



**REPORT ON LEGISLATION ADMINISTERED  
BY DEPARTMENT OF RURAL DEVELOPMENT AND  
LAND REFORM**

**PROJECT 25:  
STATUTORY LAW REVISION**

**DECEMBER 2011**



**TO MR JT RADEBE, MP, MINISTER OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

**I am honoured to submit to you in terms of section 7(1) of the South African Law Reform Commission Act of 1973 (as amended) for your consideration, the Commission's report on Statutory Law Revision (Legislation administered by the Department of Rural Development and Land Reform).**

A handwritten signature in black ink, appearing to read 'Y Mokgoro', is centered on the page.

**Y MOKGORO**

**CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION**

**03 December 2011**



## South African Law Reform Commission

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 Commission 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  
Mr T Ngcukaitobi  
Advocate DB Ntsebeza SC  
Advocate T Madonsela (until October 2009)  
Professor PJ Schwikkard  
Advocate M Sello

The Secretary of the SALRC is Mr Michael Palumbo. The project leader responsible for this investigation is Professor Cathi Albertyn. The SALRC official assigned to this investigation is Mr Linda Mngoma. The Commission's offices are on the 5<sup>th</sup> Floor, Die Meent Building, 266 Andries Street (corner of Andries and Schoeman Streets), Pretoria.

On 30 July 2008, Ms MS Mabandla, the then Minister of Justice and Constitutional Development, appointed the following advisory committee members to assist with this investigation, namely:

Prof Jeannie van Wyk, University of South Africa  
Professor Willemien du Plessis, University of North-West  
Professor André van der Walt, University of Stellenbosch  
Professor Juanita Pienaar, University of Stellenbosch  
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# Executive Summary of the Report

## A. Introduction

1. Since the advent of the constitutional democracy in 1994, no comprehensive review of the statute book for constitutionality, redundancy or obsolescence has been undertaken, although a number of Acts have been amended or repealed by Parliament on an *ad hoc* basis. To address this unsatisfactory state of affairs, in 2004, the South African Law Reform Commission (SALRC) included in its law reform programme an investigation into statutory law revision. The purpose of this investigation is two-fold: (a) to align the South African statute book with the right to equality entrenched in section 9 of the Constitution of the Republic of South Africa, 1996; and (b) to provide a statute book that is free from obsolete and unnecessary matter.
2. In August 2004, the SALRC commenced its review of land reform and administration legislation and the development of its Consultation Paper setting out provisional findings and proposals. On 27 January 2010, the SALRC wrote a letter to the then Director-General: Department of Rural Development and Land Reform (DRDLR), Mr Thozamile Gwanya, requesting comments on the provisional findings and proposals for legislative changes contained in the Consultation Paper and Draft Rural Development and Land Reform General Laws Amendment and Repeal Bill (hereinafter the Draft Bill) attached to the letter. On 31 March 2010, comments and input were received from the Director-General: DRDLR.
3. In the letter addressed to the SALRC referred to in paragraph 2 above, the DRDLR supports the objects of the Consultation Paper and the Draft Bill, being the repeal of discriminatory, unconstitutional and obsolete legislation.

## B. Discussion Paper 118

4. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC developed a discussion paper incorporating

comments and input received from the DRDLR on the SALRC's Consultation Paper and published it as Discussion Paper 118 (the Discussion Paper) for general information and comment in August 2010.

5. In the Discussion Paper, the SALRC listed all the principal and amendment legislation (consolidated list of 110 statutes enacted between 1937 and 2004) administered by the DRDLR, explained the background to statutory law revision; set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of these statutes; provided detailed findings and proposals for law reform in respect of the statutes found wanting; appended the Draft Bill setting out legislation or provisions in legislation which needed to be amended and repealed, and the extent of such repeal; and contained an invitation to interested parties to submit comments to the SALRC. The closing date for submission of public comments to the SALRC was 30 November 2010.
6. The stakeholders to whom the Discussion Paper was distributed include the Director-General: DRDLR; other relevant national government departments; the Commission on Restitution of Land Rights; heads of provincial government departments responsible for human settlements, local government and traditional affairs; the judiciary; academia; research institutions and non-government organisations involved in rural development and land reform matters.
7. The SALRC received comments from the following departments, organizations and individuals alike, namely: Department of Environmental Affairs; AgriSA; Association for Rural Advancement and Advocate Geoff Budlender SC.
8. In the process of the SALRC conducting this review, a number of new Acts have been passed and new Bills have been introduced to Parliament by the DRDLR. These include the Black Authorities Act Repeal Act, 2010 (Act No. 13 of 2010) which came into operation on 3 December 2010 and the Rural Development and Land Reform General Amendment Act, 2011 (Act No. 4 of 2011), which came into operation on 16 May 2011. The Draft Land Tenure Security Bill, 2011 and the Draft Spatial Planning and Land Use Management Bill, 2011 were published by the DRDLR for public comment on 24 December 2010 and 6 May 2011 respectively.

9. Consequently, the recommendations contained in this Report which have since been implemented by the DRDLR or are in the process of being implemented by the DRDLR have been excluded from the Draft Bill.

## **C. Draft Rural Development and Land Reform General Laws Amendment and Repeal Bill**

10. Legislation recommended for repeal on the ground of unconstitutionality.
  - a) Communal Land Rights Act, 2004 (Act No. 11 of 2004).
    - i. The Draft Bill proposes that the Communal Land Rights Act, 2004 (Act No. 11 of 2004) be repealed. The Act has not yet commenced. In the *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* case,<sup>1</sup> the Constitutional Court declared that the Act is unconstitutional in its entirety for want of compliance with section 76 of the Constitution. The Court held that  
  
*“This judgement will, however, provide Parliament with the opportunity to take a second look at the substantive objections raised by the applicants in respect of the Act when it considers the proper way to give effect to section 25(6) of the Constitution. Suffice it to say that the legislation contemplated by section 25(9) read with section 25(6) must be enacted with a sense of urgency and diligence.”*<sup>2</sup>
11. Legislation recommended for repeal on the ground of obsolescence.
  - a) Community Development Act, 1966 (Act No. 3 of 1966).
    - i. The SALRC recommends that the DRDLR initiates the process to bring into operation the commencement of-

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<sup>1</sup> 2010 (6) SA 214 (CC).

<sup>2</sup> 2010 (6) SA 214 (CC), paragraph 127.

- a) section 14(1) of the Land Affairs Act 101 of 1987, which will result in the repeal of the Community Development Act 3 of 1966 (with the exception of section 51B of the Community Development Act 3 of 1966); and
  - b) section 14(2) of the Land Affairs Act 101 of 1987, which will result in the repeal of section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986.
- ii. It is not clear whether section 51B was ever repealed and unless the Department is aware of reasons to maintain the section then it is recommended that it should be repealed. In fact section 14(2) of the Land Affairs Act 101 of 1987 states that-
- “Section 51B of the Community Development Act, 1966 (Act 3 of 1966), and the Community Development Amendment Act, 1986 (Act 48 of 1986) shall be repealed with effect from a date fixed by the State President by proclamation in the Gazette”.*
- iii. Section 14(1) of the Land Affairs Act 101 of 1987 repeals the whole of the Community Development Act 3 of 1966, except for section 51B. Section 14(2) repeals section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986. The date of commencement of section 14 still has to be proclaimed. The Community Development Act 3 of 1966 is thus currently still on the statute book.
- (b) Black Administration Amendment Act, 1942 (Act No. 42 of 1942).
- i. The Draft Bill seeks to repeal the Black Administration Amendment Act, 1942 (Act No. 42 of 1942). The purpose of Act 42 of 1942 was to amend the laws relating to Black administration. However, all the remaining sections of Act 42 of 1942 are redundant.
- (c) Black Laws Amendment Act, 1949 (Act No. 56 of 1949).

- i. The Draft Bill seeks to repeal the Black Laws Amendment Act, 1949 (Act No. 56 of 1949). The purpose of Act 56 of 1949 was, among others, to amend the Black Administration Act 38 of 1927. All the sections of Act 56 of 1949 have been repealed save for sections 19 to 26 inclusive and section 35.
  - ii. Sections 19 to 26 inclusive of Act 56 of 1949 amend respectively the following sections of Act 38 of 1927, namely: 2, 6, 10, 12, 13, 20, 21 and 27. However, these sections of Act 38 of 1927 have all been repealed save for sections 12 and 20 which have been repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 with effect from 30 December 2012.
  - iii. Section 35 of Act 56 of 1949 provides for the repeal of section 33 of the British Bechuanaland Proclamation 2 of 1885 and the unrepealed portion of the Black Chief's Jurisdiction (Transvaal and British Bechuanaland) Act 7 of 1924.
  - iv. The Black Laws Amendment Act 56 of 1949 is obsolete and may be repealed by the DRDLR with effect from 30 December 2012.
- (d) Black Laws Amendment Act, 1952 (Act No. 54 of 1952).
- i. The Draft Bill seeks to repeal the Black Laws Amendment Act, 1952 (Act No. 54 of 1952). The purpose of Act 54 of 1952 was, among others, to amend the Black Administration Act 38 of 1927. All the sections of Act 54 of 1952 have been repealed save for sections 23 and 39. Section 23 of the Act amends section 20 of Act 38 of 1927. However, section 20 of Act 38 of 1927 has been repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 with effect from 30 December 2012.
  - ii. Section 39 of the Act repeals sections 20, 31 and 32 of the British Bechuanaland Proclamation 2 of 1885, and the Blacks (Urban Areas) Amendment Act 43 of 1945.

- iii. The Black Laws Amendment Act 54 of 1952 is obsolete and may be repealed by the DRDLR with effect from 30 December 2012.
- (e) Black Administration Amendment Act, 1956 (Act No. 42 of 1956).
- i. The Draft Bill seeks to repeal the Black Administration Amendment Act, 1956 (Act No. 42 of 1956) on the ground of obsolescence. The purpose of Act 42 of 1956 was to amend Act 11 of 1896 of Natal and the Black Administration Act 38 of 1927. However, Act 11 of 1896 was repealed by section 1 of the Pre-Union Statute Laws Revision Act 24 of 1979.
  - ii. Sections 2, 3 and 4 of Act 42 of 1956 amend sections 1, 5 and 35 of Act 38 of 1927. However, sections 1, 5 and 35 of Act 38 of 1927 were repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005.
- (f) Black Laws Amendment Act, 1962 (Act No.46 of 1962).
- i. The Draft Bill seeks to repeal the Black Laws Amendment Act, 1962 (Act No. 46 of 1962). The purpose of Act 46 of 1962 was to amend, among others, the Black Administration Act, 1927 (Act No. 38 of 1927). All the remaining sections of Act 46 of 1962 are redundant.
- (g) Black Laws Amendment Act, 1974 (Act No. 70 of 1974).
- i. The Draft Bill seeks to repeal the Black Laws Amendment Act 70 of 1974. The purpose of the Act was, among others, to amend the Black Administration Act 38 of 1927. All the remaining sections of Act 70 of 1974 are redundant.
- (h) The Black Laws Amendment Act, 1976 (Act No. 4 of 1976).
- i. The Draft Bill seeks to repeal the Black Laws Amendment Act 4 of 1976. The purpose of Act 4 of 1976 was, among others, to repeal Natal Law 19 of 1891 and to amend the Black Administration Act 38 of 1927. All the remaining sections of Act 4 of 1976 are redundant.

12. Legislation recommended for partial repeal on the ground of obsolescence.
  - (a) General Law Second Amendment Act, 1993 (Act No. 108 of 1993).
    - i. The Draft Bill seeks to repeal sections 1, 2, 3, 4, 5, 6, 14, 29 and 32 of the General Law Second Amendment Act, 1993 (Act No. 108 of 1993). These sections amend statutes or parts of statutes that have been repealed and thus no longer have any practical effect.
  - (b) State Land Disposal Act, 1961 (Act No. 48 of 1961).
    - i. The Draft Bill seeks to repeal sections 2(2) and 2B of the State Land Disposal Act 48 of 1961 on the ground of obsolescence (see paragraphs 2.162 to 2.168 for discussion).
13. Legislation recommended for amendment on the basis of its partly discriminatory nature and/or obsolescence.
  - (a) Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).
    - i. The Draft Bill seeks to amend section 2(2) of the Interim Protection of Informal Land Rights Act 31 of 1996 as follows:

“(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community, if the custom or usage concerned is in accordance with the law.”
  - (b) State Land Disposal Act, 1961 (Act No. 48 of 1961).
    - i. The Draft Bill seeks to amend the definition of ‘State land’ in section 1 of the Act 48 of 1961 as follows:

“‘State land’ [**includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965**

**(Ordinance 25 of 1965) (Transvaal), vests in the State President, ]**  
means land that is owned by or vest in the national government of the  
Republic of South Africa and any right in respect of such [State] land".

ii. Secondly, the Draft Bill seeks to amend section 8A of the Act as follows:

"8A The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any **[proclamation or]** regulation referred to in section[s **5(2), 8(2) and**] 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991)."

iii. Lastly, the Draft Bill seeks to amend all the references to **[State President]** found in sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act with reference to the 'President'.

(c) Land Affairs Act, 1987 (Act No. 101 of 1987).

i. The Draft Bill seeks to amend the long title of the Land Affairs Act 101 of 1987 as follows:

"To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works **[and Land Affairs]** for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters."

ii. To amend the definition of Department in section 1 of the Act as follows:

"Department' means the Department of Public Works **[and Land Affairs]**'.

iii. To amend section 3(1) of the Act as follows:

“(1) Subject to the provisions of subsection (2), the board shall consist of not more than five members appointed by the Minister in a full-time or part-time capacity **[after consultation with the Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates].**”.

iv. To amend section 4(2)(c) of the Act as follows:

“(2)(c) If his ‘or her’ estate is sequestrated **[or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1996 (Act 28 of 1966);]**”.

v. To amend section 4(2)(d) of the Act be amended as follows:

“(2)(d) If he ‘or she’ seeks election at any party or official nomination of candidates for Parliament **[,the President’s Council]** or any other legislative authority elected on a party political basis, or attempts to have himself ‘or herself’ nominated at any such nomination;”.

(c) Planning Profession Act, 2002 (Act No. 36 of 2002).

i. The Draft Bill seeks to amend the Act by the substitution for the definition of ‘National Qualifications Framework’ in section 1 of the Act of the following definition:

“‘National Qualifications Framework’ means the National Qualifications Framework as **[defined in section 1 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]** contemplated in Chapter 2 of the National Qualifications Framework Act, 2008 (Act 67 of 2008);”

ii. Secondly the Draft Bill seeks to amend the Act by the substitution for paragraph (a) of section 8(4) of the following paragraph:

(4) with regard to education and training-

(a) must consult with the South African Qualifications Authority established by the **[South African Qualifications Authority Act, 1995 (Act 58 of 1995)]** National Qualifications Framework Act, 2008 (Act 67 of 2008), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration in terms of the National Qualifications Framework;”

- iii. Lastly, the Draft Bill seeks to amend the Act by the substitution for paragraph (c) of section 13(4) of the following paragraph:

“(c) in the case of a person applying for registration as a professional planner-

- (i) ...
- (ii) ...
- (iii) ...

or that the applicant possesses such other qualifications as defined in the **[South African Qualifications Authority Act, 1995]** National Qualifications Framework Act, 2008, as may be determined for the relevant category from time to time by the South African Qualifications Authority in terms of that Act and by the Council.”

## D. Summary of the Recommendations

14. In this Report, the SALRC makes the following recommendations, namely:
- (a) Legislation recommended for repeal on the ground of unconstitutionality.
    - i. Communal Land Rights Act, 2004 (Act No.11 of 2004).
  - (b) Legislation recommended for repeal on the ground of obsolescence.

- i. Community Development Act, 1966 (Act No.3 of 1966);
  - ii. Black Administration Amendment Act, 1942 (Act No.42 of 1942);
  - iii. Black Laws Amendment Act, 1949 (Act No.56 of 1949);
  - iv. Black Laws Amendment Act, 1952 (Act No.54 of 1952);
  - v. Black Administration Amendment Act, 1956 (Act No. 42 of 1956);
  - vi. Black Laws Amendment Act, 1962 (Act No.46 of 1962);
  - vii. Black Laws Amendment Act, 1974 (Act No.70 of 1974); and
  - viii. Black Laws Amendment Act, 1976 (Act No.4 of 1976).
- (c) Legislation recommended for partial repeal on the ground of obsolescence.
- i. General Law Second Amendment Act, 1993 (Act No. 108 of 1993).
    - Repeal sections 1, 2, 3, 4, 5, 6, 14, 29 and 32 of the Act.
  - ii. State Land Disposal Act, 1961 (Act No.48 of 1961).
    - Repeal sections 2(2) and 2B of the Act.
- (d) Legislation recommended for amendment on the basis of its partly discriminatory nature and/or obsolescence.
- i. Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).
    - Amend section 2(2) of the Act.
  - ii. State Land Disposal Act, 1961 (Act No. 48 of 1961).
    - Amend the definition of 'State land' in section 1 of the Act;
    - Amend section 8A of the Act;
    - Amend sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act.
  - iii. Land Affairs Act, 1987 (Act No. 101 of 1987).

- Amend the long title of the Act;
  - Amend the definition of 'Department' in section 1 of the Act;
  - Amend section 3(1) of the Act;
  - Amend section 4(2) (c) of the Act;
  - Amend section 4(2) (d) of the Act.
- iv. Planning Profession Act, 2002 (Act No. 36 of 2002).
- Amend the definition of 'National Qualifications Framework' in section 1 of the Act;
  - Amend section 8(4)(a);
  - Amend section 13(4)(c).

## **E. Concluding remarks**

15. The SALRC has prepared this report for consideration by the Minister of Justice and Constitutional Development in terms of section 7(1) of the South African Law Reform Commission Act, 1973 (Act No.19 of 1973).

16. The SALRC wishes to express its sincere gratitude to the officials of the Department of Rural Development and Land Reform for their co-operation and assistance during the investigation process.



# Chapter 1

## Project 25: Statutory Law Revision

### A. Introduction

#### 1 The objects of the South African Law Reform Commission

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

- a) the repeal of obsolete or unnecessary provisions;
- b) the removal of anomalies;
- c) the bringing about of uniformity in the law in force in the various parts of the Republic; and
- d) 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.

#### 2 History of the investigation

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

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

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

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

### **3. What is statutory law revision?**

1.7 Statutory law revision is the review of statutes to determine whether they need updating or are still relevant and enjoy practical application. The purpose of the review is to modernise and simplify those statutes that need modernization or updating and to reduce the size of the statute book to the benefit of legal professionals and all other

parties who make use of it. It also ensures people are not misled by obsolete laws on the statute book which seem to be relevant or 'live' law. If legislation features in the statute book and is referred to in text-books, users reasonably enough assume those statutes still serve a purpose.

1.8 Legislation identified for repeal is selected on the basis that it is no longer of practical utility. Usually this is because these laws no longer have any legal effect on technical grounds – because they are spent, unnecessary or obsolete. But sometimes they are selected because, although strictly speaking they do continue to have legal effect, the purposes for which they were enacted, either no longer exist, or are currently being met by alternative means.

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

1.10 Provisions commonly repealed by Repeals of Laws Acts include the following-

- 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;
- c) references to Acts that have been superseded by more modern legislation or by an international convention;
- d) references to statutory provisions (i.e. sections, schedules, etc) that have been repealed;
- e) repealing provisions e.g. "Section 28 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 once-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.

1.11 The meaning of the terms expired, spent, repealed in general terms, virtually repealed, superseded and obsolete was explained by the Law Commission of India as follows:<sup>3</sup>

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 their object the continuance of previous temporary enactments for periods now gone by effluxion of time;

Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required;

Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate;

Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;

Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise;

Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.12 The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete, often it is simply a case of legislation being overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. These include commencement and transitory provisions and 'pump-priming' provisions (e.g. initial funding and initial appointments to a Committee or a Board) to implement the new legislation. Next to go may be subordinate legislation-making powers that are no longer needed. Then the Committee or Board established by the Act no longer meets and can be abolished.

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<sup>3</sup> Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984 available at <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> accessed on 29 August 2007.

1.13 Much statutory law revision is possible because of the general savings provisions of section 12(2) of the Interpretation Act 33 of 1957. This section provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not-

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

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

#### **4. The initial investigation**

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALs) of the

University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. CALS pursued four main avenues of research in their study conducted in 2001:<sup>4</sup>

First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.

Second, an analysis of all Constitutional Court judgments until 2001 was undertaken. Schedules reflecting the nature and outcome of the cases, and the statutes impugned were compiled. The three most problematic categories of legislative provision were identified, and an analysis made of the Constitutional Court's jurisdiction in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe the principle of the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled in respect of each category.

Third, sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.

Fourth, a survey of five countries (United Kingdom, Germany, Norway, Switzerland and France) was conducted. With the exception of France, all the countries have conducted or are conducting statutory revision exercises, although the motivation for and the outcomes of these exercises differ.

