

**SOUTH AFRICAN LAW COMMISSION**

**TWENTY-FOURTH ANNUAL REPORT**

**1996**

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## **1996 ANNUAL REPORT**

To Advocate A M Omar, MP, Minister of Justice

I have the honour to submit to you in terms of section 7(2) of the South African Law Commission Act, 1973 (Act 19 of 1973), the Commission=s report on all its activities during 1996.

Mr Justice I Mahomed

**CHAIRPERSON**

31 December 1996

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## CONTENTS

<b>1.</b>	<b>REVIEW</b>	<b>1</b>
<b>2.</b>	<b>OBJECTS, CONSTITUTION AND FUNCTIONING</b>	
*	Establishment of the Commission	6
*	The objects of the Commission	6
*	Constitution of the Commission	7
*	Committees	8
	□ Working committee	9
	□ Project committees	9
*	Secretariat of the Commission	10
*	Financing of the Commission	12
*	Programme	13
*	Working methods	13
	□ Commission papers and committee papers	
	15	
	□ Issue papers	15
	□ Discussion papers	15
	□ Reports	16
	□ Papers in the Commission's research series	16
*	Meetings	16

### **3. THE COMMISSION'S PROGRAMME: INVESTIGATIONS REMOVED AND INCLUDED**

#### **Investigations removed**

- \* Project 83 - Review of the Moratorium Act 25 of 1963 18
  
- \* Project 91 - Review of the offences created by sections 36 and 37 of the General Law Amendment Act 62 of 1955 and section 1 of the General Law Amendment Act 50 of 1956 and related matters 19
  
- \* Project 92 - The re-evaluation of the offence created by section 1 of the General Law Amendment Act 1 of 1988 20
  
- \* Project 97 - Unjustified enrichment 21

#### **Investigations included**

- \* Project 100 - Family law and the law of persons
  - Maintenance 21
  - Family violence 22
  
- \* Project 105 - Review of security legislation 23
  
- \* Project 106 - Juvenile Justice 24
  
- \* Project 107 - Sexual offences by and against children 24
  
- \* Project 108 - Computer related crimes 26

### **4. REPORTS COMPLETED**

- \* Project 85 - Aspects of the law relating to AIDS 28

* Project 93 - Speculative and contingency fees	29
* Project 100 - Family law and the law of persons	
□ Access to minor children by interested persons	31
* Project 104 - Money laundering and related matters	33

## **5. PROGRESS REPORT**

* Project 8 - Steps aimed at making the common law more readily available	
36	
* Project 25 - Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book	
36	
* Project 47 - Unreasonable stipulations in contracts and the rectification of contracts	38
* Project 59 - Islamic marriages and related matters	39
* Project 63 - Review of the law of insolvency	40
* Project 67 - The Usury Act and related matters	43
* Project 70 - Limitation of civil liability of professional persons	49
* Project 73 - The simplification of criminal procedure	45
* Project 82 - Sentencing	47

* Project 85 - Aspects of the law relating to AIDS	48
* Project 86 - Euthanasia and the artificial preservation of life	49
* Project 88 - The recognition of a class action in South African law	50
* Project 90 - Harmonisation of the common law and indigenous law	51
* Project 94 - Arbitration	53
* Project 95 - The admissibility of computer evidence	54
* Project 96 - The Apportionment of Damages Act, 1956	55
* Project 100 - Review of family law and the law of persons	
□ Family violence	57
□ Maintenance	57
* Project 101 - Investigation into the application of the bill of fundamental rights to the criminal law, the law of criminal procedure and sentencing	58
* Project 102 - The civil jurisdiction of the courts	58
* Project 103 - Capping of claims against the Multilateral Motor Vehicle Accidents Fund	59
* Project 105 - Security legislation	

* Project 106 - Juvenile Justice	60
* Project 107 - Sexual offences by and against children	60
* Project 108 - Computer related crimes	60
<b>6. PUBLIC RELATIONS</b>	61
<b>7. ACKNOWLEDGEMENTS</b>	65
<b>ANNEXURES</b>	
* Annexure A - Present and former members of the Commission in order of date of appointment	66
* Annexure B - Project committees of the Commission and members thereof	68
* Annexure C - Present programme of the Commission	73
* Annexure D - Investigations included in the Commission's programme since its establishment: Result	75
* Annexure E - Issue papers published by the Commission	88
* Annexure F - Discussion papers published by the Commission	89
* Annexure G - Papers published by the Commission in its research series	94

## REVIEW

Law reform agencies have a vital role to play in the development of legal systems: they review the past, reform the present and anticipate the future. While this is true of any law reform agency in any country at any time, it is particularly true of the South African Law Commission at this time. For a long time in our history there has been a major discrepancy between the content of the law and the ideal of justice. Consequently the Commission is faced with a daunting and challenging task.

At the first meeting of the newly constituted Commission on 23 and 24 February 1996 a number of new policies were adopted. The main one was that emphasis should be placed on making the Commission a community-orientated institution which could be seen by members of the public as a body concerned with, and driven by, their needs. A law reform agency is a bridge between the people the law. To remain relevant and useful to the community it serves, and to provide government with pragmatic advice, law reform must be backed by extensive research and effective public consultation. Consultation is required to ensure that the law reform process is consistent with the principles of participatory democracy where the law is influenced by those it affects. This will ensure that the law evolves in a manner that is in tune with society. Laws that are derived from consultation are also more likely to function effectively and to be accepted by the community. It is therefore imperative that the community should become involved in the Commission=s activities at grassroots level and that the Commission should not be viewed by the public as an academic and aloof institution.

Since the Commission=s first meeting a number of measures have been implemented to develop public participation in the Commission=s activities and to enhance the Commission=s profile. These include the establishment of additional project committees, the employment of external expertise and knowledgeable persons to act as project leaders for investigations on the Commission=s programme, the refinement of the Commission=s document series, the holding of workshops and seminars and increased media exposure.

With a view to extending the basis for consultation and involving interested parties and the community at an earlier stage in the process of law reform, the Commission has embarked upon a working method in terms of which, in appropriate cases, shorter documents in the form of issue papers - which precede the publication of discussion papers - are compiled for general information and comment. The object is to stimulate and activate the debate in respect of relevant matters and to give direction to the reform which is to follow. Documents of this nature can also serve as background material for seminars or workshops on the topics in question. Four issue papers were published during the year under review:

- \* Project 90 - Harmonisation of the common law and indigenous law: Customary marriages (issue paper 3)
- \* Project 90 - Harmonisation of the common law and indigenous law: Conflict of personal laws (issue paper 4)
- \* Project 100 - Family law and the law of persons: Family violence (issue paper 2)
- \* Project 104 - Money laundering and related matters (issue paper 1)

Seven discussion papers, previously referred to as working papers, were finalised during the year under review and published for consultation purposes. They are:

- \* Project 47 - Unreasonable stipulations in contracts and the rectification of contracts (discussion paper 65)
- \* Project 63 - Review of the law of insolvency: Draft Bill and explanatory memorandum (discussion paper 66)
- \* Project 85 - Certain aspects of the law relating to AIDS (discussion paper 68)
- \* Project 93 - Speculative and contingency fees (discussion paper 63)
- \* Project 94 - Arbitration: A draft International Arbitration Act for South Africa (discussion paper 69)
- \* Project 96 - The Apportionment of Damages Act, 1956 (discussion paper 67)

- \* Project 104 - Money laundering and related matters (discussion paper 64)

The discussion papers are also listed in **Annexure E**.

Four reports were completed during the year under review. Three of the reports have already been submitted to the Minister:

- \* Project 93 - Speculative and contingency fees
- \* Project 100 - Family law and the law of persons: Access to minor children by interested persons
- \* Project 104 - Money laundering and related matters

The following report will be submitted to the Minister as soon as the editing has been completed:

- \* Project 85 - Interim report on legal aspects relating to AIDS

A summary of the recommendations contained in the reports appears in Chapter 4.

The following Acts emanating from draft Bills recommended by the Commission were adopted by Parliament during 1996:

- \* The Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996 which is expected to commence during 1997. The Act will facilitate South Africa's accession to the Hague Convention.
- \* The Divorce Amendment Act 95 of 1996 which commenced on 22 November 1996. The Act empowers courts, in civil divorce proceedings, to take religious requirements for the dissolution of marriages into account.
- \* The Criminal Procedure Amendment Act 86 of 1996 which is expected to commence during 1997. The Act contemplates the simplification of criminal procedure.

- \* The Criminal Procedure Second Amendment Act 85 of 1996 which commenced on 29 November 1996. The Act deals with the application of the trapping system.
- \* The International Co-operation in Criminal Matters Act 75 of 1996 which is expected to commence during the first half of 1997. The Act regulates procedures for co-operation with foreign countries in criminal matters.
- \* The Proceeds of Crime Act 76 of 1996 which is expected to commence on 16 May 1997. The Act regulates procedures to restrict and confiscate the proceeds of crime and criminalises money laundering.
- \* The Extradition Amendment Act 77 of 1996 which is expected to commence on 17 January 1997. The Act streamlines the extradition process and enhances reciprocity in extradition relations with foreign states.

The Commission's research staff were called upon to assist the parliamentary committees on Justice in their consideration of the proposed legislation.

A number of new investigations commenced during the year under review. A progress report in this regard appears in Chapter 5.

