
NOTICE 935 OF 2001**SOUTH AFRICAN LAW COMMISSION****DISCUSSION PAPER: A MORE INQUISITORIAL APPROACH TO CRIMINAL
PROCEDURE**

1. The Commission recently approved a discussion paper dealing with a more inquisitorial approach to criminal procedure as part of its investigation into simplification of criminal procedure.

2. As part of its original terms of reference the project committee resolved to include an investigation into the question of introducing more inquisitorial elements into our criminal procedure. The committee identified a number of components which should be targeted for investigation, namely, a greater role in the process by the judicial officer; providing the court with access to information (docket); taking defence disclosure further and making recommendations in this regard; judicial management of trials and case management; and a review of the existing provisions of section 115 of the Criminal Procedure Act.

3. The discussion paper addresses the following issues –

- * Police questioning of the suspect/accused, its legitimacy, effectiveness and the right to silence and its consequences. In this regard attention is given to–
 - the extent to which a suspect/accused could legitimately be questioned and hence used as a source of evidence at the different stages of the criminal justice process (from pre-trial to the trial phase);
 - different options to make police questioning more effective, including by bringing it under control of codes of conduct, or under judicial control, or by legislating police questioning;
 - the consequences of and constitutional implications of police questioning having due regard to the right to silence; and
 - the different admissibility requirements for admissions and confessions.

- * Defence disclosure before and during the trial. In this regard consideration is

given to –

- whether or not the defence should be required to disclose relevant evidence, and if so, the extent to which it should be required;
 - a review of the provisions of section 115 of the Criminal Procedure Act and its interaction with the right to silence and the consequences of non-disclosure; and
 - whether the existing provisions with regard to prosecution disclosure are sufficient and, if not, the extent to which amendments would be justified.
- * A greater role in the criminal justice process by judicial officers. The discussion paper considers ways of providing the court with access to the docket; the admissibility of statements contained in the docket; the legal status of the docket; the weight to be given to information contained in the docket; and how judicial officers should use the information in the docket.
- * Possible ways of enhancing judicial management of trials and case management. As part of the investigation the discussion paper considers whether provision should be made for pre-trial conferences and, if so, the extent to which legislation are necessary.

4. In the light of the controversial nature of these issues, the constitutional implications of some of the recommendations and the different views within the project committee on the constitutional implications of some of the recommendations, in particular the permissibility of drawing an adverse inference from the failure of a suspect to disclose information during the course of the police investigation, the Commission did not take a final position on the issues and proposes that alternative options be considered with the aim to stimulate debate.

5. The Commission invites the comments of all parties who feel that they have an interest in the topic or may be affected by the measures discussed in the Discussion Paper. Individuals, organisations and institutions affected by the provisions of the proposed legislation or who are likely to be affected by possible amendments to existing legislation should participate in this debate and are invited to indicate how the present law affects them, what their concerns are, what solutions they are able to propose and whether there are other issues and/or options

affecting the law that must be explored. The closing date for comments is 30 June 2001.

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The discussion paper will be made available on the Internet at the following site:
<http://www.law.wits.ac.za/salc/salc.html>