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

- a) the Recognition of Customary Marriages (August 1998);
- b) the Review of the Marriage Act 25 of 1961 (May 2001);
- c) the Application of the Bill of Rights to Criminal Procedure, Criminal Law,

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<sup>4</sup> "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law & Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand.

- the Law of Evidence and Sentencing (May 2001);
- d) Traditional Courts (January 2003);
- e) the Recognition of Muslim marriages (July 2003);
- f) the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- g) Customary Law of Succession (March 2004); and
- h) Domestic Partnerships (in March 2006)

## **5. Scope of the project**

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

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

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

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

1.20 The SALRC decided that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.<sup>5</sup> However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This is necessitated by, among other considerations, time and capacity. It is not foreseen that the SALRC and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

1.21 Transversally, the following needs to be noted:

- a) In terms of the Interpretation Act 33 of 1957, all references to the masculine gender include the female gender (section 6);
- b) In terms of the Interpretation Act 33 of 1957, all references to the State President are deemed to be references to the President (section 2);
- c) In terms of the Constitution of the Republic of South Africa 200 of 1993, all references to 'administrator' are deemed to be reference to 'premier';
- d) The names of a number of the government departments, and the references to their Ministers, have been changed. See in this regard President's Minute No. 690 of 6 July 2009.

1.22 In addition, the Commission is aware of recent developments affecting some of the Acts administered by the Department of Rural Development and Land Reform (DRDLR). Within this context, the Commission has taken note of the contents of, and the parliamentary procedure in respect of, the Land Use Management Bill, 2008 [B27-2008]. This Bill was withdrawn before April 2009, and according to information made available to the Commission, is currently being redrafted. As the scope of this project includes only existing national principal land reform and administration legislation that is currently being administered by the DRDLR, the potential implications of envisaged draft legislation on the body of existing law, have not been taken into account for purposes of this report. It follows that follow-up research will have to be done by the DRDLR if any new principal legislation is enacted in order to determine the effect on legislation that is currently in force.

1.23 As the latest version of every Principal Act was analysed for purposes of this Discussion Paper, separate evaluations of Amendment Acts were not necessary. The

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<sup>5</sup> 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.

only exception to this is the analysis of the General Laws Second Amendment Act 108 of 1993 as it amended a range of other legislation.

## **6. Assistance by government departments and stakeholders**

1.24 Cabinet endorsed in 2004 that government departments should be requested to participate in and contribute to this investigation. Sometimes it is impossible to tell whether a provision can be repealed without information that is not readily ascertainable without access to 'inside' knowledge held by a department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo, until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the preliminary consultation paper drafted by the SALRC invites the department being consulted to supply the necessary information. Any assistance that can be given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences.

## **7. Consultation with the Department of Rural Development and Land Reform**

1.25 The SALRC has reviewed a consolidated list of 110 statutes enacted between 1937 and 2004, as statutes that are administered by the DRDLR, with the assistance of its advisory committee appointed to assist in this investigation.<sup>6</sup> In January 2010, and in accordance with its policy to consult widely and to involve the Department likely to be affected by the proposals made, the SALRC developed and submitted to the DRDLR a Consultation Paper explaining the background to statutory law revision, setting out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by the DRDLR, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting, appended a Draft Rural Development and Land Reform General Laws Amendment and Repeal Bill (Draft Bill) setting out statutes which needed to be amended and repealed, and the extent of such

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<sup>6</sup> See list of advisory committee members on page v of this Report.

repeal. The SALRC invited the DRDLR to peruse the preliminary findings, proposals and questions for comment and submit comments to the SALRC.

1.26 On 31 March 2010, the Director-General: DRDLR submitted comments to the SALRC. In a nutshell, the Director-General: DRDLR supports the objects of the Consultation Paper and Draft Bill referred to above, being the repeal of discriminatory, unconstitutional and obsolete legislation and the amendment of statutes containing discriminatory and obsolete provisions.

## Chapter 2

# Explanatory notes on the Draft Rural Development and Land Reform General Laws Amendment and Repeal Bill

### 1. Introductory summary

2.1 As stated in Chapter 1, the SALRC has identified and reviewed a consolidated list of 110 statutes enacted between 1937 and 2004, as being statutes that are administered by the DRDLR. It was further stated that the DRDLR supports the objects of this investigation, being the amendment or repeal of statutes that are in conflict with the right to equality entrenched in section 9 of the Constitution, including provisions in statutes that are redundant or obsolete.

2.2 According to the DRDLR 2009 / 2010 Annual Report,<sup>7</sup> *“the reconfiguration of government in 2009 led to, amongst others, the establishment, for the first time after 15 years of democratic government in South Africa, of a Ministry and a Department of Rural Development and Land Reform in May 2009. With the addition of the Rural Development mandate the vision and mission was reviewed and implanted as follows:*

***New Vision***

*“Vibrant, Equitable and Sustainable Communities.”*

***New Mission***

*“To facilitate integrated development and social cohesion through participatory approaches, in partnerships with all sectors of society.”*

2.3 In this chapter, the statute that is proposed for repeal as a whole on the ground of unconstitutionality is the following:

- 1) Communal Land Rights Act, 2004 (Act No. 11 of 2004).

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<sup>7</sup> Department of Rural Development and Land Reform 2009 / 2010 Annual Report on 11.

2.4 The statutes that are proposed for repeal as a whole on the ground of obsolescence include the following:

- 1) Community Development Act, 1966 (Act No. 3 of 1966);
- 2) Black Administration Amendment Act, 1942 (Act No. 42 of 1942);
- 3) Black Laws Amendment Act, 1949 (Act No. 56 of 1949);
- 4) Black Laws Amendment Act, 1952 (Act No. 54 of 1952);
- 5) Black Administration Amendment Act, 1956 (Act No. 42 of 1956);
- 6) Black Laws Amendment Act, 1962 (Act No. 46 of 1962);
- 7) Black Laws Amendment Act, 1974 (Act No. 70 of 1974); and
- 8) Black Laws Amendment Act, 1976 (Act No. 4 of 1976);

2.5 The statutes repealed and statutes in the process of being repealed by the DRDLR are the following:

- 1) Black Authorities Act, 1951 (Act No. 68 of 1951);
- 2) Physical Planning Act, 1967 (Act No. 88 of 1967);
- 3) Physical Planning Act, 1991 (Act No. 125 of 1991);
- 4) Development Facilitation Act, 1995 (Act No. 67 of 1995);
- 5) Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and
- 6) Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997).

2.6 The statutes that are proposed for partial repeal on the ground of obsolescence include the following:

- 1) General Law Second Amendment Act, 1993 (Act No. 108 of 1993); and
- 2) State Land Disposal Act, 1961 (Act No.48 of 1961).

2.7 The statutes proposed for amendment on the basis of its partly discriminatory nature and/or obsolescence include the following:

- 1) General Law Second Amendment Act, 1993 (Act No. 108 of 1993);
- 2) Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996);
- 3) State Land Disposal Act, 1961 (Act No. 48 of 1961) and
- 4) Land Affairs Act, 1987 (Act No. 101 of 1987).

2.8 There are no Amendment Acts that contain substantive provisions standing on their own. As Amendment Acts amend principal legislation, and after enactment are incorporated into the body of the relevant principal legislation, the following Amendment Acts are not analysed as if they were stand alone statutes. These Amendment Acts' repeal or amendment follows from the proposed repeal or amendment of the Principal Acts concerned. All the Amendment Acts listed below only amend the principal legislation concerned, namely:

- 1) Abolition of Racially Based Land Measures Amendment Act, 1991 (Act No.108 of 1991);
- 2) Abolition of Racially Based Land Measures Amendment Act, 1992 (Act No.133 of 1992);
- 3) Deeds Registries Amendment Act, 1953 (Act No.15 of 1953);
- 4) Deeds Registries Amendment Act, 1957 (Act No.43 of 1957);
- 5) Deeds Registries Amendment Act, 1962 (Act No.43 of 1962);
- 6) Deeds Registries Amendment Act, 1965 (Act No.87 of 1965);
- 7) Deeds Registries Amendment Act, 1969 (Act No.61 of 1969);
- 8) Deeds Registries Amendment Act, 1972 (Act No.3 of 1972);
- 9) Deeds Registries Amendment Act, 1977 (Act No.41 of 1977);
- 10) Deeds Registries Amendment Act, 1978 (Act No.92 of 1978);
- 11) Deeds Registries Amendment Act, 1980 (Act No.44 of 1980);
- 12) Deeds Registries Amendment Act, 1982 (Act No.27 of 1982);
- 13) Deeds Registries Amendment Act, 1984 (Act No.62 of 1984);
- 14) Deeds Registries Amendment Act, 1987 (Act No.75 of 1987);
- 15) Deeds Registries Amendment Act, 1989 (Act No.24 of 1989);
- 16) Deeds Registries Amendment Act, 1993 (Act No.14 of 1993);
- 17) Deeds Registries Amendment Act, 1996 (Act No.11 of 1996);
- 18) Deeds Registries Amendment Act, 1998 (Act No.93 of 1998);
- 19) Deeds Registries Amendment Act, 2003 (Act No.9 of 2003);
- 20) KwaZulu-Natal Ingonyama Trust Amendment Act, 1997 (Act No.9 of 1997);
- 21) Land Administration Amendment Act, 1996 (Act No.52 of 1996);
- 22) Land Affairs General Amendment Act, 1995 (Act No.11 of 1995);
- 23) Land Affairs General Amendment Act, 1998 (Act No.61 of 1998);
- 24) Land Affairs General Amendment Act, 2000 (Act No.11 of 2000);
- 25) Land Affairs General Amendment Act, 2001 (Act No.51 of 2001);

- 26) Land Restitution and Reform Laws Amendment Act, 1996 (Act No.78 of 1996);
- 27) Land Restitution and Reform Laws Amendment Act, 1997 (Act No.63 of 1997);
- 28) Land Restitution and Reform Laws Amendment Act, 1999 (Act No.18 of 1999);
- 29) Physical Planning Amendment Act, 1983 ( Act No.87 of 1983);
- 30) Physical Planning Amendment Act, 1984 ( Act No.104 of 1984);
- 31) Physical Planning Amendment Act, 1985 ( Act No.92 of 1985);
- 32) Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1986 (Act No.37 of 1986);
- 33) Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1987 (Act No.66 of 1987);
- 34) Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993 (Act No.34 of 1993);
- 35) Provision of Certain Land for Settlement Amendment Act, 1998 (Act No.26 of 1998);
- 36) Regional and Land Affairs General Amendment Act, 1993 (Act No.89 of 1993);
- 37) Regional and Land Affairs Second General Amendment Act, 1993 (Act No.170 of 1993);
- 38) Removal of Restrictions Amendment Act, 1977 (Act No.55 of 1977);
- 39) Removal of Restrictions Amendment Act, 1984 (Act No.18 of 1984);
- 40) Restitution of Land Rights Amendment Act, 1995 (Act No.84 of 1995);
- 41) Restitution of Land Rights Amendment Act, 2003 (Act No.54 of 2003);
- 42) Second Community Development Amendment Act, 1982 (Act No.68 of 1982);
- 43) Sectional Titles Amendment Act, 1991 (Act No.63 of 1991);
- 44) Sectional Titles Amendment Act, 1992 (Act No.7 of 1992);
- 45) Sectional Titles Amendment Act, 1993 (Act No.15 of 1993);
- 46) Sectional Titles Amendment Act, 1997 (Act No.44 of 1997);
- 47) Sectional Titles Amendment Act, 2003 (Act No.29 of 2003);
- 48) State Land Disposal Amendment Act, 1968 (Act No.28 of 1968);
- 49) State Land Disposal Amendment Act, 1976 (Act No.26 of 1976);
- 50) State Land Disposal Amendment Act, 1982 (Act No.66 of 1982);
- 51) State Land Disposal Amendment Act, 1987 (Act No.47 of 1987);
- 52) State Land Disposal Amendment Act, 1988 (Act No.19 of 1988);

- 53) Town and Regional Planners Amendment Act, 1987 (Act No.48 of 1987);
- 54) Town and Regional Planners Amendment Act, 1988 (Act No.20 of 1988);
- 55) Town and Regional Planners Amendment Act, 1990 (Act No.37 of 1990);
- 56) Town and Regional Planners Amendment Act, 1993 (Act No.28 of 1993);
- 57) Town and Regional Planners Amendment Act, 1995 (Act No.3 of 1995) [Note: The Principal Act, the Town and Regional Planners Act, 1984 (Act No. 19 of 1984) has been repealed]; and
- 58) Upgrading of Land Tenure Rights Amendment Act, 1996 (Act No.34 of 1996).

2.9 Save for the recommendations that have already been implemented or are in the process of being implemented by the DRDLR, all other proposals discussed in this Chapter have been summarised in the Draft Bill contained in Annexure A to this Report.

2.10 Also included in this Report for sake of comprehensiveness is an evaluation of statutes proposed to be retained. The statutes proposed for retention without amendment include the following:

- 1) Abolition of Certain Titles and Conditions Act, 1999 (Act No. 43 of 1999);
- 2) Communal Property Association Act, 1996 (Act No. 28 of 1996);
- 3) Deeds Registries Act, 1937 (Act No. 47 of 1937);
- 4) Land Administration Act, 1995 (Act No. 2 of 1995);
- 5) Land Titles Adjustment Act, 1993 (Act No. 111 of 1993);
- 6) Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984);
- 7) Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) (previous title: Provision of Certain Land for Settlement Act);
- 8) Restitution of Land Rights Act, 1994 (Act No .22 of 1994);
- 9) Sectional Titles Act, 1986 (Act No. 95 of 1986);
- 10) Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003);
- 11) Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998);
- 12) Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991);
- 13) KwaZulu-Natal Ingonyama Trust Act, 1994 (No. 3KZ of 1994);

- 14) Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993);
- 15) Kimberly Leasehold Conversion to Freehold Act, 1961 (Act No. 40 of 1961); and
- 16) KwaZulu Land Affairs Amendment Act, 1998 (Act No. 48 of 1998).

## **2. Statutes administered by the Department of Rural Development and Land Reform**

2.11 The Commission has identified for purposes of the current review 110 statutes (32 Principal Acts and 78 Amendment Acts) as being statutes that are administered by the DRDLR (see Annexures B and C to this Report). The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed as a result of redundancy, obsolescence or unconstitutionality in terms of section 9 of the Constitution, has identified a number of Acts that may be repealed fully or in part and some Acts that may be otherwise amended. These Acts are contained in Schedules 1 and 2 of the proposed Draft Bill (see Annexure A).

## **3. General observations**

2.12 Bearing in mind the importance of land administration and land reform to the people of South Africa and the inevitable impact of the successful implementation thereof on people's rights generally, it is to be made clear that this Report forms part of a narrowly focused and text-based statutory review process as is outlined above. Where a statute administered by the DRDLR seems to be free of any provisions that contradict or violate section 9 of the Constitution, it is accordingly not to say that the execution of such statute necessarily takes place in line with the protection afforded by the section 9 equality provision. Therefore, this Report does not reflect on any consequential and/or operational effects of the execution of powers in terms of the legislation reviewed.

2.13 Several post-1996 statutes formed part of the review for purposes of this Report. Some of these statutes were found to contain provisions that are not fully compliant with section 9 of the Constitution.

2.14 However, although not part of the purpose of and core mandate for the current investigation, it has been observed in general that a significant number of provisions contained in several pre-1996 and post-1996 land administration and land reform statutes require statutory revision in order to:

- 1) Ensure that land administration and land reform legislation is aligned with the values and provisions of the Constitution, generally;
- 2) Ensure that land administration and land reform legislation is aligned with other framework and sectoral legislation in South Africa, generally;
- 3) Improve the statutory regulation of matters related to land administration and land reform in the context of cooperative government;
- 4) Clarify the role and responsibilities of several land administration and land reform structures, including communal property associations, traditional councils and the role and responsibilities of the different spheres of government;
- 5) Fortify legal certainty with regard to issues such as compulsory decision-making powers on the part of the MECs responsible for land-related matters and to whom various aspects pertaining to the implementation of land administration and land reform may have been delegated;
- 6) Eliminate discrepancies in and overlap between different statutes regulating land administration and land reform; and
- 7) More comprehensively regulate some land administration and land reform affairs that are currently ill-defined or ambiguous.

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

- 1) Determining the constitutionality of legislation administered by DRDLR with reference to all the other provisions of the Constitution (outside of

section 9, which forms the basis of the review done for purposes of this Report);

- 2) Updating the list of legislation administered by DRDLR by including all the pre-1994 subordinate legislation which formed the basis for land administration and reform in the former urban areas and homelands;
- 3) Updating the list of pre-1994 legislation within the functional domain of DRDLR and which has not been either allocated to DRDLR or listed in the DRDLR list of legislation (Annexure B); and
- 4) Initiating a process to inventorise, analyse, review and rationalise the body of pre-1994 RSA, TBVC and self-governing territories' land administration legislation (both principal and subordinate) a part of which was assigned to provincial premiers by the President in terms of section 235(8) of the (Interim) Constitution of the Republic of South Africa, 1993 (Act No.200 of 1993).

#### **4. Recommendations for the repeal and amendment of legislation currently administered by the Department of Rural Development and Land Reform**

2.16 For purposes of this Report, the analysis of legislation administered by the DRDLR has indicated the need to make a distinction between the following categories of legislation:

- 1) Legislation which requires an extensive transversal analysis process, involving either other government departments or DRDLR and one or more other government departments. A typical example of this category is the various Black Laws Amendment Acts (Annexure B, No. 4-8).
- 2) Legislation which has already been repealed, and which consequently should be removed from the DRDLR list, e.g. the Community Development Amendment Acts (Annexure B, No. 9-21).
- 3) Amendment Acts which are in principle included in the latest version of the principal legislation concerned. The analysis contained in this

Report thus focuses only on the review of the principal legislation (which encompasses all amendment legislation). Examples of this are the various Deeds Registries Amendment Acts (Annexure B, No. 22-38).

2.17 All the relevant Acts were categorised in the following categories, namely:

- 1) Statute proposed to be repealed as a whole on the ground of unconstitutionality;
- 2) Statutes proposed to be repealed as a whole on the ground of obsolescence;
- 3) Statutes already repealed and statutes in the process of being repealed by the DRDLR;
- 4) Statutes proposed for partial repeal or amendment on the basis of its partly discriminatory nature and / or obsolescence on the ground of obsolescence; and
- 5) Statutes proposed for retention without amendment.

2.18 Some related observations follow in the discussion below.

## **A. Statute proposed for repeal on the ground of unconstitutionality**

(a) Communal Land Rights Act, 2004 (Act No. 11 of 2004)

2.19 It is recommended that the Communal Land Rights Act 11 of 2004 be repealed following the Constitutional Court judgement in *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others*.<sup>8</sup>

2.20 The Communal Land Rights Act 11 of 2004 has not yet commenced. It provides for legal security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama Trust land, to communities, or by awarding comparable redress. The Act also provides for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights, as well as for the democratic administration of

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<sup>8</sup> 2010 (6) SA 214 (CC) (11 May 2010).

communal land by communities. In addition, the Act was passed to establish Land Rights Boards, and to provide for the co-operative performance of municipal functions on communal land. The Act aims to amend or repeal certain laws, and to provide for matters incidental thereto.

2.21 The Act consists of 10 chapters. Chapter 1 contains the definitions, and deals with the application of the Act. Chapter 2 deals with the juristic personality of a community and security of tenure. Chapter 3 provides for the transfer and registration of communal land, and chapter 4 deals with the provision of comparable redress where tenure cannot be legally secured. Chapter 5 provides for the conduct of a land rights inquiry. Chapter 6 deals with the content, making and registration of community rules. Chapter 7 provides for the establishment of a Land Administration Committee and chapter 8 with the establishment of a Land Rights Board. Chapter 9 contains provisions relating to KwaZulu-Natal Ingonyama Trust land. Chapter 10 contains general provisions.

2.22 On 11 May 2010, the Constitutional Court declared that the Act is unconstitutional in its entirety for want of compliance with section 76 of the Constitution.<sup>9</sup> The Court held that-

*“this judgement will, however, provide Parliament with the opportunity to take a second look at the substantive objections raised by the applicants in respect of the Act when it considers the proper way to give effect to section 25(6) of the Constitution. Suffice it to say that the legislation contemplated by section 25(9) read with section 25(6) must be enacted with a sense of urgency and diligence.”<sup>10</sup>*

2.23 Accordingly, it is recommended that the Communal Land Rights Act, 2004 (Act No. 11 of 2004) be repealed.

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<sup>9</sup> Footnote 8 above.

<sup>10</sup> Footnote 8 above, paragraph 127.

## **B. Statutes proposed for repeal on the ground of obsolescence**

(a) Community Development Act, (Act No. 3 of 1966)

2.24 It is recommended that the DRDLR initiates the process to bring into operation the commencement of-

- a) section 14(1) of the Land Affairs Act 101 of 1987, which will result in the repeal of the Community Development Act 3 of 1966 (with the exception of section 51B of the Community Development Act 3 of 1966); and
- b) section 14(2) of the Land Affairs Act 101 of 1987, which will result in the repeal of section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986.

