



**REPORT ON LEGISLATION ADMINISTERED  
BY DEPARTMENT OF HUMAN SETTLEMENTS**

**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 Human Settlements).**

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**

## Introduction

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

The members of the Commission are –

The Honourable Madam Justice Y Mokgoro (Chairperson)

The Honourable Mr Justice WL Seriti (Vice-Chairperson)

Professor C Albery

The Honourable Mr Justice DM Davis

Ms T Madonsela (Full-time member until October 2009)

Mr T Ngcukaitobi

Advocate DB Ntsebeza SC

Professor PJ Schwikkard

Advocate M Sello

The Secretary of the SALRC is Mr Michael Palumbo. The project leader responsible for this investigation is Mr Justice Dennis Davis. 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.

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# EXECUTIVE SUMMARY

## 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for constitutionality, redundancy or obsolescence has been undertaken, although a number of Acts have been amended or repealed by Parliament on an *ad hoc* basis.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. On 23 July 2004, the SALRC wrote a letter to the then Director-General: Department of Housing, Ms Mpumi Nxumalo, with the purpose of bringing this investigation to her attention and to request the participation of her Department in the process. On 7 May 2008, a Consultation Paper containing preliminary findings and recommendations was submitted to the Department of Human Settlements' legal advisers for comment and input. On 17 June 2008, comments and input were received from the Department's legal advisers.

3. As part of this investigation, the SALRC has reviewed 15 Acts administered by the national Department of Human Settlements which were enacted between 1973 and 2007, or were assigned during the same period to a competent authority within the jurisdiction of the government of a province designated by the Premier of the province concerned, and are still in force in the Republic, for the purposes mentioned in paragraph 1 above.

4. The Government Villages Act, 1973 (Act No.44 of 1973) as amended by the Government Villages Amendment Act, 1984 (Act No.25 of 1984) was included in the scope of Discussion Paper 115. However, according to the submission received from the Department of Human Settlements in its response to Discussion Paper 115, the Department's legal advisers stated that-

The Department is not responsible for the administration of these villages as they were not developed in terms of the current housing legislation.

5. The Department of Rural Development and Land Reform (DRDLR), however, stated in its submission to the SALRC that-

The Act (Government Villages Act, 1973) was not included in the Schedule to President's Minute No.13 of 10 June 1994 in terms of which the Minister of Rural Development and Land Reform was designated as the Minister responsible for the Acts listed in the Schedule. The DRDLR confirms that it does not administer the Act, and has no opinion on which of Human Settlements or Public Works should do so. The amendments<sup>1</sup> are supported in principle, and it is suggested that the appropriate Minister will first have to be designated by the President as the responsible Minister after the required process has been followed, if such designation has not already been effected.

6. In essence, the investigation required to determine whether the Government Villages Act, 1973 still serves a useful purpose or not, entails verifying with every municipality in whose area of administration the 'Government Villages' (defined as former military camps in the Act) were situated in order to find out who the current occupants of those houses are and what their land tenure is; whether the occupants are returning soldiers or descendants of returning soldiers; whether the houses concerned are still being maintained by government and, if so, which sphere of government is responsible for providing which services to the occupants of the houses in question. It is submitted that the SALRC does not have all the resources required to conduct such an investigation and is of the view that either the Department of Human Settlements or the Department of Public Works is in a position to conduct the required investigation.

7. Since it is also unclear as to whether the administration of the Act was assigned to the relevant Provincial Departments of Human Settlements or transferred to the Minister of Public Works, neither the Department of Human Settlements nor the Department of Public Works could support the proposal to amend the definitions of 'Minister' and 'Director-General' to refer to those of their respective departments. Accordingly, the SALRC recommends that further investigation be undertaken by the Department of Human Settlements and Department of Public Works in

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<sup>1</sup> Discussion paper 115 had provisionally proposed that the Definitions of 'Minister' and 'Director-General' which in the Act refer to those of the 'Department of Community Development' respectively, should be substituted to refer to 'Minister' and 'Director-General' of 'Human Settlements' respectively.

order to determine whether a need still exists to keep the Act on the statute book, and depending on the finding of such investigation, appropriate action be taken to amend or repeal the Act as the case may be.

8. The Housing Development Agency Act, 2008 (Act No. 23 of 2008), was excluded from the scope of this investigation due to the fact that the Act came into operation on 23 October 2008, being the month during which Discussion Paper 115 was approved by the SALRC to be published for information and public comment.

## **B. Discussion Paper 115**

9. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC developed a discussion paper referred to above and published it as Discussion Paper 115 (the Discussion Paper) for general information and comment in November 2008.

