

OVERVIEW OF THE JUDGMENTS OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA SINCE 1994

**Arranged chronologically according to when judgment was handed down

*Last updated: December 2009

	CASE	SUBJECT	CITATION
1	<i>S v Zuma and Others</i> CCT 5/94 Handed down: 5 April 1995	<p>Referral from the High Court judge in a criminal trial to the constitutionality of the presumption relating to the admissibility of confessions in terms of s. 217 (1)(b)(ii) of the Criminal Procedure Act under the interim Constitution. The trial was postponed sine die. Direct access was granted. The Court held the impugned section to be in violation of s. 25(3) of the interim Constitution (right to a fair trial) as it places on the accused the burden of proving on a balance of probabilities that a confession recorded by a magistrate was not free and voluntary.</p> <p>The Court considered the common law rule requiring the prosecution to prove that a confession has been freely and voluntarily made to be inherent in the rights specifically mentioned in s. 25(2), s. 25(3)(c) and (d) of the interim Constitution and forms part of the right to a fair trial, holding that reversing the burden of proof seriously compromises and undermines these rights, meaning that the impugned section violates these provisions. Further, the Court held that the tests of reasonableness, justification and necessity for limitation of fundamental rights set out in s 33(1) of the interim Constitution are not identical, and in applying each of them individually one will not always get the same result. But in the present case, it was held these tests may be looked at and assessed together. The Court held thus that the impugned section also does not meet the criteria laid down in s. 33(1) of the Constitution, declaring it inconsistent with the interim Constitution and invalid.</p> <p>With regard to remedy, it was held that a proper balance could be struck by invalidating the admission of any confession in reliance on s. 217(1)(b)(ii) of the Criminal Procedure Act before the date of the declaration of invalidity of the section, but in respect only of trials begun on or after 27 April 1994 and in which the verdict had not been given at the date of the declaration.</p> <p>Majority: Kentridge AJ (unanimous).</p>	1995 (2) SA 642 (CC); 1995 (4) BCLR 401 (SA)
2	<i>S v Makwanyane and Another</i> CCT 3/94 Handed down: 6 June 1995	<p>The Appellate Division dismissed appeals against the convictions of two accused for inter alia murder but referred the constitutionality of the sentence, the death penalty, to this Court, postponing the appeals against sentence until this Court decides the constitutional issues. This Court declared s. 277 (1)(a), (c), (d), (e) and (f) of the Criminal Procedure</p>	1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC)

		<p>Act and all corresponding provisions of other legislation sanctioning capital punishment which are in force in any part of the national territory in terms of s. 229 as inconsistent with the interim Constitution.</p> <p>Majority: Chaskalson P Separate concurrences: Ackermann J, Didcott J, Kentridge AJ, Langa J, Madala J, Mahomed J, Mokgoro J, O'Regan J, Sachs J.</p>	
3	<p><i>S v Mhlungu and Others</i> CCT 25/94 Handed down: 8 June 1995</p>	<p>The application to the interim Constitution to court proceedings pending at the time of coming into operation of the Constitution, 1996. Referral of issues to this Court in terms of s. 102(1). Purpose, interpretation and effect of s. 241(8). Effect of declaration of invalidity on proceedings pending at the time of coming into operation of the Constitution, 1996.</p> <p>Majority: Mahomed J (Langa J, Madala J, Mokgoro J, and O'Regan J concurring). Dissenting: Kentridge AJ (Chaskalson P, Ackermann J, Didcott J concurring). Separate Concurrence: Kriegler J, Sachs J.</p>	<p>1995 (3) SA 867 (CC); 1995 (7) BCLR 793 (CC)</p>
4	<p><i>S v Vermaas; S v Du Plessis</i> CCT 1/94; CCT 2/94 Handed down: 8 June 1995</p>	<p>Referral to this Court in terms of s. 102 of the interim Constitution. S.102(2) merely supplementing referral provisions of s. 102(1) by regulating procedure to be followed by Provincial or Local Division of Supreme Court in ordering a referral. Right of an accused to a fair trial hearing in terms of s. 25(3) to be provided with legal representation.</p> <p>Majority: Didcott J (unanimous).</p>	<p>1995 (3) SA 292 (CC); 1995 (7) BCLR 851 (CC)</p>
5	<p><i>S v Williams and Others</i> CCT 20/94 Handed down: 9 June 1995</p>	<p>Corporal punishment of juveniles as authorized in terms of s. 294 and 290(2) of the Criminal Procedure Act was held to be inconsistent with the Constitution's protection in IC s. 11(2) against cruel, inhuman or degrading treatment or punishment.</p> <p>Majority: Langa J (unanimous).</p>	<p>1995 (3) SA 632 (CC); 1995 (7) BCLR 861 (CC)</p>
6	<p><i>Coetzee v Government of the Republic of South Africa; Matiso and Others v Commanding Officer, Port Elizabeth Prison, and Others</i> CCT 19/94; CCT 22/94 Handed down: 22 September 1995</p>	<p>Imprisonment of judgment debtors as provided for by s. 65A to 65M of the Magistrates Courts Act was held to be inconsistent with the right to freedom and security of the person contained in IC s.11(1).</p> <p>Majority: Kriegler J (Chaskalson P, Mahomed DP, Ackermann J, Madala J, O'Regan J concurring). Separate Concurrences: Didcott J, Kentridge AJ, Langa J, Mokgoro J, Sachs J.</p>	<p>1995 (4) SA 631 (CC); 1995 (10) BCLR 1382 (CC)</p>

7	<p><i>Executive Council, Western Cape Legislature and Others v President of the Republic of South Africa and Others</i> CCT 27/95 Handed down: 22 September 1995</p>	<p>Interpretation of s. 16A of the Local Government Transition Act and Proclamations issued in terms thereof. The Court held that the Constitutional Principles were intended to be given detailed constitutional texture in future, and were not to be read as impacting immediately and directly on the structures and functions of the present governmental system and on chap 3; the Principles were intended to be of a substantive application in the drafting and application of the final Constitution and were also of application to any provincial constitutions that may be adopted.</p> <p>Majority: Chaskalson P. Separate concurrences: Mahomed DP, Mokgoro J, Ackermann J (O'Regan J concurring), Kriegler J, Langa J, (Didcott J concurring), Sachs J. Dissents: Madala J, Ngoye AJ.</p>	<p>1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC)</p>
8	<p><i>Zantsi v Council of State, Ciskei, and Others</i> CCT 24/94 Handed down: 22 September 1995</p>	<p>The case concerns the essential difference between the scope of the jurisdiction conferred on the Constitutional Court by s. 98(2)(c) of the Constitution and on the Provincial and Local divisions of the Supreme Court by s. 101(3)(c). A Provincial or Local Division has no jurisdiction to inquire into the constitutionality of an Act of Parliament irrespective of whether such Act was passed before or after the commencement of the Constitution. As to law passed or made by any of the Legislatures of the former TBVC States, a Provincial or Local Division of the Supreme Court has jurisdiction to inquire into the constitutionality of any such law applicable within its jurisdiction.</p> <p>Majority: Chaskalson P and Trengrove AJ (unanimous).</p>	<p>1995 (4) SA 615 (CC); 1995 (10) BCLR 1424 (CC)</p>
9	<p><i>Premier, KwaZulu-Natal and Others v President of the Republic of South Africa and Others</i> CCT 36/95 Handed down: 29 November 1995</p>	<p>Amendments of the interim Constitution by Act 44 of 1995.</p> <p>Majority: Mahomed DP (unanimous).</p>	<p>1996 (1) SA 769 (CC) ; 1995 (12) BCLR 1561 (CC)</p>
10	<p><i>Shabalala and Others v Attorney-General, Transvaal, and Another</i> CCT 23/94 Handed down: 29 November 1995</p>	<p>Police docket privilege. Rights of accused to a fair trial in terms of s 25(3) of the interim Constitution, right to have access to contents of police docket prior to trial.</p> <p>Majority: Mahomed DP (unanimous).</p>	<p>1996 (1) SA 725 (CC); 1995 (12) BCLR 1593 (CC)</p>

11	<p><i>S v Bhulwana; S v Gwadiso</i> CCT 12/95 Handed down: 29 November 1995</p>	<p>Presumption in s 21(1)(a)(I) of the Drugs and Drug Trafficking Act.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>1996 (1) SA 388 (CC); 1995 (12) BCLR 1579 (CC)</p>
12	<p><i>Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others</i> CCT 5/95 Handed down: 6 December 1995</p>	<p>Section 417(2)(b) of the Companies Act providing for examinations during companies' winding-up.</p> <p>Majority: Ackermann J Separate concurrences: Chaskalson P (concurring: Mahomed DP, Didcott J, Langa J, Madala J, Trengove AJ), Mokgoro J, O'Regan J, Sachs J Dissent: Kriegler J.</p>	<p>1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC)</p>
13	<p><i>S v Ntuli</i> CCT 17/95 Handed down: 8 December 1995</p>	<p>S. 309(4) read with s. 305 of the Criminal Procedure Act provided that convicted prisoners who lack legal representation and who were convicted in a magistrates court do not have an automatic right of appeal to the Supreme Court of Appeal. Such prisoners may only appeal against their convictions and sentences if a Supreme Court judge has granted a judges certificate certifying that there are reasonable grounds for the appeal. The Court held that the sections violated a person's right to a fair trial in terms of s. 25(3) of the Constitution. The certificate requirement was found to violate s. 8(1) of the Constitution. S. 309(4)(a) was found to be unconstitutional and was declared invalid, with the declaration being suspended until 30 April 1997, or until Parliament acted to remedy the unconstitutionality, whichever occurred the earlier.</p> <p>Majority: Didcott J (unanimous).</p>	<p>1996 (1) SA 1207 (CC); 1996 (1) BCLR 141 (CC)</p>
14	<p><i>S v Rens</i> CCT 1/95 Handed down: 28 December 1995</p>	<p>The constitutional validity of the provisions of s. 316(1)(b) of the Criminal Procedure Act, which require an accused convicted of any offence before a superior Court to obtain leave to appeal against his conviction or sentence, was considered. The Court held that the provisions are not inconsistent with the provisions of s. 8 (providing for the right to equality before the law) or s. 25(3)(h) (providing for a right to a fair trial, including the right to have recourse by way of appeal or review to a higher Court) of the Constitution. S. 316(1)(b) of the Criminal Procedure Act was found to be valid.</p> <p>Majority: Madala J (unanimous).</p>	<p>1996 (1) SA 1218 (CC); 1996 (2) BCLR 155 (CC)</p>

15	<p><i>S v Mbatha, S v Prinsloo</i> CCT 19/95 Handed down: 9 February 1996</p>	<p>Presumption in s. 40(1) of the Arms and Ammunition Act challenged as violating the right to be presumed innocent and the right against self-incrimination. The Court declared s. 40(1) unconstitutional.</p> <p>Majority: Langa J (unanimous).</p>	<p>1996 (2) SA 464 (CC); 1996 (3) BCLR 293 (CC)</p>
16	<p><i>Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others</i> CCT 5/95 Handed down: 19 March 1996</p>	<p>Judgment on correct approach to costs in constitutional cases.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>1996 (2) SA 621 (CC); 1996 (4) BCLR 441 (CC)</p>
17	<p><i>Bernstein and Others v Bester NNO and Others</i> CCT 23/95 Handed down: 27 March 1996</p>	<p>S. 417 and s. 418 of the Companies Act, which provides for the examination of persons and the disclosure of documents as to the affairs of a company, held not to be inconsistent with ss. 8, 11(1), 13 and 24 of the Interim Constitution.</p> <p>Majority: Ackermann J (Chaskalson P, Mahomed DP, Langa J, Madala J, Mokgoro J, Ngoepe AJ, Sachs J concurring). Separate Concurrences: Kriegler J (Didcott J concurring), O'Regan J.</p>	<p>1996 (2) SA 751 (CC); 1996 (4) BCLR 449 (CC)</p>
18	<p><i>Speaker of the National Assembly, Ex Parte: In re Dispute Concerning The Constitutionality of Certain Provisions of the National Education Policy Bill 83 of 1995</i> CCT 46/95 Handed down: 3 April 1996</p>	<p>The Speaker of the National Assembly referred a dispute to the Court in terms of s. 98(2)(d) and s. 98(9) of the Interim Constitution regarding the relationship between the provincial and national government in the National Education Policy Bill. The Bill was not found to be unconstitutional.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1996 (3) SA 289 (CC); 1996 (4) BCLR 518 (CC)</p>
19	<p><i>Gauteng Provincial Legislature, Ex Parte: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995</i> CCT 39/95 Handed down: 4 April 1996</p>	<p>A dispute was referred to the Court by the Speaker of the Gauteng Legislature in terms of s. 98(2)(d) and s. 98(9) of the Interim Constitution in regards the rights, powers and functions of governing bodies of State-aided schools in the Gauteng School Education Bill. The Bill was not found to be unconstitutional.</p> <p>Majority: Mahomed DP (Chaskalson P, Ackermann J, Didcott J, Kentridge AJ, Langa J, Madala J, Mokgoro J, O'Regan J concurring). Separate Concurrences: Kriegler J, Sachs J.</p>	<p>1996 (3) SA 165 (CC); 1996 (4) BCLR 537 (CC)</p>

20	<p><i>Luitingh v Minister of Defence</i> CCT 29/95 Handed down: 4 April 1996</p>	<p>The constitutionality of s. 113(1) of the Defence Act was referred by a high court following an agreement to that effect by the parties. The referral was held to be incompetent, the application for direct access refused, and the case remitted to the high court.</p> <p>Majority: Didcott J (unanimous).</p>	<p>1996 (2) SA 909 (CC); 1996 (4) BCLR 581 (CC)</p>
21	<p><i>Nel v Le Roux NO and Others</i> CCT 30/95 Handed down: 4 April 1996</p>	<p>S. 205 of the Criminal Procedure Act, which permits the examination of any person likely to have material or relevant information about any alleged offence, was found to be consistent with the Constitution as it did not infringe any rights in the Bill of Rights.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>1996 (3) SA 562 (CC); 1996 (4) BCLR 592 (CC)</p>
22	<p><i>Case and Another v Min of Safety and Security and Others; Curtis v Min of Safety and Security and Others</i> CCT 20/95; CCT 21/95 Handed down: 9 May 1996</p>	<p>S. 2(1) of the Indecent or Obscene Photographic Matter Act prohibited the possession of indecent or obscene photographic matter</p> <p>Freedom of expression/right to privacy</p> <p>Majority: Didcott J (Chaskalson J, Mahomed DP, Ackermann J, Kriegler J, O'Regan J, Ngoepe AJ concurring)</p> <p>Separate Concurrences: Langa J (Chaskalson P, Mohamed DP, Ackermann J, Kriegler J, O'Regan J concurring); Madala J, Sachs J</p> <p>Partial Dissent: Mokgoro J</p>	<p>1996 (3) SA 617 (CC); 1996 (5) BCLR 609 (CC)</p>
23	<p><i>Besserglik v Minister of Trade, Industry and Tourism and Others (Minister of Justice Intervening)</i> CCT 34/95 Handed down: 14 May 1996</p>	<p>S. 20(4) (b) of the Supreme Court Act 59 of 1959 regarding appeal proceedings. S. 22 of the Constitution - right of access to courts</p> <p>Majority: O'Regan J (unanimous)</p>	<p>1996 (4) SA 331 (CC); 1996 (6) BCLR 745 (CC)</p>
24	<p><i>Du Plessis and Others v De Klerk and Another</i> CCT 8/95 Handed down: 15 May 1996</p>	<p>Law of defamation. Retrospective application of Constitution and application of chapter 3 to legal relationships between private parties. Interpretation of s. 35(3) of the Constitution.</p> <p>Majority: Kentridge AJ (Chaskalson P, Langa J, O'Regan J concurring)</p> <p>Separate concurrences: Mahomed DP (Langa J, O'Regan J concurring), Ackermann J, Madala J, Mokgoro J, Sachs J</p> <p>Dissent: Kriegler J (Didcott J concurring)</p>	<p>1996 (3) SA 850 (CC); 1996 (5) BCLR 658 (CC)</p>

25	<i>Gardener v Whitaker</i> CCT 26/94 Handed down: 15 May 1996	Law of defamation. Application of constitution to development of common law. Interpretation of s. 35(3) of the Constitution. Role of Supreme Court and Appellate Division Majority: Kentridge AJ (unanimous)	1996 (4) SA 337 (CC); 1996 (6) BCLR 775 (CC)
26	<i>Key v Attorney -General, Cape Provincial Division and Another</i> CCT 21/94 Handed down: 15 May 1996	S. 6 and 7 of the Serious Economic Offences Act. (Search and seizure, Tollgate) Use of derivative evidence. Distinction between constitutionality and admissibility. S. 25(3) of the Constitution. Majority: Kriegler J (unanimous).	1996 (4) SA 187 (CC); 1996 (6) BCLR 788 (CC)
27	<i>Brink v Kitshoff NO</i> CCT 15/95 Handed down: 15 May 1996	S. 44 of the Insurance Act 27 of 1943 which deprived married women of benefits of husband's life insurance policies. Competence of referral under s. 102(1), direct access and invalidity of s. 44(1) and (2) because infringement of s. 8 of the Constitution. Majority: Chaskalson P unanimous Separate Concurrence: O'Regan J.	1996 (4) SA 197 (CC); 1996 (6) BCLR 752 (CC)
28	<i>Ynuico Ltd v Minister of Trade and Industry and Others</i> CCT 47/95 Handed down: 21 May 1996	Validity of s. 2(1) (b) of Import and Export Control Act empowering the Minister to prohibit importing of certain goods inconsistent with s. 37 of the interim Constitution. S. 26 argument abandoned. Held, not inconsistent with s. 37 and s. 229 of the interim Constitution. Majority: Didcott J (unanimous).	1996 (3) SA 989 (CC); 1996 (6) BCLR 798 (CC)
29	<i>Rudolph and Another v Commissioner for Inland Revenue and Others</i> CCT 13/96 Handed down: 11 June 1996	S. 74(3) of the Income Tax Act which allowed for search and seizure. Appellate Division referred matter to Constitutional Court. Right to privacy not infringed because the Constitution does not have retrospective application. Majority: Ackermann J (unanimous).	1996 (4) SA 552 (CC); 1996 (7) BCLR 889 (CC)
30	<i>S v Julies</i> CCT 7/96 Handed down: 11 June 1996	S. 21(1)(a) (iii) of the Drugs and Drug Trafficking Act provided that a person found in possession of a dependence producing substance was presumed to be dealing in that substance was unconstitutional. Presumption of innocence, no rational connection. Majority: Kriegler J (unanimous).	1996 (4) SA 313 (CC); 1996 (7) BCLR 899 (CC)

31	<p><i>Ex Parte Speaker of the KwaZulu-Natal Provincial Legislature: In Re KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Bill of 1995; Ex Parte Speaker of the KwaZulu-Natal Provincial Legislature: In Re Payment of Salaries, Allowances and Other Privileges to the Ingonyama Bill of 1995</i> CCT 1/96 ; CCT 6/96 Handed down: 5 July 1996</p>	<p>Enactment and amendment of KwaZulu-Natal legislation (the Amakhosi amendment) which sought to re-enact and amend the Act of 1990, dealing with matters relating to traditional leaders in the territory. Provincial competence to enact such legislation with right to traditional authorities. Prohibition on receiving monies and in-kind benefits. Schedule 6, s. 126, chapter 3. Court held within provincial competence and no violation of chapter 3 rights.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1996 (4) SA 653 (CC); 1996 (7) BCLR 903 (CC)</p>
32	<p><i>Azanian Peoples Organisation (AZAPO) and Others v President of the Republic of South Africa and Others</i> CCT 17/96 Heard on: 25 July 1996</p>	<p>S. 20(7) of the Promotion of National Unity and Reconciliation Act was challenged. Court held that the section was constitutional. Civil and criminal liability of perpetrators, state liability. S. 22 of the Constitution, postamble - interpretation and status, s. 33(2) of the Constitution.</p> <p>Majority: Mahomed DP (Chaskalson P, Ackermann J, Kriegler J, Langa J, Madala J, Mokgoro J, O'Regan J, Sachs J concurring) Separate concurrences: Didcott J</p>	<p>1996 (4) SA 671 (CC); 1996 (8) BCLR 1015 (CC)</p>
33	<p><i>Ex Parte Chairperson of the Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa, 1996</i> CCT 23/96 Handed down: 6 September 1996</p>	<p>Certification of the new text referred to the Constitutional Court in terms of s. 71(2) of the interim Constitution. Held, court unable to certify that all the provisions of the adopted text complied with the constitutional principles in Schedule 4. Text remitted to the Constitutional Assembly.</p> <p>Judgment of the Court.</p>	<p>1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC)</p>
34	<p><i>Ex Parte Speaker of the KwaZulu-Natal Provincial Legislature: In Re Certification of the Constitution of the Province of KwaZulu-Natal, 1996</i> CCT 15/96 Handed down: 6 September 1996</p>	<p>Certification of the Constitution of Kwazulu-Natal in terms of s. 160(4). Court held unable to certify the constitutional draft submitted for various reasons. Text did not comply with requirements of s. 160(3) of interim Constitution.</p> <p>Judgment of the Court.</p>	<p>1996 (4) SA 1098 (CC); 1996 (11) BCLR 1419 (CC)</p>
35	<p><i>Tsotetsi v Mutual and Federal Insurance Company Ltd</i> CCT 16/95 Handed down: 12 September 1996</p>	<p>Articles 46(a)(ii) and 47(a) of the schedule to the Multilateral Motor Vehicle Accidents Fund Act not unconstitutional. Referral in terms of s. 102(1) of the Constitution is incompetent because issue not decisive of the case. All rights vested before the Constitution came into force. No exceptional circumstances exist for retrospective application of Constitution. Application for direct access dismissed.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>1997 (1) SA 585 (CC); 1996 (11) BCLR 1439 (CC)</p>

36	<p><i>Scagell and Others v Attorney-General, Western Cape and Others</i> CCT 42/95 Handed down: 12 September 1996</p>	<p>Constitutionality of ss. 6(3), 6(4), 6(5), 6(6) and 6(7) of the Gambling Act challenged. Referral of s. 6(7) not within ss. 103(3) and (4) of the Constitution. S. 6(4), which imposes a legal burden on the accused, held to be in breach of s. 25(3) (presumption of innocence) and invalid. S. 6(3), which imposes an evidentiary burden on the accused, held to be in breach of right to a fair trial and invalid. Ss. 6(5) and (6) not unconstitutional.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>1997 (2) SA 368 (CC); 1996 (11) BCLR 1446 (CC)</p>
37	<p><i>Mohlomi v Minister of Defence</i> CCT 41/95 Handed down: 26 September 1996</p>	<p>S. 113(1) of the Defence Act requires a plaintiff to institute action against the state within six months and requires plaintiff to give written notice thereof at least one month before commencement of action. Held in breach of s. 22 of the Constitution and declared invalid.</p> <p>Majority: Didcott J (unanimous).</p>	<p>1997 (1) SA 124 (CC); 1996 (12) BCLR 1559 (CC)</p>
38	<p><i>S v Bequintot</i> CCT 24/95 Handed down: 18 November 1996</p>	<p>Referral in terms of s. 102(1) of the Constitution. Constitutionality of s. 37 of the General Law Amendment Act challenged. Provides that after the prosecution has proved that an accused received stolen goods, the accused has the burden to prove that at the time s/he believed, and had reasonable grounds for believing, that the person from whom the goods were received owned them or was authorised by the owner to dispose of them. Referral incompetent, remitted to WLD.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>1997 (2) SA 887 (CC); 1996 (12) BCLR 1588 (CC)</p>
39	<p><i>Transvaal Agricultural Union v Minister of Land Affairs and Another</i> CCT 21/96 Handed down: 18 November 1996</p>	<p>Application for direct access in terms of Rule 17 read with s. 100(2) of the Constitution. Applicant sought an order declaring various sections of the Restitution of Land Rights Act and two rules of procedure of the Land Claims Commission unconstitutional. Application for direct access refused (no exceptional circumstances) and applicant had approached Court prematurely. Applicant ordered to pay costs of abortive proceedings.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1997 (2) SA 621 (CC); 1996 (12) BCLR 1573 (CC)</p>
40	<p><i>JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others</i> CCT 49/95 Handed down: 21 November 1996</p>	<p>Referral in terms of s. 102(1) of the Constitution. Constitutional Court adopting rule that declaratory order a discretionary remedy and discretion not to be exercised in favour of deciding points which are merely abstract, academic or hypothetical. Such rule subject in special circumstances to exceptions, in case of Constitutional Court those necessitated by factors fundamental to proper constitutional adjudication. Court should not be compelled to determine issue of statute's inconsistency with Constitution when such can produce no tangible result beyond mere</p>	<p>1997 (3) SA 514 (CC); 1996 (12) BCLR 1599 (CC)</p>

		<p>declaration. Court declining to exercise discretion in favor of determining constitutional validity of certain provisions of Indecent or Obscene Photographic Matter Act and Publications Act where such Acts in interim entirely repealed by Films and Publications Act soon to be brought into operation.</p> <p>Majority: Didcott J (unanimous).</p>	
41	<p><i>Ex Parte Chairperson of the National Assembly: In Re Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996</i> CCT 37/95 Handed down: 4 December 1996</p>	<p>Re-certification of amended constitutional text in terms of s. 71 of the Constitution. S. 71 of the Constitution required that constitutional text passed by Constitutional Assembly in terms of chapter 5 of the Constitution, be certified by Constitutional Court as complying with Constitutional Principles set out in Schedule 4 to the Constitution. Amended text of the Constitution of the Republic of South Africa, 1996, passed by Constitutional Assembly on 11 October 1996 complying with Constitutional Principles.</p> <p>Judgment of the Court.</p>	<p>1997 (2) SA 97 (CC); 1997 (1) BCLR 1 (CC)</p>
42	<p><i>Fraser v Children's Court, Pretoria North and Others</i> CCT 31/96 Handed down: 5 February 1997</p>	<p>S. 18(4) (d) of the Child Care Act, which dispensed with the need to obtain the consent of the father of illegitimate child was held to be inconsistent with the equality provisions of IC s. 8 on the grounds that it impermissibly discriminated between the rights of a father in certain unions and those in other types of unions not recognized by law, and against fathers based on gender and marital status.</p> <p>Majority: Mahomed DP (unanimous).</p>	<p>1997 (2) SA 261 (CC); 1997 (2) BCLR 153 (CC)</p>
43	<p><i>S v Coetzee and Others</i> CCT 50/95 Handed down: 6 March 1997</p>	<p>The Court held that s. 245 and s. 332(5) of the Criminal Procedure Act were inconsistent with IC s.25(3)(c), which protects the right of an accused person to be presumed innocent. Each of the impugned provisions of the Criminal Procedure Act had the effect of reversing the burden of proof on an element in a criminal charge under certain circumstances.</p> <p>Majority: Langa J (Kriegler J concurring). Separate Concurrences: Chaskalson P, Mahomed DP, Ackermann J, Didcott J, Kentridge AJ, Mokgoro J, O'Regan J, Sachs J. Dissent: Madala J.</p>	<p>1997 (3) SA 527 (CC); 1997 (4) BCLR 437 (CC)</p>
44	<p><i>Motsepe v Commissioner for Inland Revenue</i> CCT 35/96 Handed down: 27 March 1997</p>	<p>The constitutionality of s. 92 and s. 94 of the Income Tax Act were challenged on the grounds that they violated the constitutional protection of equality, the right of access to a court of law and the right to lawful and procedurally fair administrative action through a referral in terms of IC s. 102(1). The referral was held to be incompetent because the issue was not decisive of the case and the case could be resolved without reference to constitutional issues. The Court denied an</p>	<p>1997 (2) SA 898 (CC); 1997 (6) BCLR 692 (CC)</p>

		<p>application for direct access to challenge s. 91(1) (b) of the Income Tax Act denied.</p> <p>Majority: Ackermann J (unanimous).</p>	
45	<p><i>President of the Republic of South Africa and Another v Hugo</i> CCT 11/96 Handed down: 18 April 1997</p>	<p>On 10 May 1994 the President granted a remission of sentences of prisoners who were mothers of children under 12 years in terms of IC s.82(1)(k). The respondent, a prisoner and father of a child under the age of 12, challenged the president's act on the basis that it discriminated unfairly on the basis of gender. The Court held that the president's act was reviewable by the Court, and that the act did not unfairly discriminate on the basis of gender.</p> <p>Majority: Goldstone J (Chaskalson P, Mahomed DP, Ackerman J, Langa J, Madala J and Sachs J concurring). Separate Concurrences: Mokgoro J, O'Regan J. Dissents: Didcott J, Kriegler J.</p>	<p>1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC)</p>
46	<p><i>Prinsloo v Van Der Linde and Another</i> CCT 4/96 Handed down: 18 April 1997</p>	<p>The constitutionality of s. 84 of the Forest Act, which presumes negligence in certain circumstances, was challenged. The Court held s. 84 was not inconsistent with the right of the accused in a criminal proceeding to be presumed innocent in IC s. 25(3)(c) because a reading of s.84 that was not inconsistent was possible and even if it was inconsistent with IC s. 25(3)(c) in criminal cases, any such finding of inconsistency would not encompass the civil proceedings in question. The Court held that s. 84 was not inconsistent with the right to equality in IC s. 8(1) or (2) because the distinction between defendants in forest fire cases and other civil matters did not constitute unfair discrimination.</p> <p>Majority: Ackermann, O'Regan and Sachs JJ (Chaskalson P, Mahomed DP, Goldstone J, Kriegler J, Langa J, Madala J and Mokgoro J concurring). Separate Concurrence: Didcott J.</p>	<p>1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC)</p>
47	<p><i>Fose v Minister of Safety and Security</i> CCT 14/96 Handed down: 5 June 1997</p>	<p>The court considered the meaning of "appropriate relief" as set forth in IC s. 7(4) resulting from applicant's claim for 'constitutional damages' for infringement of constitutional right not to be tortured. The Court held that in this case, the award of monetary damages would be inappropriate and the appeal was dismissed.</p> <p>Majority: Ackermann J (Chaskalson P, Mahomed DP, Langa J, Madala J, Mokgoro J and Sachs J concurring). Separate Concurrences: Didcott J, Kriegler J, O'Regan J.</p>	<p>1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC)</p>

48	<p><i>Minister of Justice v Ntuli</i> CCT 15/97; CTT 17/95 Handed down: 5 June 1997</p>	<p>The Minister of Justice applied for an extension of the period of interim validity granted by this Court to s. 309 (4) of the Criminal Procedure Act in <i>S v Ntuli</i>. The application purported to be brought under Rule 17 five days before expiry of period. The Court considered the application to be a new substantive one which Court, as presently constituted, was competent to deal with and held that the application procedurally not in compliance with rules of Court, was defective as to its notice of motion and that the Minister showed no good cause shown for an extension of period. Court declined to vary order retrospectively or prospectively.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1997 (3) SA 772 (CC); 1997 (6) BCLR 677 (CC)</p>
49	<p><i>Ex Parte Speaker of the Western Cape Provincial Legislature, In re Certification of the Constitution of the Western Cape, 1997</i> CCT 6/97 Handed down: 2 September 1997</p>	<p>The legislature of the province of the Western Cape adopted a constitutional text in accordance with s. 142 of the Constitution.</p> <p>As to the nature of the certification function - dealing with the constitution-making power of the provinces and the limits imposed upon it, required a two-step approach. First, there had to be an enquiry into whether the Constitution conferred the power on provinces to make constitutional provision for a particular topic and, second, there had to be a determination whether there was any inconsistency between the dictates of the two constitutions. If there was an inconsistency, then the further question arose as to whether that inconsistency was permissible or not. In this instance the Court held that the whole of the constitutional text of the Constitution of the Western Cape did not comply with s. 143 of the Constitution.</p> <p>Judgment of the Court.</p>	<p>1997 (4) SA 795 (CC); 1997 (9) BCLR 1167 (CC)</p>
50	<p><i>S v Pennington and Another</i> CCT 14/97 Handed down: 18 September 1997</p>	<p>The Court set out a procedure that was to be followed in appeals from the Supreme Court of Appeal to the Constitutional Court, pending the enactment of legislation or Rules dealing specifically therewith. Furthermore the Court held that s. 167(6) made it clear that the Constitutional Court was to have both original and appellate jurisdiction, and the power to control access to it by granting 'leave' only in cases where it was in the interests of justice to do so.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1997 (4) SA 1076 (CC); 1997 (10) BCLR 1413 (CC)</p>
51	<p><i>Parbhoo and Others v Getz NO and Another</i> CCT 16/97 Handed down: 18 September 1997</p>	<p>Application for confirmation of order, made by High Court, of constitutional invalidity of s. 415(3) and s. 415(5) of the Companies Act, to the extent that they permit the admission of the evidence given by person in those examinations, in subsequent criminal proceedings, except for perjury. The High Court had decided this was a breach of the right to a fair trial and this Court confirmed the order of invalidity as in infringed on fair criminal trial guarantees in s. 35(3) of</p>	<p>1997 (4) SA 1095 (CC); 1997 (10) BCLR 1337 (CC)</p>

		<p>the Constitution.</p> <p>Majority: Ackermann J (unanimous).</p>	
52	<p><i>S v Lawrence; S v Negal; S v Solberg.</i> CCT 38/96, 39/96 and 40/96 Handed down: 6 October 1997</p>	<p>Appeal from criminal convictions in terms of the Liquor Act in which sections regulating times and days of sales by grocers, and type of alcoholic beverage grocers can sell were challenged on the basis of freedom of economic activity and, in relation to closed days, freedom of religion. This Court held there is a rational basis for measures restricting the hours of sale as part of a legislative scheme designed to curtail the consumption of liquor and therefore the Act does not infringe on s. 14 of the Interim Constitution.</p> <p>Majority: Chaskalson P. Dissenting: O'Regan J (Goldstone J, Madala J concurring). Separate concurring judgment: Sachs J (Mokgoro J concurring).</p>	<p>1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC)</p>
53	<p><i>Harksen v Lane NO and Others</i> CCT 9/97 Handed down: 7 October 1997</p>	<p>Application for declaration of constitutional invalidity of s. 21 and parts of s. 64(2) and 65(1) of the Insolvency Act on the basis of right to property and equality. The Court held that there was a rational connection between the differentiation created by s. 21 of the Act and the legitimate governmental purpose behind its enactment. It followed that s. 21 did not violate s. 8(1) of the interim Constitution.</p> <p>Majority: Goldstone J. Dissents: O'Regan J (Madala J and Mokgoro J concurring), Sachs J.</p>	<p>1998 (1) SA 300 (CC); 1997 (11) BCLR 1489 (CC)</p>
54	<p><i>Hekpoort Environmental Preservation Society and Another v Minister of Land Affairs and Others</i> CCT 21/97 Handed down: 8 October 1997</p>	<p>Application for direct access to the Constitutional Court in which the Court held that Rule 17(1) permitted direct access only in exceptional circumstances and that in the absence of such circumstances the applicants in such matters should follow the procedures laid down by s. 102(1) of the Constitution and apply to the Supreme Court for the referral of the disputed issues to the Constitutional Court.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>1998 (1) SA 349 (CC); 1997 (11) BCLR 1537 (CC)</p>