2.25 The Community Development Act 3 of 1966 commenced on 17 February 1966 and has as some of its purposes the consolidation of the law relating to the development of certain areas; the promotion of community development in such areas; and the control of the disposal of affected properties. The Act provides for the granting of assistance to persons in order for them to acquire or hire immovable property; as well as for the establishment of a board for such purposes (sections 2 to 9 and sections 13 to 18) and the Community Development Fund (sections 11 and 12). The Act also provides for the termination of leases in certain areas (section 21). Reports on the activities of the board are required in terms of section 25. The Act provides for the extinction or modification of certain restrictions on land (section 26), and the waiving or modification of provisions of town-planning schemes or conditions of title of land (s 27). The Minister can, in terms of section 28, approve lay-out plans and the development of townships in anticipation of a proclamation.

2.26 Section 29 contains a list of affected properties, and section 37 provides for the removal of certain properties from this list. The Act provides for a pre-emptive right of the board in respect of affected properties (section 30); as well as for alterations, extensions or additions to buildings or new buildings on an affected property after the basic date (section 32). Section 33 deals with the determination of the basic value; and section 35 with the expropriation of an affected property by the State or any person

other than the board. The Act provides for the prohibition on the disposal of affected property in certain circumstances (section 36), and for the acquisition of immovable property by the board by agreement or expropriation (section 38). Compensation in respect of the acquisition of property has to be determined in terms of section 41.

2.27 Section 51B of the Act provides that-

*“(1) In the event of a body being established by or under any law, to exercise or to perform a power, duty or function in regard to any particular population group in any area referred to in paragraph 5 of Schedule 1 to the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), which in the opinion of the Minister was prior to the commencement of such law exercised or performed by the board (i.e. Community Development Board), the Minister may by notice in the Gazette declare that the assets, rights, liabilities and obligations of the board in regard to that area and such amount in the fund as the Treasury may determine shall vest in the said body as from a date mentioned in the notice, and on that date such assets, rights, liabilities and obligations shall so vest and such amount shall be paid into the fund or account of the said body, and from that date any reference to the board in any law or document shall, unless it would be clearly inconsistent, be interpreted as a reference to the said body.*

*(4) The Development and Housing Board, established under section 2 of the Development and Housing Act (House of Assembly), 1985 (Act 103 of 1985), shall be deemed to be a body referred to in subsection (1).”*

2.28 Section 9 of the repealed Housing Arrangements Act 155 of 1993 provided that-

*“(1) If the State President in terms of section 98A(5)(a) of the Republic of South Africa Constitution Act, 1983 (Act No.110 of 1983), assigns the administration of*

*(a) the Development and Housing Act, 1985 (Act No.103 of 1985);*

*(b) ...*

*to the Minister (for National Housing)-*

- (i) *the Development and Housing Board, the Housing Board, the Development Board or the Housing Development Board, as the case may be, shall cease to exist;*
- (ii) *all rights and obligations of the board concerned shall pass to the board (i.e. National Housing Board); and*
- (iii) *any reference in any law to the board concerned shall be construed as a reference to the board,*

*as from the date on which the administration of the Act concerned has been so assigned.”*

2.29 The Development and Housing Act (House of Assembly) 103 of 1985 was repealed as a whole by section 20 of the Housing Act 107 of 1997. The purpose of the Housing Act, among others, is to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of housing programmes.

2.30 It is not clear, however, that section 51B was ever repealed and unless the Department is aware of reasons to maintain the section then it is recommended that it should be repealed. In fact section 14(2) of the Land Affairs Act 101 of 1987 states that-

*“section 51B of the Community Development Act, 1966 (Act 3 of 1966), and the Community Development Amendment Act, 1986 (Act 48 of 1986) shall be repealed with effect from a date fixed by the State President by proclamation in the Gazette”.*

2.31 Section 14(1) of the Land Affairs Act 101 of 1987 repeals the whole of the Community Development Act 3 of 1966, except for section 51B. Section 14(2) repeals section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986. The date of commencement of section 14 still has to be proclaimed. The Community Development Act 3 of 1966 is thus currently still on the statute book.

2.32 Accordingly, it is recommended that the DRDLR initiates the process to bring into operation the commencement of-

- a) section 14(1) of the Land Affairs Act 101 of 1987, which will result in the repeal of the Community Development Act 3 of 1966 (with the exception of section 51B of the Community Development Act 3 of 1966); and
- b) section 14(2) of the Land Affairs Act 101 of 1987, which will result in the repeal of section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986.

(b) Black Administration Amendment Act, 1942 (Act No. 42 of 1942)

2.33 The purpose of the Black Administration Amendment Act 42 of 1942 is to amend the laws relating to Black administration. All the remaining sections of Act 42 of 1942 are redundant. Sections 1, 3 and 4 of the Act amend sections 7, 27 and 34 respectively of the Black Administration Act, 1927 (Act No. 38 of 1927). However, section 7 of Act 38 of 1927 was repealed by section 1(2) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005) whereas sections 27 and 34 were repealed by section 1(1) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 respectively.

2.34 Section 5 of Act 42 of 1942 amends section 10 of the Black Administration Act, 1927, Amendment Act 9 of 1929. However, section 10 of Act 38 of 1927 was repealed by section 2 of the Special Courts for Blacks Abolition Act, 1986 (Act No. 34 of 1986). Since all the remaining sections of Act 42 of 1942 are redundant, it is recommended that the Act be repealed as a whole.

(c) Black Laws Amendment Act, 1949 (Act No. 56 of 1949)

2.35 The purpose of the Black Laws Amendment Act 56 of 1949 is, among others, to amend the Black Administration Act of 1927. All the sections of Act 56 of 1949 have been repealed save for sections 19 to 26 inclusive and section 35.

2.36 Sections 19 to 26 inclusive of Act 56 of 1949 amend respectively the following sections of Act 38 of 1927: 2, 6, 10, 12, 13, 20, 21 and 27. These sections of Act 38 of

1927 have all been repealed save for sections 12 and 20 which have been repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 with effect from 30 December 2012.

2.37 Section 35 of Act 56 of 1949 provides for the repeal of section 33 of the British Bechuanaland Proclamation 2 of 1885 and the unrepealed portion of the Black Chief's Jurisdiction (Transvaal and British Bechuanaland) Act 7 of 1924.

2.38 The Black Laws Amendment Act 56 of 1949 is obsolete and may be repealed by the DRDLR with effect from 30 December 2012 on the basis of the general savings provisions contained in section 12(2) of the Interpretation Act 33 of 1957. Section 12 (2) of the Interpretation of Statutes Act, 1957 (Act 33 of 1957) provides that-

- “(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*
  - (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed;”*

(d) Black Laws Amendment Act, 1952 (Act No. 54 of 1952)

2.39 The purpose of the Black Laws Amendment Act 54 of 1952 is, among others, to amend the Black Administration Act 38 of 1927. All the sections of Act 54 of 1952 have been repealed save for sections 23 and 39. Section 23 of Act 54 of 1952 amends section 20 of Act 38 of 1927. However, section 20 of Act 38 of 1927 has been repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 with effect from 30 December 2012.

2.40 Section 39 of Act 54 of 1952 repeals sections 20, 31 and 32 of the British Bechuanaland Proclamation 2 of 1885, and the Blacks (Urban Areas) Amendment Act 43 of 1945.

2.41 On the basis of the general savings provisions contained in section 12 (2) of the Interpretation Act 33 of 1957 mentioned above, the Black Laws Amendment Act 54 of 1952 is obsolete and may be repealed by the DRDLR with effect from 30 December 2012.

(e) Black Administration Amendment Act, 1956 (Act No. 42 of 1956)

2.42 The purpose of the Black Administration Amendment Act 42 of 1956 is to amend Act 11 of 1896 of Natal and the Black Administration Act, 1927.

2.43 However, Act 11 of 1896 was repealed by section 1 of the Pre-Union Statute Laws Revision Act 24 of 1979.

2.44 Sections 2, 3 and 4 of Act 42 of 1956 amend sections 1, 5 and 35 of Act 38 of 1927. However, sections 1, 5 and 35 of Act 38 of 1927 were repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005.<sup>11</sup>

2.45 Accordingly, it is recommended that the Black Administration Amendment Act 42 of 1956 be repealed as a whole.

(f) Black Laws Amendment Act, 1962 (Act No. 46 of 1962)

2.46 The purpose of the Black Laws Amendment Act 46 of 1962 is to amend, among others, the Black Administration Act, 1927 (Act No. 38 of 1927).

2.47 All the remaining sections of Act 46 of 1962 are redundant. Section 9 of Act 46 of 1962 amends section 2 of Act 38 of 1927. However, all the remaining subsections of section 2 have been repealed.<sup>12</sup>

2.48 Section 10 of Act 46 of 1962 amends section 22 bis of Act 38 of 1927. However, Section 22 bis of Act 46 of 1962 was repealed by section 13 of the Recognition of Customary Marriages Act 120 of 1998.

2.49 Section 13 of Act 46 of 1962 amends section 9 of the Black Authorities Act 68 of 1951. However, section 9 of Act 68 of 1951 was repealed by section 2 of the Special

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<sup>11</sup> Sections 1 and 5 of Act 38 of 1927 were repealed by section 1 (1) of Act 28 of 2005, whereas section 35 of Act 38 of 1927 was repealed by section 1 (7) of Act 28 of 2005.

<sup>12</sup> Subsections 2 (1), (2), (3), (5), (6), (7), (7) bis, (7) ter, and (8) were repealed by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005); whereas subsection (4) was deleted by section 1 of the Black Laws Amendment Act 23 of 1972, and subsections (8) bis and (8) ter were deleted by section 1(b) of the Development Aid Laws Amendment Act 126 of 1991.

Courts for Blacks Abolition Act 34 of 1986. Since all the remaining sections of Act 42 of 1942 are redundant, it is recommended that the Act be repealed as a whole.

(g) Black Laws Amendment Act, 1974 (Act No. 70 of 1974)

2.50 The purpose of the Black Laws Amendment Act 70 of 1974 is, among others, to amend the Black Administration Act, 1927 (Act No. 38 of 1927).

2.51 All the remaining sections of Act 70 of 1974 are redundant. Sections 1 and 2 of Act 70 of 1974 amend sections 2 and 10 of Act 38 of 1927 respectively. However, section 2 of Act 38 of 1927 was repealed by sections 1 (1) and 1 (2) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005, whereas section 10 of Act 38 of 1927 was repealed by section 2 of the Special Courts for Blacks Abolition Act 34 of 1986.

2.52 Section 3 of Act 70 of 1974 amends section 29 of Act 38 of 1927. However, section 29 of Act 38 of 1927 was repealed by section 7 of the Abolition of Restrictions on Free Political Activity Act 206 of 1993.

2.53 Section 4 of Act 70 of 1974 amends section 35 of Act 38 of 1927. However, section 35 of Act 38 of 1927 was subsequently amended by section 2 of Act 3 of 1980<sup>13</sup> and later amended by section 9 of the Abolition of Racially Based Land Measures Act 108 of 1991.

2.54 Section 15(2) of Act 70 of 1974 provides that:

*“Regulations made by the State President under section 28 of the Black Labour Act, 1964 (Act 67 of 1964), prior to the amendment thereof by subsection (1) of this section, shall be deemed to have been made by the Minister of Plural Relations and Development under the said section so amended.”*

2.55 However, the Black Labour Act, 1964 was repealed by the Black Communities Development Act, 1984 (Act 4 of 1984) which, in turn, was repealed by section 72 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991), except for Chapters VI and VIA.

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<sup>13</sup> Laws on Co-operation and Development Amendment Act.

2.56 Since all the remaining sections of Act 70 of 1974 are redundant, it is recommended that the Act be repealed as a whole.

(h) **Black Laws Amendment Act, 1976 (Act No. 4 of 1976)**

2.57 The purpose of Act 4 of 1976 is, among others, to repeal Natal Law 19 of 1891 and to amend the Black Administration Act, 1927.

2.58 Section 2 of Act 4 of 1976 amends section 24 of Act 38 of 1927. However, section 24 of Act 38 of 1927 was repealed by section 1(5) of Act 28 of 2005.

2.59 Sections 24 to 28 of Act 4 of 1976 all amend particular sections of the National States Constitution Act 21 of 1971.<sup>14</sup> However, the latter Act was repealed as a whole by the (Interim) Constitution of the Republic of South Africa, 1993 (Act No.200 of 1993).

2.60 Notwithstanding section 1 of Act 4 of 1976 which provides for the repeal of the Natal Law 19 of 1891, the Act may still be repealed as a whole on the basis of the general savings provisions contained in the Interpretation of Statutes Act, 1957 (Act No. 33 of 1957) mentioned in paragraph 2.42 above.

2.61 Accordingly it is recommended that Act 4 of 1976 be repealed as a whole on account of obsolescence.

## **C. Statutes repealed and statutes in the process of being repealed**

(a) **Black Authorities Act, 1951 (Act 68 of 1951)**

2.62 Discussion Paper 118 had provisionally recommended that the Black Authorities Act, 1951 be repealed. On 1 December 2010, the President assented to the Black

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<sup>14</sup> Section 24 of Act 4 of 1976 inserts s 1A in Act 21 of 1971; s 25 of Act 4 of 1976 amends s 2 of Act 21 of 1971; s 26 of Act 4 of 1976 amends s 21 of Act 21 of 1971; s 27 and 28 of Act 4 of 1976 substitute respectively ss 22 and 37 of Act 21 of 1971.

Authorities Act Repeal Act, 2010 (Act No. 13 of 2010) which repealed the Black Authorities Act, 1951 (Act No. 68 of 1951) with effect from-

- (a) 31 December 2010; or
- (b) the date on which the last of the provinces of KwaZulu-Natal and Limpopo has repealed those provisions which were assigned to them, whichever occurs first.

2.63 The Black Authorities Act 68 of 1951 commenced on 17 July 1951. The Act was passed to establish certain Black authorities (namely tribal, regional and territorial authorities) (sections 2 and 3), and to define these authorities' functions (sections 4 to 7). It provided for the management of the financial matters of these authorities (sections 8 to 11), for the establishment of territorial boards (section 7bis), as well as for the abolishment of certain councils upon the establishment of regional and territorial authorities (section 12), and for the requirements of legal proceedings by or against these authorities (section 13). The Black Authorities Act 68 of 1951 also had as its purposes the resolution of conflict between the different systems of Black administration (section 14), the abolishment of the Black Representative Council (section 18), and the amendment of the Black Affairs Act 23 of 1920 and the Representation of Blacks Act 12 of 1936. Lastly, the Act provided for Black conferences (section 15).

2.64 Major parts of the Black Authorities Act 68 of 1951 were assigned to various provincial premiers by the President in terms of section 235(8) of the interim Constitution of the Republic of South Africa 200 of 1993. Some non-assigned sections are apparently administered by the Department of Co-operative Governance and Traditional Affairs (CoGTA).

2.65 The Act was assigned to the Province of the Eastern Cape to the extent of those matters falling within Schedule 6 (provincial functional domain) of the 1993 Constitution. Those issues outside Schedule 6 remain at national level. See in this regard Proclamation 111 of 1994 (Government Gazette No.15813 of 17 June 1994). However, the Black Authorities Act 68 of 1951 was repealed by section 37(1) of the Eastern Cape Traditional Leadership and Governance Act 4 of 2005, which Act commenced on 1 April 2006.

2.66 Under Proclamation 111 of 1994 mentioned above, the whole Act was also assigned to the Province of the North West, but later repealed by section 42(1) of North West Traditional Leadership and Governance Act 2 of 2005, which Act commenced on 20 March 2007.

2.67 Under Proclamation R166 of 1994 (Government Gazette 16049 of 31 October 1994), the administration of the whole of the Act was assigned to the Province of KwaZulu-Natal, with effect from 31 October 1994.

2.68 In addition, the Black Authorities Act 68 of 1951 was assigned to Mpumalanga (but was subsequently repealed by section 30(1) of the Mpumalanga Traditional Leadership and Governance Act 3 of 2005 (with effect from 7 April 2007); to Limpopo Province (under Proclamation 109 of 1994 (Government Gazette No.15813 of 17 June 1994), with effect from 17 June 1994); and to the Province of the North West under Proclamation 111 of 1994 (Government Gazette No.15813 of 17 June 1994), but later repealed by section 42(1) of North West Traditional Leadership and Governance Act 2 of 2005, which Act commenced on 20 March 2007).

2.69 The Act was not assigned to the Provinces of Gauteng, the Northern Cape, the Western Cape and the Free State.

2.70 Accordingly, the SALRC took note of the publication of the Black Authorities Act Repeal Act, 2010 (Act No. 13 of 2010) in Government Gazette No. 33836 (Government Notice No. 1154) dated 3 December 2010 for general information. Since on 1 December 2010, the President assented to the Black Authorities Act Repeal Act, 2010 (Act No. 13 of 2010) which repealed the Black Authorities Act, 1951 (Act No. 68 of 1951), the Bill does not deal with the repeal of the Black Authorities Act, 1951.

(b) Physical Planning Act, 1967 (Act No. 88 of 1967)

2.71 Discussion Paper 118 had provisionally proposed that the Physical Planning Act 88 of 1967 be amended in consultation with the Department of Environmental Affairs as well as the provincial government departments responsible for urban and rural development. To the extent that this may also affect the functional domain of municipal planning, local government should also be consulted. The Discussion Paper further proposed that section 13 of the Act be repealed.

2.72 The Physical Planning Act 88 of 1967 commenced on 7 July 1967 and aims to promote co-ordinated environment planning and the utilisation of the Republic's resources. For these purposes the Act provides for control of the zoning and subdivision of land for industrial purposes; the reservation of land for use for specific purposes; the establishment of controlled areas (section 5); as well as for restrictions upon the subdivision and use of land in these controlled areas (section 6). The province may issue permits authorising the use of land for a purpose other than the purpose for which the land was lawfully being used or authorise the use for land for brick making, sand washing, stone crushing or a quarry for the processing of any mineral. The Act also provides for the compilation and approval of guide plans; and for restrictions upon the use of land for certain purposes (unless reserved for use for such purposes). Section 13 provides for the exclusion of communal areas, viz. areas of land referred to in section 21(1) of the Development Trust and Land Act 18 of 1936 or in a scheduled 'Black' area as defined in that Act.

2.73 The Act is administered by the Minister or Premier to whom the administration of any provision has been assigned by Proclamation issued under section 13B.

2.74 The Act is pre-1994 legislation, assigned to the Provinces in terms of Proclamation R47 of 1996 (in Government Gazette No.17375 of 23 August 1996). The following sections have been assigned to provincial premiers: Section 8, as well as sections 9, 9A and 12 in so far as they are necessary for the administration of section 8, and in so far as the said sections have not been repealed by section 36 of the Physical Planning Act 125 of 1991.

2.75 This Act is still applicable only in respect of guide plans, controlled areas, restrictions on the use of land in those areas, permits, and exemptions. Many of its provisions regarding guide plans have been superseded by the provisions in the Local Government: Municipal Systems Act 32 of 2002 (Chapter 5 - dealing with Integrated Development Planning).

2.76 With regard to section 9 of the Constitution, section 13 of this Act (Exclusion of Black Areas) is probably discriminatory and unconstitutional. Section 9A may be in conflict with section 14 of the Constitution (the right to privacy) as a designated officer may enter without a warrant and conduct searches, etc. Section 13, which excludes the "former Black areas" from the application of the Act, is discriminatory and should be repealed.

2.77 In her submission to the SALRC, Ms Linda Garlipp of the Department of Environmental Affairs stated that:

*“I have perused both Acts (that is, Act 88 of 1967 and Act 125 of 1991), with regards to the abovementioned section (that is, sections 9A (1), (2) and 13 of Act 88 of 1967) I agree that section 9A (1) and (2) violates the right to privacy as enshrined in the Constitution. Section 13 of the same Act is clearly discriminatory, and the right to equality has been violated and if someone would challenge that provision, it clearly would not stand the constitutional scrutiny of our courts.”*

2.78 Clause 57 read with Schedule 3 of the draft Spatial Planning and Land Use Management Bill, 2011 proposes that the Physical Planning Act 88 of 1967 is to be repealed as a whole.

2.79 The SALRC has taken note of the draft Spatial Planning and Land Use Management Bill, 2011 as published in Government Gazette No. 34270 (Government Notice No. 280 of 2011) dated 6 May 2011 and supports the proposed repeal of the Physical Planning Act, 1967 (Act No. 88 of 1967).

(c) Physical Planning Act, 1991 (Act No. 125 of 1991)

2.80 Discussion Paper 118 had provisionally recommended that the Physical Planning Act 125 of 1991 be repealed on account of obsolescence.

2.81 The Physical Planning Act 125 of 1991 commenced on 30 September 1991 (subject to the repeal provisions of section 36). The purpose of the Act is to promote the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning. The Act sets out the procedures, as well as the legal consequences of regional structure plans and urban structure plans. It envisages the repeal of the Physical Planning Act 88 of 1967 almost in its entirety.