10. In the Discussion Paper, the SALRC listed all the 15 statutes administered by the national Department of Human Settlements or were assigned to a competent authority within the jurisdiction of the government of a province designated by the Premier of the province concerned, including the Government Villages Act, 1973 (Act No.44 of 1973) mentioned in paragraph 4 above; 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 reform in respect of the statutes found wanting; appended a Draft Human Settlements General Laws Amendment and Repeal Bill<sup>2</sup> setting out legislation or provisions in legislation which needed to be 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 was 28 February 2009.

11. The stakeholders to whom the Discussion Paper was distributed include the Department of Human Settlements, the DRDLR, the Department of Public Works and other national

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<sup>2</sup> The name of the draft Bill was amended from 'Rationalisation of Housing Laws Bill' to 'Human Settlements General Laws Amendment and Repeal Bill' in accordance with the new name of the Department.

government departments; provincial government departments responsible for human settlements; housing institutions like the National Housing Finance Corporation (NHFC), National Homebuilders Registration Council (NHRC), Social Housing Foundation (SHF), SERVCON and the Rural Housing Loan Fund (RHLF).

12. The SALRC received comments from the DRDLR, Department of Home Affairs, Department of Education and the Pretoria Magistrates' Court. All the stakeholders who submitted comments are in support of the proposed legislation subject to the proposed changes being effected to the Draft Human Settlements General Laws Amendment and Repeal Bill.

13. After carefully analysing the comments from the DRDLR and the Pretoria Magistrates' Court, and after conducting further consultation with the Departments of Human Settlements and Public Works, the SALRC effected the following changes to the proposed legislation:

**(1) Disestablishment of South African Trust Limited Act, 2002 (Act No. 26 of 2002)**

- a) The Draft Bill seeks to repeal the whole Act, which appears to have been fully implemented and thus no longer serve any purpose. The repeal is supported by the DRDLR and the Department of Human Settlements.

**(2) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) ["Pie Act"]**

- a) Initially the Draft Bill proposed amending only section 8(5)(c)(i) and (iv) to (in effect) replace 'Attorney-General' with 'National Director of Public Prosecutions'. However, this proposal is not necessary in view of section 45 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) which provides as follows:

**Interpretation of certain references in laws**

Any reference in any law to-

- (a) an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the National Director;.
- b) The Pretoria Magistrates' Court states that the proposed amendment of the substitution of 'Attorney-General' is a formal amendment and was necessitated by

the enactment of the Constitution of the Republic of South Africa, 1996 and section 22 of the National Prosecuting Authority Act, 1998.<sup>3</sup> However, in the Chief Magistrate's opinion, the SALRC should not stop at this formal amendment but should consider amendment (or scrapping) of section 8, to the extent that it radically departs from the Criminal Procedure Act, 1977. Section 8 of the 'Pie Act' makes provision for adverse costs orders against private prosecutions in certain instances in favour of the accused. The Chief Magistrate states that to provide for a cost order seems questionable and could be regarded as interfering with a court's discretion.

- c) The proposed amendment is supported in principle. However, it is recommended that the proposed amendment or repeal of section 8 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No.19 of 1998) be dealt with as part of the evictions review project being undertaken by the DRDLR in conjunction with the Department of Human Settlements as suggested by the DRDLR in their submission to the SALRC.

### **(3) Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998)**

- a) The Draft Bill proposes amendment of the Act in order to substitute references to current Acts for references to repealed Acts, as follows:
  - i. The reference to the repealed 'Engineering Professions of South Africa Act, 1990 (Act No. 114 of 1990)' in the definition of competent person in section 1 of the Act to be substituted by the reference to the current Engineering Profession Act, 2000 (Act No. 46 of 2000);
  - ii. The reference to the repealed 'section 11 of the Natural Scientific Professions Act, 1993 (Act No. 106 of 1993)' in the definition of competent person in section 1 of the Act to be substituted by the reference to the current Natural Scientific Professions Act, 2003 (Act No. 27 of 2003);
  - iii. The reference to the repealed 'Financial Institutions (Investment of funds) Act, 1984 (Act No. 39 of 1984)' in section 16(7)(a) of the Act to be

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<sup>3</sup> Section 22 of the National Prosecuting Authority Act, 1998 provides for the powers, duties and functions of the National Director.

substituted by the reference to the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); and

- iv. The reference to the repealed 'Insurance Act, 1943 (Act No.27 of 1943)' in section 23(9)(a) of the Act to be substituted by the reference to the current Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

- b) The DRDLR and the Department of Human Settlements support the proposed amendment.

#### **(4) Home Loan and Mortgage Disclosure Act, 63 of 2000**

- a) The Draft Bill proposes to (in effect) omit the reference to the repealed Agricultural Credit Act, 1966 (Act No. 28 of 1966) in section 8(2)(c) of the Act. The DRDLR and the Department of Human Settlements support the proposed amendment.

