

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

\*\*Arranged chronologically according to when judgment was handed down

\*Last updated: March 2007

	CASE	SUBJECT	CITATION
1	<i>S v Zuma and Others</i> CCT 5/94 <b>Handed down:</b> 5 April 1995	Presumption relating to the admissibility of confessions in s.217 (1)(b)(ii) of the Criminal Procedure Act Maj: Kentridge AJ (unanimous)	1995 (2) SA 642 (CC); 1995 (4) BCLR 401 (SA)
2	<i>S v Makwanyane and Another</i> CCT 3/94 <b>Handed down:</b> 6 June 1995	Death penalty declared unconstitutional. Maj: Chaskalson P held that retribution cannot be accorded the same weight under our Constitution as the rights to life and dignity, which are the most important of all the rights in the Bill of Rights. It has not been shown that the death penalty would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment. Taking these elements into account as well as the element of arbitrariness and the possibility of error in enforcing the death penalty, the clear and convincing case that is required to justify the death sentence as the penalty for murder has not been made out. Separate concurrences by: Ackermann J, Didcott J, Kentridge AJ, Langa J, Madala J, Mahomed J, Mokgoro J, O'Regan J, Sachs J.	1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC)
3	<i>S v Mhlungu and Others</i> CCT 25/94 <b>Handed down:</b> 8 June 1995	Application of Constitution to court proceedings pending at 27/4/1994. Majority judgment by Mahomed J (concurrences: Langa J, Madala J, Mokgoro J, and O'Regan J). Dissenting judgment by Kentridge AJ (concurrences: Chaskalson P, Ackermann J, and Didcott J). Concurrence: Sachs J.	1995 (3) SA 867 (CC); 1995 (7) BCLR 793 (CC)
4	<i>S v Vermaas; S v Du Plessis</i> CCT 1/94; CCT 2/94 <b>Handed down:</b> 8 June 1995	Right to be provided with legal representation. A unanimous judgment written by Didcott J.	1995 (3) SA 292 (CC); 1995 (7) BCLR 851 (CC)
5	<i>S v Williams and Others</i> CCT 20/94 <b>Handed down:</b> 9 June 1995	Corporal punishment in terms of s.294 (1)(a) of the Criminal Procedure Act. A unanimous judgment written by Langa J.	1995 (3) SA 632 (CC); 1995 (7) BCLR 861 (CC)
6	<i>Coetzee v Government of the Republic of South Africa and Others; Matiso v The Commanding Officer, Port Elizabeth Prison and Others</i>	Imprisonment of judgment debtors as provided for by s.65 of the Magistrates Courts Act. Majority judgment written by Kriegler J (concurring: Chaskalson P, Mahomed DP, Ackermann J, Madala J, and O'Regan J).	1995 (4) SA 631 (CC); 1995 (10) BCLR 1382 (CC)

	CCT 19/94; 22/94 <b>Handed down:</b> 22 September 1995	Dissent written by Didcott J. Separate concurrences by Kentridge J, Langa J, Sachs J, and Mokgoro J.	
7	<i>Executive Council, Western Cape Legislature and Others v President of the Republic of South Africa and Others</i> CCT 27/95 <b>Handed down:</b> 22 September 1995	Section 16A of the Local Government Transition Act and Proclamations issued in terms thereof Majority judgment written by Chaskalson P. Separate concurrence: Mahomed DP (concurring: Mokgoro J) Separate concurrence: Ackermann J, O'Regan J Separate concurrence: Kriegler J Separate concurrence: Langa J, (con: Didcott J) Separate concurrence: Sachs J Dissent: Madala J, Ngoye AJ	1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC)
8	<i>Zantsi v The Council of State, Ciskei, and Others</i> CCT 24/94 <b>Handed down:</b> 22 September 1995	Powers of the Supreme Court in respect of pre-constitutional legislation A unanimous judgment written by Chaskalson P.	1995 (4) SA 615 (CC); 1995 (10) BCLR 1424 (CC)
9	<i>Premier, KwaZulu-Natal and Others v President of the Republic of South Africa and Others</i> CCT 36/95 <b>Handed down:</b> 29 November 1995	Amendments of the interim Constitution by Act 44 of 1995. A unanimous judgment written by Mahomed DP.	1996 (1) SA 769 (CC) ; 1995 (12) BCLR 1561 (CC)
10	<i>Shabalala and Others v Attorney-General, Transvaal, and Another</i> CCT 23/94 <b>Handed down:</b> 29 November 1995	Police docket privilege. A unanimous judgment written by Mahomed DP.	1996 (1) SA 725 (CC); 1995 (12) BCLR 1593 (CC)
11	<i>S v Bhulwana; S v Gwadiso</i> CCT 12/95 <b>Handed down:</b> 29 November 1995	Presumption in s21(1)(a)(l) of the Drugs and Drug Trafficking Act. A unanimous judgment written by O'Regan J.	1996 (1) SA 388 (CC); 1995 (12) BCLR 1579 (CC)
12	<i>Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others</i> CCT 5/95 <b>Handed down:</b> 6 December 1995	Section 417(2)(b) of the Companies Act providing for examinations during companies' winding-up Majority judgment written by 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	1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC)
13	<i>S v Ntuli</i> CCT 17/95 <b>Handed down:</b> 8 December 1995	Limitation of a prisoner's right to prosecute an appeal in person by s.309(4) and s.305 of the Criminal Procedure Act A unanimous judgment written by Didcott J.	1996 (1) SA 1207 (CC); 1996 (1) BCLR 141 (CC)
14	<i>S v Rens</i> CCT 1/95 <b>Handed down:</b> 28 December 1995	Application for leave to appeal against conviction by a superior court in terms of s.316 of the Criminal Procedure Act A unanimous judgment written by Madala J.	1996 (1) SA 1218 (CC); 1996 (2) BCLR 155 (CC)
15	<i>S v Mbatha, S v Prinsloo</i>	Presumption in s.40(1) of the Arms and Ammunition	1996 (2) SA 464 (CC);

	CCT 19/95 <b>Handed down:</b> 9 February 1996	Act A unanimous judgment written by Langa J.	1996 (3) BCLR 293 (CC)
16	<i>Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others</i> CCT 5/95 <b>Handed down:</b> 19 March 1996	Costs judgment A unanimous judgment written by Ackermann J.	1996 (2) SA 621 (CC); 1996 (4) BCLR 441 (CC)
17	<i>Bernstein and Others v Bester and Others NNO</i> CCT 23/95 <b>Handed down:</b> 27 March 1996	Examination of any person as to the affairs of a company in the course of winding-up in terms of s. 417 and s. 418 of the Companies Act Majority judgment written by Ackermann J (concurrences: Chaskalson P, Mahomed DP, Madala J, Langa J, Mokgoro J, Sachs J, Ngoepe AJ) Separate concurrences by Kriegler J (concurring Didcott J), O'Regan J	1996 (2) SA 751 (CC); 1996 (4) BCLR 449 (CC)
18	<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 <b>Handed down:</b> 3 April 1996	Referral of a dispute by the Speaker of the National Assembly in terms of s.98(2)(d) and s.98(9) of the Constitution A unanimous judgment written by Chaskalson P.	1996 (3) SA 289 (CC); 1996 (4) BCLR 518 (CC)
19	<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 <b>Handed down:</b> 4 April 1996	Referral of a dispute by the Speaker of the Gauteng Legislature in terms of ss.98(2)(d) and 98(9) Majority judgment written by Mahomed DP (concurrences: Chaskalson P, Ackermann J, Didcott J, Langa J, Madala J, Mokgoro J, O'Regan J, Kentridge AJ) Separate concurrences: Kriegler J, Sachs J	1996 (3) SA 165 (CC); 1996 (4) BCLR 537 (CC)
20	<i>Luitingh v Minister of Defence</i> CCT 29/95 <b>Handed down:</b> 4 April 1996	Section 113(1) of the Defence Act which limits the time period within which persons can institute proceedings against the State A unanimous judgment written by Didcott J.	1996 (2) SA 909 (CC); 1996 (4) BCLR 581 (CC)
21	<i>Nel v Le Roux NO and Others</i> CCT 30/95 <b>Handed down:</b> 4 April 1996	Section 205 of the Criminal Procedure Act which permits the examination of any person likely to have material or relevant information about any alleged offence. A unanimous judgment written by Ackermann J.	1996 (3) SA 562 (CC); 1996 (4) BCLR 592 (CC)
22	<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	Section 2(1) of the Indecent or Obscene Photographic Matter Act prohibited the possession of indecent or obscene photographic matter Freedom of expression/right to privacy Majority judgment written by Didcott J (Chaskalson J, Mahomed DP, Ackermann J, Kriegler J, O'Regan J,	1996 (3) SA 617 (CC); 1996 (5) BCLR 609 (CC)

	<b>Handed down:</b> 9 May 1996	Ngoepe J) Dissenting: Mokgoro J	
23	<i>Besserglik v Minister of Trade, Industry and Tourism and Others; Minister of Justice</i> CCT 34/95 <b>Handed down:</b> 14 May 1996	Section 20(4) (b) of the Supreme Court Act 59 of 1959 regarding appeal proceedings. Section 22 of the Constitution - right of access to courts A unanimous judgment written by O'Regan J.	1996 (4) SA 331 (CC); 1996 (6) BCLR 745 (CC)
24	<i>Du Plessis and Others v De Klerk and Another</i> CCT 8/95 <b>Handed down:</b> 15 May 1996	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 Majority judgment written by Kentridge AJ (concurring: Chaskalson P, Langa J, O'Regan J) Separate concurrences: Mahomed DP (concurring Langa J, O'Regan J), Ackermann J, Madala J, Mokgoro J, Sachs J Dissent: Kriegler J (concurring Didcott J)	1996 (3) SA 850 (CC); 1996 (5) BCLR 658 (CC)
25	<i>Gardener v Whitaker</i> CCT 26/94 <b>Handed down:</b> 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 A unanimous judgment written by Kentridge AJ.	1996 (4) SA 337 (CC); 1996 (6) BCLR 775 (CC)
26	<i>Key v A-G, Cape of Good Hope and Another</i> CCT 21/94 <b>Handed down:</b> 15 May 1996	Sections 6 and 7 of the Serious Economic Offences Act. (Search and seizure, Tollgate) Use of derivative evidence. Distinction between constitutionality and admissibility. Section 25(3) of the Constitution A unanimous judgment written by Kriegler J.	1996 (4) SA 187 (CC); 1996 (6) BCLR 788 (CC)
27	<i>Brink v Kitshoff NO</i> CCT 15/95 <b>Handed down:</b> 15 May 1996	Section 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 A unanimous judgment written by Chaskalson P. O'Regan J (although concurring wrote a separate judgment).	1996 (4) SA 197 (CC); 1996 (6) BCLR 752 (CC)
28	<i>Ynuico Ltd v Min of Trade and Industry and Others</i> CCT 47/95 <b>Handed down:</b> 21 May 1996	Section 2(1) (b) of Import and Export Control Act. Section 26 argument abandoned. Retrospectively, separation of powers and s. 37 and s. 229 of the Constitution. A unanimous judgment written by Didcott J.	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 <b>Handed down:</b> 11 June 1996	Section 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. A unanimous judgment written by Ackermann J.	1996 (4) SA 552 (CC); 1996 (7) BCLR 889 (CC)
30	<i>S v Julies</i> CCT 7/96 <b>Handed down:</b> 11 June 1996	Section 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.	1996 (4) SA 313 (CC); 1996 (7) BCLR 899 (CC)

		Presumption of innocence, no rational connection. A unanimous judgment written by Kriegler J.	
31	<i>Speaker of the KwaZulu-Natal Provincial Legislature, Ex Parte: In re KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Bill of 1995; Speaker of the KwaZulu-Natal Provincial Legislature, Ex Parte: In re Payment of Salaries, Allowances and Other Privileges to the Ingonyama Bill of 1995</i> CCT 1/96 ; CCT 6/96 <b>Handed down:</b> 5 July 1996	Enactment and amendment of KwaZulu-Natal legislation. Provincial competence to enact such legislation with right to traditional authorities. Prohibition on receiving monies and in-kind benefits. Schedule 6, section 126, chapter 3. Court held within provincial competence and no violation of chapter 3 rights. A unanimous judgment written by Chaskalson P	1996 (4) SA 653 (CC); 1996 (7) BCLR 903 (CC)
32	<i>Azanian Peoples Organisation (AZAPO) and Others v The President of the Republic of South Africa</i> CCT 17/96 <b>Heard on:</b> 25 July 1996	Section 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. Section 22 of the Constitution, postamble - interpretation and status, s. 33(2) of the Constitution. Majority judgment written by Mahomed DP (concurring: Chaskalson P, Ackermann J, Kriegler J, Langa J, Madala J, Mokgoro J, O'Regan J, Sachs J) Separate concurrences: Didcott J	1996 (4) SA 671 (CC); 1996 (8) BCLR 1015 (CC)
33	<i>Chairperson of the Constitutional Assembly, Ex Parte: In re Certification of the Constitution of the Republic of South Africa, 1996</i> CCT 23/96 <b>Handed down:</b> 6 September 1996	Certification of the new text. Text remitted to Constitutional Assembly. Decision by the Court.	1996 (4) SA 744 (CC); 1996(10) BCLR 1253 (CC)
34	<i>Speaker of the KwaZulu-Natal Provincial Legislature, Ex Parte: In re Certification of the Constitution of the Province of KwaZulu-Natal, 1996</i> CCT 15/96 <b>Handed down:</b> 6 September 1996	Certification of the Constitution of Kwazulu-Natal Decision by the Court.	1996 (4) SA 1098 (CC); 1996 (11) BCLR 1419 (CC)
35	<i>Tsotetsi v Mutual and Federal Insurance Company Ltd</i> CCT 16/95 <b>Heard on:</b> 12 September 1996	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) 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. Maj: O'Regan J (unanimous)	1997 (1) SA 585 (CC); 1996 (11) BCLR 1439 (CC)

36	<i>Scagell and Others v Attorney-General, Western Cape and Others</i> CCT 42/95 <b>Handed down:</b> 12 September 1996	Constitutionality of sections 6(3), 6(4), 6(5), 6(6) and 6(7) of the Gambling Act challenged. Referral of s. 6(7) not within s.103(3) and (4). Section 6(4), which imposes a legal burden on the accused, held to be in breach of s. 25(3) (presumption of innocence) and invalid. Section 6(3), which imposes an evidentiary burden on the accused, held to be in breach of right to a fair trial and invalid. Sections 6(5) and (6) not unconstitutional. A unanimous judgment written by O'Regan J.	1997 (2) SA 368 (CC); 1996 (11) BCLR 1446 (CC)
37	<i>Mohlomi v Minister of Defence</i> CCT 41/95 <b>Handed down:</b> 26 September 1996	Section 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. A unanimous judgment written by Didcott J.	1997 (1) SA 124 (CC); 1996 (12) BCLR 1559 (CC)
38	<i>S v Bequint</i> CCT 24/95 <b>Handed down:</b> 18 November 1996	Referral in terms of s.102(1). Constitutionality of section 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. A unanimous judgment written by Kriegler J.	1997 (2) SA 887 (CC); 1996 (12) BCLR 1588 (CC)
39	<i>Transvaal Agricultural Union v Minister of Land Affairs and the Commission on Restitution of Land Rights</i> CCT 21/96 <b>Handed down:</b> 18 November 1996	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. A unanimous judgment written by Chaskalson P.	1997 (2) SA 621 (CC); 1996 (12) BCLR 1573 (CC)
40	<i>JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others</i> CCT 14/95 <b>Handed down:</b> 21 November 1996	Constitutionality of the Publications Act and the Indecent or Obscene Photographic matter Act. A unanimous judgment written by Didcott J.	1997 (3) SA 514 (CC); 1996 (12) BCLR 1599 (CC)
41	<i>Chairperson of the National Assembly, Ex Parte: In re Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996</i> CCT 37/95 <b>Handed down:</b> 4 December 1996	Re-certification of the text of the Constitution. Judgment of the Court.	1997 (2) SA 97 (CC); 1997 (1) BCLR 1 (CC)
42	<i>Fraser v The Children's</i>	Constitutionality of s. 18(4) (d) of the Child Care Act	1997 (2) SA 261 (CC);