2.82 In terms of section 35 of the Act, the former self-governing territories are excluded from the application of the Act (i.e. areas for which legislative assemblies have been established under the Self-governing Territories Constitution Act 21 of 1971). This is redundant because since the Act was adopted in 1991 the national territory of the Republic came to comprise the whole country, including the homelands (s 1 (2) of the Constitution of the Republic of South Africa, 1993.)

2.83 The Act is administered by the DRDLR.

2.84 With regard to the extent of, and reason for, current applicability, the provisions of the Physical Planning Act 125 of 1991 were never really implemented. It is mostly obsolete. The provisions of the Act have been surpassed by subsequent legislation, viz. the Local Government: Municipal Systems Act 32 of 2000 which, in chapter 5, provides for Integrated Development Planning. Not only the new local government dispensation, but also the Integrated Development Plans of municipalities supersede the plans provided for in the Physical Planning Act 125 of 1991.

2.85 Clause 57 read with Schedule 3 of the draft Spatial Planning and Land Use Management Bill, 2011 proposes to repeal the Physical Planning Act 125 of 1991 as a whole.<sup>15</sup>

2.86 The SALRC has taken note of the draft Spatial Planning and Land Use Management Bill, 2011 as published in Government Gazette No. 34270 (Government Notice No. 280 of 2011) dated 6 May 2011 and supports the proposed repeal of the Physical Planning Act, 1991 (Act No. 125 of 1991).

(d) Development Facilitation Act, 1995 (Act No. 67 of 1995)

2.87 Discussion Paper 118 had provisionally recommended that the Development Facilitation Act 67 of 1995 be repealed and replaced by a comprehensive Spatial Planning and Land Use Management Act.

2.88 The Development Facilitation Act 67 of 1995 commenced on 22 December 1995. The purpose of the Act is to introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and

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<sup>15</sup> Government Notice 280 in Government Gazette No. 34270 dated 6 May 2011.

projects in relation to land and in so doing to lay down general principles governing land development throughout the Republic; to provide for the establishment of a Development and Planning Commission for the purpose of advising the government on policy and laws concerning land development at national and provincial levels; to provide for the establishment in the provinces of development tribunals which have the power to make decisions and resolve conflicts in respect of land development projects; to facilitate the formulation and implementation of land development objectives by reference to which the performance of local government bodies in achieving such objectives may be measured; to provide for nationally uniform procedures for the subdivision and development of land in urban and rural areas so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses; and to promote security of tenure while ensuring that end-user finance in the form of subsidies and loans becomes available as early as possible during the land development process.

2.89 The Act is administered by the DRDLR.

2.90 The Development Facilitation Act 67 of 1995 makes provision for general principles for land development and conflict resolution throughout the Republic. It establishes an advisory Development and Planning Commission. It provides for the establishment of development tribunals to make decisions and resolve conflicts in respect of land development projects. It sets out land development objectives which municipalities must apply. Two chapters contain development procedures in urban and rural contexts respectively. The Act introduces a new form of land tenure, namely initial ownership.

2.91 With regard to the extent of, and reason for, current applicability, it is important to note that the Act was passed as an interim measure.

2.92 The Memorandum on the Objects of the Land Use Management Bill, 2008<sup>16</sup> indicates that one of the negative aspects of the Act is that it did not repeal any of the pre-1994 pieces of planning legislation, many of which were discriminatory on the basis of race. The net effect is that many pre-1994 planning laws remain in operation. In addition, the Act creates uncertainty in practice.

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<sup>16</sup> Notice 472 of 2008 published in Government Gazette No. 30979 dated 15 April 2008.

2.93 Clause 57 read with Schedule 3 of the draft Spatial Planning and Land Use Management Bill, 2011 proposes to repeal the Development Facilitation Act 67 of 1995 as a whole.<sup>17</sup>

2.94 In the City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others,<sup>18</sup> the main issue before the Constitutional Court was whether Chapters V and VI of the Development Facilitation Act 67 of 1995 are indeed unconstitutional by reason of being inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. The Development Facilitation Act was passed before the 1996 Constitution came into force.

2.95 The Court held that-

*“the impugned chapters are inconsistent with section 156 of the Constitution read with Part B of Schedule 4.”*<sup>19</sup>

2.96 The SALRC has taken note of the draft Spatial Planning and Land Use Management Bill, 2011 as published in Government Gazette No. 34270 (Government Notice No. 280 of 2011) dated 6 May 2011 and supports the proposed repeal of the Development Facilitation Act, 1991 (Act No. 67 of 1991). In view of the proposed repeal of the latter Act, the SALRC has not included a clause in the Draft Bill regarding the repeal of the Development Facilitation Act.

(e) Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)

2.97 Discussion Paper 118 was published for public comment in August 2010, a date which preceded the publication of the draft Land Tenure Security Bill, 2011 by the DRDLR.<sup>20</sup> As a result, the submissions received from the public in respect of

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<sup>17</sup> Government Notice 280 in Government Gazette No. 34270 dated 6 May 2011.

<sup>18</sup> 2010 (6) SA 182 (CC) (18 June 2010).

<sup>19</sup> Footnote 18 above, paragraph 70.

<sup>20</sup> The draft Land Tenure Security Bill, 2011 was published together with the Memorandum on the Objects of the Bill and the policy on which the Bill is based in Government Gazette No. 33894 (Government Notice 1118 of 2010) dated 24 December 2010. However, the closing date for submission of comments to the SALRC in respect of Discussion Paper 118 was 30 November 2010.

Discussion Paper 118 could not take into account the contents of the draft Land Tenure Security Bill referred to in the Discussion Paper. This is borne by the following comment received from the Association for Rural Advancement (Land Rights Legal Unit) who stated that:

*“In this latter respect mention has been made of a draft Land Tenure Security Bill that purports to deal comprehensively with all aspects of security of tenure. However, this draft Bill is not mentioned in the Report and it appears that NGO’s dealing with land matters have not had sight of it. This is because the Bill has not been published and no discussion or consultation has occurred in this regard. It is submitted that this needs to be an integral part of any process that intends repealing ESTA.”*

2.98 Discussion Paper 118 had provisionally proposed that the Extension of Security of Tenure Act 62 of 1997 (hereinafter referred to as ESTA) be repealed in light of the proposed draft Land Tenure Security Bill by the DRDLR. However, this proposal was not supported by the Association for Rural Advancement, Agri SA and Advocate Geoff Budlender SC to the extent that, other than the possibly discriminatory proviso contained in section 6(2) of the Act discussed below, there were no other cogent reasons supplied in the Discussion Paper to justify such a conclusion.

2.99 In its submission to the SALRC, the Association for Rural Advancement stated that:

*“From a general perspective it is submitted that the repeal of ESTA will create an extensive legal vacuum concerning tenure protection and security in rural areas. This is because ESTA has facilitated the development of a separate jurisprudence relating to tenure security from both a substantive and procedural perspective. As a result, it is submitted that the proposed repeal of ESTA should form part of a broad inquiry into tenure security, rights of occupation and eviction processes generally in order to ensure that rural dwellers’ existing rights and protections are not further diluted. It is further submitted that this inquiry should entail the possibility of combining ESTA and the LTA in order to provide farm dwellers with more substantive rights occupation.”*

2.100 According to the Memorandum on the Objects of the Draft Land Tenure Security Bill, 2011-

*“Section 25(6) of the Constitution of the Republic of South Africa, 1996 entitles persons whose land tenure is legally insecure as a result of past racially discriminatory laws and practices, either to legally secure tenure or comparable redress.*

*The promulgation of the Land Reform (Labour Tenants) Act, 1996 (act No. 3 of 1996) and the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) sought to achieve this Constitutional imperative in relation to persons residing on farms.*

*Subsequent internal reviews of both pieces of legislation have shown some weaknesses at interpretation, enforcement and general implementation levels.*

*In view of the challenges outlined above, new legislation is required in order to:*

- i. Tighten up legislation by, amongst other things, creating substantive rights in land for occupiers;*
- ii. Implement a well-resourced programme of information dissemination, support to farm dwellers and enforcement of the tenure laws;*
- iii. Proactively create new, sustainable settlements in farming areas; and*
- iv. More effective system for the monitoring of arbitrary evictions, in particular a rapid response system for evictions, eviction threats or retrogressive measures with significant consequences.”<sup>21</sup>*

2.101 In a nutshell, the objective of the proposed Land Tenure Security Bill is to give effect to sections 25 (5) and (6) and 26 of the Constitution in order to overcome the challenges experienced in the implementation of both ESTA and the Land Reform (Labour Tenants) Act 3 of 1996 (hereinafter referred to as LTA). Thus, if the Bill is passed by Parliament, it will result in the repeal of both ESTA and the LTA.

2.102 The Extension of Security of Tenure Act 62 of 1997 commenced on 28 November 1997. The Act provides for measures with State assistance to facilitate long-term security of land tenure. It aims to regulate the conditions of residence on certain land; to regulate the conditions on, and circumstances under, which the right of persons to reside on land may be terminated; to regulate the conditions and

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<sup>21</sup> Memorandum on the Objects of the Land Tenure Security Bill, 2011 published in Government Gazette No. 33894 (Government Notice 1118 of 2010) dated 24 December 2010 on 44-45.

circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and to provide for matters connected therewith.

2.103 The Act is administered by the DRDLR.

2.104 With regard to the extent of, and reason for, current applicability, this Act is of national application, but only in relation to agricultural land. Its main aim is to facilitate long-term security of tenure as well as to regulate the conditions of residence on certain land.

2.105 Some sections of this Act may possibly be unconstitutional. In relation to section 9 of the Constitution, section 6(2)(d) of the Act is discriminatory and unconstitutional. There is possible direct discrimination on the basis of gender/sex, as occupiers living in single sex accommodation are not entitled to the right of a family life, e.g. homosexual couples living in single sex hostels will not be able to adopt children. Discrimination on the basis of gender/sex needs to be “fair”, as well as justifiable in terms of section 36 of the Constitution in order for it to pass constitutional muster, as these grounds of discrimination are part of the so-called “listed” grounds. This means that a mere rational connection will not suffice. It may, however, be possible to justify the discrimination in this context if one takes into account the purpose and the rationale behind the discrimination in respect of the occupiers of single sex hostels. However, convincing arguments will have to be presented as case law illustrates the importance of equality in South Africa’s new constitutional dispensation.

2.106 Clause 48 (1) of the draft Land Tenure Security Bill, 2011 proposes to repeal the Extension of Security of Tenure Act 62 of 1997.

2.107 The SALRC has taken note of the draft Land Tenure Security Bill, 2011 as published in Government Gazette No. 33894 (Notice 1118 of 2010) dated 24 December 2010 which proposes to repeal the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997). In view of the draft Land Tenure Security Bill, 2011 which aims to repeal the Extension of Security of Tenure Act, 1997, the SALRC has not included a clause in the Draft Bill regarding the repeal of the Extension of Security of Tenure Act, 1997.

(f) Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)

2.108 Discussion Paper 118 had provisionally recommended that the Land Reform (Labour Tenants) Act 3 of 1996 be retained without amendment. The Land Reform (Labour Tenants) Act is administered by the DRDLR.

2.109 The Act has two purposes: to protect the circumstances of labour tenancy and to award labour tenants the right to acquire land occupied under the tenancy.

2.110 The definition of labour tenant by the Act constitutes the basis of determining the extent of a labour tenant's statutory right:

*“labour tenant” means a person –*

- (a) who is residing or has the right to reside on a farm;*
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a) or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and*
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,*

*including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5), but excluding a farmworker;’*

2.111 The Act contains elaborate provisions regarding:

- a) The right of a labour tenant to occupy and use the land together with his or her family;
- b) The eviction of labour tenants;
- c) The acquisition of ownership or other rights in land by labour tenants.

2.112 The Act provides that the right which it confers may be terminated only in accordance with the provisions of the Act. Termination may occur, subject to conditions and requirements, on eviction and upon acquisition of ownership, other rights in land or compensation.

2.113 The security of the right of a labour tenant against arbitrary eviction is achieved by the Act's close and rigorous control of the owner's right of eviction. The foundation of this protection lies in requiring an order of the Land Claims Court to effect eviction.

2.114 Chapter III of the Act provides for the acquisition of ownership or other rights in land by labour tenants. A labour tenant or his or her successor may apply for an award of land on one of three bases identified in the section. The alternatives are: land which the labour tenant is entitled to occupy under section 3 of the Act; land which the labour tenant "or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties"; rights in land offered by the owner of the farm elsewhere on the farm or in its vicinity.

2.115 However, according to submission received from AgriSA-

*"The provisions of the Labour Tenants Act, particularly the definitions of a labour tenant and a farmworker are vague and have led to many disputes and many court cases. The grounds for eviction set out in section 7 of the Act are also vague and contains an element of subjectivity. This also goes for section 14 dealing with special circumstances for eviction. AgriSA submits that this Act is seriously flawed and should be amended or scrapped. We do not agree with the recommendation that it should be retained without amendment."*

2.116 The Association for Rural Advancement also raised concern regarding the definition of a labour tenant. In their submission to the SALRC, the Association for Rural Advancement said that-

*"The Report (Discussion Paper 118) recommends that the Labour Tenants Act (LTA) should continue in operation. It would appear that the assumption in this regard is that the latter can serve as a substitute for ESTA. The Report proposes that the LTA should be retained without amendment. However, it is submitted that the definition of a labour tenant in terms of LTA is far too narrow to include literally hundreds of thousands of farm dwellers currently residing on farms."*

2.117 Clause 48 (2) of the draft Land Tenure Security Bill, 2011 proposes to repeal the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

2.118 Although the Act does not contain any discriminatory or obsolete and redundant provisions, however, the SALRC has taken note of the draft Land Tenure Security Bill, 2011 as published in Government Gazette No. 33894 (Notice 1118 of 2010) dated 24 December 2010 which proposes to repeal the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) as a whole. The SALRC has consequently not included a clause dealing with the repeal of the Land Reform (Labour Tenants) Act, 1996 in the Draft Bill.

(g) Removal of Restrictions Act, 1967 (Act No. 84 of 1967)

2.119 Discussion Paper 118 had provisionally proposed that the Removal of Restrictions Act 84 of 1967 be amended in consultation with the provincial government departments responsible for urban and rural development on account of a number of sections having been assigned to provincial premiers, and the fact that urban and rural development is a functional area of concurrent national and provincial legislative competence. To the extent that this may also affect the functional domain of municipal planning, local government should also be consulted.

2.120 The Removal of Restrictions Act 84 of 1967 commenced on 26 June 1967 and aims to empower the Premier of a province to alter, suspend or remove certain restrictions and obligations in respect of land in the province either on his/her own accord or on application by any person (sections 2 to 6). Detailed provisions set out the procedure to be followed from the time an application is made, to the objection phase, to approval or rejection of the application. It provides for the repeal of the Removal of Restrictions in Townships Act 48 of 1946 and the validation of certain proclamations of Administrators (section 8). The Act does not affect the validity of existing ordinances (section 9).

2.121 The House of Assembly Debates (1967 cols 7524-7525) indicate that the reasons for the enactment were that effective town planning and provision of houses should not be hampered by obsolete restrictive conditions on land and to eradicate the confusion which had resulted from decisions under the repealed Removal of Restrictions in Townships Act 48 of 1946.

2.122 The Act is administered by the DRDLR.

2.123 The administration of the whole Removal of Restrictions Act 84 of 1967, except section 5, (and excluding those provisions which fall outside the functional areas specified in Schedule 6 to the 1993 Constitution or which relate to matters referred to in paragraphs (a) to (e) of section 126 (3) of the 1993 Constitution) was assigned to the provinces in terms of section 235(8) of the Interim Constitution, 1993 (see Proclamation R160 in Government Gazette No.16049 dated 31 October 1994).

2.124 The Act still applies in most of the provinces in South Africa, excluding Gauteng, which has its own Removal of Restrictions Act 3 of 1996, and the Northern Cape, where the procedures are contained in the Northern Cape Planning and Development Act 7 of 1998. The Western Cape Planning and Development Act 7 of 1999 and the KwaZulu-Natal Planning and Development Act 6 of 2008 envisage similar procedures but these Acts are not yet in operation.

2.125 The Act is, however, listed as one of the Acts to be repealed by the draft Spatial Planning and Land Use Management Bill, 2011 (see clause 57 read with schedule 3). Similar provisions to the provisions of the Removal of Restrictions Act 84 of 1967 are included in the proposed Act.

2.126 Although the Act does not contain any discriminatory measures, however, the SALRC has taken note of the draft Spatial Planning and Land Use Management Bill, 2011 as published in Government Gazette No. 34270 (Government Notice No. 280 of 2011) dated 6 May 2011 which proposes to repeal the Removal of Restrictions Act, 1967 (Act No. 84 of 1967) as a whole. The SALRC has consequently not included a clause dealing with the repeal of the Removal of Restrictions Act in the Draft Bill.

#### **D. Statutes proposed for partial repeal or amendment on the basis of its partly discriminatory nature and / or obsolescence**

(a) General Law Second Amendment Act, 1993 (Act No. 108 of 1993)

2.127 It is recommended that the following sections of the General Law Second Amendment Act 108 of 1993 be repealed, namely:

- 1) Section 1 (Principal Act: Water Act 54 of 1956);
- 2) Section 2 (Principal Act: Water Act 54 of 1956);
- 3) Section 3 (Principal Act: Water Act 54 of 1956);
- 4) Section 4 (Principal Act: Water Act 54 of 1956);
- 5) Section 5 (Principal Act: Water Act 54 of 1956);
- 6) Section 6 (Principal Act: Police Act 7 of 1958);
- 7) Section 14 (Principal Act: Financial Relations Act 65 of 1976);
- 8) Section 29 (Principal Act: Abolition of Racially Based Land Measures Act 108 of 1991); and
- 9) Section 32 (Principal Act: Upgrading of Land Tenure Rights Act 112 of 1991).

2.128 The General Law Second Amendment Act 108 of 1993 commenced on 1 August 1993, but sections 13 and 14 were deemed to have come into operation on 30 June 1991 and sections 27 and 28 on 1 April 1992. The General Law Second Amendment Act 108 of 1993 amends 11 Acts and repeals a wide range of discriminatory and obsolete laws. It consists of 37 sections. Section 10 has been repealed by section 20 of the Housing Act 107 of 1997.

2.129 The purpose of the Act was to amend the following Acts:

- 1) Water Act 54 of 1956;
- 2) Police Act 7 of 1958;
- 3) State Land Disposal Act 48 of 1961;
- 4) Housing Act 4 of 1966;
- 5) Removal of Restrictions Act 84 of 1967;
- 6) General Law Amendment Act 101 of 1969;
- 7) Financial Relations Act 65 of 1976;
- 8) Conversion of Certain Rights to Leasehold Act 81 of 1988;
- 9) Police Third Amendment Act 76 of 1989;
- 10) Abolition of Racially Based Land Measures Act 108 of 1991; and
- 11) Upgrading of Land Tenure Rights Act 112 of 1991.

2.130 The General Law Second Amendment Act 108 of 1993 is administered by a number of different departments, that is, the DRDLR, the Department of Human Settlements, the Department of Police, the Department of Water and Environmental Affairs and the Department of Agriculture, Forestry and Fisheries (DAFF). The Act

should therefore be subject to a transversal analysis and the above mentioned Departments should be consulted before any amendments are carried out.

2.131 With regard to the extent of, and reasons for current applicability, sections 7 and 8, 11 to 13, 15 to 28, 30 and 31, and 33 to 37 of the General Laws Second Amendment Act 108 of 1993 are still applicable. This is because they refer to statutes that are still in force.

2.132 The General Law Second Amendment Act does not appear to contain any blatantly discriminatory provisions, and appears to be consistent with section 9 of the Constitution. The Act does not, therefore, require amendment in this respect.

2.133 The Act does, however, appear to contain a number of obsolete provisions. It is recommended that sections 1, 2, 3, 4, 5, 6, 14, 29 and 32 of the Act be repealed. This is because these sections amend statutes or parts of statutes that have been repealed and thus no longer have any practical effect. In other words, they are obsolete.

2.134 Sections 1, 2, 3, 4 and 5 amended various sections of the Water Act 54 of 1956. This Act was repealed by section 163(1) of the National Water Act 36 of 1998. Sections 1, 2, 3, 4 and 5 should therefore be repealed on the grounds that they amend an Act that no longer exists.

2.135 Section 6 amended one section of the Police Act 7 of 1958. The Police Act was repealed by section 12 of the Police Service Rationalisation Proclamation R5 of 1995. Section 6 should therefore be repealed on the grounds that it amends an Act that no longer exists.

2.136 Section 14 amended one section of the Financial Relations Act 65 of 1976. The Financial Relations Act was repealed by section 230 of the Constitution of the Republic of South Africa, Act 200 of 1993. Section 14 should therefore be repealed on the grounds that it amends an Act that no longer exists.

2.137 Section 29 amends section 87(1) and (2) of the Abolition of Racially Based Land Measures Act 108 of 1991. In terms of section 87(4) of the Abolition of Racially Based Land Measures Act, however, the whole of section 87 lapsed on 31 December 1994. Section 87, including subsections (1) and (2), is thus spent. This means that section 29 is also spent and that it should, therefore, be repealed.