## **C. Summary of recommendations**

14. In this Report, the Commission makes the following recommendations:

- 1. That the following Act be repealed as a whole:
  - a) Disestablishment of South African Housing Trust Limited Act, 2002 (Act No. 26 of 2002).
- 2. That the specified provisions in the following Acts be amended:
  - a) Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998)
    - i. The definition of 'competent person' in section 1;
    - ii. Paragraph (a) of subsection 16(7); and

- iii. Paragraph (a) of subsection 23(9).
- b) Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000)
  - i. Paragraph (c) of subsection 8(2).

## **D 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 Human Settlements 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 –

1. the repeal of obsolete or unnecessary provisions;
2. the removal of anomalies;
3. the bringing about of uniformity in the law in force in the various parts of the Republic; and
4. 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.

## **B. 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-

1. references to bodies, organisations, etc that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
2. references to issues that are no longer relevant as a result of changes in social or economic conditions;
3. references to Acts that have been superseded by more modern legislation or by an international convention;
4. references to statutory provisions (i.e. sections, schedules, etc) that have been repealed;
5. repealing provisions e.g. "Section 28 is repealed/shall cease to have effect";
6. commencement provisions once the whole of an Act is in force;
7. transitional or savings provisions that are spent;

8. 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;
9. 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>4</sup>

1. 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;
2. 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;
3. 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;
4. Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;
5. Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise;
6. 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

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<sup>4</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.

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.

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 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.

## C. The initial investigation

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. CALS pursued four main avenues of research in their study conducted in 2001:<sup>5</sup>

1. First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.
2. 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.
3. 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.
4. 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.

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<sup>5</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.

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

1. the Recognition of Customary Marriages (August 1998);
2. the Review of the Marriage Act 25 of 1961 (May 2001);
3. the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
4. Traditional Courts (January 2003);
5. the Recognition of Muslim marriages (July 2003);
6. the Repeal of the Black Administration Act 38 of 1927 (March 2004);
7. Customary Law of Succession (March 2004); and
8. Domestic Partnerships (in March 2006).

## **D. Scope of the Project**

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

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

1. differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
2. unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
3. 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>6</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.

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

1.21 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.

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<sup>6</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.

## Chapter 2

# Explanatory notes on the Draft Human Settlements General Laws Amendment and Repeal Bill

## A Introduction

2.1 The Department of Human Settlements derives its legislative mandates from the following legislation, among others:<sup>7</sup>

1. Section 26 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);<sup>8</sup>
2. The Housing Act, 1997 (Act No. 107 of 1997);
3. The Housing Consumers Protection Measures Act, 1998 (Act No. 19 of 1998);
4. The Housing Development Agency Act, 2008 (Act No. 23 of 2008);
5. The Social Housing Act, 2008 (Act No. 16 of 2008);
6. The Rental Housing Act, 1999 (Act No. 50 of 1999); and
7. Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000).

2.2 The mission of the Department of Human Settlements is-

To facilitate an environment that provides sustainable human settlements.<sup>9</sup>

2.3 In his State of the Nation Address on 3 June 2009, the President of the Republic of South Africa, His Excellency J.G. Zuma, said that:

As part of social infrastructure development we will provide suitably located and affordable housing and decent human settlements. We will proceed from the understanding that human settlements is not just about building houses. It is about transforming our cities and towns and building cohesive, sustainable and

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<sup>7</sup> Department of Human Settlements Annual Report 2009 / 2010 on 13-16.

<sup>8</sup> Section 26 of the Constitution provides that:

1. “Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.”

<sup>9</sup> Department of Human Settlements Annual Report 2009 / 2010 on 13.

caring communities with closer access to work and social amenities, including sports and recreation facilities.<sup>10</sup>

2.4 The following public entities report to the Department of Human Settlements:

1. Social Housing Foundation;
2. National Urban Reconstruction and Housing Agency;
3. Rural Housing Loan Fund;
4. Housing Development Agency;
5. National Home Builders Registration Council;
6. National Housing Finance Corporation (HHFC);
7. Thubelisha Homes; and
8. Servcon Housing Solutions.<sup>11</sup>

## **B Recommendation for the repeal and amendment of legislation administered by the Department of Human Settlements**

2.5 The SALRC has identified 15 pieces of legislation as being statutes that are administered by the national Department of Human Settlements, or were assigned to a competent authority within the jurisdiction of the government of a province designated by the Premier of the province concerned. The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed or amended as a result of redundancy, obsolescence or unconstitutionality, has identified an Act that may be repealed wholly and Acts that may be amended by the national Department of Human Settlements. These Acts, save for the Act that is recommended for amendment by the relevant provincial governments, are contained in Schedules 1 and 2 of the Draft Human Settlements General Laws Amendment and Repeal Bill

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<sup>10</sup> Government Communications Statement by President Jacob Zuma on the State of the Nation Address 3 June 2009 Web 23 November 2011.

