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## The Constitutional Assembly Database Project - Resurrecting a Database Ten Years On

JULIEN HOFMAN\*

*In 1995 the Constitutional Assembly Database Project (the Project) began to publish the proceedings of South Africa's Constitutional Assembly on the Internet. The Project finished this work, the first of its kind anywhere in the world, in 1996, but the Database has not been available since a computer crash in 2000. This paper is the first account of the history of the Project. The paper argues that it is important to restore access to the Database, but in a way that will not repeat the mistakes made when setting up the database.*

South Africa is one of the few examples of a society that passed in an orderly way from a minority racist government to a democracy in which a Constitution with a comprehensive and justiciable Bill of Rights enshrines basic human values. South Africa was also the first country to negotiate a Constitution in full view of the international community. In *The Soul of a Nation: Constitution-making in South Africa*, Hassen Ebrahim, the Executive Director of the Constitutional Assembly, says the three principles on which the Constitutional Assembly worked were inclusivity, accessibility and transparency. Speaking of transparency he says:

The Constitutional Assembly also established a project to ensure that all its materials, from minutes, reports, and all submissions, were accessible through the Internet. This was the first example of such an exercise in the world: never before had a project of this nature been undertaken in full view of the international community.<sup>231</sup>

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<sup>231</sup> Hassen Ebrahim *The Soul of a Nation: Constitution-making in South Africa* 1998 Oxford University Press Cape Town pages 179-180, The full text of the book is now available online at <http://www.sahistory.org.za/pages/sources/soul-of-nation-constitution/chapter1-6.htm>. See also the *Annual Report of the Constitutional Assembly* May 1994 - May 1995 available at: [http://www.polity.co.za/html/govdocs/constitution/ca/ANREPORT/Ca94\\_95.pdf](http://www.polity.co.za/html/govdocs/constitution/ca/ANREPORT/Ca94_95.pdf).

It would be fitting if the Database containing these materials were available as an enduring monument to those who drafted South Africa's Constitution, as a research tool for understanding the Constitution and a model for countries wanting to achieve a similar transformation. This is not the case because, after being available on the Internet for five years, the records that make up the Database are no longer accessible in an easily usable form. This paper gives the history of the Database, how it came to be unavailable and what needs to be done to resurrect it.

## **I. The Constitutional Assembly Database Project: 1995-1996**

### ***A. Inspiration***

Discussions about setting up an online collection of the documents of the Constitutional Assembly (the CA)<sup>232</sup> first took place in 1994 between the writer and Hassen Ebrahim, the CA's Executive Director. Cyril Ramaposa, the CA's Chairperson, supported the idea, but the CA secretariat, with its many duties, was not in a position to run the database. The University of Cape Town had the infrastructure and expertise and it seemed sensible to collaborate. The first discussions envisaged the University of Cape Town setting up and running a gopher site to carry selected materials from the CA.<sup>233</sup> This was done and the earliest postings to the CA Database were to the gopher site.

### ***B. World Wide Web***

South Africa, as it happened, began drafting its new Constitution when specialised World Wide Web applications were becoming available.<sup>234</sup> In particular, a US company, Verity Inc., was marketing database

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<sup>232</sup> The Constitutional Assembly was usually shortened to CA. In the archives of the CA secretariat there should be a letter from the Secretary of the South African Institute of Chartered Accountants complaining that section 1 of the Chartered Accountants Designation (Private) Act 67 of 1993 reserved the abbreviation 'C.A.' to members of the Institute and made its use by any other body a criminal offence.

<sup>233</sup> Gopher is an Internet protocol for locating and retrieving documents. It was released in 1991 and was popular until more versatile Web applications became available.

<sup>234</sup> The 'Web' is so much a part of modern information management that it is easy to forget how recent it is. Tim Berners-Lee is credited with having invented the technology the Web uses in 1989 but it took time for people to appreciate its potential. The first Web search engine, for example, Lycos, dated from 1993 and the World Wide Web Consortium was only founded in October 1994.

management software called Topic. The software could cope with large amounts of data and Verity could supply it with a Web server that made the data and search engine available over the Web. Excel, the South African agents of Verity, persuaded the CA secretariat of the advantages of using Topic to build a comprehensive online database of all the documentation sent to and produced by the CA rather than the more limited collection envisaged for the gopher site.<sup>235</sup>

As a result, in February 2005 when Hassen Ebrahim, for the Constitutional Assembly, signed the contract with the University of Cape Town that created the CA Database Project, the CA provided the University with the funding to buy the Topic software and use it to set up a Web-based searchable database of all the CA documentation.<sup>236</sup> The Database URL was <http://www.constitution.org.za>; the '.org.za' domain being chosen to distance the website from '.gov.za' websites that documented government work.