2.138 Section 32 amended the Upgrading of Land Tenure Rights Act 112 of 1991 by inserting Chapter 2A. Chapter 2A of the Upgrading of Land Tenure Rights Act was repealed by section 6 of the Upgrading of Land Tenure Rights Amendment Act 34 of 1996. Section 32 should therefore be repealed on the grounds that it amends a part of the Upgrading of Land Tenure Rights Act that no longer exists.

2.139 In addition, sections 15 (d) and 37 (1) of the General Law Second Amendment Act also contains provisions or parts of provisions that appear to be spent. These provisions are discussed below.

2.140 Section 15(d) of the Act substitutes the definition of ‘publish’ in section 1 of the Conversion of Certain Rights to Leasehold or Ownership Act 81 of 1988 as follows:

*“publish’, in relation to a notice, means the publication of the notice –*

*(a) by publishing it either in the Official Gazette of the province concerned or in an Afrikaans and in an English newspaper circulating in the area concerned; and”*

2.141 In terms Proclamation No. 41 in Government Gazette No. 17320 of 26 July 1996, the administration of those provisions of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) which fall within the functional areas specified in Schedule 6 of the Constitution,<sup>22</sup> were assigned by the President in terms of section 235 (8) of the Constitution to a competent authority within the jurisdiction of the government of a province, and those provisions of the Act which fall outside the functional areas specified in Schedule 6, were assigned by the President to the Premier of a province.

2.142 According to opinion received from the State Law Advisers, the assignment of the administration of legislation in terms of section 235 (8) of the interim Constitution to a province renders that legislation provincial legislation.

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<sup>22</sup> Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993).

2.143 Thus, it is recommended that the definition of ‘publish’ in section 1 of the Conversion of Certain Rights to Leasehold or Ownership Act 81 of 1988 be amended by the relevant provincial legislatures as follows:<sup>23</sup>

“‘publish’, in relation to a notice, means the publication of the notice –

- (a) by publishing it either in the Official Gazette of the province concerned or in **[an Afrikaans and in an English newspaper]** two newspapers with different official languages as its main language circulating in the area concerned; and”

(b) State Land Disposal Act, 1961 (Act No. 48 of 1961)

2.144 It is recommended that:

- a) Sections 2(2) and 2B of the State Land Disposal Act 48 of 1961 be repealed on the ground of obsolescence;
- b) The definition of ‘state land’ (section 1) and section 8A of the State Land Disposal Act 48 of 1961 be amended on the basis of their partly obsolete nature; and
- c) All the references in the Act to **[State President]** found in sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act be substituted with reference to the ‘President’.

2.145 The State Land Disposal Act 48 of 1961 commenced on 28 June 1961 and provides for the disposal of certain State land and for matters incidental thereto; and for the prohibition on the acquisition of State land by prescription (section 3). Section 2 provides for the disposal of certain State land by the President, and section 2A for powers of the President in relation to certain rights of the State in respect of private land. In addition, the Act also provides that the President may consent to the amendment or cancellation of any condition registered against any land conferring a right in that land on the State.

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<sup>23</sup> The administration of the whole of the Act has under Proclamation 41 of 1996, promulgated in Government Gazette 17320 of 26 July 1996, been assigned to the Provinces of Northern Cape, North West, Eastern Cape, Western Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo and Mpumalanga with effect from 26 July 1996.

2.146 The State Land Disposal Act 48 of 1961 is administered by both the Department of Rural Development and Land Reform and the Department of Public Works (DPW) and it confers powers on both the Minister for Rural Development and Land Reform and the Minister for Public Works. It should, therefore, be subject to a transversal review process and the DPW should be consulted before any amendments are carried out.

2.147 The Act consists of 14 sections. Two of these sections have been repealed. The Act has also been amended on five occasions. The Act is important for a number of reasons:

- 1) Firstly, the Act allows the disposal of national state land to take place on a centralised basis;
- 2) Secondly, in practice, the disposal of national state land takes place primarily in terms of this Act;
- 3) Thirdly, the Act confers on the President the power to amend or cancel any condition registered against any land conferring any right on the State; and
- 4) Fourthly, the Act prohibits the acquisition of both national state land and provincial state land by means of acquisitive prescription.

2.148 With regard to the extent of, and reason for, current applicability, the State Land Disposal Act 48 of 1961 applies to the disposal of all types of national state land situated either within or outside of the Republic. It is currently applicable for the reasons set out above.

2.149 The Act does, however, contain a number of obsolete and possible spent provisions. In addition, it does not accurately reflect the current system of national and provincial government, or the distinction that may be drawn between national state land and provincial state land.

(i) Section 1

2.150 It is recommended that the definition of the term “State land” in section 1 be amended. The definition of the term “State land” is obsolete. This is because it does not accurately reflect South Africa’s new system of national and provincial government

and, in particular, it does not accurately reflect the distinction that may now be drawn between “national state land” and “provincial state land”. In this respect the following points may be made:

- (a) First, that in terms of the new constitutional dispensation, ownership of state land does not vest only in the national government. Ownership of state land may vest in either the national or the provincial governments. A distinction may, therefore, be drawn between national state land and provincial state land. Ownership of national state land vests in the national government and ownership of provincial state land vests in the relevant provincial government. Support for this proposition may be found in section 239 of the interim Constitution. This section regulated the manner which state land that existed on the 27 April 1994 was allocated to either the national or the provincial governments. It essentially provided in this respect that state land associated with the administration of a particular law would vest in the authority that had been assigned administrative responsibility for that law in terms of section 235 of the interim Constitution. The 1996 Constitution does not contain an equivalent provision. Item 28(1) of Schedule 6 of the 1996 Constitution does, however, provide that “on the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government”.
- (b) Second, that the disposal of provincial state land is comprehensively regulated by provincial legislation. Over the past 15 years each of the provincial legislatures has enacted a “land administration” statute. These statutes confer the authority to dispose of provincial state land on the Premier or the relevant Member of the Executive Council. In each of these Acts, the right to dispose of provincial state land encompasses the right to sell, exchange, let, donate and encumber provincial state land. The relevant provincial Acts are as follows: the Eastern Cape Land Disposal Act 7 of 2000, Free State Land Administration Act 1 of 1998, Gauteng Land Administration Act 11 of 1996, KwaZulu-Natal Land

Administration Act 3 of 2003; Northern Province Land Administration Act 6 of 1999, Mpumalanga Land Administration Act 5 of 1998, Northern Cape Land Administration Act 6 of 2002; North West Land Administration Act 4 of 2001; and Western Cape Land Administration Act 6 of 1998. In addition, some of these Acts also prohibit the acquisition of provincial state land by means of acquisitive prescription (see s 21 of the Gauteng Land Administration Act, s 12 of the KwaZulu-Natal Land Administration Act, s 8 of the Northern Cape Land Administration Act, s 7 of the North West Land Administration Act, and s 7 Western Cape Land Administration Act).

- (c) Third, that in accordance with the system of co-operative government, Parliament has enacted framework legislation aimed at regulating the manner in which the provincial governments may dispose of provincial state land. The Government Immovable Asset Management Act 19 of 2007 provides in this respect that relevant national and provincial departments of state must prepare custodian immovable asset plans (see section 4) and that these plans must, *inter alia*, include a strategy for disposing of immovable assets (see section 7).

2.151 It is, therefore, proposed that the definition of state land be amended to reflect more accurately the distinction that may be drawn between national state land and provincial state land. Given, however, that such a change will have consequential effects on other provisions of the Act, for example section 3 which prohibits the acquisition of state land by means of acquisitive prescription, the views of the Department of Rural Development and Land Reform are required in regard to the proposed amendment of the definition.

2.152 Apart from the fact that it does not accurately reflect the distinction that may be drawn between national state land and provincial state land, the definition of the term "State land" may also have to be amended because the references to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 and sections 78(3) and (4) of the Town Planning and Townships Ordinance (Transvaal) 25 of 1965 may be obsolete.

2.153 Section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 refers to land which has been set aside for educational or other public purposes and

which has been transferred to the President in return for being granted a certificate by the Minister exempting the area in which the land is located, and which has been divided into lots for the purpose of creating agricultural holdings, from certain provisions of the Town Planning and Townships Ordinance 11 of 1931.

2.154 It is unlikely that any such land has been transferred to the President since 1957. This is on account of the fact that the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was repealed in 1957 except in so far as it related to land which had already been divided into agricultural holdings and in respect of which a certificate had already been issued. The Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was repealed by the Transvaal Provincial Council when it enacted section 36 of the Division of Land Ordinance (Transvaal) 20 of 1957 (the power to repeal the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was conferred on the Transvaal Provincial Council by section 4 of the Provincial Powers Extension Act 10 of 1944).

2.155 Given that it is unlikely that any such land has been transferred to the President since 1957, it is possible that the national government may have disposed of all such land. If this is the case then the purpose for which the reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was included in the definition of "State land" has been fulfilled. The reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 may, therefore, be repealed.

2.156 A somewhat similar argument may also be made in respect of the reference to section 78(3) and (4) of the Town Planning and Townships Ordinance 25 of 1965. Section 78(3) and (4) referred to land in a township which had been transferred to the President in trust for a future local authority. This section has, however, been repealed and replaced by section 86(2) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986.

2.157 Once again it is unlikely that any such land has been transferred to the President at least since 1996. This is because the concept of a "future local authority" as referred to in section 86 of Ordinance 15 of 1986 does not appear to be consistent with the constitutional and legislative framework governing the establishment of municipalities in South Africa today.

2.158 In addition, section 86 appears in Part B of Chapter III of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 and this Part applies only to townships which have been or which are going to be established in a local authority which is not an “authorised local authority”. The concept of an “unauthorised local authority” is also not consistent with the constitutional and legislative framework governing the status and the powers of municipalities in South African today.

2.159 Given that it is unlikely that any such land has been transferred to the President at least since 1996, it is possible that the national government may have disposed of all such land. If this is the case then it would serve no purpose to replace the reference to section 78(3) and (4) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 with a reference to section 86(2) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986. The reference to section 78(3) and (4) may, therefore, be repealed.

2.160 Finally, it should also be noted that the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 will be repealed – at least in so far as the province of Gauteng is concerned – when the Gauteng Planning and Development Act 3 of 2003 comes into operation (see section 97 of the Act).

2.161 The DPW recommended that the definition of the term “State Land” should be amended as follows:

“ ‘State land’ [**includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President, ] means land that is owned by or vest in the national government of the Republic of South Africa and any right in respect of such [State] land”.**

(ii) Section 2(2)

2.162 Discussion paper 121 had provisionally proposed that section 2(2) be amended. However, the DPW recommended that section 2(2) be repealed. Section 2(2) provides as follows:

*“The State President shall not dispose of any particular State Land in terms of subsection (1) if the disposal thereof is governed by a provincial ordinance: Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of –*

- (a) places upon State land which have been reserved by the State President as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945), as being places of public resort, of public recreation, or of historical or scientific interest; and*
- (b) State land situated in public resorts, places of rest, seaside resorts, holiday centers, holiday camps, caravan parks, tent camps and picnic places referred to in Item 24 of the Second Schedule of the said Act which cannot lawfully be leased in terms of any such ordinance.”*

2.163 Section 2(2) confirms the points made above. The reference to provincial ordinances, however, is obsolete. As pointed out above, the disposal of provincial state land today is comprehensively regulated by Acts of the various provincial legislatures.

2.164 In addition, all of the provincial Acts referred to above confer the power to lease provincial state land on the relevant Premier or Member of the Executive Council. There are, consequently, no places on provincial state land or portions of provincial state land which cannot lawfully be leased. The proviso to section 2(2) is therefore redundant.

2.165 Finally, the references to Item 5 and Item 24 of the Second Schedule Financial Relations Consolidation and Amendment Act 38 of 1945 are also obsolete. This is because the Financial Relations Consolidation and Amendment Act was repealed by the Financial Relations Act 65 of 1976, and the Financial Relations Act was repealed by the Constitution of the Republic of South Africa, Act 200 of 1993.

2.166 Accordingly, the SALRC recommends that section 2(2) should be repealed.

(iii) Section 2B

2.167 It recommended that section 2B be repealed. Section 2B provides as follows:

**2B Disposal of State land in Foreshore, Cape Town**

*“(1) Land vesting in the State under section 19(2) of the Cape Town Foreshore Act, 1950 (Act 26 of 1950), as from 1 April 1979, shall be State land to which the provisions of this Act shall apply.*

*(2) Land which before the date referred to in subsection (1) was-*  
*(a) Sold, exchanged or donated by the board but in respect of which title has not yet been given on that date; or*  
*(b) Leased by the board, shall be deemed to have been sold, exchanged, donated or leased under the provisions of this Act.*

*(3) The Minister may from time to time out of the proceeds of the sale or lease referred to in subsections (1) and (2) pay to the City Council of the City of Cape Town such amounts as the Minister may determine with the concurrence of the Minister of Finance.”*

2.168 The reason for this is that the land referred to in section 2B(1) vested in the State on 1 April 1979. It is highly probable that over the past 30 years the national government may have disposed of all such land. If this is the case section 2B no longer serves any purpose and it may, therefore, be repealed. The DPW supports the proposed repeal of section 2B of the State Land Disposal Act 48 of 1961.

**(iv) Section 8A**

2.169 It is recommended that section 8A be amended. Section 8A provides as follows:

*“The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any proclamation or regulation referred to in sections 5(2), 8(2) and 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).”*

2.170 There is a view that the references to section 5(2) and section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 are spent and should be deleted from section 8A. Section 5(2) provided for the continued existence of

proclamations made under section 25(1) of the Black Administration Act 38 of 1927, notwithstanding the repeal of section 25(1) itself.

2.171 In terms of section 6(a) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005, provision was made for the repeal of all such section 25(1) Black Administration Act 38 of 1927 proclamations on 30 September 2007, or such date as it is repealed by a competent authority, whichever occurs first.

2.172 The same argument should be made as regards regulations made under section 30(2) and bylaws made under section 30A(1) of the Black Administration Act 38 of 1927. Section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 provided for the continued existence of such regulations and bylaws. Section 8(2) was, however, repealed by section 6(b) of the Repeal of the Black Amendment Act and Amendment of Certain Laws Act 28 of 2005 on 30 September 2007, or such date as it is repealed by a competent authority, whichever occurs first.

2.173 It is recommended that section 8A be amended as follows:

“8A The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any **[proclamation or]** regulation referred to in section[s **5(2), 8(2) and**] 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).”

2.174 Finally, it is recommended that all the references in the Act to **[State President]** found in sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act be substituted with reference to the 'President'.

2.175 The DPW supports the proposed amendment of the definition of 'State land' and section 8A as well as the proposed repeal of sections 2(2) and 2B of the State Land Disposal Act 48 of 1961 as stated above.

(c) Interim Protection of Informal Land Rights Act, 1996 (Act NO. 31 of 1996)

2.176 It is recommended that the Interim Protection of Informal Land Rights Act 31 of 1996 be retained and amended as stated in Annexure A of this Report. The retention of

the Act has been underscored by the unconstitutionality finding of Communal Land Rights Act, 2004 (Act 11 of 2004) in the *Tongoane* judgement.<sup>24</sup>

2.177 The Interim Protection of Informal Land Rights Act 31 of 1996 commenced on 26 June 1996. The Act provides for the temporary protection of certain rights to, and interests in, land which are not otherwise adequately protected by law; and provides for matters connected therewith.

2.178 The Act is administered by the DRDLR.

2.179 With regard to the extent of, and reasons for current applicability, the Act has national application and exists to provide protection for weaker titles in land.

2.180 The Act is a necessary legislative tool aimed at the protection of weaker rights in land. The offending provision should be rectified so as to prevent its possibly discriminatory effects.

2.181 In relation to section 9 of the Constitution, section 2(2) of this Act (Deprivation of informal rights to land) permits deprivation of land or a right in land where the land is held on a communal basis, and the decision to deprive is in accordance with the custom and usage of that community, subject to requirements set in subsection (4). The section is discriminatory. The section allows for deprivation of land or a right in land in terms of customary practice. This is possibly unconstitutional due to inherent inequalities found in traditional customary practices in some communities and could allow for indirect gender discrimination. The section also permits a deprivation which could be contrary to section 26(3) of the Constitution (the right not to be evicted from a home without a court order).

2.182 It is recommended that section 2(2) of the Act be amended as follows:

“(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community, if the custom or usage concerned is in accordance with the law.”

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<sup>24</sup> Footnote 8 above.

2.183 This part of the Act fulfills an important role. It is recommended that the Act be retained and amended as indicated in Annexure A. The possible discriminatory effect(s) should be curtailed.

2.184 However, the exact impact of the *Tongoane* judgement on the Interim Protection of Informal Land Rights Act, 1996 needs to be further scrutinized.

(d) Land Affairs Act, 1987 (Act No. 101 of 1987)

2.185 The Land Affairs Act 101 of 1987 commenced on 1 May 1988 and provides for the determination of amounts of compensation, purchase prices or rents in respect of immovable property that was expropriated, purchased or leased by the DPW and the DRDLR for public purposes. It also provides for the giving of advice with regard to the value of land, rights, purchase prices or rents in respect of certain immovable property. One of its purposes was to establish a Land Affairs Board (section 2 to 10). Section 12 provides for the disposal of certain assets, rights, liabilities and obligations, and section 13 for the interpretation of certain expressions.

2.186 The Land Affairs Act 101 of 1987 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exists. It is recommended that the Act be amended as stated in the paragraphs below.

2.187 The long title must be amended in order to remove the words **[and Land Affairs]** after the words Department of Public Works, due to the fact that there is no longer such a Department of Public Works and Land Affairs. It is recommended that the long title to the Act be amended as follows:

“To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works **[and Land Affairs]** for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters.”

2.188 Likewise, the definition of Department in section 1 of the Act also contains the words **[and Land Affairs]** after the words Department of Public Works. It is recommended that the definition of ‘department’ be amended as follows:

“department’ means the Department of Public Works.’

2.189 Section 3(1) of the Act refers to the appointment of board members by the Minister of Public Works, after consultation with the ‘Minister of Local Government, Housing and Works in the Ministers Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers Council: House of Delegates’. These references to obsolete names like ‘own affairs’ portfolios should be deleted. It is recommended that section 3(1) of the Act be amended as follows:

“(1) Subject to the provisions of subsection (2), the board shall consist of not more than five members appointed by the Minister in a full-time or part-time capacity **[after consultation with the Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates].**”

2.190 Subsection 4(2)(c) makes reference to a repealed piece of legislation, namely- the Agricultural Credit Act, 1966 (Act 28 of 1966). The latter Act was repealed by the Agricultural Debt Management Act 45 of 2001. It is recommended that the above anomaly be deleted. It is recommended that section 4(2)(c) of the Act be amended as follows:

“(2)(c) if his ‘or her’ estate is sequestrated **[or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1996 (Act 28 of 1966);]**”

2.191 Subsection 4(2)(d) makes reference to ‘the President’s Council’ which does no longer exist. It is recommended that section 4(2)(d) of the Act be amended as follows:

“(2)(d) if he ‘or she’ seeks election at any party or official nomination of candidates for Parliament **[,the President’s Council]** or any other legislative authority elected on a party political basis, or attempts to have himself ‘or herself’ nominated at any such nomination;”

2.192 The DPW supports the proposed amendments of the Land Affairs Act, 1987 as recommended above.

## **E. Statutes proposed for retention without amendment**

### **(a) Land Survey Act, 1997 (Act No. 8 of 1997)**

2.193 The Land Survey Act 8 of 1997 commenced on 11 April 1997 and aims to regulate the survey of land in the Republic. Sections 2 to 3A and 5 to 6 provide for the appointment, powers, functions and duties of the Chief-Surveyor-General, the Surveyor-General and the Chief Director. Section 8 provides for fees of the office, and section 9 for the survey regulations board.

2.194 Provisions relating to land surveyors are set out in sections 11 and 12. Section 13 deals with the limitation of liability, and section 14 provides that no registration of land can take place without an approved diagram or general plan. Other provisions relating to diagrams and general plans are set out in sections 15 to 16 and 21 to 24. The Act deals with surveys and resurveys (sections 17 to 20 and 25 to 26). It also provides for the approval of a superseding general plan (section 27), the registration of a piece of land on a superseding general plan (section 28), and for the resolution of disputes (section 29 to 31). Sections 32 to 35 deal with boundaries. Sections 36 to 38 provide for the correction of registered diagrams and the alteration or cancellation of general plans, as well as diagrams for consolidated titles. Sections 39 to 42 deal with beacons and reference marks.

2.195 The Act also provides for the protection of trigonometrical stations (section 43); offences and compensation for damages sustained thereby (section 44); power of entry upon land (section 45); as well as notices to the Surveyor-General of applications to court (section 46). The Act is binding on the State in terms of the provisions of section 47.

2.196 Sections 48 and 49 deal with the amendment of the Professional and Technical Surveyors' Act 40 of 1984, the repeal of laws of former entities and transitional provisions.