It is generally accepted today that legal systems and legal rules should be revised and reformed on a continuous basis. In South Africa this is partly due to the nature of the legal system received here. The limited law-making function of the courts, coupled with the system of legal precedent, promotes the uniform application of legal rules. This strong point of our legal system also has an inherent weakness. Because of changing social norms, certain principles of our legal system have lost touch with reality. Law reform is therefore necessary to ensure that the principles underlying our legal system are just and in line with governing social views and values. Law reform is also necessary to simplify and rationalise the growing volume of decisions and statutes and, where applicable, to promote the harmonisation of legal principles at a national and an international level.

The transformation of our legal system offers great challenges in the area of law reform. The Law Commission and its secretariat view their involvement in the process of law reform as a valuable opportunity to contribute to the inception and preservation of a legal system that satisfies the needs of the South African community.

The appointment of the Chairperson of the Commission as South Africa=s new Chief Justice with effect from 1 January 1997 was a notable honour. He succeeds Chief Justice Michael Corbett who has retired.

## **OBJECTS, CONSTITUTION AND FUNCTIONING**

### **\* Establishment of the Commission**

The South African Law Commission was established by the South African Law Commission Act of 1973.

### **\* The objects of the Commission**

The objects of the Commission are set out as follows in section 4 of the Act: to do research with reference to all branches of the law of the Republic and to study and investigate all such branches in order to make recommendations for the development, improvement, modernisation or reform thereof, including -

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic;
- the consolidation or codification of any branch of the law; and
- steps aimed at making the common law more readily available.

In short, the Commission is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

### **\* Constitution of the Commission**

The members of the Commission are appointed by the President.

In terms of section 3(1)(a) of the Act the Commission is constituted as follows:

- A judge of the Supreme Court of South Africa, as Chairperson; and
- six persons who appear to the President to be fit for appointment on account of the tenure of a judicial office or on account of experience as an advocate or as an attorney or as a professor of law at any university, or on account of any other qualification relating to the objects of the Commission.

The Commission's term of office expires on 31 December 1998. For the duration of the year under review the Commission was constituted as follows:

\* **Chairperson**

The Honourable Mr Justice I Mahomed (Vice-President of the Constitutional Court and Chief Justice designate)

\* **Vice-Chairperson**

The Honourable Mr Justice P J J Olivier (Judge of the Appellate Division of the Supreme Court of South Africa)

\* **Other members**

Adv J J Gauntlett, SC (Member of the Cape Bar)

Mr P Mojapelo (Practising attorney)

The Honourable Madam Justice Mokgoro (Judge of the Constitutional Court)

Prof R T Nhlapo (Professor in the Department of Private Law, University of Cape Town)

Ms Z Seedat (Practising attorney)

In terms of section 3(c) of the Act not more than three members may be designated as full-time members of the Commission. At present only one member of the Commission, Professor R T Nhlapo, serves in a full-time capacity.

**Annexure A** contains a list of former and present members of the Commission and the periods for which they served or for which they were appointed.

\* **Additional members:**

In terms of section 3(2) of the Act the President may appoint one or more additional members if this is necessary for the investigation of any particular matter by the Commission. The following persons were appointed additional members in terms of this provision for the purposes of the investigations indicated opposite their names:

- Prof T J Scott of the University of Pretoria: Steps aimed at making the common law more readily available (Project 8)
- Prof C F C van der Walt of Potchefstroom University: Unreasonable stipulations in contracts and the rectification of contracts (Project 47)

\* **Committees**

Section 7A of the Act provides for the establishment of committees of the Commission. There are two categories of committees: those appointed by the Commission and consisting of members of the Commission only, and those consisting of members of the Commission and persons who are not members of the Commission. The latter are appointed by the Minister. The

object of the second category of committees is to utilise the expertise of persons outside the Commission for the activities of the Commission and to ensure direct community involvement.

Committees of the Commission perform the activities assigned to them by the Commission and are subject to the Commission's directives. Activities performed by committees are deemed to be performed by the Commission and for the purposes of remuneration members of committees are deemed to be members of the Commission.

□ ***Working committee***

Under the first category of committee the Commission has established a working committee that consists of the following members:

\* **Chairperson:**

Mr Justice P J J Olivier

\* **Members:**

Professor R T Nhlapo

Individual members of the Commission on a rotating basis

During 1996 Adv J J Gauntlett SC served as a member of the working committee.

The working committee may be considered the executive committee of the Commission. In accordance with the Commission's directives this committee attends on a continuous basis to routine matters and other matters that require urgent attention. The committee also considers the inclusion of new investigations in the Commission's programme. Furthermore, the committee plans and manages the activities of the Commission's Secretariat.

□ ***Project committees***

Project committees fall under the second category of committees. The Commission follows the practice of instituting a project committee consisting of experts to assist with an investigation and advise the

Commission if a specific investigation in the Commission's programme so requires. During the course of the year under review the following project committees were established: arbitration, the recognition of a class action in South African law, harmonisation of the common law and indigenous law, the criminal juvenile justice system, money laundering, sentencing, sexual offences by and against children, the simplification of criminal procedure and aspects of the law relating to AIDS. The names of the members of these committees appear in **Annexure B**. In recommending persons to the Minister for appointment, the Commission ensured representativity and promoted the employment of external experts and knowledgeable persons to act as project leaders for investigations on the Commission's programme. The Commission would like to express its appreciation to the membership of non-governmental organisations for their willingness to serve on project committees of the Commission. Appointments to the project committee on insolvency, whose term of office expires on 31 December 1996, will be finalised early in 1997.

\* **Secretariat of the Commission**

The Commission is assisted in its task by a full-time Secretariat consisting of officials on the establishment of the Department of Justice. The Secretariat consists of an administrative component and a professional component. The Director, Mr W Henegan, also serves as the Secretary to the Commission.

The research component of the Secretariat consists of 12 State Law Advisers. Their task is to do the necessary research under the guidance of project leaders (who are designated by the Commission), to consult with interested parties, to compile discussion papers and draft reports and to carry out other assignments of the Commission. These posts are at present filled by the following persons:

Mr M B Cronje (Principal State Law Adviser)  
Mrs A-M Havenga (Principal State Law Adviser)  
Mr G O Hollamby (Principal State Law Adviser)  
Mrs A M Louw (Senior State Law Adviser)  
Mr M F Palumbo (Senior State Law Adviser)  
Mr J H Potgieter (Principal State Law Adviser)  
Mr P K Smit (State Law Adviser)  
Mr A W F van Vuuren (Senior State Law Adviser)  
Mr P A van Wyk (Senior State Law Adviser)

Currently there are two vacancies of principal state law adviser and one of senior state law adviser.

In the course of the rationalisation of the Department of Justice a number of additional professional posts have been created on the establishment of the Commission including an assistant for the Commission=s secretary. The filling of these posts will ensure faster progress with the Commission=s formidable law reform programme. It will also ensure that the secretariat is representative of the population at the professional level.

The administrative component of the Secretariat consists of the following posts:

Senior Administrative Officer	:	1
Administrative Officer	:	1
Senior Administrative Clerk	:	1
Librarian	:	1
Typist	:	2
Secretary	:	2
General Assistant	:	1
Operator	:	1

During the year under review Ms L Lekganyane and Ms L Damons were appointed as secretaries in vacancies that occurred. They are welcomed as members of the Commission's staff. There is one vacancy of senior administrative officer and one of typist.

The Commission wishes to express its appreciation to the members of the Secretariat for their outstanding auxiliary services to the Commission. The Commission wishes to make special mention of the high standard of working documents and reports submitted to the working committee and the Commission by the research staff. An experienced and skilled research component is an essential requirement for the effective functioning of the Commission as an institution.

The Commission also wishes to express its appreciation to the full-time member, Professor Nhlapo, and the various project leaders for guiding the researchers, for the research done by them and for the documents and reports compiled under their guidance.

**\* Financing of the Commission**

Funds for the expenditure connected with the Commission's activities are provided in the Vote of the Department of Justice under the Law Reform Subprogramme. The Director is consulted on the compilation of the draft Vote. The funds made available are sufficient for the Commission's requirements, taking into account the Commission's continuous efforts to limit expenditure.

The Commission's budget for the 1996/97 financial year is R4 692 000, which is made up as follows:

	R
<input type="checkbox"/> Staff expenditure	3 039 000
<input type="checkbox"/> Administrative expenditure	570 000
<input type="checkbox"/> Supplies and printing	310 000
<input type="checkbox"/> Equipment	340 000
<input type="checkbox"/> Professional and special services	373 000
<input type="checkbox"/> Sundry expenditure	60 000

\* **Programme**

The Act provides that the Commission must from time to time draw up programmes where the matters which in its opinion require consideration are included in order of priority. The Commission's programme is subject to the Minister's approval.

The Commission's present programme appears in **Annexure C**. The investigations included in or removed from the Commission's programme during the year under review are dealt with in Chapter 3. **Annexure D** contains a list of all the investigations included in the Commission's programme since its establishment and also indicates the result or state of investigations, where applicable.

Any person or body is free to submit proposals for law reform to the Commission. In each case the Commission considers the merits of a proposal. In some instances a preliminary inquiry is instituted in order to determine whether the inclusion of a matter in the Commission's programme is justified. The Commission also includes matters in its programme of its own accord.

Every effort is made to dispose of urgent matters with the least possible delay. It should always be borne in mind, however, that the Commission has to follow certain procedures and that these sometimes take up considerable time. The availability of funds and skilled research capacity, the nature and extent of the inquiry and the need for consultation must all be taken into consideration. Consultation in particular is time-consuming, but the Commission regards it as an indispensable part of the law reform process.