### *C. Hardware, software and people*

It is hard to convey, even after only twelve years, what a difficult and costly undertaking it was to set up and run the Project. Installing the Topic software was tricky and the Topic web server would only run on an expensive UNIX computer. Nico Vlok of the Vector Group, then the South African distributors for the Sun Microsystems Computer Company, arranged a SPARC10 computer for the Project and Dr Fred Goldstein, Deputy Director of the University of Cape Town's Information Technology Services, agreed to house the SPARC10 in an air-conditioned computer room and connect it to the Internet. Because access to the computer room was restricted, special software was necessary to transfer data from the Project office to the SPARC10.<sup>237</sup>

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<sup>235</sup> At the time there was no other product supported in South African able to do the same job.

<sup>236</sup> The Project was based in the Department of Roman and Comparative Law. At that time, the writer was head of the Department and the Department was responsible for Information Technology in the Law Faculty. The departmental administrator, Mrs. Barbara Bergé, watched over the Project's accounts and was able to correct many erroneous postings in the University's accounting system.

<sup>237</sup> Although both Verity and Excel gave a 10% discount, the Topic server software, WWW server and a single fixed retrieval client licence cost R139 537. The computer was a gift but additional memory and disk space cost R26 642. The market cost of the software and hardware need for the project was in the region of R300 000. This was more than twice the 1995 gross annual salary of a law professor at the University of Cape Town.

An important decision concerned the qualifications of the people who would manage the Project. On the advice of Professor Peter Underwood, then head of the University of Cape Town's School of Librarianship, it was decided to employ professional librarians rather than IT specialists. Gaile Moosmann, who had the previous year obtained a Postgraduate Diploma in Library and Information Science, was appointed to manage the Project and her fellow graduate, Jill Claassen, soon joined her. Together they did almost all the work of editing and posting the information on the Database.<sup>238</sup> Jamie Boakes, worked for the Project for its first six months and provided the technical expertise to set up the software. It is to the credit of these people that the CA Database was up and running in a few weeks and was demonstrated to Cyril Ramaposa and officially launched in June 2005.

The Project office and its equipment, in contrast to the SPARC10 and its software, were basic. The Project had three entry level desktop computers, a laser printer and two Hewlett-Packard flatbed scanners supplied with Hewlett-Packard optical character recognition (OCR) software. The office was a seminar room in the Kramer Law Building with desks and office equipment borrowed from the University's stores.

#### *D. Material on the database*

The material to be posted on the Database was of two kinds. Documents produced by the CA posed least problems. These arrived as word processor files, delivered by hand on 3½" diskettes. But more difficult was dealing with the hundreds of submissions sent to the CA by political parties, organizations and individuals. Most of these submissions arrived in hard copy. They ranged from long printed documents (one academic even sent a copy of his doctoral dissertation) to handwritten notes on scraps of paper.

Before they could go on the database they had to be either typed up or scanned and converted to a text file. Text produced by the OCR software always needed editing and the policy was to edit the text until it was readable, but no more. The possibility of posting the submissions on the Database as image files as well as text files was considered but rejected because of the disk space this would need.

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<sup>238</sup> They were assisted in 1995 by Sharon Lamb and Heidi Stegman, final year LLB students in the Law Faculty.

There were also thousands of submissions dealing with issues such as gay rights, the death penalty and whether the Constitution should contain a reference to God. Rather than enter these as separate submissions, it was decided to compile lists of supporters and opponents under the different topics.

To get submissions from the public on the Database as quickly as possible, all submissions came first to the campus Project office. Project staff not only put the submissions on the Database, but also flagged submissions for the attention of the appropriate theme committee of the CA. To do this, the Project staff designed a form they attached to each submission when it went to the CA secretariat. The form contained a summary of the content of each submission and suggested which committee or committees should consider it. The form, in effect, indexed each submission. It is unfortunate that this information was not entered electronically into the database.