2.197 The provisions of the Act may be summarised as follows: Firstly, there are provisions creating infrastructure for the supervision, control and carrying out of necessary surveys, the compilation of maps, the preservation of records and information relating to surveys of land and, in general, the administration of the Land Survey Act. Secondly, the Act regulates the procedure and requirements for undertaking surveys; the different types of surveys; compiling the necessary documents; settling disputes arising in respect of surveys; and approving diagrams or general plans compiled as a result of surveys. Thirdly, the Act provides for the organisation and control of the land surveyors profession. In this respect it must be read with the Professional Technical Surveyors Act 40 of 1984. In short, the Act regulates all matters related to the surveying of land.

2.198 The Act has some relevance in relation to conveyancing. The diagram, which is provided for in the Land Survey Act, is a crucial element in the South African system and process of land registration.

2.199 The Land Survey Act finds special application in relation to the development of Sectional Title Schemes. The boundaries of a section are identified with reference to physical data, namely walls, ceilings and floors of a particular building as shown on the sectional plan and not with reference to survey beacons as in the case of conventional erven. However, the Surveyor General will still have a final say in whether general surveying standards have been met before the Sectional Title Scheme is registered (See section 5 and regulation 5, Sectional Titles Act 95 of 1986).

2.200 An overview of relevant judicial consideration of the Land Survey Act demonstrated that section 37(2) of the Act features prominently in case law. This section deals with the amendment of the general plan of a public space that is converted into private ownership, usually for the purposes of subdivision by a developer.

2.201 The Land Survey Act was promulgated after the introduction of the final Constitution of 1996. In this sense, there should not be obvious discord between the provisions of this Land Survey Act and the Constitution, as there might be in cases of pre-constitutional legislation. In particular, the Land Survey Act indeed adheres to the values espoused in the Bill of Rights, especially section 9.

(b) Abolition of Certain Titles and Conditions Act, 1999 (Act No. 43 of 1999)

2.202 It is recommended that the Abolition of Certain Titles and Conditions Act 43 of 1999 be retained without amendment.

2.203 The Abolition of Certain Titles and Conditions Act 43 of 1999 commenced on 24 November 1999 and provides for the abolition of certain conditions in terms of which the consent or permission of the holder of an office under the Republic, the former Union of South Africa or any *dominium*, colony or republic which preceded the former Union of South Africa is required for the alienation or transfer of immovable property from one person to another. It provides that specified conditions are excluded from the operation of the Act.

2.204 The Act is administered by the DRDLR.

2.205 With regard to the extent of, and reason for current applicability, the title conditions provided for under the former Union are no longer suitable under the new dispensation. The Act has national application. The Act still applies where land is transferred and one of the conditions specified is still contained in the deed of transfer.

2.206 There are no offending provisions in the Act, and it is recommended that the Act be retained without amendments.

(c) Communal Property Association Act, 1996 (Act No. 28 of 1996)

2.207 It is recommended that the Communal Property Association Act 28 of 1996 be retained without amendment.

2.208 The Communal Property Association Act 28 of 1996 commenced on 22 May 1996. The purpose of the Act is to enable communities to form juristic persons, to be known as communal property associations (CPAs), in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution and to provide for matters connected therewith.

2.209 The Act is administered by the DRDLR.

2.210 The Act consists of 19 sections and one Schedule to the Act. The underlying aim of the Act is to set out the various procedures to form a provisional and thereafter a permanent communal property association. It sets out the practical and legal matters to comply with before such an association can be registered. One of the main functions of the Act is to ensure that the structure and functioning of said associations are in line with the equality principle. Accordingly, various provisions are focused on achieving exactly that, for example ample provisions relating to the drafting (section 6) and adoption (section 7) of the constitution that forms the basis of the association. In order to be as complete as possible, the Schedule to the Act sets out the various items that have to be addressed in the constitution of each association. Section 9 also lists the principles to be accommodated in constitutions. Apart from regulating the structuring and functioning of these associations, provision is also made for the monitoring and inspection of said associations. In the event of liquidation and deregistration of associations, section 13 becomes relevant. Offences and the delegation of powers are also regulated by the Act.

2.211 The Act sets out the whole process related to the forming of a new juristic person, the Communal Property Association (CPA); from conceptualisation of a CPA, to the actual establishment of the provisional and thereafter the “final” CPA, as well as its functioning, monitoring and final liquidation or de-registration.

2.212 With regard to the extent of, and reason for current applicability, the Act is important as it provides for a new juristic person that enables communities to gain access to and control over property, including land. Apart from the fact that any community can employ the Act to form their own CPA for purposes of the Act, it often happens that the LCC restores land to communities under the restitution programme on condition that a CPA be formed. The Transformation of Certain Rural Areas Act 94 of 1998 also relied/s rather heavily on CPAs as vehicles of land holding. Case law has shown that CPAs are also employed in relation to labour tenants. The Act therefore has application for as long as communities want to, or are ordered by way of court orders to, hold land on a community basis. It is thus relevant in so far as both redistribution and restitution programmes operate.

2.213 It is recommended that the Act be retained without amendments.

(d) Deeds Registries Act, 1937 (Act N o. 47 of 1937)

2.214 It is recommended that the Deeds Registries Act 47 of 1937 be retained without amendments.

2.215 The Deeds Registries Act 47 of 1937 commenced on 1 September 1937, and aims to consolidate and amend the legislation relating to the registration of deeds. It provides for the registration of land, townships and settlements, bonds, rights in immovable property, and antenuptial contracts.

2.216 With regard to the registration of land, every piece of land in the country (including farms, erven, lots, plots and stands) is surveyed and a diagram thereof is framed. A diagram consists of a plan of the piece of land and a description thereof. It also contains numerical data of its size and situation. It is the duty of each registrar to record the diagram of every piece of land situated within the area of his jurisdiction. The following towns have deeds registries: Cape Town, King William's Town, Kimberley, Vryburg, Pietermaritzburg, Pretoria, Bloemfontein and Windhoek. In addition, there is a Rand Townships registration office in Johannesburg.

2.217 In respect of sectional titles, it was not, prior to 30 March 1973, possible to register portions of property. The registration procedure was not concerned with the buildings on the registered land. However, there has been a significant change in the law since the coming into force of the Sectional Titles Act 66 of 1971. The Act introduced new concepts and innovations to the system of land registration in South Africa. The Act *inter alia* provides:

- a) For the division of land and buildings comprising a development scheme into sections and common property. Thereby the Act creates an entirely new composite thing, namely a unit consisting of a section (an apartment or a commercial unit), and an undivided share in the common property.
- b) That not only ownership, but also limited real rights (such as notarial leases, mortgage bonds and servitudes) may be registered with regard to portions of buildings under a sectional title scheme.

2.218 With regard to the formalities of registration, a conveyancer must prepare all deeds of transfer, mortgage bonds and certificates of title, which must, thereafter, be

attested, executed or registered by the Registrar. Each deed is passed in duplicate original; the Registrar retains one copy for the register and delivers the other to the transferee. Every mortgage bond and every other real right must be endorsed upon both duplicate originals. The real right in the land passes in each case at the moment of registration, i.e. when the deed of transfer, bond, lease or servitude is signed by the Registrar of Deeds. After the registration process had been completed a serial number is allocated to the deed. A synopsis of the registration history of a particular plot of land is therefore accessible to the public at any time. During the past few years, drastic reforms have been introduced by way of micro-filming and computerisation of the data in the deeds office.

2.219 The effect of the registration of a person's name as the owner of a piece of land is that he or she is (in the absence of fraud or of error) the owner of the land and the permanent buildings on it. Similarly, the registration of a *jus in re aliena* in the name of a person confers on him or her the benefit of such right (e.g. a servitude, a mortgage, or an interest in a will which has been registered against the land).

2.220 In spite of the fact that a person has what is termed a 'clean transfer' in his favour (i.e. ownership of a piece of land has been registered in his name without registration or endorsement of any *jus in re aliena*), the ownership of the land, or a real right in it, may, in fact, be legally vested in another person (e.g. ownership may be vested in a spouse by virtue of a marriage in community of property). Registration of a piece of land would nevertheless constitute security of tenure.

2.221 According to the abstract system of transfer of ownership, the invalidity of the agreement creating the obligation does not affect the transfer of ownership if the following two requirements are met:

- a) The existence of a valid real agreement (which requires that one person has the intention to transfer ownership to another person, and that other person has the intention to acquire ownership); and
- b) Registration of the transfer (in the case of immovable property) or delivery (in the case of movable property).

2.222 There are no offending provisions in the Act. It is recommended that the Deeds Registries Act 47 of 1937 be retained without amendment.

(e) Land Administration Act, 1995 (Act No. 2 of 1995)

2.223 It is recommended that the Land Administration Act 2 of 1995 be retained without amendment.

2.224 The Land Administration Act 2 of 1995 commenced on 6 April 1995. The Act provides for the delegation of powers and the assignment of the administration of laws regarding land matters to the provinces, and for the creation of uniform land legislation.

2.225 A minister may delegate to a premier or any officer in the service of the national government in writing any power conferred upon him or her by or under a law regarding land matters. This delegated power is exercised subject to the directions of the minister and can be revoked at any time.

2.226 A premier who has been delegated power may further delegate such power to a member of the Executive Council or Director-General of that province.

2.227 A member of the Executive Council may further delegate such power to the Director-General of that province. The Director-General may in turn delegate power to the Director-General of a national department or a province or an officer in the service of the local government as contemplated in section 1 of the Local Government Transition Act of 1993.

2.228 The president may assign the administration of a law regarding land matters to a premier of a province or reassign the administration of a law related to land matters.

2.229 It is recommended that the Act be retained without amendment. It is not discriminatory and is vital to the proper delegation of power in all land-related matters.

(f) Land Titles Adjustment Act, 1993 (Act No. 111 of 1993)

2.230 It is recommended that the Land Titles Adjustment Act 111 of 1993 be retained without amendment.

2.231 The aim of the Act is to provide registered title to people who claim to be owners of land but do not possess registered title. In other words, the aim is to enable persons

who own land, but, as a result of restrictive legislation or failure of an heir or a predecessor to effect transfer, do not have a title deed as proof of ownership. Information about such land may be obtained from any person who is aware of land of which the rightful owner cannot be identified, or from a person who lays claim to ownership without having proof.

2.232 With regard to the scope of application, the Act implicitly applies only in respect of private land. The following are, among others, the circumstances under which the Act may be applied:

- a) Where owners have not transferred title to the current owner. This is a common scenario on black freehold land where, due to apartheid and other laws (e.g. The Subdivision of Agricultural Land Act 70 of 1970), hereditary successors-in-title or informal transfers were never registered. The owner of the land may be found to be in possession of title deeds dating around the turn of the first century. A mechanism is thus needed which allows for the heirs of successors-in-title to be identified;
- b) When the documentary proof needed to effect transfer has been lost and transfer cannot be effected in terms of any existing legal remedies; and
- c) Where transfer can be effected in terms of existing legal remedies, but the costs attached to this outweigh the value of the land.

2.233 In relation to the beneficiaries in terms of the Act, any person who claims land of which the rightful owners cannot be identified, or persons who lay claim to ownership without having the necessary proof, has the right to benefit from the Act. Land may be dealt with in accordance with the provisions of the Act only if the Minister of Rural Development and Land Reform is satisfied that the application is valid and designates the land in question by notice in the Government Gazette.

2.234 In respect of the legal nature of the claimants, the following needs to be stated: A claimant or likely owner may be a natural person or a representative of a community where people claim to be owners of land, but do not possess the registered title. Service providers need not make a determination that a community concerned is a legal entity. The criterium is that a claimant may be a representative of a community. It is not necessary to identify each member of such community.

2.235 The following is a synopsis of the title adjustment process:

- a) The Minister of Rural Development and Land Reform may by notice in the Government Gazette designate land as land to be dealt with in accordance with the provisions of the Act. Such land may be land or portions thereof in respect of which persons lay claim to rightful ownership but for which they cannot submit registered title deeds.
- b) The Minister may appoint a title adjustment commissioner to deal with the land in accordance with the provisions of the Act.

2.236 The Act contains no discriminatory, obsolete or redundant provisions. It is recommended that the Act be retained without amendment.

(g) Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984)

2.237 It is recommended that the Professional and Technical Surveyors' Act 40 of 1984 be retained without amendment.

2.238 The Professional and Technical Surveyors' Act 40 of 1984 commenced on 10 September 1984 and provides for the establishment of a South African Council for Professional and Technical Surveyors (sections 2 to 10) and an education advisory committee (sections 11 to 19). It also provides for the registration of professional surveyors, professional surveyors in training, surveyors, survey technicians and survey technicians in training (sections 20 to 27). Sections 28 to 33 deal with improper conduct, disciplinary proceedings, inquiries, suspensions, appeals against decisions of the council, as well as readmissions. Sections 34 to 36 deal with rules, procedures and evidence, and the rectification of errors. Section 37 deals with liability of the council. Section 39 provides for exemptions from the operation of provisions of the Act, and section 40 for the construction of the Institute of Government Land Surveyors' Incorporation Act, 1904 (Act No. 22 of 1904) of the Cape of Good Hope. Sections 42 and 43 provide for the completion of certain inquiries and the transfer of assets and liabilities to the council.

2.239 This Act was declared applicable in the former territories of Bophuthatswana, Ciskei, KwaZulu, Transkei, Venda, Gazankulu, KaNgwane, KwaNdebele, Lebowa and QwaQwa by Proclamation 66 in Government Gazette 16511 of 7 July 1995.

2.240 The Act contains no discriminatory provisions. It is recommended that it be retained without amendment.

(h) Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993)  
(previous title: Provision of Certain Land for Settlement Act)

2.241 It is recommended that the Provision of Land and Assistance Act 126 of 1993 be retained without amendment.

2.242 The Provision of Land and Assistance Act 126 of 1993 commenced on 23 July 1993. The Act provides for the designation of certain land; regulates the subdivision of such land and the settlement of persons thereon; provides for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and provides for matters connected therewith.

2.243 The Act is administered by the DRDLR.

2.244 This Act was drafted prior to the first democratic elections in 1994. It was initially promulgated to settle persons on agricultural, peri-urban and urban land and commenced before the all-encompassing land reform programme was embarked on in 1994. It was thereafter employed as one of the main vehicles to realise the land redistribution programme and is still widely used today. The Act consists of only 16 sections. The Act sets out the procedures available to designate land for settlement. It can be either in relation to privately owned land or State-owned land. Development of land is also provided for. The Act has detailed procedures for the identification of the land, as well as for the subdivision and transfer thereof. Technical requirements regarding the surveying and approval of plans are provided for.

2.245 The majority of the Act is focused on registration of ownership. Apart from the technical requirements, the Act also specifically provides for financial assistance, what it entails, and how to access grants. It also sets out the powers of the Minister. The Minister may issue regulations and delegate certain powers. The present formulation also refers to the roles of the Expropriation Act 63 of 1975 and the Minister in the acquisition of land for purposes of this Act.

2.246 The Act has been criticized as not being proactive enough regarding the acquisition of land and the concomitant planning and development.

2.247 With regard to the extent of, and reason for current applicability, this Act is still one of the main vehicles employed in the land redistribution programme under the overall land reform programme. Numerous notices in terms of this Act are regularly published in the Government Gazette. The Act is especially useful in that the designations invariably connect environmental and developmental issues with the initial designation of land. This is noteworthy because environmental conservation and the achievement of development goals are not necessarily included in the various individual land redistribution tools as such. The co-existence of this Act and the Distribution and Transfer of Certain State Land Act 119 of 1993 is not clear, apart from the obvious distinction that the Distribution and Transfer of Certain State Land Act 119 of 1993 is focused on the redistribution and transfer of State land only, and this Act also relates to privately owned land.

2.248 The Act has been amended three times: by the Development Facilitation Act 67 of 1995, the Provision of Certain Land for Settlement Amendment Act 26 of 1998 and the Land Affairs General Amendment Act 11 of 2000. In the course of 2008 various amendments to the Act were furthermore proposed, especially in relation to the powers of the Minister in the acquisition of land to further the objectives of the Act. These found their way into the Provision of Land and Assistance Act 126 of 1993 by means of the enactment of the Provision of Land and Assistance Amendment Act 58 of 2008 (commencement date: 9 January 2009).

2.249 The 2008 amendments to the Act have enhanced the utilisation of the Act, especially in relation to the acquisition of land. The possible overlapping of this Act and the Distribution and Transfer of Certain State Land Act 119 of 1993 needs to be clarified.

2.250 The Act provides a framework for the implementation of a one-stop process, starting from the identification of land to the subdivision and finally, registration of land. It provides for technical requirements as well as financial assistance. Published notices also include references to environmental conservation (e.g. the carrying capacity of land is invariably set out in the notice and compliance with the water legislation is usually specifically provided for) and development. This is made possible by enabling the Minister to make the designation of land conditional (see s 2(3)(a) and

(b)). The Act is furthermore useful because the aims encompass designation of land for residential, agricultural production and for small business development – one legislative measure is thus employed for various objectives – all linked with redistribution goals in general.

2.251 The Act does not contain any discriminatory measures. It is recommended that the Act be retained without amendment.

(i) Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)

2.252 It is recommended that the Restitution of Land Rights Act 22 of 1994 be retained without amendment.

2.253 The Restitution of Land Rights Act 22 of 1994 commenced on 2 December 1994 and provides for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices. It also provides for the establishment of a Commission on Restitution of Land Rights (sections 4 to 21) and a Land Claims Court (sections 22 - 38), as well as for matters connected therewith.

2.254 Section 2 deals with entitlement to restitution and section 3 with claims against nominees. The Act provides for direct access to the Court in sections 38A to 38E. Section 39 deals with the register of public land, section 42 with transfer duties and fees, and section 42A with the registration of land in the name of the claimant. Section 42C deals with financial aid, section 42D with the powers of the Minister in the case of certain agreements, and section 42E with the acquisition of land, a portion of land, or a right in land for land reform purposes.

2.255 The Act protects the rights of legitimate claimants to restitution. It also lays down the rules for acceptance of claims:

- 1) Claims that are acceptable are those of individuals, families and communities who were forcibly removed from land due to racial laws.
- 2) Only people who were dispossessed of land after 19 June 1913, have a right to restitution.

- 3) Even the rights of people who did not have title deeds are respected. These may be tenancy rights, the right to have access to ancestral graves, the right to graze stock, etc.
- 4) For a claim to be valid, it had to be lodged on or before 31 December 1998.
- 5) Claims of people who received fair and equitable compensation at the time of removal are not acceptable.

2.256 Sometimes it is not possible to restore the original land. This could be due to major buildings being erected or other development activity happening on the claimed land. In such cases it would not be possible to remove the developments without causing social and economic disruption.

2.257 Occasionally, the land claimed is part of a conservation area or a national forest. Claimants have needs for housing, for farming, and to make a living on land. A conservation area cannot meet these needs and at the same time preserve its status as a national heritage. Successful claims in these areas may result in revenue loss, as many of these areas are tourism sites.

2.258 Where the land was converted to a mining site or a military base, successful claims will probably result in risks to the health and safety of claimants.

2.259 A distinction must be drawn between a) cases where specific restoration cannot take place on account of practicalities, and b) cases where the non-restoration of land cannot take place because of restoration not being in the public interest.

2.260 Where original land cannot be restored, claimants may negotiate the following:

- 1) To be allocated alternative land;
- 2) To be paid financial compensation;
- 3) To be given priority to benefit from planned developments on the land, e.g. a housing project or preferential job opportunities; and
- 4) To have a stake in the management of a development project on the land claimed, and share in the financial benefits arising from the development.

2.261 The initial final date for lodging of claims was 31 December 1998. Some claims have not yet been finalised. Outstanding cases are generally the more complicated ones.

2.262 The bulk of cases renders it impossible to provide a summary. The main findings of the courts on restitution matters may be found in *Tong, M Jurisprudence on Restitution of Land Rights in South Africa, Department of Land Affairs, Commission on Restitution of Land Rights (2007)*.

2.263 Substantial numbers of historically dispossessed persons and communities have received restitution of property or equitable redress.

2.264 The Act does not contain any redundant or obsolete provisions. None of its provisions are in breach of section 9 of the Constitution.

2.265 It is recommended that the Act be retained without amendment.

(j) Sectional Titles Act, 1986 (Act No. 95 of 1986)

2.266 It is recommended that the Sectional Titles Act 95 of 1986 be retained without amendment.

2.267 The Sectional Titles Act 95 of 1986 commenced on 1 June 1988 and provides for the division of buildings into sections and common property, and for the acquisition of separate ownership in sections coupled with joint ownership in common property. It aims to control certain incidents attaching to separate ownership in sections and joint ownership in common property. In addition, the Act provides for the transfer of ownership of sections and the registration of sectional mortgage bonds and other real rights over sections. The Act regulates the use and enjoyment of the sections and the common property as well as the administration and management of the scheme. In this respect it provides for the establishment of a body corporate and the appointment of trustees and managing agents.

