31 Years of Law Reform in South Africa

Chief Justice of the Republic of South Africa, Mandisa Maya

On the occasion of the 8th Scarnam Lecture by the Law Commission of England and Wales

28 November 2025
London, England

Thank you, Programme Director. Please allow me to acknowledge:

1. Sir Peter Fraser, the Chair of the Law Commission;
2. The Commissioners of the Law Commission;
3. Lord Justice David Bean, Vice President of the Court of Appeal, Civil Division
4. All Justices and distinguished members of the Judiciary and Magistracy
5. His Excellency High Commissioner Jeremiah Mamabolo of the South African High Commissioner to the United Kingdom of Great Britain and Northern Ireland;
6. Former Chair of the Law Commission, Sir Nicholas Green;
7. Former Commissioners;
8. Lady Ann Paton, Chair of the Scottish Law Commission;
9. All Members of the House of Commons present here tonight;
10. Joint Chief Executive Officers of the Law Commission and the entire Commission Staff, in particular, the efficient Mr Michael Duncan, who has been facilitating logistics with my office for this visit;

11. Director of Operations at the Honourable Society of Lincoln's Inn, Ms Amanda Jeffrey and her staff;
12. Members of the Legal fraternity and Academia;
13. Members of the media present here tonight;
14. Members of the public who are following these proceedings virtually on various online platforms;
15. Distinguished Guests;

Introduction

It is an immense honour to deliver this year's Scarman Lecture, an event that has long invited us to pause and reflect on the relationship between the law, society, and the ceaseless task of reform. The lectures remind us that the law sits in constant dialogue with the social, political and economic realities that surround it. The utility of the law depends on our willingness to examine and re-shape it when necessary, and to ensure that it remains responsive to the world it seeks to govern.

South Africa, my homeland, knows this obligation all too well. Few countries in the free world have had their legal foundations unsettled and remade to the degree that ours has. Our legal landscape has been shaped by successive historical forces, which have each left imprints on the structure and substance of our law. The complex hybridity of South Africa's legal system forms the first part of my reflection today.

Historical foundations of the South African legal system

The South African legal system is layered. It carries the imprint of Roman-Dutch civil law, later overlaid by English common law, and further shaped by indigenous legal traditions that survived, to this day I might add, despite formal suppression.[1] These streams did not merely co-exist. They interacted and sometimes collided and ultimately produced a pluralistic legal order that reflects the complexity of the society it has long sought to govern.

[1] Du Bois "Wille's Principles of South African Law" (Juta & Co Ltd, Cape Town, 2007) at 33.

The "*Roomsch Hollandsch Recht*" or Roman-Dutch law was imported into South Africa with the arrival of the Dutch East India Company in the seventeenth century.[2] It was a juristic tradition steeped in Roman texts, and refined by Dutch scholars such as Grotius, Voet and Van der Linden.[3] The Roman-Dutch impact on private law still endures today. As recently as April of this year, for instance, our Constitutional Court handed down a judgment on servitudes that required the Court to harken back to the Digest of Justinian and Voets' writings.[4] Interestingly, the Court noted that the law of servitudes which was developed "to deal with social relations on the land in Ancient Rome and 17th century Holland under an absolutist theory of property ownership" must now give way to a publicly accessible set of rules that are designed appropriately for 21st century South Africa. It added, pointedly, that though the reform was urgent, it was a "task for the South African Law Reform Commission (SALRC) and/or Parliament, not for the courts."[5] I will return to the role of the South African Law Reform Commission later.

The Roman-Dutch foundations of South African law did not remain untouched. The British occupation of the Cape in the nineteenth century introduced a second major influence: the English common law. This tradition did not displace Roman-Dutch law but supplemented it, particularly in areas such as criminal and civil procedure, and the law of evidence.[6] Inevitably, English law also left its mark on aspects of substantive law. In the realm of contract law, for instance, South African doctrine drew materially on English authority in the development of principles governing offer and acceptance, rectification of written contracts, agency, and misrepresentation.[7] What emerged from this engagement of English and Roman-Dutch law was not a simple transplantation, but a process of selective reception, in which South African courts drew from English law to preserve coherence and doctrinal clarity.