<sup>11</sup> Department of Human Settlements Annual Report 2009 / 2010 on 16-20.

(hereinafter the Draft Bill) attached as annexure A to this Report. Furthermore, the discussion below provides reasons and recommendations why these statutes and/or provisions were identified for repeal or amendment. For ease of reference the legislation has been divided into the following two categories, namely:

- i. Statute recommended for repeal;
- ii. Statutes recommended for amendment;
- iii. Statute recommended for amendment by the relevant provincial governments;
- iv. Statute recommended for retention without amendment; and
- v. Statute recommended for further investigation.

## **1. Statute recommended for repeal**

2.6 On initial scrutiny the following statute appears to contain references to bodies that are no longer in existence or otherwise have ceased to serve any purpose, rendering the Act redundant. However, sometimes it is impossible to tell whether an Act or provision can be repealed without factual information that is not readily ascertainable without access to inside knowledge held by the Department.

### **(a) The Disestablishment of South African Trust Limited Act, 2002 (Act No.26 of 2002)**

2.7 This Act provides for the disestablishment and winding up of the South African Housing Trust Limited (the Trust), including the transfer of rights and assets of the Trust to the National Housing Finance Corporation as well as to vest the obligations and liabilities of the Trust in the South African Government.

2.8 Section 2(1) of the Act provides that-

As from the effective date the Company ceases to exist as a company in terms of the Companies Act and must for the purposes of that Act be regarded as having been wound up.

2.9 According to the Department of Housing Annual Report 2006-2007,<sup>12</sup> the disestablishment process was completed by the beginning of 2003. In the circumstances the Act no longer serves any purposes and may be repealed.

## **2. Statutes recommended for amendment**

### **(a) Housing Consumers Protection Measures Act, 1998 (Act No.95 of 1998)**

2.10 The Act makes provision for the protection of housing consumers and to provide for the establishment and functions of the National Home Builders Registration Council.

2.11 Reference is made in the Act to certain legislation that has now been repealed, namely:

- a) The definition of 'competent person' in section 1 of the Act makes reference to the Engineering Professions of South Africa, 1990 (Act No. 114 of 1990) and the Natural Scientific Professions Act, 1993 (Act No. 106 of 1993). The latter Acts were repealed by the Engineering Profession Act, 2000 (Act No. 46 of 2000) and Natural Scientific Professions Act, 2003 (Act No. 27 of 2003) respectively.

2.12 The proposed amendment of the definition of 'competent person' above is recommended notwithstanding the transitional arrangements and savings provisions (that is, they do not affect the proposed amendment) contained in subsections 42(11) and (12) of the Engineering Profession Act 46 of 2000 and subsection 42(9) of the Natural Scientific Professions Act 27 of 2003 respectively. The transitional arrangements and savings provisions in question provide as follows:

Engineering Profession Act 46 of 2000Act 46 of 2000

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- (11) A person who is registered as an engineering technician in terms of section 14(1) and (2) of the Engineering Profession of South Africa Act,

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<sup>12</sup> In page 15 of the Annual Report, it is stated that "the winding up of the South African Housing Trust and the transfer of the functions relating to financial obligations were completed by the beginning of 2003 in terms of the Disestablishment of South African Trust Limited Act, 2002 (Act No.26 of 2002).

1990, remains registered as such, until that person is registered as a professional engineering technician in terms of this Act.

- (12) A person who is registered as an engineering technician in training in terms of the Engineering Profession of South Africa Act, 1990, is considered to be registered as a candidate engineering technician in terms of this Act.

#### Natural Scientific Professions Act 27 of 2003

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- (9) Any person who immediately prior to the commencement of this Act was registered as a professional natural scientist or as a professional natural scientist-in-training in terms of the Natural Scientific Professions Act, 1993, or was deemed to have been so registered, is deemed to be registered as a professional natural scientist or a candidate natural scientist, as the case may be, in terms of this Act.

2.13 Paragraph (a) of subsection 16(7) of the Act makes reference to a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984). The latter Act was repealed by the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

2.14 Paragraph (a) of subsection 23(9) of the Act makes reference to the Insurance Act, 1943 (Act No. 27 of 1943). This subsection provides that:

- (9) The Council Advisory Committee shall, after consultation with the funds advisory committee, after five years from the date of commencement of this Act, submit proposals to the Council, for recommendation to the Minister, regarding-
- (a) the feasibility of introducing a requirement that a home builder's obligations in terms of section 13 (2) (b) shall be insured by an insurer exempted from the provisions of the Insurance Act, 1943 (Act No. 27 of 1943);.