2.268 Sections 4 to 14 deal with development schemes, sectional plans and section title; sections 15 to 19 with registration and common property; and sections 20 to 24 with the subdivision, consolidation and extension of sections. Sections 25 and 26

provide for the extension of schemes, and sections 27 to 31 for the exclusive use of common property and servitudes. Sections 32 to 34 deal with participation quotas and developers, and sections 44 to 50 with owners, premises and buildings.

2.269 The Sectional Titles Act 95 of 1986 is administered by the DRDLR.

2.270 The Sectional Titles Act 95 of 1986 consists of 65 sections. Four of these sections have been repealed. The Act has also been amended on seven occasions. The Act is important for a number of reasons. It has amended the common law principles of ownership to make it possible for a person to acquire individual ownership of a part of a building. As a result of these changes the Act has dramatically increased access to home ownership. Sectional title ownership is a common and popular form of home ownership in South Africa.

2.271 Sections 1(4), 4(10), 20(2), 24(2), 25(7) and 26(3) have been assigned to the provinces under Proclamation R22 of 1997 (Government Gazette 17846 of 14 March 1997).

2.272 With regard to the extent of, and reasons for current applicability, the Act governs the establishment, management, use, and disestablishment of sectional title schemes throughout the Republic. It is currently applicable for the reasons set out above.

2.273 The Sectional Titles Act 95 of 1986 fulfils an important function. For the purposes of this review it does not contain any blatantly discriminatory provisions. It thus appears to be consistent with section 9 of the Constitution. The Act does not, therefore, require amendment in this respect.

2.274 It is recommended that the Act be retained without amendment.

(k) Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003)

2.275 It is recommended that the Spatial Data Infrastructure Act 54 of 2003 be retained without amendment.

2.276 Different dates of commencement apply to the Spatial Data Infrastructure Act 54 of 2003, viz. sections 1-11, 13, 19-22 came into operation on 8 May 2006. The remaining sections 12, 14-18 will come into operation when the Committee for Spatial Information is established (Government Notice 113 of 2004 dated 4 February 2004).

2.277 The Act is administered by the DRDLR.

2.278 The purpose of the Spatial Data Infrastructure Act is to establish the South African Spatial Data Infrastructure (SASDI), the Committee for Spatial Information and an electronic metadata catalogue; to determine standards and prescriptions with regard to the facilitation of the sharing of spatial information; to capture and publish metadata; and to avoid duplication of such capture.

2.279 With regard to the extent of, and reason for current applicability, the Act is applicable as the SASDI is operative. It is a recent enactment.

2.280 The Act contains no discriminatory measures.

2.281 It is recommended that the Act be retained without amendment.

(l) Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998)

2.282 It is recommended that the Transformation of Certain Rural Areas Act 94 of 1998 be retained without amendment.

2.283 The Transformation of Certain Rural Areas Act 94 of 1998 commenced on 2 November 1998. The purpose of the Act is to provide for the transfer of certain land to municipalities and certain other legal entities; for the removal of restrictions on the alienation of land; for the repeal of the Rural Areas Act 9 of 1987, and related laws; and for matters connected therewith.

2.284 The Act is administered by the DRDLR.

2.285 The Act consists of 11 sections and one Schedule setting out the legislative measures to be repealed by this Act. The aim of the Act is to dismantle a particular form of land holding in certain identified rural areas in South Africa. The regime to be

dismantled was enabled by the former Rural Areas Act (House of Representatives) 9 of 1987 and the areas involved are all so-called “coloured” areas in mainly the Northern Cape and some areas in the Free State.

2.286 The Act sets out how this regime is to be dismantled, the various stages involved (namely a transitional phase preceding the finalisation of land rights), the persons and bodies involved in the process and the relevant time periods. The underlying principles guiding this process are also set out in the Act (section 4). The Act is open-ended in that it leaves it to the particular communities to decide exactly when and how the process is to take place. This means that change may be effected independently in the different areas. The Act makes a distinction between (a) trust land situated in a township and (b) land outside a township in which the residents have a right to decide to whom transfer should be effected. Procedures for the protection of existing rights and the fiduciary role of municipalities are also provided for. Provision is also made for the removal of restrictive conditions referred to in laws and title deeds. The Act also has general provisions dealing with regulations and the delegation of powers.

2.287 With regard to the extent of, and reason for current applicability, it is unclear exactly how far the process of dismantling the former land holding regime has progressed. It is clear, however, that the underlying idea was not that the Act should remain on the statute books *ad infinitum*, but that it should regulate the process and once the process had been completed, the need for the Act would expire. After the commencement of the Act, the various communities decided by way of referenda to indicate their preferences between the following three entities to receive the land: (a) the municipality, (b) a communal property association, and (c) an option of own choice – including trust ownership and individual title. In the Namaqualand area the results showed a distinct preference for communal property associations. In almost all of the areas the transitional period had to be extended by way of proclamation in the Government Gazette. This may be an indication that the whole process is perhaps more complicated and time-consuming than what was initially envisaged, and that the dismantling process has not yet been completed.

2.288 Not having all the information at hand regarding the process in the various areas, it is difficult to comment on the present employ and application of the Act. The Act has to be in place for as long as the dismantling process continues. It, therefore, still has a role to play, depending on particular progress in the relevant areas. As

mentioned, transitional periods were supposed to be 18 months, but have almost in all instances been extended. The provisions embodying underlying principles (e.g. section 4) are in line with constitutional imperatives. It is proposed that an in-depth study be undertaken in all the relevant areas to establish exactly what the legal position is.

2.289 There are no offending provisions in the Act.

2.290 It is recommended that the Act be retained without amendment.

(m) Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991)

2.291 It is recommended that the Upgrading of Land Tenure Rights Act 112 of 1991 be retained without amendment. This Act should be reviewed in light of the Constitutional Court judgement in *Tongoane v National Minister for Agriculture and Land Affairs* case.<sup>25</sup>

2.292 The Upgrading of Land Tenure Rights Act 112 of 1991 commenced on 1 September 1991 and provides for the upgrading and conversion into ownership of certain rights granted in respect of land; as well as for the transfer of tribal land in full ownership to tribes.

2.293 The Act is administered by the DRDLR.

2.294 With regard to the extent of, and reason for current applicability, the Act has national application and acts to upgrade certain tenure rights into ownership up until the time when new legislation to replace the Communal Land Rights Act which the Constitutional Court has declared to be unconstitutional commences. In *Ex Parte Western Cape Provincial Government and Others: In Re DVB Behuising (Pty) Ltd v North West Provincial Government and Another*, the Constitutional Court stated that-

*“In 1991 Parliament passed the Upgrading of Land Tenure Rights Act, 112 of 1991 (the Upgrading Act). Its terms were not of application in the TBVC states until 28 September 1998, the date of promulgation of the Land Affairs General*

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<sup>25</sup> Footnote 8 above.

*Amendment Act, 61 of 1998, which made its provisions applicable in the whole country. As the name of the Upgrading Act suggests, its purpose was to provide for the conversion into full ownership of the more tenuous land rights which had been granted during the apartheid era to Africans.”<sup>26</sup>*

2.295 The Act as a whole is a necessary legislative tool for the protection of weaker tenure rights (i.e. tenure rights that had been granted under the apartheid era to a majority of black South Africans).

2.296 The Act does not contain any offending provisions.

2.297 It is recommended that the Act be retained without amendment. This Act should be reviewed in light of the Tongoane judgment above.

(n) KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No.3KZ of 1994)

2.298 It is recommended that the KwaZulu-Natal Ingonyama Trust Act of 1994 be retained without any amendment.

2.299 This is a former Act of the KwaZulu Legislative Assembly which has been given the status of a National Act, due to the fact that it is now administered by the Minister of Rural Development and Land Reform of the National Government, or any other Minister designated by the President. The purpose of the Act is to provide for the establishment of the Ingonyama Trust and for certain land to be held in trust; and to provide for matters incidental thereto.

2.300 Although the definition of ‘Minister’ in section 1 of the Act refers to ‘the Minister for Agriculture and Land Affairs of the National Government, or another Minister designated by the President’, and section 4 of the Act provides that “the Department of Land Affairs shall bear the cost of the administration of the Board”, however, in terms of Proclamation No.44 of 2009,<sup>27</sup> the responsibility for the administration of legislation previously entrusted to the Minister of Agriculture and Land Affairs has now been transferred to the Minister of Rural Development and Land Reform. Furthermore, in

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<sup>26</sup> 2000 (4) BCLR 374 (CC) on 8.

<sup>27</sup> Government Gazette No 32367 dated 01 July 2009.

terms of Proclamation 48 of 2009,<sup>28</sup> the name of the Department of Land Affairs was substituted by that of Department of Rural Development and Land Reform.

2.301 It is not certain why reference was made to the repealed Trust Moneys Protection Act, 1934, (Act No. 34 of 1934) in subsection 2 (6) of the Act since at the time this provision was introduced by the KwaZulu-Natal Ingonyama Trust Amendment Act, 1997 (Act No. 9 of 1997), Act 34 of 1934 had already been repealed by section 26 (1) of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

2.302 It is recommended that the Act be retained.

(o) Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993)

2.303 The Distribution and Transfer of Certain State Land Act 119 of 1993 commenced on 20 July 1993. The purpose of the Act is to regulate the distribution and transfer of certain land belonging to the State and designated by the Minister as land to be dealt with in accordance with the provisions of this Act. It also provides for matters connected therewith.

2.304 The Act is administered by the DRDLR, and consists of 20 sections. It is mainly aimed at subdividing land held by the state in its various forms (including land registered in the name of a Minister, Premier or former Administrator) and thereafter transferring land to individuals or communities, very often in cases where the identities of the transferees are not readily ascertainable. Large portions of the Act are thus aimed at setting the procedures to advertise the availability of such land and thereafter to ascertain the identities of beneficiaries as well as to setting out the actual procedures of distributing the erstwhile state-owned land. Formal legislative measures regulating the subdivision and registration of land in general are excluded in order to streamline and expedite the process.

2.305 With regard to the extent of, and reason for current applicability, it needs to be emphasised that the Act was drafted prior to the commencement of the democratic South Africa on 27 April 1994 and was thus also aimed at that process. Its applicability

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<sup>28</sup> Government Gazette No 32387 dated 07 July 2009.

was necessary in light of the diverse land control systems at that stage as well as the various “forms” of state-owned land in, amongst others, the self-governing territories, the national states and the rest of South Africa. Immediately after 27 April 1994 the Act was employed to facilitate some of the land reform initiatives. Since its commencement it has been amended only once, namely in 1995 under the Land Affairs General Amendment Act 11 of 1995. However, it is unclear to what extent this Act is still being employed in South Africa today in light of other legislative measures impacting on land reform, e.g. the Provision of Land and Assistance Act 126 of 1993.

2.306 The Act does not contain any offending provisions.

2.307 It is recommended that the Act be retained without amendment.

(p) Kimberly Leasehold Conversion to Freehold Act, 1961 (Act No. 40 of 1961)

2.308 It is recommended that the Kimberly Leasehold Conversion to Freehold Act 40 of 1961 be retained. However, the DRDLR needs to determine whether there is a need to retain the Act or whether it can be repealed.

2.309 The Kimberly Leasehold Conversion to Freehold Act 20 of 1961 commenced on 30 May 1961, and has as its purpose the transfer of the ownership of certain erven at Kimberly to the lessees or licencees thereof; as well as the exemption from the payment of certain duties and fees and the performance of certain acts in pursuance thereof. The Act also provides for the amendment of the General Law Amendment Act 68 of 1957 (section 19).

2.310 The Kimberly Leasehold Conversion to Freehold Act 20 of 1961 provides for the exclusion of certain erven from certain township plans (section 2); for the opening of a township register (section 4); and for applications for transfer of ownership of erven (section 5). Section 6 provides for deeds of transfer of erven, and section 7 for the conversion of certain cessions into mortgage bonds. Section 8 deals with suspensive agreements relating to leases (or licences) of erven, and section 9 with the transfer of undivided share in an erf. Section 10 provides for the effect of registration of a title deed, and section 12 for the amendment of a certified general plan.

2.311 With regard to the extent of, and reason for current applicability, the Act has specific application and regulates the leasehold conversion process.

2.312 There are no offending provisions in the Act.

2.313 It is recommended that the Act be retained.

(q) KwaZulu Land Affairs Amendment Act, 1998 (Act No. 48 of 1998)

2.314 The KwaZulu Land Affairs Amendment Act 48 of 1998 commenced on 11 September 1998 and aims to amend the KwaZulu Land Affairs Act 11 of 1992, so as to validate certain acts purporting to have been performed in terms of that Act. The KwaZulu Land Affairs Amendment Act 48 of 1998 also provides for matters connected therewith.

2.315 The whole of the KwaZulu Land Affairs Act 11 of 1992 was assigned to the Province of KwaZulu-Natal in terms of Proclamation R63 of 1998 (Government Gazette No.18978 of 19 June 1998), excluding sections 11, 24, 25, 26, 29, 30 and 36, in so far as it is applicable in, or in a part of, the Province of KwaZulu-Natal.

2.316 The KwaZulu Land Affairs Act 11 of 1992 was amended by section 52 of the Division of Revenue Act 2 of 2008, with effect from 1 November 2008. Proclamation R9 of 1997 (Government Gazette No.17753 of 31 January 1997) also amended the KwaZulu Land Affairs Act 11 of 1992 (with effect from 31 January 1997) by substituting and deleting certain definitions, amending section 9 and the references contained therein to registration officers; amending sections 11, 19, 30, 36, 37, 39, repealing section 35, and inserting Schedule II.

2.317 There are no offending provisions in the Act. It is recommended that the Act be retained.

## **Annexure A**

### **Rural Development and Land Reform General Laws Amendment and Repeal Bill**

#### **General Explanatory Note:**

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

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

#### **BILL**

**To repeal certain obsolete and redundant laws of the Republic and to amend certain laws pertaining to rural development and land reform containing discriminatory or obsolete provisions**

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

#### **Repeal of laws**

1. The laws specified in Schedule 1 are hereby repealed to the extent set out in the fourth column of the Schedule.

#### **Amendment of laws**

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

#### **Short title and commencement**

3. This Act is called the Rural Development and Land Reform General Laws Amendment and Repeal Act, 201...and comes into operation on a date determined by the President by proclamation in the Gazette.

**SCHEDULE 1**

<b>Item No.</b>	<b>No. and year of law</b>	<b>Title and subject</b>	<b>Extent of repeal</b>
1.	42 of 1942	Black Administration Amendment Act	The whole
2.	56 of 1949	Black Laws Amendment Act [w.e.f. 30 December 2012]	The whole
3.	54 of 1952	Black Laws Amendment Act [w.e.f. 30 December 2012]	The whole
4.	42 of 1956	Black Administration Amendment Act	The whole
5.	48 of 1961	State Land Disposal Act 1961	Repeal sections 2(2) and 2B.
6.	46 of 1962	Black Laws Amendment Act	The whole
7.	70 of 1974	Black Laws Amendment Act	The whole
8.	4 of 1976	Black Laws Amendment Act	The whole
9.	108 of 1993	General Law Second Amendment Act 1993	Repeal sections 1, 2, 3, 4, 5, 6, 14, 29 and 32.
10.	11 of 2004	Communal Land Rights Act	The whole

## SCHEDULE 2

Item No.	No. and year of law	Title and subject	Extent of amendment
1.	31 of 1996	Interim Protection of Informal Land Rights Act	<p>1. Section 2 of the Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">“(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community, <u>if the custom or usage concerned is in accordance with the law.</u>”</p>
2.	101 of 1987	Land Affairs Act	<p>1. The Act is hereby amended by the substitution for the long title of the following long title:</p> <p style="padding-left: 40px;">“To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works <b>[and Land Affairs]</b> for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters.”</p> <p>2. Section 1 of the Act is hereby amended by the substitution for the</p>

definition of 'department' of the following definition:

“‘department’ means the Department of Public Works **[and Land Affairs]**.”

3. Section 3 of the Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsection (2),... after consultation with the **[Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates]** “ Minister of Public Works.”;

4. Section 4 of the Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(2)(c) if his ‘or her’ estate is sequestrated **[or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act 28 of 1966)]**.”

5. Section 5 of the Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(2)(d) if he ‘or she’ seeks election at any party or official nomination of candidates for Parliament**[, the**

			<p><b>President's Council]</b> or any other legislative authority elected on a party political basis, or attempts to have himself 'or herself' nominated at any such nomination;"</p>
3.	48 of 1961	State Land Disposal Act	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of 'state land' of the following definition:</p> <p>“State land’ [includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President, ] <u>means land that is owned by or vest in the national government of the Republic of South Africa</u> and any right in respect of <u>such [State] land</u>”.</p> <p>2. Sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act are hereby amended by the substitution for the words <b>[State President]</b> of the word '<u>President</u>' wherever they appear in these sections.</p> <p>3. The Act is hereby amended by the substitution for section 8A of the following section:</p> <p>“8A. The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any <b>[proclamation or]</b> regulation</p>

			referred to in section[s <b>5(2), 8(2) and</b> ] 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).”
4.	36 of 2002	Planning Profession Act	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of ‘National Qualifications Framework’ of the following definition:</p> <p>“National Qualifications Framework’ means the National Qualifications Framework as <b>[defined in section 1 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]</b> <u>contemplated in Chapter 2 of the National Qualifications Framework Act, 2008 (Act 67 of 2008);</u>”</p> <p>2. Section 8(4) of the Act is hereby amended by the substitution for paragraph (a) of the following paragraph:</p> <p>“(4) with regard to education and training-</p> <p>(a) must consult with the South African Qualifications Authority established by the <b>[South African Qualifications Authority Act, 1995 (Act 58 of 1995)]</b> <u>National Qualifications Framework Act, 2008 (Act 67 of 2008)</u>, or any body established by it and the voluntary</p>

			<p>associations, to determine competency standards for the purpose of registration in terms of the National Qualifications Framework;”</p> <p>2. Section 13(4) of the Act is hereby amended by the substitution for paragraph (c) of the following paragraph:</p> <p>“(c) in the case of a person applying for registration as a professional planner-</p> <p>(i) ...</p> <p>(ii) ...</p> <p>(iii)...</p> <p>or that the applicant possesses such other qualifications as defined in the <b>[South African Qualifications Authority Act, 1995]</b> <u>National Qualifications Framework Act, 2008</u>, as may be determined for the relevant category from time to time by the South African Qualifications Authority in terms of that Act and by the Council.”</p>
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## Annexure B

### Statutes administered by the Department of Rural Development and Land Reform

#### Principal Legislation

No.	Name of Act, number and year
1.	Abolition of Certain Titles and Conditions Act, 1999 (Act No.43 of 1999)
2.	Black Authorities Act, 1951 (Act No.68 of 1951)
3.	Communal Property Association Act, 1996 (Act No.28 of 1996)
4.	Communal Land Rights Act, 2004 (Act No.11 of 2004)
5.	Community Development Act, 1966 (Act No.3 of 1966)
6.	Deeds Registries Act, 1937 (Act No.47 of 1937)
7.	Development Facilitation Act, 1995 (Act No.67 of 1995)
8.	Distribution and Transfer of Certain State Land Act, 1993 (Act No.119 of 1993)
9.	Extension of Security of Tenure Act, 1997 (Act No.62 of 1997)
10.	General Law Second Amendment Act, 1993 (Act No. 108 of 1993)
11.	Interim Protection of Informal Land Rights Act, 1996 (Act No.31 of 1996)
12.	Kimberly Leasehold Conversion to Freehold Act, 1961 (Act No.40 of 1961)
13.	KwaZulu Land Affairs Amendment Act, 1998 (Act No. 48 of 1998)
14.	Land Administration Act, 1995 (Act No.2 of 1995)
15.	Land Affairs Act, 1987 (Act No.101 of 1987)
16.	Land Reform (Labour Tenants) Act, 1996 (Act No.3 of 1996)
17.	Land Survey Act, 1997 (Act No.8 of 1997)
18.	Land Titles Adjustment Act, 1993 (Act No.111 of 1993)
19.	Manufacturing Development Act, 1993 (Act No.187 of 1993)
20.	Physical Planning Act, 1967( Act No.88 of 1967)
21.	Physical Planning Act, 1991 ( Act No.125 of 1991)
22.	Planning Profession Act, 2002 (Act No.36 of 2002)
23.	Professional and Technical Surveyors' Act, 1984 (Act No.40 of 1984)
24.	Provision of Land and Assistance Act (previous title: Provision of Certain Land for Settlement Act), 1993 (Act No.126 of 1993)
25.	Removal of Restrictions Act, 1967 (Act No.84 of 1967)

26.	Restitution of Land Rights Act, 1994 (Act No.22 of 1994)
27.	Sectional Titles Act, 1986 (Act No.95 of 1986)
28.	Spatial Data Infrastructure Act, 2003 (Act No.54 of 2003)
29.	State Land Disposal Act, 1961 (Act No.48 of 1961)
30.	Transformation of Certain Rural Areas Act, 1998 (Act No.94 of 1998)
31.	Upgrading of Land Tenure Rights Act, 1991 (Act No.112 of 1991)
32.	KwaZulu-Natal Ingonyama Trust Act, 1994 (No.3KZ of 1994)