---

[2] Hahlo and Kahn "The Union of South Africa: The development of its laws and Constitution" (Juta & Co Ltd, Cape Town, 1960) at 17.
[3] Id at 35-37.
[4] *Huntrex 277 (Pty) Ltd v Berzack* [2025] ZACC 6; 2025 (7) BCLR 802 (CC); 2025 (4) SA 347 (CC) at paras 69-70.
[5] Id.
[6] Schreiner "*The contribution of English law to South African Law; and the rule of law in South Africa*" (Juta & Co Ltd, Cape Town, 1960) at 32.
[7] Id at 41-52.

Interestingly, parallel to this, a third stream of law continued to regulate the lives of the majority of South Africans: the indigenous customary law. Unlike the case of Roman Dutch law and English law, there was no single, uniform system of customary law.[8] Customary law developed organically and is a living system governing family relations, communal life, dispute resolution and traditional leadership structures across the country.

Unfortunately, from the earliest moments of colonial rule, customary law was viewed through a lens of hierarchy and misunderstanding. When Britain first annexed Natal in 1843, Roman-Dutch law was declared to be the applicable law,[9] with customary law applicable except "so far as it was not repugnant to the general principles of humanity observed throughout the civilized world."[10] Customary law, though birthed in South Africa, was treated as if it were a common law custom or foreign law that needed to be proven in each case,[11] and judges had a discretion on whether to apply it.[12] Judicial treatment of customary law accordingly became inconsistent and deeply mediated by the attitudes of individual judges, many of whom had limited understanding of its principles or purpose.

For much of South Africa's history, these three streams of law (Roman-Dutch, English, and African) were not permitted to coexist on equal terms. Their interaction was mediated through the lens of colonial hierarchy and apartheid ideology, which elevated imported European legal sources at the expense of indigenous knowledge systems. As a result, South African law developed along uneven lines, with sophistication in some branches and distortion or neglect in others.

However, although formally subordinated within the hierarchy of the colonial and apartheid legal order, customary law retained legitimacy among communities because it was lived, practised, and diffused through social life. Understanding the South African legal system, therefore, requires acknowledging not only the European

[8] Bekker, Labuschagne and Vorster *Introduction to Legal Pluralism in South Africa* (Butterworths Publishers (Pty) Ltd, Durban, 2002) at 31.
[9] Id citing Ordinance 12 of 1845 (Cape) at 21 fn 3.
[10] Id citing Ordinance 3 of 1849.
[11] Id at 22 fn 11.
[12] Id at 26-27.

influence, but also the parallel and resilient system of African law that long pre-dated imported European traditions.

This legal architecture remained largely intact until the watershed year of 1994, when South Africa entered a constitutional order that transformed not only its politics but its jurisprudence as well. The Interim Constitution of 1993, followed by the final Constitution in 1996, marked a decisive shift. The Constitution recognised both common law and customary law and insisted on the development of both systems in accordance with constitutional values. All law, whether rooted in Roman-Dutch doctrine, shaped by English precedent, developed by customary practice, or codified in statute, became subject to the Constitution.

The democratic state has also come to recognise the important place of religious personal laws within South Africa's plural legal order. A significant recent milestone in this regard was the Constitutional Court's judgment in 2022[13] which affirmed the full recognition of Muslim marriages. It declared several provisions of the Divorce Act[14] and Marriages Act[15] unconstitutional because they did not afford Muslim marriages the same protections afforded to other marriages. Further, the common-law definition of marriage itself was declared unconstitutional to the extent that it excluded marriages solemnised in accordance with Sharia law. The decision marked a significant step toward ensuring that South Africa's legal system accommodates the diversity of its people while upholding the principles of equality and dignity for all.