55	<p><i>S v Ntsele</i> CCT 25/97 Handed down: 14 October 1997</p>	<p>Application for confirmation of High Court order declaring s. 21(1)(b) of the Drugs and Drug Trafficking Act invalid. This Court confirmed the High Court's declaration of invalidity on the ground that the provision violated the presumption of innocence in s. 35(3)(h) of the Constitution. This Court further held that the interests of justice required the application of the final Constitution although the matter was pending at the inception thereof, and that high courts should consider the suspension or retrospective effect of orders of invalidity.</p> <p>Majority: Kriegler J (unanimous).</p>	1997 (11) BCLR 1543 (CC)
56	<p><i>Ex parte Speaker of the Western Cape Provincial Legislature: In re Certification of the Amended Text of the Constitution of the Western Cape, 1997</i> CCT 29/97 Handed down: 18 November 1997</p>	<p>Application for certification of the amended text of the Constitution of the Western Cape, 1997. The Court held that the text as amended complied with s. 143 of the Constitution and certified the text.</p> <p>Judgment of the Court.</p>	1998 (1) SA 655 (CC); 1997 (12) BCLR 1653 (CC)
57	<p><i>Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another</i> CCT 2/97 Handed down: 26 November 1997</p>	<p>Application for leave to appeal against a High Court judgment upholding the constitutional validity of a regulation prohibiting foreign citizens from being permanently employed as teachers in state schools. This Court held that the regulation unfairly and unjustifiably discriminated on the basis of citizenship, and accordingly invalidated the regulation.</p> <p>Majority: Mokgoro J (unanimous).</p>	1998 (1) SA 745 (CC); 1997 (12) BCLR 1655 (CC)
58	<p><i>Soobramoney v Minister of Health, KwaZulu-Natal</i> CCT 32/97 Handed down: 27 November 1997</p>	<p>Appeal against a High Court judgment refusing to grant an order against a provincial hospital to provide ongoing renal dialysis treatment to the applicant, on the basis of the right under s. 27(3) of the Constitution not to be refused emergency medical treatment and the right to life under s. 11 of the Constitution. Appeal dismissed.</p> <p>Majority: Chaskalson P (Langa DP, Ackermann, Didcott, Goldstone, Kriegler, Mokgoro, O'Regan JJ concurring).</p> <p>Separate Concurrences: Madala and Sachs JJ.</p>	1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC)
59	<p><i>Sanderson v Attorney-General, Eastern Cape</i> CCT 10/97 Handed down: 2 December 1997</p>	<p>Appeal against the rejection of a contention that the applicant who was an accused in criminal proceedings had not been brought to trial within a reasonable time after having been charged as provided for in terms of s. 25(3)(a) of the interim Constitution. Appeal dismissed.</p> <p>Majority: Kriegler J (unanimous).</p>	1998 (2) SA 38 (CC); 1997 (12) BCLR 1675 (CC)

60	<p><i>East Zulu Motors (Pty) Ltd v Empangeni/Ngwelezane Transitional Local Council and Others</i> CCT 44/96 Handed down: 4 December 1997</p>	<p>Application for leave to appeal against a High Court decision that the applicant should not be granted ancillary relief in respect of an order that s. 47bisC of the Town Planning Ordinance (Natal) is unconstitutional to the extent that it does not accord a right of appeal to an objector. Application refused.</p> <p>Majority: Madala J (Chaskalson P, Langa DP, Mokgoro J, Sachs J concurring). Separate Concurrence: O'Regan J (Ackermann, Goldstone, Kriegler JJ concurring).</p>	<p>1998 (2) SA 61 (CC); 1998 (1) BCLR 1 (CC)</p>
61	<p><i>Pretoria City Council v Walker</i> CCT 8/97 Handed down: 17 February 1998</p>	<p>Application for leave to appeal against a decision of the High Court granting an order of absolution from the instance in favour of the respondent. This Court held that the city council indirectly unfairly discriminated on the basis of race by selectively enforcing payments for electricity and water supply against residents of old Pretoria and not those of Mamelodi and Atteridgeville, but that implementation of a flat rate and cross-subsidisation did not constitute unfair discrimination. However, absolution from the instance was not the appropriate relief, hence the appeal was upheld.</p> <p>Majority: Langa DP (unanimous). Separate Concurrence: Sachs J.</p>	<p>1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC)</p>
62	<p><i>African National Congress and Another v Minister of Local Government and Housing, KwaZulu-Natal, and Others</i> CCT 19/97 Handed down: 24 March 1998</p>	<p>Appeal against a judgment of the High Court regarding the proper interpretation and application of s. 182 of the interim Constitution, which provides for ex officio membership of traditional leaders on local government structures. Appeal dismissed.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>1998 (3) SA 1 (CC); 1998 (4) BCLR 399 (CC)</p>
63	<p><i>Bruce and Another v Fleecytex Johannesburg CC and Others</i> CCT 1/98 Handed down: 24 March 1998</p>	<p>Application for direct access to this Court to challenge the constitutional validity of s. 150(3) of the Insolvency Act. Application dismissed.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1998 (2) SA 1143 (CC); 1998 (4) BCLR 415 (CC)</p>
64	<p><i>Oranje Vrystaatse Vereeniging vir Staatsondersteunde Skole and Another v Premier, Province of the Free State, and Others</i> CCT 12/96 Handed down: 12 May 1998</p>	<p>Application by the respondents for a costs order against applicants, who withdrew an application for leave to appeal against a decision of the High Court. Application dismissed.</p> <p>Majority: Goldstone J (unanimous).</p>	<p>1998 (3) SA 692 (CC); 1998 (6) BCLR 653 (CC)</p>

65	<p><i>Wild and Another v Hoffert NO and Others</i> CCT 28/97 Handed down: 12 May 1998</p>	<p>Appeal against a judgment of the High Court in which the applicants were refused constitutional relief for unreasonable delay in criminal proceedings. Appeal dismissed, on the basis that the relief prayed for (permanent stay of prosecution) was inappropriate because there was no trial-related prejudice or other extraordinary circumstances present.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>1998 (3) SA 695 (CC); 1998 (6) BCLR 656 (CC)</p>
66	<p><i>De Lange v Smuts NO and Others</i> CCT 26/97 Handed down: 28 May 1998</p>	<p>Application for confirmation of a High Court order declaring s. 66(3) of the Insolvency Act, which authorises a person presiding over a creditors' meeting to imprison a recalcitrant witness, unconstitutional. This Court confirmed the High Court's order only to the extent that it held that s. 66(3) is unconstitutional for authorising a presiding officer who is not a magistrate to commit a recalcitrant witness to prison.</p> <p>Majority: Ackermann J (Chaskalson P, Langa DP, Madala, Sachs JJ concurring). Separate Concurrence: Sachs J. Dissent: Didcott J (Kriegler J concurring). Partial Dissents: Mokgoro, O'Regan JJ.</p>	<p>1998 (3) SA 785 (CC); 1998 (7) BCLR 779 (CC)</p>
67	<p><i>S v Mello and Another</i> CCT 5/98 Handed down: 28 May 1998</p>	<p>Referral from the High Court for this Court to determine the constitutional validity of the presumption relating to possession of drugs in s. 20 of the Drugs and Drugs Trafficking Act. This Court declared s. 20 inconsistent with s. 25(3)(c) of the interim Constitution.</p> <p>Majority: Mokgoro J (unanimous).</p>	<p>1998 (3) SA 712 (CC); 1998 (7) BCLR 908 (CC)</p>
68	<p><i>S v Van Nell and Another</i> CCT 3/98 Handed down: 28 May 1998</p>	<p>Application for confirmation of the High Court's order of constitutional invalidity of s. 20 of the Drugs and Drugs Trafficking Act. The matter was referred back to the High Court to be disposed of in accordance with the order made in <i>S v Mello and Another</i>.</p> <p>Majority: Mokgoro J (unanimous).</p>	<p>1998 (8) BCLR 943 (CC)</p>
69	<p><i>Member of the Executive Council for Development Planning and Local Government, Gauteng v Democratic Party and Others</i> CCT 33/97 Handed down: 29 May 1998</p>	<p>Appeal against a judgment of the High Court rejecting the contention that s. 16(5) of the Local Government Transition Act is constitutionally invalid for being inconsistent with s. 160(3)(b) read with s. 160(2)(b) of the Constitution. Appeal dismissed.</p> <p>Majority: Yacoob J (unanimous).</p> <p>Judgment on procedural issues, particularly the circumstances in which an application for leave to appeal directly to the Court will be granted.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1998 (4) SA 1157 (CC); 1998 (7) BCLR 855 (CC)</p>

70	<p><i>Mistry v Interim Medical and Dental Council of South Africa and Others</i> CCT 13/97 Handed down: 29 May 1998</p>	<p>Referral to this Court for consideration of the constitutional validity of the search and seizure powers of inspectors under s. 28(1) of the Medicines and Related Substances Control Act on the basis that the provision is inconsistent with s. 13 of the interim Constitution. This Court declared s. 28(1) unconstitutional.</p> <p>Majority: Sachs J (unanimous).</p>	<p>1998 (4) SA 1127 (CC); 1998 (7) BCLR 880 (CC)</p>
71	<p><i>Amod v Multilateral Motor Vehicle Accidents Fund</i> CCT 4/98 Handed down: 27 August 1998</p>	<p>Application for leave to appeal directly to this Court against the decision of the High Court dismissing the applicant's claim for damages for loss of support arising out of the death of her husband to whom she was married according to Islamic law. Application dismissed, since this Court's jurisdiction to develop the common law ought not ordinarily be exercised without the matter having first being dealt with by the Supreme Court of Appeal.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1998 (4) SA 753 (CC); 1998 (10) BCLR 1207 (CC)</p>
72	<p><i>De Freitas and Another v Society of Advocates of Natal (Natal Law Society intervening)</i> CCT 2/98 Handed down: 15 September 1998</p>	<p>Application for leave to appeal directly to the Constitutional Court against a decision of the High Court dismissing a challenge to both the constitutionality of s. 7(2) of the Admission of Advocates Act in so far as it entitles the respondent to bring a disciplinary action against an advocate who is not one of its members, and the constitutionality of the "referral rule", which prohibits advocates from accepting work directly from the public without the intervention of an attorney. Application refused on the ground that this Court's jurisdiction to develop the common law ought not ordinarily be exercised without the matter having first being dealt with by the Supreme Court of Appeal.</p> <p>Majority: Langa DP (unanimous).</p>	<p>1998 (11) BCLR 1345 (CC)</p>
73	<p><i>Osman and Another v Attorney-General, Transvaal</i> CCT 37/97 Handed down: 23 September 1998</p>	<p>Appeal against a judgment of the High Court rejecting a challenge to the constitutionality of s. 36 of the General Law Amendment Act on the basis that it is inconsistent with s. 25(2)(c) and s. 25(3)(c) of the interim Constitution, which entrenched the rights not to incriminate oneself, and to be presumed innocent and to remain silent during a criminal trial, respectively. Appeal dismissed.</p> <p>Majority: Madala J (unanimous).</p>	<p>1998 (4) SA 1224 (CC); 1998 (11) BCLR 1362 (CC)</p>

74	<p><i>Fraser v Naude and Others</i> CCT 14/98 Handed down: 23 September 1998</p>	<p>Application for special leave to appeal to this Court against the decision of the Supreme Court of Appeal rejecting a challenge to the validity of adoption proceedings before the Commissioner of the Children's Court. Application dismissed.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1999 (1) SA 1 (CC); 1998 (11) BCLR 1357 (CC)</p>
75	<p><i>National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others</i> CCT 11/98 Handed down: 9 October 1998</p>	<p>Application for confirmation of a High Court order declaring the common law proscription of sodomy, s. 20A of the Sexual Offences Act, and the inclusion of sodomy both in schedule 1 to the Criminal Procedure Act and the schedule to the Security Officers Act constitutionally invalid. This Court confirmed the declarations of invalidity and made additional orders dealing with the retrospective effect of each declaration of invalidity.</p> <p>Majority: Ackermann J (unanimous). Separate Concurrence: Sachs J.</p>	<p>1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC)</p>
76	<p><i>Christian Education South Africa v Minister of Education</i> CCT 13/98 Handed down: 14 October 1998</p>	<p>Application for direct access to this Court to challenge the constitutional validity of s. 10 of the South African Schools Act, which prohibits corporal correction. Application dismissed.</p> <p>Majority: Langa DP (unanimous).</p>	<p>1999 (2) SA 83 (CC); 1998 (12) BCLR 1449 (CC)</p>
77	<p><i>Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others</i> CCT 7/98 Handed down: 14 October 1998</p>	<p>Referral from the Supreme Court of Appeal for this Court to consider both the lawfulness of the adoption of a resolution by local authorities in terms of which a general rate was imposed on property and rights in property throughout the greater Johannesburg municipal area, and whether the interim Constitution preserved for the predecessor of the Supreme Court of Appeal any residual jurisdiction to adjudicate upon the lawfulness of the resolution. At the discretion of this Court the matter was disposed of as if it were an appeal from the High Court. This Court held that the impugned resolution was not unconstitutional and that the Supreme Court of Appeal had constitutional jurisdiction by virtue of ch. 8 of the final Constitution to adjudicate on constitutional issues under the interim Constitution, but did not have any residual jurisdiction to rule on the lawfulness of the impugned resolution. Appeal dismissed.</p> <p>Majority: Chaskalson P and Goldstone and O'Regan JJ (Ackermann and Madala JJ concurring). Partial Dissent: Kriegler J (Langa DP and Mokgoro, Sachs and Yacoob JJ concurring).</p>	<p>1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC)</p>

78	<p><i>Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour intervening)</i> CCT 15/98 Handed down: 27 November 1998</p>	<p>Application for confirmation of a High Court order declaring s. 35(1) of the Compensation for Occupational Injuries and Diseases Act, which substitutes an employee's common law claim for damages due to an occupational injury for a claim in terms of the Act, constitutionally invalid, on the ground of inconsistency with ss. 9(1) and (3), 23(1) and 34 of the Constitution. High Court order of invalidity not confirmed and decision reversed.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>1999 (2) SA 1 (CC); 1999 (2) BCLR 139 (CC)</p>
79	<p><i>Beinash and Another v Ernest & Young and Others</i> CCT 12/98 Handed down: 2 December 1998</p>	<p>Application for leave to appeal against the decision of the High Court, dismissing a challenge to the constitutionality of s. 2(1)(b) of the Vexatious Proceedings Act, under which a person can be ordered not to institute legal proceedings without leave of a court, on the basis that it is inconsistent with s. 34 of the Constitution. Application refused.</p> <p>Majority: Mokgoro J (unanimous).</p>	<p>1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC)</p>
80	<p><i>Premier, Mpumalanga, and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal</i> CCT 10/98 Handed down: 2 December 1998</p>	<p>Appeal against a High Court judgment upholding a challenge, based on the right to procedurally fair and justifiable administrative action under s. 24 of the interim Constitution, to a decision by the MEC for Education, Mpumalanga, to retroactively discontinue paying tuition, transportation and boarding bursaries to state-aided schools' pupils. Appeal dismissed.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>1999 (2) SA 91 (CC); 1999 (2) BCLR 151 (CC)</p>
81	<p><i>President of the Republic of South Africa and Others v South African Rugby Football Union and Others</i> CCT 16/98 Handed down: 2 December 1998</p>	<p>Application for leave to appeal against a High Court order setting aside the appointment of a commission of inquiry into the first respondent, accompanied by an application for condonation of the late filing thereof. Both applications granted.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1999 (2) SA 14 (CC); 1999 (2) BCLR 175 (CC)</p>
82	<p><i>Mphahlele v First National Bank of South Africa Ltd</i> CCT 23/98 Handed down: 1 March 1999</p>	<p>This matter concerned a challenge to the long-standing practice of the Supreme Court of Appeal of not furnishing reasons for a decision refusing leave to appeal. This Court held that where an applicant for leave to appeal to the Supreme Court of Appeal has been given reasons for the adverse decision in the court of first instance and has been informed by the highest Court having jurisdiction in the matter that there are no reasonable prospects of a different order being granted on appeal, this procedure is not in any way inconsistent with an open and democratic society and is not in breach of the Constitution.</p> <p>Judgment of the Court.</p>	<p>1999 (2) SA 667 (CC); 1999 (3) BCLR 253 (CC)</p>

83	<p><i>The Premier of the Western Cape v The President of South Africa and Another</i> CCT 26/98 Handed down: 29 March 1999</p>	<p>Related to the autonomy of the provinces. The Premier of the Western Cape applied directly to this Court to have certain provisions of the Public Service Amendment Act of 1998 declared unconstitutional in that they infringed provincial executive autonomy and encroached on the functional/ institutional integrity of the province. Chaskalson P, in a unanimous judgment found that the Constitution expressly requires national legislation to structure the public service and that the amendment did not infringe the autonomy of the province. However, the Court did find that to the extent that the amendment empowered the national Minister to transfer functions, without the consent of the Premier, it was unconstitutional.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1999 (3) SA 657 (CC); 1999 (4) BCLR 382 (CC)</p>
84	<p><i>August and Another v The Independent Electoral Commission (IEC) and Others</i> CCT8/99 Handed down: 1 April 1999</p>	<p>The right of prisoners to vote in national elections. Applicants appealed against High Court judgment, which found that the IEC had no obligation to ensure that prisoners could register and vote. The Court held that only parliament had the power to disenfranchise prisoners, and that in the absence of such legislative disenfranchisement, prisoners retained their constitutional right to vote. The IEC was accordingly ordered to make all reasonable arrangements to enable prisoners eligible for the vote, to register as voters and vote.</p> <p>Majority: Sachs J (unanimous).</p>	<p>1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC)</p>
85	<p><i>New National Party of South Africa v Government of the Republic of South Africa and Others</i> CCT 9/99 Handed down: 13 April 1999</p>	<p>Constitutional challenge to provisions of the Electoral Act requiring a bar-coded identity document as a pre-requisite for registration as a voter and for voting. A challenge was also mounted on the basis that the independence of the Electoral Commission was infringed. Yacoob J, on behalf of the majority, held that there was a rational connection between the electoral scheme and the achievement of a legitimate purpose. In addition, the scheme did not infringe the right to vote. Langa DP, on behalf of the majority, held that the relevant organs of government had not infringed the administrative independence of the Commission. O' Regan J dissented, finding that the provisions were unreasonable with the result that the right to vote had been infringed.</p> <p>Majority: Yacoob J (Chaskalson P, Langa DP, Ackermann J, Goldstone J, Madala J and Sachs J concurring). Separate Concurrences: Langa DP (Chaskalson P, Ackermann J, Goldstone J, Madala J, Mokgoro J, Sachs J and Yacoob J concurring). Dissent: O' Regan J.</p>	<p>1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC)</p>

86	<p><i>Democratic Party v Minister of Home Affairs and Another</i> CCT 11/99 Handed down: 13 April 1999</p>	<p>Appeal against a judgment of the High Court regarding the constitutionality of provisions of the Electoral Act prescribing the documents necessary for registration and voting respectively. Goldstone J, on behalf of the majority, affirmed the findings of Yacoob J in the NNP case. He found further that it had not been proved that the provisions violated equality rights. O'Regan J dissented on the grounds stated in the NNP case.</p> <p>Majority: Goldstone J (Chaskalson P, Langa DP, Ackermann J, Madala J, Mokgoro J, Sachs J and Yacoob J concurring). Dissent: O'Regan J.</p>	<p>1999 (3) SA 254 (CC); 1999 (6) BCLR 607 (CC)</p>
87	<p><i>South African National Defence Union v Minister of Defence and Another</i> CCT 27/98 Handed down: 26 May 1999</p>	<p>Concerned the constitutionality of s.126B (1), (2), (3) and (4) of the Defence Act, prohibiting members of the armed forces from participating in public protest action and joining trade unions. In respect of the prohibition on participation in acts of public protest, the majority held that the impugned provisions infringed the right to freedom of expression, which could not be justified by reference to the need to ensure that uniformed military personnel do not engage in politically partisan conduct. As to the prohibition on membership of trade unions, the word "workers" in s. 23(2) of the Constitution was found to include members of the armed forces with the result that it was applicable. The majority held that the impugned provisions unjustifiably infringed s. 23 of the Constitution.</p> <p>Majority: O'Regan J (Chaskalson P, Langa DP, Ackermann J, Goldstone J, Kriegler J, Madala J, Mokgoro J and Yacoob J concurring). Separate concurrence: Sachs J.</p>	<p>1999 (4) SA 469 (CC); 1999 (6) BCLR 615 (CC)</p>
88	<p><i>S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat</i> CCT 21/98; CCT 22/98; CCT 2/99; CCT 4/99 Handed down: 3 June 1999</p>	<p>The Court in this case dealt with four separate cases concerning the constitutionality of various provisions of the Criminal Procedure Act. These provisions related to the admissibility of the record of bail proceedings at trial, the test in the granting of bail, particularly where serious offences are concerned and access to the police docket for purposes of a bail application. In a unanimous judgment by Kriegler J, the Court considered the general principles of bail and the nature, effect and constitutionality of major amendments to the law governing bail. On the basis of those general principles, the appeals of Dlamini and Dladla were dismissed, whilst the appeals in Joubert and Schietekat were upheld.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>1999 (4) SA 623 (CC); 1999 (7) BCLR 771 (CC)</p>

89	<p><i>The President of the Republic of South Africa and Others v South African Rugby Football Union and Others</i> CCT 16/98 Handed down: 4 June 1999</p>	<p>Application for recusal, which implicated each of the members of the court, but was directed at five judges only. The fourth respondent laid claim to a reasonable apprehension on his part that the specified justices would be biased. The Court held that the question was whether a reasonable, objective and informed person would reasonably apprehend that the judicial officer in question had not or would not bring an impartial mind to bear on the adjudication of the case. The Court set out its reasons for finding that on an application of this test to the facts, the application for recusal fell to be dismissed.</p> <p>Judgment of the Court.</p>	<p>1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC)</p>
90	<p><i>President of the Ordinary Court Martial and Others v The Freedom of Expression Institute and Others</i> CCT 5/99 Handed down: 24 August 1999</p>	<p>Appeal against High Court ruling declaring certain provisions of the Defence Act and the Disciplinary Code unconstitutional on grounds that the court martial is not independent and impartial, nor was it constituted by legally qualified persons. Court held it unnecessary to decide the order of invalidity.</p> <p>Majority: Langa DP (unanimous).</p>	<p>1999 (4) SA 682 (CC); 1999 (11) BCLR 1219 (CC)</p>
91	<p><i>The Premier of the Province of the Western Cape and Another v The Electoral Commission and Another</i> CCT 19/99 Handed down: 2 September 1999</p>	<p>The constitutionality of a determination by the Electoral Commission made in terms of Electoral Act as contemplated by the Constitution, concerning the number of seats to which the Western Cape provincial legislature was entitled. This determination was in conflict with the Western Cape constitution which specified a different number of seats.</p> <p>Majority: Mokgoro J (unanimous).</p>	<p>1999 (11) BCLR 1209 (CC)</p>
92	<p><i>President of the Republic of South Africa and Others v South African Rugby Football Union and Others</i> CCT 16/98 Handed down: 10 September 1999</p>	<p>Constitutional reviewability of President's decision to appoint a commission of inquiry s. 84(2)(f) of the Constitution and to make powers of subpoena in terms of the Commissions Act applicable to such commission. Abdication of President's responsibility to the Minister was unsubstantiated; President had applied his mind to the facts and the law before him; unwarranted adverse credibility findings made against President by the judge below. President not required to give respondents a hearing before appointing such commission as this action did not amount to 'administrative action' as contemplated by section 33 of the Constitution. Court did not deem it necessary to deal with an argument that the judge below had been biased. Appeal unanimously upheld in decision by the Court.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC)</p>

93	<p><i>Executive Council, Western Cape v Minister of Provincial Affairs and Constitutional Development and Another; Executive Council, KwaZulu-Natal v President of the Republic of South Africa and Others</i> CCT 15/99; CCT 18/99 Handed down: 15 October 1999</p>	<p>The constitutionality of various provisions of the Local Government: Municipal Structures Act were attacked on the basis that Parliament, in terms of chapter 7 of the Constitution (local government) does not have the legislative competence to deal with such matters, and in legislating, had usurped the powers of provincial legislatures, local government councils and/or the independent Municipal Demarcation Board.</p> <p>Majority: Ngcobo J (Chaskalson P, Langa DP, Ackermann J, Goldstone J, Madala J and Sachs J concurring). Dissent: O'Regan J (Mokgoro J, Cameron AJ concurring).</p>	<p>2000 (1) SA 661 (CC); 1999 (12) BCLR 1360 (CC)</p>
94	<p><i>Cape Metropolitan Council v The Minister of Provincial Affairs and Constitutional Development and Another</i> CCT 34/99 Handed down: 15 October 1999</p>	<p>An application for leave to appeal directly against a High Court judgment dealing essentially with the same issues raised in cases CCT 15/99 and CCT 18/99. The appellants argued that the appeal be heard before judgment was handed down in the two abovementioned cases.</p> <p>Majority: Langa DP (unanimous).</p>	<p>2000 (1) SA 727 (CC); 1999 (12) BCLR 1353 (CC)</p>
95	<p><i>S v Manyonyo</i> CCT 36/99 Handed down: 4 November 1999</p>	<p>In February 1996 the High Court referred two reverse onus provisions (s. 21(1) (c) and 20 of the Drugs and Drug Trafficking Act) to the Court for consideration of their constitutionality in terms of s. 102(1) of the interim Constitution. Concern was noted regarding the delay in the referral of the matter to the Court. Court held that both provisions were unconstitutional.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>1999 (12) BCLR 1438 (CC)</p>
96	<p><i>Ex parte the President of the Republic of South Africa In re: Constitutionality of the Liquor Bill</i> CCT 12/99 Handed down: 11 November 1999</p>	<p>Referral of a Bill by President to the Court for consideration in terms of s. 84(2)(c) of the Constitution. Provinces given exclusive jurisdiction (per Schedule 5A to the Constitution) over 'liquor licences' and national government failed to justify intervention in this arena in so far as the retail of liquor was essentially a provincial competence. National government did however, have jurisdiction to regulate the manufacture and wholesale of liquor as 'liquor licences' did not cover these arenas. Provinces were accorded exclusive powers by the Constitution in those areas, in which it was appropriate to regulate, but this was subject to an override by national government where one or more of the requirements of s. 44(2) of the Constitution were satisfied.</p> <p>Majority: Cameron AJ (unanimous).</p>	<p>2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)</p>

97	<p><i>National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others</i> CCT 10/99 Handed down: 2 December 1999</p>	<p>Constitutionality of s. 25(5) of the Aliens Control Act which facilitates the immigration into South Africa of the spouses of permanent South African residents but not to afford the same benefits to gays and lesbians in permanent same-sex life partnerships with permanent South African residents.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>2000 (2) SA 1 (CC); 2000(1) BCLR 39 (CC)</p>
98	<p><i>Chief Lesapo v North West Agricultural Bank and Another</i> CCT 23/99 Handed down:</p>	<p>Order of constitutional invalidity regarding s. 38(2) of the North West Agricultural Bank Act confirmed by the Court for infringing the applicants right of access to court (s. 34 of the Constitution) in that it permitted the Bank to seize the property of defaulting debtors with whom it has concluded loan agreements, and to sell such property to recover its debt, without recourse to a court of law.</p> <p>Majority: Mokgoro J (unanimous)</p>	<p>2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 (CC)</p>
99	<p><i>S v Twala (South African Human Rights Commission Intervening)</i> CCT 27/99 Handed down: 2 December 1999</p>	<p>The Court had to decide whether s. 316 read with s. 315(4) of the Criminal Procedure Act which allows a person who has been convicted and sentenced by a High Court to appeal against that decision only if permission had been given by the High Court or Supreme Court of Appeal is consistent with the Constitution. The Court had to measure these sections against that part of the Constitution which gives to every accused person the right to a fair trial, including the right to appeal or review by a higher court. <i>S v Rens</i> considered.</p> <p>Majority: Yacoob J (unanimous)</p>	<p>2000 (1) SA 879 (CC); 2000 (1) BCLR 106 (CC)</p>
100	<p><i>S v Baloyi (Minister of Justice and Another Intervening)</i> CCT 29/99 Handed down: 3 December 1999</p>	<p>Appropriate balance between the state's constitutional duty to provide effective remedies against domestic violence, and its simultaneous obligation to respect the constitutional rights to a fair trial of those who might be affected by the measures taken. Whether s. 3(5) of the Prevention of Family Violence Act created an unconstitutional reverse onus. The Court held that properly construed, s. 3(5) of the Prevention of Family Violence Act, read with s. 170 of the Criminal Procedure Act, and does not impose a reverse onus on the accused. It was held that s. 3(5) is not unconstitutional to the extent that it imposes a reverse onus.</p> <p>Majority: Sachs J (unanimous).</p>	<p>2000 (2) SA 425 (CC); 2000 (1) BCLR 86 (CC)</p>

101	<p><i>Pharmaceutical Manufacturers Association of SA and Another: in re Ex Parte President of the Republic of South Africa and Others</i> CCT 31/99 Handed down: 25 February 2000</p>	<p>Court's power to review and set-aside decision by the President to bring an Act into force. Whether an act setting-aside such a decision constituted a finding of constitutional invalidity requiring confirmation by the Court in terms of s. 172(2) of the Constitution. The Court held that although the common law remained relevant to this process, judicial review of the exercise of public power was a constitutional matter which took place under the Constitution and in accordance with its provisions. The Constitutional Court, as the highest Court in constitutional matters, should control declarations of constitutional invalidity made against the highest organs of State. It was held that the decision by the Full Bench was accordingly subject to confirmation by the Constitutional Court under s. 172(2)(a).</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC)</p>
102	<p><i>Western Cape Provincial Government and Others: In re DVB Behuising (Pty) Ltd v North West Provincial Government and Another</i> CCT 22/99 Handed down: 2 March 2000</p>	<p>Constitutionality of repeal of racist land laws by proclamation by provincial government. Court a quo ordered such declaration to be ultra vires. The majority refused to confirm the entire order as province was competent to repeal the regulations except those dealing with registration of land tenure rights.</p> <p>Majority: Ngcobo J. Dissents: Madala J, Goldstone J, O'Regan J, Sachs J (dissented only partly from the majority's view, holding that the order should be confirmed).</p>	<p>2001 (1) SA 500 (CC); 2000 (4) BCLR 347 (CC)</p>
103	<p><i>S v Harksen; Harksen v President of the Republic of South Africa and Others; Harksen v Wagner NO and Another</i> CCT 41/99 Handed down: 30 March 2000</p>	<p>Constitutionality of s 3(2) of the Extradition Act in so far as the President's consent to extradition proceedings commencing gave rise to an international agreement which required the approval of or tabling before Parliament. It was argued that the President's consent in terms of s. 3(2) had brought into existence a bilateral international agreement and that s. 3(2) thus empowered the President to conclude international agreements having the effect of law without reference to Parliament and without provision for their incorporation into municipal law, which was in conflict with s. 231 of the Constitution.</p> <p>Majority: Goldstone J (unanimous).</p>	<p>2000 (1) SA 1185 (CC); 2000 (5) BCLR 478 (CC)</p>

104	<i>Brummer v Gorfil Brothers Investments (Pty) Ltd and Others</i> CCT 45/99 Handed down: 30 March 2000	Condonation for late-filing of application for leave to appeal refused. Majority: Yacoob J (unanimous).	2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC)
105	<i>Dormehl v Minister of Justice and Others</i> CCT 10/00 Handed down: 14 April 2000	Rule 17 of the Constitutional Court's rules which required leave to approach the Court directly did not violate the s. 34 right of access to court. Direct access in this case refused. Majority: Chaskalson P (unanimous).	2000 (2) SA 987 (CC); 2000 (5) BCLR 471 (CC)
106	<i>State v Manamela and Another (Director-General of Justice Intervening)</i> CCT 25/99 Handed down: 14 April 2000	Constitutionality of s. 37 of General Law Amendment Act which makes it an offence to acquire stolen goods otherwise than at a public sale without having reasonable cause to believe that person disposing of the goods was authorised or entitled to do so. Reverse onus on accused. The Court held that s. 37 violated the right to silence and the presumption of innocence. The violation of the right to silence was found to be justified, but the violation of the presumption of innocence unjustified. Majority: Madala, Sachs and Yacoob JJ (Chaskalson P, Langa DP, Ackermann J, Mokgoro J and Ngcobo J concurring). Dissent: O'Regan J and Cameron AJ.	2000 (3) SA 1 (CC); 2000 (5) BCLR 491 (CC)
107	<i>Veerasamy v Engen Refinery and Another</i> CCT 16/00 Handed down: 31 May 2000	Application for direct access denied. Majority: O'Regan J (unanimous).	2000 (3) SA 337 (CC);
108	<i>Minister of Welfare and Population Development v Fitzpatrick and Others</i> CCT 08/00 Handed down: 31 May 2000	Constitutionality of s. 18(4)(f) of the Child Care Act proscribing the adoption of South African born children by persons who were not South African citizens or who were eligible to become naturalized but had not yet applied for naturalisation. Court found that the provision violated the s. 28(2) right of the child. Majority: Goldstone J (unanimous).	2000 (3) SA 422 (CC); 2000 (7) BCLR 713 (CC)