	<i>Court, Pretoria North and Others</i> CCT 31/96 <b>Handed down:</b> 5 February 1997	challenged. Dispensed with the need to obtain consent of father of illegitimate child. Section inconsistent with s. 8 of interim Constitution. Order in terms of 98(5): Parliament required to remedy defect within two years. A unanimous judgment written by Mahomed DP.	1997 (2) BCLR 153 (CC)
43	<i>S v Coetzee and Others</i> CCT 50/95 <b>Handed down:</b> 6 March 1997	Constitutionality of s.245 and s. 332(5) of the Criminal Procedure Act challenged. Unanimous court held that s.245 unconstitutional. Langa J, writing for the majority of court held that s.332 (5) is unconstitutional; O'Regan J and Mokgoro J held it was constitutional after severance, Madala J dissented.	1997 (3) SA 527 (CC); 1997 (4) BCLR 437 (CC)
44	<i>Motsepe v Commissioner for Inland Revenue</i> CCT 35/96 <b>Handed down:</b> 27 March 1997	Constitutionality of s.92 and s.94 of the Income Tax Act challenged. Applicant sequestered and married in community of property, husband a fugitive from justice. Referral in terms of s.102(1) held to be incompetent. Application for direct access to challenge s. 91(1) (b) of the Income Tax Act denied. A unanimous judgment written by Ackermann J.	1997 (2) SA 898 (CC); 1997 (6) BCLR 692 (CC)
45	<i>President of the Republic of South Africa and Another v Hugo</i> CCT 11/96 <b>Handed down:</b> 18 April 1997	Remission of sentences of prisoners who were mothers of children under 12 years on 10 May 1994 granted by President in terms of s.82(1)(k) of the interim Constitution. Respondent challenged presidential act on basis of equality, argued gender and sex discrimination. Majority judgment written by Goldstone J held power reviewable, no unfair discrimination. Separate concurrence by O'Regan J. Separate judgment by Mokgoro J saying that there is discrimination but it is not unfair. Dissent by Kriegler J that the discrimination is unfair. Separate dissent by Didcott J on mootness.	1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC)
46	<i>Prinsloo v Van Der Linde and Another</i> CCT 4/96 <b>Handed down:</b> 18 April 1997	Constitutionality of s.84 of the Forest Act which presumes negligence in certain circumstances challenged. Referral from a civil trial in TPD. Applicant argued that right to be presumed innocent s. 25(3)(c) and equality right s. 8 infringed. Court held s.84 was not inconsistent with the interim Constitution. Development of approach to s.8(1). Majority judgment written by Ackermann J, O'Regan J and Sachs J. Separate judgment by Didcott J.	1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC)
47	<i>Fose v Minister of Safety and Security</i> CCT 14/96 <b>Handed down:</b> 5 June 1997	Appeal by applicant in respect of exception taken to applicant's claim of 'constitutional damages' for infringement of constitutional right not to be tortured. Meaning of 'appropriate relief' in s.7(4) of the interim Constitution considered. Court held that award of extra constitutional damages in this case inappropriate. Also, in circumstances of this case, punitive damages inappropriate. Appeal dismissed in judgment of majority written by Ackermann J. Separate judgments written by Didcott J and Kriegler J, and minor reservation by O'Regan J.	1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC)
48	<i>Minister of Justice v Ntuli</i> CCT 15/97 [17/95]	Application for extension of period of interim validity granted by this Court to s.309 (4) of the Criminal	1997 (3) SA 772 (CC); 1997 (6) BCLR 677 (CC)

	<p><b>Handed down:</b> 5 June 1997</p>	<p>Procedure Act in <i>S v Ntuli</i>. Application brought under Rule 17 five days before expiry of period. Application considered to be a new substantive one which Court, as presently constituted, was competent to deal with. Court held application procedurally not in compliance with rules of Court; notice of motion defective; no good cause shown by Minister for extension of period. Court declined to vary order retrospectively or prospectively. A unanimous judgment written by Chaskalson P.</p>	
49	<p><i>Speaker of the Western Cape Provincial Legislature, Ex Parte: In re Certification of the Constitution of the Western Cape, 1997</i> CCT 6/97 <b>Handed down:</b> 2 September 1997</p>	<p>Certification of the Constitution of the Western Cape: certification denied in judgment by the Court.</p>	<p>1997 (4) SA 795 (CC); 1997 (9) BCLR 1167 (CC)</p>
50	<p><i>Pennington and Summerley v The State</i> CCT 14/97 <b>Handed down:</b> 18 September 1997</p>	<p>Application for leave to appeal against decision of the SCA dismissing appeal against decision of High Court on conviction and sentence. Procedures on appeal before national legislation and/or rules are drafted. Applicability of 1996 Constitution. A unanimous judgment written by Chaskalson P.</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 <b>Handed down:</b> 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. High Court had decided this was a breach of the right to a fair trial. A unanimous judgment written by Ackermann J.</p>	<p>1997 (4) SA 1095 (CC); 1997 (10) BCLR 1337 (CC)</p>
52	<p><i>Lawrence v The State and Another; Negal v The State and Another; Solberg v The State and Another</i> CCT 38/96, 39/96 and 40/96 <b>Handed down:</b> 6 October 1997</p>	<p>Appeal from criminal convictions in terms of the Liquor Act. Sections regulating times and days of sales by grocers, and type of alcoholic beverage grocers can sell. Challenged on the basis of freedom of economic activity and, in relation to closed days, freedom of religion. Majority judgment written by Chaskalson P. Dissenting: O'Regan J. (Concurrence: Goldstone J). Separate concurring judgment: Sachs J.</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 <b>Handed down:</b> 7 October 1997</p>	<p>Application for declaration of constitutional invalidity of s.21 and parts of ss.64(2) and 65(1) of the Insolvency Act on the basis of right to property and equality. Referred by Cape of Good Hope Provincial High Court. Majority judgment written by Goldstone J. Dissents: O'Regan J and 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 <b>Handed down:</b></p>	<p>Application for direct access to the Constitutional Court. A unanimous judgment written by Ackermann J.</p>	<p>1998 (1) SA 349 (CC); 1997 (11) BCLR 1537 (CC)</p>

	8 October 1997		
55	<i>S v Ntsele</i> CCT 25/97 <b>Handed down:</b> 14 October 1997	Application for confirmation of High Court order declaring s. 21(1) (b) of the Drugs and Drug Trafficking Act 140 of 1992 invalid. High Court had decided that the provision violated the presumption of innocence in s. 35(3) (h) of the Constitution. A unanimous judgment written by Kriegler J.	1997 (11) BCLR 1543 (CC)
56	<i>Speaker of the Western Cape Provincial Legislature, Ex Parte: In re Certification of the Amended Text of the Constitution of the Western Cape, 1997</i> CCT 29/97 <b>Handed down:</b> 18 November 1997	Certification of the amended text of the Constitution of the Western Cape, 1997. Judgment of the Court.	1998 (1) SA 655 (CC); 1997 (12) BCLR 1653 (CC)
57	<i>Larbi-Odam and Others v MEC for Education (North-West Province) and Another</i> CCT 2/97 <b>Handed down:</b> 26 November 1997	Application for leave to appeal against High Court decision upholding constitutional validity of regulation prohibiting foreign citizens from being permanently employed as teachers in state schools. Regulation invalidated because unfairly discriminates on basis of citizenship. A unanimous judgment written by Mokgoro J.	1998 (1) SA 745 (CC); 1997 (12) BCLR 1655 (CC)
58	<i>Soobramoney v Minister of Health, KwaZulu-Natal</i> CCT 32/97 <b>Handed down:</b> 27 November 1997	Appeal against High Court decision refusing order against provincial hospital to provide ongoing renal dialysis treatment to applicant, on basis of right not to be refused emergency medical treatment s. 27(3) and right to life s. 11. Appeal dismissed. A unanimous judgment written by Chaskalson P. Separate concurring: Madala J and Sachs J.	1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC)
59	<i>Sanderson v Attorney-General Eastern Cape</i> CCT 10/97 <b>Handed down:</b> 2 December 1997	Appeal in terms of s.25(3) (a) of the interim Constitution, that the accused had not been brought to trial within a reasonable time after having been charged. A unanimous judgment written by Kriegler J.	1998 (2) SA 38 (CC); 1997 (12) BCLR 1675 (CC)
60	<i>East Zulu Motors (Pty) Ltd v Empangeni/Ngwelezane Transitional Local Council and Others</i> CCT 44/96 <b>Handed down:</b> 4 December 1997	Application for leave to appeal against decision High Court, that applicant should not get ancillary relief in respect of order that section 47bisC of the Town Planning Ordinance 27 of 1949 (Natal) is unconstitutional to the extent that it does not accord a right of appeal to an objector. Application for leave to appeal refused. Majority judgment written by Madala J. Separate concurrence: O'Regan J (concurred in by Ackermann J, Goldstone J and Kriegler J.	1998 (2) SA 61 (CC); 1998 (1) BCLR 1 (CC)
61	<i>City Council of Pretoria v Walker</i> CCT 8/97 <b>Handed down:</b> 17 February 1998	Application for leave to appeal against decision of High Court granting order of absolution from the instance in favour of the respondent. Langa DP for majority held that Council indirectly unfairly discriminated on basis of race by selectively enforcing payment for electricity and water against residents of old Pretoria and not those of Mamelodi and	1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC)

		Atteridgeville. Flat rate and cross-subsidisation not unfair discrimination. But absolution from the instance not appropriate relief, so appeal upheld. Separate concurrence: Sachs J.	
62	<i>African National Congress and Another v MEC for Local Government, KwaZulu-Natal and Others</i> CCT 19/97 <b>Handed down:</b> 24 March 1998	Appeal by ANC against judgment of High Court, in matter regarding proper interpretation and application of s.182 of interim Constitution, providing for ex officio membership of traditional leaders on local government structures. A unanimous judgment written by O'Regan J.	1998 (3) SA 1 (CC); 1998 (4) BCLR 399 (CC)
63	<i>Bruce and Another v Fleecytex Johannesburg CC and Others</i> CCT 1/98 <b>Handed down:</b> 24 March 1998	Application for direct access to Constitutional Court to challenge constitutional validity of s150(3) of the Insolvency Act. A unanimous judgment written by Chaskalson P.	1998 (2) SA 1143 (CC); 1998 (4) BCLR 415 (CC)
64	<i>Die OVS Vereeniging vir Staatsondersteunde Skole and Another v Die Premier van die Provinsie Vrystaat and Others</i> CCT 12/96 <b>Handed down:</b> 12 May 1998	Application by respondents for costs order against applicants, who withdrew application for leave to appeal against decision of the High Court. A unanimous judgment written by Goldstone J.	1998 (3) SA 692 (CC); 1998 (6) BCLR 653 (CC)
65	<i>Wild and Cutler v Hoffert NO and Others</i> CCT 28/97 <b>Handed down:</b> 12 May 1998	Appeal against decision of the High Court in which applicants were refused constitutional relief for unreasonable delay before trial. Appeal dismissed, on basis that assuming there had been unreasonable delay, the relief prayed for (permanent stay of prosecution) was inappropriate because no evidence of trial-related prejudice or other extraordinary circumstances. A unanimous judgment written by Kriegler J.	1998 (3) SA 695 (CC); 1998 (6) BCLR 656 (CC)
66	<i>De Lange v Smuts NO and Others</i> CCT 26/97 <b>Handed down:</b> 28 May 1998	Right to freedom and security of the person. Application for confirmation of order, made by the High Court, of constitutional invalidity of s. 66(3) of the Insolvency Act 24 of 1936 which authorises a person presiding over a creditors' meeting to imprison a recalcitrant witness. The High Court order confirmed only to the extent that s. 66(3) of the Insolvency Act is unconstitutional in so far as it authorises a presiding officer who is not a magistrate to commit a recalcitrant witness to prison. Majority judgment written by Ackermann J. Separate concurring: Sachs J. Dissent: Didcott J, and Kriegler J. Partial dissents: O'Regan J and Mokgoro J.	1998 (3) SA 785 (CC); 1998 (7) BCLR 779 (CC)
67	<i>Mello and Another v The State</i> CCT 5/98 <b>Handed down:</b> 28 May 1998	Referral from the High Court of the constitutional validity of presumption relating to possession of drugs in s. 20 of the Drugs and Drugs Trafficking Act. Section 20 declared to be inconsistent with section 25(3) (c) of the interim Constitution.	1998 (3) SA 712 (CC); 1998 (7) BCLR 908 (CC)

		A unanimous judgment written by Mokgoro J.	
68	<i>Van Nell v The State</i> CCT 3/98 <b>Handed down:</b> 28 May 1998	Application for confirmation of order, made by the High Court, of constitutional invalidity of s.20 of the Drugs and Drugs Trafficking Act. In unanimous judgment by Mokgoro J, the matter was referred back to the High Court to be disposed of in accordance with the order made in <i>Mello v The State</i> .	1998 (8) BCLR 943 (CC)
69	<i>MEC for Development Planning and Local Government, Gauteng v Democratic Party and Others</i> CCT 33/97 <b>Handed down:</b> 29 May 1998	Appeal against judgment of the High Court, challenging the constitutionality of s.16(5) of the Local Government Transition Act on basis that it is inconsistent with s.160(3)(b) read with s.160(2)(b) of the Constitution. Appeal dismissed in unanimous judgment by Yacoob J. Separate unanimous judgment by Chaskalson P on procedural issues, particularly the circumstances in which leave to appeal directly to the Court will be granted.	1998 (4) SA 1157 (CC); 1998 (7) BCLR 855 (CC)
70	<i>Ministry v Interim National Medical and Dental Council and Others</i> CCT 13/97 <b>Handed down:</b> 29 May 1998	Right to privacy. Challenge to the search and seizure powers given to inspectors by s.8(1) of the Medicines and Related Substances Control Act on basis that the provision is inconsistent with section 13 of the interim Constitution. Unanimous judgment by Sachs J and separate concurring judgment by Chaskalson P on procedural matters.	1988 (4) SA 1127 (CC); 998 (7) BCLR 880 (CC)
71	<i>Amod v Multilateral Motor Vehicle Accidents Fund</i> CCT 4/98 <b>Handed down:</b> 27 August 1998	Application for leave to appeal directly to the Constitutional Court against the decision of the High Court, where 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 was dismissed. Application for leave to appeal refused. A unanimous judgment written by Chaskalson P.	1998 (4) SA 753 (CC); 1998 (10) BCLR 1207 (CC)
72	<i>De Freitas and Another v The Society of Advocates of Natal</i> CCT 2/98 <b>Handed down:</b> 15 September 1998	Application for leave to appeal directly to the Constitutional Court against the decision of the High Court, challenging the constitutionality of s. 7(2) of the Admission of Advocates' Act 74 of 1964 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 and advocate from accepting work directly from the public without the intervention of an attorney. Application for leave to appeal directly to the Constitutional Court refused. A unanimous judgment written by Langa DP.	1998 (11) BCLR 1345 (CC)
73	<i>Osman and Another v The Attorney General, Transvaal</i> CCT 37/97 <b>Handed down:</b> 23 September 1998	The right to remain silent and the right not to make a self-incriminating statement. Appeal against the judgment of the Transvaal High Court, challenging the constitutionality of section 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. Appeal dismissed in a unanimous judgment by Madala J.	1998 (4) SA 1224 (CC); 1998 (11) BCLR 1362 (CC);
74	<i>Fraser v Naude and Others</i>	Application for a special leave to appeal to the	1999 (1) SA 1 (CC);

	CCT 14/98 <b>Handed down:</b> 23 September 1998	Constitutional Court against the decision of the Supreme Court of Appeal, challenging the constitutionality of adoption proceedings before the Commissioner Children's Court. Application for leave to appeal to the Constitutional Court refused. A unanimous judgment written by Chaskalson P.	1998 (11) 1357 BCLR (CC)
75	<i>The National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others</i> CCT 11/98 <b>Handed down:</b> 09 October 1998	Sodomy laws. The right to equality, the right to human dignity and the right to privacy. Application for confirmation of order, made by the High Court, of constitutional invalidity of: s.20A of the Sexual Offences Act the inclusion of sodomy as an item in Schedule 1 of the Criminal Procedure Act the inclusion of sodomy as an item in Schedule to the Security Officers Act. All orders confirmed as well as the order declaring the common law offence of sodomy unconstitutional. A unanimous judgment written by Ackermann J. Separate concurring: Sachs J.	1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC)
76	<i>Christian Education of South Africa v The Minister of Justice of the Government of the Republic of South Africa</i> CCT 13/98 <b>Handed down:</b> 14 October 1998	Corporal Punishment. Application for direct access to Constitutional Court to challenge constitutional validity of section 10 of the South African Schools Act. A unanimous judgment written by Langa DP.	1999 (2) SA 83 (CC); 1998 (12) BCLR 1449 (CC)
77	<i>Fedsure Life Assurance Ltd and Others v The Greater Johannesburg Transitional Metropolitan Council and Others</i> CCT 7/98 <b>Handed down:</b> 14 October 1998	Referral from the Supreme Court of Appeal for the Constitutional Court to consider: Firstly, the lawfulness of the resolutions adopted by the Greater Johannesburg Transitional Metropolitan Council and the Eastern Metropolitan Substructure in terms of which a general rate was imposed on ratepayers owning land and rights in land throughout the area of the JTMC; Secondly, whether the interim Constitution preserved for the predecessor of the Supreme Court of Appeal any residual or concurrent jurisdiction to adjudicate upon the lawfulness of the impugned resolutions. At the discretion of the court the matter was disposed of as if it were an appeal from the High Court. Appeal dismissed. Majority judgment written by Chaskalson P, Goldstone J and O'Regan J (concurrence: Ackermann J, Madala J). Dissent: Kriegler J (concurrence: Langa DP, Mokgoro J, Sachs J and Yacoob J.	1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC)
78	<i>Jooste v Score Supermarket Trading (Pty)Ltd and Another</i> CCT 15/98 <b>Handed down:</b> 27 November 1998	Application for confirmation of High Court order declaring s.35(1) of the Compensation for Occupational Injuries and Diseases Act constitutionally invalid, on the ground of inconsistency with s. 9 (1) and (3), 34 and 23(1) of the Constitution. High Court order not confirmed in unanimous judgment by Yacoob J.	1999 (2) SA 1 (CC); 1999 (2) BCLR 139 (CC)
79	<i>Beinash and Another v Ernest and Young and Others</i>	The right of access to courts. Application for leave to appeal against the decision of the High Court, challenging the constitutionality of s. 2(1) (b) of the	1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC)