\* **Working methods**

Research is done to determine authoritatively the existing legal position and to identify shortcomings or deficiencies that need to be rectified. If necessary, consultation takes place between the researcher and interested parties or persons with particular knowledge concerning the matter under investigation. Comparative studies are carried out in order to enable the Commission to benefit from experience elsewhere in the world. The primary aim of the Commission is to effect law reform by consulting with as many interested persons and bodies as possible. This process is facilitated by the Commission's new policy of compiling issue papers, as a first step, outlining the problems encountered with particular areas of the law and inviting submissions on possible solutions and distributing them as widely as possible for general information and comment. Discussion papers are then prepared by the Commission's research staff to serve as a basis for its deliberations. They contain essential information on the investigation concerned and the tentative proposals of the Commission. Members of the public are informed of the availability of discussion papers by notices in the *Government Gazette*, press releases and press conferences. In addition, copies are distributed to organisations and, sometimes, individuals whose views on the subject under discussion the Commission particularly wishes to canvass. The responses to the provisional proposals are carefully studied before final decisions are made. The Commission also hears oral evidence in appropriate cases. The Commission's recommendations are embodied in comprehensive reports that also contain, where applicable, the draft legislation to give effect to the proposals. Reports are submitted to the Minister of Justice and it is usually recommended to the Minister that reports should be published officially.

Judging from comments received, the Commission's working papers and reports are of a high standard. There appears to be an increasing tendency amongst faculties of law to use and prescribe the Commission's working papers and reports for their students at undergraduate as well as postgraduate level.

In view of the many valuable comments and proposals received on the Commission's recommendations as contained in its documents, there is no doubt that its working methods have proved successful. These methods ensure that the Commission's final recommendations as contained in its reports are well substantiated and are the product of a thorough airing of views and debate.

In the course of its activities the Commission publishes a variety of documents. The document series of the Commission consists of the following:

□ *Commission papers and committee papers*

Commission papers and committee papers are internal documents that are normally not available outside the ranks of the Commission. In these papers suggestions for the inclusion of matters in the Commission's programme, research results for the information of or consideration by the Commission, draft issue papers, discussion papers and reports and a variety of other matters are dealt with. The papers are numbered in sequence as they come before the Commission.

□ *Issue papers*

In order to involve the community actively at an earlier stage, the Commission has decided to publish issue papers for appropriate investigations as the first step in the consultation process. The purpose of an issue paper is to announce an investigation, to elucidate the aim and extent of the investigation, to point to possible options available for solving existing problems and to initiate and stimulate debate on identified issues.

□ *Discussion papers*

Discussion papers, previously referred to as working papers, are public documents because they are published with a view to obtaining comments and evidence. These papers are proof that the Commission has itself already given considerable attention to the investigation concerned and they provide detailed background material. They also contain detailed substantiation of the questions on which comment or evidence are required.

Discussion papers are numbered serially as they are published. The number of the discussion paper bears no relation to the number of the investigation concerned. Discussion papers published since the introduction of the document series are listed in **Annexure E**.

□ ***Reports***

The Act requires the Commission to prepare a full report on any matter investigated by it and to submit such report together with draft legislation, if any, to the Minister for consideration. All reports of the Commission are official, but not all are published. In this regard, attention is invited to the list, in **Annexure D**, of investigations reported on by the Commission since its establishment.

In addition to the reports on its investigations the Act provides that the Commission must annually submit to the Minister a report on all its activities during the previous year.

□ ***Papers in the Commission's research series***

This series is used mainly for publications intended to make the common law more readily available and contains translated common law sources and noter-ups. Papers published in this way are listed in **Annexure F**.

Issue papers and discussion papers are supplied free of charge to interested institutions and persons who wish to comment on a particular matter. These papers are obtainable from the Commission's offices. The annual report, papers in the research series and reports on investigations that are published are obtainable from the Government Printer, Private Bag X85, Pretoria, 0001.

\* **Meetings**

The Commission met five times during the year, namely on 23 and 24 February, 20 April, 15 June, 31 August and 29 and 30 November. The meetings were held in Pretoria.

The working committee of the Commission met twice, namely on 18 to 19 July and 29 November in Pretoria.

The following project committees of the Commission met on the dates indicated against the committees concerned:

AIDS	08.08.1996
	09.09.1996
	20.09.1996
	30.09.1996
	22.10.1996
	11.11.1996
Arbitration	12.06.1996
	12.08.1996
	25.10.1996
Harmonisation of the common law and indigenous law	07.06.1996
Insolvency	27.06.1996
Money laundering	08.03.1996
	15.05.1996
	30.05.1996
	08.08.1996
Sentencing	19.10.1996
Simplification of criminal procedure	19.10.1996

3

## **THE COMMISSION=S PROGRAMME: INVESTIGATIONS REMOVED AND INCLUDED**

### *Investigations removed*

\* **Project 83 - Review of the Moratorium Act 25 of 1963**

The former Minister of Justice approved the inclusion of this investigation in the Commission=s programme on 4 February 1992 after the Commission received a research document in which the matter was fully investigated and certain proposals for reform were made by Professor J J Henning of the Centre for Business Law of the University of the Orange Free State.

The Commission decided to publish a condensed and adapted version of Professor Henning=s research document as a working paper for general information and comment. On 13 November 1993, however, the Commission received a letter from Professor Henning in which he questioned the publication of the working paper in view of the changes that had been brought about by the new dispensation as far as military service by civilians is concerned. Comment was subsequently invited from the National Defence Force and the Association of Law Societies of the Republic of South Africa.

It was submitted on behalf of the Head of the National Defence Force that it is undesirable to subject the Moratorium Act to an intensive investigation before the final changes have been brought about by the new dispensation (which had not been completed at the time) as far as military service by civilians is concerned. The former Commission endorsed the view of the National Defence Force and, also bearing in mind that the National Defence Force could itself promote legislation if *ad hoc* difficulties are experienced, recommended to the Minister that the investigation be removed from the Commission=s programme. The removal of the investigation from the programme was approved by the Minister on 10 June 1996 after the newly appointed Commission reconsidered and endorsed the recommendation of its predecessor.

**\* Project 91 - Review of the offences created by sections 36 and 37 of the General Law Amendment Act 62 of 1955 and section 1 of the General Law Amendment Act 50 of 1956 and related matters**

Section 36 of the General Law Amendment Act 62 of 1955 provides that any person who is found in the possession of goods, in regard to which there is a reasonable suspicion that they have been stolen and who is unable to give a satisfactory account of such possession, shall be guilty of an offence. Section 37 of the Act concerned provides that any person who in any manner, otherwise than at a public sale, acquires or receives into his possession from any other person stolen goods, without having reasonable cause for believing at the time of such acquisition or receipt that such goods are the property of the person from whom he receives them or that such person has been duly authorised by the owner thereof to deal with or to dispose of them, shall be guilty of an offence. Section 1 of the General Law Amendment Act 50 of 1956 provides that unlawful appropriation of the use of another=s property is an offence.

The inclusion of the investigation in the Commission=s programme, which had been approved by the former Minister on 15 January 1993, was motivated as follows at the time:

Some years ago the Commission considered the consolidation, in a criminal law Act, of the said provisions which, although relating to important offences, are dispersed in general law amendment Acts. Various lacunae in the provisions concerned were also pointed out in judicature and law journals. The Commission=s recommendations were, however, as far as the reformulation of the offences are concerned, not acceptable at the time. Nevertheless, there is a need to consolidate the provisions concerned and to remedy the lacunae identified. The Commission is of opinion that the provisions should be reviewed again.

Owing to investigations with a higher priority, the investigation has not yet been embarked upon at the time of commencement of the newly appointed Commission=s term of office. At its first meeting on 23 and 24 February 1996 the Commission indicated, as a matter of general policy, that one of its main aims should be the protection of the wider interests of the South African people as a whole, that it should not get involved in esoteric matters, and that it should take care not to become academic and aloof. In view of its general policy the Commission indicated that it attaches little importance to the investigation and decided to recommend to the Minister that the investigation be removed from the Commission=s programme. The Minister approved the removal of the investigation on 23 March 1996.

\* **Project 92 - The re-evaluation of the offence created by section 1 of the General Law Amendment Act 1 of 1988**

Section 1 of the General Law Amendment Act 1 of 1988 provides that any person who consumes or uses any substance which impairs his or her faculties to appreciate the wrongfulness of his or her acts or to act in accordance with that appreciation, while knowing that such substance has that effect, and who, while such faculties are thus impaired commits any act prohibited by law under any penalty, but is not criminally liable because his or her faculties were impaired, shall be guilty of an offence.

The above section was adopted upon the Commission=s recommendation to counter-act the effect of the judgment in *S v Chretien* 1981 1 SA 1097 (A). The aim of the Act is to prevent a person who commits an act sanctioned by penalty while intoxicated from going scot-free on the grounds of unaccountability owing to intoxication. The opinion held by the former project committee on criminal law was that the Act, as presently worded, is not beyond criticism. It was suggested in this regard that although there is a need for the offence created by section 1 of the Act concerned, it is incorrect to make drunkenness an element of such an offence; that the draftsmanship of this section is poor, and that the scope of this legislation should be limited.

The inclusion of the investigation in the Commission=s programme was approved by the former Minister of Justice on 15 January 1993.