However, the recognition and respect accorded to customary law and religious laws required far-reaching changes to be effected. It required the new democratic state to confront the fractured legal inheritance of its past, where custom was relegated to the margins and the authority of the law itself had been profoundly compromised. The Constitution called for a re-imagining of the law's purpose in a society emerging from structural injustice. It demanded the systematic re-design of rules and institutions developed in a context of exclusion and inequality, and necessitated the repeal of

[13] *Women's Legal Centre Trust v President of the Republic of South Africa* [2022] ZACC 23; 2022 (5) SA 323 (CC); 2023 (1) BCLR 80 (CC).
[14] 70 of 1979
[15] 25 of 1961

discriminatory laws, and the construction of new statutory frameworks capable of supporting a democratic society. This was a task of such magnitude that it could not be achieved through adjudication alone. It required specialised institutions committed to law reform. And it is to this topic to which I now turn.

Where South Africa started at the dawn of democracy

To understand the critical role played by the reformation of the law in the country over the years, it is necessary to reflect on where South Africa started at the dawn of democracy in 1994, and to understand the holistic state of the country at that pivotal moment. After decades of oppressive apartheid rule, South Africa was a deeply divided nation. The legacy of racial segregation was entrenched not only in law but also in the social fabric, marked by profound inequality, widespread poverty, and systemic discrimination. Nearly 20 million South Africans, who had been denied political agency under apartheid, lined up to exercise their newly obtained right to vote in the country's first democratic elections on April 27, 1994, a moment that symbolised hope and the possibility of a united, free nation.[16]

However, the social realities into which democracy was born were stark. Apartheid's legacy of spatial segregation relegated many to under-resourced townships and rural homelands with limited access to quality education, healthcare, and economic opportunities. Despite political liberation, the country remained one of the most unequal societies globally, grappling urgently with poverty, unemployment, and social violence. The state apparatus itself was transitioning from a system staffed by apartheid functionaries, with economic control largely still in the hands of the minority.

In this context, the South African Law Reform Commission (SALRC), formerly known as the South African Law Commission assumed a vital role. Initially established under the Law Reform Commission Act of 1973, the SALRC's mandate at the dawn of democracy was reimagined to align with the transformative spirit of the new Constitution. Its fundamental objective was to research and recommend reforms across all branches of South African law to ensure they reflected the principles of

[16] Apartheid Museum *from Apartheid to Democracy – the struggle for liberation in South Africa* page 13

equality, human dignity, freedom, and justice enshrined in the post-apartheid Constitution.[17]

The SALRC's target was not merely the formal removal of apartheid-era statutes but the full transformation and modernisation of the legal framework to support inclusive democracy and socio-economic development. This entailed addressing the systemic inequities embedded in the law and promoting accessible, fair legislation that would underpin a just society.[18]

In terms of achievements, since the dawn of democracy, the SALRC has played a pivotal role in law reform by producing ground-breaking research and submitting recommendations that have informed key legislative reforms. The SALRC operates with a research programme approved by the Minister of Justice,[19] and many of its reports have significantly influenced South Africa's progressive legal landscape.

To date, the SALRC has achieved considerable success in steering law reform aligned with constitutional imperatives. The research and recommendations have informed significant legislation, helping to dismantle discriminatory laws and fostering legal certainty and coherence in the emerging democratic order. Its vision continues to embody excellence in legal scholarship and reform, championing continuous renewal to meet the evolving needs of the South African society under the rule of law.[20]

Notable Law reform initiatives by the SALRC

One of the notable law reform initiatives by the SALRC is the reviewing and reforming of outdated laws that impact constitutional rights and modern governance in South Africa. Among its current focal projects is a comprehensive inquiry into colonial and

[17] C Botha and B Bekink *Law Reform in South Africa: 21 Years Since the Establishment of a Supreme Constitutional Dispensation* page 28.
[18] South African Government *Deputy Minister Andries Nel: South African Law Reform Commission Workshop.*
[19] South African Law Reform Commission *Objects, Constitution and Functioning*
[20] South African Law Reform Commission *Report on activities of the South Africa Law Reform Commission 2022/2023*

apartheid-era legislation that remains on the statute books, assessing their compatibility with the democratic values enshrined in the Constitution, especially expressive rights such as freedom of religion, belief, opinion, and expression. This work is critical in repealing, amending, or modernising laws that are obsolete, redundant, or inconsistent with constitutional norms, thus moving South Africa closer to a legal framework that reflects its democratic ethos and respect for human rights.[21]

With this initiative the SALRC's reform efforts also emphasise improving transparency and procedural clarity in its own mandate, recommending amendments to enhance the publication and parliamentary tabling of its reports to foster greater public accountability. This ongoing work highlights the SALRC's role in ensuring that South Africa's legal landscape evolves to support constitutional democracy, social justice, and effective governance, while addressing legacy issues that continue to affect the justice system and society at large.