	CCT 12/98 <b>Handed down:</b> 2 December 1998	Vexatious Proceedings Act on the basis that it is inconsistent with s.34 of the Constitution. Application refused in unanimous judgment by Mokgoro J.	
80	<i>The Premier, Province of Mpumalanga and Another v The Executive Committee of the Association of Governing Bodies of State-Aided Schools: Eastern Transvaal.</i> CCT 10/98 <b>Handed down:</b> 2 December 1998	The right to procedurally fair administrative action where legitimate expectations are affected. The MEC for education in Mpumalanga retroactively decided to discontinue paying bursaries in Mpumalanga. The Association of Governing Bodies of State-aided schools successfully challenged this decision in the High Court. The MEC was unsuccessful in his appeal to this court. In a unanimous judgment delivered by O'Regan J, the court found that in absence of affording interested parties adequate prior notice, the government had to act in a procedurally fair manner. The court concluded that the MEC had neither given such prior notice, nor acted in a procedurally fair manner, in retroactively terminating such bursaries.	1999 (2) SA 91 (CC); 1999 (2) BCLR 151 (CC)
81	<i>President of the Republic of South Africa and Others v South African Rugby Football Union and Others (SARFU)</i> CCT 16/98 <b>Handed down:</b> 2 December 1998	Issue of proper forum. The meaning of section 172 (2) (a) and section 167(3)(b) "issues connected with decisions on constitutional matters". The President and others lodged an application for condonation and a notice of appeal against a High Court order setting aside the appointment of a commission of inquiry into the SARFU, a proclamation under the Commissions Act, as well as a number of interlocutory decisions. Application for condonation was granted by Chaskalson P, in a unanimous judgment of the court	1999 (2) SA 14 (CC); 1999 (2) BCLR 175 (CC)
82	<i>Mphahlele v First National Bank of South Africa Ltd</i> CCT 23/98 <b>Handed down:</b> 1 March 1999	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. The judgment of the Court, delivered by Goldstone J and concurred in by the other members of the Court, found that this practice is not inconsistent with the Constitution.	1999 (2) SA 667 (CC); 1999 (3) BCLR 253 (CC)
83	<i>The Premier of the Western Cape v The President of South Africa and Another</i> CCT 26/98 <b>Handed down:</b> 29 March 1999	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.	1999 (3) SA 657 (CC); 1999 (4) BCLR 382 (CC)
84	<i>August and Another v The Independent Electoral Commission (IEC) and Others</i> CCT8/99	The right of prisoners to vote in national elections. August and Another appealed against a judgement of the High Court, which found that the IEC had no obligation to ensure that prisoners could register and vote. Sachs J, on behalf of a unanimous court, found	1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC)

	<p><b>Handed down:</b> 1 April 1999</p>	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.	
85	<p><i>The New National Party of South Africa (NNP) v The Government of the Republic of South Africa and Others</i> CCT 9/99 <b>Handed down:</b> 13 April 1999</p>	Constitutionality of provisions of the Electoral Act regulating registration on common voters roll. Independence of the Eastern Cape. The NNP applied for leave to appeal against the judgment of the full bench of the High Court, which dismissed the application with costs. Yacoob J and Langa J, found on behalf of the majority of the court that such provisions were rational and did not infringe any rights; also that the independence of the Eastern Cape had not been violated. O' Regan J dissented, finding that said provisions were unreasonable, and in the circumstances, the right to vote, had been infringed.	1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC)
86	<p><i>The Democratic Party v The Minister of Home Affairs and the Electoral Commission</i> CCT 11/99 <b>Handed down:</b> 13 April 1999</p>	Constitutionality of provisions of the Electoral Act regulating registration on common voters roll. The DP applied for leave to appeal against the judgment of the full bench of the High Court, which dismissed the application with costs. Goldstone J, on behalf of the majority, affirmed the finding of Yacoob J in the NNP case. He also found that it had not been proved that the provision violated equality rights. O'Regan J dissented on the grounds stated in the NNP case.	1999 (3) SA 254 (CC); 1999 (6) BCLR 607 (CC)
87	<p><i>The South African Defence Force Union v The Minister of Defence and Another</i> CCT 27/98 <b>Handed down:</b> 26 May 1999</p>	Constitutionality of s.126B (2),(3) and (4) of the Defence Act, prohibiting members of the armed forces from participating in public protest action and from joining trade unions. A unanimous judgment written by O'Regan J. Separate concurring: Sachs J.	1999 (4) SA 469 (CC); 1999 (6) BCLR 615 (CC)
88	<p>(1) <i>Bongani Dlamini v The State</i>; (2) <i>Vusi Dladla and Others v The State</i>; (3) <i>The State v Mark David Joubert</i>; (4) <i>The State v Jan Johannes Schietekat</i>. (1) CCT 21/98 (2) CCT 22/98 (3) CCT 2/99 (4) CCT 4/99 <b>Handed down:</b> 3 June 1999</p>	Constitutionality of various provisions of the Criminal Procedure Act relating to bail. 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. The Appeals of Dlamini and Dladla were dismissed, whilst the appeals in Joubert and Schietekat were upheld. A unanimous judgment by Kriegler J.	1999 (4) SA 623 (CC); 1999 (7) BCLR 771 (CC)
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 <b>Handed down:</b> 4 June 1999</p>	Application for recusal of five judges of this Court by Fourth Respondent. In a unanimous judgment of this Court, reasons were given, for the dismissal of the recusal application. A unanimous judgment written by Goldstone J.	1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC)

90	<i>President of the Ordinary Court Martial and Others v The Freedom of Expression Institute and Others</i> CCT 5/99 <b>Handed down:</b> 24 August 1999	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. A unanimous judgment written by Langa DP.	1999 (4) SA 682 (CC); 1999 (11) BCLR 1219 (CC)
91	<i>The Premier of the Province of the Western Cape and Another v The Electoral Commission and Another</i> CCT 19/99 <b>Handed down:</b> 2 September 1999	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. Mokgoro J for a unanimous Court.	1999 (11) BCLR 1209 (CC)
92	<i>President of the Republic of South Africa and Others v South African Rugby Football Union and Others</i> CCT 16/98 <b>Handed down:</b> 10 September 1999	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.	2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC)
93	<i>(1) The Executive Council of the Province of the Western Cape v The Minister for Provincial Affairs and Constitutional Development and Another; (2) The Executive Council of KwaZulu-Natal v The President of the Republic of South Africa and Another</i> (1) CCT 15/99 (2) CCT 18/99 <b>Handed down:</b> 15 October 1999	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. Majority judgment written by Ngcobo J. Dissenting: O'Regan J (Mokgoro J Cameron AJ concurring in the judgment of O'Regan J.)	2000 (1) SA 661 (CC); 1999 (12) BCLR 1360 (CC)
94	<i>Cape Metropolitan Council v The Minister of Provincial Affairs and Constitutional Development and Another</i> CCT 34/99 <b>Handed down:</b> 15 October 1999	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. Langa DP wrote for a unanimous Court.	2000 (1) SA 727 (CC); 1999 (12) BCLR 1353 (CC)
95	<i>S v Manyonyo</i> CCT 36/99 <b>Handed down:</b>	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	1999 (12) BCLR 1438 (CC)

	4 November 1999	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. A unanimous judgment written by Chaskalson 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	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. A unanimous judgment written by Cameron AJ.	2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)
97	<i>National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others</i> CCT 10/99 <b>Handed down:</b> 2 December 1999	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. Whether Court could read in words into the offending provision to give it the desired effect. A unanimous judgment written by Ackermann J.	2000 (2) SA 1 (CC); 2000(1) BCLR 39 (CC)
98	<i>Chief Direko Lesapo v North West Agricultural Bank and Another</i> CCT 23/99 <b>Handed down:</b> 16 November 1999	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. A unanimous judgment written by Mokgoro J.	2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 (CC)
99	<i>State v Twala</i> CCT 27/99 <b>Handed down:</b> 2 December 1999	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. A unanimous judgment written by Yacoob J.	2000 (1) SA 879 (CC); 2000 (1) BCLR 106 (CC)
100	<i>State v Baloyi (Minister of Justice Intervening)</i> CCT 29/99	Appropriate balance between the state's constitutional duty to provide effective remedies against domestic violence, and its simultaneous obligation to respect	2000 (2) SA 425 (CC); 2000 (1) BCLR 86 (CC)

	<p><b>Handed down:</b> 3 December 1999</p>	<p>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. Sachs J for a unanimous Court.</p>	
101	<p><i>Pharmaceutical Manufacturers Association of SA in re: the Ex Parte Application of the President of the RSA and others</i> CCT 31/99 <b>Handed down:</b> 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. A unanimous judgment written by Chaskalson P.</p>	<p>2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC)</p>
102	<p><i>Ex Parte Western Cape Provincial Government and Others: In re DVB Behuising v North West Provincial Government and Another</i> CCT 22/99 <b>Handed down:</b> 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 provincial powers as dealt with question of land tenure. Majority per Ngcobo J refused to confirm the entire order as province was competent to repeal the regulations except those dealing with registration of land tenure rights; Madala J dissented for different reasons and would not confirm any aspect of the order; Goldstone J, O'Regan J and 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>Harksen v President of the Republic of South Africa</i> CCT 41/99 <b>Handed down:</b> 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. A unanimous judgment written by Goldstone J.</p>	<p>2000 (1) SA 1185 (CC); 2000 (5) BCLR 478 (CC)</p>
104	<p><i>Brummer v Gorfil Brothers Investments (Pty) Ltd and Others</i> CCT 45/99 <b>Handed down:</b> 30 March 2000</p>	<p>Constitutionality of the laws that permit a party to pending legal proceedings or some other person to purchase the right of another in those proceedings for the sole purpose of terminating the litigation. Right of access to court. Applicant sought condonation for late application, dismissed. A unanimous judgment written by Yacoob J.</p>	<p>2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC)</p>
105	<p><i>Dormehl v Minister of Justice and Others</i> CCT 10/00 <b>Handed down:</b> 14 April 2000</p>	<p>Application for direct access denied by the Court It was undesirable for the Court to act as a court of first and last instance without there being any possibility of appeal. Held further that this did not constitute an infringement of section 34 of the Constitution. A unanimous judgment written by Chaskalson P.</p>	<p>2000 (2) SA 987 (CC); 2000 (5) BCLR 471 (CC)</p>
106	<p><i>State v Manamela</i> CCT 25/99 <b>Handed down:</b> 14 April 2000</p>	<p>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. Held by unanimous Court to violate right to silence and presumption of innocence. Unanimous Court held violation of right to silence to be justified. Majority per Madala J, Sachs J and Yacoob J held violation of presumption of</p>	<p>2000 (3) SA 1 (CC); 2000 (5) BCLR 491 (CC)</p>

		innocent to be unjustified under s. 36 of Constitution. Minority per O'Regan J and Cameron AJ held violation of presumption of innocence to be justified.	
107	<i>Veerasamy v Engen Refinery and Another</i> CCT 16/00 <b>Handed down:</b> 31 May 2000	Application for direct access. Admissibility of tape recordings of applicant asking for gift. Applicant asserting violation of right to privacy. Direct access denied by O'Regan J on behalf of the Court.	2000 (3) SA 337 (CC);
108	<i>Minister of Welfare and Population Development v Fitzpatrick and Others</i> CCT 08/00 <b>Handed down:</b> 31 May 2000	Constitutionality of s. 18(4)(f) of the Child Care Act prescribing 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. Goldstone J for a unanimous Court confirmed the High Court's ruling that the provision violated the rights of the child.	2000 (3) SA 422 (CC); 2000 (7) BCLR 713 (CC)
109	<i>Dawood and Another; Shalabi and Another; Thomas and Another v Minister of Home Affairs and Others</i> CCT 35/99 <b>Handed down:</b> 7 June 2000	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.	2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC)
110	<i>South African Commercial Catering and Allied Workers Union and Another v Irvin &amp; Johnson Ltd Seafood's Processing Division</i> CCT 2/00 <b>Handed down:</b> 9 June 2000	Appeal from the decision of the Labour Appeal Court not to grant a recusal application. The majority (Cameron AJ) held that a party applying for the recusal of a judge bears the onus of rebutting the presumption of judicial impartiality and must, at the hearing, adduce convincing evidence of a reasonable apprehension of bias. In a dissent, Mokgoro J and Sachs J found that the test was whether a lay litigant in the position of the parties would reasonably have apprehended bias.	2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC)
111	<i>(1) Sheard v Land and Agricultural Bank of South Africa and Another; (2) First National Bank of South Africa Ltd v Land and Agricultural Bank of South Africa and Others</i> (1) CCT 07/00 (2) CCT 15/00 <b>Handed down:</b> 9 June 2000	Constitutionality of ss. 34(3)(b) to (7), (9) and (10) and 55(2)(b) to (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 s. 34 of the Constitution right of access to courts. They were consequently invalid. The court (per Mokgoro J) suspended the invalidity of ss. 34(3) (b) to (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).	2000 (3) SA 626 (CC); 2000 (8) BCLR 876 (CC)
112	<i>Christian Education South</i>	Corporal Punishment. Challenge to s.10 of the Schools	2000 (4) SA 757 (CC);

	<p><i>Africa v Minister of Education</i> CCT 4/00 <b>Handed down:</b> 18 August 2000</p>	<p>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 s. 15 and s.31 of the Constitution. Applying a proportionality analysis and weighing up various factors in the context of the limitations clause, Sachs J in a unanimous decision found the limitation to be justified.</p>	<p>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 <b>Handed down:</b> 25 August 2000</p>	<p>Search and seizure powers relating to a preliminary investigation under the National Prosecuting Authority Act held by Langa J, writing for a unanimous court, to violate s. 14 of the Constitution. Section 29 requiring 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 to be exercised in the light of the constitutional protection of the right to privacy. The Act contains considerable privacy safeguards and the infringement of the right therefore held to be justifiable.</p>	<p>2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC)</p>
114	<p><i>Grootboom v The Government of the Republic of South Africa and Others</i> CCT 38/00 <b>Handed down:</b> 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>2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)</p>
115	<p><i>National Police Service Union and Others v The Minister of Safety and Security and Others</i> CCT 21/00 <b>Handed down:</b> 27 September 2000</p>	<p>Appellant not ready to proceed. Application for postponement held not to be in the interests of justice and denied. Investigation into interests of justice to include consideration of interests of parties and the public in general. Case struck off the roll (notwithstanding agreement between parties). Held, by Mokgoro J writing for the Court, that parties must appear and be prepared to argue the matter should the postponement not be granted.</p>	<p>2000 (4) SA 1110 (CC); 2001(1) BCLR 775 (CC)</p>
116	<p><i>(1) S v Dzukuda; S v Tilly; S v Tshilo; (2) S v Tshilo</i> CCT 23/00 CCT 34/00 <b>Handed down:</b> 27 September 2000</p>	<p>Constitutionality of s.52 of the Criminal Law Amendment Act. Section 52 providing for a "split procedure" whereby certain accused are tried in the Magistrates' Courts and, if found guilty, are sentenced in the High Court. Held in a unanimous judgment, by Ackermann J, that the fact that the sentencing judge was not "steeped in the atmosphere of the trial" not found to vitiate the accused's right to a fair trial under s. 35(3) of the constitution. Held that the section did not infringe the right because the process is, at all times, under the control of a judicial officer whose duty it is to ensure observance of the fair trial right. Section also held not to 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. In the second case, the applicant was refused leave to appeal.</p>	<p>2000 (4) SA 1078 (CC); 2000 (11) BCLR 1252 (CC)</p>