For the same reasons reflected under the discussion of the preceding investigation above, and in view of other more deserving investigations, the new Commission recommended to the Minister that the investigation be removed from its programme. The Minister approved the removal of the investigation on 29 March 1996.

\* **Project 97 - Unjustified enrichment**

The former Minister of Justice approved the inclusion of this investigation in the Commission=s programme on 29 April 1994 upon recommendation of the Commission acting on the advice of the former project committee on the law in respect of unjustified enrichment. This committee had accepted in principle that the South African law should provide for a general enrichment action and that such an investigation by the Commission would be proper. Various options with regard to the manner in which such an action could be established were put forward.

At its first meeting on 23 and 24 February 1996 the new Commission resolved that, in view of its general policy as outlined above and also in view of further developments in the case law regarding unjustified enrichment, with special reference to the decision in *Kommissaris van Binnelands Inkomste v Willers* 1994 3 SA 283 (A), the development of a general enrichment action should be left in the hands of the courts. It subsequently recommended to the Minister that the investigation be removed from its programme. The Minister approved the removal of the investigation on 23 June 1996, but added that the matter may be reviewed again if circumstances so demand.

***Investigations included***

The five new investigations mentioned hereunder were included in the Commission=s programme during the year under review. The progress made in these investigations is reported in Chapter 5.

\* **Project 100 - Family law and the law of persons**

\* **Maintenance**

The Commission received a letter from the Minister on 24 July 1996 requesting it to undertake an investigation into the whole of the Maintenance Act in order to ascertain what steps can be taken to ensure that an effective maintenance payment system is developed. The Commission was furthermore requested to give priority to the investigation and to consider the appointment of a project committee to assist the Commission in the formulation of definite proposals for reform.

The Minister's request for the inclusion of the investigation stems from a letter he received from the Minister for Welfare and Population Development in which the function and purpose of the Lund Committee for Child and Family Support were explained and in which the Minister was requested to indicate when a review of the Maintenance Act could be expected. The Lund Committee was set up to look at the system of state maintenance grants for children and parents, and how these can best be developed to alleviate poverty, while remaining affordable within the budget.

The Commission considered the Minister's request and decided, at its meeting on 31 August 1996, that an investigation into maintenance should be included in its programme. The Minister endorsed the inclusion of the investigation on 26 September 1996.

\* **Project 100 - Family law and the law of persons**

\* **Family violence**

According to representations received from Attorneys *Pincus Matz, Marquard and Hugo-Hamman*, the Prevention of Family Violence Act 133 of 1993 represents a radical and, in their view, an unjust departure from the *audi alteram partem* principle. They are of opinion that this principle is a fundamental principle of our law and not one which can or should be abandoned under any circumstances. At most, particular circumstances may justify a temporary suspension of the principle. It is for this reason that the Supreme Court has traditionally insisted that applicants make out a proper case for urgency and explain to the Court why an order should be granted without any notice to the other side.

The representations were circulated to magistrates for comment as well as to other interested bodies and persons. From the comment received it appeared that although the aim of the Act is laudable, the manner in which it provides for interdicts appears to be seriously flawed. Some respondents likewise expressed concern at the apparent disregard for the *audi alteram partem* rule. Moreover, the Human Rights Watch

(an international N.G.O. based in the U.S.A.) evaluated the Act concerned in a publication entitled *Violence against Women in South Africa* and drew attention to a number of shortcomings.

The Commission decided at its meeting on 23 and 24 February to recommend to the Minister that the investigation be included in its programme. The Minister approved the inclusion of the investigation on 29 March 1996 and requested that urgent attention be given to the investigation.

\* **Project 105 - Review of security legislation**

The previous Commission considered a request received from the Minister of Safety and Security addressed to the Minister of Justice and referred to the Commission. The Minister of Safety and Security proposed that a review and rationalisation of South Africa=s security legislation should be undertaken by the Commission. He stated that in view of the history of security legislation and changed circumstances in South Africa, all existing legislation such as the Internal Security Act, 1982, and similar Acts in the former TBVC states should be repealed and a new Act should become operational in the Republic. This Act should be enacted strictly in accordance with international norms, the Constitution and the country=s present circumstances and requirements.

The then Chairperson of the Commission, Mr Justice H J O Van Heerden, informed the Minister that the Commission was willing to undertake a review of security legislation and requested logistical support from the Department of Safety and Security or the Department of Justice. The Chairperson also referred to the institution of a sub-committee of experts to advise the Commission and to consider the papers which will be distributed.

At the newly appointed Commission=s meeting on 23 and 24 February 1996, both the views expressed by the previous Commission in this regard and the establishment of a project committee composed of suitably qualified experts were endorsed. The Minister was subsequently approached in connection with the inclusion of the investigation in the Commission=s programme. He approved such inclusion on 22 March 1996.

\* **Project 106 - Juvenile Justice**

On 7 December 1994 Cabinet decided to establish a core group of Ministers under the chairmanship of the Minister of Health assisted by a steering committee and sectoral working group which were responsible for the ratification of the Convention of the Rights of the Child and which were requested to develop a National Plan of Action for the children of South Africa. The Convention was ratified during June 1995. The Justice Sectoral Working Group recommended that the Commission should be requested to develop a Juvenile Justice System to give effect to the Convention which requires, in article 40, the establishment of such a system and provides for detailed principles to underpin such a system. Following a request by the Minister the Commission included an investigation into Juvenile Justice in its law reform programme. The Commission established a project committee for the investigation to which the Minister made appointments on 5 December 1996. The names of the members appointed to the project committee appears in **Annexure B**.

\* **Project 107 - Sexual offences by and against children**

In his LLM thesis entitled *Seksuele Misdrywe met Jeugdiges - >n Kritiese Beskouing* (January 1994), Mr J J Brits made a number of proposals for the amendment of the law in respect of sexual offences against children. These proposals include the following changes:

- \* An amendment of section 14(1)(a) and 14(3)(a) of the Sexual Offences Act so as to include sexual intercourse *per anum*;
- \* The creation of a statutory offence of rape so as to include sexual intercourse *per anum*;
- \* The decriminalisation of sexual acts committed between youths of more or less the same age for experimental purposes;
- \* The abolition of compulsory imprisonment for contraventions of section 14(1) and 14(3) of the Sexual Offences Act;
- \* The creation of a children=s court with the following functions:
  - (i) To decide whether a prosecution should be instituted;
  - (ii) to issue an order for removal of the child if necessary;

- (iii) to issue a maintenance order if necessary;
- (iv) to make a finding whether the defendant is molesting the child and to issue an interdict ordering the defendant to refrain from such conduct;
- (v) to issue an order for the postponement of a case *sine die*;
- (vi) to conduct the proceedings in an inquisitorial manner.

The above-mentioned proposals were distributed among interested parties for comment. Although most respondents did not support the specific proposals made by Mr Brits, they generally agreed that an investigation into certain aspects of child illtreatment was necessary. The following aspects were *inter alia* identified for investigation:

- \* A number of sexual offences are gender-specific (rape, sodomy, and the offences created by sections 10,11,12, 12A, 17 and 18 of the Sexual Offences Act) and should be reviewed in the light of the new Constitution.
- \* The revision of the offence of rape and the possibility that rape should be defined as an offence committed by a man who has sexual intercourse with a woman or another man who, at the time, does not consent to it.
- \* The adoption of an inquisitorial approach in respect of offences committed against children.
- \* The creation of a presumption of competency in respect of child witnesses.
- \* The enactment of legislation to empower the court when sentencing an offender to prohibit him or her from being employed in a position of trust over children.
- \* The investigation of child pornography and child prostitution.

The outgoing Commission decided to recommend to the Minister that an investigation into sexual offences by and against children be included in its programme. The Minister approved the inclusion of the investigation on 13 April 1996.

\* **Project 108 - Computer related crimes**

The Commission received a letter from Dr P C Jacobs, the principal legal officer of the South African Police Services, on 5 December 1995 requesting it to investigate and recommend legislation relating to computer crimes. In his representations Dr Jacobs stated that although the South African courts have interpreted common law crimes such as fraud to include fraud by means of a computer, it would be advisable to investigate the questions of computer crime and computer misuse with a view to introducing legislation in South Africa. In support of his proposal he mentioned that specific legislation has been introduced in several countries abroad, for example in Britain. Furthermore, at the 64th Annual Conference of Interpol, held in Beijing during 3 - 11 October 1995, a resolution was adopted in terms of which the problem of computer crime should be approached in a similar manner in African, American and Asian regions and that a Steering Committee be set up to encourage the adoption of mutually agreed standard methods for international investigations.

The proposal was circulated to the Attorneys-General and to the Office for Serious Economic Offences for comment. From the comments received it is clear that, apart from Mr J H du Plessis of the Attorney-General of Pietermaritzburg's office, all other respondents supported the inclusion of such an investigation in the Commission's programme.

Briefly the question is whether existing South African criminal law caters sufficiently for all instances where computer related crimes are involved and whether or not the misuse or abuse of certain acts relating to computers should be criminalised. The following categories were identified as possible problem areas:

- (i) The use of a computer in the commission of another crime, usually theft or fraud.
- (ii) The theft of computer hardware and software and the physical damaging of computer hardware and software.
- (iii) Copying of computer software (so-called software piracy).
- (iv) The breaking into a person or organisation's computer or computer system (hacking).
- (v) The theft, changing or destruction of the information on another person or organisation's computer.