The Topic software itself did not allow for indexing documents on the database. The explanation given for the absence of this facility was that Topic's sophisticated search capability meant that indexing was not necessary or, if indexing was wanted, the search software would make it easy to index the material once it was on the database. The librarians involved in the project were not happy with this feature of Topic and their reservations were justified. A search engine may work well with a "flat" database in which all the documents are all of the same type. A search engine cannot, however, distinguish between documents that belong to different categories without being able to refer either to metadata associated with the documents or to some structure that distinguishes between different classes of documents. Despite help from experts, the Project staff never did master Topic's search capability and it seems unlikely, even if they had, that it would have allowed users to get the most out of the Database.

To compensate for the lack of indexing, the material in the Database was arranged in directories. The directory structure was simple: submissions from the public were in one directory and reports from the committees were in separate directories. In addition, the website included material, such as newspaper reports and cartoons about the CA, which was not on the Topic database. This material disappeared in the computer crash of 2000 described in the next section.

Once the staff had dealt with the backlog of documents and submissions from the CA they turned their attention to the negotiations that

led to what is known as the Interim Constitution of 1994.<sup>239</sup> The records of these negotiations were in dozens of boxes of 3½" diskettes. No attempt had previously been made to order or index this material.<sup>240</sup> Advised by Professor D. M. Davis, who had taken part in the negotiations, Project staff put the more important surviving material on the database.

### *E. Significance of the Database*

The Database was significant as a symbol of South Africa's new approach to transparency and openness. The publicity and excitement that surrounded the project also helped to raise awareness in South Africa of the important work the Constitutional Assembly was doing.<sup>241</sup> Sun Systems' publicity machine was particularly efficient at getting press coverage for the Project and, of course, for Sun's contribution to the Project throughout South Africa.<sup>242</sup>

Outside South Africa, the Database attracted international attention. It showed, in a striking way, the ability of the Internet to deliver information. The logs of the site, probably also lost in the computer crash in 2000, showed that individuals in North America, Northern Europe and the Far East, who were regularly using the Database to follow what was happening in the CA.<sup>243</sup>

It is ironic that the members of the CA, the framers of the Constitution, benefited little from the Database. This was because few Members of the Constitutional Assembly had computers with Internet access. Members of the CA worked from the hard copies of the documents printed by the CA secretariat and distributed to them in the traditional way.

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<sup>239</sup> Constitution of the Republic of South Africa Act 200 of 1993.

<sup>240</sup> These pre-1994 negotiations are the subject of a number of studies. See the readings given by the Centre for Conflict Resolution and the Media Peace Centre at [http://www.ccr.uct.ac.za/archive/two/11\\_3/reading.html](http://www.ccr.uct.ac.za/archive/two/11_3/reading.html)

<sup>241</sup> There were many other initiatives to publicise the work of the Constitutional Assembly including a newspaper *Constitutional Talk* and a popular show on national television with the same name hosted by Professors Mandla Mchunu and Dennis Davis.

<sup>242</sup> The Sun press release dated 26 June 1995 is still available at <http://www.sun.com/smi/Press/sunflash/1995-06/sunflash.950626.8191.xml>. This was a good example of the public-private cooperation that South Africa tries to encourage.

<sup>243</sup> Project staff commented on the large proportion of hits from users from the '.mil' domain.

## II. Preserving the Constitutional Assembly Database: 1997-2000

The Constitutional Assembly was a unique body and the legislation that established it provided for no direct connection with any government department and no direct successor. This may have been constitutionally and theoretically sound, but it meant continuity was a problem when it came to preserving the records of the CA.

### A. *Hard copy archives*

Once the Constitutional Court had approved the Constitution, the documents of the CA secretariat went to the National Archives in Pretoria. In the move from the Secretariat offices the order in which the Secretariat had kept its records was lost and the National Archives has not had resources to index them comprehensively.<sup>244</sup>

It is not certain, of course, that the National Archives received the complete collection of material. Important original documents were certainly kept by some of the individuals involved in the CA. It is not easy to discover which other public access libraries have sets of the records. The Project had a complete set of the printed materials which it passed on to the Manuscripts and Archives Library at the University of Cape Town where it has been indexed.<sup>245</sup>

### B. *CD version*

In 1997 Hassen Ebrahim and some of the staff from the CA, funded by the Canadian International Development Agency, produced a CD which contained the material on the Database and other relevant material. Documents were converted to PDF format but they were not indexed and the CD did not come with the Topic search engine. This means the CD is not satisfactory as a research tool and has not been widely circulated.