109	<p><i>Dawood and Another; Shalabi and Another; Thomas and Another v Minister of Home Affairs and Others</i> CCT 35/99 Handed down: 7 June 2000</p>	<p>Constitutionality of s. 25(4)(b) of the Aliens Control Act challenged in so far as foreign spouses married to South African citizens or permanent residents may be refused temporary residence permits (or extension of existing ones) by immigration officials. O'Regan J for the Court confirmed the High Court's ruling that this provision violated the right to dignity. Immigration officials directed not to refuse to grant or extend the validity of temporary residence permits to such applicants unless good cause for refusal to issue such permits is established.</p> <p>Majority: O' Regan J (unanimous)</p>	<p>2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC)</p>
110	<p><i>South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd Seafoods Division Fish Processing</i> CCT 2/00 Handed down: 9 June 2000</p>	<p>Appeal from the decision of the Labour Appeal Court not to grant a recusal application. Cameron AJ for the majority held that a party applying for the recusal of a judge bears the onus of rebutting the presumption of judicial impartiality and must adduce convincing evidence of a reasonable apprehension of bias on the part of the judicial officer. This had not been done in this case. In a dissent, Mokgoro J and Sachs J were of the opinion that more weight should be given to a lay litigant's perception of a judge's impartiality and that in this case it was reasonable for the applicants to have an apprehension that they would not get a fair hearing.</p> <p>Majority: Cameron AJ (Chaskalson P, Langa DP, Goldstone J, Kriegler J, Madala J, Ngcobo J, O'Regan J and Yacoob J concurring) Dissent: Mokgoro J and Sachs J</p>	<p>2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC)</p>
111	<p><i>First National Bank of South Africa Ltd v Land and Agricultural Bank of South Africa and Others</i> CCT 15/00; <i>Sheard v Land and Agricultural Bank of South Africa and Another</i> CCT 07/00 Handed down: 9 June 2000</p>	<p>Constitutionality of ss. 34(3)(b)-(7), (9) and (10) and 55(2)(b)-(d) of the Land Bank Act allowing attachments and sales in execution to take place without recourse to a court of law. Provisions held to be an unjustifiable form of self-help inimical to the rule of law and in conflict with the rights of access to courts in s. 34 of the Constitution. They were consequently held to be invalid. The Court suspended the invalidity of ss. 34(3) (b)-(7), (9) and (10) for two years, and provided that, from the date of order, no uncompleted attachments and sales in execution could take place without recourse to a court of law. Attachments under s. 34 where the property was yet to be sold were set aside without prejudice to the Bank's statutory security in terms of s. 34(3)(b).</p> <p>Majority: Mokgoro J (unanimous)</p>	<p>2000 (3) SA 626 (CC); 2000 (8) BCLR 876 (CC)</p>

112	<p><i>Christian Education South Africa v Minister of Education</i> CCT 4/00 Handed down: 18 August 2000</p>	<p>Challenge to s. 10 of the Schools Act outlawing corporal punishment in schools. The court held that the prohibition limited the individual and community rights of Christian parents to exercise a strongly held religious belief and therefore constituted an infringement of ss. 15 and 31 of the Constitution. Applying a proportionality analysis and weighing up various factors in the context of the limitation clause, Sachs J found the limitation to be justified.</p> <p>Majority: Sachs J (unanimous)</p>	<p>2000 (4) SA 757 (CC); 2000 (10) BCLR 1051 (CC)</p>
113	<p><i>The Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others; In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others</i> CCT 1/00 Handed down: 25 August 2000</p>	<p>Search and seizure powers relating to a preliminary investigation in terms of s. 29(5) read with s. 28(13) and (14) of the National Prosecuting Authority Act held by Langa DP to violate s. 14 of the Constitution. It was held that s. 29 requires a judicial officer to entertain a reasonable suspicion that an offence (though not necessarily an offence specified under the act) has been committed when issuing a warrant. Discretion to issue a warrant is to be exercised in the light of the constitutional protection of the right to privacy. That the Act contains considerable privacy safeguards and the infringement of the right is therefore justifiable.</p> <p>Majority: Langa DP (unanimous)</p>	<p>2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC)</p>
114	<p><i>Grootboom and Others v The Government of the Republic of South Africa and Others</i> CCT 38/00 Handed down: 21 September 2000</p>	<p>Applicants requested the Court to enforce an undertaking made by the respondent during the hearing of CCT 11/00 to provide temporary shelter. Matter settled and agreement made an order of Court.</p> <p>Order of the Court</p>	
115	<p><i>National Police Service Union and Others v The Minister of Safety and Security and Others</i> CCT 21/00 Handed down: 27 September 2000</p>	<p>Appellants not ready to proceed. Application for postponement held not to be in the interests of justice and denied, notwithstanding agreement between parties to have the matter postponed. Investigation into interests of justice includes consideration of interests of parties and the public in general and is in the discretion of the Court. Case struck off the roll.</p> <p>Majority: Mokgoro J (unanimous)</p>	<p>2000 (4) SA 1110 (CC); 2001(8) BCLR 775 (CC)</p>
116	<p><i>S v Dzukuda and Others; S v Tshilo</i> CCT 23/00; CCT 34/00 Handed down: 27 September 2000</p>	<p>Constitutionality of s. 52 of the Criminal Law Amendment Act. S. 52 providing for a “split procedure” whereby certain accused persons are tried in the Magistrates’ Courts and, if found guilty, are sentenced in the High Court. Held that the fact that the sentencing judge was not “steeped in the atmosphere of the trial” does not vitiate the accused’s right to a fair trial under s. 35(3) of the Constitution. Held further that the section did not infringe the right because the process is, at all times, under the control</p>	<p>2000 (4) SA 1078 (CC); 2000 (11) BCLR 1252 (CC)</p>

		<p>of a judicial officer whose duty it is to ensure observance of the fair trial right. Further that s. 52 does not inevitably result in an unnecessary delay in the trial. When read in conformity with the Constitution, nothing in the section compels the High Court to use its powers in a way which would infringe constitutional rights, said the Ackermann J. In the second case, the applicant was refused leave to appeal.</p> <p>Majority: Ackermann J (unanimous)</p>	
117	<p><i>Hoffmann v South African Airways</i> CCT 17/00 Handed down: 28 September 2000</p>	<p>Exclusion from employment as cabin attendant of otherwise eligible asymptomatic HIV-positive job applicant held to infringe the applicant's right to equality under s. 9 of the Constitution. HIV-status found to be an analogous ground in terms of s. 9(3). Economic interests of employer found not to be compelling in light of the infringement of applicant's rights. Employer unfairly discriminated against the applicant and ordered to offer the applicant employment to be accepted within 30 days.</p> <p>Majority: Ngcobo J (unanimous)</p>	<p>2001 (1) SA 1 (CC); 2000 (11) BCLR 1211 (CC)</p>
118	<p><i>Janse van Rensburg NO and Another v The Minister of Trade and Industry NO and Another</i> CCT 13/99 Handed down: 29 September 2000</p>	<p>Constitutionality of two sections of the Consumer Affairs (Unfair Business Practices) Act. After the TPD had struck down the impugned sections, the Act had been amended in such a way that the objection to s. 7(3) (dealing with search and seizure) had fallen away. S. 8(5)(a) empowered the Minister to prevent, for a period not exceeding 6 months, any unfair business practice which is the subject of an investigation; and attach property related to an investigation. As in Dawood, the absence of guidance on the manner in which the Minister's wide and unfettered powers are to be exercised, led the Court to the finding that s. 33 had been violated. Order of invalidity suspended for 12 months and conditions attached to the exercise of the discretion in the meantime. Potential infringement of ss. 22, 25 and 34 not considered.</p> <p>Majority: Goldstone J (unanimous)</p>	<p>2001 (1) SA 29 (CC); 2000 (11) BCLR 1235 (CC)</p>
119	<p><i>Government of the Republic of South Africa and Others v Grootboom and Others</i> CCT 11/00 Handed down: 4 October 2000</p>	<p>Appeal against the decision of the High Court granting shelter to the respondent, children and their parents on the basis of s. 28 of the Constitution. The court considered both s. 28 and s. 26 and found that there had been no infringement of s. 28 since the primary obligation imposed by that section fell onto the child's immediate caregiver. S. 26 requires the state to put in place a reasonable programme for the progressive provision of adequate housing for all. This programme should comprise short, medium and long-term components. Appeal on the s. 28 ruling allowed, but it was held that the State had failed to make provision in terms of the s. 26 obligation to deal with people in crisis such as the applicants, and was</p>	<p>2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)</p>

		<p>ordered to devise and implement a programme that would do so.</p> <p>Majority: Yacoob J (unanimous).</p>	
120	<p><i>Levy v Glynos and Another</i> CCT 29/00 Handed down: 21 November 2000</p>	<p>Application for leave to appeal dismissed by the Court - no prospects of success.</p> <p>Judgment of the Court.</p>	Not reported.
121	<p><i>Metcash Trading Ltd v Commissioner, South African Revenue Service, and Another</i> CCT 3/00 Handed down: 24 November 2000</p>	<p>Ss. 36(1), 40(2) (a) and 40(5) of the Value Added Tax Act found not to oust the jurisdiction of courts. The sections therefore did not infringe s. 34 of the Constitution. It was held that to the extent that s. 40(5) might be said to limit the right, such limitation is justifiable.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>2001 (1) SA 1109 (CC); 2001 (1) BCLR 1 (CC)</p>
122	<p><i>South African Association of Personal Injury Lawyers v Heath and Others</i> CCT 27/00 Handed down: 28 November 2000</p>	<p>Challenge to the constitutionality of s. 3(1) of the Special Investigating Units and Special Tribunals Act and proclamation R24 of 1997 appointing a High Court judge as head of a Special Unit investigating corruption. The court found the appointment to be in conflict with the constitutional requirement of separation of powers between the executive and the judiciary and declared invalid. The order of invalidity was suspended for one year. A further challenge to the constitutionality of proclamation R31 of 1999 instituting an investigation into the activities of personal injury lawyers in connection with Road Accident Fund claims was also successful on the basis that the proclamation violated the principle of legality. The proclamation was declared invalid from the date of judgment.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>2001 (1) SA 883 (CC); 2001 (1) BCLR 77 (CC)</p>
123	<p><i>S v Steyn</i> CCT 19/00 Handed down: 29 November 2000</p>	<p>Ss. 309B and C of the Criminal Procedure Act were held to unconstitutionally infringe s. 35 of the Constitution, the fair trial right, of an accused to appeal against the judgment of a magistrate. The invalidity was suspended for 6 months.</p> <p>Majority: Madlanga AJ (unanimous).</p>	<p>2001 (1) SA 1146 (CC); 2001 (1) BCLR 52 (CC)</p>

124	<p><i>Permanent Secretary, Department of Education and Welfare, Eastern Cape and Another v Ed-U-College (PE) Section 21 Inc.</i> CCT 26/00 Handed down: 29 November 2000</p>	<p>Application for leave to appeal against the High Court judgment concerning the decision regarding the payment of subsidies to independent schools by the Department and in particular the reduction of such subsidies in 1997. The court held that the decision was administrative action within the meaning of s. 33. Appropriation by Provincial Legislature of money to the education budget and approval of amount earmarked for independent schools was found not to constitute administrative action. In the absence of sufficient evidence, no finding could be made as to whether there was an infringement of the right.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2001 (2) SA 1 (CC); 2001 (2) BCLR 118 (CC)</p>
125	<p><i>S v Boesak</i> CCT 25/2000 Handed down: 1 December 2000</p>	<p>Application for special leave to appeal the decision of the Supreme Court of Appeal which had dismissed applicant's appeal from a conviction in the High Court. Applicant alleged that the Supreme Court of Appeal decision infringed his fair trial rights under s. 35(3)(h) of the Constitution. The accused's rights to be presumed innocent, to remain silent and not to testify was found not to have been infringed by the SCA when it found that the accused's failure to testify contributed to a finding of guilt beyond a reasonable doubt. The primary question was what constitutes a "constitutional matter" under s. 167(3)(b) of the Constitution and Rule 20(1) of the Rules of the Constitutional Court? The applicant also alleged that his s. 12(1) (a) right had been infringed. The court held that the accused had been duly convicted of theft and that his imprisonment could therefore not have been "without just cause". Importantly, the court held that the question whether evidence was sufficient to justify a finding of guilt beyond a reasonable doubt was not a constitutional matter. Further, it was held that the right to be presumed innocent was not implicated in circumstances in which all that was being challenged was the purely factual conclusion reached by the Supreme Court of Appeal.</p> <p>Majority: Langa DP (unanimous).</p>	<p>2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC)</p>
126	<p><i>Sonderup v Tondelli and Another</i> CCT 53/00 Handed down: 4 December 2003</p>	<p>This case involved a four-year-old girl who was brought from British Columbia, Canada by her mother. The issue was whether the mother acted in violation of the provisions of the Hague Convention on Civil Aspects of International Child Abduction requiring mandatory return of a child removed or retained in breach of custody rights. The Court held that the provisions applied in this matter. Although the Court assumed in favour of the applicant that the Convention could, in certain circumstances, be in conflict with the constitutional injunction in s. 28(2) of the Constitution that a child's best interests are of paramount importance in all matters, such conflict would be justified under s. 36. The Court thus ordered that the child be returned to</p>	<p>2001 (1) SA 1171 (CC); 2001 (2) BCLR 152 (CC)</p>

		<p>British Columbia. Certain conditions were imposed on the manner in which the return was to take place.</p> <p>Majority: Goldstone J (unanimous).</p>	
127	<p><i>Moseneke and Others v The Master of High Court and Another</i> CCT 51/00 Handed down: 6 December 2000</p>	<p>This case examined the constitutionality of s. 23(7) (a) and regulation 3(1) under the Black Administration Act challenged on the basis that they disallowed black intestate estates from being administered and distributed by the Master of the High Court. The Court granted the applicant direct access and declared the section unconstitutional with immediate effect and inconsistent with the applicants' rights to equality and dignity. An appeal by the Minister of Justice against the order of the High Court striking down the regulation was upheld in part. The regulation was struck down and the order was suspended for a period of two years.</p> <p>Majority: Sachs J (unanimous).</p>	<p>2001 (2) SA 18 (CC); 2001 (2) BCLR 103 (CC)</p>
128	<p><i>Prince v President, Cape Law Society and Others</i> CCT 36/00 Handed down: 12 December 2000</p>	<p>Rastafarian applicant alleging that criminal prohibition on use and possession of cannabis infringed his right to freely practice his religion. The Court requested the parties to submit further evidence on affidavit as to the justifiability of the limitation. In addition, s. 12(1)(b) of the Supreme Court Act was declared inconsistent with the interim Constitution and invalid in effect from 27 April 1994.</p> <p>Majority: Ngcobo J (unanimous).</p>	<p>2001 (2) SA 388 (CC); 2001 (2) BCLR 133 (CC)</p>
129	<p><i>Ex Parte Hansmann</i> CCT 03/01 Handed down: 22 February 2001</p>	<p>This case was heard as an application for special leave to appeal against the applicant's conviction for dealing in cannabis. The Court denied the application on the basis that the applicant was a fugitive from justice and had withheld this fact from the Court.</p> <p>Judgment by the Court.</p>	<p>2001 (2) SA 852 (CC); 2001(4) BCLR 311 (CC)</p>
130	<p><i>Lane and Another v Dabelstein and Others</i> CCT 60/00 Handed down: 6 March 2001</p>	<p>An application for special leave to appeal against a Supreme Court of Appeal judgment and order of attachment of assets was refused partly on the basis that no constitutional issue of substance was raised and partly on the basis that the issues had not been raised in the courts a quo.</p> <p>Majority: Goldstone and Kriegler JJ (unanimous).</p>	<p>2001 (2) SA 1187 (CC); 2001 (4) BCLR 312 (CC)</p>

131	<p><i>Mkangeli and Others v Joubert and Others</i> CCT 61/00 Handed down: 6 March 2001</p>	<p>Application for direct access refused on the grounds that the matter had not yet been heard by the Supreme Court of Appeal. It was held that the High Court finding that various provisions of the Extension of Security of Tenure Act were unconstitutional was, in fact, obiter and it was not therefore necessary to consider confirmation.</p> <p>Majority: Chaskalson P (unanimous.)</p>	<p>2001 (2) SA 1191 (CC); 2001 (4) BCLR 316 (CC)</p>
132	<p><i>S v Dodo</i> CCT 1/01 Handed down: 5 April 2001</p>	<p>Challenge to s. 51(1) read with s. 51(3)(a) of the Criminal Law Amendment Act which obliges High Courts to sentence people convicted of certain serious offences to life imprisonment, unless "substantial and compelling circumstances" justify the imposition of a lesser sentence. Ackermann J in a unanimous decision held that there was no infringement of the separation of powers or of the rights contained in s. 12(1) (e) and 35(3)(c) of the Constitution. Order of invalidity by Eastern Cape High Court not confirmed.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>2001 (3) SA 382 (CC); 2001 (5) BCLR 423 (CC)</p>
133	<p><i>S v Mamabolo (E TV and Others Intervening)</i> CCT 44/00 Handed down: 11 April 2001</p>	<p>The majority held that, while the common law crime of scandalising the court limits freedom of expression, the limitation is justifiable provided that the crime is appropriately narrowly defined with the aim of preserving confidence in the administration of justice.</p> <p>Sachs J, in a separate judgment, held that greater protection of expression was required - in order to constitute a crime, the conduct must pose a real and direct threat to the administration of justice. The employment of a summary procedure in such matters unanimously held to be an unjustifiable limitation of the Constitutional fair trial right.</p> <p>Majority: Kriegler J (Chaskalson P, Ackermann J, Goldstone J, Madala J, Mokgoro J, Ngcobo J, Yacoob J, Madlanga AJ and Somyalo AJ concurring) Separate Concurrence: Sachs J</p>	<p>2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC)</p>
134	<p><i>Mohamed and Another v President of the Republic of South Africa and Others (Society for the Abolition of the Death Penalty in South Africa and Another)</i> CCT 17/01 Handed down: 28 May 2001</p>	<p>A Tanzanian citizen wanted in the United States, was handed over to the FBI by the SA government, removed from the country and put on trial in New York without an undertaking first being obtained that he would not be subject to the death penalty should he be found guilty. The Court affirmed the finding in Makwanyane that the death penalty is unconstitutional and this meant that the South African government could not expose a person to the risk of execution, regardless of consent. Held that applicant was illegally removed from the country. The Director of the Court was directed to urgently draw the judgment to the attention of the trial court in New York.</p> <p>Judgment of the Court.</p>	<p>2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC)</p>

135	<p><i>Minister of Public Works and Others v Kyalami Ridge Environmental Association and Another (Mukhwevho Intervening)</i> CCT 55/00 Handed down: 29 May 2001</p>	<p>Decision by a Presidential committee to erect a transit camp for flood victims in the grounds of Leeuwkop Prison challenged on the ground that the government did not act within the terms of any pre-existing legislative scheme. It was held that the government as owner of land has the same rights as any other landowner. When exercising those rights and its powers under the Constitution its decisions and actions are not ultra vires where there is no applicable legislation outlawing this. Governmental duties vis-à-vis those living in crisis (as set out in Grootboom) affirmed.</p> <p>Majority: Chaskalson P (unanimous).</p>	<p>2001 (3) SA 1151 (CC); 2001 (7) BCLR 652 (CC)</p>
136	<p><i>Booyesen and Others v Minister of Home Affairs and Another</i> CCT 08/01 Handed down: 4 June 2001</p>	<p>Unconstitutionality of s. 26(2) (a) and 26(3) (b) of the Aliens Control Act dealing with applications for work permits by foreign spouses of South African citizens or permanent residents confirmed. The Court found that the provisions unjustifiably limited the right to dignity.</p> <p>Majority: Sachs J (unanimous).</p>	<p>2001 (4) SA 485 (CC); 2001 (7) BCLR 645 (CC)</p>
137	<p><i>Independent Electoral Commission v Langeberg Municipality</i> CCT 49/00 Handed down: 7 June 2001</p>	<p>Although there was no live issue between the parties in this case, the Court held that it would be in the interests of justice to make a finding on the applicability of Chapter 3 of the Constitution to disputes involving the IEC. It was held that the IEC was not a department or administration within the national sphere of government. A dispute between the IEC and a municipal council cannot therefore be classified as an intergovernmental dispute for the purposes of Chapter 3 of the Constitution.</p> <p>Majority: Yacoob J and Madlanga AJ (unanimous).</p>	<p>2001 (3) SA 925 (CC); 2001(9) BCLR 883 (CC)</p>
138	<p><i>Moise v Greater Germiston Transitional Local Council: Minister of Justice and Constitutional Development Intervening (Women's Legal Centre as Amicus Curiae)</i> CCT 54/00 Handed down: 4 July 2001</p>	<p>Constitutional invalidity of s. 2(1)(a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act confirmed. It was held that the section, which obliges plaintiffs wishing to sue an administration, local authority or any of its officers for damages for a wrongful act, to serve a written notice on the defendant within ninety days of the cause of action arising, constituted a material limitation of s. 34 of the Constitution and could not be justified under s. 36 of the Constitution.</p> <p>Majority: Somyalo AJ (unanimous).</p>	<p>2001 (4) SA 491 (CC); 2001 (8) BCLR 765 (CC)</p>

139	<i>Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening)</i> CCT 48/00 Handed down: 16 August 2001	The central issue was the constitutional obligation on the courts to develop the common law to promote the spirit, purport and objects of the Bill of Rights. The Court held that, although the major engine for law reform should be the legislature, courts are under a general duty to develop the common law when it deviates from the spirit, purport and objects of the Bill of Rights. Majority: Ackermann and Goldstone JJ (unanimous).	2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC)
140	<i>Wallach v Selvan and Another</i> CCT 15/01 Handed down: 21 August 2001	An application for direct access was dismissed on the basis that complaint had no merit. It was based on an alleged failure on the part of the judge who had presided in the High Court to give reasons for his decision. Majority: Kriegler J (unanimous).	2001 (11) BCLR 1195 (CC)
141	<i>S v Price</i> CCT 23/01 Handed down: 4 September 2001	Application for special leave to appeal against the decision of the High Court refused by the Court as there were no prospects of success. Majority: Yacoob J(unanimous).	2001 (11) BCLR 1193 (CC)
142	<i>De Beer N O v North-Central Local Council and South-Central Local Council (Umhlutuzana Civic Association Intervening)</i> CCT 59/00 Handed down: 26 September 2001	Appeal against an order of the High Court. Constitutionality of s. 105(9) of the Durban Extended Powers Consolidated Ordinance (Natal). S. 105(9) of the Ordinance was alleged to infringe the s. 34 right to a fair hearing on the basis of a deficient notice procedure. The Court held that s. 105 of the Ordinance does not compromise the right to a fair hearing since the courts in the final analysis have judicial control that renders s.105(9) hearing fair in the context of the notice that must precede the hearing. Appeal accordingly dismissed without costs. Majority Yacoob J (unanimous).	2002 (1) SA 429 (CC); 2001 (11) BCLR 1109 (CC)
143	<i>Ex Parte Women's Legal Centre: In re Moise v Greater Germiston Transitional Local Council</i> CCT 54/00 Handed down: 21 September 2001	Application for a variation of order of this Court made in <i>Moise v Greater Germiston Transitional council</i> to make the order in question apply retrospectively. The application was dismissed. Majority: Kriegler J (unanimous).	2001 (4) SA 1288 (CC); 2001 (8) BCLR 765 (CC)

144	<p><i>In re Constitutionality of the Mpumalanga Petitions Bill, 2000</i> CCT 11/01 Handed down: 5 October 2001</p>	<p>The application concerned the issue of the Court's jurisdiction in referral proceedings. There was a referral in terms of s. 121(2) (b) of the Constitution. It also involved the constitutionality of clauses 18 and 19 of the Mpumalanga Petitions Bill and the provincial legislature's competence to pass the Bill in question. It was held that clauses 18 and 19 of the Bill, which require the Speaker of the provincial legislature to make regulations under the Bill and to fix the date on which the Bill is to come into operation, are not unconstitutional. It was held further that the Court was not empowered to consider the legislature's competence to pass the Bill-if such issue not referred to the legislature by the Premier.</p> <p>Majority: Langa DP (unanimous).</p>	<p>2002 (1) SA 447 (CC); 2001 (11) BCLR 1126 (CC)</p>
145	<p><i>Minister of Education v Harris</i> CCT 13/01 Handed down: 5 October 2001</p>	<p>Appeal by the Minister of Education against a High Court decision striking down a notice regulating age requirements for admission to an independent school. Appeal dismissed on basis that appellant had exceeded powers in issuing notice and breached principle of legality.</p> <p>Majority: Sachs J (unanimous).</p>	<p>2001 (4) SA 1297 (CC); 2001 (11) BCLR 1157 (CC)</p>
146	<p><i>Minister of Defence v Potsane and Another; Legal Soldier (Pty) Ltd and Others v Minister of Defence and Others</i> CCT 14/01 CCT 29/01 Handed down: 5 October 2001</p>	<p>An application for direct access in two matters alleging that the provisions of the Military Discipline Supplementary Measures Act conferring authority on military prosecutors to conduct prosecutions in military courts were inconsistent with s. 179 of the Constitution. The application was dismissed.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>2002 (1) SA 1 (CC); 2001 (11) BCLR 1137 (CC)</p>
147	<p><i>S v Niemand</i> CCT 28/00 Handed down: 8 October 2001</p>	<p>Appeal concerning constitutional validity of indeterminate sentence imposed on habitual criminals in terms of s. 286 of the Criminal Procedure Act read with s. 65(4) (b) (iv) of the Correctional Services Act. Such treatment or punishment alleged to be cruel, inhuman and degrading. The Court declared s.65(4)(b)(iv) of the Correctional Services Act read with s. 286 of the Criminal Procedure Act to be inconsistent with the Constitution.</p> <p>Majority: Madala J (unanimous).</p>	<p>2002 (1) SA 21 (CC); 2002 (3) BCLR 219 (CC)</p>

148	<p><i>Minister of Home Affairs v Liebenberg</i> CCT 22/01 Handed down: 8 October 2001</p>	<p>Application for confirmation of an order made in the WLD declaring a regulation made in terms of the Aliens Control Act invalid. The application dismissed on the basis that orders concerning the constitutional invalidity of regulations not subject to confirmation by this Court as regulations do not fall within the purview of s. 172(2(a) of the Constitution.</p> <p>Majority: Skweyiya AJ (unanimous).</p>	<p>2002 (1) SA 33 (CC); 2001 (11) BCLR 1168 (CC)</p>
149	<p><i>Potgieter v Lid van die Uitvoerende Raad: Gesondheid, Provinsiale Regering Gauteng en Andere</i> CCT 26/01 Handed down: 8 October 2001</p>	<p>Application for confirmation of order of invalidity of s. 68(4) of the Mental Health Act. The section limited to three months the period within which legal proceedings may be instituted against any person in respect of any act performed under any provision of the Act. It was held that the limitation constitutes a material limitation of right of access to Court guaranteed in s. 34 of the Constitution.</p> <p>Majority: Skweyiya AJ (unanimous).</p>	<p>2001 (11) BCLR 1175 (CC)</p>
150	<p><i>President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another</i> CCT 16/98 Handed down: 22 November 2001</p>	<p>An application to review the taxation of a party and party bill of costs and an associated application for recusal of judges of the Court. The Court set aside the taxing master's allocatur and remitted the matter to the taxing master for taxation afresh in light of the judgment.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>2002 (2) SA 64 (CC); 2002 (1) BCLR 1 (CC)</p>
151	<p><i>Fredericks and Others v MEC for Education and Training, Eastern Cape and Others</i> CCT 27/01 Handed down: 4 December 2001</p>	<p>Appeal against decision of the High Court that found that jurisdiction of High Court had been ousted in matter concerning a collective agreement in terms of the Labour Relations Act. The appeal was based on s. 9 and s. 33 of the Constitution. It was held that the High Court retained jurisdiction in terms of s. 169 of the Constitution unless a matter has been assigned to another court of similar status to the High Court. The CCMA was not a court of similar status to the High Court and therefore the High Court did have jurisdiction to deal with the matter. The matter was referred back to the High Court.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2002 (2) SA 693 (CC); 2002 (2) BCLR 113 (CC)</p>
152	<p><i>Member of the Executive Council for Local Government and Development Planning, Western Cape, and Another v Paarl Poultry Enterprises CC t/a Rosendal Poultry Farm</i> CCT 38/01 Handed down: 14 December 2001</p>	<p>Validity of s. 10 of Proclamation 52 which purported to validate all decisions and actions of district councils retrospectively from 1 July 1997 to cover the period during which these councils had been "improperly elected." The court held that s. 10 of the Local Government Transition Act conferred wide powers in respect of local restructuring of provincial MECs. The failure to enact new regulatory framework did not result in district councils becoming unlawfully constituted. The respondent's application for declaratory relief was referred the matter back to the High Court to be dealt with in light of the judgment.</p>	<p>2002 (3) SA 1 (CC); 2002 (2) BCLR 133 (CC)</p>

		Majority: Yacoob J (unanimous).	
153	<i>National Gambling Board v Premier, KwaZulu- Natal, and Others</i> CCT 32/01 Handed down: 21 December 2001	Application for direct access seeking an interim interdict restraining the respondents from continuing with a process to award a contract for a central electronic monitoring system in KwaZulu Natal. S. 13(1) of the National Gambling Act requires gambling machines to be linked to a central electronic monitoring system. Direct access denied as, parties had not complied with their constitutional obligation of cooperative government under s. 41 of the Constitution. Majority: Du Plessis AJ (unanimous).	2002 (2) SA 715 (CC); 2002 (2) BCLR 156 (CC)
154	<i>Prince v President, Cape Law Society, And Others</i> CCT 36/00 Handed down: 25 January 2002	Application concerning the constitutional validity of the prohibition on the use or possession of cannabis when its use or possession was inspired by religion. The majority held that the prohibition against the possession and use of cannabis was part of a worldwide attempt to curb its distribution. The Court held that Rastafarianism was a religion and therefore the legislation impacted on the Rastafarian's individual and collective rights to practice their religion. However to allow harmful drugs to be used by certain people for religious purposes, would impair the State's ability to enforce its drug legislation. Majority: Chaskalson CJ, Ackermann and Kriegler JJ (Goldstone J, Yacoob J concurring) Dissent: Ngcobo J (Madlanga AJ, Mokgoro J, Sachs J concurring) Separate Dissent: Sachs J (Mokgoro J concurring)	2002 (2) SA 794 (CC); 2002 (3) BCLR 231 (CC)
155	<i>Bel Porto School Governing Body and Others v Premier, Western Cape, and Another</i> CCT 58/00 Handed down: 21 February 2002	The Western Cape Education Department (WCED) had undertaken a restructuring process to rationalise education in the province and rectify the disparities caused by the previous government. The WCED had to establish a single system within the province to cater for the needs of all children equally. The former House of Assembly Elsen Schools sued WCED contending that the decision by the WCED to implement rationalisation and a redeployment scheme without first employing general assistants at their schools infringed their constitutional rights to equality and just administrative action. The majority held that the plan was rational particularly given that WCED had its own surplus staff without having taken on the Elsen staff. It was held that there was no	2002 (3) SA 265 (CC); 2002 (9) BCLR 891 (CC)

		<p>violation of the right to equality. WCED had complied with the right to just administrative action in terms of s. 24 of the interim Constitution.</p> <p>Majority: Chaskalson CJ (Goldstone J, Kriegler J, Madlanga AJ, Somyalo AJ and Yacoob J concurring) Dissents: Madala J, Mokgoro and Sachs JJ, Ngcobo J.</p>	
156	<p><i>Islamic Unity Convention v Independent Broadcasting Authority and Others</i> CCT 36/01 Handed down: 11 April 2002</p>	<p>Application for leave to appeal directly to the Constitutional Court against the High Court's refusal to deal with constitutionality of clause 2(a) of the Code of Conduct for Broadcasting Services. In a unanimous judgment the Court held that the High Court had erred in approaching the prayer for constitutional invalidity as if it were a prayer for discretionary relief in terms of s. 19(a) (iii) of the Supreme Court of Appeal. The relevant portion of clause 2 (a) prohibited speech that was "likely to prejudice relations between sections of the population". Clause 2(a) limited the right to freedom of expression and is therefore unconstitutional. The prohibition was overbroad.</p> <p>Majority: Langa DCJ (unanimous).</p>	<p>2002 (4) SA 294 (CC); 2002 (5) BCLR 433 (CC)</p>
157	<p><i>Van Der Walt v Metcash Trading Ltd</i> CCT 37/01 Handed down: 11 April 2002</p>	<p>Application for special leave to appeal alternatively for direct access. On two successive days the Supreme Court of Appeal refused leave to appeal to one petitioner and granted leave to appeal to another petitioner. The applications were based on identical facts which were considered by different panels of judges. Applicant argued that the effect of the decisions was irrational and arbitrary and in conflict with the rule of law and that right to access to court had been violated. Also that his right to equality before the law and the right to equal protection and benefit of the law had been violated by the different outcomes of the two decisions. The majority of the Court held that the applicant's constitutional rights had not been violated by the contrary decisions. There was nothing to suggest that the decisions were made arbitrarily. S. 9(1) does not guarantee equality of outcome and s. 34 was not violated.</p> <p>Majority: Goldstone J (Chaskalson CJ, Langa DCJ, Ackermann J, Kriegler J, O'Regan J, Du Plessis AJ and Skweyiya AJ concurring) Separate Dissents: Ngcobo J, Madala J and Sachs J.</p>	<p>2002 (4) SA 317 (CC); 2002 (5) BCLR 454 (CC)</p>