2.15 The Insurance Act, 1943 (Act No. 27 of 1943) was repealed by the Long-term Insurance Act, 1998 (Act No. 52 of 1998), excluding section 60(1)(f). The proposed amendment of paragraph (a) of subsection 23(9) of the Housing Consumers Protection Measures Act 95 of 1998 is recommended notwithstanding section 75 of the Long-term Insurance Act 52 of 1998 and section 72 of the Short-term Insurance Act 53 of 1998 respectively. These sections provide as follows:

- (a) Section 75 of the Long-term Insurance Act 52 of 1998 (**Interpretation of certain references in existing laws**):

Unless it would in a particular case be clearly inappropriate, a reference in a law in force immediately before the commencement of this Act-

- (a) to a domestic insurer or a registered insurer, shall be construed as a reference to a long-term insurer or a short-term insurer, as the case may be;

- (b) section 72 of the Short-term Insurance Act 53 of 1998 (**Interpretation of certain references in existing laws**) provides that:

Unless it would in a particular case be clearly inappropriate, a reference in a law in force immediately before the commencement of this Act-

- (a) to a domestic insurer or a registered insurer, shall be construed as a reference to a short-term insurer or a long-term insurer, as the case may be;

**(b) Home Loan and Mortgage Disclosure Act, 2000 (Act No.63 of 2000)**

2.16 The purpose of the Act is to promote fair practices, which require disclosure by financial institutions of information regarding the provision of home loans, to establish an Office of Disclosure; and to provide for matters connected therewith.

2.17 Section 8(2) of the Act states that a member of the Office (of Disclosure) ceases to be a member if-

- (c) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No. 28 of 1996).

2.18 The Agricultural Credit Act, 1966 (Act No. 28 of 1996) was repealed as a whole by the Agricultural Debt Management Act, 2001 (Act No. 45 of 2001). Accordingly, it is recommended that the Act be amended in order to remove the reference to the repealed Agricultural Credit Act, 1966 (Act No. 28 of 1996).

### **3. Statute recommended for amendment by relevant provincial governments**

#### **(a) The Less Formal Township Establishment Act, 1991 (Act No.113 of 1991)**

2.19 This Act provides for shortened procedures for the development of land and establishment of townships and less formal forms of residential settlement, as well as the use of land by tribal communities for communal forms of residential settlement.

2.20 In terms of Proclamation R159 of 31 October 1994, the administration of the Less Formal Township Establishment Act, 1991 (Act No.113 of 1991), excluding sections 3(5), 9(2) and (3), 12(2A) and (3), 19(6A) and (7), and 26(2) and (3), and any other provisions of the said Act which fall outside the functional areas specified in Schedule 6 to the Constitution of the Republic of South Africa Act, 1993 (Act No.200 of 1993) or which relate to matters referred to in paragraphs (a) to (e) of section 126(3) of the Constitution, has been assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of the Constitution, designated by the Premier of the province concerned.<sup>13</sup>

2.21 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. Therefore, if the assigned sections of the Act do not fall within the exclusions mentioned in the proclamations that assigned it to the provinces, it constitutes provincial legislation that can be repealed by the provincial legislatures concerned.

2.22 Against the foregoing background, attention of the relevant provincial legislatures is drawn to the following sections of the Act that have been assigned to the provinces and therefore need to be updated, namely-

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<sup>13</sup> The administration of the whole of this Act, excluding sections 3(5), 9(2) and (3), 12(2A) and (3), 19(6A) and (7), and 26(2) and (3), has under Proclamation R159 of 1994, promulgated in Government Gazette 16049 of 31 October 1994, been assigned to the Provinces of Eastern Cape; Free State; Gauteng; KwaZulu-Natal, Limpopo, Mpumalanga, North-West and Western Cape with effect from 31 October 1994.

- (i) The definition of “Administrator”<sup>14</sup> in the Act refers to a competent authority to whom the administration of this Act has been assigned in terms of section 235(8) of the interim Constitution<sup>15</sup>. Similarly, the definition of “province” and section 28 dealing with the application of the Act, also refers to the interim Constitution. The interim Constitution was repealed by the Constitution of the Republic of South Africa, 1996, and accordingly the aforementioned definitions and section must be amended.
- (ii) The definitions of “erf”, “general plan” and “public place” refer to similar definitions in the Land Survey Act 9 of 1927. The latter Act was repealed by the Land Survey Act 8 of 1997.
- (iii) Section 3(5)(c) refers to section 12 of the National Roads Act 54 of 1971. The latter Act was repealed by the South African National Roads Agency Limited and National Roads Act 7 of 1998.
- (iv) Chapter III of the Act deals with Settlement by Indigenous Tribes. It is not clear whether this part of the Act still serves any purpose and in fact, if it is still being used.