- (vi) Theft of computer services. This relates to the unauthorised use of a computer.

The respondents generally agreed that the criminal law makes provision for those instances where a computer is used in the commission of an existing offence (with possible evidential problems), however, in some cases it can be proved that computers were misused, but not that theft or any other offence was committed (because, for instance, the property involved - computer information - does not meet the definition of that element of the offence). The question is therefore whether certain acts, such as the unauthorised use of computers or unauthorised access to computers with the intent to commit or further the commission of an offence or the unauthorised modification of computer material should be criminalised. The respondents agreed that the criminal law does not make adequate provision for such instances and that an investigation with a view to criminalising certain acts is called for in the light of the increasing use of computers, the extent to which computers are used to store invaluable information and the serious consequences which may result from misuse or unauthorised use of such information.

The Commission considered the proposals at its meeting on 31 August 1996 and decided to recommend to the Minister that an investigation into computer related crimes be included in its programme. The Minister approved the inclusion of the investigation on 3 October 1996.

## REPORTS COMPLETED

During the year under review the following four reports were completed:

\* **Project 85 - Aspects of the law relating to AIDS**

At the request of the Department of Health, the Commission is conducting an investigation into aspects of the law relating to HIV/AIDS. Background information regarding this investigation is furnished in Chapter 5.

The Commission approved an interim report containing recommendations on certain aspects concerning HIV/AIDS which warrant urgent intervention, and which from a scientific, medical and legal viewpoint appear to be relatively uncontroversial, at its meeting on 29 November 1996.

The recommendations include:

- A prohibition on the use of non-disposable syringes, needles, and other hazardous material.
- The implementation, in relevant occupational legislation, of universal work place infection control measures (universal precautions).
- The statutory implementation of a national compulsory standard for condoms conforming to international standards.
- The amendment, finalisation and promulgation of the draft Regulations relating to Communicable Diseases and the Notification of Notifiable Medical Conditions, 1993 (which deschedule AIDS as a communicable disease in respect of which certain coercive measures apply mandatorily).
- The promulgation of a national policy on testing for HIV/AIDS.

**It should be noted that the interim report deals only with the matters indicated above. Subsequent interim reports will deal with other matters identified for reform.**

\* **Project 93 - Speculative and contingency fees**

The need for an investigation into contingency fees emanated from an indication by the former Chief Justice that a system of speculative fees, approved by the Association of Law Societies, is not acceptable in terms of the common law. The Commission was subsequently requested to investigate the desirability of a system of contingency fees and published a working paper for general information and comment during March of the year under review. **A report was approved by the Commission on 30 November 1996. The report was submitted to the Minister on 6 December 1996.**

The Commission's main recommendation is that contingency fee agreements should be legalized in South African law and that common law prohibitions on such fees should be removed. A contingency fee agreement is an agreement between a legal practitioner, such as an attorney, and his or her client to the effect that the legal practitioner will charge no fees if the client's court case is conducted unsuccessfully. The system therefore implies that a litigant may, in certain instances, instruct a legal practitioner on a "no success, no pay" basis. Up to the present such a system has not been recognised in South African law due to common law restraints. It has, however, been introduced in certain legal systems abroad, mainly because of its enormous potential to promote access to justice.

The Commission concluded that a system of contingency fees in terms of which a prospective litigant is only liable to remunerate his or her legal representative in the event of successful litigation, can contribute significantly to promote access to the courts and that such a system is desirable.

Should the client win the case, the fee payable to the legal practitioner - in terms of a contingency fee agreement - may be recovered from the proceeds of the litigation (in those cases where the claim concerned is one sounding in money) and is usually higher than the practitioner's normal fee. This is so because the legal practitioner bears the risk of not being compensated in a number of cases. In view of these risks the Commission recommends that legal practitioners, in the event of successful litigation, should be entitled to receive, in addition to their normal fees for the case in question, an uplift to a maximum of 100 per cent of their normal fees. In practice this would mean that legal practitioners will be entitled to charge double their normal fees if they conduct their clients' cases successfully.

The Commission's other recommendations involve the form and content of contingency fee agreements as well as safeguards aimed at eliminating abuse of such agreements and at protecting the interests of the public. An important safeguard, in the Commission's view, is that contingency fee agreements should be prohibited in family law and criminal law cases. In family law cases the concern is that the availability of

contingency fee agreements may encourage litigation in, for example, the field of divorce. In respect of criminal law cases, the Commission holds that people accused of crime are in terms of the Constitution adequately catered for as far as access to justice is concerned.

Another important safeguard recommended by the Commission is that the uplift payable to the legal practitioner in the event of success should not exceed 25 per cent of the proceeds of the litigation in the case of claims sounding in money. The reason for this is to prevent a situation in which all proceeds are swallowed up in legal fees. The Commission also recommends that both attorneys and advocates be entitled to enter into contingency fee agreements. To enable advocates to enter into such agreements voluntarily, it is further recommended that the limitations at present contained in the rules of the General Council of the Bar and in the respective rules of the individual associate and constituent Bars relating to contingency fees be adjusted. In view of the concern that payment of an increased fee may deplete the proceeds of litigation, the Commission recommends that in cases where an advocate is a party to the contingency fee arrangement, the total of the uplift fee portion payable to both attorney and advocate by the client, in claims sounding in money, should not exceed 25 per cent of the proceeds of the action.

Other safeguards recommended include the requirement that it should be explained to the client that he or she will be liable to pay the uplift portion of the advocate's fee (in cases where counsel has to be employed) in the event of success and that the basis of payment be agreed upon between attorney and client; that the client should be advised of any other options of financing the litigation and of their respective implications; that the client should be informed of the normal rule that he or she may be liable to pay the opponent's taxed party and party costs in the event of unsuccessful litigation and that there should be a cooling off period of fourteen days during which the client could cancel the contingency fee agreement. In view of reservations that contingency fee agreements may lead to an increase in frivolous litigation, the Commission recommends that contingency fee agreements should only be entered into in cases where there are reasonable prospects that the client's case will be successful.

In general the Commission recommends that the option of contingency fee agreements should be available to all litigating parties, whether they are plaintiffs or defendants or whether they are natural or juristic persons. Although access to justice appears to be a problem especially for the category of persons that may be described as the middle class, *ie* persons too rich to qualify for legal aid but too poor to finance litigation out of their own pockets, it is recommended that there should be no qualification regarding the financial means of persons wishing to enter into such agreements.

The Commission further recommends that the application of contingency fee agreements should not be limited to claims sounding in money; that the controlling bodies governing the legal professions should

devise guidelines with regard to the nature and form of the agreements in cases where the claim involved does not sound in money, and that the payment of disbursements in an action conducted on the basis of a contingency fee agreement should be a matter of contract between lawyer and client.

\* **Project 100 - Family law and the law of persons**

\* **Access to minor children by interested persons**

After the publication of the working paper and report concerning the rights of a father in respect of his child born out of wedlock (project 79), the Commission received several telephonic and written requests to investigate the granting of access rights (visitation rights) to grandparents of children. The representations were considered and an investigation concerning the visitation rights of grandparents was approved as part of the Commission's investigation into the law of persons and the family. **A report was submitted to the Minister on 11 July 1996.**

In its report the Commission expresses the view that the present common law position in terms of which parents have the exclusive right to decide to whom and under what circumstances to grant access rights or visitation rights, does not in all cases meet the current needs of society and that adjustment of our law by way of legislation regarding this matter is necessary.

Although this investigation initially dealt only with the visitation rights of grandparents, the Commission argues that this matter should not be limited to that category of persons. There may be special circumstances where someone else, for example an uncle or aunt, godparents or even friends and neighbours, could claim visitation rights with regard to a minor child. There is also an increase in "extended" families. These are families where one or both of the parties have gone through a divorce and have married again. A stepfather, for example, may have a special relationship with his stepchild and after the death of the mother or a subsequent divorce the biological father or mother may deny the stepfather access to the child. Also in the case of adoption there may be circumstances under which it would be in the best interest of the child to grant access rights to a person with whom the child has a special relationship.

The Commission recommends legislation with the following effect:

- \* If a grandparent of a minor child is denied access to the child by the person who has parental authority over the child, such grandparent may apply to court for an order granting him or her access to the child and the court may grant the application on such conditions as it deems fit.
  - \* Any other person who alleges that there exists between him or her and a minor child any particular family tie or other relationship which makes it desirable in the interest of the child that he or she should have access to such child, may, if such access is denied by the person who has parental authority over the child, apply to court for an order granting him or her access to the child and the court may grant such application on such conditions as it deems fit.
  - \* The court may not grant access to a minor child unless it is satisfied that it is in the best interest of the child.
  - \* The court may refer any application to the Family Advocate referred to in section 1 of the Mediation in Certain Divorces Matters Act 24 of 1987 for investigation and recommendation.
  - \* The provisions of section 4(3) of the Mediation in Certain Divorces Matters Act are made applicable with regard to proceedings concerning the application by grandparents or other interested persons for access to a minor child.
- \* **Project 104 - Money laundering and related matters**

The Commission completed its report on the investigation into money laundering and related matters on 31 August 1996. **The report was submitted to the Minister of Justice early in September 1996.**

The object of the investigation was to establish an administrative framework to control money-laundering activities. A number of offences to criminalise money laundering and certain related acts were created with the enactment of the Proceeds of Crime Act 76 of 1996 following a recommendation to this effect by the Commission in its report on International Co-operation in Criminal Prosecutions (project 98). The description of money laundering used for this purpose entails the manipulation of illegally acquired

wealth in order to obscure its true source or nature and so to avoid prosecution or the confiscation of property. It was realised that the criminal law alone would not be effective to curb money laundering as described here.