Another law reform initiative that the SALRC is actively working on is the domestication of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into South African law. This reform initiative aims to transform the manner in which disability rights are recognised and protected, shifting from a traditional welfare and medical model to a human rights-based approach. To that end, the SALRC is developing a framework statute – the Promotion of Equality and Protection against Discrimination of Persons with Disabilities Bill – that comprehensively incorporates the CRPD's principles, ensuring that persons with disabilities are recognised as rights-holders entitled to equality, dignity, and full participation in society.[22]

The need for this reform arises from South Africa's constitutional obligations and the shortcomings of existing laws, which do not fully reflect the CRPD's expansive protections against discrimination or promote equality effectively.[23] By creating this framework, complemented by future sector-specific legislation, the SALRC intends to

[21] South African Law Reform Commission *Discussion Paper 162 Project 149 Review of Colonial and Apartheid Era Legislation* page 1-7.
[22] South African Law Reform Commission *Discussion Paper 163 Project 148 Domestication of the United Nations Convention on the Rights of Persons with Disabilities* page xi - 5.
[23] Page 69.

provide clear legal protections, enhance access to justice, and ensure compliance with international human rights standards. This process involves extensive public participation and considers best practices from other countries, marking a significant step towards a more inclusive and rights-based legal system for persons with disabilities in South Africa.[24]

The SALRC also has another critical project on alternative dispute resolution in which it is developing a comprehensive legislative framework to promote the use of Alternative Dispute Resolution, with a particular focus on mediation, as a means to improve access to justice in South Africa. This initiative seeks to provide an efficient, cost-effective, and just mechanism for resolving civil disputes outside of the traditional adversarial court system, which is often expensive and time-consuming. The proposed Mediation Act will include core definitions, principles, and certification standards for mediators, incorporating international best practices such as alignment with the Singapore Convention on Mediation. The envisaged legislation also aims to regulate the mediation profession through a recognised Mediation Council and establish mandatory mediation in certain circumstances while safeguarding voluntary and fair participation.[25]

The need for this reform stems from the challenges faced by South Africa's civil justice system, including long delays, high costs, and limited accessibility to the courts, particularly for marginalised communities. Mediation aligns with South Africa's cultural heritage and constitutional values, emphasising meaningful engagement and reconciliation over adversarial conflict. By formalising mediation within the legal system, the SALRC intends to make dispute resolution more accessible, efficient, and aligned with principles of fairness and social harmony, helping to alleviate the burdens on courts while enhancing the quality of justice delivered to citizens. This reform highlights South Africa's progressive approach to integrating traditional and modern justice mechanisms to meet contemporary legal and social needs.

[24] Page 29 - 39.
[25] South African Law Reform Commission *Report on activities of the South African Law Reform Commission* page 34-36.

Socio-economic challenges facing courts

South African Courts approach

I will now turn to socio-economic challenges that South Africa is faced with and how the courts are interfacing with these challenges.

South Africa's Constitution is widely regarded as one of the most progressive in the world. Its international acclaim stems not only from the transformative vision it embodies, but also from the Constitutional Court's jurisprudence, which has given depth, clarity, and practical meaning to its provisions. Central to this constitutional order is a comprehensive Bill of Rights that affirms a strong commitment to social justice, democratic accountability, and the creation of institutions that serve the people. These rights reflect a constitutional commitment to ensuring that all people especially those historically marginalised can live lives of dignity.