158	<p><i>South African Municipal Workers Union v City of Cape Town and Others</i> CCT 10/02 Handed down: 9 May 2002</p>	<p>Application for leave to appeal directly to this Court against the judgment and order of the High Court. It was held that the matter concerned the interpretation of statutes and raises no constitutional issue. Application for leave to appeal dismissed.</p> <p>Judgment of the Court.</p>	<p>2002 (4) SA 451 (CC); 2002 (10) BCLR 1083 (CC)</p>
159	<p><i>First National Bank (FNB) of SALtd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SALtd t/a Wesbank v Minister of Finance</i> CCT 19/01 Handed down: 16 May 2002</p>	<p>Application concerning the constitutionality of s. 114 of the Customs and Excise Act. It was held that FNB was entitled to invoke the guarantee of property rights provided by s. 25(1) of the Constitution. It was further held that although FNB neither used nor was in possession of its vehicles at the time the Commissioner detained and threatened to sell them, FNB remained the owner and the sale would constitute an arbitrary deprivation of property. S. 114 was declared to be constitutionally invalid to the extent that it provides that goods owned by persons other than the person liable to the State for the customs debt described in the section, are subject to a lien, detention and sale.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC)</p>
160	<p><i>Ex parte Minister of Safety and Security and Others: in Re S v Walters and Another</i> CCT 28/01 Handed down: 21 May 2002</p>	<p>Application concerning the constitutionality of s. 49(2) of the Criminal Procedure Act which governs the use of force to carry out an arrest. The Court held that s. 49(1) should be interpreted as generally excluding the use of a firearm unless (a) the suspect poses an immediate threat of serious bodily harm to the arrester or to someone else; and (b) is reasonably suspected of having committed a serious crime involving or threatening such harm. Read this way the section is constitutionally justifiable and the order of the High Court declaring it partially invalid was not confirmed. The Court held further that s. 49(2) authorises the use of lethal force for arrests in circumstances that are so wide as to be constitutionally unjustifiable. The subsection was struck down in its entirety.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>2002 (4) SA 613 (CC) 2002 (7) BCLR 663 (CC)</p>
161	<p><i>Van Rooyen and Others v the State and Others (General Council of the Bar of South Africa Intervening)</i> CCT 21/01 Handed down: 11 June 2002</p>	<p>Appeal from High Court finding that control exercised over magistrates by the Minister of Justice impermissibly limits judicial independence. It was held that, in general, the legislation in question viewed as a whole was consistent with the core values of judicial independence.</p> <p>Majority: Chaskalson CJ (unanimous).</p>	<p>2002 (5) SA 246 (CC); 2002 (8) BCLR 810 (CC)</p>

162	<p><i>S v Bierman</i> CCT 52/01 Handed down: 11 June 2002</p>	<p>The applicant in this matter failed to raise the constitutionality of the common law issues regarding the admissibility of her priest's evidence in lower courts. The Court held that as a result the Court did not have the benefit of Supreme Court of Appeal's consideration and this would ordinarily be sufficient to refuse the application. However the applicant also failed to establish that she had any prospects of success. The Court found that it was not in the interests of justice to grant an appeal against a criminal conviction on a point of law where a decision favourable to the applicant would not result in the conviction being set aside.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2002 (5) SA 243 (CC); 2002 (10) BCLR 1078 (CC)</p>
163	<p><i>S v Singo</i> CCT 49/01 Handed down: 12 June 2002</p>	<p>Validity of s. 72(4) of the Criminal Procedure Act which allows for summary proceedings when an accused fails to appear in court at fixed date, unless the accused can satisfy to the court that the failure to appear was not his/her fault. The Court examined whether s. 72(4) unjustifiably limited the right to a fair trial, right to be presumed innocent and right to remain silent and what relief was appropriate. The Court found that s. 72(4) did limit those rights. It also found that the limitation on the right to remain silent was justifiable, but the limitation on the right to be presumed innocent was not justifiable. The Court ordered s. 72(4) to be read as requiring the accused to raise a reasonable possibility that the failure to comply was not due to his/her fault.</p> <p>Majority: Ngcobo J (unanimous)</p>	<p>2002 (4) SA 858 (CC); 2002 (8) BCLR 793 (CC)</p>
164	<p><i>Uthukela District Municipality and others v President of Republic of South Africa and others</i> CCT 7/02 Handed down: 12 June 2002</p>	<p>Entitlement of national, provincial and local spheres of government to an equitable share of revenue raised nationally. In terms of s. 5(1) of the Division of Revenue Act, district municipalities were excluded. The impugned section had been repealed by the time the case came to this Court. It was held that when an Act is declared unconstitutional by the High Court, but then later repealed before hearing before this Court, the Court will not deal with the issue if any order will have no practical effect on the parties. If dispute can be dealt with on a political level and parties are organs of state, the Court will be hesitant to intervene. Here, there would have been a practical effect, but because the parties were organs of state, the Court found there needed to be reasonable efforts made to settle dispute at the political level.</p> <p>Majority: Du Plessis AJ (unanimous)</p>	<p>2003 (1) SA 678 (CC); 2002 (11) BCLR 1220 (CC)</p>

165	<p><i>National Director of Public Prosecutions v Mohamed NO and others</i> CCT 13/02 Handed down: 12 June 2002</p>	<p>Constitutionality of s. 38 of the Prevention of Organised Crime Act (POCA). The Court found that the High Court should have also dealt with the constitutionality of the other provisions in Chapter 6. Court set aside the order of the High Court and remitted the matter.</p> <p>Majority: Ackermann J (unanimous)</p>	<p>2002 (4) SA 843 (CC); 2002 (9) BCLR 970 (CC);</p>
166	<p><i>Khumalo and Others v Holomisa</i> CCT 53/01 Handed down: 14 June 2002</p>	<p>Suit for defamation by public politician against newspaper. Appellants asked for the common law rule on defamation by developed to allow the action to lie only if the article was false. It was held that the common law rule developed by the Supreme Court of Appeal that a publisher could avoid liability where it could not prove that the statement was true but it could establish that publication was nevertheless reasonably struck an appropriate balance between the right to freedom of expression and dignity.</p> <p>Majority: O'Regan J (unanimous)</p>	<p>2002 (5) SA 401 (CC); 2002 (8) BCLR 771 (CC)</p>
167	<p><i>Minister of Health and others v Treatment Action Campaign and Others (1)</i> CCT 9/02 Handed down: 5 July 2002</p>	<p>Appeal of an interim executive order. An issue arose between the TAC and the government whether the latter was to give effect to certain paragraph of the High Court order which directed it to make Nevirapine available to mothers and their new born babies in public health facilities in certain stated circumstances. The Court reasoned that this does constitute a constitutional matter. Discussion on whether it is in the interests of justice to hear the appeal, finding it does not. The Court finds that the appealing party has to show that irreparable harm will flow if the appeal is not heard. The government did not show any cogent reason why it could not implement the order.</p> <p>Judgment of the Court.</p>	<p>2002 (5) SA 703 (CC); 2002 (10) BCLR 1033 (CC)</p>
168	<p><i>MEC for Health Kwazulu - Natal v Premier of KwaZulu-Natal In re: Minister of Health v Treatment Action Campaign and Others</i> CCT 15/02 Handed down: 6 May 2002 Reasons 5 July 2002</p>	<p>Case concerned what stance the KwaZulu Natal government should adopt vis-à-vis the TAC case. Court found that the issue was a political one and therefore not within the interests of justice to grant leave to appeal.</p> <p>Judgement of the Court.</p>	<p>2002 (10) BCLR 1028 (CC)</p>

169	<p><i>Certain Amicus Curiae applications, In re: Minister of Health and others v Treatment Action Campaign and Others</i> CCT 08/02 Handed down: 2 May 2002 Reasons: 5 July 2002</p>	<p>Two amici wanted to adduce evidence in an appeal by the government against an order against it in the High Court. The Court held that a person can be admitted as amicus on the basis of written consent of all parties or on the basis of an application addressed to the Chief Justice. Amici's application to adduce further evidence denied.</p> <p>Judgment of the Court.</p>	Not Reported.
170	<p><i>Minister of Health and others v Treatment Action Campaign and Others (2)</i> CCT 8/02 Handed down: 5 July 2002</p>	<p>Concerned the public health care rights afforded to individuals under the Constitution and the state's obligation to take reasonable measures. Judgment by the Court confirms its obligation to review the state's actions in this regard. Two particular policies were challenged. One which provided Nevirapine to only two locations in the public health sector and for only 2 years and the other which stated that a comprehensive distribution of Nevirapine would only be considered after two years. The Court made a declaratory order defining these two infringements, and outlining the need to use the extra funds made available, to provide for the training of additional counsellors. An order requiring a report-back was not called for</p> <p>Judgment of the Court.</p>	2002 (5) SA 721 (CC); 2002 (10) BCLR 1075
171	<p><i>Van der Spuy v General Council of the Bar of South Africa (Minister of Justice and Constitutional Development, Advocates for Transformation and Law Society of South Africa Intervening)</i> CCT 48/01 Handed down: 18 July 2002</p>	<p>Application for direct access to challenge to the constitutionality of the referral rule which compels advocates to accept work only from attorneys. Langa DCJ wrote for a unanimous Court refusing application for direct access. The Court found that there was no appeal to the Supreme Court of Appeal and that this issue was being addressed by the Legal Practice Bill and it was therefore not in the interests of justice to hear the case.</p> <p>Majority: Langa DCJ (unanimous).</p>	2002 (5) SA 392 (CC); 2002 (10) BCLR 1092 (CC)
172	<p><i>Satchwell v President of the Republic of South Africa and Another</i> CCT 45/01 Handed down: 25 July 2002</p>	<p>A challenge to the constitutionality of s. 8 and s. 9 of the Judges Remuneration and Conditions of Services Act which give benefits to the spouses of judges but not their same sex life partners. It was held that benefits should be afforded to same sex partners of judges where reciprocal duties entailed in a marriage can be shown in the same sex relationship. The Court ordered s. 8 and s. 9 to be read as applying to same sex partners with the above mentioned qualification.</p> <p>Majority: Madala J (unanimous).</p>	2002 (6) SA 1 (CC); 2002 (9) BCLR 986 (CC)

173	<p><i>Du Toit and Another v Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae)</i> CCT 40/01 Handed down: 10 September 2002</p>	<p>Confirmation proceedings for the challenge to the constitutionality of s. 17(a), s.17(c) and 20(1) of the Child Care Act and s. 1(2) of the Guardianship Act which limited adoption rights to married couples. It was held that the provisions discriminate on the grounds of sexual orientation and marital status and infringed dignity. The legislation was also found to infringe the principle of the paramount of a child's best interests.</p> <p>Majority: Skweyiya AJ (unanimous).</p>	<p>2003 (2) SA 198 (CC); 2002 (10) BCLR 1006 (CC)</p>
174	<p><i>Beyers v Eleven Judges of the Constitutional Court</i> CCT 25/02 Handed down: 10 September 2002</p>	<p>Action for damages against the Constitutional Court judges for summary dismissal of previous application for leave to appeal to the Constitutional Court from the Supreme Court of Appeal. Application for direct access and leave for appeal denied by the Court because of no reasonable prospects of success.</p> <p>Judgment of the Court.</p>	<p>2002 (6) SA 630 (CC); 2002 (10) BCLR 1001 (CC)</p>
175	<p><i>United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae) (No 1)</i> CCT 23/02 Handed down: 4 October 2002</p>	<p>A challenge to the validity of two related sets of Acts (the First Amendment Act, Local Government Amendment Act and the Membership Act, Second Amendment Act) which amended the Constitution to permit limited floor crossing in municipal councils, and removed the existing prohibition on floor crossing in the National Assembly and the nine provincial legislatures, and which further amended the Constitution to cater for corresponding changes to the composition of the National Council of Provinces. The decision by the Court emphasised that the Court was not examining the merits of floor-crossing, but deciding whether the amendments to the Constitution complied with s. 74(3) of the Constitution. It was held that floor-crossing at the national, provincial and local government level is not inconsistent with the Constitution as such. However, the Membership Act had not been passed in a reasonable period and was declared unconstitutional.</p> <p>Judgment of the Court.</p>	<p>2003 (1) SA 488 (CC); 2002 (11) BCLR 1179 (CC)</p>
176	<p><i>United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae) (No 2)</i> CCT 23/02 Handed down: 4 October 2002</p>	<p>Challenge to the legislation that was passed to permit 'floor-crossing' on the basis that it infringed s. 19 of the Constitution. It was held that amendments to the Constitution passed in accordance with s. 74 of the Constitution could not be challenged on the grounds of inconsistency with other provisions of the Constitution.</p> <p>Judgment of the Court.</p>	<p>2003 (1) SA 495 (CC); 2002 (11) BCLR 1213 (CC)</p>

177	<i>President of the Republic of South Africa and Others v United Democratic Movement (African Christian Democratic Party and Others Intervening, Institute for Democracy in South Africa and Another as Amici Curiae)</i> CCT 23/02 Handed down: 4 October 2002	This decision gave the Court's reasons for its interim order of 3 and 4 July 2002. The Court found that this case dealt with the important issue concerning whether this Court could suspend the operation of an Act of Parliament. Leave to appeal was granted but time was needed for the parties to prepare full arguments and for intervening parties to submit papers. Judgment of the Court.	2003 (1) SA 472 (CC); 2002 (11) BCLR 1164 (CC)
178	<i>S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)</i> CCT 31/01 Handed down: 9 October 2002	Constitutionality of sections of the Sexual Offences Act which criminalise the sex worker for prostitution. The Court unanimously upheld the constitutionality of the brothel provisions, but split 6-5 with respect to the criminalising of the sex worker for prostitution with the majority finding the provisions constitutional. A minority found that s. 20(1)(aA) brought about indirect unfair discrimination. S. 20(1)(aA) unjustifiably limited both s. 8 and s. 13 of the interim Constitution. Majority: Ngcobo J (Chaskalson CJ, Kriegler J, Madala J, Du Plessis AJ, Skweyiya AJ concurring). Dissent: O'Regan and Sachs JJ (Langa DCJ, Ackermann J, Goldstone J concurring)	2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC)
179	<i>Ex parte Mercer and Another</i> CCT 31/02 Handed down: 28 October 2002	The applicants had been convicted in the magistrate's court of harbouring certain wild animals without a permit in contravention of the Nature and Environmental Conservation Ordinance. They applied directly to the Constitutional Court without waiting for the outcome of the appeal in the High Court. The Court held that, although the matter raised a number of constitutional issues, it would be premature for the Court to hear the matter before the High Court had dealt with it. Application for direct access denied Judgment of the Court.	2003 (1) SA 203 (CC);

180	<p><i>African National Congress and others v United Democratic Movement and Others (Krog and Others Intervening)</i> CCT 43/02 Handed down: 19 November 2002</p>	<p>Judgment relates to an order made by the Court in the floor crossing case extending an earlier freezing order for a further eighteen days. When this period expired five members of the KZN provincial legislature who crossed were replaced. The Court stressed that there has to be finality in litigation otherwise there would be uncertainty in the lower courts. In addition, the Court's power to vary its own order should be used sparingly. Lastly, the judgment found there to be no ambiguity in its order and therefore no need to clarify.</p> <p>Majority: Chaskalson CJ (unanimous)</p>	<p>2003 (1) SA 533 (CC); 2003 (1) BCLR 1 (CC)</p>
181	<p><i>Swartbooi and Others v Brink and Another</i> CCT 27/02 Handed down: 21 November 2002</p>	<p>A challenge to an order by the High Court for members of a municipal council to be personally liable for costs after a successful review application by council. Court granted leave to appeal and determined that the Nala municipality had a material interest in the litigation and should be given the opportunity to be heard.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>2003 (1) BCLR 21 (CC)</p>
182	<p><i>Phoebus Apollo Aviation CC v Minister of Safety and Security</i> CCT 19/02 Handed down: 28 November 2002</p>	<p>Application was dismissed for lack of a constitutional issue. The case dealt with the vicarious liability of the Minister for actions of police officers acting outside the scope of their employment.</p> <p>Majority: Kriegler J (unanimous).</p>	<p>2003 (2) SA 34 (CC); 2003 (1) BCLR 14 (CC)</p>
183	<p><i>National Education Health and Allied Workers Union v University of Cape Town & Others</i> CCT 2/02 Handed down: 6 December 2002</p>	<p>Appeal from the Labour Appeal Court concerning the interpretation of s. 197 of the Labour Relations Act. It was held that that the primary purpose of s. 197 is to protect workers from the loss of employment in the event of a transfer of a business as a going concern. Upon the transfer of a business, the workers are automatically transferred to the new owner without a prior agreement.</p> <p>Majority: Ngcobo J (unanimous).</p>	<p>2003 (3) SA 1 (CC); 2003 (2) BCLR 154 (CC)</p>
184	<p><i>Democratic Alliance and Another v. Masondo NO and Another</i> CCT 29/02 Handed down: 12 December 2002</p>	<p>Appeal against a decision of the High Court concerning the interpretation of s. 160(8) of the Constitution, particularly whether minority parties are entitled to representation on a mayoral committee established under the provisions of the Local Government: Municipal Structures Act. It was held that the mayoral councils as contemplated by the Municipal Structures Act are not committees of the council as contemplated by s. 160 of the Constitution.</p> <p>O'Regan J dissented and argued that if the mayoral committees carry out the constitutional powers and functions of the local government council, then they</p>	<p>2003 (2) SA 413 (CC); 2003 (2) BCLR 128 (CC)</p>

		are committees of that council. Majority: Chaskalson CJ, Langa DCJ, Goldstone J, Kriegler J, Mokgoro J, Ngcobo J, Yacoob J. Separate Concurrence: Sachs J Dissent: O' Regan J	
185	<i>Geuking v President of the Republic of South Africa and Others</i> CCT 35/02 Handed down: 12 December 2002	The applicant challenged the constitutionality of ss 3(2) and 10(2) of the Extradition Act. It was held that s. 3(2) which requires the President's consent to trigger extradition proceedings is not a trial, nor an administrative decision but rather, a policy decision. There were no grounds to attack the decision. It was held that s. 10(2) which provides that the magistrate holding an extradition enquiry must accept a certificate from the appropriate authorities in the foreign state as conclusive proof that they have sufficient evidence to warrant the proposed prosecution does not violate s. 12(1), s. 35(3) nor s. 34 of the Constitution. The provision also does not interfere with the independence of the judiciary nor violate the separation of powers doctrine. Majority: Goldstone J (unanimous).	2003 (3) SA 34 (CC); 2004 (9) BCLR 895 (CC)
186	<i>National Union of Metalworkers of South Africa v Bader Bop (Pty) Ltd and Another</i> CCT 14/02 Handed down: 13 December 2002	An application concerning a minority union's right to strike to persuade an employer to recognise shop stewards. It was held that s. 12-15 of the Labour Relations Act, should not be interpreted so as to preclude minority unions from striking to acquire such rights, where the right to strike is constitutionally protected and there is no express limitation of the right to strike in the Act. Majority: O'Regan J. Separate Concurrence: Ngcobo J.	2003 (3) SA 513 (CC); 2003 (2) BCLR 182 (CC)
187	<i>Bannatyne v Bannatyne (Commission for Gender Equality, as Amicus Curiae)</i> CCT 18/02 Handed down: 20 December 2002	Special leave to appeal was sought and granted against a Supreme Court of Appeal decision setting aside a contempt order for contempt of a maintenance order. It was held that an application to the High Court for process - in - aid by way of contempt proceedings is competent as appropriate relief and when carried out should seek to implement the best interests of the child principle. It was further held that courts should also bear in mind the systemic failures of the maintenance system. Majority: Mokgoro J (unanimous).	2003 (2) SA 363 (CC); 2003 (2) BCLR 111 (CC)

188	<p><i>Phillips and Another v Director of Public Prosecutions, Witwatersrand Local Division, and Others</i> CCT 20/02 Handed down: 11 March 2003</p>	<p>Application for the confirmation of a High Court order declaring s. 160(d) of the Liquor Act unconstitutional. It was held that although the state has a valid interest in reducing the negative consequences of liquor consumption, that interest cannot justify a sweeping curtailment of expression at all types of licensed premises, particularly not at licensed theatres, because these venues are crucial to the free exchange of ideas protected by the Constitution. The order was confirmed.</p> <p>Majority: Chaskalson CJ, Langa DCJ, Goldstone J, Kriegler J, Mokgoro J, O'Regan J, Yacoob J. Separate Concurrences: Ngcobo and Sachs JJ. Dissent: Madala J.</p>	<p>2003 (3) SA 345 (CC); 2003 (4) BCLR 357 (CC)</p>
189	<p><i>Satchwell v President of South Africa and Another</i> CCT 48/02 Handed down: 17 March 2003</p>	<p>Applicant had obtained a previous order of constitutional invalidity of regulations of the Judges' Remuneration and Conditions of Employment Act. However these regulations were replaced by new regulations which were substantially the same. The court ordered that the words "or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support" be read into the regulations.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2003 (4) SA 266 (CC); 2004 (1) BCLR 1 (CC)</p>
190	<p><i>J and Another v Director General, Department of Home Affairs and Others</i> CCT 46/02 Handed down: 28 March 2003</p>	<p>Application for confirmation of the order of the High Court declaring s. 5 of the Children's Status to be unconstitutional. It was held that the section violated the right to equality as it allowed for married couples to become joint parents of a child born to them as a result of artificial insemination, but it did not allow same-sex partners to become joint parents to a similarly born child. The Court confirmed that s. 5 of the Act inconsistent with the Constitution and orders that it should be read to provide the same status to children born from artificial insemination to same-sex permanent life partners as it currently provides to such children born to heterosexual married couples.</p> <p>Majority: Goldstone J (unanimous).</p>	<p>2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC)</p>
191	<p><i>National Director of Public Prosecutions and Another v Mohamed NO and Others</i> CCT 44/02 Handed down: 3 April 2003</p>	<p>Application for leave to appeal a decision by the High Court declaring s. 38 of the Prevention of Organised Crime Act unconstitutional in as far as it infringed the right to a fair trial. Held, the section did not infringe the audi alteram partem rule because it allowed for a rule nisi to be granted where the presiding judge found it to be necessary. Confirmation of order declined.</p> <p>Majority: Ackermann J (unanimous).</p>	<p>2003 (4) SA 1 (CC); 2003 (5) BCLR 476 (CC)</p>

192	<p><i>Swartbooi and Others v Brink and Others</i> CCT 27/02 Handed down: 3 April 2003</p>	<p>Application for leave to appeal against the refusal of an application for leave to appeal by the Supreme Court of Appeal. Appellants based their application on rule 20 on the understanding that they were seeking leave to appeal against the order of the SCA. Held that when the SCA refused to grant leave to appeal in any case, the appeal to this Court was not an appeal against that refusal of leave to appeal to it but an appeal against the High Court decision itself, governed by rule 18.</p> <p>Majority: Yacoob J (unanimous).</p>	2003 (5) BCLR 497 (CC)
193	<p><i>Swartbooi and Others v Brink and Another (2)</i> CCT 27/02 Handed down: 3 April 2003</p>	<p>Application for leave to appeal a High Court decision which had ordered the members of a local council to be personally liable for their costs. It was held that s. 28(1)(b) of the Local Government: Municipal Structures Act applied to the liability of members of a local council. Costs should not be determined according to common law rules that provide for personal liability for costs of people acting in a representative capacity if their actions are motivated by malice or amount to improper conduct. S 28(1)(b) exempts municipal councillors from, amongst other things, being liable to civil proceedings for anything that they have said in, produced before or submitted to the council. The appeal was upheld.</p> <p>Majority: Yacoob J (unanimous).</p>	2006 (1) SA 203 (CC); 2003 (5) BCLR 502 (CC)
194	<p><i>Xinwa and Others v Volkswagen of South Africa (Pty) Ltd</i> CCT 3/03 Handed down: 4 April 2003</p>	<p>Application for leave to appeal against Labour Appeal Court decision. Though the application was not, on its face, an application for leave to appeal, it was construed as such. It was an application for an order declaring that the dismissal of the applicants was procedurally unfair and for an order of reinstatement and compensation. The facts indicate that the dismissal of the workers was not procedurally unfair. The applications were dismissed.</p> <p>Judgment of the Court.</p>	2003 (4) SA 390 (CC); 2003 (6) BCLR 575 (CC)
195	<p><i>Wallach v High Court of South Africa, Witwatersrand Local Division, and Others</i> CCT 2/03 Handed down: 4 April 2003</p>	<p>Application for direct access was denied on the basis that an incorrect procedure was followed. It was held further that the interpretation and application of the Insolvency Act is not a matter for this Court as a court of first and last instance.</p> <p>Judgment of the Court.</p>	2003 (5) SA 273 (CC)

196	<p><i>Ingledeu v Financial Services Board: In re Financial Services Board v Van der Merwe and Another</i> CCT 6/02 Handed down: 13 May 2003</p>	<p>Application for leave to appeal against High Court decision. The applicant relied on s. 32 of the Constitution to gain access to the record of investigation when he was sued by the Financial Services Board under the Insider Trading Act. It was held, that it was not in the interests of justice to grant the application for leave to appeal because the applicant would not be prejudiced if he did not get the information required at that stage of the proceedings. Application for leave to appeal was dismissed.</p> <p>Majority: Ngcobo J (unanimous).</p>	<p>2003 (4) SA 584 (CC); 2003 (8) BCLR 825 (CC)</p>
197	<p><i>S v Shongwe</i> CCT 45/02 Handed down: 30 May 2003</p>	<p>Application for direct access to appeal against his conviction by the High Court. Held, it is impermissible to use the rule 17 procedure for appeals. Rule 17 is a procedure for gaining access to this Court directly, ordinarily in circumstances where the issue raised has not been considered by another court. It may be employed in exceptional circumstances only. It is not an appeal procedure, nor may it be used for disguised appeals. The application was dismissed.</p> <p>Judgment of the Court.</p>	<p>2003 (5) SA 276 (CC); 2003 (8) BCLR 858(CC)</p>
198	<p><i>Minister of Home Affairs v Eisenberg & Associates: In re Eisenberg & Associates v Minister of Home Affairs and Others</i> CCT 15/03 Handed down: 27 June 2003</p>	<p>Application challenging legality of powers of the Minister of Home Affairs to make regulations in terms of the Immigration Act, whilst Immigration Advisory Board not yet constituted, on grounds that he had made these regulations without complying with the public notice and comment procedures prescribed by the Act. The High Court had declared such regulations invalid. It was held that the Minister complied with the requirements set out in s. 4 of the Promotion of Administrative Justice Act. The declaration of invalidity of regulations set aside as Minister did have the power to make such regulations whilst the Board had not yet been constituted. Appeal upheld.</p> <p>Majority: Chaskalson CJ (unanimous).</p>	<p>2003 (5) SA 281 (CC); 2003 (8) BCLR 838 (CC)</p>
199	<p><i>Fourie and Another v Minister of Home Affairs and Another</i> CCT 25/03 Handed down: 31 July 2003</p>	<p>Application for leave to appeal directly to the Court. Partners in a permanent same-sex relationship sought a declaratory order that the 'marriage' between them was legally binding in terms of the Marriage Act and an order directing that their relationship be registered as a marriage in terms of the Marriage Act and Identification Act. The High Court dismissed the application. The applicant then applied to this Court directly. The application was dismissed and the applicants were ordered to appeal to the Supreme Court of Appeal because the matter raises complex questions relating to our common law.</p> <p>Majority: Moseneke J (unanimous).</p>	<p>2003 (5) SA 301 (CC); 2003 (10) BCLR 1092 (CC)</p>

200	<p><i>S v Thebus and Another</i> CCT 36/02 Handed down: 28 August 2003</p>	<p>Application for leave to appeal against a Supreme Court of Appeal decision concerning the constitutionality of the common purpose doctrine. It was held: firstly, common purpose neither amounts to an arbitrary deprivation of freedom, nor trenches the right to be presumed innocent. Therefore, the doctrine is not unconstitutional. Secondly, the pre-trial right to silence under s. 35(1)(a) must be distinguished from the right to silence during trial protected by s. 35(3)(h). The application was dismissed.</p> <p>Majority: Moseneke J (unanimous on the issue of the constitutionality of the common purpose doctrine); (Chaskalson CJ and Madala J concurring on the right to silence). Separate concurrences: Yacoob J; Ngcobo J (Langa DCJ concurring). Dissent: O'Regan J and Goldstone J on the right to silence (Ackermann and Mokgoro JJ concurring).</p>	<p>2003 (6) SA 505 (CC); 2003 (10) BCLR 1100 (CC)</p>
201	<p><i>Ex Parte Omar</i> CCT 32/03 Handed down: 11 September 2003</p>	<p>Application for direct access seeking an order declaring s. 8 of the Domestic Violence Act invalid. It was held that an application for direct access to consider a challenge to the constitutionality of legislation where the minister responsible for the legislation is not a party to the application will not be granted. Furthermore, although the applicant raises important constitutional issues, this is not an appropriate case for the Court to determine the constitutional issues without the matter being entertained first by the High Court. Application for direct access refused.</p> <p>Judgment of the Court.</p>	<p>2006 (2) SA 284 (CC); 2003 (10) BCLR 1087 (CC)</p>
202	<p><i>Head of Department, Department of Education, Limpopo Province v Settlers Agricultural High School and Others</i> CCT 36/03 Handed down: 2 October 2003</p>	<p>Application for leave to appeal from an order of the High Court. The application was dismissed on the grounds that it would not be in the interests of justice to condone the long delay in lodging the appeal. The application was dismissed with costs.</p> <p>Judgment of the Court.</p>	<p>2003 (11) BCLR 1212 (CC)</p>
203	<p><i>Phenithi v Minister of Education and Others</i> CCT 35/03 Handed down: 06 October 2003</p>	<p>Application for direct access to the Court to have parts of ss. 14(1) and 14(2) of the Employment of Educators Act declared unconstitutional and invalid. It was held that the applicant had given no reasons for the delay of 18 months before she applied to the Court and factual disputes in the case would best be decided by the High Court. The application was dismissed.</p> <p>Judgment of the Court.</p>	<p>2003 (11) BCLR 1217 (CC)</p>

204	<p><i>Gcali v MEC for Housing and Local Government in the Eastern Cape and Others</i> CCT 29/03 Handed down: 06 October 2003</p>	<p>Application for direct access under the provisions of s. 167(6)(a) of the Constitution read with rule 7. It was held that the application for direct access is in fact a disguised application for leave to appeal against the three judgments of the High Court. Applicant should first appeal against the orders he challenges, in the High Court and the Supreme Court of Appeal, since the issues raised are matters which should normally be disposed of in these courts before approaching this Court. The application was dismissed.</p> <p>Judgment of the Court.</p>	2003 (11) BCLR 1203 (CC)
205	<p><i>Alexkor Ltd and Another v The Richtersveld Community and Others</i> CCT 19/03 Handed down: 14 October 2003</p>	<p>Application for leave to appeal Supreme Court of Appeal decision relating to community claim to land and natural resources. Held, contrary to the submissions of the Applicant, the Court had jurisdiction to hear the matter. Further, the case raised a constitutional matter because it involved the interpretation and application of the Restitution of Land Rights Act which gives effect to a constitutional right. Held, on the facts, not disputed by the applicant, the respondent was dispossessed after 1913 due to the racially-discriminating practices. The Court largely confirmed the Supreme Court of Appeal order, holding in the Respondent's favour all three issues raised by the Applicant.</p> <p>Judgment of the Court.</p>	2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC)
206	<p><i>De Reuck v Director of Public Prosecutions, Witwatersrand Local Division, and Others</i> CCT 5/03 Handed down: 15 October 2003</p>	<p>Application for leave to appeal a decision of the High Court in which the Applicant was found guilty of importing and possessing child pornography in terms of s. 27(1) of the Films and Publications Act. It was held that the section constitutes a law of general application and the limitation of the rights claimed (freedom of expression and privacy) is reasonable and justifiable in that a person is allowed to possess child pornography should the Films and Publication Board grant an exemption on the basis of a good cause in that respect. It was further held that child pornography does not consist of all depictions of a nude child, but rather those that stimulate erotic feeling, not aesthetic feeling, the test being an objective one. The limitation serves a legitimate purpose, viz. protecting the dignity of children, stamping out the market for photographs made by abusing children and preventing a reasonable risk that the images will be used to harm children. The appeal was dismissed.</p> <p>Majority: Langa DCJ (unanimous).</p>	2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC)

207	<p><i>Wallach v Registrar of Deeds (Pretoria) and Others; Wallach v Spilg and Others</i> CCT 33/03; 45/03 Handed down: 14 November 2003</p>	<p>Two applications for direct access brought by the same applicant, dealt with in single judgment of the Court. The first was a constitutional challenge to provisions of the Insolvency Act. The second related to a High Court order ejecting the applicant from certain immovable property. These applications raised issues already dealt with by this Court in a previous application for direct access by the same applicant. The applications for direct access were denied with costs.</p> <p>Judgment of the Court.</p>	2004 (3) BCLR 229 (CC)
208	<p><i>Western Cape Workers Association v Halgang Properties CC</i> CCT 44/03 Handed down: 14 November 2003</p>	<p>Application for special leave to appeal decision of the Labour Appeal Court. The application as dismissed as it was not in the interest of justice to grant leave to appeal.</p> <p>Judgment of the Court.</p>	2004 (3) BCLR 237 (CC)
209	<p><i>Van der Westhuizen v S</i> CCT 60/03 Handed down: 24 November 2003</p>	<p>Applicant sought direct access for the grant of bail. The application was dismissed as it was not in the interest of justice to grant the application.</p> <p>Judgment of the Court.</p>	2004 (2) BCLR 117 (CC)
210	<p><i>S v Mercer</i> CCT 43/03 Handed down: 24 November 2003</p>	<p>Application for leave to appeal High Court decision confirming applicant's conviction of contravening provisions of the Nature and Environmental Conservation Ordinance of 1974 (Cape) and challenging the constitutionality of the Ordinance. Also challenging the constitutionality of Ordinance of 1957. Held, Ordinance of 1957 not considered by the High Court and challenge to Ordinance of 1974 inchoate. Applicant also sought to have the decision of the Northern Cape Nature Conservation Services denying him a permit to keep caracal set aside. Held that this was not an appropriate matter to be raised under the guise of a criminal appeal and that the correct procedure would be to seek the review of that decision in the High Court. Held, on the record, that the institution of the prosecution under Ordinance of 1974 was not unconstitutional, unlawful or unfair. The application for condonation dismissed because the applicant has no prospects of success.</p> <p>Judgment of the Court.</p>	2004 (2) SA 598 (CC); 2004 (2) BCLR 109 (CC)