117	<p><i>Hoffmann v South African Airways</i> CCT 17/00 <b>Handed down:</b> 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 s.9. HIV-status found, by Ngcobo J in a unanimous decision, to be an analogous ground. 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 with effect from the date of the judgment.</p>	<p>2001 (1) SA 1 (CC); 2000 (11) BCLR 1211 (CC)</p>
118	<p><i>Janse van Rensburg and Another v The Minister of Trade and Industry NO and Another</i> CCT 13/99 <b>Handed down:</b> 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. Section 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 <i>Dawood</i>, the absence of guidance on the manner in which the Minister's wide and unfettered powers are to be exercised led the Court (per Goldstone J) 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>2001 (1) SA 29 (CC); 2000 (11) BCLR 1235 (CC)</p>
119	<p><i>The Government of the Republic of South Africa and Others v Grootboom and Others</i> CCT 11/00 <b>Handed down:</b> 4 October 2000</p>	<p>Appeal against the decision of the High Court granting the respondent children and their parent's shelter on the basis of s. 28 of the rights of children of the Constitution. The court (Yacoob J) considered both s. 28 and s. 26. There had been no infringement of s. 28 since the primary obligation imposed by that section fell onto the child's immediate caregiver. Section 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 ordered to devise and implement a programme that would do so.</p>	<p>2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)</p>
120	<p><i>Levy v Glynos and Another</i> CCT 29/00 <b>Handed down:</b> 21 November 2000</p>	<p>Application for leave to appeal dismissed by the Court - no prospects of success.</p>	<p>Not reported</p>
121	<p><i>Metcash Trading Limited v The Commissioner for the South African Revenue Service and Another</i> CCT 3/00 <b>Handed down:</b> 24 November 2000</p>	<p>Sections 36(1), 40(2) (a) and 40(5) of the Value Added Tax Act found (per Kriegler J) not to oust the jurisdiction of courts. The sections therefore did not infringe s. 34 of the Constitution. To the extent that s.40(5) might be said to limit the right, such limitation is justifiable.</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 <b>Handed down:</b> 28 November 2000</p>	<p>Challenge to the constitutionality of s. 3(1) of Act 74 of 1996 and proclamation R24 of 1997 appointing a High Court judge as head of a Special Unit investigating corruption. Appointment found (per Chaskalson P) to be in conflict with the constitutional requirement of separation of powers between the executive and the judiciary and declared invalid. Order of invalidity 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>2001 (1) SA 883 (CC); 2001 (1) BCLR 77 (CC)</p>
123	<p><i>Steyn v The State (Van Tonder Intervening as Amicus Curiae)</i> CCT 19/00 <b>Handed down:</b> 29 November 2000</p>	<p>Sections 309B and C of the Criminal Procedure Act held to unconstitutionally infringe s. 35 of the Constitution, the fair trial right, of an accused to appeal against the judgment of a magistrate. Invalidity suspended for 6 months. A unanimous judgment written by Madlanga AJ.</p>	<p>2001 (1) SA 1146 (CC); 2001 (1) BCLR 52 (CC)</p>
124	<p><i>Permanent Secretary of the Department of Education, Eastern Cape and Another v Ed-U-College (P.E.) Section 21 Inc.</i> CCT 26/00 <b>Handed down:</b> 29 November 2000</p>	<p>Decision of the MEC for Education in the Eastern Cape to decrease subsidies to independent schools in the province. Held that 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 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. A unanimous judgment written by O'Regan J.</p>	<p>2001 (2) SA 1 (CC); 2001 (2) BCLR 118 (CC)</p>
125	<p><i>Boesak v The State</i> CCT 25/2000 <b>Handed down:</b> 1 December 00</p>	<p>Application for leave to appeal from the judgment of the Supreme Court of Appeal denied. 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 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. Primary question: 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. Held that the accused had been duly convicted of theft and that his imprisonment could therefore not have been "without just cause". Circumstances in which appeal from Supreme Court of Appeal in criminal matter would be appropriate outlined. A unanimous judgment written by Langa DP.</p>	<p>2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC); 2001 (1) SACR 1 (CC)</p>
126	<p><i>Sonderup v Tondelli and Another</i> CCT 53/00 <b>Handed down:</b></p>	<p>The provisions of the Hague Convention on the Civil Aspects of International Child Abduction requiring mandatory return of a child removed or retained in breach of custody rights were held to apply in this</p>	<p>2001 (1) SA 1171 (CC); 2001 (2) BCLR 152 (CC)</p>

	4 December 2000	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 British Columbia. Certain conditions were imposed on the manner in which the return was to take place. A unanimous judgment written by Goldstone J.	
127	<i>Moseneke and Others v The Master of High Court</i> CCT 51/00 <b>Handed down:</b> 6 December 2000	Section 23(7) (a) and regulation 3(1) under the Black Administration Act challenged on the basis that they disallowed black intestate estates from being wound up by the Master of the High Court. The Court granted the applicant direct access and declared the section to be inconsistent with the applicants' rights to equality and dignity and unconstitutional with immediate effect. 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 2 years. A unanimous judgment written by Sachs J.	2001 (2) SA 18 (CC); 2001 (2) BCLR 103 (CC)
128	<i>Prince v President of the Law Society of the Cape of Good Hope and Others</i> CCT 36/00 <b>Handed down:</b> 12 December 2000	Rastafarian applicant alleging that criminal prohibition on use and possession of cannabis infringed the right to freely practice his religion. The court requested the parties to submit further evidence on affidavit as to the justifiability of the limitation. Section 12(1)(b) of Supreme Court Act declared inconsistent with the interim Constitution and invalid from 27 April 1994. A unanimous judgment written by Ngcobo J.	2001 (2) SA 388 (CC); 2001 (2) BCLR 133 (CC)
129	<i>Ex Parte Hansmann</i> CCT 3/01 <b>Handed down:</b> 22 February 2001	Application for special leave to appeal against a conviction for dealing in cannabis refused on the basis that applicant was a fugitive from justice who has withheld this fact from the Court. Judgment by the Court.	2001 (2) SA 852 (CC); 2001(4) BCLR 311 (CC)
130	<i>Lane NO and Another v Dabelstein and Others</i> CCT 60/00 <b>Handed down:</b> 6 March 2001	Application for special leave to appeal against judgment and order of the SCA 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. A unanimous judgment by Goldstone and Kriegler JJ.	2001 (2) SA 1187 (CC); 2001 (4) BCLR 312 (CC)
131	<i>Mkangeli and Others v Joubert and Others</i> CCT 61/00 <b>Handed down:</b> 6 March 2001	Application for direct access refused on the grounds that the matter had not yet been heard by the SCA. 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. A unanimous judgment written by Chaskalson P.	2001 (2) SA 1191 (CC); 2001 (4) BCLR 316 (CC)
132	<i>The State v Dodo</i> CCT 1/01 <b>Handed down:</b> 5 April 2001	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	2001 (3) SA 382 (CC); 2001 (5) BCLR 423 (CC)

		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. A unanimous judgment written by Ackerman J.	
133	<i>The State v Mamabolo</i> CCT 44/00 <b>Handed down:</b> 11 April 2001	The majority, per Kriegler J, 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. 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.	2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC)
134	<i>Mohamed and Another v President of the Republic of South Africa and Others</i> CCT 17/01 <b>Handed down:</b> 28 May 2001	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 <i>Makwanyane</i> that the death penalty is unconstitutional and this meant that the Soth 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. Judgment by the Court.	2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC)
135	<i>Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others</i> CCT 55/00 <b>Handed down:</b> 29 May 2001	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. Held, per Chaskalson P, 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 <i>ultra vires</i> where there is no applicable legislation outlawing this. Governmental duties vis-à-vis those living in crisis (as set out in <i>Grootboom</i> ) affirmed.	2001 (3) SA 1151 (CC); 2001 (7) BCLR 652 (CC)
136	<i>Booyesen and Others v Minister of Home Affairs and Another</i> CCT 08/01 <b>Handed down:</b> 4 June 2001	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 sections, which required such applicants to apply for work permits from outside the country and disallowed the granting of work permits where the applicant intended to engage an occupation for which there were already a “sufficient” number of persons in SA were found per Sachs J to make unacceptable inroads	2001 (4) SA 485 (CC); 2001 (7) BCLR 645 (CC)

		on family life and, as such, infringe the right to dignity. The order was conditionally suspended for 12 months.	
137	<i>Independent Electoral Commission(IEC) v The Langeberg Municipality as successor to the Stilbaai Municipality</i> CCT 49/00 <b>Handed down:</b> 7 June 2001	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 found by Yacoob J and Madlanga AJ 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.	2001 (3) SA 925 (CC); 2001(9) BCLR 883 (CC)
138	<i>Moise v Transitional Local Council of Greater Germiston</i> CCT 54/00 <b>Handed down:</b> 4 July 2001	Constitutional invalidity of s. 2(1) (a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act confirmed. Somyalo AJ found 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 and could not be justified under section 36 of the Constitution.	2001 (4) SA 491 (CC); 2001 (8) BCLR 765 (CC)
139	<i>Carmichele v The Minister of Safety and Security and the Minister of Justice and Constitutional Development</i> CCT 48/00 <b>Handed down:</b> 16 August 2001	Constitutional obligation on the courts to develop the common law to promote the spirit, purport and objects of the Bill of Rights. The Court (per Ackermann J and Goldstone J) 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.	2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC)
140	<i>Wallach v Selvan and Another</i> CCT 15/01 <b>Handed down:</b> 21 August 2001	Alleged failure on the part of the judge who had presided in the High Court to give reasons for his decision. Application refused in unanimous judgment written by Kriegler J.	2001 (11) BCLR 1195 (CC)
141	<i>David Ashley Price v The State</i> CCT 23/01 <b>Handed down:</b> 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. Judgment by Yacoob J.	2001 (11) BCLR 1193 (CC)
142	<i>Stephanus Johannes Martinus De Beer N. O v The North Central Local Council and the South Central Local Council and Others</i> CCT 59/00 <b>Handed down:</b> 26 September 2001	Appeal against an order of the High Court. Constitutionality of s.105(9) of the Durban Extended Powers Consolidated Ordinance (Natal). Section 105(9) of the Ordinance alleged to infringe the right to fair hearing. The Court held that s. 105 of the Ordinance does not compromise the right to 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. Unanimous judgment by Yacoob J.	2002 (1) SA 429 (CC); 2001 (11) BCLR 1109 (CC)

143	<i>Sias Moise v Transitional Local Council of Greater Germiston</i> CCT 54/00 <b>Handed down:</b> 21 September 2001	Application for a variation of order of this Court. Order to have an added provision making the order in question to apply retrospectively. It was alleged that the absence of such a provision was a “patent error or omission”. The Court held, per Kriegler J that there was no need for any addition to the order. Application for variation of the order refused.	2001 (4) SA 1288 (CC); 2001 (8) BCLR 756 (CC)
144	<i>In re: The Constitutionality of the Mpumalanga Petitions Bill, 2000</i> CCT 11/01 <b>Handed down:</b> 5 October 2001	Referral in terms of s. 121(2) (b) of the Constitution. Constitutionality of clauses 18 and 19 of the Mpumalanga Petitions Bill and the provincial legislature’s competence to pass the Bill in question. Held per Langa DP 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. Held further that the Court was not empowered to consider the legislature’s competence to pass the Bill-such issue not referred to the legislature by the Premier.	2002 (1) SA 447 (CC); 2001 (11) BCLR 1126 (CC)
145	<i>Minister of Education v Doreen Harris</i> CCT 13/01 <b>Handed down:</b> 5 October 2001	Appeal by the Minister of Education against judgment of Coetsee J in the High Court, in a matter regarding validity and or constitutionality of a notice regulating age requirements for admission to an independent school policy. Notice found to be invalid because the enabling act empowered the Minister to determine policy and not to impose binding law. Matter not decided on broad constitutional questions raised. Appeal dismissed in unanimous judgment by Sachs J.	2001 (4) SA 1297 (CC); 2001 (11) BCLR 1157 (CC)
146	<i>(1) Minister of Defence v Andries Diphaphang Potsane; (2) Legal Soldier (Pty) Ltd and Others v Minister of Defence and Others</i> CCT 14/01 CCT 29/01 <b>Handed down:</b> 5 October 2001	The first case ( <i>Potsane</i> ) is an appeal by the Minister of Defence against judgment and order by Ramphai J in the Free State High Court upholding a constitutional challenge to an aspect of disciplinary proceedings in a military court. The High Court declared some provisions of the Military Discipline Supplementary Measures Act of 1999 inconsistent with s. 179 of the Constitution and equality clause of the Constitution. The other case ( <i>Legal Soldier</i> ) is an application for direct access presenting a similar challenge. The challenged provisions were found to be constitutional and appeal the he Minister of Defence was accordingly upheld. Application for direct access in <i>Legal Soldier</i> refused-no prospect of success. Kriegler J wrote for unanimous Court.	2002 (1) SA 1 (CC); 2001 (11) BCLR 1137 (CC)
147	<i>Willem Hendrik Niemand v The State</i> CCT 28/00 <b>Handed down:</b> 8 October 2001	Appeal concerning constitutional validity of indeterminate sentence imposed on habitual criminals in terms of s. 286 of the Criminal Procedure Act of 1977 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. Madala J wrote for unanimous Court.	2002 (1) SA 21 (CC); 2002 (3) BCLR 219 (CC)
148	<i>Minister of Home Affairs v Dominique Liebenberg</i>	Application (in terms of s.172(2)(d) of the Constitution) by the Minister of Home Affairs, for	2002 (1) SA 33 (CC); 2001 (11) BCLR 1168 (CC)

	CCT 22/01 <b>Handed down:</b> 8 October 2001	confirmation of an order made in the WLD declaring some provisions in the Seventh Amendment of the Aliens Control Regulations of 2000 published in terms of the Aliens Control Act. Judgments of High Court concerning constitutional invalidity of Regulations not subject to confirmation by this Court. Application dismissed. Skweyiya AJ for unanimous Court.	
149	<i>Frans Barnard Potgieter v Lid van die Uitvoerende Raad: Gesondheid, Provinsiale Regering Gauteng and Others</i> CCT 26/01 <b>Handed down:</b> 8 October 2001	Referral for confirmation from High Court. Constitutional invalidity of s.68(4) of the Mental Health Act confirmed. Section 68(4) limits 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. The limitation of three months period constitutes a material limitation of right of access to Court guaranteed in s.34 of the Constitution. Skweyiya AJ for unanimous Court.	2001 (11) BCLR 1175 (CC)
150	<i>President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another</i> CCT 16/98 <b>Handed down:</b> 10 November 2001	An application to review the taxation of a party and party bill of costs. Governed by Rules 21 and 17 of the Supreme Court of Appeals Rules. Order setting aside the taxing master's allocate and remitting the matter to the taxing master for taxation afresh in light of the judgment. Kriegler J for unanimous Court.	2002 (2) SA 64 (CC); 2002 (1) BCLR 1 (CC)
151	<i>Fredericks and Others v MEC for Education and Training, Eastern Cape and Others</i> CCT 27/01 <b>Handed down:</b> 04 December 2001	Application for leave to appeal. Scope of the jurisdiction of the High Court to determine certain complaints arising out of an employment relationship. Unanimous judgment by O'Regan J upheld appeal raised by the Applicants was based on s.9 and s.33 of the Constitution. High Court has constitutional jurisdiction in terms of s.169 of the Constitution but has no jurisdiction where the Constitutional Court has exclusive jurisdiction or Parliament has assigned the determination of constitutional matter to another court of similar status to the High Court. Held claim concerned constitutional matter not assigned to another court by Parliament. Therefore High Court did have jurisdiction to deal with the matter. Case referred back to High Court.	2002 (2) SA 693 (CC); 2002 (2) BCLR 113 (CC)
152	<i>Member of the Executive Council for Local Government and Development Planning of the Western Cape and Another v Paarl Poultry Enterprises CC t/a Rosendal Poultry Farm</i> CCT 38/01 <b>Handed down:</b> 14 December 2001	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" according to the High Court judgment. 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. Dismissed the respondent application for declaratory relief and referred the matter back to the High Court to be dealt with in light of the judgment. Yacoob J for unanimous Court.	2002 (3) SA 1 (CC); 2002 (2) BCLR 133 (CC)
153	<i>National Gambling Board v</i>	Application for direct access seeking an interim	2002 (2) SA 715 (CC);

	<p><i>Premier of KwaZulu Natal and Others</i> CCT 32/01 <b>Handed down:</b> 21 December 2001</p>	<p>interdicts restraining the Respondents from continuing with a process to award a contract for a central electronic monitoring system in KwaZulu Natal. Section 13(1) of the National Gambling Act requires gambling machines to be linked to a central electronic monitoring system. Direct access denied, by Du Plessis AJ for unanimous Court, parties had not complied with their constitutional obligation of cooperative government under s. 41 of the Constitution.</p>	<p>2002 (2) BCLR 156 (CC)</p>
154	<p><i>Prince v President of the Law Society of the Cape of Good Hope</i> CCT 36/00 <b>Handed down:</b> 25 January 2002</p>	<p>Constitutional validity of the prohibition on the use or possession of cannabis when its use or possession was inspired by religion. The constitutional complaint was that the prohibition went too far in that it included the possession or use of cannabis required by the Rastafarian religion. The majority, per Chaskalson CJ, 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 right (s.15) and collective rights (s.31) to practice their religion. But to allow harmful drugs to be used by certain people for religious purposes, would impair the State's ability to enforce its drug legislation. Dissent: Ngcobo, Sachs, Mokgoro J and Madlanga AJ.</p>	<p>2002 (2) SA 794 (CC); 2002 (3) BCLR 231 (CC)</p>
155	<p><i>Bel Porto School Governing Body and Others v Premier of the Western Cape Province and Another</i> CCT 58/00 <b>Handed down:</b> 21 February 2002</p>	<p>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 implemented rationalisation and 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. Held that there was no violation of the right to equality since the Elsen schools had not been unfairly discriminated against. WCED had complied with the right to just administrative action in terms of s. 24 of the Constitution. Justices Mokgoro, Sachs filed a joint dissenting judgment and Justices Ngcobo and Madala filed separate dissenting judgments.</p>	<p>2002 (3) SA 265 (CC); 2002 (9) BCLR 891 (CC)</p>
156	<p><i>Islamic Unity Convention v Independent Broadcasting Authority and Others</i> CCT 36/01 <b>Handed down:</b> 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 Langa DCJ 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</p>	<p>2002 (4) SA 294 (CC); 2002 (5) BCLR 433 (CC)</p>