The administrative framework recommended by the Commission is based on five pillars, *ie* client identification, record-keeping, reporting of certain information, implementing internal policies and creating a financial intelligence unit.

The starting point of an administrative system to combat money laundering is an institution's ability to identify its clients. The aim in this respect should be the elimination of anonymous accounts and the identification of hidden principals or beneficial owners. Institutions should establish the actual ownership of accounts, and should refuse to enter into transactions with clients who fail to provide proof of their identity. The Commission therefore recommends the introduction of measures requiring institutions to obtain proof of a client's identity when a business relationship is established or a single transaction is concluded.

Effective record-keeping is essential to the investigation of money-laundering schemes. The only way of identifying a transaction through which the proceeds of an offence have been laundered, and those involved in it, is to follow the so-called audit trail. This means that by identifying the nature of the transaction and the true participants in that transaction, the money-laundering scheme can be exposed. This will only be possible if sufficient records have been kept by the institution at which the transaction had occurred.

The Commission therefore recommends measures to ensure that records are kept of information obtained when an account is opened or another form of business relationship is established. Records should also be kept of information in respect of specific transactions, carried out either in the course of a business relationship or as single transactions. Recorded information should be kept for a period of at least five years.

The aim of a reporting system should be to identify transactions involving the proceeds of crime. Such transactions will probably, upon further investigation, appear to be part of a money-laundering scheme. The Commission recommends a reporting system that is based on reporting cash transactions above a prescribed threshold amount on the one hand, and reporting suspicious transactions irrespective of the amount involved, on the other.

The threshold amount should make structuring of transactions to avoid the threshold without drawing the attention of a reporting body as difficult as possible. At the same time the threshold should not be so low that the reporting system becomes clogged with reports of insignificant transactions. Suspicious transactions will include transactions that appear unnecessarily complex, unusual transactions, regular transactions that form a peculiar pattern and transactions that may have been structured to avoid the threshold.

In their approach to implementing a framework of administrative measures, institutions should follow procedures that are based on responsible business practice. This entails that institutions should develop internal policies to ensure the implementation of procedures to facilitate compliance with the proposed administrative framework. The Commission recommends that institutions be required to implement policies such as Know your client, internal reporting procedures and staff training. Provisions in this respect can, however, not be too prescriptive of the contents of the internal policies that institutions are required to adopt.

An integral element of a system to control money laundering is the establishment of a body to record and utilise reported information. The Commission recommends the creation of a statutory body referred to as the Financial Intelligence Centre. The task of such a body will mainly be to receive information through the reporting system, to analyse that information, to conduct investigations into money-laundering activities and to disseminate information that warrants investigation to the appropriate investigating authorities. The Financial Intelligence Centre should also be able to enforce the administrative framework through administrative sanctions imposed upon institutions that fail to comply with this framework.

These administrative measures should apply to a wide variety of organisations in the business sector that are in a position to detect and deter money-laundering activities. In this respect the Commission realises the value of a co-operative approach to the administration of such a framework. The Commission therefore recommends the institution of a body, referred to as the Money Laundering Policy Board to assist the Minister in formulating, revising and implementing an anti money-laundering policy and in administering the administrative framework. Such a board should consist of representatives of all the types of institutions to which the framework will apply.

**5**

## **PROGRESS REPORT**

In this chapter the position regarding uncompleted investigations on the Commission's programme is discussed. At present there are 24 uncompleted investigations on the Commission's programme. Investigations completed as well as interim reports submitted to the Minister are discussed in Chapter 4.

\* **Project 8 - Steps aimed at making the common law more readily available**

One of the objects of the Commission as set out in section 4(e) of the Act is to take steps to make the common law more readily available. Works that were published in this regard are listed in the Commission's research series contained in **Annexure G**.

At the Commission's meeting on 23 - 24 February 1996 it was resolved that there is no real need for the Commission to be involved in the project and that it should consequently enjoy a very low priority.

\* **Project 25 - Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book**

The object of this investigation is the ultimate establishment of a simple, coherent and generally accessible statute book. This comprises the repeal of obsolete and unnecessary provisions, the consolidation of provisions that belong together, the codification, where appropriate, of particular branches or aspects of the law, and the bringing about of uniformity in the law in all parts of the Republic. This is a task of immense proportions. In fact, it is a never-ending task because new legislation that should be regulated in accordance with the accepted rules is continually being passed.

Up to the present the investigation has remained an ideal in respect of which very little has been achieved. Over the years the Commission has got rid of a considerable amount of dead wood in the statute book through a number of repeal Acts - see projects 7 and 25 (**Annexure D**). Furthermore, the Commission is striving to give effect to the above-mentioned objectives in the separate investigations that it is undertaking.

The present position is unsatisfactory, especially as regards subordinate legislation. There are no reliable registers of subordinate legislation. The prevailing legal position can in most cases be established only by enquiring at the government department or institution responsible for the making of the measures concerned. The position is further worsened by the fact that such legislation, as a rule, is not available in annotated form, with the result that a search of various *Government Gazettes* or official gazettes has to be conducted in order to establish the latest position. Briefly, there is a need for the consolidation and indexing of all prevailing, subordinate legislation and the updating thereof in an accessible form. The same problem is encountered with regard to the legislation adopted by the former independent states and self-governing territories within the present Republic.

The fact that under the new constitutional dispensation, apart from the central legislature, there are nine provincial legislatures, each having extensive legislative powers, makes it essential to look very closely at ways of preventing our statute book from becoming increasingly inaccessible. This is obviously an enormous task which will be very expensive. Up to the present it has in fact been the aspect of costs that has obstructed any real progress with the investigation. In addition, the Commission does not have sufficient professional personnel to undertake a task of this magnitude without adversely affecting the other investigations on the Commission's programme.

A further important dimension of this investigation is the need to purge the statute book in order to identify and rectify unconstitutional provisions.

**During the year under review representations were made to acquire additional funding to establish a unit under the auspices of the Commission to assist with this task. The outcome of the representations is still being awaited.**

\* **Project 47 - Unreasonable stipulations in contracts and the rectification of contracts**

This investigation was included in the Commission's programme in 1983. The initial research was financed by the Human Sciences Research Council. Prof C F C van der Walt of the University of Potchefstroom was appointed as an additional member of the Commission for the purposes of the inquiry.

The aim of the investigation is to determine to what extent adequate measures exist in South African law to restrict unreasonable stipulations and practices in contracts and whether those measures meet the needs of modern South African society.

Prof Van der Walt and several assistants formed a team to carry out the necessary research, which commenced in 1984. The research results were handed to the Commission by Prof Van der Walt on 11 October 1989. The research papers were submitted to the project committee appointed for the purposes of the investigation. The committee indicated that the comprehensive research results and proposals for reform should be published in summarised form as a working paper for general information and comment. A working paper was published in May 1994 for general information and comment. The closing date for comment was 30 September 1994. A workshop was held on 20 April 1995. At a meeting of the working committee assisted by experts in the field of the law of contract on 3 August 1995 the principles that should be contained in draft legislation were considered.

In the light of the Commission's decision that there is a need for further discussion of this matter, the Commission approved a discussion paper for general information and comment at its meeting on 15 June 1996. The following principles were contained in the discussion paper:

- \* Contracts are daily concluded in the expectation that they will satisfy the needs and aspirations of the contracting parties. It may only subsequently be realised that, in practical application, the contract or some of its terms are unjust or unconscionable. The question was considered whether the courts should be able to grant relief in these circumstances by either setting aside the contract or modifying its terms. With the rise of the movement for consumer protection in the early seventies, it became the generally accepted view in most first world countries that legislative action was required to deal with contractual unconscionability. The question was considered whether legislation should grant courts the power to review contracts and whether and how the scope and extent of the power of review should be defined. The *Unconscionability* or the *Good faith* criterion were considered in this regard and the unconscionability criterion was considered advisable.
  
- \* The question was further considered whether the courts will need guidelines to limit their powers of intervention and to indicate the ambit of the intended doctrine. **The provisional conclusion was that the laying down of guidelines by legislation may result in the courts considering themselves bound exclusively by those guidelines.** Another question was whether the review power of the courts should extend to all types of contracts, to non-consumer transactions, to international agreements or to standard term contracts only. **It was believed that no exceptions should be made to the provisions relating to good faith and that the proposed provisions of the Bill should apply to all contracts concluded after the commencement of the Bill and,**

**furthermore, that the Bill should be binding upon the State.** Finally, there is the question of waiver of the benefits of the Bill. It was believed that to allow the waiver of the provisions of the Bill would neutralise the efficacy of the Bill. It was therefore proposed that any agreement or contractual term purporting to exclude the provisions of the Bill or to limit its application should be void. The closing date for comment on the discussion paper was 30 September 1996, which was extended to 15 November 1996.

**A draft report for consideration by the Commission is being prepared for consideration during the first half of 1997.**

**\* Project 59 - Islamic marriages and related matters**

The object of this investigation is to determine the extent to which provision can be made in South African law for the recognition of rules of Islamic law relating to marriage, matrimonial property, succession, guardianship and related aspects of family law and the law of persons.