#### **4. Statute recommended for retention without amendment**

##### **(a) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No.19 of 1998)**

2.23 The purpose of the Act is to provide for the prohibition of unlawful eviction and for procedures for the eviction of unlawful occupiers.

2.24 Although sections 8(5)(c)(i) and (iv) of the Act still refer to the Attorney-General, however, section 179(1) of the Constitution of the Republic of South Africa provides that-

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<sup>14</sup> See section 1 of Act 113 of 1991

<sup>15</sup> Constitution of the Republic of South Africa, 1993

There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of a National Director of Public Prosecutions, who is the head of the prosecuting authority,

2.25 Section 22 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998) provides that the-

- (1) The National Director, as the head of the prosecuting authority, shall have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the prosecuting authority by the Constitution, this Act or any other law.

2.26 Nonetheless, section 45 of Act 32 of 1998 (Interpretation of certain references in laws) provides that-

Any reference in any law to-

- (a) an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the National Director;.

2.27 Accordingly, it is not recommended that the Act be amended in order to replace 'Attorney-General' with 'National Director of Public Prosecutions' in view of section 45 of Act 32 of 1998 as stated above.

## **5. Statutes recommended for further investigation**

### **(a) Government Villages Act, 1973 (Act No.44 of 1973)**

2.28 This Act provides for the control and management of 'Government Villages', which are defined as *the former military camps used for residential purposes and situated at Benoni, Germiston, Randfontein, Vereeniging, Cradock Place (Port Elizabeth), Collondale (East London) and Oribi (Pietermaritzburg).*

2.29 According to information obtained from meetings held with DPW officials, it appears that some of these 'Government Villages' have been transferred to or absorbed by the adjacent

municipalities and have been subdivided and disposed of to the occupants or owners as the case may be.<sup>16</sup>

2.30 Certain terminology in the Government Villages Act 44 of 1973 are glaringly obsolete. In the definitions section, the definitions of 'Minister' as well as 'Director-General' both refer to the Department of Community Development, a department no longer provided for in the structure of government.

2.31 Section 2(2)(b)(vi) of the Act is a provision that purports to grant core judicial powers and functions to the executive without recourse to the courts. This provision states that-

- (1) The Director-General shall control and manage Government Villages subject to the directions of the Minister.
- (2) In the performance of his functions under subsection (1) the Director-General may-
  - (b)(vi) without obtaining a judgement or decree of the court, eject from any Government Village any person whose right to accommodation or to occupy any land, building or structure in that Government Village has expired by effluxion of time or has been terminated by notice or who has no right to be in that Government Village.

2.32 According to comments received from the Department of Rural Development and Land Reform (DRDLR) in response to Discussion Paper 115, the DRDLR considers section 2(2)(b)(vi) of the Act to be in direct conflict with section 26 of the Constitution of the Republic of South Africa of 1996 which provides in subsection (3) that-

no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.

2.33 The DRDLR, however, suggested that the amendment of section 2(2)(b)(vi) and related provisions be dealt with as part of the evictions review project being undertaken by the DRDLR in conjunction with the Department of Human Settlements.

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<sup>16</sup> The 'Government Villages' situated in Germiston and Vereeniging were transferred to the relevant municipalities in 1992.

2.34 Section 3 of the Act provides that-

The Director-General shall administer the moneys appropriated by Parliament in respect of Government Villages, and shall for the purposes of the Exchequer and Audit Act, 1956, (Act 23 of 1956), be the accounting officer in respect of such moneys.

2.35 However, the latter Act was repealed by the Exchequer Act, 1975 (Act 66 of 1975) which in turn was repealed by section 94 of the Public Finance Management Act, 1999 (Act 1 of 1999) as a whole, except sections 28, 29 and 30. The retained sections of the Exchequer Act only deal with transitional provisions relating to the Department of Posts and Telecommunications and the South African Broadcasting Corporation. This means therefore that the remaining sections of the Exchequer and Audit Act, 1956 are irrelevant for purposes of the Government Villages Act.

2.36 In essence, the investigation required to determine whether the Act still serves a useful purpose or not entails verifying with every municipality in whose area of administration the former military camps were situated in order to find out who the current occupants of those houses are and what their land tenure is; whether the occupants are returning soldiers or descendants of returning soldiers; whether the houses concerned are still being maintained by government and, if so, which sphere of government is responsible for providing which services to the occupants of the houses in question. It is submitted that the SALRC does not have all the resources required to conduct such an investigation and is of the view that either the Department of Human Settlements or the DPW is in a position to conduct the required investigation.