		SCA. 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. Majority judgment written by Langa DCJ.	
157	<i>Van Der Walt v Metcash Trading Limited</i> CCT 37/01 <b>Handed down:</b> 11 April 2002	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 per Goldstone J 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. Section 9(1) does not guarantee equality of outcome and s. 34 was not violated. Dissent: Ngcobo J, Madala J and Sachs J.	2002 (4) SA 317 (CC); 2002 (5) BCLR 454 (CC)
158	<i>South African Municipal Workers Union v City of Cape Town and Others</i> CCT 10/02 <b>Handed down:</b> 9 May 2002	Application for leave to appeal directly to this Court against the judgment an order of the High Court. Application for leave to appeal refused in a decision by the Court.	2002 (4) SA 451 (CC); 2002 (10) BCLR 1083 (CC)
159	<i>First National Bank (FNB) of SA t/a Wesbank v Commissioner for the South African Revenue Services and Another; First National Bank of SA t/a Wesbank v Minister of Finance</i> CCT 19/01 <b>Handed down:</b> 16 May 2002	Constitutionality of s. 114 of the Customs and Excise Act. Ackermann J on behalf of the unanimous Court held that FNB was entitled to invoke the guarantee of property rights provided by s.25(1) of the Constitution. 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. Declared s. 114 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.	2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC)
160	<i>S v Walters and Another</i> CCT 28/01 <b>Handed down:</b> 21 May 2002	Constitutionality of s. 49(2) of the Criminal Procedure Act. The use of force to carry out an arrest. On behalf of a unanimous Court Kriegler J held that s.49(1) should be interpreted as generally excluding the use of firearm unless the suspect poses an immediate threat of serious bodily harm to the arrester or to someone else; and is reasonably suspected of having committed a serious crime involving or threatening such harm. Read this way the section is	2002 (4) SA 613 (CC)

		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. The Court also held that the trial judge does not have power to differ from the SCA on a question of constitutional interpretation and should deal with the constitutional issue only when it is necessary for the verdict.	
161	<i>Van Rooyen and Others v State and Others (General Council of the Bar of South Africa Intervening)</i> CCT 21/01 <b>Handed down:</b> 11 June 2002	Appeal from High Court finding that control exercised over magistrates by the Minister of Justice impermissibly limits judicial independence. The Court in a unanimous decision by Chaskalson CJ found that the test for assessing judicial independence includes an element of whether the courts are independent in the eyes of an observer.	2002 (5) SA 246 (CC); 2002 (8) BCLR 810 (CC)
162	<i>S v Bierman</i> CCT 52/01 <b>Handed down:</b> 11 June 2002	The Court in a unanimous decision by O'Regan J denied leave to appeal for the applicant arguing that the High Court erred in allowing a minister of religion to whom she confessed to testify at trial. The Court found that it was not in the interests of justice to grant appeal.	2002 (5) SA 243 (CC); 2002 (10) BCLR 1078 (CC)
163	<i>S v Singo</i> CCT 49/01 <b>Handed down:</b> 12 June 2002	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. Ngcobo J writing for a unanimous court found that s.72(4) did limit those rights. The Court 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.	2002 (4) SA 858 (CC); 2002 (8) BCLR 793 (CC)
164	<i>Uthukela District Municipality and others v President of Republic of South Africa and others</i> CCT 7/02 <b>Handed down:</b> 12 June 2002	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. Du Plessis AJ in a unanimous decision explained 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	2003 (1) SA 678 (CC); 2002 (11) BCLR (CC)

		found there needed to be reasonable efforts made to settle dispute at the political level.	
165	<i>National Director of Public Prosecutions v Mohamed NO and others</i> CCT 13/02 <b>Handed down:</b> 12 June 2002	Constitutionality of s.38 of the Prevention of Organised Crime Act (POCA). Ackermann J writing for 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.	2002 (4) SA 843 (CC); 2002 (9) BCLR 970 (CC); 2002 (2) SACR 196 (CC)
166	<i>Khumalo and Others v Holomisa</i> CCT 53/01 <b>Handed down:</b> 14 June 2002	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. O'Regan J writing for a unanimous Court found that the common law rule developed by the SCA 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.	2002 (5) SA 401 (CC); 2002 (8) BCLR 771 (CC)
167	<i>Minister of Health and others v Treatment Action Campaign and Others (1)</i> CCT 9/02 <b>Handed down:</b> 5 July 2002	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.	2002 (5) SA 703 (CC); 2002 (10) BCLR 1033 (CC)
168	<i>Minister of Education v Premier of KwaZulu-Natal In re: Minister of Health v Treatment Action Campaign</i> CCT 15/02 <b>Handed down:</b> Decided 6 May 2002 Reasons 5 July 2002	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.	2002 (10) BCLR 1075 (CC)
169	<i>In re Amicus Curiae applications relating to Minister of Health and others v Treatment Action Campaign and Others</i> CCT 8/02 Decided 2 May 2002 Reasons: 5 July 2002	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.	Not Reported.
170	<i>Minister of Health and others v Treatment Action Campaign and Others (2)</i> CCT 8/02	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	2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC)

	<b>Handed down:</b> 5 July 2002	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	
171	<i>Van der Spuy v General Council of the Bar of South Africa</i> CCT 48/01 <b>Handed down:</b> 18 July 2002	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 SCA 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.	2002(5) SA 392 (CC); 2002 (10) BCLR 1092 (CC)
172	<i>Satchwell v President of the Republic of South Africa and Another</i> CCT 45/01 <b>Handed down:</b> 25 July 2002	Constitutionality of ss.8 and 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. Madala J in a unanimous decision found 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.	2002 (6) SA 1 (CC); 2002 (9) BCLR 986 (CC)
173	<i>Du Toit and another v Minister of Welfare and Population Development and Others</i> CCT 40/01 <b>Handed down:</b> 10 September 2002	Right of same sex life partners to jointly adopt children. In a unanimous decision written by Skweyiya AJ the Court found that the infringed provisions of the Child Care Act and Guardianship Act discriminate on the grounds of sexual orientation and marital status. In addition, the dignity right of one of the applicants was found to be infringed because of the denial of her as a parent. Lastly, the legislation was found to infringe the principle of the paramount of a child's best interests.	2003 (2) SA 198 (CC); 2002 (10) BCLR 1006 (CC)
174	<i>Beyers v Eleven Judges of the Constitutional Court</i> CCT 25/02 <b>Handed down:</b> 10 September 2002	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.	2002 (6) SA 630 (CC); 2002 (10) BCLR 1001 (CC)
175	<i>United Democratic Movement v President of the Republic of South Africa and Others (1)</i> CCT 23/02 <b>Handed down:</b> 4 October 2002	Two related sets of Acts were considered. The first, concerned with local government, consists of Act 18 of 2002 ("the First Amendment Act"), which amended the Constitution to permit limited floor crossing in municipal councils, and Act 20 of 2002 ("the Local Government Amendment Act"), which amended the Local Government: Municipal Structures Act correspondingly. The second set consists of Act 22 of	2003 (1) SA 488 (CC); 2002 (11) BCLR 1179 (CC)

		2002 ("the Membership Act"), which removed the existing prohibition on floor crossing in the National Assembly and the nine provincial legislatures, and Act 21 of 2002 ("the Second Amendment Act"), which further amended the Constitution to cater for corresponding changes to the composition of the National Council of Provinces. A decision by the Court stressed the fact that the Court was not examining the merits of floor-crossing, but deciding whether this type was permitted under the Constitution. The Court generally concluded that floor-crossing at the national, provincial and local government level is not inconsistent with the Constitution as such. But the Court found that there was a procedural flaw in the legislation relating to national and provincial floor-crossing. The Membership Act was passed under transitional provisions which required the legislation to be passed in a reasonable period. The Court found that the Membership Act had not been passed within a reasonable period and thus was struck down.	
176	<i>United Democratic Movement v President of the Republic of South Africa and Others (2)</i> CCT 23/02 <b>Handed down:</b> 4 October 2002	Appeal by the government against interim orders issued by the High Court suspending the operation of the legislation. A decision by the Court, found that the High Court orders were too wide and should not have been made. Assuming but not deciding that the High Court did have the power to make such an order, the Court found that that power should only be exercised in exceptional circumstances to prevent serious irreparable harm.	2003 (1) SA 495 (CC); 2002 (11) BCLR (CC)
177	<i>United Democratic Movement v President of the Republic of South Africa and Others (3)</i> CCT 23/02 <b>Handed down:</b> 4 October 2002	This decision by the Court 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.	2003 (1) SA 472 (CC); 2003 (1) BCLR 1 (CC)
178	<i>Jordan and others v S</i> CCT 31/01 <b>Handed down:</b> 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 majority judgment written by Ngcobo J found that the challenged provisions were not unconstitutional. (Chaskalson CJ, Kriegler J, Madala J, Du Plessis AJ, Skweyiya AJ concurred). Dissent: O'Regan J and Sachs J (Langa DCJ, Ackermann J, Goldstone J concurred) found that s.20(1) (aA) brought about indirect unfair discrimination. Section 20(1)(aA) unjustifiably limited both s8 and s13 of the interim Constitution.	2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC)
179	<i>Ex parte Mercer and Another</i>	The applicants had been convicted in the magistrate's court of harbouring certain wild animals without a	2003 (1) SA 203 (CC);

	CCT 31/02 <b>Handed down:</b> 28 October 2002	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.	
180	<i>African National Congress and others v United Democratic Movement and Others (Krog and Others Intevening)</i> CCT 43/02 <b>Handed down:</b> 19 November 2002	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. Unanimous judgment written by Chaskalson CJ.	2003 (1) SA 533 (CC); 2003 (1) BCLR 1 (CC)
181	<i>Swartbooi and others v Brink and Another</i> CCT 27/02 <b>Handed down:</b> 21 November 2002	Personal liability of public officials acting within their public capacity. 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.	2003 (2) SA 34 (CC); 2003 (1) BCLR 21 (CC)
182	<i>Phoebus Apollo Aviation v Minister of Safety and Security</i> CCT 19/02 <b>Handed down:</b> 28 November 2002	Unanimous judgment by Kriegler J which dismissed the appeal for lack of a constitutional issue. Case dealt with the vicarious liability of the Minister for actions of police officers acting outside the scope of their employment.	2003 (2) SA 34 (CC); 2003 (1) BCLR 14 (CC)
183	<i>National Education Health and Allied Workers Union v University of Cape Town &amp; Others</i> CCT 2/02 <b>Handed down:</b> 6 December 2002	Appeal from the Labour Appeal Court (LAC), interpreting s 197 of the Labour Relations Act. Held that when a statute gives effect to a constitutional right, then the interpretation of that statute raises a constitutional issue. It further found that appeals from the LAC firstly lie with the SCA, but in certain circumstances may be heard directly by this Court. It stressed that this Court will be hesitant to hear appeals from the LAC unless they raise issues of principle. Found that the primary purpose of s. 197 is to protect workers from the loss of employment in the event of a transfer. It further found that upon the transfer of a business, the workers automatically are transferred to the new owner without a prior agreement. Maj: Ngcobo J (unanimous).	2003 (3) SA 1 (CC); 2003 (2) BCLR 154 (CC)
184	<i>Democratic Alliance v. Masondo</i> CCT 29/02 <b>Handed down:</b> 12 December 2002	Langa DP held that the mayoral councils as contemplated by the Municipal Structures Act are not committees of the council as contemplated by s160 of the Constitution. Concurring judgment by Sachs J. O'Regan J dissented and argued for a purposive approach to s.160(8) – if the mayoral committees carry out the constitutional powers and functions of the local government council, then they are committees of	2003 (2) SA 413 (CC); 2003 (2) BCLR 128 (CC)

		that council.	
185	<i>Wilhelm Ignaz Erich Geuking v President of the Republic of South Africa</i> CCT 35/02 <b>Handed down:</b> 12 December 2002	A unanimous judgment by Goldstone J held that the President's consent to trigger extradition proceedings is not a trial, nor an administrative decision but rather, a policy decision. It is thus not a prerequisite that the nationality of the person sought for extradition be considered. A provision in the Extradition Act 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 the person's rights to a fair trial, to freedom and security of the person, or to a fair hearing. The provision also does not interfere with the independence of the judiciary or violate the separation of powers doctrine.	2003 (3) SA 34 (CC); 2004 (9) BCLR 895 (CC)
186	<i>National Union of Metalworkers of South Africa v Bader Bop Ltd</i> CCT 14/02 <b>Handed down:</b> 13 December 2002	A unanimous judgment by O'Regan J held that s12-15 of the Labour Relations Act, which regulate labour organisational rights, and which confer certain organisational rights on majority unions, 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. Separate concurring judgment by Ngcobo J.	2003 (3) SA 513 (CC); 2003 (2) BCLR 182 (CC)
187	<i>Bannatyne v Bannatyne</i> CCT 18/02 <b>Handed down:</b> 20 December 2002	The enforcement of Maintenance Court maintenance orders by High Courts is competent as appropriate relief and when carried out should seek to implement the best interests of the child principle. Courts should also bear in mind the systemic failures of the maintenance system. A unanimous judgment by Mokgoro J.	2003 (2) SA 363 (CC); 2003 (2) BCLR 111 (CC)
188	<i>Phillips and another v Director of Public Prosecutions (Witwatersrand) and Others</i> CCT 20/02 <b>Handed down:</b> 11 March 2003	Section 160(d) of the Liquor Act makes it an offence for the holder of an on-consumption licence to allow any person: (i) to perform an offensive, indecent or obscene act; or (ii) who is not clothed or not properly clothed, to perform or to appear, on a part of the licensed premises where entertainment of any nature is presented or to which the public has access. Though 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 Court found the section to be unconstitutional. A majority judgment by Yacoob J (with separate concurrences by Ngcobo J and Sachs J). Dissent by Madala J.	2003 (3) SA 345 (CC); 2003 (4) BCLR 357
189	<i>Kathleen Margaret Satchwell v President of South Africa and Another</i> CCT 48/02	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	2003 (4) SA 266 (CC); 2004 (1) BCLR 1 (CC)

	<b>Handed down:</b> 17 March 2003	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. A unanimous judgment by O’Regan J.	
190	<i>J&amp;B v Director General: Department of Home Affairs and Others</i> CCT 46/02 <b>Handed down:</b> 28 March 2003	Section 5 of the Children’s Status Act was found to be unconstitutional as it violated the right to equality. 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. A unanimous judgment by Goldstone J.	2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC)
191	<i>The National Director of Public Prosecutions and Another v Mohamed NO and Others</i> CCT 44/02 <b>Handed down:</b> 3 April 2003	Section 38 of the Prevention of Organised Crime Act found to be constitutional. It did not infringe the <i>audi alteram partem</i> rule because it allowed for a rule <i>nisi</i> to be granted where the presiding judge found it to be necessary. A unanimous judgment by Ackermann J.	2003 (4) SA 1 (CC); 2003 (5) BCLR 476 (CC)
192	<i>Swarthboo and Others v Brink and Another (1)</i> CCT 27/02 <b>Handed down:</b> 3 April 2003	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 of the Constitutional Court rules on the understanding that they were seeking leave to appeal against the order of the Supreme Court of Appeal. Yacoob J writing for a unanimous Court 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. Rule 18 governed such appeals.	2003 (5) BCLR 497 (CC)
193	<i>Swarthboo and Others v Brink and Another (2)</i> CCT 27/02 <b>Handed down:</b> 3 April 2003	The liability of members of a local council for 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. Instead, s.28(1) (b) of the Local Government: Municipal Structures Act 117 of 1998 applied to the case. This law 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. A unanimous judgment by Yacoob J.	2003 (5) BCLR 502 (CC)
194	<i>Xinwa and Others v Volkswagen of South Africa (Pty) Ltd</i> CCT 3/03 <b>Handed down:</b> 4 April 2003	The matter was dealt with summarily under Rule 18(10) (b). The facts indicate that the dismissal of the workers was not procedurally unfair and therefore leave to appeal was denied. Unanimous judgment of the Court.	2003 (4) SA 390 (CC); 2003 (6) BCLR 575 (CC)
195	<i>Wallach v The High Court of South Africa and Others</i> CCT 2/03 <b>Handed down:</b>	Application for direct access denied. Incorrect procedure for direct access followed; the applicant cannot seek the nullification of a judgment and cite the court as the respondent. The correct procedure is	2003 (5) SA 273 (CC)