211	<p><i>Municipality of Plettenberg Bay v Van Dyk & Co Inc</i> CCT 42/03 Handed down: 24 November 2003</p>	<p>Application for leave to appeal a decision of the High Court. It was held that the applicant deliberately chose not to comply with rule 18(2). Further, held that this was not a case in which there had been a serious infringement of a fundamental right. There was no obstacle in the way of the applicant complying with the rule, nor any urgency which required the applicant to launch its application without doing so. Application dismissed with costs.</p> <p>Judgment of the Court.</p>	2004 (2) BCLR 113 (CC)
212	<p><i>Shaik v Minister of Justice and Constitutional Development and Others</i> CCT 34/03 Handed down: 02 December.2003</p>	<p>Application for leave to appeal High Court decision of constitutionality of s. 28(6) of the National Prosecuting Authority Act, in that the provision violates the applicant's rights to silence in terms of s. 35(1)(a) of the Constitution. It was held that the reference to "any person" in s. 28 does not apply to accused persons, therefore the applicant would not benefit from a ruling by this Court. Further that the applicant challenged the wrong section of the Act, by challenging s. 28(6) instead of s. 28(8). It was held that it was not in the interest of justice to grant the application for leave to appeal.</p> <p>Majority: Ackermann J (unanimous).</p>	2004 (3) SA 599 (CC); 2004 (4) BCLR 333 (CC)
213	<p><i>Minister of Home Affairs v National Institute for Crime Prevention and the Re-integration of Offenders (NICRO) and Others</i> CCT 03/04 Handed down: 03 March 2004</p>	<p>Urgent application to declare unconstitutional and invalid s. 8(2)(f) and s. 24B of the Electoral Act to the extent that these provisions disenfranchise persons serving a sentence of imprisonment without the option of a fine. The majority held that any limitation of the right to vote must be supported by clear and convincing reasons. Held, these provisions are inconsistent with the Constitution and invalid as the provisions deprive prisoners serving sentences of imprisonment without the option of a fine of the right to register and vote in the upcoming elections. The Electoral Commission ordered to ensure that all prisoners, who are entitled to vote, following the declaration of invalidity of the various sections of the Electoral Act, are afforded a reasonable opportunity to register as voters for, and to vote in, the forthcoming general election in April 2004. The application was upheld.</p> <p>Majority: Chaskalson CJ (Langa DCJ; Mokgoro J; Moseneke J; O'Regan J; Sachs J; Skweyiya J; Van der Westhuizen J and Yacoob J concurring) Dissents: Ngcobo J, Madala J.</p>	2005 (3) SA 280 (CC); 2004 (5) BCLR 445 (CC)

214	<p><i>Khosa and Others v Minister of Social Development and Others; Mahlaule and Others v Minister of Social Development and Others.</i> CCT 12/03;13/03 Handed down: 04 March 2004</p>	<p>Application for an order confirming the constitutional invalidity of certain provisions of the Social Assistance Act. The challenged sections disqualified persons who are not South African citizens from a social grant. Applicants were permanent residents. The majority held that the Constitution vests the right to social security in "everyone" and that permanent residents are bearers of this right. The exclusion of permanent residents from the welfare scheme is not a reasonable way to achieve the realisation of the right to social security and as such is discriminatory and unfair and infringes the right to equality. Order confirmed.</p> <p>Majority: Mokgoro J (Chaskalson CJ, Langa DCJ, Goldstone J, Moseneke J, O'Regan J and Yacoob J concurring). Dissent: Ngcobo J (Madala J concurring).</p>	<p>2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC)</p>
215	<p><i>S v Basson</i> CCT 30/03 Handed down: 10 March 2003</p>	<p>Application for firstly, leave to appeal directly to this Court against the judgment of the High court in that it was vitiated by bias and secondly, leave to appeal against the Supreme Court of Appeal decision dismissing an application for the reservation of questions of law. The majority dismissed the first application. On the second application it was held that the grounds of appeal upon which the application is based all raise constitutional matters or issues connected with decisions on constitutional matters. It was held, the Court would not decide whether it is in the interests of justice for the application for special leave to appeal to be granted as further directions will be given by the Chief Justice for the further disposal of the application for leave to appeal.</p> <p>Majority: Ackermann Madala Mokgoro, Moseneke, Ngcobo and O'Regan JJ. Separate Concurrence: Sachs J. Dissent: Chaskalson CJ (Langa DCJ and Yacoob J concurring).</p>	<p>2005 (1) SA 171 (CC); 2004 (6) BCLR 620 (CC)</p>
216	<p><i>Lawyers for Human Rights and Another v Minister of Home Affairs and Another</i> CCT 18/03 Handed down: 9 March 2004</p>	<p>Application for confirmation of declaration of invalidity of sections of the Immigration Act by the High Court dealing with the treatment of illegal foreigners at ports of entry pending their removal from the Republic. The Court rejected the argument that illegal foreigners who were not formally in the country could not be beneficiaries of the Constitution. It was held that s. 34(8) did limit the rights of illegal foreigners but it was justifiable. Held further however, that s. 34 was inconsistent with the Constitution because it did not provide for a court to confirm a detention on a vehicle if the detention lasted more than thirty days. It was held further that the failure to grant to a person detained on a vehicle the right to be released within forty eight hours was a justifiable limitation of the right to freedom. The</p>	<p>2004 (4) SA 125 (CC); 2004 (7) BCLR 775 (CC)</p>

		<p>appeal is upheld and the High Court order set aside and replaced.</p> <p>Majority: Yacoob J (Chaskalson CJ, Langa DCJ, Ackermann J, Goldstone J, Mokgoro J, Ngcobo J, O'Regan J, Sachs J concurring). Dissent: Madala J (Moseneke J concurring).</p>	
217	<p><i>Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others</i> CCT 27/03 Handed down: 10 March 2004</p>	<p>Application for special leave to appeal against a judgment of the Supreme Court of Appeal concerning the allocation of fishing quotas in the deep-sea hake trawl sector of the fishing industry. The applicant, dissatisfied with the allocation it received in the 2001 allocation process, sought to review that decision on the grounds of unreasonableness, failure to apply the mind and undisclosed policy change. It succeeded in the High Court but the decision was overturned by the Supreme Court of Appeal. The applicant then approached the Court.</p> <p>The Court held that courts' powers to review administrative action no longer flow directly from the common law, but from the Promotion of Administrative Justice Act (PAJA) which derived its force from the Constitution. The Court held that the provisions of PAJA should be directly relied upon by applicants seeking review of administrative action. All three grounds of appeal were rejected. The appeal was dismissed with costs.</p> <p>Majority: O'Regan J (unanimous). Separate Concurrence: Ngcobo J (unanimous).</p>	<p>2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC)</p>
218	<p><i>Daniels v Campbell NO and Others</i> CCT 40/03 Handed down: 11 March 2004</p>	<p>This matter concerned an application for confirmation of an order made by the Cape High Court declaring certain provisions of the Intestate Succession Act and Maintenance of Surviving Spouses Act unconstitutional for failing to include persons married according to Muslim rights as 'spouses' and 'survivors'. Sachs J held that the word 'spouse' and 'survivor' included parties to a monogamous Muslim marriage for the purposes of these Acts. So interpreted the Acts were not invalid or unconstitutional.</p> <p>Ngcobo J, concurring, held that legislation must be read in a manner that gives effect to the values of our constitutional democracy in terms of section 39(2) of the Constitution. Moseneke J and Madala J held that the word 'spouse' has a specific and settled meaning in our law, and must refer to a party married in accordance with the Marriage Act. The exclusion of people married under Muslim rites from the protection of the Acts in question is unjustifiably discriminatory. Moseneke J concluded that the declaration of constitutional invalidity should have been confirmed.</p> <p>Majority: Sachs J (Chaskalson CJ, Langa DCJ,</p>	<p>2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC)</p>

		Ackermann J, Mokgoro J, Ngcobo J, O'Regan J, Yacoob J concurring). Separate Concurrence: Ngcobo J (Chaskalson CJ, Langa DCJ, Ackermann J, Mokgoro J, O'Regan J, Sachs J, Yacoob J concurring). Dissent: Moseneke J (Madala J concurring).	
219	<i>Liberal Party v The Electoral Commission and Others</i> CCT 10/04 Handed down: 5 April 2004	An urgent application was brought seeking direct access to this Court to appeal against a decision of the Electoral Court. The matter concerned failure to comply with s.28 of the Electoral Act. The Court dismissed the application for direct access and for leave to appeal. Judgment of the Court.	2004 (8) BCLR 810 (CC)
220	<i>Western Areas Ltd and Others v S</i> CCT 04/04 Handed down: 5 April 2004	Application for 'conditional' leave to appeal to this Court against an order of the High Court dismissing their objection to indictment in terms of s. 319 of the Criminal Procedure Act. The applicants sought leave to appeal to this Court, conditional upon a refusal by the Supreme Court of Appeal to consider the appeal on its merits. Application for 'conditional' leave to appeal was dismissed. Judgment of the Court	2004 (8) BCLR 819 (CC)
221	<i>Dudley v City of Cape Town and Another</i> CCT 5/04 Handed down: 20 May 2004	Application for leave to appeal directly from the Labour Court. The Court held that it would benefit from the views of the Labour Appeal Court. Leave to appeal directly to the Court was refused however the applicant was not precluded from approaching the Court later, once the appellate court had disposed of the matter. Judgment of the Court	2005 (5) SA 429 (CC); 2004 (8) BCLR 805 (CC)
222	<i>Minister of Finance and Another v Van Heerden</i> CCT 63/03 Handed down: 29 July 2004	Application for leave to appeal against a High Court decision which challenged the constitutional validity of Rule 4.2.1 of the Political Office-Bearers Pension Fund. This rule provided for lower employer contribution rates in respect of a certain category of parliamentarians. The issue before the Court was whether this rule was unconstitutional for being discriminatory and offending equality rights. It was held: that the constitutional understanding of equality included remedial or restitutionary equality. Legislative and other measures that fall within the requirements of s. 9(1) and (2) of the Constitution were not presumptively unfair and remedial measures form a substantive and composite part of equality protection envisaged under the Constitution. The Court granted leave to appeal, the appeal was upheld and the order of the High Court declaring	2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC)

		<p>Rule 4.2.1 unconstitutional and invalid was set aside.</p> <p>Majority: Moseneke J (Chaskalson CJ, Langa DCJ, Madala J, O'Regan J, Sachs J, Van der Westhuizen J, Yacoob J).</p> <p>Separate Concurrences: Mokgoro J (Sachs J, Skweyiya J concurring), Ngcobo J (Sachs J concurring), Sachs J.</p>	
223	<p><i>Kaunda and Others v The President of the Republic of South Africa and Others</i> CCT 23/04 Handed down: 4 August 2004</p>	<p>A direct appeal against a judgment of the Pretoria High Court. The applicants were South African citizens held in Zimbabwe on various charges. They sought an order compelling the government to take urgent steps, including diplomatic representations on their behalf to the Zimbabwean and Equatorial Guinean governments</p> <p>Chaskalson CJ held that in terms of s. 3 of the Constitution, South African citizens are entitled to request the government of South Africa for protection under international law against wrongful acts of a foreign state. In this case the Court found that the government's approach was not inconsistent with international law or the Constitution. The appeal was accordingly dismissed.</p> <p>O'Regan J argued that the State bore an obligation to take steps to seek to protect the applicants against the conduct of other States that might amount to a fundamental breach of the human rights of the applicants as recognised in international customary law and the African Charter on Human and People's Rights.</p> <p>Majority: Chaskalson CJ(Langa DCJ, Moseneke J, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring).</p> <p>Separate concurrences: Ngcobo J, Sachs J. Dissent: O'Regan J (Mokgoro J concurring).</p>	<p>2005 (4) SA 235 (CC); 2004 (10) BCLR 1009 (CC)</p>
224	<p><i>Mashaaha v The President of the Republic of South Africa and Others</i> CCT 67/03 Handed down: 6 September 2004</p>	<p>Confirmation proceedings concerning whether Presidential Proclamation Rule 7 of 1996, which purported to assign the administration of most of the Social Assistance Act (South African Airways) to provincial governments, was consistent with the interim Constitution. It was held that the administration of South African Airways fell within s. 126(3) of the interim Constitution, because it was not a matter that could be regulated effectively by provincial legislation but instead required minimum standards across the nation. Thus, in terms of s. 235(6), the matter was not capable of being assigned to the provinces. The High Court order of invalidity was confirmed.</p> <p>Majority: Van der Westhuizen J (unanimous).</p>	<p>2005 (2) SA 476 (CC); 2004 (12) BCLR 1243 (CC)</p>

225	<p><i>Port Elizabeth Municipality v Various Occupiers</i> CCT 53/03 Handed down: 1 October 2004</p>	<p>Application concerning the State's obligations under s. 26(3) of the Constitution where it attempts to evict shack-dwellers from privately-owned land. It was held that s. 26(3) permits evictions from homes only where authorised by a court order, made after considering all the circumstances. The PIE Act provides in s. 6 for circumstances in which a municipality may apply to evict unlawful occupiers. A court may only authorise eviction if it is just and equitable. Although municipalities are not under a duty to provide alternative accommodation or land in every case, its failure to take all reasonable steps to do so is an important consideration in deciding what was just and equitable. On the facts, it was not just and equitable to grant the eviction order.</p> <p>Majority: Sachs J (unanimous).</p>	<p>2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC)</p>
226	<p><i>Mabaso v Law Society of the Northern Provinces and Another</i> CCT 76/03 Handed down: 5 October 2004</p>	<p>Constitutional challenge to s. 20 of the Attorneys Act and an appeal against the SCA's refusal to condone late filing of the record. S. 20 provided a short-cut procedure for the enrolment in one province of attorneys previously admitted "under this Act" in another province, but denied that benefit to attorneys previously admitted in the "homelands". On the procedural question, it was held that such applications are now governed by Rule 19, and should be brought against the prior High Court decision, not the SCA decision that merely refused condonation. On the substantive question, s. 20 was held to discriminate unfairly against "homelands" attorneys, contrary to s. 9 of the Constitution. Words were read in to remedy the defect.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2005 (2) SA 117 (CC); 2005 (2) BCLR 129 (CC)</p>
227	<p><i>Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bisset and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v Gauteng MEC for Local Government and Housing and Others</i> CCT 57/03; CCT 61/03; CCT 01/04 Handed down: 6 October 2004</p>	<p>Confirmation proceedings concerning the constitutionality of s. 118(1) of the Local Government: Municipal Systems Act and s. 50(1) (a) of the Gauteng Local Government Ordinance, both of which precluded transfer of immovable property unless all electricity and water charges owing to a municipality by its occupiers, including non-owner occupiers, for a specified period were paid. It was held that these provisions amounted to a deprivation of property under s. 25(1) of the Constitution, but that the deprivation was not arbitrary, for they had the important purposes of encouraging both payment and a sense of civic responsibility. The provisions were also held not to infringe ss. 9, 26, and 34 of the Constitution.</p> <p>Majority: Yacoob J (Chaskalson CJ, Langa DCJ, Madala J, Moseneke J, Ngcobo J, Skweyiya J and Van der Westhuizen J) Separate Concurrences: O'Regan J (Mokgoro J concurring), Sachs J.</p>	<p>2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC)</p>

228	<p><i>Jaftha v Schoeman and Others; Van Rooyen v Stoltz & Others</i> CCT 74/03 Handed down: 8 October 2004</p>	<p>Constitutional challenge under s. 26 of the Constitution to ss. 66(1)(a) and 67 of the Magistrates' Courts Act, which allow creditors to execute against their judgment debtor's immovable property. It was held that any measure which removes from people their access to adequate housing limits their s. 26 right. The process of execution against immovable property is unconstitutional to the extent that it allows for sales in execution of people's homes in circumstances where that is unjustifiable all-things-considered. The appropriate remedy is to provide for compulsory judicial oversight of the execution process. Words were read in to the Act to reflect this.</p> <p>Majority: Mokgoro J (unanimous).</p>	<p>2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC)</p>
229	<p><i>Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another</i> CCT 49/03; CCT 69/03; CCT 50/03 Handed down: 15 October 2004</p>	<p>Confirmation proceedings and an application for direct access concerning the constitutionality of the system of male primogeniture in African customary law, as well as of certain provisions of the Black Administration Act and its regulations which regulated intestate succession for black estates. The impugned customary rule and legislative provisions were held to be unfairly discriminatory, contrary to ss. 9(3) and 10 of the Constitution. Both the substantive rules governing inheritance and the procedures whereby the estates of black people were treated differently were struck down. From thenceforth, estates that would previously have devolved in terms of the unconstitutional regime were held to devolve in terms of the rules set out in the Intestate Succession Act. Special provision was made in the order for polygamous unions.</p> <p>Majority: Langa DCJ (Chaskalson CJ, Madala J, Mokgoro J, Moseneke J, O'Regan J, Sachs J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring). Dissent: Ngcobo J.</p>	<p>2005 (1) SA 563 (CC); 2005 (1) BCLR 1 (CC)</p>
230	<p><i>Zondi v MEC for Traditional and Local Government Affairs and Others</i> CCT 73/03 Handed down: 15 October 2004</p>	<p>Confirmation proceedings concerning the constitutionality of certain provisions of the Pound Ordinance (KwaZulu-Natal), which empowered landowners and pound-keepers to seize and impound livestock found trespassing on land, and to sell the impounded animals to recover fees without a court order. The scheme was held to infringe ss 9(3) and 34 of the Constitution. In particular, it was held to discriminate unfairly against landless black persons. The declaration of invalidity was partially suspended and interim protective measures were put in place.</p> <p>Majority: Ngcobo J (unanimous).</p>	<p>2005 (3) SA 589 (CC); 2005 (4) BCLR 347 (CC)</p>

231	<p><i>Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others</i> CCT 56/03 Handed down: 26 November 2004</p>	<p>Application concerning what legal duties to ensure the safety and security of rail commuters bind certain organs of state, namely, Metrorail and the South African Rail Commuter Corporation (SARCC), which were created under the Legal Succession to the South African Transport Services Act and are statutorily mandated to provide a nationwide train service but simultaneously are entitled to pursue a profit. It was held that, although Metrorail and the SARCC disclaimed such duties arguing that they bound only the police, they nevertheless had a legal responsibility to take reasonable steps to fill the policing void by providing for the security of rail commuters.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC)</p>
232	<p><i>City of Cape Town and Another v Robertson and Another</i> CCT 19/04 Handed down: 29 November 2004</p>	<p>Confirmation proceedings and an application for leave to appeal against a decision of the High Court declaring the provisional valuation roll of the Cape Metropolitan Area invalid. The validity of the provisional valuation roll was challenged on three grounds. First, that the Property Valuation Ordinance is not a law in force and therefore the City could not rely on it for levying rates. Second, that in any case, the City could not impose rates because it was not a local authority as described by the Ordinance. And third, that there was no other law empowering the City to charge property rates based on a provisional valuation roll. The Court held that the Constitution authorized municipalities to impose property rates and ordered that the decision of the High Court be set aside.</p> <p>Majority: Moseneke J (unanimous).</p>	<p>2005 (2) SA 323 (CC); 2005 (3) BCLR 199 (CC)</p>
233	<p><i>Director of Public Prosecutions, Cape of Good Hope v Robinson</i> CCT 15/04 Handed down: 2 December 2004</p>	<p>Application for leave to appeal against a decision of the High Court. The respondent had been convicted of sexual assault in Canada but fled to South Africa immediately after his conviction and was sentenced in his absence. The magistrate found that he was liable for surrender to Canada in terms of s 10 of the Extradition Act. The High Court upheld his appeal against this decision and found that his right to a fair trial had been violated as a result of being sentenced in his absence.</p> <p>The Court re-instated the order of the magistrate and held that the respondent was liable for surrender. The magistrate had to decide whether the respondent was convicted of an extraditable offence. The power to decide whether there was a violation of the constitutional rights of the person sought to be surrendered vested with the Minister responsible for Justice.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>2005 (4) SA 1 (CC); 2005 (2) BCLR 103 (CC)</p>

234	<p><i>Radio Pretoria v Chairperson, Independent Communications Authority of South Africa, and Another</i> CCT 38/04 Handed down: 8 December 2004</p>	<p>Application for leave to appeal against a decision of the Supreme Court of Appeal. The applicant sought the review of a decision of the Independent Communications Authority not to grant it a 1-year temporary licence and a 4-year broadcast licence. The applicant contended that the Supreme Court of Appeal's decision violated its rights to equality, freedom of expression, access to courts, just administrative action and appropriate relief. The Court held that the question of the temporary licence was moot since the licence had long expired and held that the question of the 4-year licence was not properly before the Court as review proceedings had not commenced. The Court refused leave to appeal.</p> <p>Judgment of the Court.</p>	2005 (4) SA 319; 2005 (3) BCLR 231 (CC)
235	<p><i>S v Jaipal</i> CCT 21/04 Handed down: 18 February 2005</p>	<p>Application for leave to appeal against a decision of the Supreme Court of Appeal.</p> <p>The applicant claimed that his conviction on one count of murder in the High Court had been vitiated by irregularities in his trial proceedings, and his right to a fair trial in terms of s. 35(3) of the Constitution had been breached. The Court held that while the applicant's trial had indeed been irregular, these irregularities did not result in an unfair trial. Van der Westhuizen J warned that limited resources must not be allowed to compromise constitutional rights to fair trial. The application for leave to appeal was allowed and the appeal dismissed.</p> <p>Majority: Van der Westhuizen J (unanimous).</p>	2005 (4) SA 581 (CC); 2005 (5) BCLR 423 (CC)
236	<p><i>Volks NO v Robinson and Others</i> CCT 12/04 Handed down: 21 February 2005</p>	<p>Confirmation proceedings and appeal against a decision of the High Court which found that the exclusion of permanent life partners from the Maintenance of Surviving Spouses Act to be in violation of the rights to equality and dignity, and thus unconstitutional.</p> <p>Skweyiya J writing for the majority found that the distinction between married and unmarried people was not unfair as there is a reciprocal duty of support between married persons, and the law imposes no such duty upon unmarried persons. He found that the differentiation did not amount to unfair discrimination, and did not violate the dignity of surviving partners of life partnerships.</p> <p>Sachs J in a dissent found that the critical question was whether there was a family relationship of such proximity and intensity as to render it unfair to deny the right to claim maintenance after death.</p> <p>Mokgoro J and O'Regan J in a joint dissent found the provisions to constitute unfair discrimination on the ground of marital status.</p> <p>Majority: Skweyiya J (Chaskalson CJ, Langa DCJ, Moseneke J, Van der Westhuizen J, Yacoob J concurring)</p>	2005 (5) BCLR 446 (CC)

		<p>Separate Concurrences: Ngcobo J (Chaskalson CJ, Langa DCJ, Moseneke J, Van der Westhuizen J, Yacoob J concurring)</p> <p>Dissent: Mokgoro and O'Regan JJ, Sachs J.</p>	
237	<p><i>Affordable Medicines Trust and Others v Minister of Health and Others</i> CCT 27/04 Handed down: 11 March 2005</p>	<p>Application for leave to appeal against decision of the High Court dismissing a challenge to the constitutionality of a licensing scheme introduced by the State. The scheme, set up by the Medicines and Related Substances Act and regulations made under that Act, sought to regulate the dispensing of medicines by health care providers such as dentists and medical practitioners. Such health care providers had to be licensed to dispense medicines.</p> <p>The applicants challenged the constitutionality of s. 22C(1)(a) of the Act, and regulations 18(3)(b), (f), (g), (h), and (i); 18(5)(b) and (f), 18(6), 18(7) and 20. The case concerned, firstly, the powers given to the Director-General of Health to prescribe conditions on which licenses would be issued; second, the factors the Director-General is required to have regard to in issuing licenses; and third, the linking of licenses to dispense to particular premises.</p> <p>The Court held that the powers conferred on the Director-General by s. 22C(1)(a) of the Act are consistent with the objective of increasing access to medicines that are safe for consumption by the public. These powers include the power to make regulations consistent with this objective, and Ngcobo J therefore found that s. 22C(1)(c) of the Act, and regulations 18(3)(b), (f), (g), (h), (i); 18(5)(b) and (f); 18(6); 18(7) and regulation 20 were constitutional.</p> <p>However, the purpose sought to be achieved by regulation 18(5)(a), (c), (d), (e) were not authorised by the Act and were therefore unconstitutional.</p> <p>Majority: Ngcobo J (unanimous).</p>	<p>2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC)</p>
238	<p><i>S v Van Vuuren</i> CCT 14/05 Handed down: 6 April 2005</p>	<p>Application for leave to appeal against sentences imposed by the Magistrates' Court. Application dismissed on ground that it raised no constitutional matters.</p> <p>Judgment of the Court.</p>	<p>2005 (2) SACR 1 (CC) 2005 (7) BCLR 639 (CC)</p>

239	<p><i>President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Agri SA and Others, Amici Curiae)</i> CCT 20/04 Handed down: 13 May 2005</p>	<p>Application for leave to appeal against decision of the Supreme Court of Appeal upholding an interdict issued against the applicants in the High Court. The respondent sought an eviction order against some 40 000 people who were unlawfully occupying its land. The order was granted but the sheriff and police refused to execute the order, because of the large costs involved, and the fact that no alternative land was available for relocation. A structural interdict against the State was imposed in the Provisional Division. The Court held that the obligation on the state goes further than the mere provision of mechanisms and institutions with which to enforce rights. Failure to meet this obligation undermines the rule of law. It is unreasonable for a private entity to be forced to bear the burden which should be borne by the state of providing the occupiers with accommodation. The state failed to take action and thereby breached the respondent's rights of access to court and to an effective remedy as required by the rule of law and the Constitution.</p> <p>Majority: Langa ACJ (unanimous).</p>	<p>2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC)</p>
240	<p><i>Sibiya and Others v The Director of Public Prosecutions, Johannesburg, and Others</i> CCT 45/04 Handed down: 25 May 2005</p>	<p>Confirmation proceedings. Ss. 1(1) - (5) of the Criminal Law Amendment Act dealt with the procedure whereby death sentences imposed before the decision in <i>S v Makwanyane</i> would be converted to an appropriate sentence. The High Court had declared these sections invalid and unconstitutional because they did not give an accused a fair trial in relation to the new sentence imposed. In a unanimous judgment, it was found that there was no need to comply with the fair trial rights in the Constitution because the people concerned had already had a fair trial. Accordingly the declaration of invalidity was not confirmed. Further, the Court ordered the respondents to take the necessary steps to replace all the death sentences as soon as possible and to report back to the court before 15 August 2005 with the steps taken.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>2005 (5) SA 315 (CC); 2005 (8) BCLR 812 (CC)</p>
241	<p><i>Laugh it Off Promotions CC v SAB International (Finance) BV t/a Sabmark International (Freedom of Expression Institute as amicus curiae)</i> CCT 42/04 Handed down: 27 May 2005</p>	<p>Application for leave to appeal against the Supreme Court of Appeal's judgment confirming a restraint order granted against Laugh it Off for infringement of the respondent's trade mark. The dispute concerned the proper interpretation of s. 34(1) (c) of the Trade Marks Act. This court found that SAB had failed to establish the "likelihood of taking advantage of, or being detrimental to, the distinctive character or repute of the marks". It was held that the right to free expression cannot lightly be limited and therefore, as the section is aimed at protecting the selling power of the mark, an interpretation that conforms to the Constitution requires that evidence of a real likelihood or probability of harm of an economic sort must be adduced by the respondent. Accordingly leave to appeal was granted and the order of the</p>	<p>2006 (1) SA 144 (CC); 2005 (8) BCLR 743 (CC)</p>

		<p>Supreme Court of Appeal was set aside.</p> <p>Majority: Moseneke J (Langa DCJ, Madala J, Mokgoro J, Ngcobo J, O'Regan J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring). Separate concurrence: Sachs J.</p>	
242	<p><i>K v Minister of Safety and Security</i> CCT 52/04 Handed down: 13 June 2005</p>	<p>Application for leave to appeal against an order of the Supreme Court of Appeal. The applicant had instituted an action for damages in delict against the Minister, seeking to hold him vicariously liable for her rape at the hands of three policemen, employees of the respondent.</p> <p>It was held that the common law of vicarious liability must be applied by the courts in such a way that it is consistent with s. 39 (2) of the Constitution as well as with the general spirit, purport and objects of the Bill of Rights. The court concluded that although the rape was a deviation from the employment duties of the policemen, there was a sufficiently close connection between their employment and the wrongful conduct. The Minister was found to be vicariously liable. The matter was referred back to the Johannesburg High Court for determination of quantum of damages.</p> <p>Majority: O'Regan J (unanimous).</p>	<p>2005 (6) SA 419 (CC); 2005 (9) BCLR 835 (CC)</p>
243	<p><i>Du Toit v Minister of Transport</i> CCT 22/04 Handed down: 8 September 2005</p>	<p>The applicant challenged the amount of compensation awarded by the Supreme Court of Appeal in terms of certain sections of the Roads Act read with the Expropriation Act, for the expropriation of a quantity of gravel from his farm.</p> <p>The majority noted that the constitutional validity of s. 12(1)(b) of the Expropriation Act had not been challenged, and that as a result, this Court was not at large to determine whether the Expropriation Act complied with the requirements for calculating compensation for expropriation in s. 25(3) of the Constitution. It was held that compensation had to be calculated first in terms of s. 12(1)(b) of the Expropriation Act, and then assessed against the requirements of s. 25(3) of the Constitution, as there was no provision in the Act itself dealing with constitutional standards of compensation. The compensation awarded by the Supreme Court of Appeal for temporary use of the land was held to be just and equitable. The appeal was dismissed.</p> <p>The minority disagreed with the two-stage approach adopted by the majority, holding that the requirements of s. 25(3) of the Constitution are paramount. Although the minority did not concur in the order of the majority, preferring rather to refuse leave to appeal, it did however agree that the compensation awarded was just and equitable.</p> <p>Majority: Mokgoro J (Moseneke J, Sachs J, Skweyiya J, Yacoob J concurring).</p>	<p>2006 (1) SA 297 (CC); 2005 (11) BCLR 1053 (CC)</p>

		Dissent: Langa ACJ (Ngcobo J, O'Regan J, Van der Westhuizen J concurring).	
244	<i>S v Basson</i> CCT 30/03 Handed down: 9 September 2005	Application for leave to appeal against the outcome of criminal proceedings. The judgment of the Court considered three issues. First, in relation to allegations of bias, the Court held that although some of the judge's remarks and behavior could be considered inappropriate, it could not be said to give rise to a reasonable apprehension of bias. Second, in relation to the exclusion of the bail record, the Court held that the decision to admit or exclude evidence is a discretionary one best made by the trial court. In the absence of injudicious exercise of the discretion or misdirection on principles of law, a court of appeal is not at large to interfere in the exercise of this discretion. Third, in relation to quashing of six of the charges of conspiracy to commit murder, the Court found that although the crimes had allegedly taken place outside the border of the Republic, the Riotous Assemblies Act nevertheless applied to the conspiracy formed in South Africa to carry out these crimes. The order of the High Court setting aside the six charges was itself set aside, allowing the State to re-indict the respondent on those charges if it so chose. Judgment of the Court.	2007 (3) SA 582 (CC); 2005 (12) BCLR 1192 (CC)
245	<i>Ex Parte Institute for Security Studies: in re S v Basson</i> CCT 30/03 Handed down: 9 September 2005	The Court refused the application for admission as amicus curiae. It was held that consent of all parties is not decisive but a factor to be taken into account by the Court in the exercise of its discretion. Further, the argument sought to be presented to the Court must be useful and different to that of the other parties. In criminal matters the Court should be cautious to allow the submissions of amici to stack the odds against an accused. Judgment of the Court.	2006 (6) SA 195 (CC)
246	<i>Mnguni v Minister of Correctional Services and Others</i> CCT 42/05 Handed down: 26 September 2005	Application for direct access. The applicant, a convicted prisoner, was diagnosed with HIV/AIDS while serving his sentence. He sought to review the decision that prisoners are no longer released on medical parole. The Court dismissed the application, holding that the applicant had failed to show exceptional circumstances that would justify direct access. Judgment of the Court.	2005 (12) BCLR 1187 (CC)

247	<p><i>De Kock v Minister of Water Affairs and Forestry and Others</i> CCT 30/05 Handed down: 26 September 2005</p>	<p>Application for direct access. The applicant cited the respondents, all public bodies, for their failure to ensure his environmental and property rights based on the dangers to health caused by pollution. The Court held that the requirements for direct access had not been met and dismissed the application. The Court however held that the issues raised were important to the public interest and directed the Registrar to bring the case to the attention of the Law Society for the Northern Provinces, to consider whether to provide the applicant with legal assistance.</p> <p>Judgment of the Court.</p>	2005 (12) BCLR 1183 (CC)
248	<p><i>Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amicus Curiae)</i> CCT 59/04 Handed down: 30 September 2005</p>	<p>Application for leave to appeal against the judgment of the Supreme Court of Appeal which had held certain regulations promulgated by the first applicant, on the advice of the second applicant in terms of the Medicines and Related Substances Control Act, to be invalid. The regulations purported to regulate the prices of medicine, across the supply chain. The Court was faced with procedural and substantive questions. In regard to the former, the Court was unanimous in holding that the Supreme Court of Appeal had, in the circumstances, been correct to assume jurisdiction on appeal despite the absence of a judgment on leave to appeal from the High Court. Further, the fact that the applicants had not presented argument on the merits to the Supreme Court of Appeal did not preclude them from raising arguments of substance before the Court. The Court held unanimously that a litigant cannot avoid the provisions of the Promotion of Administrative Justice Act by relying on s. 33 of the Constitution. However the Court was split as to the question of whether the regulation of prices constituted administrative action within the meaning of PAJA. The Court has unanimously accepted the validity of a single exit price being established for medicines sold in South Africa and the validity of the regulatory structure put in place for its realisation. As to the dispensing fee, the majority of the Court found it to be inappropriate and invalid. The Court was unanimous in holding that the Supreme Court of Appeal's decision to set aside the regulations in their entirety could not stand. However the members of Court were divided in their conclusions regarding specific regulations.</p> <p>Judgment of the Court.</p>	2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC)