Socio-economic rights, long recognised in international human rights instruments such as the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights are firmly entrenched in the South African Constitution.[26] By placing these rights alongside civil and political rights, the Constitution recognises their interdependence and affirms that dignity, equality, and freedom cannot be realised without access to basic resources, opportunities, and services.[27]

The decision to entrench socio-economic rights was a deliberate response to the legacy of land dispossession, forced removals, educational exclusion, and entrenched economic marginalisation created by structural inequalities that could not be addressed by political rights alone. The democracy that South Africa envisioned was not just about voting rights or political freedom. It was about redress, ensuring that the legacy of apartheid's social and economic exclusion is confronted and not

[26] Dullah Omar Institute 'Introducing Socio-Economic Rights' at page 19, available at https://dullahomarinstitute.org.za/socio-economic-rights/research-and-publications/resource-book/Chapter%201%20-%20Introducing%20Socio-Economic%20Rights.pdf.
[27] Constitutional Court "Socio-Economic Rights" at page 299 https://www.concourt.org.za/images/phocadownload/street_law_series/chapter5.pdf.

ignored.[28] That is why the South African Bill of Rights goes beyond civil and political rights to include socio-economic rights the rights to housing, healthcare, food, water, education, and social security. These rights speak to daily lived experiences and they reflect a core constitutional commitment that true equality requires both freedom and material justice.[29]

In the *Grootboom* case,[30] Ms Grootboom and her community were living in intolerable conditions in an informal settlement. After being evicted from private land where they had erected temporary shelters, they had nowhere suitable to stay and were forced to live on a sports field without proper housing, sanitation, or protection. They approached the courts arguing that the government's housing policy was unreasonable as it did not make provision for emergency relief for those in crisis situations.

In the *Treatment Action Campaign (TAC)*[31]case, the government restricted access to the antiretroviral drug nevirapine, which could prevent mother-to-child HIV transmission, limiting its use to selected pilot sites despite evidence of its effectiveness and availability at no cost. The TAC argued that this policy unreasonably denied pregnant women and new-borns lifesaving treatment. The Constitutional Court held that the government's restrictions were unreasonable and ordered it to make nevirapine available more broadly and to remove barriers to access our courts affirmed that socio-economic rights are not merely aspirational. This holding was based on the State's obligation prescribed by the Constitution to act reasonably and progressively to realise the fundamental rights it entrenches for all, particularly the poor and marginalised.

The enforcement of socio-economic rights presents a delicate constitutional balance. In *Grootboom*, the Constitutional Court recognised the profound deprivation faced by communities living in intolerable conditions and that it was constrained to adopt a

[28] Constitutional Court "Socio economic rights" at page 299, available at https://www.concourt.org.za/images/phocadownload/street_law_series/chapter5.pdf.
[29] Ibid.
[30] *Government of the Republic of South Africa and Others v Grootboom* [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169.
[31] *Minister of Health and Others v Treatment Action Campaign* [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC).

reasonable standard that respected the separation of powers, while still giving meaning to the right of access to housing.[32] Similarly, in *Treatment Action Campaign,* although the Court directed the State to remove unreasonable barriers to the provision of antiretroviral treatment, it was thrown into sharp relief that courts cannot assume the role of policymakers or budget allocators.

Although the courts were called upon to address pressing socio-economic challenges, their implications had far-reaching financial and institutional implications of which the courts had to be cognisant and faced an almost insurmountable challenge of crafting effective yet constitutionally restrained remedies.

Climate change

An additional challenge confronting affecting nations and their courts across the board, including South Africa, is climate change, which is increasingly manifesting itself as a profoundly socio-economic issue, with its impact falling most heavily on poor, marginalised communities, already struggling to realise access to crucial basic services.

South Africa is a land of extraordinary natural resources, not just by reason of its rich deposits of coal, diamonds, gold, and platinum group metals that have fueled her economic development, but also in the breathtaking diversity of her landscapes and natural beauty that draws tourists to Table Mountain, the Cape Winelands, the rugged peaks of the Drakensberg Mountains, the vast savannas of the Kruger National Park, the Blyde River Canyon and the rugged Wild Coast, among many other attractions.[33]

[32] Nyinevi "Challenges to Judicial Enforcement of Socio-economic Rights in Africa: Comparative Lessons from Ghana and South Africa (PULP 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3153515.
[33]Afro Barometer South Africans see pollution as serious problem requiring greater government attention (27 February 2025), available at https://www.afrobarometer.org/publication/ad776-south-africans-see-pollution-as-serious-problem-requiring-greater-government-attention//.