	4 April 2003	to apply for leave to appeal to that judgment. The interpretation and application of the Insolvency Act is not a matter for this Court as a court of first and last instance. Unanimous judgment of the Court.	
196	<i>Ingledew v The Financial Services Board</i> CCT 6/02 <b>Handed down:</b> 13 May 2003	The applicant argued that s. 32 of the Constitution (right of access to information) should give him access to the record of investigation when he was sued by the Financial Services Board under the Insider Trading Act of 1998. The Court found it was not in the interests of justice to grant the application for leave to appeal because the applicant will not be prejudiced if he did not get the information required at this stage of the proceedings. The application for leave to appeal was dismissed. A unanimous judgment by Ngcobo J.	2003(4) SA 584 (CC); 2003 (8) BCLR 825 (CC)
197	<i>The State v Shongwe</i> CCT 45/02 <b>Handed down:</b> 30 May 2003	Unanimous judgment of the Court. Application for direct access denied.	2003 (5) SA 276 (CC); 2003 (8) BCLR 858(CC)
198	<i>Minister of Home Affairs v Eisenberg &amp; Associates</i> CCT 15/03 <b>Handed down:</b> 27 June 2003	Chaskalson CJ writing for a unanimous Court held that the regulations promulgated in terms of section 52 of the Immigration Act were not subject to section 7 of the same Act, because the Act did not specify such a condition. Further, it was found that the Minister complied with the requirements set out in section 4 of the Promotion of Administrative Justice Act, which deals with administrative action affecting the public. The appeal was upheld.	2003 (5) SA 281 (CC); 2003 (8) BCLR 838 (CC)
199	<i>Fourie and Another v Minister of Home Affairs and Another</i> CCT 25/03 <b>Handed down:</b> 31 July 2003	Application for leave to appeal directly to the Court. Partners in a permanent same-sex relationship since June 1994 sought a declaratory order that the 'Marriage' between them was legally binding in terms of the Marriages Act, secondly, 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 by holding that, under the common law, marriage is a legal union of a man and a woman for the purpose of a lifelong mutual relations and that the Marriage Act contemplate a marriage between a male and a female to the exclusion of others. The applicant then applied to this Court directly. Moseneke J dismissed the application and ordered that the applicants first have their matter considered by the SCA.	2003 (5) SA 301 (CC); 2003 (10) BCLR 1092 (CC)
200	<i>Abduraghman Thebus and Another v The State</i> CCT 36/02 <b>Handed down:</b> 28 August 2003	Moseneke J in a unanimous judgment dismissed the appeal for the following reasons. Firstly, common purpose neither amounts to an arbitrary deprivation of freedom, nor trenches the right to be presumed innocent. Therefore, the doctrine of common purpose is not unconstitutional. Secondly, the pre-trial right to silence under s35(1)(a) must be distinguished from the right to silence during trial protected by s35(3)(h), in that once decided to engage in giving evidence during	2003 (6) SA 505 (CC); 2003 (10) BCLR 1100 (CC)

		investigation, inferences can be drawn from information provided. Dissent: O'Regan J and Goldstone J on the right to silence.	
201	<i>Ex Parte Omar</i> CCT 32/03 <b>Handed down:</b> 11 September 2003	Application for direct access. Applicant seeks an order declaring s. 8 of the Domestic Violence Act 1998 invalid. Applicant did not comply with rules of Court. Application for direct access refused.	2006 (2) SA 294 (CC); 2003 (10) BCLR 1087 (CC)
202	<i>Head of Department , Department of Education, Limpopo Province v Settlers Agricultural High School and Others</i> CCT 36/03 <b>Handed down:</b> 2 October 2003	Application for leave to appeal from a decision of the High Court. Rights of School Governing Bodies to make decisions on suitable candidates for employment. The Court dismissed the application with costs.	2003 (11) BCLR 1212 (CC)
203	<i>Pheniti v The Minister of Education</i> CCT 35/03 <b>Handed down:</b> 06 October 2003	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. Non-compliance with the rules. The Court dismissed the application.	2003 (11) BCLR 1217 (CC)
204	<i>Gcali v MEC for Housing and Local Government In the Eastern Cape and Others</i> CCT 29/03 <b>Handed down:</b> 06 October 2003	Application for direct access under the provisions of s. 167(6) (a) of the Constitution. The Court dismissed the application.	2003 (11) BCLR 1203 (CC)
205	<i>Alexkor Limited v The Richtersveld Community and Others</i> CCT 19/03 <b>Handed down:</b> 14 October 2003	Unanimous judgment of the Court. Appeal against the order of the SCA was dismissed because the Court found that, contrary to the submissions of the Applicant, the Court had jurisdiction to hear the matter. 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 s.25(7) of the Constitution and on the facts, not disputed by the Applicant, the Respondent was dispossessed after 1913 due to the racially-discriminating practices.	2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC)
206	<i>De Reuck v Director of Public Prosecutions (WLD) and Others</i> CCT 5/03 <b>Handed down:</b> 15 October 2003	A decision by Langa DCJ for a unanimous court. Section 27(1) of the Films and Publications Act prohibiting possession and importation of pornography does justifiably limits rights of freedom of expression and privacy (ss.16 and 14 of the Constitution respectively) 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. Child pornography does not consist of all depictions of a nude child, but rather those that do not stimulate aesthetic feeling, the test being an objective one.	2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC)
207	<i>Wallach v Registrar of Deeds (Pretoria) and Others; Wallach v Spilg and Others</i>	Two applications for direct access brought by same applicant, dealt with in single judgment of the Court. The first was a constitutional challenge to	2004 (3) BCLR 229 (CC)

	CCT 33/03; 45/03 <b>Handed down:</b> 14 November 2003	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. Applications for direct access refused.	
208	<i>Western Cape Workers Association v Halgang Properties CC</i> CCT 44/03 <b>Handed down:</b> 14 November 2003	Application for special leave to appeal. Case raises the issue of unfair labour practices and the transfer of a business as a going concern. The trade union approached the Court on behalf of the dismissed workers for leave to appeal against the decision of the Labour Appeal Court (LAC). It alleged that the decision of the LAC infringed the rights of the workers to fair labour practices and asked the Constitutional Court to order the reinstatement of two workers. The Court found that in the circumstances the union has no prospects of persuading it that the workers should be reinstated. It concluded that it was therefore not in the interest of justice to grant leave to appeal.	2004 (3) BCLR 237 (CC)
209	<i>Van der Westhuizen v The State</i> CCT 60/03 <b>Handed down:</b> 24 November 2003	Application for special leave to appeal directly to this Court. Court held that it was not in the interest of justice to grant the application for direct access and the application was dismissed.	2004 (2) BCLR 117 (CC)
210	<i>Mercer v The State</i> CCT 43/03 <b>Handed down:</b> 24 November 2003	Application for leave to appeal and application for condonation. Application for condonation dismissed because no prospects of success. Judgment of the Court.	2004 (2) SA 598 (CC); 2004 (2) BCLR 109 (CC)
211	<i>Municipality of Plettenberg Bay v Van Dyk &amp; Co Inc</i> CCT 42/03 <b>Handed down:</b> 24 November 2003	Application dismissed because applicant did not comply with the requirements of the rules of this court.	2004 (2) BCLR 113 (CC)
212	<i>Shaik v The Minister of Justice and Constitutional Development and Others</i> CCT 34/03 <b>Handed down:</b> 02.December.2003	Application for leave to appeal. Constitutionality of s.28(6) of the National Prosecuting Authority Act. The High Court held that the provision violates the applicant's rights to silence in terms of s.35(1)(a) of the Constitution but such infringement was justified in terms of s36(1) of the Constitution and the application in the High Court was accordingly dismissed. Shortly after the applicant launched his application to this Court he was charged with certain offences that had been subject to s28 enquiry. Ackermann J held that the reference to any person in s28 does not apply to accused persons, therefore the applicant would not benefit from a ruling by this Court. Held further that the applicant challenged the wrong section of the Act, by challenging the Constitutionality of s.28(6) instead of s.28(8). The Court concluded that it was not in the interest of justice to grant the application for leave to appeal.	2004 (3) SA 599 (CC); 2004 (4) BCLR 333 (CC)

213	<p><i>Minister of Home affairs v NICRO and others</i> CCT 03/04 <b>Handed down:</b> 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 Court upheld the application by NICRO and two convicted prisoners serving sentences, in declaring that these provisions are inconsistent with the Constitution and invalid. 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.</p>	2004 (5) BCLR 445 (CC)
214	<p><i>Khosa and others v Minister of Social Development; Mahlaule and others v Minister of Social Development and others.</i> CCT 12/03 &amp; 13/03 <b>Handed down:</b> 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 the persons who are not South African citizens from a social grant. Mokgoro J for the majority held that the exclusion of permanent residents from the scheme is discriminatory and unfair and infringes the right to equality. Dissent: Ngcobo J.</p>	2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC)
215	<p><i>S v Wouter Basson</i> CCT 30/03 <b>Handed down:</b> 09 March 2003</p>	<p>The accused was indicted in the Pretoria High Court on 67 charges including murder, fraud, conspiracy to commit various crimes and drug offences. Before the accused was called upon to plead he took an exception to charges in the indictment and the admissibility of the bail record. Both the objections were upheld. Shortly after the commencement of the trial, the state applied for the recusal of the trial court Hartzenberg J, on the grounds that he was biased and had prejudiced the case. The application was dismissed. Just over two years later the accused was acquitted on all remaining charges. The state immediately launched an application in terms of s. 319(1) of the Criminal Procedure Act to have certain questions of law reserved for consideration by the SCA. The SCA dismissed the application for the reservation of questions of law.</p> <p>Application for leave to appeal directly to this Court against the judgment of the High court in terms of Rule 18-dimissed. Application for leave to appeal directly to this court against the judgment of the SCA-Rule 20-granted- the grounds of appeal all raise constitutional matters or issues connected with constitutional matters, for the purposes of s. 167(3)(b) of the Constitution.</p>	2005 (1) SA 171 (CC); 2004 (6) BCLR 620 (CC)

216	<p><i>Lawyers for Human Rights and Another v Minister of Home Affairs and Others</i> CCT 18/03</p> <p><b>Handed down:</b> 9 March 2004</p>	<p>Confirmation of declaration of invalidity. Section 34(8) of the Immigration Act provides that illegal foreigners can, if an immigration officer so decides be detained on the vehicle in which they arrived to be removed from South Africa by that vehicle. Section 34(2) provides for certain detained illegal foreigners to be released from detention within forty eight hours except those detained on a vehicle to be taken to court within forty eight hours of their arrest and detention. Yacoob J for the majority held that the organisation did act in the public interest. The Court also rejected the argument that illegal foreigners who were not formally in the country could not be beneficiaries of the Constitution. Held that s. 34(8) did limit the rights of illegal foreigners but that it was justifiable in our society to provide that they can be detained in and removed in the vehicle in which they came. 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. 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.</p> <p>Dissent: Madala J.</p>	<p>2004 (4) SA 125 (CC); 2004 (7) BCLR 775 (CC)</p>
217	<p><i>Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others</i> CCT 27/03</p> <p><b>Handed down:</b> 10 March 2004</p>	<p>Application for special leave to appeal against a judgment of the SCA concerning the allocation of fishing quotas in the deep-sea hake trawl sector of the fishing industry. The applicant, Bato Star Fishing (Pty) Ltd, dissatisfied with the allocation it received in the 2001 allocation process, sought to review that decision. It succeeded in the High Court; decision was overturned by the SCA. The applicant then approached the Court. Sections 2(j) and 18(5) of the Marine Living Resources Act (the Act) identify transformation of the industry as one of the Act's ten objectives. The applicant relied on these provisions and the fact that it was a medium-sized black empowerment company.</p> <p>O'Regan J, in whose judgment all the judges concurred, found that because the courts' powers to review administrative action no longer flow directly from the common law, but from the Promotion of Administrative Justice Act (PAJA) and the Constitution itself, the provisions of PAJA should be directly relied upon by applicants seeking the review of administrative action. She rejected all three grounds of appeal, namely unreasonableness, failure to apply the mind and undisclosed policy change.</p> <p>Ngcobo J filed a separate judgment in which all the members of the Court concurred, emphasizing transformation and the constitutional context within which the Act must be understood. He held that the Act requires the Minister to pay special attention to transformation of the fishing industry when granting fishing rights, but a court may not tell functionaries how to implement transformation.</p> <p>Application for leave to appeal granted and appeal</p>	<p>2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC)</p>

		dismissed with costs.	
218	<p><i>Daniels v Campbell NO and Others</i> CCT 40/03 <b>Handed down:</b> 11 March 2004</p>	<p>On appeal, Sachs J held that the word “spouse” in its ordinary meaning includes parties to a Muslim marriage. Accordingly, it was not necessary to read-in words into the Intestate Succession Act and the Maintenance of Surviving Spouses Act.</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. The word “spouse” in the statutes under consideration must be construed to reflect this change in legal norms and values reflected in various statutes expressly recognizing Muslim marriages. Previous cases are distinguishable as they are concerned with couples who did not claim to be married under any law.</p> <p>Dissented: Moseneke J and Madala J and 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.</p>	<p>2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC)</p>
219	<p><i>The Liberal Party v The Electoral Commission and Others</i> CCT 10/04 <b>Handed down:</b> 5 April 2004</p>	<p>Application for direct access to this Court and to appeal against the decision of the Electoral Court was brought on the basis of urgency. The Court considered the prospects of success of the appeal. Application dismissed.</p>	<p>2004 (8) BCLR 810 (CC)</p>
220	<p><i>Western Areas &amp; 2 Others v The State</i> CCT 04/04 <b>Handed down:</b> 5 April 2004</p>	<p>Application for ‘conditional’ leave to appeal to this Court against an order dismissing their objection to indictment in terms of s.319 of the Criminal Procedure Act. They also made application to the SCA for leave to appeal and fear that their appeal may not be considered on the merits. Application for leave to appeal not conditional upon application to the SCA being refused but on a refusal by the Supreme Court of Appeal to consider appeal on its merits. Application for ‘conditional’ leave to appeal-dismissed.</p>	<p>2004 (8) BCLR 819 (CC)</p>

221	<p><i>Dudley v City of Cape Town and Another</i> CCT 5/04 <b>Handed down:</b> 14 June 2004</p>	<p>Application for leave to appeal. The Court previously held, unanimously, that the application should be dismissed. The respondent attempted to file a further affidavit, late and without complying with Rules for service and filing, in which a costs order against the applicant was sought. This judgment was delivered to give reasons why no order was made as to costs.</p>	<p>2005 (5) SA 429 (CC); 2004 (8) BCLR 805 (CC)</p>
222	<p><i>Minister of Finance and Another v Van Heerden</i> CCT 63/03 <b>Handed down:</b> 29 July 2004</p>	<p>Application for leave to appeal against a High Court decision. Concerned a challenge to the constitutionality of rules of the Political Office-Bearers Pension Fund that provided for differentiated employer contributions in respect of members of Parliament and other political office-bearers. Respondent argued that the rules unfairly discriminatory; and Fund not validly established under s. 190A of the interim Constitution or s. 219 of the Constitution. Applicant contended: permissible affirmative action measure.</p> <p>The Court held that leave to appeal granted. The appeal was upheld and the order of the High Court declaring Rule 4.2.1 unconstitutional and invalid set aside. Moseneke J (for the majority) held: legislative and other measures that meet s. 9(2) are not presumptively unfair. Differentiation aimed at protecting or advancing disadvantaged persons is warranted if it meets the test of s. 9(2). The impugned pension scheme upheld as a restitutive measure.</p> <p>Separate concurrences: Mokgoro J, Ngcobo J, Sachs J.</p>	<p>2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC)</p>
223	<p><i>Kaunda &amp; Others v The President of the Republic of South Africa and Others</i> CCT 23/04 <b>Handed down:</b> 4 August 2004</p>	<p>Appeal against judgment of the High Court in Pretoria. The applicants were South African citizens held in Zimbabwe on various charges, threatened with extradition to Equatorial Guinea. They contended that their rights to dignity, freedom and security of the person, including the right not to be treated or punished in a cruel inhuman or degrading way, and the right to a fair trial and conditions of detention were being threatened/infringed. They sought an order compelling the government to take urgent steps, including diplomatic representations.</p> <p>Application for leave to appeal directly to this Court granted.</p> <p>Chaskalson CJ writing for the majority held that: appeal dismissed. Held, further: A privilege and benefit of South African citizenship is an entitlement to request the government for protection against a foreign state. The government must deal with the request consistently with the Constitution. It has a wide discretion. Here, its policies are not inconsistent with international law or the Constitution.</p> <p>Sep 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>Mashaoha v the President of the Republic of South Africa and Others</i> CCT 67/03 <b>Handed down:</b> 6 September 2004</p>	<p>Confirmation of order of the Pretoria High Court declaring Presidential Proclamation Rule 7 of 1996 inconsistent with the interim Constitution and invalid. The proclamation purported to assign the administration of almost the whole of the Social Assistance Act (the South African Airways) to provincial governments. The main issue was whether social assistance is a matter that cannot be regulated effectively by provincial legislation and requires minimum standards across the nation. Maj: Van der Westhuizen J (unanimous) held that the South African Airways falls within s.126(3) of the interim Constitution and was therefore in terms of s. 235(6) not capable of being assigned to the provinces. Order of invalidity of the High Court confirmed, and MEC ordered to pay costs. Order of invalidity suspended.</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 <b>Handed down:</b> 1 October 2004</p>	<p>Application for leave to appeal against the decision of the SCA. In response to a petition signed by 1600 people in the suburb of Lorraine, the Port Elizabeth Municipality sought an eviction order against 68 persons living in shacks on privately owned land. The occupiers had appealed successfully to the SCA against the eviction. The Municipality applied for leave to appeal to this Court, arguing that it was not constitutionally obliged to find alternative accommodation or land when seeking an eviction order. Sachs J writing for a unanimous Court held that s26(3) of the Constitution provides that no one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act provides for circumstances in which a municipality may apply to evict unlawful occupiers. A court may order eviction if it is just and equitable to do so. Although it was not under a constitutional duty in all cases to provide alternative accommodation or land, its failure to take all reasonable steps to do so would be an important consideration in deciding what was just and equitable. Here, it was not just and equitable for the eviction order to be granted. Application for leave to appeal refused with costs.</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 <b>Handed down:</b> 5 October 2004</p>	<p>Application for leave to appeal against a decision of the SCA refusing condonation. Constitutional challenge to s.20 of the Attorneys Act which provides a short-cut route to enrolment for attorneys admitted "under this Act", thereby excluding attorneys admitted in the "homelands". Maj: O'Regan J (unanimous) held that application for leave to appeal granted in part. Such applications now governed by Rule 19, and should be brought against the High Court decision, not the SCA decision refusing condonation. Section 20 of the Attorneys Act infringes equality right in s9 of the Constitution. Words read in to remedy defect.</p>	<p>2005 (2) SA 117 (CC); 2005 (2) BCLR 129 (CC)</p>