2.37 The Department of Human Settlements stated in their response to Discussion Paper 115 that the *Department (of Human Settlements) is not responsible for these villages as they were not developed in terms of the current housing legislation*. Since it is also unclear as to whether the administration of the Act was assigned to the relevant Provincial Departments of Human Settlements or transferred to the Minister of Public Works, neither the Department of Human Settlements nor the DPW could support the proposal to amend the definitions of 'Minister' and 'Director-General' to refer to those of their respective departments.

2.38 Accordingly, it is recommended that further investigation be undertaken by the two Departments in order to determine whether a need still exists to keep the Act on the statute book, and depending on the finding of such investigation, appropriate action be taken to amend or repeal the Act as the case may be.

## **Annexure A**

### **HUMAN SETTLEMENTS 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 redundant legislation of the Republic and to amend certain laws pertaining to human settlements containing redundant or obsolete provisions**

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

#### **Repeal of laws**

1. The law specified in Schedule 1 is hereby repealed.

#### **Amendment of laws**

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

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

3. This Act shall be called the Human Settlements General Laws Amendment and Repeal Act, ... and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## Schedule 1

Number and year of law	Title or subject of law	Extent of repeal
Act No. 26 of 2002	Disestablishment of South African Housing Trust Limited Act, 2002	The whole

## Schedule 2

Item No.	No. and year of law	Short title	Extent of amendment
1.	Act No.95 of 1998	Housing Consumers Protection Measures Act, 1998	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of 'competent person' of the following definition:</p> <p>“‘competent person' is a registered person in terms of the <b>[Engineering Professions of South Africa Act, 1990 (Act 114 of 1990)]</b> <u>Engineering Profession Act, 2000 (Act 46 of 2000)</u>, or a person registered in terms [of <b>section 11</b>] of the <b>[Natural Scientific Professions Act, 1993 (Act 106 of 1993)]</b> <u>Natural Scientific Professions Act, 2003 (Act 27 of 2003)</u>, and holding the indemnity insurance prescribed by the Council in respect</p>

			<p>of the certification of-</p> <ul style="list-style-type: none"> <li>(a) the appropriateness of design and construction of homes;</li> <li>(b) compliance with the Home Building Manual; and</li> <li>(c) any other matter that may be required to be certified in terms of the Home Building Manual;”.</li> </ul> <p>2. Section 16 of the Act is hereby amended by the substitution for paragraph (a) of subsection (7) of the following paragraph:</p> <p>(7) The funds of the Council or any fund may, subject to subsection (4) and subject to the approval of the Minister with the concurrence of the Minister of Finance, be invested in accordance with the policies approved by the Council-</p> <p>“(a) with a financial institution as defined in section 1 of the <b>[Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)]</b> <u>Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001)</u>;”.</p> <p>3. Section 23 of the Act is hereby amended by the substitution for paragraph (a) of subsection (9) of the</p>
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			<p>following paragraph:</p> <p>(9) The Council Advisory Committee shall, after consultation with the funds advisory committee, after five years from the date of commencement of this Act, submit proposals to the Council, for recommendation to the Minister, regarding-</p> <p>“(a) the feasibility of introducing a requirement that a home builder's obligations in terms of section 13(2)(b) shall be insured by an insurer exempted from the provisions of the <b>[Insurance Act, 1943 (Act 27 of 1943)]</b> <u>Long-term Insurance Act, 1998 (Act 52 of 1998)</u> and the <u>Short-term Insurance Act, 1998 (Act 53 of 1998)</u>.”.</p>
2.	Act 63 of 2000	Home Loan and Mortgage Disclosure Act, 2000	<p>1. Section 8(2) of the Act is hereby amended by the substitution for paragraph (c) of the following paragraph:</p> <p>“(c) his or her estate is sequestrated <b>[or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1996 (Act No.28 of 1966)]</b>; ”.</p>

## Annexure B

### LIST OF STATUTES ADMINISTERED BY THE DEPARTMENT OF HUMAN SETTLEMENTS

Number	Name of Act, number and year
1.	Government Villages Act, 1973 (Act No.44 of 1973)
2.	Government Villages Amendment Act, 1984 (Act No.25 of 1984)
3.	Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991)
4.	General Law Amendment Act, 1993 (Act No. 18 of 1993)
5.	Housing Act, 1997 (Act No. 107 of 1997)
6.	Housing Amendment Act, 1999 (Act No. 28 of 1999)
7.	Housing Second Amendment Act, 1999 (Act No. 60 of 1999)
8.	Housing Amendment Act, 2001 (Act No. 4 of 2001)
9.	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998)
10.	Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998)
11.	Housing Consumers Protection Measures Amendment Act, 1999 (Act No. 27 of 1999)
12.	Rental Housing Act, 1999 (Act No. 50 of 1999)
13.	Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000)
14.	Disestablishment of South African Housing Trust Limited Act, 2002 (Act No. 26 of 2002)
15.	Housing Consumers Protection Measures Amendment Act, 2007 (Act No. 17 of 2007)