The project committee established for the purpose of the investigation met in 1990 and considered a working paper dealing with the nature of Islamic law and the conflict between the common law and Islamic law as well as the observance of Islamic law in South Africa. A comparative legal study received further attention during the year.

The investigation was delayed by the higher priority accorded to the Commission's investigations into Group and Human Rights and Constitutional Models. The Constitution and in particular the bill of fundamental rights have a material bearing on the investigation which should be taken into account, especially in respect of draft legislation. As the Constitution is now finalised, clarity exists as to the aspects requiring further consideration.

During the course of the year under view specific attention was devoted to the further course of the investigation. The Commission decided to accord the investigation the highest possible priority rating. In view of the complex nature as well as the wide scope of the investigation, the Commission decided to follow an incremental approach. In terms of this approach the recognition of Muslim marriages has been identified as the first area for reform.

The Commission has also established a project committee for this investigation. **Nominations for appointment to the project committee will be invited early in 1997 for consideration by the Commission and submission to the Minister.**

**\* Project 63 - Review of the law of insolvency**

The Honourable Mr Justice R H Zulman has been appointed as chairperson of the project committee in the place of Mr G G Smit.

This investigation by the Commission concerns the review of the law of insolvency in its entirety, that is, not only the Insolvency Act 24 of 1936 but also the statutory provisions applicable to the liquidation of companies, close corporations, cooperatives and other bodies corporate. It is one of the most comprehensive investigations undertaken by the Commission with the assistance of its project committee on insolvency law.

In the course of the investigation the following seven working papers were distributed for comment:

- ❑ Working Paper 29 : Prerequisites for and alternatives to sequestration
- ❑ Working Paper 30 : Qualifications, appointment and removal of liquidators
- ❑ Working Paper 33 : Effect of insolvency on assets, civil proceedings and contracts
- ❑ Working Paper 35 : Insolvency interdicts
- ❑ Working Paper 39 : Rehabilitation
- ❑ Working Paper 41 : Dispositions that are void or can be set aside and the effect of sequestration on the insolvent's spouse
- ❑ Working Paper 61 : Statutory provisions that benefit creditors

The project committee has considered the comments received on all the working papers except working paper 61 and has assumed points of view on appropriate legislation.

During 1992 the project committee reconsidered its working method with a view to expediting the completion of the investigation as far as possible. It was decided, for the time being, not to distribute further working papers for comment but to prepare draft legislation on the insolvency of individuals as soon as possible.

From comments received and research carried out the following topics were identified and were considered by the project committee in the course of the investigation:

- ❑ Assets excluded from an insolvent estate.
- ❑ Rights and duties of an insolvent.
- ❑ Meetings and proof of claims.
- ❑ Interrogations.
- ❑ The powers and duties of liquidators.
- ❑ Secured creditors.
- ❑ The application and distribution of assets and remuneration of liquidators.

- ❑ Contribution and estate accounts.
- ❑ Appeal, review and jurisdiction.
- ❑ Proposed statutory provisions in respect of pensions.
- ❑ Insolvency of a partnership and its members.
- ❑ Protection of workers' rights.
- ❑ Offences.

The project committee has taken a stance in respect of appropriate legislation with regard to the topics. A discussion paper (Discussion Paper 66) which contains a draft Insolvency Bill and explanatory memorandum has been published for comment. The closing date for comment was 15 November 1996, but has been extended to 17 January 1997 on request.

An interim report on trans-national insolvency has been completed but a further report is still to be completed before the project committee considers the matter. Trusts, deceased estates and the consolidation of statutory provisions on insolvency into one Act are still to be considered.

The Standing Advisory Committee on Company Law undertook to do the necessary research in respect of that part of the insolvency law applicable only to companies and close corporations. The object is that the Standing Advisory Committee and the Commission's project committee for the law of insolvency will eventually jointly consider proposals for reform in respect of this particular part of the law of insolvency. It has, however, transpired that because of a dearth of research personnel, the Standing Advisory Committee has not yet commenced with the investigation. As a result the Commission envisaged making researchers available for the remainder of the investigation as soon as its own researchers had completed their investigation into the insolvency of the individual, but to date researchers have not been available for this task.

As a result of interim recommendations submitted in the course of the investigation, the following legislation has been enacted:

- ❑ Section 1 of Act 6 of 1991 substituting section 34 of the Insolvency Act, 1936, to regulate the voidable sale of a business;
- ❑ section 1(3) to (5) of Act 57 of 1993 dealing with the preference conferred by a special bond over movable property;
- ❑ Act 122 of 1993 dealing with insolvency interdicts; and
- ❑ section 1 of Act 129 of 1993 dealing with appeals against sequestration orders.
- ❑ Act 32 of 1995 dealing with the protection of financial markets in the event of insolvency.

**\* Project 67 - The Usury Act and related matters**

This project is aimed at a thorough investigation of the Usury Act 73 of 1968, the Credit Agreements Act 75 of 1980 in so far as it is related to the Usury Act, and any other aspect of the law relating to the limitation of finance charges.

A contract has been concluded with Profs F R Malan and J N Otto (both of the Rand Afrikaans University) and Prof N Grové (University of Pretoria) to do the research on behalf of the Commission and to submit the results to the Commission in the form of a draft working paper. The draft working paper was submitted to the Commission's working committee several times during 1991 before it was adapted by the researchers in order to be published as a working paper. The working paper was distributed on 26 March 1993 for general information and comment. The working paper evoked wide interest in the financial and business world. A draft report was considered by the Commission in April 1994.

The Commission concluded that the desirability of simplification of the proposed draft legislation should be investigated in co-operation with the Department of Trade and Industry.

The Department of Trade and Industry who initiated the investigation has requested the Commission to remove the investigation from its programme. **The Commission has recommended the removal of the investigation from its programme. The Commission's recommendation has been submitted to the Minister together with the draft report compiled by the Commission for consideration and approval.**

\* **Project 70 - Limitation of civil liability of professional persons**

The desirability of the limitation of the delictual liability of professional persons and the possible regulation thereof by legislation are investigated in this project.

A working paper was published during December 1993 for general information and comment. After the comments received had been processed, a draft report was prepared. However, before the draft report could be submitted to the Commission, the South African Institute of Chartered Accountants (SAICA) held discussions with the Minister concerning the reform of auditors' liability. Following these discussions, SAICA made oral representations to the working committee at its meeting on 4 August 1995. The representations can be summarised as follows:

- ❑ Auditors and chartered accountants are in a special position. The audit function required by law places auditors in a category that differs from those of other professions. It exposes them more to unlimited liability than for example attorneys and stockbrokers.
- ❑ It is very difficult to obtain professional indemnity insurance to cover liability that auditors might incur as a result of negligence or dishonesty in the exercise of their profession.
- ❑ It was suggested that the American limited liability partnerships may possibly serve as a model for solving the problem in South Africa. SAICA undertook to do research on the operation of limited liability partnerships and to approach the Commission with new proposals. These proposals are being awaited.

During the course of the year under review the Commission recommended the removal of the investigation from its programme. During November 1996 the Minister, however, requested the Commission to continue with the investigation.

**The further course of the investigation will be considered at the Commission's first meeting in 1997.**

**\* Project 73 - The simplification of criminal procedure**

The object of this project is to investigate the possibility of shortening and simplifying certain cumbersome procedures that give rise to the unnecessary protraction of trials, without sacrificing justice. Owing to the scope of the investigation the Commission decided to publish several working papers relating to different aspects of the investigation.

In the first phase of the investigation, the Commission dealt with problems relating to appeal procedures. A report was handed to the Minister during 1994.

In the second phase of the investigation the Commission considered the reasons for delays in the finalisation of trials, abuses of the process, particular provisions of the Criminal Procedure Act, 1977, which cause delays, as well as delays resulting from the administration of the process. A working paper was published in November 1993 for general information and comment. Based on the comment received, a draft report was considered and approved by the Commission on 25 August 1995. The report was submitted to the Minister on 15 December 1995. A summary of the recommendations contained in the report is provided in Chapter 4.

During September 1994, in the discussion of his budget Vote in the senate, the Minister expressed the view that it is imperative to involve ordinary people in the legal system, especially in the adjudication process, and that a system of lay magistrates, similar to the one in Britain, should be investigated. The Minister also expressed his concern for the unprecedented crime wave sweeping the country and indicated that we need innovative thinking to solve these problems. Against this background the Minister requested the Commission to give attention to the problems arising from the application of the bill of rights to criminal law, law of criminal procedure and sentencing. The Commission's investigation should, *inter alia*, deal with the questions of sentencing guidelines, greater community participation in sentencing and advising the courts on sentencing.

Following the request by the Minister the Commission had to reconsider the completion of its investigation into the simplification of criminal procedure. At its meeting on 24 February 1996 the Commission approved the appointment of a project committee for the investigation. The names of the members of the project committee are reflected in **Annexure B**.

The project committee met on 19 October 1996 and considered the planning of the investigation. It was resolved that:

- Consultation on the breakdown of the criminal justice system is crucial in restoring the legitimacy of the criminal justice process and to this end the input of all interested parties at grassroot level including CBOs and NGOs should be obtained;
- access to the criminal justice system is of particular importance;
- the investigation into problems arising from the application of the Bill of Rights to criminal procedure should receive immediate attention in view of the delays resulting from allegations as to the constitutionality of provisions of the Criminal Procedure Act.