227	<p><i>Mkontwana v Nelson Mandela Metropolitan Municipality &amp; Another</i></p> <p><i>Bisset and Others v Minister of Provincial Affairs &amp; Constitutional Development</i></p> <p><i>Transfer Rights Action Campaign and Others v MEC for Local Government and Housing in the Province of Gauteng and Others</i> CCT 57/03 CCT 61/03 CCT 01/04 <b>Handed down:</b> 6 October 2004</p>	<p>Applications for confirmation and leave to appeal against High Court decisions. Three cases concerned 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 sections preclude transfer of immovable property unless all electricity and water consumption charges due to a municipality in connection with the property by all occupiers of including non-owner occupiers for a specified period are paid. It was contended that these laws allow for arbitrary deprivation of property and infringe s. 25(1) of the Constitution.</p> <p>Yacoob J writing for a unanimous held that the legislation deprives people of property. However, the deprivation is not arbitrary. The provision has an important purpose that encourages payment as well as a sense of civic responsibility. There is sufficient reason for the deprivation. Also, all municipalities had to provide owners with copies of electricity and water accounts sent to occupiers if the owners requested these in writing. These laws also do not infringe the right to equality (s9), the right of access to housing (s26) or the right of access to courts (s34). The order of the South Eastern Cape High Court was set aside. O'Regan J (Mokgoro J concurring) concurred with the order proposed by Yacoob J, but for different reasons.</p>	2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC)
228	<p><i>Jaftha v Schoeman &amp; Others; Van Rooyen v Stoltz &amp; Others</i> CCT 74/03 <b>Handed down:</b> 8 October 2004</p>	<p>Application for leave to appeal against the decision of High Court. The appellants challenge provisions of the Magistrates' Courts Act which provide for execution against the immovable property of judgment debtors, on the basis that the impugned sections constituted an unjustifiable limit on their right of access to adequate housing in s. 26 of the Constitution. Mokgoro J writing for a unanimous Court upheld the appeal against the decision of the High Court. Any measure which removes from people their pre-existing access to adequate housing limits the right to housing in the Constitution. The process of execution against immovable property is unconstitutional to the extent that it allows a person's home to be sold in execution in circumstances where it is unjustifiable. An appropriate remedy would be to provide judicial oversight of the execution process. Words read in to the Act.</p>	2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC)

229	<p><i>Bhe and Others v Magistrate, Khayelitsha and Others</i></p> <p><i>Shibi v Sithole and Others</i></p> <p><i>SA Human Rights Commission and Another v President of the RSA and Another</i> CCT 49/03; CCT 69/03; CCT 50/03</p> <p><b>Handed down:</b> 15 October 2004</p>	<p>Confirmation proceedings and application for direct access. The applicants sought confirmation of orders of invalidity of certain provisions of the Black Administration Act and regulations made in terms of the Act, which govern intestate succession for black estates. The applicants also challenged the system of male primogeniture as it applies in African customary law.</p> <p>Langa DCJ, for the majority, held that the impugned provisions are manifestly discriminatory and in breach of the s. 9(3) and s. 10 of the Constitution, and therefore must be struck down. The effect of this order is that not only are the substantive rules governing inheritance provided in the section held to be inconsistent with the Constitution, but also the procedures whereby the estates of black people are treated differently from the estates of white people are held to be inconsistent with the Constitution.</p> <p>The Court ordered that estates that would previously have devolved according to the rules in the Black Administration Act and the customary law rule of male primogeniture must now devolve according to the rules provided in the Intestate Succession Act. Special provision was made in the order for polygamous unions.</p> <p>Partial dissent: Ngcobo J</p>	2005 (1) SA 563 (CC); 2005 (1) BCLR 1 (CC)
230	<p><i>Xolisile Zondi v MEC for Traditional and Local Government Affairs and Others</i> CCT 73/03</p> <p><b>Handed down:</b> 15 October 2004</p>	<p>Application for confirmation. The applicant sought confirmation of an order of the High Court declaring invalid certain provisions of the Pound Ordinance KwaZulu-Natal.</p> <p>The challenged provisions gave power to landowners and pound keepers to seize and impound livestock found trespassing on land. They also gave power to the pound keepers to sell the impounded animals to recover the pound fees. All of this occurred without a court order.</p> <p>Ngcobo J, in a unanimous judgment, confirmed in part and dismissed in part the High Court order. He held that the combined effect of certain provisions among those challenged, created an impounding scheme that, from seizure of the animals to execution of their sale, did not involve the judicial process and did not provide for notice to livestock owners where they could, with reasonable diligence, be identified. The Court also held that one of the provisions discriminated against black people, landless black people in particular, on the basis of colour and landownership and therefore violated the constitutional right to equality.</p>	2005 (3) SA 589 (CC); 2005 (4) BCLR 347 (CC)

231	<p><i>Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others</i> CCT 56/03 <b>Handed down:</b> 26 November 2004</p>	<p>Application for leave to appeal against the decision of the SCA. The applicants sought to hold certain organs of state responsible for the safety and security of rail commuters. They sued Metrorail and the South African Rail Commuter Corporation ("the SARCC"), which were created under the Legal Succession to the South African Transport Services Act and are responsible for providing train services nationwide. Both are organs of state but their statutory mandate entitles them to pursue a profit. They also sued the Minister of Transport and the Minister of Safety and Security.</p> <p>O'Regan J in a unanimous judgment held that although Metrorail and the SARCC disclaimed responsibility for ensuring the safety and security of commuters, arguing that this was a police function, they had a responsibility to take reasonable steps to fill the policing void. The Court issued a declaratory order to the effect that Metrorail and the SARCC have an obligation to ensure that reasonable measures are taken to provide for the security of rail commuters.</p>	2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC)
232	<p><i>City of Cape Town and the Minister of Provincial and Local Government v Robertson and Another</i> CCT 19/04 <b>Handed down:</b> 29 November 2004</p>	<p>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 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.</p> <p>Moseneke J for a unanimous Court ordered that the decision of the High Court be set aside.</p>	2005 (2) SA 323 (CC); 2005 (3) BCLR 199 (CC)
233	<p><i>Director of Public Prosecutions: Cape of Good Hope v Robinson</i> CCT 15/04 <b>Handed down:</b> 2 December 2004</p>	<p>Application for leave to appeal against a decision of the High Court.</p> <p>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. He was judged liable for surrender back to Canada by a magistrate in terms of s 10 of the Extradition Act. The High Court overruled this decision.</p> <p>Yacoob J, for a unanimous Court, re-instated the order of the magistrate and held that the respondent was liable for surrender.</p>	2005 (4) SA 1 (CC); 2005 (2) BCLR 103 (CC)
234	<p><i>Radio Pretoria v Chairperson, Independent Communications Authority of South Africa and Another</i> CCT 38/04 <b>Handed down:</b> 8 December 2004</p>	<p>Application for leave to appeal against a decision of the SCA. The Court unanimously refused leave to 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 Court held that the question of the temporary licence was moot since the licence had long expired. The Court held that the question of the 4-year licence was not properly before the Court.</p>	2005 (4) SA 319; 2005 (3) BCLR 231 (CC)

235	<p><i>Jaipal v The State</i> CCT 21/04 <b>Handed down:</b> 18 February 2005</p>	<p>Application for leave to appeal against a decision of the SCA. The applicant complained 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.</p> <p>Van der Westhuizen J, in a unanimous judgment, held that while the applicant's trial had indeed been irregular, these irregularities did not result in an unfair trial.</p> <p>The application for leave to appeal was allowed and the appeal dismissed. Van der Westhuizen J warned that limited resources must not be allowed to compromise constitutional rights to fair trial.</p>	2005 (4) SA 581 (CC); 2005 (5) BCLR 423 (CC)
236	<p><i>Richard Gordon Volks NO v Ethel Robinson and Others</i> CCT 12/04 <b>Handed down:</b> 21 February 2005</p>	<p>The constitutionality of the Maintenance of Surviving Spouses Act. The High Court found the exclusion of permanent life partners to be in violation of the right to equality and dignity, and therefore unconstitutional.</p> <p>Skweyiya J writing for the majority found that the distinction between married and unmarried people is 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 dignity.</p> <p>Ngcobo J found in a separate concurring judgment further that the provisions of the Act do not impair dignity, do not unfairly discriminate and are therefore not unconstitutional.</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 grounds of marital status.</p>	2005 (5) BCLR 446 (CC)
237	<p><i>The Affordable Medicines Trust and Others v The Minister of Health of the Republic of South Africa and Another</i> CCT 27/04 <b>Handed down:</b> 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 (the 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 20, 18(3) (b), (f), (g), (i), 18(5), 18(6) and 18(7). 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>Ngcobo J, in a judgment in which all the judges concurred, found that the powers conferred on the</p>	2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC)

		<p>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 are 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 invalid.</p>	
238	<p><i>Van Vuuren v The State</i> CCT14/05 <b>Handed down:</b> 6 April 2005</p>	<p>Application for leave to appeal against sentences imposed by the Magistrates' Court in Nigel. Application raised no constitutional matters and had to be dismissed. Judgment of the Court.</p>	2005 (7) BCLR 639 (CC)
239	<p><i>President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd.</i> CCT 20/04 <b>Handed down:</b> 13 May 2005</p>	<p>Application for leave to appeal against decision of the SCA. Modderklip sought an eviction order in the Johannesburg and Pretoria High Courts after a large number of people occupied land illegally. The sheriff and the police refused to execute the order, because of the large costs involved, and the fact that no alternative land was available for relocation.</p> <p>Langa ACJ, for a unanimous 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. Also, 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 Modderklip's constitutional rights to an effective remedy as required by the rule of law and the Constitution.</p> <p>Application for leave to appeal granted and appeal partially dismissed. Order entitling Modderklip to compensation granted.</p>	2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC)
240	<p><i>Sibiya and Others v The Director of Public Prosecutions (Johannesburg High Court) and Others</i> CCT 45/04 <b>Handed down:</b> 25 May 2005</p>	<p>Confirmation proceedings. The Johannesburg High Court declared subsections 1 - 5 of s. 1 of the Criminal Law Amendment Act invalid. The legislation 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 declared the law unconstitutional because it did not give the accused a fair trial in relation to the new sentence.</p> <p>Yacoob J, in a unanimous judgment, 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 plan.</p>	2005 (5) SA 315 (CC); 2005 (8) BCLR 812 (CC)

241	<p><i>Laugh it Off Promotions CC v South African Breweries International (Finance) B.V. t/a Sabmark International</i> CCT 42/04 <b>Handed down:</b> 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.</p> <p>Moseneke J, writing for a unanimous 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". He 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 SCA was set aside.</p> <p>Sachs J in a concurring judgment found that parody was central to the challenge, and that an expression of humour is not only permissible but necessary to the health of constitutional democracy.</p>	2006 (1) SA 144 (CC); 2005 (8) BCLR 743 (CC)
242	<p><i>K v Minister of Safety and Security</i> CCT 52/04 <b>Handed down:</b> 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>O'Regan J, for the Court, held that the common law of vicarious liability must be applied by the courts in such a way that it is consistent with the terms of the Constitution as well as the spirit, purport and objects of the Bill of Rights. She 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 judgment written by O'Regan J</p>	2005 (6) SA 419 (CC); 2005 (9) BCLR 835 (CC)
243	<p><i>Du Toit v Minister of Transport</i> CCT 22/04 <b>Handed down:</b> 8 September 2005</p>	<p>The applicant challenged the amount of compensation awarded by the SCA 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>Mokgoro J, writing for 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, the Court was not at large to determine whether the Expropriation Act complied with the requirements set out for calculating compensation for expropriation in s. 25(3) of the Constitution. Rather, Mokgoro J held, 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. The compensation awarded by</p>	2006 (1) SA 297 (CC); 2005 (11) BCLR 1053 (CC)

		<p>the SCA was held to be just and equitable. The appeal was dismissed.</p> <p>Langa ACJ, for 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 Langa ACJ did not concur in the order of Mokgoro J, preferring rather to refuse leave to appeal, he did however agree that the compensation awarded was just and equitable.</p>	
244	<p><i>S v Basson</i> CCT 30/03 <b>Handed down:</b> 9 September 2005</p>	<p>Application for leave to appeal against judgment of the SCA. On the acquittal of the respondent on criminal charges in the High Court, the state had unsuccessfully applied to the Supreme Court of Appeal to have certain questions of law reserved for that court's consideration.</p> <p>The Court held that although the SCA refused leave to appeal, its judgment traversed constitutional issues. The appeal in these circumstances lay properly against the SCA and not the judgment of the High Court. The judgment of the Court considered three issues. The state argued, first, that the trial judge in the High Court had been biased in favour of the respondent. 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. Secondly, the state argued that the High Court had been wrong to exclude the bail record as evidence. 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. Thirdly, the state argued that the trial court had incorrectly quashed six of the charges of conspiracy to commit murder, as a result of a mistaken interpretation of the Riotous Assemblies Act. The Court agreed, holding 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 the 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.</p>	<p>2005 (1) SA 171 (CC); 2005 (12) BCLR 1192 (CC)</p>
245	<p><i>Institute for Security Studies: in re S v Basson</i> CCT 30/03 <b>Handed down:</b> 9 September 2005</p>	<p>Application for admission as amicus curiae. On 2 December 2004 the Court made an order refusing the application. Reasons were given in this judgment.</p> <p>The Court held that consent of all parties is not decisive. 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.</p>	<p>2006 (6) SA 195 (CC); 2006 (2) SACR 350 (CC)</p>

246	<p><i>Mnguni v The Minister of Correctional Services and Others</i> CCT 42/05 <b>Handed down:</b> 26 September 2005</p>	<p>Application for direct access. The applicant, a convicted prisoner serving a sentence and diagnosed with HIV/AIDS, was refused compassionate parole on medical grounds. He sought review of the decision.</p> <p>The Court held that the applicant had failed to show exceptional circumstances that would justify direct access. The application was dismissed. However, the Court noted that the issues raised by the application are important and may require adjudication.</p> <p>The Registrar was ordered to bring the judgment to the attention of the Law Society for the Northern Provinces.</p>	2005 (12) BCLR 1187 (CC)
247	<p><i>De Kock v Minister of Water Affairs and Forestry and Others</i> CCT 30/05 <b>Handed down:</b> 26 September 2005</p>	<p>Application for direct access. The applicant cited the respondents, all public bodies, for their failure to ensure his environmental rights.</p> <p>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 are 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>	2005 (12) BCLR 1183 (CC)