## Annexure C

### LIST OF RESPONDENS TO THE DISCUSSION PAPER AND THE COMMENTS RECEIVED

	<b>Name and organization</b>	<b>Comments</b>
1.	Mr Mavuso Msimang. Director-General: Department of Home Affairs	No comments
2.	Mr D. Hindle. Director-General: Department of Education	No comments
3.	Mr TT Gwanya. Director-General: Department of Rural Development and Land Reform	<p><b>A: Part A: General Comments</b></p> <p><b>1. Annexure A: The Draft Bill</b></p> <p>As Schedule 2 contains amendments only, it is suggested that “repealed” in clause 1(2) be omitted and “amended” be substituted; and that the clause heading and long title be amended consequentially.</p> <p>The proposed amendment has been effected.</p> <p><b>2. Annexure B: Statutes Administered by the Department of Human Settlements</b></p> <p>It is suggested that an additional item (16) be added: “Housing Development Agency Act, 2008 (Act No.23 of 2008).</p> <p>The proposed amendment has not been effected on the basis that the Act came into operation on 23 October 2008, being the</p>

	<p>month during which the Discussion Paper in respect of legislation administered by the Department of Human Settlements was approved by the SALRC to be published for information and public comment.</p> <p><b>B: Part B: Proposed Repeal and Amendments</b></p> <p><b>1. Disestablishment of South African Trust Limited Act, 26 of 2002</b></p> <p>The Draft Bill seeks to repeal the whole Act, which appears to have been fully implemented and thus no longer serves a purpose. The repeal is supported.</p> <p><b>2. Government Villages Act, 44 of 1973</b></p> <p>The draft Bill seeks to replace the Minister and Director-General of “Community Development” with those of Human Settlements. The Act was not included in the Schedule to President’s Minute No.13 of 10 June 1994 in terms of which the Minister of Rural Development and Land Reform was designated as the Minister responsible for the Acts listed in that schedule. DRDLR confirms that it does not administer the Act, and has no opinion on which of Human Settlements or Public Works should do so.</p> <p>The amendments are not supported by the</p>
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	<p>Department of Human Settlements on the grounds that this Act is not administered by the Department of Human Settlements.</p> <p>The recommendation that the appropriate Minister will first have to be designated by the President as the responsible Minister after the required process has been followed, if such designation has not already been effected, is, however, supported.</p> <p><b>3. Less Formal Township Establishment Act, 113 of 1991</b></p> <p>The draft Bill includes no proposed amendment/s and this is supported.</p> <p><b>4. Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998</b></p> <p>The draft Bill proposes amending only section 8(5)(c)(i) and (iv) to replace “Attorney General” with “National Director of Public Prosecutions”.</p> <p>These amendments have no implications for DRDLR which supports them. However, the phrase “is not barred from...court concerned” should not be underlined (it is already in the text) and closing quotation should be added at the end of subparagraph (iv).</p> <p>The proposed amendment has been effected.</p>
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		<p><b>5. Housing Consumers Protection Measures Act, 95 of 1998</b></p> <p>The drafted amendments replace references to repealed Acts with reference to current Acts. The amendments have no implications for DRDLR, which supports them.</p> <p><b>6. Home Loan and Mortgage Disclosure Act, 63 of 2000</b></p> <p>The amendment has the effect of omitting the reference to the (repealed) Agricultural Credit Act, 1996. The amendment has no implications for DRDLR, which supports it.</p>
4.	Mr D. Nair. Chief Magistrate: Pretoria	<p><b>1. Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998</b></p> <p>The SALRC should consider amendment (or scrapping) of section 8 of the Act, to the extent that it radically departs from the Criminal Procedure Act, 1977. Section 8 of the Act makes provision for adverse costs orders against private prosecutions in certain instances in favour of the accused. The Chief Magistrate states that to provide for a cost order seems questionable and could be regarded as interfering with a court's discretion.</p> <p>The proposed amendment is supported in principle. However, it is recommended that the proposed amendment or repeal of</p>

		section 8 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, be dealt with as part of the evictions review project being undertaken by the DRDLR in conjunction with the Department of Human Settlements as suggested by the DRDLR.
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