However, this rich natural environment is increasingly threatened by climate change and human-driven ecological degradation.[34] Key contributing factors include habitat destruction, pollution, overharvesting, and rising greenhouse gas emissions much of which stem from a coal-dependent economy and poor waste management systems.[35] The country is already experiencing severe climate impacts, such as prolonged droughts, floods, heatwaves, wildfires, ocean chemistry changes and sea-level rise, all of which place pressure on ecosystems and vulnerable communities.

Although South Africa has developed a strong legal framework anchored in section 24 of the Constitution and statutes like National Environmental Management Act (NEMA), the Air Quality Act[36] and the Waste Act,[37] there remains a significant gap between environmental rights and the lived realities of many South Africans. Environmental harm and pollution are disproportionately borne by poor and Black communities, as recognised in cases like *Deadly Air*[38] where the court, in a critical moment for environmental justice, affirmed that the residents of the Highveld Priority Area, one of the most polluted regions in the world, have a constitutional right to clean air. The court found the government's inaction unconstitutional.

Similarly, in *Xolobeni*[39] the High Court held that the state must obtain prior, and informed consent from communities before granting mining rights on communal land. These judgments were a powerful assertion of community agency, but also raised deep questions about which voices are heard in environmental decision-making and which are not.

---

[34] Bongaarts *Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (2019) DOI:10.1111/padr.12283.

[35] Climate and Development Knowledge Network "Johannesburg, South Africa: Waste reclaimers join hands to save the city"(8 February 2021), available at https://cdkn.org/story/feature-johannesburg-south-africa-waste-reclaimers-join-hands-to-save-the-city#:~:text=Reclaiming%20and%20recycling%20of%20waste,safety%20measures%20are%20also%20key.&text=Shahrin%20Mannan%20is%20a%20Senior,Voices%20from%20the%20Frontline%E2%80%9D%20initiative.&text=Eli%20Kodisang%2C%20aged%2053%2C%20is,40%20kilometres%20away%20from%20Johannesburg

[36] 39 of 2004.

[37] 59 of 2008.

[38] *Minister of Environmental Affairs v Trustees for the time being of Groundwork Trust and Others* [2025] ZASCA 43; 2025 (4) SA 98 (SCA).

[39] *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP).

The recent Wild Coast litigation before our Constitutional Court similarly highlights the Judiciary's insistence that development projects should align with Constitutional imperatives by involving genuine community consultation and consider environmental and cultural impacts. In this matter, the Department of Mineral Resources and Energy granted Impact Africa, later joined by Shell, rights to explore for oil and gas along the Wild Coast. Community and environmental groups challenged the decision, arguing that there had been inadequate consultation, disregard for environmental and cultural impacts, and non-compliance with relevant mining law's transformative objectives.

These challenges are, of course, universal. Across our borders, Mexico's laws specifically regulate hazardous substances and waste management, with the Supreme Court rulings affirming the responsibilities of federal, State, and municipal authorities. Environmental disasters such as the 2014 copper sulphate spill in the Bacanuchi River have prompted extensive litigation and remediation obligations.[40] In Surinam, the relatively new Constitutional Court has not yet ruled on environmental matters, but courts have blocked large agricultural expansions threatening Indigenous and Maroon lands and have further adjudicated key environmental challenges which include mining pollution and Indigenous land rights. The Constitutional Court of Indonesia in 2024 ruled a hazardous waste law conditionally unconstitutional due to legal uncertainty, allowing permit holders to operate during review.

In this continent, Germany has seen one of the most significant legal victories in climate justice in *Neubauer et al. v. Germany*.[41] The case was brought by a group of young people who challenged the Federal Climate Protection Act of 2019, arguing that it did not go far enough to reduce emissions after 2030 and therefore violated their fundamental rights, including the rights to life, health, property, and a humane future. They contended that by postponing significant emissions reductions, the law placed a disproportionate burden on younger and future generations, who would later face drastic restrictions on their freedoms to achieve Germany's climate goals. The Federal Constitutional Court of Germany declared parts of the 2019 Federal Climate Protection Act unconstitutional because it did not sufficiently protect future generations' rights.