249	<p><i>The Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others: In re: Application for Declaratory Relief</i> CCT 59/04 Handed down: 30 September 2005</p>	<p>In an application for direct access, the applicants in the main application under this case number sought an order from the Constitutional Court declaring that the judgment and order of the Supreme Court of Appeal, setting aside certain regulations, was automatically suspended on the bringing of the application for leave to appeal to the Constitutional Court.</p> <p>The Court held that the court making an order of invalidity is the court best placed to decide if that order should be suspended or not and if so on what conditions. The application for direct access was dismissed.</p> <p>Judgment of the Court.</p>	2006 (8) BCLR 872 (CC)
250	<p><i>Sibiya and Others v DPP, Johannesburg High Court and Others</i> CCT 45/04 Handed down: 7 October 2005</p>	<p>Application to extend the time limits set by an order of the Constitutional Court. The first judgment in this matter ordered the respondents to file a report containing information and explanations in relation to death sentences that had not yet been replaced by alternative punishments in terms of the Criminal Law Amendment Act. Examining the reasons furnished for non-compliance with the deadline, the Court held that it would not be in the interests of justice to refuse the extension. The report was subsequently filed. The judgment pointed out problems in the report and an order was made to have a further report filed.</p> <p>Majority: Yacoob J (unanimous).</p>	2006 (2) BCLR 293 (CC)
251	<p><i>Phillips and Others v National Director of Public Prosecutions</i> CCT 55/04 Handed down: 7 October 2005</p>	<p>Application for leave to appeal against the decision of the Supreme Court of Appeal to confirm a restraint order made in terms of the Prevention of Organised Crime Act.</p> <p>The Court held that the applicants had not challenged the constitutionality of the relevant sections of the Act and that they sought to raise a constitutional complaint that was not pleaded in the lower courts. It was further held that where an Act of Parliament regulates the circumstances in which a court may vary its own orders, the case should be decided within the provisions of the Act. The application was dismissed.</p> <p>Majority: Skweyiya J (unanimous).</p>	2006 (1) SA 505 (CC); 2006 (2) BCLR 274 (CC)
252	<p><i>Omar v Government of the Republic of South Africa and Others (Commission for Gender Equality, Amicus Curiae)</i> CCT 47/04 Handed down: 7 November 2005</p>	<p>Application for leave to appeal against the High Court's dismissal of an application to declare s. 8 of the Domestic Violence Act unconstitutional.</p> <p>The Court dismissed the application. It was found that s. 8 of the Act does not violate the right of access to court or constitute an arbitrary deprivation of freedom. Further, any possibility that complainants will manipulate the Act does not render it unconstitutional as the possibility of manipulation is far outweighed by the potential of the Act to afford police protection to the victims of domestic violence.</p>	2006 (2) SA 289 (CC); 2006 (2) BCLR 253 (CC)

		Majority: Van der Westhuizen J (unanimous).	
253	<i>Zondi v MEC, Traditional and Local Government Affairs, and Others</i> CCT 73/03 Handed down: 29 November 2005	Application for extension of the period of suspension of an order declaring certain provisions of the Pound Ordinance, KwaZulu-Natal, constitutionally invalid. The Court held that it had the power, under the common law, the Constitution and its original order, to extend the period of suspension. Further, the Court has the power to extend the suspension period whenever it is just and equitable to do so. Accordingly the extension was granted. Majority: Ngcobo J (unanimous).	2006 (3) SA 1 (CC); 2006 (3) BCLR 423 (CC)
254	<i>Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others as Amici Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others</i> CCT 60/04; CCT 10/05 Handed down: 1 December 2005	The Fourie matter concerned the common-law definition of marriage, which prohibited marriage between members of the same sex. The Equality Project matter was a challenge to the constitutionality of sections of the Marriage Act. The two cases raised the question whether the fact that no provision is made for the applicants, and all those in like situation, to marry each other, amounts to denial of equal protection of the law and unfair discrimination by the state against them because of their sexual orientation, contrary to the provision of the Constitution guaranteeing the right to equality and dignity. The Court was unanimous on all matters except the remedy. It held that both the Marriage Act and the common law definition of marriage were unconstitutional to the extent that they discriminated against same-sex couples. The majority held that a legislative remedy would render the development of the common law unnecessary. Holding that Parliament is properly placed to find the best remedy, the order of invalidity was suspended for twelve months in order to give Parliament time to remedy the defect. If Parliament failed to cure the defect within that time, the words "or spouse" would automatically be read into the relevant section of the Marriage Act. Majority: Sachs J (Langa CJ, Moseneke DCJ, Mokgoro J, Ngcobo J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring). Partial Dissent: O'Regan J.	2006 (1) SA 524 (CC); 2006 (3) BCLR 355 (CC)

255	<p><i>Helicopter & Marine Services (Pty) Ltd and Another v V & A Waterfront Properties (Pty) Ltd and Others</i> CCT 53/05 Handed down: 1 December 2005</p>	<p>The applicant sought to collaterally attack the validity of the grounding order made by the Civil Aviation Authority as well as make submissions about the requirement for the grant of a final interdict. The Court held that the applicants had no prospects of success and that it was not in the interests of justice to hear the matter. Application for leave to appeal dismissed.</p> <p>Judgment of the Court.</p>	2006 (3) BCLR 351 (CC)
256	<p><i>Veldman v Director of Public Prosecutions (Witwatersrand Local Division)</i> CCT 19/05 Handed down: 5 December 2005</p>	<p>Application for leave to appeal against a 15 year sentence imposed on the applicant by a regional magistrate's court for murder. At the time the applicant entered a plea and was charged in court, the maximum sentencing jurisdiction of that court was 10 years. By the time of sentence, legislative amendments had increased that jurisdiction to 15 years. This application challenged the sentence imposed as being incompatible with s. 35(3)(n) of the Constitution. The majority held that the sentence imposed by the regional court was not authorised, and that the resulting sentence violated the principles of the rule of law and breached the applicant's s. 35(3) rights.</p> <p>Majority: Mokgoro J (Moseneke DCJ, Sachs J, Skweyiya J, Van der Westhuizen J concurring). Separate concurrence: O'Regan (Langa CJ, Yacoob J Ngcobo J concurring).</p>	2007 (3) SA 210 (CC) 2007 (8) BCLR 827 (CC)
257	<p><i>Mtotywa and Others v Director of Public Prosecutions (Mthatha)</i> CCT 61/05 Handed down: 14 December 2005</p>	<p>The applicants had been convicted of certain crimes and now claimed that they were not properly represented by their attorneys so did not receive a fair trial. The Court did not decide whether the question of a special entry in terms of s. 317 of the Criminal Procedure Act raises a constitutional issue, deciding the matter rather on the basis that the applicants had failed to show exceptional circumstances justifying direct access to the Court. Application for direct access dismissed</p> <p>Judgment of the Court.</p>	2006 (4) BCLR 459 (CC)
258	<p><i>Janse van Rensburg v Maluti-A-Phofung Municipality</i> CCT 63/05 Handed down: 14 December 2005</p>	<p>The applicant alleged that the municipality had failed to renew a lease agreement where improvements had been made on the property. The High Court dismissed his claim because he failed to comply with the rules. The applicant had failed to comply with the rules of the Court as well. No exceptional circumstances had been shown and the Court held that there was no reason that resolution of the dispute should not be sought through other means or before other courts. Application for direct access dismissed.</p> <p>Judgment of the Court.</p>	2006 (4) BCLR 457 (CC)

259	<p><i>African Christian Democratic Party P v The Electoral Commission and Others</i> CCT 10/06 Handed down: 24 February 2006</p>	<p>Urgent application for direct access alleging an infringement of s. 19 of the Constitution. The majority held that the ACDP was permitted to contest the local government elections in the Cape Metropolitan on 1 March 2006. This, after the Electoral Court upheld the decision of the IEC to not allow the ACDP to contest the elections because they had not complied with s. 14 and s. 17 of the Local Government: Municipal Electoral Act. The majority concluded that the Act must be read in conformity with the overall framework of elections and constitutional rights and values relevant to elections.</p> <p>The minority held that the applicant had not complied with the Act and therefore confirmed the order of the Electoral Court.</p> <p>Majority: O'Regan J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Ngcobo J, Nkabinde J, Sachs J, Van der Westhuizen J, Yacoob J concurring). Dissent: Skweyiya J.</p>	<p>2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC)</p>
260	<p><i>Matatiele Municipality and Others v The President of the Republic of South Africa and Others</i> CCT 73/05 Handed down: 27 February 2006</p>	<p>Urgent application for direct access challenging the constitutional validity of the Constitutional Twelfth Amendment and the Cross-Boundary Municipalities Laws and Related Matters Act which, according to the applicants unlawfully demarcated Matatiele from KwaZulu-Natal to the Eastern Cape. Ngcobo J, writing for the majority, ordered that the EC and KZN legislature be joined and appear before Court to give evidence with regard to public participation in the procedure of enacting the Twelfth Amendment. Sections 74(8) and 118(1) (a) were to be specifically addressed at a hearing on 30 March 2006. The judgment does not pronounce finally on the constitutionality of the Twelfth Amendment and the Repeal Act.</p> <p>Majority: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J and Sachs J concurring) Separate Concurrences: O'Regan (Langa DCJ and Van der Westhuizen J concurring), Sachs J Partial Dissent: Skweyiya and Yacoob JJ</p>	<p>2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC)</p>
261	<p><i>Ex Parte: Minister of Social Development and Others</i> CCT14/06 Handed down: 09 March 2006</p>	<p>Urgent application for direct access dismissed. In 2004 the Court invalidated a presidential proclamation and suspended the order for eighteen months. Applicants requested a further suspension of twenty five days. The majority held that the period of suspension had already expired and the Court could not revive the invalid proclamation. In a separate concurrence Ngcobo J stated that in considering an application to extend the period of suspension of an order of validity, the Court must balance all of the relevant factors, bearing in mind the goal of making an order that is just and equitable.</p> <p>Majority: Van der Westhuizen J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J, and Yacoob J concurring)</p>	<p>2006 (4) SA 309 (CC); 2006 (5) BCLR 604 (CC)</p>

		Separate Concurrence: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J and Nkabinde J concurring).	
262	<i>Van der Merwe v Road Accident Fund and Another (The Women's Legal Centre Trust as amicus curiae)</i> CCT 48/05 Handed down: 30 March 2006	The Court confirmed and varied a High Court order invalidating provisions of the Matrimonial Property Act. The Court found s. 18(b) to be unconstitutional in so far as it precludes spouses from claiming patrimonial damages from each other in delict. It amended the Act to allow for such damages to become the separate property of the injured spouse. Majority: Moseneke DCJ (Langa CJ, Mokgoro J, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring) Partial Dissent: Yacoob J.	2006 (4) SA 230 (CC); 2006 (6) BCLR 682 (CC)
263	<i>Campus Law Clinic, University of KwaZulu-Natal, v Standard Bank of South Africa Ltd and Another</i> CCT 01/06 Handed down: 31 March 2006	Applicants brought an application in the public interest for leave to appeal against a judgment of the Supreme Court of Appeal; a matter to which they were not party. A unanimous Court dismissed the application and held that although the applicants had the requisite standing; new constitutional issues had been raised and the interests of justice require that the matter be dealt with comprehensively. Not appropriate therefore for application to be granted. Majority: O'Regan J (unanimous)	2006 (6) SA 103 (CC); 2006 (6) BCLR 669 (CC)
264	<i>Phumelela Gaming and Leisure Ltd v Gründlingh and Others</i> CCT 31/05 Handed down: 18 May 2006	This case sought to involve a delictual claim by a totalisator against bookmakers on the ground that the use of the totalisator's dividends amounted to unlawful competition. In a unanimous judgment it was held that there was no need to develop the test of unlawful competition in terms of s. 39(2) of the Constitution. Majority: Langa CJ (unanimous)	2006 (8) BCLR 883 (CC)
265	<i>Du Toit v Seria</i> CCT 18/06 Handed down: 23 May 2006	This case arose from an application arising from a Muslim marriage where the marriage had been terminated according to Muslim law. The parties had not concluded a civil marriage. The applicant argued that a common law universal partnership had existed between the parties during the subsistence of the Muslim marriage and therefore that she was entitled to half of the property owned by her former husband. Application dismissed on the grounds that it was not in the interests of justice to hear the application.	2006 (8) BCLR 869 (CC).

		Judgment of the Court.	
266	<i>South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others</i> CCT 57/05 Handed down: 02 June 2006	This is an application for confirmation of an order of invalidity made by High Court in respect of the definition of shebeen in the Gauteng Liquor Act. The definition was challenged as unconstitutional as it served to limit the amount of beer a shebeen could sell and was vague. The High Court invalidated and severed the second part of the definition. In a unanimous judgment, O'Regan J held that the definition was vague and suspended the order for six months. In the interim, the definition as amended by the Court would apply and shebeen permits issued should be amended consistently with the new definition. Majority: O'Regan J (unanimous).	2006 (8) BCLR 901 (CC)
267	<i>Magajane v Chairperson, North West Gambling Board and Others</i> CCT 49/05 Handed down: 8 June 2006	The North West Gambling Board Act to the extent that it authorised warrantless searches of premises which were not licensed under the Act, was held to be unconstitutional for infringing the right to privacy because the objectives of such searches could have been achieved by requiring warrants, which would have been less invasive of the right to privacy. It was therefore not necessary to determine the other issues raised by the applicant, which were whether other provisions of the Act resulted in a violation of the right to remain silent and exceeded the constitutional competence of the provincial legislature respectively. Majority: Van der Westhuizen J (unanimous).	2006 (5) SA 250 (CC); 2006 (10) BCLR 1133 (CC);
268	<i>AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and Another</i> CCT 51/05 Handed down: 28 July 2006	The majority held that public power may be exercised by a private body. When such power is exercised, it is always subject to the rule of law and the doctrine of legality. In determining whether the authority to exercise public power by a private body is properly delegated, regard must be had to what powers would be necessary for the private body to perform its functions properly. Majority: Yacoob J (Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, Sachs J, Skweyiya J, van der Westhuizen J concurring). Separate Concurrence: O'Regan J (Ngcobo J concurring) Dissent: Langa CJ.	2007 (1) SA 343 (CC); 2006 (11) BCLR 1255 (CC)

269	<p><i>Dikoko v Mokhatla</i> CCT 62/05 Handed down: 3 August 2006</p>	<p>In dealing with statements made by a municipal councillor, the majority held that defamatory statements made outside of the business of the Municipal Council are not privileged. Privilege does not extend to municipal councillors not performing the real and legitimate business of the Council. Privilege in respect of provincial legislatures is granted only to members of the provincial legislature. The Court differed however on the issue of quantum of damages.</p> <p>Merits Majority: Mokgoro J (unanimous) Damages Majority: Moseneke DCJ(Langa CJ, Madala J, O' Regan J, van der Westhuizen J, Yacoob J concurring) Separate Dissent: Sachs J, Skweyiya J</p>	<p>2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC)</p>
270	<p><i>Doctors for Life International v Speaker of the National Assembly and Others</i> CCT 12/05 Handed down: 17 August 2006</p>	<p>Application challenging the constitutional validity of four health related Bills on the basis that Parliament failed to fulfill its constitutional obligation to facilitate public involvement when passing the Bills. The majority held that the obligation to facilitate public involvement is a material part of the law-making process and failure to comply with it renders the resulting legislation invalid. The Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act were declared invalid and the order of invalidity suspended for eighteen months. The Court did not consider the Sterilisation Amendment Bill as it was still a Bill It was also held that Parliament had not acted unreasonably in facilitating public participation in terms of the Dental Technicians Amendment Act as there had been no public interest.</p> <p>Majority: Ngcobo J Dissent: Yacoob J (Skweyiya J concurring); Separate Concurrence: Van der Westhuizen J.</p>	<p>2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC)</p>
271	<p><i>Matatiele Municipality and Others v President of the RSA and Others</i> CCT 73/05 Handed down: 18 August 2006</p>	<p>Application challenging the constitutional validity of the Constitutional Twelfth Amendment Act and the Cross-boundary Municipalities Laws Repeal and Related Matters Act (the Repeal Act). The Twelfth Amendment was considered unconstitutional in that that it re-demarcated the boundary of the municipality of Matatiele, and removed it from KwaZulu-Natal into the Eastern Cape. Ngcobo J writing for the majority held that a decision to alter a provincial boundary is a law-making process, and the legislature must, in terms of s. 118, act reasonably in facilitating public participation in making its decision. He held that the Eastern Cape had complied with its duty to facilitate public involvement but that KwaZulu-Natal had not. Therefore that part of the Twelfth</p>	<p>2007 (1) BCLR 47 (CC)</p>

		<p>Amendment that alters the boundary of KwaZulu-Natal was declared invalid as it had not been adopted consistently with the Constitution. He accordingly declared invalid that part of the amendment that transferred the area of Matatiele Local Municipality. The order of invalidity was suspended for eighteen months.</p> <p>Majority: Ngcobo J (Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Nkabinde J, O'Regan J, Sachs J concurring) Separate Dissents: Yacoob J (van der Westhuizen J concurring), van der Westhuizen J, Skweyiya J</p>	
272	<p><i>Giddey NO v JC Barnard and Partners</i> CCT 65/05 Handed down: 1 September 2006</p>	<p>Application concerning the interpretation and application of s. 13 of the Companies Act. The question was how a court should approach the exercise of s. 13 discretion given that s. 34 of the Constitution entrenches the right to have disputes resolved by courts. It was held that on appeal the exercise of discretion by a court in terms of s. 13 will only be interfered with if it was not exercised judicially or on the basis of incorrect facts or principles of law. The appeal was dismissed.</p> <p>Majority: O' Regan J (unanimous)</p>	<p>2007 (5) SA 525 (CC) 2007 (2) BCLR 125 (CC)</p>
273	<p><i>Concerned Land Claimants Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association and Others</i> CCT 29/06 Handed down: 21 September 2006</p>	<p>The applicant is a breakaway group from a group of people who had been previously dispossessed and who had entered into an agreement with the respondents for the restitution of their land. The applicant was unhappy with the terms of the agreement as it felt that the agreement did not give sufficient land to those who had been dispossessed. The application for leave to appeal was dismissed without hearing oral argument as it was not in the interests of justice for the matter to be heard.</p> <p>Judgment of the Court.</p>	<p>2007 (2) SA 531 (CC) 2007 (2) BCLR 111 (CC)</p>
274	<p><i>South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others</i> CCT 58/06 Handed down: 21 September 2006</p>	<p>The applicant sought an order allowing it to broadcast on radio and television the appeals of the second to twelfth respondents through the use of visuals and sound. Together with this, the applicant sought permission to broadcast edited highlights packages on television and radio. The Supreme Court of Appeal had denied these applications relying on s. 173 of the Constitution. The majority held that where a court exercises its discretion in terms of s. 173, a court on appeal, may only interfere with that decision if it is manifestly unjust, or violates the rights in the Bill of Rights or the provisions of the Constitution. The application was dismissed.</p> <p>Majority: Langa CJ, Madala, Nkabinde, O'Regan and Yacoob JJ, Kondile and van Heerden JJ Separate Concurrence: Sachs J Separate Dissent: Moseneke DCJ (Mokgoro J)</p>	<p>2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC)</p>

		concurring), Mokgoro J.	
275	<i>Steenkamp v Provincial Tender Board, Eastern Cape</i> CCT 71/05 Handed down: 28 September 2006	<p>The applicant sought compensation for out-of-pocket expenses it had incurred in the fulfilment of a tender award which was subsequently set aside. The majority dismissed the appeal holding that the administrative breach of the statutory duty of the tender board justice was not wrongful in the delictual sense.</p> <p>The minority held that a successful tenderer should be able to claim out –of- pocket expenses it has incurred in fulfilling contractual obligations that arose as a result of the tender award.</p> <p>Majority: Moseneke DCJ (Madala J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring) Separate Concurrence: Sachs J Dissent: Langa CJ and O’ Regan J (Mokgoro J concurring)</p>	2007 (3) SA 121 (CC) 2007 (3) BCLR 300 (CC)
276	<i>Prophet v National Director of Public Prosecutions</i> CCT 56/05 Handed down: 29 September 2006	<p>The applicant sought leave to appeal against a Supreme Court of Appeal decision which upheld the forfeiture of the applicant’s property in terms of Chapter 6 of the Prevention of Organised Crime Act. The Court held that the property was an instrumentality of the offence of drug manufacturing. It held that the forfeiture did not constitute an arbitrary deprivation of property, nor was it disproportionate given the nature of the offence and extent of the instrumentality of the property. It also held that the forfeiture was valid despite the applicant’s acquittal on drug-dealing charges in the Magistrates Court because there was a reasonable probability that the house was an instrument of the crime. The appeal was accordingly dismissed.</p> <p>Majority: Nkabinde J (unanimous).</p>	2007 (2) BCLR 140 (CC); 2006 (2) SACR 525 (CC)
277	<i>South African Police Service v Public Servants Association</i> CCT68/05 Handed down: 13 October 2006	<p>The applicant contested the interpretation of the word ‘may’, in regulations dealing with the upgrading and downgrading of officers in the SAPS. The question was whether the regulation conferred a discretion on the Commissioner to advertise a post when it was held by a satisfactorily performing incumbent.</p> <p>The majority held that the regulation did confer a discretion but it must be exercised in a manner that ensured that no incumbents are unfairly retrenched.</p>	2007 (3) SA 521 (CC);

		<p>Majority: Sachs J (Langa CJ, Moseneke DCJ, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J concurring)</p> <p>Separate Concurrence: Yacoob J (Langa CJ, Moseneke DCJ, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J concurring)</p> <p>Dissent: O'Regan J.</p>	
278	<p><i>Gory v Kolver NO and Others</i> CCT 28/06 Handed down: 23 November 2006</p>	<p>Application for confirmation of order, made by High Court, of constitutional invalidity of s. 1(1) of the Intestate Succession Act to the extent that it does not provide for same sex life partners to inherit by intestate succession from one another. This defect was cured by an order reading the words 'or permanent same sex life partner with reciprocal duties of support' into the Act. The order is to operate with limited retrospectivity to minimise disruption to the administration of estates.</p> <p>Majority: Van Heerden AJ (unanimous).</p>	<p>2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC)</p>
279	<p><i>Lekolwane and Another v Minister of Justice and Constitutional Development</i> CCT 47/05 Handed down: 23 November 2006</p>	<p>Originally an application challenging the constitutionality of s. 22 of the Witness Protection Act. The merits of the application were not heard as the matter was struck off the roll since no good cause had been shown to justify condonation and a postponement. To grant yet another postponement would constitute a gross abuse of the processes of the Court. Such would not be in the interests of justice. Therefore the request for condonation and postponement was refused.</p> <p>Majority: Van der Westhuizen (unanimous).</p>	<p>2007 (3) BCLR 280 (CC)</p>
280	<p><i>Sibiya and Others v DPP, Johannesburg High Court and Others</i> CCT 45/04 Handed down: 7 October 2005</p>	<p>In the first Sibiya case the Court made a supervisory order concerning the substitution of death sentences. The respondents were required to report to the Court concerning the steps taken but failed to do so within the allocated time. The court granted an extension upon application. Within the extended time, a report was filed. In its judgment the Court gave its reasons for granting the extension and considered the report on the substitution process. In view of certain discrepancies in the report, the Court held that it would continue its supervisory role until the process of substitution of death sentences had been completed.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>2006 (2) BCLR 293 (CC)</p>

281	<p><i>Minister of Safety and Security v Luiters</i> CCT 23/06 Handed down: 30 November 2006</p>	<p>An application from the Minister of Safety and Security which sought to reverse a High Court and Supreme Court of Appeal finding that the Minister was vicariously liable for the criminal actions of an off duty policeman who had placed himself on duty. The Court did not grant leave to appeal as they found no prospects of success. In a unanimous judgment it was also held that the test for vicarious liability developed in the K case sufficiently provided for policeman who had subjectively placed themselves on duty.</p> <p>Majority: Langa CJ (unanimous).</p>	2007 (3) BCLR 287 (CC)
282	<p><i>Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others</i> CCT 39/06 Handed down: 12 December 2006</p>	<p>An appeal against a High Court ruling that s. 23 (1) of the Private Security Industry Regulatory Authority Act was not unconstitutional to the extent that it only provided for the employment of South African citizens and permanent residents in the private security industry, to the exclusion of refugees who could not show good cause in terms of s. 23(6) of the Act. In a majority judgment, the appeal was dismissed. Held that the section is not discriminatory because the trustworthiness of nationals and permanent residents is easier to verify objectively. In a dissenting judgment, it was held that the section discriminated on the basis of refugee status. This was contrary to South Africa's international law obligations and did not recognise that refugees occupied a position most similar to permanent residents and should therefore be entitled to admission to the industry.</p> <p>Majority: Kondile AJ. Separate Concurrence: Sachs J. Dissents: Mokgoro and O'Regan JJ (Langa CJ, Van der Westhuizen J concurring).</p>	2007 (4) BCLR 339 (CC)
283	<p><i>Fraser v ABSA Bank Limited (National Director of Public Prosecutions as Amicus Curiae)</i> CCT 66/05 Handed down: 15 December 2006</p>	<p>Application concerning the discretion to be exercised by a court in applying s. 26(6) of the Prevention of Organised Crime Act which allows frozen property to be released for reasonable living and legal expenses. It was held that in exercising the discretion to permit creditors to intervene in confiscation proceedings a Court must consider the "accused's" fair trial rights and interest of the State in preserving the property and the claims of creditors.</p> <p>Majority: Van der Westhuizen J (unanimous)</p>	2007 (3) SA 484 (CC); 2007 (3) BCLR 219 (CC)

284	<p><i>Engelbrecht v Road Accident Fund and Another</i> CCT 57/06 Handed down: 6 March 2007</p>	<p>An appeal concerning regulation 2(1)(c) of the regulations under the Road Accident Fund Act. The regulation allows 14 days within which an affidavit which sets out the details of the accident, must be submitted to the police or else the claimant loses the claim. It was held that the 14-day period is too short and does not amount to a 'real and fair' opportunity to exercise the right of access to courts protected in s. 34 of the Constitution. This regulation was declared invalid.</p> <p>Majority: Kondile AJ (unanimous).</p>	<p>2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC).</p>
285	<p><i>Shinga v S (Society of Advocates, Pietermaritzburg Bar as Amicus Curiae); O'Connell and Others v S</i> CCT 56/06; CCT 80/06 Handed down: 8 March 2007</p>	<p>Confirmation proceedings, in two cases, regarding the constitutionality of s. 309(3A), s. 309C(4)(c) and s. 309C(5)(a) of the Criminal Procedure Act governing the rights of people convicted in the Magistrates' Court to appeal to the High Court against their convictions or sentences. <i>S v Shinga</i>: s. 309(3A) provided for an appeal to be disposed of in chambers without oral argument. The Court confirmed the finding that this provision was inconsistent with the right of an accused person to a fair trial as appeals are to be held in open court. s. 309C(4)(c) provided that the record was only to be forwarded to the High Court in limited circumstances. This provision was held to be inconsistent with the right to a fair trial. The record is now required in all matters. The finding in <i>S v O'Connell</i> that s. 309C(5)(a) was invalid to the extent that it requires only one judge to consider an application for leave to appeal, was confirmed. Two judges are now required.</p> <p>Majority: Yacoob J (unanimous).</p>	<p>2007 (5) BCLR 474 (CC) 2007 (2) SACR 28 (CC)</p>
286	<p><i>The Crown Restaurant CC v Gold Reef Theme Park (Pty) Ltd</i> CCT 05/07 Handed down: 6 March 2007</p>	<p>Application to have the exceptio doli generalis, a defence against the unfair enforcement of contracts reintroduced into contract law, on the basis that it is an equitable remedy in line with constitutional values. Application dismissed by the Court as it was not in the interests of justice that it be granted.</p> <p>Judgment of the Court.</p>	<p>2007 (5) BCLR 453 (CC)</p>
287	<p><i>Mohunram and Another v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae)</i> CCT 19/06 Handed down: 26 March 2007</p>	<p>Application challenging the validity of the forfeiture of a house, in terms of POCA, that had been used in gambling operations. There was no dispute that the house was an instrumentality of the offence but the Court disagreed on whether such forfeiture was proportionate. The majority held that the forfeiture was disproportionate.</p> <p>Majority: Moseneke DCJ (Mokgoro J and Nkabinde J concurring) Separate Concurrences: Sachs J (O'Regan J and Kondile AJ concurring) Dissent: Van Heerden AJ (Langa CJ, Madala J, Van</p>	<p>2007 (4) SA 222 (CC) 2007 (6) BCLR 575 (CC).</p>

		der Westhuizen J and Yacoob J concurring)	
288	<i>Road Accident Fund v Mdeyide</i> (Minister of Transport Intervening) CCT 70/06 Handed down: 4 April 2007	Application for confirmation proceedings and application for leave to appeal against a decision of the High Court declaring s. 23(1) of the Road Accident Fund Act unconstitutional. The Court held that the application could not proceed as no enquiry had been conducted into the blind, illiterate and innumerate respondent's capacity to litigate and to manage his own affairs. The matter was referred back to the High Court for an inquiry into the respondent's legal capacity. Majority: Navsa AJ (unanimous).	2007 (7) BCLR 805 (CC).
289	<i>Barkhuizen v Napier</i> CCT 72/05 Handed down: 26 March 2007	Constitutional challenge under s. 34 to a time limitation clause in a short-term insurance contract requiring the applicant to institute court proceedings within 90 days. The clause was held to provide adequate time to seek assistance of the courts and there was no evidence suggesting that the contract was not concluded freely between the parties. The clause was therefore not found to be unconstitutional or contrary to public policy. The minority found the clause offended public policy and was unenforceable. Majority: Ngcobo J (Madala J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Separate Concurrences: O'Regan J, Langa CJ. Dissents: Sachs J, Moseneke DCJ (Mokgoro J concurring).	2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC);
290	<i>NM and Others v Smith and Others (Freedom of Expression Institute as Amicus Curiae)</i> CCT 69/05 Handed down: 4 April 2007	Application challenging a High Court decision that the disclosure of the names and HIV status of three HIV positive women in a university report did not give rise to a claim based on the <i>actio injuriarum</i> . The appeal was upheld. The Court differed on the facts as to whether the respondents had been shown to have acted intentionally and on the question whether the <i>actio injuriarum</i> should be developed. Majority: Madala J (Moseneke DCJ, Mokgoro J, Ngcobo J, Nkabinde J, van der Westhuizen J, Yacoob J concurring) Separate Concurrences: Langa CJ, Sachs J. Dissent: O' Regan J.	2007 (5) SA 250 (CC); 2007 (7) BCLR 751 (CC)

291	<p><i>University of Witwatersrand Law Clinic v Minister of Home Affairs and Others</i> CCT 08/07 Handed down: 11 April 2007</p>	<p>The application for leave to appeal in this matter was dismissed because an application in the same matter was pending in the Pretoria High Court and the main party before the High Court sought to join the proceedings instituted by the amicus. This Court held that it was not in the interest of justice to grant the application for leave to appeal at that stage.</p> <p>Judgment of the Court.</p>	2007 (7) BCLR 821 (CC)
292	<p><i>Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies And Another, Amici Curiae)</i> CCT 54/06 Handed down: 10 May 2007</p>	<p>This was an application for confirmation proceedings and an appeal against the whole judgement and order of the Pretoria High Court. The common law definition of rape was challenged to the extent that it excluded anal penetration. S. 261 of the Criminal Procedure Act was declared to be invalid and unconstitutional. The section was extended to include acts of non-consensual penetration of a penis into the anus of a female.</p> <p>Majority: Nkabinde J (Moseneke DCJ, Kondile AJ, Madala J, Mokgoro J, O'Regan J, Van der Westhuizen J, van Heerden AJ and Yacoob J concurring) Dissent: Langa CJ (Sachs J concurring)</p>	2007 (5) SA 30 (CC) 2007 (8) BCLR 827
293	<p><i>South African Defence Union v Minister of Defence and Others</i> CCT 65/06 Handed down: 30 May 2007</p>	<p>Application from the Supreme Court of Appeal against findings that the Constitution did not impose a duty to bargain and findings of constitutional validity of regulations made in terms of the Defence Act. It was held that where legislation had been enacted to give effect to a constitutional right, a litigant was not entitled to bypass that right and rely directly on the constitutional right. Regulations were enacted to give effect to s. 23 of the Constitution which did impose a duty to bargain. It was therefore not necessary to determine whether s. 23(5) of the Constitution confers a justiciable duty to bargain. The Court held that SANDF may not impose pre-conditions for bargaining nor can they unilaterally withdraw from the Military Bargaining Council. The Court considered the constitutionality of each regulation in question and made a ruling on them</p> <p>Majority: O'Regan J (unanimous).</p>	2007 (5) SA 400 2007 (8) BCLR 863 (CC)
294	<p><i>Van Vuren v Minister of Justice and Constitutional Development and Another</i> CCT 15/07 Handed down: 1 June 2007</p>	<p>Application for direct access concerning the constitutionality of s. 136(3)(a) of the Correctional Services Act, which provides that certain prisoners serving life sentences are entitled to be considered for parole only after they have served 20 years of their sentence. The application for direct access was refused, but the Registrar was directed to bring the judgment to the attention of the Law Society of the Northern Provinces with a request to consider whether one of its members might assist Mr Van Vuren to re-launch the action in the High Court.</p> <p>Judgment of the Court.</p>	2007 (8) BCLR 903 (CC)

295	<p><i>Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd</i> CCT 69/06 Handed down: 6 June 2007</p>	<p>Application for leave to appeal against a decision of the Supreme Court of Appeal which upheld the Land Claims Court's finding that the applicants were not dispossessed of their land as a result of past racially discriminatory laws or practices. The application concerned the rights of former labour tenants to restitution of land rights in terms of the Restitution of Land Rights Act.</p> <p>The Court held that the test to be applied was whether the members of the applicant derived their possession from shared rules in 1969. The applicants each had separate relationships with the previous land owners and by 1969 no rights remained vested in the labour tenants as a community. However, the dispossession was a consequence of and was facilitated by repressive State laws and practices which permitted the demise of the labour tenancy system. The Court made a declarator that the individual applicants were dispossessed of a right in land as a result of past racially discriminatory laws and practices and were entitled to restitution under the Act.</p> <p>Majority: Moseneke DCJ (unanimous).</p>	[2007] ZACC 12
296	<p><i>Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others</i> CCT 67/06 Handed down: 7 June 2007</p>	<p>Application for leave to appeal against a decision by the Supreme Court of Appeal granted and the appeal upheld. This case involved the balance between socio-economic development and protection of the environment in s. 24 of the Constitution and highlighted the nature and scope of obligations imposed on environmental authorities. It was held that sustainable development is the framework through which these two interests can be reconciled and that this consists of a wider obligation than simply need and desirability. The decision by the authorities allowing for construction of the filling station was set aside and they were ordered to reconsider the application. In a dissenting judgment it was held that the authorities' failure to consider the environment was formal rather than substantive and that the appeal should be dismissed.</p> <p>Majority: Ngcobo J (Moseneke DCJ, Madala J, Mokgoro J, Navsa AJ, Nkabinde J, O'Regan J, Skweyiya J and Van der Westhuizen J concurring) Dissent: Sachs J</p>	2007 (10) BCLR 1059 (CC)
297	<p><i>Shilubana and Others v Nwamitwa and Others</i> CCT 03/07 Handed down: 17 May 2007</p>	<p>This matter concerns a dispute for the right to succeed as Hosi (chief) of the Valoyi tribe in Limpopo. The applicants had applied for leave to appeal against a decision of the Supreme Court of Appeal. A day before the matter was due to be heard by this Court, the respondent gave notice that he intended to apply for postponement. The Court granted a postponement and issued directions in regard to the lodging of supplementary written argument.</p> <p>Majority: Van der Westhuizen J (unanimous).</p>	2007 (9) BCLR 919 (CC)