## Amendment Legislation

No.	Name of Act, number and year
1.	Abolition of Racially Based Land Measures Amendment Act, 1992 (Act No.133 of 1992)
2.	Black Administration Amendment Act, 1942 (Act No.42 of 1942)
3.	Black Administration Amendment Act, 1956 (Act No.42 of 1956)
4.	Black Laws Amendment Act, 1949 (Act No.56 of 1949)
5.	Black Laws Amendment Act, 1952 (Act No.54 of 1952)
6.	Black Laws Amendment Act, 1962 (Act No.46 of 1962)
7.	Black Laws Amendment Act, 1974 (Act No.70 of 1974)
8.	Black Laws Amendment Act, 1976 (Act No.4 of 1976)
9.	Community Development Amendment Act, 1967 (Act No.42 of 1967)
10.	Community Development Amendment Act, 1968 (Act No.58 of 1968)
11.	Community Development Amendment Act, 1970 (Act No.74 of 1970)
12.	Community Development Amendment Act, 1971 (Act No.68 of 1971)
13.	Community Development Amendment Act, 1972 (Act No.93 of 1972)
14.	Community Development Amendment Act, 1975 (Act No.19 of 1975)
15.	Community Development Amendment Act, 1977 (Act No.126 of 1977)
16.	Community Development Amendment Act, 1978 (Act No.19 of 1978)
17.	Community Development Amendment Act, 1980 (Act No.12 of 1980)
18.	Community Development Amendment Act, 1982 (Act No.26 of 1982)
19.	Community Development Amendment Act, 1983 (Act No.64 of 1983)
20.	Community Development Amendment Act, 1984 (Act No.20 of 1984)
21.	Community Development Amendment Act, 1986 (Act No.48 of 1986)
22.	Deeds Registries Amendment Act, 1953 (Act No.15 of 1953)
23.	Deeds Registries Amendment Act, 1957 (Act No.43 of 1957)

24.	Deeds Registries Amendment Act, 1962 (Act No.43 of 1962)
25.	Deeds Registries Amendment Act, 1965 (Act No.87 of 1965)
26.	Deeds Registries Amendment Act, 1969 (Act No.61 of 1969)
27.	Deeds Registries Amendment Act, 1972 (Act No.3 of 1972)
28.	Deeds Registries Amendment Act, 1977 (Act No.41 of 1977)
29.	Deeds Registries Amendment Act, 1978 (Act No.92 of 1978)
30.	Deeds Registries Amendment Act, 1980 (Act No.44 of 1980)
31.	Deeds Registries Amendment Act, 1982 (Act No.27 of 1982)
32.	Deeds Registries Amendment Act, 1984 (Act No.62 of 1984)
33.	Deeds Registries Amendment Act, 1987 (Act No.75 of 1987)
34.	Deeds Registries Amendment Act, 1989 (Act No.24 of 1989)
35.	Deeds Registries Amendment Act, 1993 (Act No.14 of 1993)
36.	Deeds Registries Amendment Act, 1996 (Act No.11 of 1996)
37.	Deeds Registries Amendment Act, 1998 (Act No.93 of 1998)
38.	Deeds Registries Amendment Act, 2003 (Act No.9 of 2003)
39.	KwaZulu-Natal Ingonyama Trust Amendment Act, 1997 (Act No.9 of 1997)
40.	Land Administration Amendment Act, 1996 (Act No.52 of 1996)
41.	Land Affairs General Amendment Act, 1995 (Act No.11 of 1995)
42.	Land Affairs General Amendment Act, 1998 (Act No.61 of 1998)
43.	Land Affairs General Amendment Act, 2000 (Act No.11 of 2000)
44.	Land Affairs General Amendment Act, 2001 (Act No.51 of 2001)
45.	Land Restitution and Reform Laws Amendment Act, 1996 (Act No.78 of 1996)
46.	Land Restitution and Reform Laws Amendment Act, 1997 (Act No.63 of 1997)
47.	Land Restitution and Reform Laws Amendment Act, 1999 (Act No.18 of 1999)
48.	Land Survey Amendment Act, 1981 (Act No.26 of 1981)
49.	Physical Planning Amendment Act, 1983 ( Act No.87 of 1983)
50.	Physical Planning Amendment Act, 1984 ( Act No.104 of 1984)
51.	Physical Planning Amendment Act, 1985 ( Act No.92 of 1985)
52.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1986 (Act No.37 of 1986)
53.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1987 (Act No.66 of 1987)
54.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993 (Act No.34 of 1993)
55.	Provision of Certain Land for Settlement Amendment Act, 1998 (Act No.26 of 1998)
56.	Regional and Land Affairs General Amendment Act, 1993 (Act No.89 of 1993)

57.	Regional and Land Affairs Second General Amendment Act, 1993 (Act No.170 of 1993)
58.	Removal of Restrictions Amendment Act, 1977 (Act No.55 of 1977)
59.	Removal of Restrictions Amendment Act, 1984 (Act No.18 of 1984)
60.	Restitution of Land Rights Amendment Act, 1995 (Act No.84 of 1995)
61.	Restitution of Land Rights Amendment Act, 2003 (Act No.54 of 2003)
62.	Second Community Development Amendment Act, 1982 (Act No.68 of 1982)
63.	Sectional Titles Amendment Act, 1991 (Act No.63 of 1991)
64.	Sectional Titles Amendment Act, 1992 (Act No.7 of 1992)
65.	Sectional Titles Amendment Act, 1993 (Act No.15 of 1993)
66.	Sectional Titles Amendment Act, 1997 (Act No.44 of 1997)
67.	Sectional Titles Amendment Act, 2003 (Act No.29 of 2003)
68.	State Land Disposal Amendment Act, 1968 (Act No.28 of 1968)
69.	State Land Disposal Amendment Act, 1976 (Act No.26 of 1976)
70.	State Land Disposal Amendment Act, 1982 (Act No.66 of 1982)
71.	State Land Disposal Amendment Act, 1987 (Act No.47 of 1987)
72.	State Land Disposal Amendment Act, 1988 (Act No.19 of 1988)
73.	Town and Regional Planners Amendment Act, 1987 (Act No.48 of 1987)
74.	Town and Regional Planners Amendment Act, 1988 (Act No.20 of 1988)
75.	Town and Regional Planners Amendment Act, 1990 (Act No.37 of 1990)
76.	Town and Regional Planners Amendment Act, 1993 (Act No.28 of 1993)
77.	Town and Regional Planners Amendment Act, 1995 (Act No.3 of 1995) [Principal Act has been repealed]
78.	Upgrading of Land Tenure Rights Amendment Act, 1996 (Act No.34 of 1996)

## Consolidated list of Amendment and Principal Legislation

No.	Name of Act, number and year
1.	Abolition of Certain Titles and Conditions Act, 1999 (Act No.43 of 1999)
2.	Abolition of Racially Based Land Measures Act, 1991 (Act No.108 of 1991)
3.	Abolition of Racially Based Land Measures Amendment Act, 1992 (Act No.133 of 1992)
4.	Black Administration Amendment Act, 1942 (Act No.42 of 1942)
5.	Black Administration Amendment Act, 1956 (Act No.42 of 1956)
6.	Black Authorities Act, 1951 (Act No.68 of 1951)
7.	Black Laws Amendment Act, 1949 (Act No.56 of 1949)
8.	Black Laws Amendment Act, 1952 (Act No.54 of 1952)
9.	Black Laws Amendment Act, 1962 (Act No.46 of 1962)
10.	Black Laws Amendment Act, 1974 (Act No.70 of 1974)
11.	Black Laws Amendment Act, 1976 (Act No.4 of 1976)
12.	Black Manufacturing Development Act, 1993 (Act No.187 of 1993)
13.	Communal Property Association Act, 1996 (Act No.28 of 1996)
14.	Communal Land Rights Act, 2004 (Act No.11 of 2004)
15.	Community Development Act, 1966 (Act No.3 of 1966)
16.	Community Development Amendment Act, 1967 (Act No.42 of 1967)
17.	Community Development Amendment Act, 1968 (Act No.58 of 1968)
18.	Community Development Amendment Act, 1970 (Act No.74 of 1970)
19.	Community Development Amendment Act, 1971 (Act No.68 of 1971)
20.	Community Development Amendment Act, 1972 (Act No.93 of 1972)
21.	Community Development Amendment Act, 1975 (Act No.19 of 1975)
22.	Community Development Amendment Act, 1977 (Act No.126 of 1977)
23.	Community Development Amendment Act, 1978 (Act No.19 of 1978)
24.	Community Development Amendment Act, 1980 (Act No.12 of 1980)
25.	Community Development Amendment Act, 1982 (Act No.26 of 1982)
26.	Community Development Amendment Act, 1983 (Act No.64 of 1983)
27.	Community Development Amendment Act, 1984 (Act No.20 of 1984)
28.	Community Development Amendment Act, 1986 (Act No.48 of 1986)
29.	Deeds Registries Act, 1937 (Act No.47 of 1937)
30.	Deeds Registries Amendment Act, 1953 (Act No.15 of 1953)
31.	Deeds Registries Amendment Act, 1957 (Act No.43 of 1957)

32.	Deeds Registries Amendment Act, 1962 (Act No.43 of 1962)
33.	Deeds Registries Amendment Act, 1965 (Act No.87 of 1965)
34.	Deeds Registries Amendment Act, 1969 (Act No.61 of 1969)
35.	Deeds Registries Amendment Act, 1972 (Act No.3 of 1972)
36.	Deeds Registries Amendment Act, 1977 (Act No.41 of 1977)
37.	Deeds Registries Amendment Act, 1978 (Act No.92 of 1978)
38.	Deeds Registries Amendment Act, 1980 (Act No.44 of 1980)
39.	Deeds Registries Amendment Act, 1982 (Act No.27 of 1982)
40.	Deeds Registries Amendment Act, 1984 (Act No.62 of 1984)
41.	Deeds Registries Amendment Act, 1987 (Act No.75 of 1987)
42.	Deeds Registries Amendment Act, 1989 (Act No.24 of 1989)
43.	Deeds Registries Amendment Act, 1993 (Act No.14 of 1993)
44.	Deeds Registries Amendment Act, 1996 (Act No.11 of 1996)
45.	Deeds Registries Amendment Act, 1998 (Act No.93 of 1998)
46.	Deeds Registries Amendment Act, 2003 (Act No.9 of 2003)
47.	Development Facilitation Act, 1995 (Act No.67 of 1995)
48.	Distribution and Transfer of Certain State Land Act, 1993 (Act No.119 of 1993)
49.	Extension of Security of Tenure Act, 1997 (Act No.62 of 1997)
50.	General Law Second Amendment Act, 1993 (Act No.108 of 1993)
51.	Interim Protection of Informal Land Rights Act, 1996 (Act No.31 of 1996)
52.	Kimberly Leasehold Conversion to Freehold Act, 1961 (Act No.40 of 1961)
53.	KwaZulu Land Affairs Amendment Act, 1998 (Act No.48 of 1998)
54.	KwaZulu-Natal Ingonyama Trust Amendment Act, 1997 (Act No.9 of 1997)
55.	Land Administration Act, 1995 (Act No.2 of 1995)
56.	Land Administration Amendment Act, 1996 (Act No.52 of 1996)
57.	Land Affairs Act, 1987 (Act No.101 of 1987)
58.	Land Affairs General Amendment Act, 1995 (Act No.11 of 1995)
59.	Land Affairs General Amendment Act, 1998 (Act No.61 of 1998)
60.	Land Affairs General Amendment Act, 2000 (Act No.11 of 2000)
61.	Land Affairs General Amendment Act, 2001 (Act No.51 of 2001)
62.	Land Reform (Labour Tenants) Act, 1996 (Act No.3 of 1996)
63.	Land Restitution and Reform Laws Amendment Act, 1996 (Act No.78 of 1996)
64.	Land Restitution and Reform Laws Amendment Act, 1997 (Act No.63 of 1997)
65.	Land Restitution and Reform Laws Amendment Act, 1999 (Act No.18 of 1999)
66.	Land Survey Act, 1997 (Act No.8 of 1997)

67.	Land Survey Amendment Act, 1981 (Act No.26 of 1981)
68.	Land Titles Adjustment Act, 1993 (Act No.111 of 1993)
69.	Physical Planning Act, 1967( Act No.88 of 1967)
70.	Physical Planning Act, 1991 ( Act No.125 of 1991)
71.	Physical Planning Amendment Act, 1983 (Act No.87 of 1983)
72.	Physical Planning Amendment Act, 1984 ( Act No.104 of 1984)
73.	Physical Planning Amendment Act, 1985 ( Act No.92 of 1985)
74.	Planning Profession Act, 2002 (Act No.36 of 2002)
75.	Professional and Technical Surveyors' Act, 1984 (Act No.40 of 1984)
76.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1986 (Act No.37 of 1986)
77.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1987 (Act No.66 of 1987)
78.	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993 (Act No.34 of 1993)
79.	Provision of Certain Land for Settlement Amendment Act, 1998 (Act No.26 of 1998)
80.	Provision of Land and Assistance Act (previous title: Provision of Certain Land for Settlement Act), 1993 (Act No.126 of 1993)
81.	Regional and Land Affairs General Amendment Act, 1993 (Act No.89 of 1993)
82.	Regional and Land Affairs Second General Amendment Act, 1993 (Act No.170 of 1993)
83.	Removal of Restrictions Act, 1967 (Act No.84 of 1967)
84.	Removal of Restrictions Amendment Act, 1977 (Act No.55 of 1977)
85.	Removal of Restrictions Amendment Act, 1984 (Act No.18 of 1984)
86.	Restitution of Land Rights Act, 1994 (Act No.22 of 1994)
87.	Restitution of Land Rights Amendment Act, 1995 (Act No.84 of 1995)
88.	Restitution of Land Rights Amendment Act, 2003 (Act No.54 of 2003)
89.	Second Community Development Amendment Act, 1982 (Act No.68 of 1982)
90.	Sectional Titles Act, 1986 (Act No.95 of 1986)
91.	Sectional Titles Amendment Act, 1991 (Act No.63 of 1991)
92.	Sectional Titles Amendment Act, 1992 (Act No.7 of 1992)
93.	Sectional Titles Amendment Act, 1993 (Act No.15 of 1993)
94.	Sectional Titles Amendment Act, 1997 (Act No.44 of 1997)
95.	Sectional Titles Amendment Act, 2003 (Act No.29 of 2003)
96.	Spatial Data Infrastructure Act, 2003 (Act No.54 of 2003)
97.	State Land Disposal Act, 1961 (Act No.48 of 1961)
98.	State Land Disposal Amendment Act, 1968 (Act No.28 of 1968)

99.	State Land Disposal Amendment Act, 1976 (Act No.26 of 1976)
100.	State Land Disposal Amendment Act, 1982 (Act No.66 of 1982)
101.	State Land Disposal Amendment Act, 1987 (Act No.47 of 1987)
102.	State Land Disposal Amendment Act, 1988 (Act No.19 of 1988)
103.	Town and Regional Planners Amendment Act, 1987 (Act No.48 of 1987)
104.	Town and Regional Planners Amendment Act, 1988 (Act No.20 of 1988)
105.	Town and Regional Planners Amendment Act, 1990 (Act No.37 of 1990)
106.	Town and Regional Planners Amendment Act, 1993 (Act No.28 of 1993)
107.	Town and Regional Planners Amendment Act, 1995 (Act No.3 of 1995) [Principal Act has been repealed]
108.	Transformation of Certain Rural Areas Act, 1998 (Act No.94 of 1998)
109.	Upgrading of Land Tenure Rights Act, 1991 (Act No.112 of 1991)
110.	Upgrading of Land Tenure Rights Amendment Act, 1996 (Act No.34 of 1996)

## Annexure C

### Categorisation of Acts

CATEGORY	ACTS
1. Statute proposed for repeal on the ground of unconstitutionality.	1) Communal Land Rights Act, 2004 (Act No. 11 of 2004).
2. Statutes proposed for repeal as a whole on the ground of obsolescence.	1) Community Development Act, 1966 (Act No. 3 of 1966). 2) Black Administration Amendment Act, 1942 (Act No. 42 of 1942). 3) Black Laws Amendment Act, 1949 (Act No. 56 of 1949). 4) Black Laws Amendment Act, 1952 (Act No. 54 of 1952). 5) Black Administration Amendment Act, 1956 (Act No. 42 of 1956). 6) Black Laws Amendment Act, 1962 (Act No. 46 of 1962). 7) Black Laws Amendment Act, 1974 (Act No. 70 of 1974). 8) Black Laws Amendment Act, 1976 (Act No. 4 of 1976).
3. Statutes repealed and statutes in process of being repealed by the DRDLR.	1) Black Authorities Act, 1951 (Act No. 68 of 1951). 2) Physical Planning Act, 1967 (Act No. 88 of 1967). 3) Physical Planning Act, 1991 (Act No. 125 of 1991). 4) Development Facilitation Act, 1995 (Act No. 67 of 1995).

	<ul style="list-style-type: none"> <li>5) Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).</li> <li>6) Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997).</li> </ul>
4. Statutes proposed for partial repeal on the ground of obsolescence.	<ul style="list-style-type: none"> <li>1) General Law Second Amendment Act, 1993 (Act No. 108 of 1993).</li> <li>2) State Land Disposal Act, 1961 (Act No. 48 of 1961).</li> </ul>
5. Statutes proposed for amendment on the basis of partly discriminatory nature and/ or obsolescence.	<ul style="list-style-type: none"> <li>1) Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).</li> <li>2) State Land Disposal Act, 1961 (Act No. 48 of 1961).</li> <li>3) Land Affairs Act, 1987 (Act No. 101 of 1987).</li> <li>4) Planning Profession Act, 2002 (Act No.36 of 2002).</li> </ul>
6. Statutes proposed for retention without amendment.	<ul style="list-style-type: none"> <li>1) Abolition of Certain Titles and Conditions Act, 1999 (Act No. 43 of 1999).</li> <li>2) Communal Property Association Act, 1996 (Act No.28 of 1996).</li> <li>3) Deeds Registries Act, 1937 (Act No.47 of 1937).</li> <li>4) Land Administration Act, 1995 (Act No.2 of 1995).</li> <li>5) Land Titles Adjustment Act, 1993 (Act No.111 of 1993).</li> <li>6) Professional and Technical Surveyors' Act, 1984 (Act No.40 of 1984).</li> <li>7) Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) (previous title: Provision of Certain Land for Settlement Act).</li> <li>8) Restitution of Land Rights Act, 1994</li> </ul>

	<p>(Act No.22 of 1994).</p> <p>9) Sectional Titles Act, 1986 (Act No.95 of 1986).</p> <p>10) Spatial Data Infrastructure Act, 2003 (Act No.54 of 2003).</p> <p>11) Transformation of Certain Rural Areas Act, 1998 (Act No.94 of 1998);</p> <p>12) Upgrading of Land Tenure Rights Act, 1991 (Act No.112 of 1991).</p> <p>13) KwaZulu-Natal Ingonyama Trust Act, 1994 (No.3KZ of 1994).</p> <p>14) Distribution and Transfer of Certain State Land Act, 1993 (Act No.119 of 1993).</p> <p>15) Kimberly Leasehold Conversion to Freehold Act, 1961 (Act No.40 of 1961).</p> <p>16) KwaZulu Land Affairs Amendment Act, 1998 (Act No.48 of 1998).</p>
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## **Annexure D**

### **List of respondents to Discussion Paper 118**

1. Department of Rural Development and Land Reform.
2. Department of Environmental Affairs  
(Ms Linda Garlipp Chief Director: Legal Services).
3. Land Rights Legal Unit, Association for Rural Advancement  
(M Cowling).
4. Geoff Budlender SC, Advocate of the High Court of South Africa.
5. AgriSA  
(Annelize Crosby: Legal and Policy Advisor).

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*Ex Parte Western Cape Provincial Government and Others: In Re DVB Behuising (Pty) Ltd v North West Provincial Government and Another* 2000 (4) BCLR 347 (CC)

*Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* (CCT 100/09) [2010] ZACC 10 (11 May 2010)

## List of legislation

Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996)

Proclamation No. 41 of 1994 (Government Gazette No. 11320 dated 26 July 1994)

Proclamation No. 109 of 1994 (Government Gazette No. 15813 dated 17 June 1994)

Proclamation No. 111 of 1994 (Government Gazette No. 15813 dated 17 June 1994)

Proclamation R9 of 1997 (Government Gazette No.17753 of 31 January 1997)

Proclamation R22 of 1997 (Government Gazette 17846 of 14 March 1997)

Proclamation R63 of 1998 (Government Gazette No.18978 of 19 June 1998)

Proclamation No. 44 of 2009 (Government Gazette No. 32367 dated 01 July 2009)

Proclamation No. 48 of 2009 (Government Gazette No. 32387 dated 07 July 2009)

## Bills

Draft Land Tenure Security Bill, 2011 (Notice 1118 of 2010 in Government Gazette No. 33894 dated 24 December 2010)

Draft Spatial Planning and Land Use Management Bill, 2011 (Notice 280 in Government Gazette No. 34270 dated 6 May 2011)