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<sup>244</sup> The writer was asked by the Western Cape Provincial Archives to help with putting the material in order before it was sent on to the National Archives in Pretoria. The material looked as if it had been dumped off the back of a truck. Papers, files and boxes of 3½" disks were in a heap on the floor of a large room.

<sup>245</sup> The material can be consulted, but is not available for loan. An index is available at:  
<http://www.lib.uct.ac.za/mss/index.php?html=/mss/newaids/BC1114.HTM&msscolli d=381>

### ***C. Online version***

The contract between the CA and the University of Cape Town stipulated that, when the Project ended, the University of Cape Town would continue to use the equipment to make the searchable Database available online. This was done until the middle of 2000 when the SPARC10, having survived Y2K, fell victim to a failure in the power supply to the University's computer room. It proved impossible to revive it and there was no funding to replace it and upgrade the Topic software.

### ***D. Raw data version***

After the computer crash, it was possible to recover the raw data of the Database from a backup.<sup>246</sup> The raw data was sent to the Government Publications Library at the University of Cape Town where the Head Librarian, Ms. Lauren Rushby, copied it onto CDs for anyone who wanted access to it. After complaints that the data on the CDs was not usable, Ms. Rushby decided to stop providing the data in this form.

## **III. Why resurrect the Database?**

The online searchable version of the Database has been unavailable for six years and it is difficult to be certain what loss this has been. It is possible, however, to identify two groups who should benefit if the Database again became available.

### ***A. Research and education***

Some researchers, both in South Africa and abroad, have been interested enough in the records of the CA's proceedings to contact the University of Cape Town asking for access to the Database or for copies of the raw data.<sup>247</sup> Were the material available online in an easy-to-use form there might be growth both in the number and the detail of studies into South Africa's constitution-making.

It is also possible, although this is more speculative, that as more South African schools get Internet access, the Database will become a teaching resource. Traditional archives have to restrict access to the material

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<sup>246</sup> It seems there was no backup of the other material on the website, such as the site logs.

<sup>247</sup> No record, unfortunately, has been kept of these enquiries.

for which they are responsible. With an electronic database there is no need for such restrictions. This would give learners, even those in isolated parts of the country, the opportunity not only to learn about South African history, but also to work with important primary historical sources.<sup>248</sup>

### ***B. Interpreting the Constitution***

The Database is also, in theory, an important resource for interpreting South Africa's Constitution.<sup>249</sup> South African courts took over the exclusionary rule of English law that when interpreting the legislation they do not take account of what legislators say about a bill in Parliament and in the committees of Parliament.<sup>250</sup> The Constitution, of course, is not ordinary legislation and, in an early Constitutional Court case, Justice Arthur Chaskalson, (speaking of the 1994 Constitution) said this exclusionary rule did not apply when interpreting the Constitution:

Our Constitution was the product of negotiations conducted at the Multi-Party Negotiating Process. The final draft adopted by the forum of the Multi-Party Negotiating Process was, with few changes, adopted by Parliament. The Multi-Party Negotiating Process was advised by technical committees, and the reports of these committees on the drafts are the equivalent of the travaux préparatoires relied upon by the international tribunals. Such background material can provide a context for the interpretation of the Constitution and, where it serves that purpose, I can see no reason why such evidence should be excluded. The precise nature of the evidence, and the purpose for which it may be tendered, will determine the weight to be given to it.<sup>251</sup>

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<sup>248</sup> The material in the CA Database would complement the material available, for example, in the UWC-Robben Island Mayibuye Archives. See <http://www.robben-island.org.za/departments/heritage/mayibuye/mayibuye.asp>

<sup>249</sup> The materials on the Database should be at least as important for understanding South Africa's Constitution as the Federalist Papers are for understanding the United States Constitution.

<sup>250</sup> In *Pepper v Hart* [1993] 1 All ER 42 (HL) the House of Lords changed this rule, but in South Africa the Supreme Court of Appeal in *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA) (Marais JA, Farlam JA, Brand AJA) at 604 paragraph 25 declined to say whether the decision in *Pepper v Hart* applied in South African law.

<sup>251</sup> *S v Makwanyane and Another* 1995 (3) SA 391 (CC) at 405 paragraph 17.