298	<p><i>Minister of Safety and Security v Van Niekerk</i> CCT 74/06 Handed down: 8 June 2007</p>	<p>Appeal against a finding by the Pretoria High Court that the arrest of the respondent was unlawful. The Minister of Safety and Security sought leave to appeal on the grounds that it would be in the interests of justice for the Court to consider the circumstances when police can arrest offenders for drunken and disorderly behaviour. The court dismissed the application for leave to appeal holding that such circumstances should be determined on a case - by - case and there is sufficient guidance in the Police Standing Order (G) 341.</p> <p>Majority: Sachs J (unanimous).</p>	Unreported.
299	<p><i>Van der Merwe and Another v Taylor NO and Others</i> CCT 45/06 Handed down: 14 September 2007</p>	<p>Applicant seeks return of foreign currency seized by the State in terms of s. 20 of the Criminal Procedure Act. The majority agreed with the minority as to applicant's ownership of the €20 865 but disagreed that he established ownership of the balance of the foreign currency. The majority concluded that the intention to pass and acquire ownership of that amount had not been established, and that the applicants' vindicatory claim on that amount should fail. Further, they found that there was no legal impediment preventing seizure of unauthorised foreign currency under s. 20 of the CPA and that there was no evidence that the currency would not be required for purposes of criminal proceedings against the first applicant. Leave to appeal granted and dismissal of the appeal with no order as to costs.</p> <p>Majority: Moseneke DCJ and Nkabinde J (Langa CJ, Kondile AJ, Madala J, Van der Westhuizen J, Yacoob J concurring).</p> <p>Separate Concurrences: Sachs J, O'Regan J (Van Heerden AJ concurring).</p> <p>Dissent: Mokgoro J.</p>	2007 (11) BCLR 1167 (CC)
300	<p><i>Armbruster and Another v Minister of Finance and Others</i> CCT 59/06 Handed down: 25 September 2007</p>	<p>Applicant unsuccessfully applied to High Court to set aside forfeiture of foreign currency. Application to this Court for leave to appeal against the decision of the High Court. The Court held that, according to the regulations, the currency was not forfeited immediately upon seizure. It was forfeited only after the official had decided that some or none of the money should be returned to any affected person. That decision had to be taken consciously after the affected person made representations. Further that although the discretion was indeed wide, the regulation seeks to mitigate undue hardship and injustice, and that, while forfeiture of currency did have a punitive element, it did not amount to a criminal penalty. The regulations did not violate the right of access to court guaranteed in the Constitution. Held that the official performed an administrative function. The Court concluded that the regulation did not allow arbitrary deprivation of property contrary to the Constitution, because the link between the purpose of the deprivation, the owner and the property could hardly have been closer. Application for leave to appeal granted but appeal dismissed.</p>	[2007] ZACC 17

		Majority: Mokgoro J (unanimous).	
301	<i>M v The State</i> CCT 53/06 <i>Handed down:</i> 26 September 2007	<p>This matter concerns the impact of the constitutional injunction that the best interests of a child are paramount in all matters concerning the child on sentencing of primary caregivers of young children. Applicant unsuccessfully petitioned the Supreme Court of Appeal for leave to appeal against the order of imprisonment for fraud and applied to this Court for leave to appeal. The majority in this Court held that focused and informed attention needed to be given to the interests of children at appropriate moments in the sentencing process. The objective was to ensure that the sentencing court was in a position adequately to balance all the varied interests involved, including those of the children placed at risk. The Regional Magistrate had passed sentence without giving sufficient independent and informed attention as required by s. 28(2) read with s. 28(1)(b) of the Constitution, to the impact on the children of sending M to prison. The Court held that in the light of all the circumstances of this case M, her children, the community and the victims who will be repaid from her earnings, stand to benefit more from her being placed under correctional supervision than from her being sent back to prison. Appeal upheld.</p> <p>Majority: Sachs J (Moseneke DCJ, Mokgoro J, Ngcobo J, O'Regan J, Skweyiya J, and Van der Westhuizen J concurring). Dissent: Madala J (Navsa AJ and Nkabinde J concurring).</p>	[2007] ZACC 18
302	<i>S v Shaik and Others</i> CCT 86/06 <i>Handed down:</i> 2 October 2007	<p>Application for leave to appeal against the convictions and sentences of applicant and his ten companies, and the related confiscation of their assets. The Court did not hear argument on the merits of the appeal but only considered the preliminary question whether leave to appeal should be granted. The application was argued in two parts: the first related to the criminal proceedings and the second to the subsequent confiscation of assets. As to the criminal proceedings, the Court dismissed the application to introduce new evidence, as much of the evidence in question is not undisputed, and the evidence is also irrelevant to the issues to be decided by this Court. None of the applicant's arguments relating to an unfair trial were upheld. The appeal against the convictions and sentences was not granted as it does not bear reasonable prospects of success. As to the confiscation proceedings, the Court held that the applicants' submissions raise a constitutional issue.</p>	[2007] ZACC 19

		<p>POCA must be interpreted in conformity with the Constitution, which provides that no one may be arbitrarily deprived of his or her property. The Court held that the submissions cannot be said to bear no reasonable prospects of success. Accordingly, it concluded that it is in the interests of justice for the application for leave to appeal against the confiscation order to be granted. Application for leave to appeal against the convictions and sentences is dismissed. Application for leave to appeal against the confiscation order upheld and leave to appeal granted.</p> <p>Judgment of the Court.</p>	
303	<p><i>Masetlha v President of the Republic of South Africa and Another</i> CCT 01/07 Handed down: 3 October 2007</p>	<p>This application for leave to appeal deals with the constitutional validity of two decisions of the President, namely suspension and termination of Masetlha's employment as head and Director-General of the National Intelligence Agency. Questions: whether the power to amend a term of employment or to dismiss is located within s. 209(2) of the Constitution, read with s. 3(3)(a) of Intelligence Service Act (ISA) and s. 12(2) of the Public Service Act (PSA) or within all of these provisions read together, and whether the provisions are capable of being construed harmoniously and secondly, whether the authority is executive power or administrative action reviewable under PAJA. The majority held that the President dismissed the applicant in terms of s. 209(2) of the Constitution read with s. 3(3)(a) of ISA. There is a distinction between the substantive power to appoint and dismiss a head of an intelligence service, on the one hand, and the resultant contract of employment which is regulated by the provisions of section 12 of the PSA. Further, the procedural and permissive requirements of ss. 12(2) and (4) of the PSA must not be read alone, but in conjunction with the constitutional and operative legislative scheme.</p> <p>Majority: Moseneke DCJ (Langa CJ, Navsa AJ, Nkabinde J, O' Regan J, Skweyiya J and van der Westhuizen J concurring). Dissent: Ngcobo J (Madala J concurring). Separate: Sachs J.</p>	[2007] ZACC 20
304	<p><i>KZN MEC of Education v Pillay</i> CCT 51/06 Handed down: 5 October 2007</p>	<p>Appeal from the High Court concerning the right of a learner to wear a nose stud to school. The school and the Department of Education appealed against finding that the school had discriminated unfairly against the learner in prohibiting the wearing of the nose stud. The respondent contended that the school's refusal to allow her daughter to wear a nose stud violated s. 9, s. 15, s. 16 and s. 31 of the Constitution. It was held that the school had discriminated against the learner on the grounds of religion and culture. Schools are required to affirm and reasonably accommodate difference.</p> <p>Majority: Langa CJ (Moseneke DCJ, Madala J, Mokgoro J, Navsa AJ, Ngcobo J, Nkabinde J, Sachs J,</p>	[2007] ZACC 21

		van der Westhuizen J concurring) Dissent: O' Regan J.	
305	<i>Sidumo and Another v Rustenburg Platinum Mines Ltd and Others</i> CCT 85/06 Handed down: 5 October 2007	<p>The case involved the dismissal of the applicant by the first respondent for failing to apply established search procedures. A key finding of the Supreme Court of Appeal was that in deciding unfair dismissal disputes commissioners of the CCMA should approach the employer's sanction in relation to misconduct with a measure of deference because it is the employer's function in the first place to impose a sanction. All four judgments in this Court agree that the Supreme Court of Appeal decision must be overturned. The commissioner is not given the power to consider afresh what he or she would do but to decide whether what the employer did was fair. In reaching a decision the commissioner must have regard to all relevant circumstances. The judgments differ, however, in respect of certain aspects of how the functioning of the commissioner is to be characterised. The majority held that compulsory arbitration in the CCMA constitutes administrative action, reviewable not in terms of PAJA but against a standard of reasonableness.</p> <p>Majority: Navsa AJ (Moseneke DCJ, Madala J, O'Regan J and Van der Westhuizen J concurring). Separate Concurrences: Ngcobo J (Mokgoro J, Nkabinde J and Skweyiya J concurring); O'Regan; Sachs J.</p>	[2007] ZACC 22
306	<i>Chirwa v Transnet Limited and Others</i> CCT 78/06 Handed down: 28 November 2007	<p>Application concerning the concurrent jurisdiction of the Labour Court and the High Court to hear disputes involving employment and labour relations arising from the dismissal of the applicant. The applicant had originally pursued her claim in the CCMA but then changed to the High Court claiming unfair administrative action. The central questions were whether this change was permissible and whether the dismissal amounted to administrative action. Skweyiya J held that the applicant's claim was properly characterised as an unfair dismissal claim and that the High Court did not have concurrent jurisdiction with the Labour Court in such matters. The question of administrative action need not be decided. The appeal was dismissed.</p> <p>While agreeing with the outcome, Langa DCJ, in a separate judgment held that the Labour Court and the High Court did have concurrent jurisdiction. The dismissal did not amount to administrative action.</p>	[2007] ZACC 23

		<p>Majority: Skweyiya J (Moseneke DCJ, Madala J, Navsa AJ, Nkabinde J, Sachs J and van der Westhuizen J concurring)</p> <p>Separate Concurrences: Ngcobo J (Moseneke DCJ, Madala J, Navsa AJ, Nkabinde J, Sachs J and van der Westhuizen J concurring); Langa CJ (Mokgoro J and O'Regan J concurring).</p>	
306	<p><i>Van Wyk v Unitas Hospital and Another</i> CCT 12/07 Handed down: 6 December 2007</p>	<p>Application from the Supreme Court of Appeal challenging a decision that the applicant was not entitled to a report relating to the nursing conditions at the hospital where her husband had died. The application to this Court was made eleven months after the decision of the Supreme Court of Appeal. It was held that it would not be in the interests of justice to grant condonation for the delay. Application dismissed.</p> <p>Judgment of the Court.</p>	[2007] ZACC 24
307	<p><i>MEC Department of Agriculture Conservation and Environment and Another v HTF Developers (Pty) Ltd</i> CCT 32/07. Handed Down: 6 December 2007</p>	<p>Application concerning the relationship between s. 31A and s. 32 of the Environmental Conservation Act. The central issue was whether the s. 32 notice and comment procedure was required when direction are issued to a specific person or entity and not to general members of the public. It was held that the notice and comment procedure is not applicable but that directions issued in terms of s. 31 are subject to procedural fairness requirements.</p> <p>Majority: Skweyiya J (unanimous) Separate Concurrence: Ngcobo J (Moseneke DCJ, Sachs J, Van der Westhuizen J concurring)</p>	[2007] ZACC 25
308	<p><i>Islamic Unity Convention v Minister of Telecommunications</i> CCT 33/07 Handed down: 7 December 2007</p>	<p>Application for the confirmation of findings of constitutional invalidity of certain provisions of the now repealed Independent Broadcasting Act (IBA Act) and the corresponding provisions of the Independent Communications Act of South Africa. Regulations and procedures made in terms of the IBA Act had also been declared unconstitutional. The main challenge to these provisions was that they conferred investigative, prosecutorial and adjudicative powers on the Broadcasting Monitoring and Complaints Committee and its successor the Complaints and Compliance Committee contrary to s. 33, s. 34 and s. 192 of the Constitution. It was held that there was nothing impermissible in the conferral of these powers as the legislative scheme provided for fairness, independence and impartiality. The Court declined the confirmation of invalidity and upheld the appeals against the findings of invalidity of the regulations and procedures.</p> <p>Majority: Mpati AJ (unanimous).</p>	[2007] ZACC 26

309	<p><i>AD and Another v DW and Others</i> CCT 48/07 Handed down: 7 December 2007</p>	<p>Application concerning the sole custody and sole guardianship of a South African child by citizens of the USA. The central issue was whether the High Court had jurisdiction to deal with adoption matters. It was held that it was only in exceptional circumstances that the High Court would have jurisdiction as the Children's Court had the appropriate procedural mechanisms. It was further held that while subsidiarity is a core principle governing inter - country adoptions, a contextualised case - by - case approach had to be adopted.</p> <p>Majority: Sachs J (unanimous).</p>	[2007] ZACC 27
310	<p><i>Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others</i> CCT 24/07 Handed down: 19 February 2008</p>	<p>Appeal from the Supreme Court of Appeal concerning the eviction of over 400 occupiers of two buildings in inner city Johannesburg by the City of Johannesburg. The City had attempted to use health and safety legislation to compel the eviction. It was held that the government, before it evicts residents from their homes, has the constitutional duty to engage meaningfully with them about possible steps that can be taken to alleviate their homelessness and that a criminal sanction could only be imposed on residents who remain in a building after a court order for eviction is granted.</p> <p>Majority: Yacoob J (unanimous)</p>	[2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC)
311	<p><i>Molimi v The State</i> CCT 10/07 Handed down: 4 March 2008</p>	<p>Challenge against the constitutionality of evidence (statements made by co accuseds in a criminal trial) used against an accused (the applicant), in terms of Section 3 of the Law of Evidence Amendment Act, 1988.</p> <p>The court held that the statements of the co accused were not admissible against the applicant. The admissible evidence of the cell phone records alone was insufficient to prove the applicant's guilt beyond reasonable doubt</p> <p>The Court refrained from expressing any view on the question of whether the admission of hearsay evidence in terms of the Law of Evidence Amendment Act denies the accused the right to cross-examination.</p> <p>Majority: Nkabinde J (unanimous)</p>	[2008] ZACC 2; 2008 (3) SA 608 (CC); 2008 (5) BCLR 451 (CC)
312	<p><i>Zealand v Minister of Justice and Constitutional Development and Another</i> CCT 54/07 Handed down: 11 March 2008</p>	<p>This case concerns the applicant's challenge for damages against the state following his alleged unlawful detention. While awaiting trial in one case, the applicant was convicted in a second case and sentenced to 18 years in prison and detained in a maximum security prison. His conviction on the second case was overturned on appeal. Due to the negligence on the part of prison officials, the applicant remained detained in maximum security, as a prisoner awaiting trial in the first case, for over 5 years. Chief Justice Langa held, to detain the applicant in maximum security while he was merely an awaiting trial was arbitrary, without just case, violated section 12(1) of the Constitution and was</p>	[2008] ZACC 3; 2008 (2) SACR 1 (CC); 2008 (6) BCLR 601 (CC)

		<p>sufficient to establish delictual liability.</p> <p>Majority: Langa CJ (unanimous)</p>	
313	<p><i>Njongi v The Executive Council, Department of Welfare, Eastern Cape</i> CCT 37/07 Handed down: 28 March 2008</p>	<p>Appeal against the decision of the Full Court of the Eastern Cape. Where a social grant is unlawfully cancelled, the prescription period does not begin to run until or unless the administrative decision is set aside or reliance thereon is expressly disavowed by the State. The Court expressed doubt as to whether prescription time-limits applicable to ordinary debts could apply to constitutionally obligatory payment of social grants, but did not decide the point. Appeal upheld.</p> <p>Majority: Yacoob J (unanimous)</p>	<p>[2008] ZACC 4; 2008 (4) SA 237 (CC); 2008 (6) BCLR 571 (CC)</p>
314	<p><i>Mphela and 217 Others v Haakdoornbult Boerdery CC and Others</i> CCT 42/07 Handed down: 8 May 2008</p>	<p>This case concerns the restitution of land due to past discriminatory laws and practices. The applicants' forefathers were forcibly removed from their farm and relocated to a new farm. Their original farm was subsequently subdivided into four portions, three of which were owned by the respondents. The SCA confirmed the order of the LCC in respect of the partial restoration of three of the four portions and upheld the respondents' appeal in respect of the remaining portion. It ordered that the matter be remitted to the LCC, to determine whether the applicants, in view of their continued ownership of the new farm, had to contribute to the acquisition by the State of the properties comprising the original farm. The applicants sought leave to appeal in this Court against the SCA's order.</p> <p>The Court held that the applicants' case on partial restoration did not warrant this Court's interference with the SCA's exercise of discretion. The application for leave to appeal was therefore refused. However on the point of the remittal order, he held that the remittal process would unnecessarily prolong the finalisation of the matter and that there were factors to which the SCA did not properly direct itself, thus that part of the remittal order was accordingly set aside.</p> <p>Majority: Mpati Aj (unanimous)</p>	<p>[2008] ZACC 5; 2008 (4) SA 488 (CC); 2008 (4) BCLR 675 (CC)</p>

315	<p><i>Independent Newspapers v Minister for Intelligence Services</i> CCT 38/07 Handed down: 22 May 2008</p>	<p>In a claim premised on the right to open justice, the applicants—a newspaper group—sought an order compelling public disclosure of discrete portions of a record of proceedings of a matter determined by this Court (<i>Masetlha v President of the Republic of South Africa and Others</i>). This Court held that the right to open justice is not absolute, and that a court must decide in all the circumstances of a particular case whether its limitation is in the interests of justice. In this case, the competing constitutional claims were the principle of open justice, and the government's obligation to pursue national security. The Court held that a security classification alone does not oust the jurisdiction of a court to decide whether they should be protected from disclosure to the media and public. It ruled that the whole of the in camera affidavit at issue should be made available to the public but that the three disputed annexures to the affidavit should not.</p> <p>Majority: Moseneke DCJ (Madala J, Mpati AJ, Ngcobo J, Nkabinde J and Skweyiya J concurring) Dissent: Yacoob J (Sachs J concurring), Sachs J, Van der Westhuizen J</p>	[2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC)
316	<p><i>Shaik and Others v The State</i> CCT 86/06 Handed down: 29 May 2008</p>	<p>Appeal against a confiscation order granted against the first appellant and two of his companies in terms of the Prevention of Organised Crime Act 121 of 1998 (POCA). The appellants argued that two particular benefits (a shareholding in Thint (Pty) Ltd and accumulated dividends received by Nkobi Investments (Pty) Ltd) did not constitute 'proceeds of crime'. The Court held that all benefits which have arisen from the commission of a crime, directly or indirectly, are susceptible to confiscation in terms of POCA, and that the trial court has the discretion to determine the appropriate amount to be confiscated in each case. The Court held that the appellants had not shown that the trial court improperly exercised its discretion in this case, and that both benefits had, as a matter of fact, flowed to the appellants as a result for Mr Zuma's support for and interventions on behalf of the first appellant and his companies. The appeal was therefore dismissed.</p> <p>Majority: O'Regan J (unanimous)</p>	[2008] ZACC 7; 2008 (2) SACR 165 (CC); 2008 (8) BCLR 834 (CC)
317	<p><i>Nyathi v Member of the Executive Council for the Department of Health, Gauteng and Another</i> CCT 19/07 Handed down: 2 June 2008</p>	<p>Section 3 of the State Liability Act 20 of 1957 violates the right of access to courts, right to equality, right to dignity and public accountability. The Court confirmed an order of Constitutional invalidity made by the High Court and declared section 3 to be inconsistent with the Constitution to the extent that it disallows execution and attachment against state assets.</p> <p>Majority: Madala J (unanimous)</p>	[2008] ZACC 8; 2008 (5) SA 94 (CC); 2008 (9) BCLR 865 (CC)

318	<p><i>Shilubana and Others v Nwamitwa</i> CCT 03/07 Handed down: 4 June 2008</p>	<p>Appeal from the Supreme Court of Appeal concerning the appointment by customary institutions of a female chief, contrary to tradition. The appointment of the daughter of a Hosi (chief) as the new Hosi in the Valoyi traditional community was challenged by the brother of the Hosi. It was held that the right of a customary community to function according to customary law in terms of section 211(2) of the Constitution includes the right to develop that law to bring it in line with the constitutional commitment to gender equality and thus Ms Shilubana was lawfully the Hosi of the Valoyi.</p> <p>Majority: Van Der Westhuizen J (unanimous)</p>	[2008] ZACC 9; 2008 (9) BCLR 914 (CC)
319	<p><i>Merafong Demarcation Forum and 10 Others v The President of the Republic of South Africa and 15 Others</i> CCT 41/07 Handed down: 13 June 2008</p>	<p>Challenge concerning the rationality of a decision by the Gauteng provincial legislature to vote in favor of the Constitution Twelfth Amendment Bill in the National Council of Provinces and the fulfillment of the legislature's duty to facilitate public participation in relation to the Bill. The Court held that the constitutional duty to facilitate public participation requires that the public be afforded a reasonable opportunity to make submissions. It does not require a legislature to re-engage with the public if it initially supports the view expressed by the majority of the public but ultimately departs from it. The Court confirmed that all public power must be exercised rationally, but held that the contentious political nature of a decision is irrelevant to the rationality enquiry. If a public body changes its mind, its final decision is not irrational where the change is based on legitimate considerations and a correct appreciation of its powers and obligations. The actions of the Gauteng provincial legislature were therefore not unconstitutional</p> <p>Majority: Van der Westhuizen J (Langa CJ, Mpati AJ, Ngcobo J, Skweyiya J, Yacoob J concurring) Separate Concurrences: Ngcobo J (Langa CJ, Mpati AJ, Ngcobo J, Skweyiya J, Van der Westhuizen J, Yacoob J concurring); Skweyiya J (Yacoob J concurring). Dissents: Moseneke DCJ (Madala J, Nkabinde J, Sachs J concurring); Madala J; Sachs J."</p>	[2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC)
320	<p><i>Walele v The City of Cape Town and Others</i> CCT 67/07 Handed down: 13 June 2008</p>	<p>Application for leave to appeal against an order of the Cape High Court, which dismissed the applicant's application to review the City of Cape Town's decision to approve building plans for a four-storey block of flats on a property which adjoined that of the applicant. The majority of the Court held that the City had failed to comply with mandatory procedural requirements in the Building Standards Act 103 of 1977, read with the Promotion of Administrative Justice Act 3 of 2000. The majority held that the decision-maker had not independently applied its mind to the decision. Leave to appeal was granted, and the matter was remitted to the City for reconsideration. The minority held that the City had complied with the legislative requirements, and that</p>	[2008] ZACC 11

		<p>the decision-maker had properly applied his mind to the matter.</p> <p>Majority: Jafta AJ (Madala J, Mokgoro J, Ngcobo J, Nkabinde J and Skweyiya J concurring). Minority: O'Regan J (Langa CJ, Kroon AJ, Van der Westhuizen J and Yacoob J concurring).</p>	
321	<p><i>Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd (Hoogekraal Highlands Trust and Safamco Enterprises (Pty) Ltd as amici curiae)</i> CCT 78/07 Handed down: 25 July 2008</p>	<p>Application for leave to appeal by Wary Holdings against a judgment of the Supreme Court of Appeal. The matter concerned a dispute between Wary Holdings and Stalwo related to the meaning and applicability of a proviso to the definition of "agricultural land" as contained in the Subdivision of Agricultural Land Act 70 of 1970. The proviso stated that land within the area of jurisdiction of a transitional council that was classified as "agricultural land" immediately prior to the first election of the members of the transitional council would retain such classification.</p> <p>Wary Holdings claimed that a contract for the sale of land which it had concluded with Stalwo was invalid because the land was classified as "agricultural land" and, in consequence, the Minister of Agriculture's consent to the sale was necessary (which had not been sought). The Supreme Court of Appeal held that the proviso only applied during the existence of transitional councils and thus did not apply to this sale. It held that the contract was valid.</p> <p>The majority of the Constitutional Court held that the life of the proviso was not tied to the life of the transitional councils and was still applicable. The minority of the Court held that the matter should be dismissed because it did not raise a constitutional issue.</p> <p>The order of the Supreme Court of Appeal was reversed and the sale was declared invalid.</p> <p>Majority: Kroon AJ (Langa CJ, Madala J, Mokgoro J, Ngcobo J, Skweyiya J and Van der Westhuizen J concurring) Minority: Yacoob J (O'Regan ADCJ and Nkabinde J concurring)</p>	[2008] ZACC 12
322	<p><i>Thint (Pty) Ltd v National Director of Public Prosecutions and Another; Zuma and Another v National Director of Public Prosecutions and Others</i> CCT 89/07 and CCT 91/07 Handed down: 31 July 2008</p>	<p>Application for leave to appeal concerning search and seizure warrants which authorised, in terms of the National Prosecuting Authority Act, searches and seizures carried out by the National Prosecuting Authority (the state) to obtain information connected to the investigation of serious, organised crime. Whether the warrants violated the applicants' rights to privacy and property. The majority held that a balance must be struck between protecting privacy and property interests and the state's constitutionally mandated task of prosecuting crime. An application for a warrant must disclose material facts and must</p>	[2008] ZACC 13

		<p>demonstrate a “need” for a warrant, which requires there being an appreciable risk that the state would be unable to obtain the information sought by other means. Warrants are required to be intelligible so that they are reasonably capable of being understood by the reasonably well-informed person. The majority held that these requirements were met in these cases, and that specific mention in the warrants of the right to claim legal privilege was not required. The appeal was dismissed.</p> <p>Majority: Langa CJ (O’Regan ADCJ, Jafta AJ, Kroon AJ, Madala J, Mokgoro J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Dissent: Ngcobo J</p>	
323	<p><i>Thint Holdings (Southern Africa) (Pty) Ltd and Another v National Director of Public Prosecutions and Another; Zuma v National Director of Public Prosecutions</i> CCT 90/07 and CCT 92/07 Handed down: 31 July 2008</p>	<p>This case concerned the constitutionality of a letter of request made by a judge, on application by the State, requesting evidence for a criminal trial from authorities in Mauritius. The Court upheld the constitutionality of the letter of request, finding that: a) The State is lawfully permitted to seek original copies of evidence even when it already possesses copies of that evidence; b) The applicants at the time of the issuing of the letter of request were not accused persons; c) The naming of the applicants in the letter did not infringe their right to dignity; d) The applicants would have a fair opportunity to challenge any evidence obtained via the letter of request at their criminal trial; and e) The applicant’s rights of access to courts were not infringed</p> <p>Judgment of the Court</p>	[2008] ZACC 14
324	<p><i>CUSA v Tao Ying Metal Industries and Others</i> CCT 40/07 Handed down: 18 September 2008</p>	<p>This application deals with labour matters. This case is largely concerned with the interpretation and enforcement of exemptions as they apply to the employer and its employees under the Labour Relations Act 66 of 1995 and the 1998 bargaining council main agreement. The issue in this case was whether the employer had been exempted from paying the minimum wages under the 1998 agreement and, if the employer was not exempted, it had to pay to its employees the minimum wages provided for under that agreement.</p> <p>The case dealt with questions concerning the role of commissioners of the Commission for Conciliation, Mediation and Arbitration in resolving labour disputes and that of the courts in overseeing the arbitration process. The case also dealt with the jurisdiction of commissioners to resolve labour disputes and that of the courts to review arbitral awards.</p> <p>The majority of the Court upheld the commissioner’s decision and concluded that the employer was not exempted from paying the minimum wages contemplated under the 1998 agreement. The minority judgment held that this Court should only hear disputes concerning the enforcement of collective</p>	[2008] ZACC 15

		<p>bargaining agreements where they materially concern the right to engage in collective bargaining. The appeal was upheld.</p> <p>Majority: Ngcobo J (Langa CJ, Kroon AJ, Madala J, Mokgoro J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring)</p> <p>Dissent: O'Regan J</p>	
325	<p><i>Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others</i> CCT 88/07 Handed down: 25 September 2008</p>	<p>Application concerning extent to which order of reinstatement made in terms of the Labour Relations Act can be made retrospective, and the nature of the Labour Appeal Court's discretion regarding order of reinstatement with retrospective effect. It was held that extent of retrospectivity is not limited beyond the date of dismissal and the nature of the Labour Appeal Court's discretion accords with that of ordinary principles of appeal procedure.</p> <p>Majority: Nkabinde J (Kroon K, Madala J, Mokgoro J, O'Regan J, Skweyiya J concurring) Dissent: Yacoob J (Langa CJ and Van Der Westhuizen J concurring)</p>	[2008] ZACC 16
326	<p><i>Kruger v The President of the Republic of South Africa and Others</i> CCT 57/07 Handed down: 2 October 2008</p>	<p>Matter concerned the constitutionality of Presidential Proclamations R27 and R32 designed to bring into force certain sections of the Road Accident Fund Amendment Act 19 of 2005 into operation. Majority found both Proclamations invalid, but provided for a just and equitable order to permit the President to bring the correct sections of the Amendment Act into force within 30 days of the issuing of the Court's order, which would operate retrospectively from the date of the issuing of Proclamation R27.</p> <p>Majority: Skweyiya J (Langa CJ, Nkabinde J, O'Regan J, Mokgoro J, Kroon AJ, Madala J, Van der Westhuizen J) Dissents: Jafta AJ; Yacoob J</p>	[2008] ZACC 17
327	<p><i>Lekolwane and Another v Minister of Justice and Constitutional Development</i> CCT 47/05 Handed down: 3 October 2008</p>	<p>Application for reinstatement as application previously struck from the roll of this Court. The Court held unanimously that the test for re-enrollment is if re-enrollment in such instance will be in the best interests of justice. The applicants had not shown good cause, nor given a full explanation for their previous conduct. Application refused.</p> <p>Judgment of the Court</p>	[2008] ZACC 18
328	<p><i>Glenister v The President of the Republic of South Africa and Others (Centre for Constitutional Rights as amici curiae)</i> CCT 41/08 Handed down: 22 October 2008</p>	<p>Application for leave to appeal against an order of the Pretoria High Court which held that that Court lacked jurisdiction to hear the applicant's challenge to the decision by Cabinet to initiate legislation dissolving the Directorate of Special Operations (Scorpions). The applicant alternatively sought direct access to the Constitutional Court for an order compelling the government to withdraw the relevant legislation.</p> <p>The unanimous judgment dealt only with the</p>	[2008] ZACC 19

		<p>question of whether the doctrine of the separation of powers permitted the Court to consider the validity of Cabinet's decision while the legislative process was still underway. The Court held that in order to justify such an intervention, the applicant would have had to prove that material and irreversible harm had arisen, which he had failed to do.</p> <p>The applications for leave to appeal and for direct access were dismissed.</p> <p>Majority: Langa CJ (unanimous)</p>	
329	<p><i>Weare v Ndebele NO and Others</i> CCT 15/08 Handed down: 18 November 2008</p>	<p>Application for confirmation of an order of invalidity made by the Pietermaritzburg High Court declaring section 22(5) of the KwaZulu-Natal Regulation and Betting Ordinance 28 of 1957 unconstitutional. This Ordinance provides that juristic persons may not hold licences to engage in bookmaking in the Province (whereas in other provinces both natural and juristic persons may hold licences). The High Court held that the section constituted unfair discrimination.</p> <p>The Court held that the order of constitutional invalidity made by the High Court required confirmation by the Court. However, the Court held that the section served a legitimate government purpose and did not constitute unfair discrimination. The respondents' appeal against the High Court order therefore succeeded and the application for confirmation was dismissed.</p> <p>Majority: Van der Westhuizen (unanimous)</p>	[2008] ZACC 20
330	<p><i>Geldenhuis v National Director of Public Prosecutions and Others</i> CCT 26/08 Handed down: 26 November 2008</p>	<p>Application for confirmation of an order of invalidity made by the Supreme Court of Appeal declaring sections 14(1)(b) and 14(3)(b) of the Sexual Offences Act 23 of 1957 unconstitutional. Those provisions made the age of consent for same-sex sexual relations 19 years, as opposed to 16 years for heterosexual relations. Since this legislation had been repealed in 2007, the case concerned only those persons who were convicted under the legislation then in force.</p> <p>The Court held that the sections constituted unfair discrimination, and lowered the age of consent for same-sex sexual relations to 16 years, in line with heterosexual relations.</p> <p>Majority: Mokgoro J (unanimous)</p>	[2008] ZACC 21
331	<p><i>Chagi and 29 Others v Special Investigating Unit</i> CCT 101/07 Handed down: 3 December 2008</p>	<p>Application for leave to appeal. The applicants claimed damages arising from the unlawful conduct of a Special Investigating Unit. The conduct relied on was that of a prior Unit which had been replaced by a second Unit. The High Court and the Supreme Court of Appeal held that the second Unit was not liable for the actions of the first Unit.</p> <p>Yacoob J, writing for a unanimous court, agreed that the second Unit was not liable, but raised a concern that this would mean that no state entity could be</p>	[2008] ZACC 22