[40] Mexico
[41] ESCT-Net "Neubauer et al. v. Germany", available at https://www.escr-net.org/caselaw/2023/neubauer-et-al-v-germany/.

Following the ruling, Germany's legislature amended the law to require at least a 65 per cent reduction in greenhouse-gas emissions from 1990 levels by 2030. This ruling marked a concrete legal shift; the judiciary affirmed that climate policy must respect fundamental rights and that inter-generational justice is justiciable. Nonetheless, enforcement and implementation remain challenging across sectors.

In Spain, although many cases have been dismissed or stalled, there have been legal strides in holding the state accountable. In *Greenpeace v Spain* the claimants argued that the Spanish government breached its obligations under European Union law by failing to adopt an adequately ambitious National Energy and Climate Plan and Long-Term Decarbonisation Strategy by the statutory deadline, December 2019. They contended that the targets (a 23% GHG reduction by 2030) were inconsistent with the goals of the Paris Agreement and violated human-rights protections under Spain's Constitution and the European Convention on Human Rights. On 24 July 2023, the Supreme Court of Spain dismissed the claims, holding that Spain's National Integrated Energy and Climate Plan was not "arbitrary" and fell within the discretion afforded to Member States under EU and international climate governance frameworks. The Court found that the Government had acted in accordance with its obligations and that setting higher targets would impinge upon the separation of powers and economic policy discretion. The Court also held that the alleged infringements of human rights were insufficient to ground direct judicial orders to raise the ambition of policy targets.[42]

These examples demonstrate not only that the protection of the environment and preservation of natural resources traverses geographic boundaries but the need across the nations for comprehensive and efficient policy and legal frameworks with teeth that will ensure their enforcement and implementation. Polluted air, rising seas, deforestation, and the over-exploitation of natural resources extend beyond the jurisdiction of any single State, and demand transnational legal dialogue, deeper comparative engagement, and harmonised frameworks of accountability and enforcement.

[42] Greenpeace Spain et al.v. Spain.

Artificial Intelligence (AI)

My address would be incomplete if I did not take a moment to reflect on recent, major developments that are affecting the world of work and will require significant, ongoing legal reform – Artificial Intelligence or AI. As we know, AI is a key pillar of the second phase of the Fourth Industrial Revolution which offers major opportunities for improving life including efficiency in our various justice systems, from legal research to reducing backlogs and, importantly, improving access to justice for ordinary citizens. However, it also presents serious risks that threaten fundamental rights, judicial integrity, and equal access to justice.

AI technology and its use in the judicial system, is at a nascent stage in South Africa. Its introduction in the courts, in the form of Case-Lines and Court-Online to enable electronic filing of process and storage of court records is being rolled out across the country incrementally. The development of a regulatory framework is still developing. The Artificial Intelligence Planning Discussion Document (2024)[43] and the National AI Policy Framework (2024) signal the state's intention to build a national AI regime grounded in ethics, human rights, and responsible innovation.

Alarmingly, despite the slow steps being taken to introduce AI in the courts, they have not escaped the growing challenge of the misuse of AI-generated information in their proceedings, including fabricated ("hallucinated") material where legal counsel presented AI fabricated jurisprudence and fictitious legal authorities to the court.

Recent cases in our jurisdiction such as *Parker v Forsyth,*[44] which centred on whether the citations in the legal submissions (which turned out to be AI-generated) undermined the professionalism and integrity of the proceedings. There, the plaintiff's attorneys submitted authorities that later proved non-existent having been generated by an artificial-intelligence tool raising issues of due diligence in legal research.

[43] Aziz "A step towards advancing AI governance in South Africa"(1 February 2025)

[44] *NNO and Others* (1585/20) [2023] ZAGPRD 1 (29 June 2023).