Despite this judgment, there are few reported cases where a South African court has used the records of the CA or the Multi-Party Negotiations to interpret the Constitution.<sup>252</sup> A recent important decision about the constitutionality of South African law that did not give same-sex couples the same status as married couples, for example, does not mention the submissions and discussions on the meaning of family life and on discrimination on grounds of sexual orientation that took place in the Constitutional Assembly.<sup>253</sup>

Failure to use the records of the Constitutional Assembly to interpret the Constitution may exist because South African judges and lawyers are not comfortable with using material of this sort or because they do not find it helpful. But it may also be that they have not used the material because it has not been available.<sup>254</sup> If the CA Database again becomes accessible, South African courts may begin to make more use of it. Even if this does not happen now, the history of how the United States Supreme Court has interpreted their Bill of Rights shows that approaches to constitutional interpretation can change. There may come a time when those interpreting the South African Constitution would like to know more about the original intention of its drafters.

#### IV. What is needed to resurrect the Database

After the SPARC10 crashed in 2000, it was not clear who was responsible for the CA Database.<sup>255</sup> The contract with the Constitutional Assembly did not oblige the University of Cape Town to make the Database available and there was no funding for this in the contract between the

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<sup>252</sup> The closest a court appears to have come to referring to the travaux préparatoires is an unreported case, *Nompumza and others v S* [1998] JOL 4181 (Ck) page 3, in which White, J, quoted the following passage from Chapter 27 of the *Constitutional Law of South Africa* Matthew Chaskalson and others editors, 1996 Juta, Cape Town which justified a particular interpretation of section 35(1)(f) of the Constitution in these words: “The *travaux préparatoires*, for one thing, indicate clearly that the mischief aimed at was the view . . . .”

<sup>253</sup> *Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, Amici Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others* 2006 (1) SA 524 (CC).

<sup>254</sup> The library of the Constitutional Court, for example, does not have a full collection of this material.

<sup>255</sup> The Department of Roman and Comparative Law had disappeared as part of institutional restructuring and the writer had moved to the Department of Commercial Law and ceased to be responsible for information technology in the Law Faculty.

University and the CA. The registered holder of the domain name is still the Constitutional Assembly, but University of Cape Town manages the website and it refers users wanting to know about the Database to the University's Government Publications Library, Law Library and Law Faculty. There are obvious advantages to an institution in being associated with a resource like the Database.<sup>256</sup>

There have been some efforts to make the Database more accessible.<sup>257</sup> Resurrecting it, however, will need careful planning if the Database's second incarnation is to be more useful and endure longer than its first.<sup>258</sup>

#### **A. *Who owns the Database***

An important first step to resurrecting the Database is to establish who owns it. The contract with the University of Cape Town, giving the University permission to publish the Database electronically, asserted that copyright belonged to the Constitutional Assembly on behalf of the State.<sup>259</sup>

South African law has no provision for copyright in a database. The Database is a collection of materials, the ownership of which is determined by the relevant provisions in the Copyright Act.<sup>260</sup> Drafts of the Constitution, minutes of proceedings in the committees and speeches made by members of the Constitutional Assembly are presumably governed by section 12(8)(a) which says: 'No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in

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<sup>256</sup> There are, presumably, corresponding disadvantages when the resource proves unusable.

<sup>257</sup> The Law Faculty's IT Committee, for example, had planned to convert the documentation in the Database into a modern format. This, as experience with two CD versions has shown, would not have made the Database more accessible. Laureen Rushby, more constructively, has been using spare capacity in the Government Publications Library to index the documents using an Excel spreadsheet.

<sup>258</sup> The writer has proposed that the Law Faculty and the Government Publications Library collaborate rebuild the Database in a way that will take into account the recommendations in this paper.

<sup>259</sup> It is unlikely that the South African government would object to any responsible attempt to resurrect the Database. It would be possible to apply to the officer appointed by the State President for the purposes in terms of section 5(6) of the Copy Act for permission to use material in which copyright vests in the state.

<sup>260</sup> Copyright Act 98 of 1978. What follows assumes that the Constitutional Assembly qualifies, for the purposes of the Interpretation Act, as the state.

speeches of a political nature. . . .’ Reports and opinions by members of the Secretariat or commissioned by the Secretariat may, however, fall under under section 5(2) which says: ‘Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the state . . . .’<sup>261</sup>

Copyright in the individual submissions will vest in the ordinary way in the authors of these submissions. Because of the publicity that surrounded the CA Database, those sending submission to the CA must be taken to have agreed to these being published on the Database.