248	<p><i>The 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 <b>Handed down:</b> 30 September 2005</p>	<p>Application for leave to appeal against the judgment of the SCA 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 Act to be invalid. The regulations purported to regulate the prices, across the supply chain, at which medicines would be sold.</p> <p>The Court was faced with procedural and substantive questions. In regard to the former, the Court was unanimous in holding that the SCA 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 SCA did not preclude them from raising arguments of substance before the Court.</p> <p>As to the dispensing fee, Chaskalson CJ and Ngcobo J found the fee set by the regulations to be inappropriate and invalid, although their reasoning was slightly different. Langa DCJ, O'Regan J Sachs J and Van der Westhuizen J concurred. Moseneke J held that the fee was in the main, appropriate, although he held it to be inappropriate as in respect of rural and courier pharmacies. Madala, Mokgoro, Skweyiya and Yacoob JJ concurred.</p> <p>The Court was unanimous in holding that the SCA 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. Challenges to 6 of the regulations were upheld unanimously, and 1 by a majority; challenges to 2 of the regulations were dismissed by a majority. The orders of the High Court and the Supreme Court of Appeal were set aside and replaced with an order reflecting the above.</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 <b>Handed down:</b> 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 effect of the Supreme Court of Appeal decision 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>	2005 (6) BCLR 576 (CC)
250	<p><i>Sibiya and Others v The Director of Public Prosecutions (Johannesburg High Court) and Others</i> CCT 45/04 <b>Handed down:</b> 7 October 2005</p>	<p>Application by the respondents for extension of 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 sentences of death that had not yet been replaced by alternative punishments in terms of the Criminal Law Amendment Act. The extension was granted on 18 August 2005. This judgment gives reason therefore.</p> <p>Examining the reasons furnished for non-compliance</p>	2005 (5) SA 315 (CC); 2006 (2) BCLR 293 (CC)

		with the deadline, Yacoob J, for 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 directed the respondents to attend to the problems. Yacoob J ordered that a further report to be filed.	
251	<i>Phillips and Others v National Director of Public Prosecutions</i> CCT 55/04 <b>Handed down:</b> 7 October 2005	Application for leave to appeal against the Supreme Court of Appeal confirmation of a restraint order made in terms of the Prevention of Organised Crime Act. Skweyiya J writing for the Court dismissed the application for leave to appeal. The applicants had not challenged the constitutionality of relevant sections of the Act or raised certain sections of the Constitution now relied on in the lower courts. A constitutional complaint that was not pleaded in the lower courts will not be entertained. Where an Act of Parliament regulates the circumstances in which a court may vary its own orders, the case need be decided only within the provisions of the Act.	2006 (1) SA 505 (CC); 2006 (2) BCLR 274 (CC)
252	<i>Omar v Government of the Republic of South Africa and Others</i> CCT 47/04 <b>Handed down:</b> 7 November 2005	Application for leave to appeal against the High Court's dismissal of an application to declare section 8 of the Domestic Violence Act unconstitutional. Van der Westhuizen J, writing for a unanimous Court, dismissed the application for leave to appeal. The Act serves an important social and legal purpose in addressing domestic violence and South Africa's obligations under the Constitution and international law to combat domestic violence. 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.	2006 (2) SA 289 (CC); 2006 (2) BCLR 253 (CC)
253	<i>Xolisile Zondi v MEC for Traditional and Local Government Affairs and Others</i> CCT 73/03 <b>Handed down:</b> 29 November 2005	Application for extension of period of suspension of declaration of constitutional invalidity. In October 2004 the Court declared certain sections of the Pound Ordinance, KwaZulu Natal, unconstitutional. The declaration was suspended for 12 months to allow the Provincial legislature to correct the defects. Ngcobo J, for a unanimous Court, held that the Court has the power at common law to extend a period of suspension whenever it is just and equitable to do so.	2005 (3) SA 589 (CC); 2006 (3) BCLR 423 (CC)

254	<p><i>The Minister of Home Affairs and Another v Fourie and Others</i></p> <p><i>Lesbian and Gay Equality Project v Minister of Home Affairs and Others</i></p> <p>CCT60/04 CCT10/05</p> <p><b>Handed down:</b> 1 December 2005</p>	<p>Two applications: The <i>Fourie</i> matter was an application for leave to appeal against a judgment of the SCA. The respondents in that matter launched a cross-appeal against aspects of the SCA judgment. The <i>Lesbian and Gay Equality Project (LGEP)</i> matter was an application for direct access.</p> <p>The <i>Fourie</i> matter concerned the common-law definition of marriage, which prohibited marriage between members of the same sex. The <i>LGEP</i> matter was a challenge to the constitutionality of sections of the Marriage Act. The applicant in that matter argued that the marriage formula to be repeated by a couple to be married discriminated unconstitutionally against homosexual persons.</p> <p>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 homosexual couples. The majority, as per Sachs J, 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. O’Regan J agreed with the finding of unconstitutionality, but held that this Court should develop the common law and at the same time read in words to s. 3 (1) of the Act, permitting same sex couples to marry with immediate effect.</p>	2006 (1) SA 524 (CC); 2006 (3) BCLR 355 (CC)
255	<p><i>Helicopter &amp; Marine Services (Pty) Ltd and Another V &amp; A Waterfront Properties (Pty) Ltd and Others</i></p> <p>CCT 53/05</p> <p><b>Handed down:</b> 1 December 2005</p>	<p>Application for leave to appeal dismissed. 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.</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></p> <p>CCT 19/05</p> <p><b>Handed down:</b> 5 December 2005</p>	<p>Application for leave to appeal against sentence imposed on applicant by regional magistrate’s court for murder. At the time the applicant entered a plea in the regional magistrate’s court the maximum sentencing jurisdiction of the court was ten years. At the time of sentence, legislative amendments had increased that jurisdiction to fifteen years.</p> <p>Mokgoro J, for 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 to a fair trial. O’Regan J and Ngcobo J, writing separately, agreed with the order made by the majority, but took the view that the fairness or unfairness to the applicant in this case was of no concern, and that the matter should be decided on the</p>	2006 (2) SACR 319 (CC)

		basis of the interpretation of the legislative amendment and principles of the rule of law.	
257	<i>Mtotywa and Others v Director of Public Prosecutions (Mthatha)</i> CCT 61/05 <b>Handed down:</b> 14 December 2005	Application for direct access dismissed. 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. Judgment of the Court.	2006 (4) BCLR 459 (CC)
258	<i>Janse van Rensburg v Maluti-A-Phofung Municipality</i> CCT 63/05 <b>Handed down:</b> 14 December 2005	Application for direct access dismissed. The applicant had failed to comply with the rules of the Court. 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. Judgment of the Court.	2006 (4) BCLR 457 (CC)
259	<i>ACDP v The Electoral Commission and Others</i> CCT10/06 <b>Handed down:</b> 24 February 2006	Urgent application for direct access upheld. O'Regan J writing for the majority held that 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 17 of the Local Government: Municipal Electoral Act. O'Regan J concluded that the Act must be read in conformity with the overall framework of elections and constitutional rights and values relevant to elections. Skweyiya J, writing for the minority, held that the applicant had not complied with the Act and therefore confirmed the order of the Electoral Court.	2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC)
260	<i>Matatiele Municipality and Others v The President of the Republic of South Africa and Others</i> CCT 73/05 <b>Handed down:</b> 27 February 2006	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	2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC)

		Repeal Act.	
261	<p><i>Ex Parte: Minister of Social Development and Others</i> CCT14/06 <b>Handed down:</b> 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 per Van der Westhuizen J 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>2006 (4) SA 309 (CC); 2006 (5) BCLR 604 (CC)</p>
262	<p><i>Vanessa Michelle Van der Merwe v The Road Accident Fund and Another</i> (<i>The Women's Legal Centre Trust as amicus curiae</i>) CCT 48/05 <b>Handed down:</b> 30 March 2006</p>	<p>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 judgment: Moseneke DCJ Separate concurrence: Yacoob J.</p>	<p>2006 (4) SA 230 (CC); 2006 (6) BCLR 682 (CC)</p>
263	<p><i>The Campus Law Clinic (University of KwaZulu-Natal) Durban v Standard Bank of South Africa Ltd and Another</i> CCT 01/06 <b>Handed down:</b> 31 March 2006</p>	<p>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. Writing for a unanimous Court, O'Regan J dismissed the application and held that though 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.</p>	<p>2006 (6) SA 103 (CC)</p>
264	<p><i>Phumelela Gaming and Leisure Ltd v Gründlingh and Others</i> CCT 31/05 <b>Handed down:</b> 18 May 2006</p>	<p>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 Langa CJ held that there was no need to develop the test of unlawful competition in terms of s. 39(2) of the Constitution.</p>	<p>2006 (8) BCLR 883 (CC)</p>

265	<p><i>Nazeema Du Toit v Nazeer Ahmed Seria</i> CCT 18/06 <b>Handed down:</b> 23 May 2006</p>	<p>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.</p>	Unreported
266	<p><i>South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others</i> CCT 57/05 <b>Handed down:</b> 02 June 2006</p>	<p>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.</p>	2006 (8) BCLR 901 (CC)
267	<p><i>Isaac Metsing Magajane v The Chairperson: The North West Gambling Board and Others</i> CCT 49/05 <b>Handed down:</b> 8 June 2006</p>	<p>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. Van der Westhuizen J wrote for a unanimous Court.</p>	2006 (5) SA 520 (CC); 2006 (10) BCLR 1133 (CC); 2006 (2) SACR 447 (CC)
268	<p><i>AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and Another</i> CCT 51/05 <b>Handed down:</b> 28 July 2006</p>	<p>Writing for the majority Yacoob J 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 judgment written by Yacoob J. O'Regan concurred in separate judgment. Langa CJ wrote a dissenting judgment.</p>	2007 (1) SA 343 (CC); 2006 (11) BCLR 1255 (CC)

269	<p><i>David Dikoko v Thupi Zacharia Mokhatla</i> CCT 62/05 <b>Handed down:</b> 3 August 2006</p>	<p>In dealing with statements made by a municipal councillor, the majority held, in a judgment by Mokgoro J, 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. Appellate courts will only interfere with damages awards where special circumstances warranting such interference exist.</p>	<p>2006 (6) SA 235 (CC); 2007 (1) BCLR (CC)</p>
270	<p><i>Doctors for Life International v The Speaker of the National Assembly and Others</i> CCT 12/05 <b>Handed down:</b> 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. Ngcobo J writing for 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. He accordingly declared the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act invalid, but suspended the order of invalidity for eighteen months. The Court did not consider the Sterilisation Amendment Bill as it was still in Bill format. He 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. Yacoob J dissented (Skweyiya J concurring); Van der Westhuizen J (wrote concurring dissent in separate judgment).</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 <b>Handed down:</b> 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 s118, 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 Amendment that alters the boundary of KwaZulu-Natal is 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. Yacoob J dissented (van der Westhuizen J concurring) Skweyiya J wrote a separate dissent</p>	<p>2007 (1) BCLR 47 (CC)</p>

272	<p><i>Trevor B Giddey NO v J C Barnard and Partners</i> CCT 65/05 <b>Handed down:</b> 1 September 2006</p>	<p>Application concerning the interpretation and application of s13 of the Companies Act. The question was how a court should approach the exercise of s13 discretion given that section 34 of the Constitution entrenches the right to have disputes resolved by courts. . O'Regan J held in a majority judgment 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>	2007 (2) BCLR 125 (CC)
273	<p><i>Concerned Land Claimants Organisation of PE v PE Land and Community Restoration Association and Others</i> CCT 29/06 <b>Handed down:</b> 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>	Not reported
274	<p><i>South African Broadcasting Corporation v The National Director of Public Prosecutions and Others</i> CCT 58/06 <b>Handed down:</b> 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. Langa CJ held that s.173 of the Constitution gives a court the inherent power to regulate its own process. This section is fundamental to our democracy and absolutely crucial to enable courts to properly and effectively administer their own affairs. Where a court exercises 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. Sachs J wrote a separate judgment and concurred in the judgment of the majority. Moseneke DCJ together with Mokgoro J dissented, holding that s.173 can not be used in such a way as to impinge on a right in the Constitution. In this case the discretion exercised violated the right to freedom of expression of the SABC.</p>	2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC)
275	<p><i>Steenkamp v Provincial Tender Board of the Eastern Cape</i> CCT 71/05 <b>Handed down:</b> 28 September 2006</p>	<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. Moseneke DCJ writing for 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. Madala, Nkabinde, Skweyiya, Van der Westhuizen and Yacoob JJ concurred. Sachs J concurred in a separate judgment. O' Regan J and Langa CJ dissented finding that a successful tenderer should be able to claim out of pocket expenses it has incurred in fulfilling contractual obligations that arose</p>	2007 (3) BCLR 300 (CC)

		as a result of the tender award. Mokgoro J concurred in the dissenting judgment.	
276	<i>Prophet v The National Director of Public Prosecutions</i> CCT 56/05 <b>Handed down:</b> 29 September 2006	The applicant sought leave to appeal against a SCA 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. Unanimous judgment by Nkabinde J.	2007 (2) BCLR 140 (CC)
277	<i>SAPS v Public Servants Association</i> CCT68/05 <b>Handed down:</b> 13 October 2006	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. Sachs J writing for 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. Langa CJ, Moseneke DCJ, Mokgoro J, Skweyiya J, Van der Westhuizen J, Nkabinde J concurred. They also concurred in the separate concurring judgment of Yacoob J where it was consistent with Sachs J. O' Regan J dissented on the basis that the interpretation adopted by the majority would inevitably lead to unfair job losses and that would be inconsistent with the constitutional commitment to fair labour practices.	Not reported
278	<i>Gory v Kolver NO and Others</i> CCT 28/06 <b>Handed down:</b>	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. Order confirmed in a unanimous judgment by Van Heerden AJ.	2007 (3) BCLR 249 (CC)

279	<i>Lekolwane and Another v Minister of Justice and Constitutional Development</i> CCT 47/05 <b>Handed down:</b> 23 November 2006	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. The judgment relates to the reasons for the striking off. Van der Westhuizen J writing for a unanimous Court.	2007 (3) BCLR 280 (CC)
280	<i>Sibiya and Others v Director of Public Prosecutions</i> CCT 45/04 <b>Handed down:</b> 30 November 2006	In the first Sibiya case the Court made a supervisory order concerning the substitution of death sentences. In this judgment the Court gives a final report on the substitution process which was completed on 28 July 2006. Yacoob J wrote for a unanimous Court.	2006 (2) BCLR 293 (CC)
281	<i>The Minister of Safety and Security v Luiters</i> CCT 23/06 <b>Handed down:</b> 30 November 2006	An application from the Minister of Safety and Security which sought to reverse a High Court and SCA 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 per Langa CJ, it was also held that the test for vicarious liability developed in the <i>K</i> case sufficiently provided for policeman who had subjectively placed themselves on duty.	2007 (3) BCLR 287 (CC)
282	<i>Union of Refugee Women and Others v Private Security Industry Regulatory Authority and Others</i> CCT 39/06 <b>Handed down:</b> 12 December 2006	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. The appeal was dismissed in a majority judgment written by Kondile AJ in which Moseneke DCJ, Madala J, Nkabinde J, and Sachs J (in a separate judgment) concurred. They held that the section is not discriminatory because the trustworthiness of nationals and permanent residents is easier to verify objectively. Mokgoro J and O'Regan J held in a dissenting judgment 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. Langa CJ and Van der Westhuizen J concurred in the dissent.	As yet unreported.
283	<i>Fraser v ABSA Bank Limited (National Director of Public Prosecutions as Amicus Curiae)</i> CCT 66/05 <b>Handed down:</b> 15 December 2006	Application concerning the discretion to be exercised by a court in applying s.26(6) of the Prevention of Organised Crime Act. 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 property of creditors. Van der Westhuizen J wrote for the Court.	2007 (3) BCLR 219 (CC)

284	<p><i>Engelbrecht v Road Accident Fund and Another</i> CCT 57/06 <b>Handed down:</b> 6 March 2007</p>	<p>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.</p> <p>Kondile AJ, writing for the majority, 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 section 34 of the Constitution. This regulation was declared invalid.</p>	As yet unreported.
285	<p><i>S v Shinga; S v O'Connell and Others</i> CCT 56/06; CCT 80/06 <b>Handed down:</b> 8 March 2007</p>	<p>Confirmation proceedings, in two cases, regarding the constitutionality of s.309(3A), s.309(4)(c) and s.309(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.309(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. 309(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>Yacoob J wrote for the Court.</p>	As yet unreported
286	<p><i>The Crown Restaurant CC v Gold Reef Theme Park (Pty) Ltd</i> CCT 05/07 <b>Handed down:</b> 8 March 2007</p>	<p>Application to have the <i>exceptio doli generalis</i>, a defence against the unfair enforcement of contracts reintroduced into contract law. 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>	As yet unreported
287	<p><i>Kumarnath Mohunram and Shelgate Investments CC v The National Director of Public Prosecutions and BOE Bank Limited (Law Review Project Intervening as Amicus Curiae)</i> CCT 19/06 <b>Handed down:</b> 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 (concurring Mokgoro J and Nkabinde J) Separate Concurrences: Sachs J (concurring O'Regan J and Kondile AJ) Dissent: Van Heerden AJ (concurring Langa CJ, Madala J, Van der Westhuizen J and Yacoob J)</p>	As yet unreported.

288	<p><i>Road Accident Fund v Mdeyide</i> (Minister of Transport Intervening) CCT <b>Handed down:</b></p>	<p>Application for confirmation proceedings 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 legal capacity of the blind, illiterate and innumerate applicant. The matter was referred back to the High Court to investigate the appointment of a curator.</p> <p>Majority: Navsa AJ (unanimous).</p>	As yet unreported.
289	<p><i>Barend Petrus Barkhuizen v Ronald Stuart Napier</i> CCT 72/05 <b>Handed down:</b> 26 March 2007</p>	<p>Constitutional challenge under section 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 not to be unconstitutional or contrary to public policy.</p> <p>Majority: Ngcobo J (concurring Madala J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J) Separate Concurrences: O'Regan J, Langa CJ Dissents: Sachs J, Moseneke DCJ (concurring Mokgoro J)</p>	As yet unreported.
290	<p><i>NM and Others v Smith and Others (Freedom of Expression Institute Intervening)</i> CCT 69/05 <b>Handed down:</b></p>	<p>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.</p> <p>Majority: Madala J (concurring Moseneke DCJ, Mokgoro J, Ngcobo J, Nkabinde J, van der Westhuizen J, Yacoob J.) Separate Concurrence: Langa CJ, Sachs J. Dissent: O' Regan J.</p>	As yet unreported.
291	<p><i>University of Witwatersrand Law Clinic v Minister of Home Affairs and Another</i> CCT 08/07 <b>Handed down:</b> 11 April 2007</p>	<p>Application for leave to appeal 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.</p> <p>Judgment of the Court.</p>	As yet unreported.