Similarly, in *Mavundla,*[45] the applicant's heads of argument cited nine authorities, but the court found that only two actually existed. The remaining authorities were fictitious and appeared to have been generated through an AI tool. The court held that submitting fabricated cases is a serious breach of an attorney's ethical duties, undermines the integrity of the judicial process, and cannot be excused by reliance on technology. And in *Northbound*[46] the court discovered while drafting its judgment that the applicant's heads of argument relied on AI-hallucinated cases. Initially, counsel attempted to correct the heads by filing a substituted version, but even the revised document contained fictitious authorities. When pressed, junior counsel conceded that he had used an online tool Legal Genius, which generated false citations due to time pressure and the urgency of the matter. The court held that AI cannot replace a practitioner's duty to verify all authorities, and that reliance on unverified AI outputs constitutes a failure of professional responsibility. The incident highlighted growing risks of AI misuse in litigation and prompted strong judicial warning. These cases reveal how unverified AI-generated authorities undermine the courts, violate ethical duties, and erode public confidence in the profession and the integrity of the judicial process.

It is now established that AI can aid judges in their administrative tasks. The other side of the coin is that over-reliance risks outsourcing core judicial reasoning to opaque algorithms that lack empathy, context, and accountability. There are also broader systemic dangers, AI can reproduce historical biases, exclude those without digital access, weaken essential legal skills, and deepen inequalities in the justice system. Without proper regulation, generative tools may compromise fairness, transparency, and judicial independence.

Overall, the central challenge is to balance technological innovation with constitutional values. AI must remain a tool that enhances and does not replace human judgement. Ensuring transparency, accountability, and strong human oversight is essential to prevent misuse and to build a justice system that is efficient, fair, and accessible to all.

---

[45] *Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others* (7940/2024P) [2025] ZAKZPHC 2; 2025 (3) SA 534 (KZP) (8 January 2025)
[46] *Northbound Processing (Pty) Ltd v South African Diamond and Precious Metals Regulator and others* (2025) ZAGPJHC 661.

In the African continent, it is not only South Africa that has recognised the gaps and dangers posed by AI. The African Commission and African Union have also called for continental AI governance based on accountability, inclusion, and the protection of fundamental freedoms.

Conclusion

The interventions mentioned above are only a few examples that depict the critical role played by courts, tribunals and Law Commissions in reforming laws to address the gaps that are constantly created by change and innovation. Law Commissions specifically have an ongoing role in the evolution of legal systems worldwide by serving as impartial, expert bodies tasked with reviewing existing laws, identifying gaps or outdated provisions, and recommending reforms that align with societal needs and constitutional values. In an ever-changing global landscape marked by social, technological, and economic developments, the work of law commissions ensures that legal frameworks remain relevant, fair, modern, and accessible. Through comprehensive research, broad public consultations, and the drafting of proposals grounded in evidence and best practices, they facilitate the creation of coherent and inclusive laws that promote justice and social harmony.

It has been established that their independence and specialised expertise allow them to act as trusted mediators between the public, governments, and legal communities, foster consensus and balance competing interests. By continually modernising the law and removing obsolete statutes, law commissions uphold the legitimacy and effectiveness of justice systems and help societies adapt to new challenges. And as the world continuously evolves, the role of law commissions remains indispensable in building legal frameworks that support justice, equity, and sustainable development.

The past 31 years of law reform in South Africa stand as a testament to the unwavering dedication of the courts and notably, the Law Reform Commission, whose work in areas such as those I have discussed, exemplify how these institutions empower countries to meet evolving demands while safeguarding fundamental rights

and promoting social inclusion. Their collective efforts have forged a legal framework that not only respects constitutional values but also responds adaptively to the evolving societal landscape.

As custodians of justice and equity, these bodies have laid a foundation that inspires confidence in the law as a living instrument of social transformation. It is incumbent upon all stakeholders to sustain this momentum, ensuring that the law continues to advance inclusivity, protect fundamental rights, and uphold the principles upon which our democracy is built. Through vigilant, unflagging and informed reform, South Africa's legal system will remain a beacon of justice and a catalyst for sustainable progress.

Thank you.