### ***B. Indexing the material***

The most serious flaw in the Database is that it lacks “metadata,” or, in more traditional terminology, the entries have not been indexed. Indexing the Database will be a notable task as the Database consists of over 2,000 files taking up about 500 MB of disk space; but, this must be done if the Database is to survive in a usable form.

### ***C. Arranging the material for browsing***

South Africa achieved its present Constitution after multiple negotiations. The first negotiations were meetings between political parties and only when these negotiations resulted in the Interim Constitution of 1994 was the drafting of the Constitution in the hands of elected representatives.<sup>262</sup> Understanding this structure is necessary to know what weight to attach to any particular record. It is important, for example, to distinguish between drafts and the final text and between expert opinions and submissions from individual members of the public. Although the structure is explained in commentaries such as that of Hassen Ebrahim,<sup>263</sup> it will be easier for the ordinary users of the Database if the documents are arranged in directories that reflect the structure. It might also be helpful if there were an introductory note for each directory.

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<sup>261</sup> Section 5(6) reads: “Copyright which vests in the state shall for administrative purposes be deemed to vest in such officer in the public service as may be designated by the State President by proclamation in the Gazette.”

<sup>262</sup> The Constitutional Assembly was established by Chapter 5 (sections 68-74) of the Interim Constitution.

<sup>263</sup> See footnote 1.

#### ***D. Expanding the material on the Database***

In *The Soul of a Nation: Constitution-making in South Africa*, Hassen Ebrahim gives the text of 38 documents that helped shape the Constitution. These and other similar documents could be added to the Database. It would also be useful if the material that was originally on the CA website but not part of the Database could be recovered and put on the database. Material of this sort would be particularly useful if the Database is to be used as an educational resource.

#### ***E. Database software***

It is no longer necessary, as it was in 1995, to pay large sums for database software. There are now consortia offering software of this sort under open access licences. Staff at the University of Cape Town, for example, are already using EPrints<sup>264</sup> and DSpace<sup>265</sup> to publish research and the Library has decided that it will use Greenstone<sup>266</sup> for the institutional repositories it intends setting up. Another possibility would be to use the software developed and used by the Australasian Legal Information Institute.<sup>267</sup>

#### ***F. Future proofing the Database***

It needs to be remembered, however, that even open source software costs money to install, run and update. Data in electronic form needs continual attention. If the server is not replaced, the software not upgraded and the format of the data not changed when these become necessary, an electronic database is worth less than a pile of paper.

It is doubtful that any South African educational institution can commit itself to funding even an important national resource like the CA Database. There are so many other more immediate needs and demands on their resources. A more viable alternative would be to entrust responsibility for the database to a dedicated body such as the Southern African Legal Information Institute (SAFLII).<sup>268</sup> This is currently funded by the Constitutional Court of South Africa Trust.

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<sup>264</sup> <http://pubs.cs.uct.ac.za/>

<sup>265</sup> <http://lawspace.law.uct.ac.za/>

<sup>266</sup> <http://www.greenstone.org/cgi-bin/library>

<sup>267</sup> <http://www.austlii.edu.au/>

<sup>268</sup> <http://www.saflii.org/>

Ultimately, however, if the future of material of this sort is to be assured, the state must take some responsibility. There are two pieces of legislation which could be used to deal with this problem. In terms of section 3(e) of National Archives and Record Service of South Africa Act 43 of 1996 maintaining ‘a national automated archival information retrieval system’ is one of the functions of the National Archives. The ability to do this, however, depends on funding and whether this extends to establishing and maintaining databases such as the CA Database is not clear.

Section 53(a) of the Electronic Communications and Transactions Act 25 of 2002 allows the Minister to “declare certain classes of information which is of importance to the ...social well-being of its citizens to be critical data,” and section 55(1) gives the Minister the power to prescribe standards for critical databases. This power, however, has never been used and it is not clear that it would apply to databases of a historical, legal or cultural nature. It may well be that new legislation is needed.

## **V. Lessons**

Whether resurrected or not, the experience with the CA Database teaches three lessons about publishing material online:

- First, no matter how powerful the search software, it is essential to index material, and the best time to do this is when the material is posted electronically;
- Second, if a database is going to endure, there must be provision for maintenance and updating of hardware and software; and
- Third, where a database contains material that is of national importance, it is not satisfactory to leave to private initiative, educational institutions or non-government organizations the responsibility for ensuring that it stays accessible.