		<p>held liable. Yacoob J concluded that the first Unit could still be held liable, and remitted the matter to the High Court to be dealt with as if the first Unit had been cited in the original summons and as if the first Unit could attract liability.</p> <p>Majority: Yacoob J (unanimous)</p>	
332	<p><i>Gumede v President of the Republic of South Africa and Others (Women's Legal Centre Trust as amicus curiae)</i> CCT 50/08 Handed down: 8 December 2008</p>	<p>Application for confirmation of an order of invalidity made by the Durban High Court declaring certain sections of the Recognition of Customary Marriages Act, 1998, the KwaZulu Act on the Code of Zulu Law Act, 1985 and the Natal Code of Zulu Law Proclamation of 1987 unconstitutional. The High Court held that the combined effect of the Acts and the Code was that a wife to a customary marriage entered into before the commencement of the Recognition of Customary Marriages Act, 1998 would be entitled to nothing upon the dissolution of such a marriage. This was in contrast with customary marriages entered into after the commencement of that Act which were automatically in community of property, and thus the Acts and the Code were unconstitutional to that extent.</p> <p>Moseneke DCJ agreed with the High Court that certain provisions of the Acts and the Code constituted unfair discrimination, and consequently confirmed the order of constitutional invalidity issued by the High Court.</p> <p>Majority: Moseneke DCJ (unanimous)</p>	[2008] ZACC 23
333	<p><i>The President of the Republic of South Africa and Others v Quagliani; The President of the Republic of South Africa and Others v Van Rooyen and Brown; Goodwin v Director-General, Department of Justice and Constitutional Development (the Speaker of the National Assembly and the Chairperson of the National Council of Provinces intervening)</i> CCT 24/08 and CCT 52/08 Handed down: 21 January 2009</p>	<p>Matter concerned challenges to the validity and enforceability of the Extradition Agreement concluded between South African and the United States of America in 1999. The majority of the Court held that: 1) Cabinet Ministers were entitled to play a role in signing the Agreement provided the President took the final decision to enter into it; 2) the applicants were barred from raising the issue of a lack of mandate by the National Council of Provinces to approve the Agreement; and 3) the Agreement was enforceable in that it was provided for by the Extradition Act. Consequently the challenges to the Agreement failed.</p> <p>Majority: Sachs J (unanimous)</p>	[2009] ZACC 1

334	<p><i>Van Straaten v President of the Republic of South Africa and Others</i> (CCT106/08) Handed down: 24 February 2009</p>	<p>Urgent application for direct access in terms of section 167(4)(d) of the Constitution. The applicant, Mr van Straaten, sought an order to declare the National Prosecuting Authority Amendment Bill, 2008 and the South African Police Service Amendment Bill, 2008 to be invalid. Together, the bills disbanded the Directorate of Special Operations unit. This Court has no jurisdiction to consider the application. The Constitution contains clear and express provisions which preclude any court from considering the constitutionality of a bill save in the limited circumstances referred to in sections 79 and 121 of the Constitution. The Court held that this case does not fall within these limited circumstances. The Court noted that the State has an obligation to respond to court process and lead by example. The order included a request to the Registrar to send a copy of the judgment to the offices of the President and Minister for Justice and Constitutional Development in order to bring the situation to their attention.</p> <p>Majority: Sachs J (unanimous)</p>	[2009] ZACC 2; 2009 (3) SA 457 (CC)
335	<p><i>Richter v The Minister for Home Affairs and Others (with the Democratic Alliance and Others Intervening, and with Afriforum and Another as Amici Curiae)</i> (CCT03/09; CCT 09/09) Handed down: 12 March 2009</p>	<p>Application for confirmation of constitutional invalidity made by the High Court in Pretoria regarding section 33(1) (e) of the Electoral Act 73 of 1998. Said provisions concerned the rights of registered voters abroad. It was held that this section created an unjustifiable violation of section 19 of the Constitution in restricting the rights of classes of voters to vote in elections. Therefore, the High Court's order of invalidity was confirmed.</p> <p>Majority: O'Regan J (unanimous)</p>	[2009] ZACC 3; 2009 (3) SA 615 (CC)
336	<p><i>A Party and Another v The Minister for Home Affairs and Others; Moloko and Others v The Minister for Home Affairs and Another</i> (CCT 06/09; CCT 10/09) [2009] ZACC 4; 2009 (3) SA 649 (CC) Handed down: 12 March 2009</p>	<p>Two applications seeking an order declaring sections 7(2), 7(3)(a), 8(3), 9(1) and 60(1) of the Electoral Act as well as the regulations giving effect to them unconstitutional and invalid to the extent that they precluded South African citizens living abroad from registering as voters in terms of the Electoral Act. Also a challenge to section 33(1) of the Electoral Act as it makes no provision for South African citizens who are not ordinarily resident in the Republic who wish to apply for a special vote. The Court dismissed challenges to regulation 17 of the Election Regulations, to sections 7(2), 7(3)(a), 8(3), 9(1) and 60(1) of the Electoral Act and to regulations 2 and 11 of the Voter Registration Regulations. These provisions relate to the essence of the electoral scheme chosen by Parliament and the Court is hesitant to sit as the court of first and last instance especially since the urgency was due to the applicants' failure to act earlier. The Court upheld the constitutional challenge to certain portions of section 33(1)(e) and regulations 6(e), 11, 12 and 13 of the Election Regulations. Any registered voter who was living abroad qualifies for a special vote. The Court awarded the applicants half of the costs.</p>	[2009] ZACC 4; 2009 (3) SA 649 (CC)

		Majority: Ngcobo J (unanimous)	
337	<i>Johncom Media Investments Limited v M and Others (CCT 08/08)</i> Handed down: 17 March 2009	Application for confirmation of an order of constitutional invalidity in respect of section 12 of the Divorce Act 70 of 1979. The order of invalidity was upheld. Section 12 was held to infringe the right to freedom of expression in terms of s16 of the Constitution in that it prohibited the publication of any information which comes to light during a divorce action or any related proceedings regardless of whether the publication affects the individual's rights or those of their children. Ordered, also, that subject to authorization granted by a court, it is prohibited to publish the identity or any information that might reveal the identity of any party of child in any divorce proceedings. Majority: Jaftha AJ (unanimous)	[2009] ZACC 5; 2009 (4) SA 7 (CC)
338	<i>Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another (CCT 97/07)</i> Handed down: 20 March 2009	Appeal from the SCA regarding decision of a private arbitrator. O'Regan J (for the majority, Langa CJ, Mokgoro, Van der Westhuizen and Yacoob JJ concurring) held that section 34 of the Constitution did not apply directly to private prosecutions, although arbitration agreements need to be in line with the Constitution. The arbitration had been fairly conducted in line with the intention of the parties and the conduct of the arbitrator was not so grossly irregular as to warrant the setting aside of the agreement. The appeal was dismissed. Kroon AJ held that section 34 did apply to private arbitrations. That there had been gross irregularities in the behavior of the arbitrator and that the award should be set aside. Ngcobo dissented, holding that the matter did not raise constitutional issues, and that it was not in the interests of justice to grant the appeal. Majority: O'Regan (Langa CJ, Mokgoro J, Van der Westhuizen J and Yacoob J concurring) Minority: per Kroon AJ (Jaftha J and Nkabinde J concurring)	[2009] ZACC 6; 2009 (4) SA 529 (CC)
339	<i>Machele and Others v Mailula and Others (CCT 99/08)</i> Handed down: 26 March 2009	Application for leave to appeal against an interim execution order seeking to prevent the execution of an eviction order while an appeal in respect of the eviction itself was pending in the Supreme Court of Appeal. Court held that an interim execution order was appealable when a constitutional issue was raised and that an eviction from one's home always raised a constitutional issue. The applicants showed that they would suffer irreparable harm if the execution order was carried out as they would lose	[2009] ZACC 7

		<p>their homes. It was in the interests of justice to grant leave to appeal and to suspend the execution order. In considering appropriate relief in terms of section 38 of the Constitution, the Court held that it would be fair and just for its decision to be referred to the Supreme Court of Appeal to be adjudicated simultaneously with the appeal already pending in that Court on the merits of the eviction itself.</p> <p>Majority: Skweyiya J (unanimous)</p>	
340	<p><i>Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others (CCT 36/08)</i> <i>Handed down:</i> <i>1 April 2009</i></p>	<p>Application for confirmation of the invalidity of sections 153(3) and (5), 158(5), 164(1) 170A(1) and (7) of the Criminal Procedure Act 51 of 1977 regarding the testimony of child witnesses in open court. The constitutional validity of these provisions was raised by the High Court on its own initiative. This Court held that a High Court is entitled to raise a constitutional issue of its own accord if the issue stemmed from the facts of the case, and a decision on the constitutional issue was necessary to decide the case. Court took notice that a child complainant of abusive sexual acts will in many cases experience undue stress or suffering by testifying in open court. Yet, the Court held that there is nothing to prevent all of the impugned provisions from being applied in a manner that properly protects the interests of the child. Therefore the High Court's order of invalidity was not confirmed and High Court order set aside. Court ordered the Department of Justice and Constitutional Development to provide the Court with a report with various finding regarding a list of regional courts, how many intermediaries they have, the services available to the intermediaries and the like. Skweyiya J wrote a separate concurring judgment.</p> <p>Majority: Ngcobo J (Langa CJ, Moseneke DCJ, Mokgoro J, O'Regan J, Sachs J, Van der Westhuizen J and Yacoob J concurring) Minority: Skweyiya J</p>	<p>[2009] ZACC 8; 2009 (4) SA 222 (CC) 2009 (2) SACR 130 (CC)</p>
341	<p><i>President of the Republic of South Africa and Others v Quagliani; President of the Republic of South Africa and Others v Van Rooyen and Another; Goodwin v Director-General, Department of Justice and Constitutional Development (CCT 24/08, CCT 52/08)</i> <i>[2009] ZACC 9</i> <i>Handed down:</i> <i>1 April 2009)</i></p>	<p>This judgment rejected Mr Quagliani's challenges to the enforceability of the South Africa-United States Extradition Agreement. The judgment left open the question whether a punitive costs order should be made in connection with wasted costs occasioned by a last-minute application for postponement of delivery of the judgment. The application, made on the morning the judgment was to be delivered, sought to join the Speakers of the provincial legislatures to the proceedings. Sachs J held that bringing an application to postpone delivery of judgment well after all the evidence had been looked at and argument completed, was so manifestly out of line with proper respect for court processes, that a special adverse costs order was called for. Commendable eagerness by a legal representative to serve the best interests of his client, had transformed itself into excess of zeal. As Mr Quagliani authorised the last-minute</p>	<p>[2009] ZACC 9</p>

		<p>application, he was ordered to pay the wasted costs on an attorney and client scale.</p> <p>Majority : Sachs J (unanimous)</p>	
342	<p><i>Netherburn Engineering CC t/a Netherburn Ceramics v Mudau and Others (CCT 01/09)</i> <i>Handed down:</i> <i>1 April 2009</i></p>	<p>At a CCMA hearing, the commissioner refused, in terms of section 140(1) of the Labour Relations Act 66 of 1995, to allow the applicant to be represented by an attorney. After unsuccessfully challenging this in the Labour Court and Labour Appeal Court, this Court handed down a unanimous judgment dismissing the application for leave to appeal. The Court held that, although section 140(1) of the Labour Relations Act raises a constitutional question, it was not in the interests of justice to hear the matter, because section 140 was repealed nearly seven years ago, and there appears no longer to be a live dispute between the parties. In the result, the application for leave to appeal was dismissed.</p> <p>Majority: O'Regan (unanimous)</p>	[2009] ZACC 10
343	<p><i>Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others (CCT 77/08)</i> <i>Handed down:</i> <i>7 May 2009</i></p>	<p>The matter concerned the constitutional validity of provisions of the Private Security Industry Act of 2001, regulating the private security industry in South Africa. The applicants were farmers who had hired "in-house" security guards. Case concerned whether they were required to register as "security service providers" under section 21(1)(a) of the Act and be bound by the the Code of Conduct which ensured the payment of minimum wages and compliance with labour standards. The majority of the Court held that the provision was not overbroad; that the in-house security guards fell within this definition and were thus required to register in terms of the Act. Furthermore the Court held that the requirement of compliance with the Code of Conduct was not unconstitutional since it was an important purpose of the Act. In a dissenting judgment, O'Regan J held that section 21(a) was impermissibly vague and therefore unconstitutional and invalid.</p> <p>Majority: Mokgoro J (Langa CJ, Moseneke DCJ, Ngcobo J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concurring). Minority: O'Regan</p>	[2009] ZACC 11
344	<p><i>Laerskool Generaal Hendrik Schoeman v Bastian Financial Services (Pty) Ltd (CCT 22/09)</i> <i>Handed down:</i> <i>7 May 2009</i></p>	<p>Application for leave to appeal against a decision of the SCA. The Court warned that litigants who obtained a judgment from the SCA - which is the final court of appeal in non-constitutional matters - should ordinarily be entitled to assume after the time for lodging a further appeal has lapsed that the judgment has become final. Here, no adequate explanation was given for the delay. Condonation was refused and the application dismissed.</p> <p>Judgment of the Court</p>	[2009] ZACC 12

345	<p><i>African National Congress v Chief Electoral Officer of the Independent Electoral Commission</i> (CCT 45/09) Order: 5 May 2009 Judgment Handed down: 3 June 2009</p>	<p>This matter involved an urgent application for leave to appeal by the African National Congress (ANC) against a decision taken by the Electoral Court upholding the objection of the Chief Electoral Officer (CEO) of the Independent Electoral Commission to one of the candidates included on the ANC list for election of the National Assembly in the 2009 General Elections. The objection was based on the fact that said candidate was not on the voters' roll. A unanimous Court held that on the facts there was no reason to prohibit the candidate from standing for election and therefore upheld the appeal against the decision of the Electoral Court.</p> <p>Majority: Judgment of the Court</p>	[2009] ZACC 13
346	<p><i>Biowatch Trust v Registrar Genetic Resources and Others</i> (CCT 80/08) Handed down: 3 June 2009</p>	<p>Dealing with costs awards in constitutional litigation. Sachs J, noted that appellate courts are reluctant to interfere with the exercise of discretion in relation to costs awards, the more so when the appeal was based solely on questions of costs. High Court had misdirected itself in not giving appropriate attention to the fact that this was a matter regarding the vindication of constitutional rights. The general rule in constitutional litigation is that an unsuccessful litigant in proceedings against the state ought not to be ordered to pay costs, unless the application is frivolous or vexatious or in any other way manifestly inappropriate. Biowatch was substantially successful. The governmental authorities were ordered to pay Biowatch's costs.</p> <p>Majority: Sachs J (Unanimous.)</p>	[2009] ZACC 14
347	<p><i>Von Abo v President of the Republic of South Africa</i> (CCT 67/08) Handed down: 5 June 2009</p>	<p>Application for the confirmation of part of an order handed down by the North Gauteng High Court, Pretoria. Applicant sought an order declaring that the Government had failed to properly consider and decide his request, and that it grant him diplomatic protection relating to the violation of his rights by the Government of Zimbabwe. This Court held that diplomatic protection was the responsibility of the government as a whole, and not the President alone. "Conduct", as described in section 172(2)(a) did not include this category of obligations. Moreover, on the facts of this case, it was clear that it was the Department of Foreign Affairs that had purported to deal with the matter and not the President despite the applicant's appeals to the President for diplomatic protection. For these reasons, Moseneke DCJ held that the matter had been erroneously brought to this Court and thus struck the matter off the roll. Moseneke DCJ (unanimous)</p>	[2009] ZACC 15

348	<p><i>Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others</i> (CCT 22/08) Handed down: 10 June 2009</p>	<p>This was an application for leave to appeal against an order of the Western Cape High Court, which ruled in favour of the respondents by granting an eviction order. The High Court held that the respondents had complied with the requirements of the PIE Act 19 of 1998. The applicants appealed the decision to the Constitutional Court on the basis that, inter alia, the PIE Act was not applicable to them because they had consent to occupy the Joe Slovo settlement and such consent was still valid. Consequently, they were not 'unlawful occupiers' as stipulated in the PIE Act and could thus not be evicted. The judgment of the Court held that, at the time the eviction proceedings were initiated, the applicants were unlawful occupiers within the meaning of the PIE Act either because there was no consent to occupy the property or such consent had been revoked. The Court granted a structured eviction order based on the draft order submitted by the respondents. All judges concurred in the judgment of the Court. 5 separate, concurring judgments were written by Deputy Chief Moseneke, Justice Ngcobo, Justice O'Regan, Justice Sachs and Justice Yacoob explaining the reasons for their concurrence.</p>	[2009] ZACC 16
349	<p><i>Strategic Liquor Services v Mvumbi NO and Others</i> (CCT 33/09) Handed down: 18 June 2009</p>	<p>Application for leave to appeal against a judgment of the Labour Court which dismissed an application to review a Commission for Conciliation, Mediation and Arbitration award in favour of an employee. The employer contended that the CCMA and the Labour Courts misconceived the jurisdictional prerequisites for constructive dismissal, since on the employee's own version he had a choice whether to resign or be subjected to poor performance procedures. The Court held that it should not intervene, since the employer's submission misconstrued the test for constructive dismissal: this does not require that the employee have no choice but to resign, but only that the employer should have made continued employment intolerable. The Court however drew attention to the long delays that had beset the case in the labour courts and to the fact that neither the Labour Court nor the Labour Appeal Court had given the employer reasons for the adverse decision. It pointed out that a reasoned judgment is essential to the appeal process. Failure to provide one when requested cuts across the employer's right of access to courts. The application for leave to appeal was dismissed with costs. Judgment of the Court.</p> <p>Majority: Cameron J (unanimous)</p>	[2009] ZACC 17

350	<p><i>Centre for Child Law v Minister for Justice and Constitutional Development and Others</i> (CCT98/08) Handed down: 15 July 2009</p>	<p>Application for confirmation of order of constitutional invalidity made by the Pretoria High Court, declaring various provisions of the Criminal Law Amendment Act 105 of 1997 (CLAA), as amended by Criminal Law (Sentencing) Amendment Act 38 of 2007 (the Amendment Act) (the Amendment Act) invalid. This statute made minimum sentences for certain serious crimes applicable to 16 and 17 year old children. The majority found that, limiting the children's rights provisions in the Bill of Rights (section 28), the minimum sentencing regime constrains the discretion of sentencing officers by orientating the sentencing officer away from options other than incarceration, by de-individualising sentencing, and by conducting to longer and heavier sentences. Since no adequate justification was provided for the limitation, the Court confirmed the order of invalidity in its essential respects. The minority held that that the Amendment Act is not inconsistent with the Constitution, because the sentencing regime must be interpreted on the basis that all children are the beneficiaries of the rights conferred by section 28(1)(g) of the Constitution, to which all courts must give effect during the sentencing process.</p> <p>Majority: Cameron J (Langa CJ, Moseneke DCJ, Mokgoro J, O'Regan J, Sachs J and Van der Westhuizen J concurring). Minority: Yacoob J (Ngcobo J, Nkabinde J and Skweyiya J concurring).</p>	[2009] ZACC 18
351	<p><i>Hassam v Jacobs NO and Others</i> (CCT83/08) Handed down: 15 July 2009</p>	<p>Application for confirmation of an order of invalidity. The case concerns the proprietary consequences of a polygynous Muslim marriage within the context of intestate succession. The applicant, was a party to a polygynous Muslim marriage. Her husband died intestate. A party to such a marriage is not a "spouse" for purposes of the Intestate Succession Act 81 of 1987. The exclusion of women in the position of applicant from the protection of the Act unfairly discriminates against them on the listed grounds of religion, marital status and gender. This exclusion is not justifiable and section 1 of the Act was declared unconstitutional. To remedy the defect, the words "or spouses" are to be read-in after each use of the word "spouse" in the Act.</p> <p>Majority: Nkabinde J (unanimous).</p>	[2009] ZACC 19
352	<p><i>Women's Legal Trust v President of the Republic of South Africa and Others</i> (CCT13/09) Handed down: 22 July 2009</p>	<p>Application for direct access seeking an order declaring that the President and Parliament failed to fulfil constitutional obligations because no legislation has been passed recognising and regulating marriages concluded under Islamic law. The Court dealt with a preliminary point only - whether the Centre could bring its case as a direct access application. The Court held that the exclusive-access provision of the Constitution, section 167(4)(e), focuses on specific agents - it mentions only the President and Parliament. By contrast, the obligation to enact legislation to fulfil the rights in the Bill of Rights falls</p>	[2009] ZACC 20

		on a wide range of constitutional actors. The obligation therefore does not fall within this Court's exclusive jurisdiction. Application dismissed. Majority: Cameron J (unanimous).	
353	<i>Conrad Stefaans Brummer v The Minister for Social Development and Others</i> (CCT 25/09) Handed down: 13 August 2009	Application for confirmation of invalidity of section 78(2) of the Promotion of Access to Information Act (PAIA) which allows a person who is refused access to information to challenge the refusal in court. The challenge must be brought within 30 days. Confirmed the High Court's declaration that section 78(2) was unconstitutional in that it does not give a person who is refused information adequate time to approach a court for relief. The provision limits the applicant's right to access to court as well as his access to information. This limitation was not reasonable and justifiable. Ordered that Parliament enact legislation that prescribes a time limit that is consistent with the Constitution. Pending the enactment of such legislation a period of 180 days will suffice for applicants to bring applications to court. The present matter was referred back to the High Court (and a different judge) for it to consider his application for access to information. Majority: Ngcobo J (unanimous).	[2009] ZACC 21
354	<i>Wybrand Andreas Ludowikus Du Toit v Minister for Safety and Security and Another</i> (CCT 91/08) Handed down: 18 August 2009	The applicant was sentenced to 15 years imprisonment for murder and dismissed from his employ in the SAPS as a result of this. He was later granted amnesty in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("Reconciliation Act"). He applied to the High Court for an order compelling the SAPS to reinstate him to his previous position. The High Court dismissed the application, as did the Supreme Court of Appeal. On appeal, this Court held that the granting of amnesty does not render unlawful acts lawful, nor does it undo the legal consequences of the conduct for which amnesty was granted. Section 20(10) of the Reconciliation Act ought not to be interpreted so as to operate prospectively on the civil and administrative consequences of the grant of amnesty. The grant of amnesty cannot be equated with an appeal or review, which are judicial processes whereas amnesty is an administrative process. The appeal was dismissed, without costs, and the cost orders of the High Court and Supreme Court were set aside. Majority: Langa CJ (unanimous)	[2009] ZACC 22

355	<p><i>Wycliffe Simiyu Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)</i> (CCT 53/08)</p> <p>Handed down: 25 August 2009</p>	<p>On appeal from the North Gauteng High Court. Raised issues of the exhaustion of internal remedies prior to approaching a court for judicial review. This is required in terms of PAJA. Applicants (Kenyan nationals) had their residence permits withdrawn because they were fraudulently obtained. Letter explaining this was sufficient reason to allow for a meaningful review in terms of the Immigration Act, 2002. The applicants needed to exhaust this internal remedy before approaching the court. Appeal dismissed.</p> <p>Majority: Mokgoro J (unanimous).</p>	[2009] ZACC 23
356	<p><i>Reflect-All 1025 CC and Others v Member of the executive Council for Public Transport, Roads and Works, Gauteng Provincial Government</i> (CCT 110/08)</p> <p>Handed down: 27 August 2009</p>	<p>Application for confirmation of order of invalidity of section 10(1) and (3) of the Infrastructure Act 2001 and corresponding Notices 2625 and 2626 relating to the planning of provincial roads. Court held that the provisions do not arbitrarily deprive the landowners of their land, and strike a balance between the province's legitimate interests and the landowners' proprietary interests. The provisions were not arbitrary. With regard to section 10(3) the Court held that there is no need for compensation as the provincial government has not acquired any rights in the affected land, and that the publication of notices does not amount to administrative action. The application was dismissed and the cost order of the High Court altered parties to pay their own costs in both Courts. O'Regan J dissented with regard to section 10(3), finding it to be unconstitutional because of the indefinite restriction of the rights and the fact that there is no mechanism for periodic public review.</p> <p>Majority: Nkabinde J (Moseneke DCJ, Mokgoro J, Ngcobo J and Skweyiya J concurring)</p> <p>Minority: O'Regan J (Van der Westhuizen J and Cameron J concurring)</p>	[2009] ZACC 24
357	<p><i>Minister for Justice and Constitutional Development v Mqabukeni Chonco and 383 Others</i> (CCT 42/09)</p> <p>Handed down: 30 September 2009</p>	<p>This was an application for leave to appeal against a decision by the Supreme Court of Appeal ("SCA"). The SCA found that advice rendered by the Department of Justice and Constitutional Development to the President, which was intended to assist him to fulfill his constitutional Head of State function to pardon offenders under section 84(2)(j) of the Constitution, constituted 'preliminary executive functions' for which the relevant Minister could be held accountable under section 85(2)(e) of the Constitution. On appeal to this Court, it was held that the power to request advice, and the advice itself, is an 'auxiliary power' granted to the Head of State by section 84(1). The matter fell within the responsibility of the President only and was therefore within the exclusive jurisdiction of the Constitutional Court. The High Court and the SCA had lacked jurisdiction to consider it. Mr Chonco ought to have sued the President, not the Minister, to obtain the relief he sought. Accordingly, the appeal succeeded.</p>	[2009] ZACC 25

		Majority: Langa CJ (unanimous)	
358	<i>Gcaba v The Minister of Safety and Security NO and Others</i> (CCT 64/08) Handed down: 7 October 2009	Application for leave to appeal relating to the powers of the High Court over labour-related matters, and whether the conduct of a public sector employer towards an employee amounts to administrative action. A unanimous Court held that jurisdiction must be assessed on the basis of the pleadings. Where a remedy lies in the High Court, section 157(2) of the Labour Relations Act 66 of 1995 should not be interpreted to exclude such jurisdiction. However, employment and labour relationship decisions taken in relation to public sector employees generally do not amount to administrative action. When conduct of the state as employer has no direct consequences for other citizens, it will not amount to administrative action. Accordingly, the application was dismissed and there was no order as to costs. Majority: Van der Westhuizen J (unanimous)	[2009] ZACC 26
359	<i>Bothma v Els and Others</i> (CCT 21/09) Handed down: 8 October 2009	Application for leave to appeal against an order of the High Court granting a permanent stay of a prosecution. The applicant had instituted a private prosecution against the respondent on charges of rape alleged to have occurred almost 40 years earlier. The High Court held that the delay, for which it regarded the applicant as being fully culpable, would result in irreparable trial prejudice to the respondent and deny him his constitutional right to a fair trial. Sachs J held that the High Court had paid insufficient attention to the specific nature of the alleged offence and the manner in which the applicant claimed the trauma had contributed towards the subsequent delay. These were issues that should have been left for the trial court to determine. Any prejudice that the respondent might suffer because of the delay was not insurmountable and his right to a fair trial would be protected by the presumption of innocence. The appeal therefore succeeded, and the decision of the High Court staying the prosecution was set aside. Majority: Sachs J (unanimous)	[2009] ZACC 27
360	<i>Mazibuko and Others v City of Johannesburg and Others</i> (CCT 39/09) Handed down: 8 October 2009	Application for leave to appeal concerning the reasonableness, fairness and lawfulness of a water policy of the City of Johannesburg, specifically with regard to the pilot project in Phiri Township, Soweto. The introduction of a free basic water allowance of 6 kilolitres per household per month and the introduction of prepaid water meters were challenged as infringing the applicants' Constitutional rights of access to water and to just administrative action as well as their rights to dignity and equality. The Court held that the City's free basic water policy was reasonable. It had curtailed the previously exorbitant water losses in the area; had been accepted by the	[2009] ZACC 28

		<p>majority of the consumers in the area; was under constant review; and provided for, on average across Johannesburg, more water per person than the applicants were asking for. The Court refused to give a quantified content to section 27, holding that this would not be appropriate, especially where the quantity asked for was not clearly proven on the papers. The introduction of prepaid meters was found to be authorized by law, fair and not discriminatory. The importance of socio-economic rights litigation was affirmed. The orders of the High Court and the Supreme Court of Appeal were overturned.</p> <p>Majority: O'Regan J (unanimous)</p>	
361	<p><i>The Minister of Justice and Constitutional Development v Nyathi and Others</i> (CCT 53/09) Handed down: 9 October 2009</p>	<p>Application by the Minister for Justice and Constitutional Development for the extension of the suspension of the declaration of invalidity made in <i>Nyathi v MEC for Health, Gauteng and Another</i> 2005 (5) SA 94 (CC) in June 2008. That order declared constitutionally invalid section 3 of the State Liability Act 20 of 1957, a provision which prohibits parties to whom debts are owed by the state from executing against or attaching state assets for the satisfaction of judgment debts. The Minister sought an extension of the order of invalidity because Parliament had failed to enact the remedial legislation within the prescribed time frame. The Court, per Mokgoro J, granted a further extension for a period of two years together with an interim order. The interim order provided a procedure for the attachment and execution of movable state assets if the relevant Treasury failed to satisfy the judgment debt within the period prescribed in the interim order.</p> <p>Majority: Mokgoro J (unanimous)</p>	[2009] ZACC 29
362	<p><i>Leon Joseph and Others v City of Johannesburg and Others</i> (CCT 43/09) Handed down: 9 October 2009</p>	<p>Application for leave to appeal on whether the electricity supplier (City Power) can lawfully disconnect the electricity supply to leased residential premises without giving the tenants, and not just the landlord with whom the supplier has a contractual relationship, pre-termination notice and a hearing in terms of section 3(2) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). The unanimous Court held that the applicants received electricity as a matter of public law right correlative to the constitutional and statutory duties of local government to provide basic municipal services to all persons living in its jurisdiction. Applicants were accordingly entitled to procedural fairness. This required 14 days' pre-termination notice in the form of a physical notice placed in a prominent position in the building. By-law 14(1) of the Electricity By-laws (1999) was declared unconstitutional and therefore invalid - an invalidity cured by severing the words "without notice". By-law 15(3) of the Credit Control and Debt Collection By-Laws (2005) was read in the light of PAJA to require procedural fairness and thus</p>	[2009] ZACC 30

		to produce a constitutional result. Majority: Skweyiya J (unanimous)	
363	<i>Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others</i> (CCT 12/09) Handed down: 14 October 2009	Application on both Bill of Rights and provincial competence grounds for a declaration that the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007 is invalid, alternatively that section 16 of the Act is unconstitutional. The Court held that the subject matter of the Act is housing and that it falls within the concurrent competence of national and provincial legislature. Therefore, the Act as a whole is not invalid. The Court however found that section 16 of the Act is unconstitutional because it compels an owner of a building or land, or the municipality within whose jurisdiction the building or land is located, to institute eviction proceedings against unlawful occupiers even in circumstances where the requirements of Prevention of Illegal Evictions and Unlawful Occupations Act 19 of 1998, which protects unlawful occupiers against arbitrary evictions, may not be met. It also found that the power given to the MEC to issue a notice is overbroad and irrational because it applies to any unlawful occupier on any land or in any building even if it is not a slum and was not properly related to the purpose of the Act being the elimination or prevention of slums. The majority therefore granted an order declaring section 16 of the Act inconsistent with section 26 of the Constitution and invalid. Majority: Moseneke DCJ (Langa CJ, Cameron J, Mokgoro J, Ngcobo J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J and Van der Westhuizen J concurring). Dissent: Yacoob J	[2009] ZACC 31
364	<i>Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Others</i> (CCT 40/09) Handed down: 14 October 2009	Appeal against an order finding that the Head of Department ("HoD") had acted unlawfully in withdrawing the function of the school governing body ("SGB") to determine the school's language policy and appointing an interim committee to perform the function. The withdrawal was motivated by Hoërskool Ermelo's alleged refusal to change its single medium Afrikaans language policy despite a shortage of English medium schooling in the area. The Court held that section 29(2) of the Constitution read with section 22 of the South African Schools Act 84 of 1996 empowers the HoD to withdraw the SGB's function to determine language policy. Once the HoD has withdrawn the function, the power to determine the function vests in the HoD. Therefore, the Court held that it was incorrect for the HoD to invoke section 25 of Schools Act in appointing an interim committee to determine the function. The HoD's actions therefore lacked lawful basis. The Court however emphasised the need to ensure that the	[2009] ZACC 32

		<p>constitutional rights to education and to be taught in an official language of one's choice are properly protected. Accordingly, the Court ordered the school to revisit its language policy in the light of the judgment, and to report to the Court. The HoD was ordered to report to the Court on the steps being taken to ensure that there are sufficient places for grade 8 English learners in the area at the start of 2010.</p> <p>Majority: Moseneke DCJ (unanimous)</p>	
365	<p><i>Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others</i> (CCT 31/09) Handed down: 19 November 2009.</p>	<p>Appeal against the South Gauteng High Court's order dismissing the applicants' claim against the Ekurhuleni Metropolitan Municipality for high-mast lighting and temporary sanitation facilities in the Harry Gwala Informal Settlement. The Court held that Chapters 12 and 13 of the National Housing Code are not applicable, as the former deals with emergency situations and the latter with upgraded townships. The applicants' direct reliance on several constitutional provisions was also held to be vague, insufficiently specified and inappropriate. The Court did not pronounce on the reasonableness of the Municipality's newly adopted policy, as it was held to be inappropriate to consider a case so fundamentally changed on appeal. The MEC (whom the Court joined in the proceedings before it, and whose department admitted delay in finalising the necessary approvals) was ordered to take a final decision on the application to upgrade the status of the settlement within 14 months of the date of the order.</p> <p>Majority: Van der Westhuizen J (unanimous)</p>	[2009] ZACC 33
366	<p><i>City of Tshwane Municipal Council v Cable City (Pty) Ltd</i> (CCT 85/09) Handed down: 03 December 2009</p>	<p>Application for leave to appeal against a judgment of the North Gauteng High Court ruling, affirmed on appeal to the Supreme Court of Appeal, that section 12 of the Regional Services Councils Act 109 of 1985 did not empower the Minister of Finance to authorise the City Council to summarily estimate the liability of levy payers. The City contended the judgments of the courts below should be reversed because the Minister was not party to the litigation. A unanimous Court held that, given that the relevant statutory provisions have been abolished, and that the legal argument in favour of the notice is exceedingly weak, the non-joinder of the Minister is not a sufficient reason to hear the case. The Court found that it was therefore not necessary to enter into the question of the existence and impact of the doctrine of collateral challenge. The application for leave to appeal was dismissed.</p> <p>Majority: Judgment of the Court</p>	[2009] ZACC 34