The Commission has a separate project on sentencing (project 82) on its programme. In this project attention will be given to sentencing guidelines, community participation in sentencing and the influence of the human rights provisions of the Constitution on sentencing provisions and sentencing options.

An issue paper on access to justice has been completed and will be considered for publication early in 1997.

\* **Project 82 - Sentencing**

The Commission's approach is to evaluate the present position with regard to sentencing in South Africa, to identify defects, to investigate criticism of the present system and to find solutions to shortcomings. A project committee was appointed during 1991 to assist the Commission in its investigation and a number of subjects were identified for investigation including an evaluation of existing forms of punishment and alternative sentencing options, community participation and individual interests in sentencing, pre-sentencing procedures with special reference to juvenile offenders and the compensation of victims of crime. During September 1994 the Minister of Justice requested the Commission to investigate the questions of sentencing guidelines, greater community participation in sentencing and advising the courts on sentencing.

Prof Cilliers, a former member of the project committee, attended the 8th International Symposium on Victimology, which was held in Adelaide, Australia, from 21 to 26 August 1994. A report by Prof Cilliers on the compensation of victims of crime was presented to the Minister during 1995 and the Minister indicated that a working document on the subject should be published. Since the terms of office of the members of the project committee expired during 1994, the Commission approved the appointment of a new project committee at its meeting on 24 February 1996.

The project committee was appointed by the Minister on 20 September 1996 and met on 19 October 1996 to consider the planning of the investigation. The committee resolved that, prior to deciding on its approach to the question of sentencing in South Africa and embarking upon specific areas of investigation, it was vital that information should first be obtained regarding:

- The statistics available in South Africa on the question of sentencing;
- community perceptions of the problems relating to sentencing; and

- the training in respect of sentencing available for prosecutors, magistrates and judges.

The committee, however, also acknowledged that there was a need to address certain problems immediately. To this end the following issues are being attended to:

- An issue paper on the compensation of victims of crime has been completed and will be considered for publication at the next meeting of the committee early in 1997;
- an issue paper on community participation and individual interests in sentencing has been completed and will be considered for publication early in 1997;
- diversion of juveniles from the criminal justice system should be considered in co-operation with the project committee appointed for the Commission=s investigation into a new juvenile justice system; and
- in view of the high crime rate, attention will be given to the issue of minimum and maximum sentences for serious offences. The project committee resolved that a structured sentencing system should be developed in the long term.

\* **Project 85 - Aspects of the law relating to AIDS**

The Commission has been investigating aspects of the law relating to HIV/AIDS since 1993. Since then extensive research has been done covering issues concerning testing for HIV infection; confidentiality of AIDS related information; blood transfusion; discrimination in the health care setting and the workplace, as well as discrimination in relation to sex workers, prisoners, children and insurance, and legislative options for prevention and education. Evidence was heard from interest groups, and a discussion document (Working Paper 58) was published for general information and comment during 1995. Comments on the Working Paper reflected differences of opinion between interest groups, **inter alia** regarding the Commission=s basic preliminary conclusion that an AIDS-specific statute (containing a general prohibition against unfair discrimination on the ground of HIV infection) was warranted.

After the appointment of members of the Commission's project committee on HIV/AIDS expired, and the appointment of a new representative Commission at the beginning of 1996, new appointments were made to the project committee to reflect various skills and different experiences to assist the Commission with the development of a final report for consideration by the Minister of Justice. Mr Justice Edwin Cameron acts as project leader. The names of the other members of the project committee are reflected in **Annexure B**.

The project committee is pursuing a consultative process in an attempt to resolve the differences of opinion reflected in the comments on Working Paper 58. It is also following an approach of dealing with issues incrementally in an attempt to finalise them more swiftly. In doing so it has, since its appointment in August 1996, identified certain aspects concerning HIV/AIDS which warrant urgent intervention, and which from a scientific, medical and legal viewpoint appear to be relatively uncontroversial. Preliminary proposals regarding these issues were motivated in a discussion paper (Discussion Paper 68) which was widely distributed for comments among various role players during October 1996. Comments received in general supported the preliminary recommendations and the Commission on 29 November 1996 approved an interim report dealing with these issues. Information regarding the interim report appears in Chapter 4.

**Subsequent interim reports will deal with other matters identified for reform.**

\* **Project 86 - Euthanasia and the artificial preservation of life**

The advances made in medical science and especially the application of medical technology have resulted in patients living longer. This signifies a welcome prolongation of meaningful life for many patients, but the prolongation of a poor quality of life for others, which inevitably raises the question whether treatment is a benefit or a burden.

Worldwide, increased importance is being attached to a patient's autonomy and the need has therefore arisen to consider the protection of a patient's right to refuse medical treatment, particularly where the patient is no longer capable of communicating his or her wishes to the doctor. In this regard the so-called living will is relevant.

A working paper was published on 4 February 1994 for general information and comment. The aim of this investigation was to determine whether and in what circumstances actions that could indirectly end a person's life may be justified; the role that the wishes of the patient should play in this regard and what conduct would be acceptable in cases where no instructions or requests were received from such persons.

In accordance with the Commission's policy to consult with all interested parties, a workshop on this topic was held on 22 June 1994. It was attended by 80 persons, including experts in the fields of medicine, law, religion and ethics.

On 18 October 1996 a second workshop was held where draft legislation was discussed. It was attended by 20 persons, all of whom were experts in the fields of medicine and law.

In the light of the great interest displayed by the public in this investigation and the evident need for more comprehensive discussion of the whole problem of euthanasia, the artificial preservation of life and the termination of life, **a second extensive discussion paper will be published early in 1997 for general information and comment.**

In addition to the issues discussed in the first working paper, the aim of this discussion paper is to investigate further whether and in what circumstances actions that could directly end a person's life may be justified. A distinction has been made between cases where clinical death has set in, cases where the terminally-ill person is mentally competent and cases where the terminally-ill person lacks mental competency.

\* **Project 88 - The recognition of a class action in South African law**

As a result of various representations by consumer organisations and a request by the former Minister of Justice in this regard, the Commission included this investigation in its programme.

During 1993 a project committee of experts was appointed in order to assist the Commission with the investigation. The particulars appear in **Annexure B**. During 1993 a member of this project committee, Prof C Loots of the University of the Witwatersrand, did research in the United States of America on behalf of the Commission with regard to the latest developments in this area.

During August 1995 the working and project committees approved the publication of a working paper which was released during October 1995 for general information and comment. The closing date for

comment was 30 November 1995. The working paper contained preliminary proposals regarding the possible introduction of class actions and public interest actions in South African law.

During the course of the year the research was completed and a draft report compiled. **The draft report will be considered by the Commission during the first half of 1997.**

\* **Project 90 - Harmonisation of the common law and indigenous law**

The newly reconstituted project committee for the harmonisation of the common law and the indigenous law had its first meeting on 7 June 1996. The committee adopted a provisional programme, identifying the recognition of indigenous marriages and the conflict of laws in the application of indigenous law as the two matters which should be dealt with first. Two issue papers, dealing with these topics, were subsequently published for general information and comment. Prof R T Nhlapo, the full-time member of the Commission and Chairperson of the project committee, publicly presented issue papers 3 and 4 to Dr M E Tshabalala-Msimang MP, Deputy Minister of Justice on Wednesday, 25 September 1996.

Issue paper 3 notes that since indigenous law marriages are potentially polygynous, they have consistently been denied full recognition. The new Constitution now presents an opportunity to rethink the legal dualism of the past. Forms of marriage, polygyny, consent of the spouses, minimum age, parental consent, formalities, bride wealth (*lobolo*), and the consequences of marriage are investigated in issue paper 3. Furthermore, breakdown of the marriage and the procedure, division of property, maintenance and custody and guardianship on divorce are considered. The questions are posed whether there is a need for a common marriage law for all South Africans, or whether indigenous law marriages should be dealt with in separate legislation, and whether certain indigenous marriage practices, including bridewealth and polygyny, are incompatible with the Constitution and the Bill of Rights and, if so, in what specific ways.

With the assistance of the Gender Unit of the Department of Justice and the gender units of the Provinces a number of workshops in which the Commission participated were organised in rural and urban areas to debate the issues and proposals contained in the issue paper. Workshops were held in East-London, Kimberley, Mmabatho, Pietersburg, Thohoyandou, Giyani and Lebowagomo. Further workshops will take place during January and February 1997.

Issue paper 4 deals with the conflict of laws in the application of indigenous law. Since indigenous law now enjoys explicit recognition on a par with common law as part of South Africa's legal system, a clear choice of law rules are required to direct the courts to apply either indigenous law or common law in line

with the parties' social circumstances and the requirements of the Constitution. At present, it is far from clear when indigenous law is applicable, for the rules on application are fragmentary, vague, badly drafted and out of date. Recent family law legislation, emanating from the South African Parliament and the legislatures of the former homelands, is also relevant when it comes to choosing a system of law, since much of it amends or repeals indigenous law. Choice of law rules in existing legislation often do not make it clear whether indigenous and common law are attributable to persons or territories. With the recognition by the proposed new Constitution of a right to culture (ss 30 and 31) and of religious and traditional systems of personal family law (s 15(3)), the need for rules which reflect the fact that litigants are subject to particular legal regimes because of personal qualities (eg cultural orientation) becomes obvious.

The closing date for comment on issue paper 3 was 31 October 1996 and 30 November 1996 in the case of issue paper 4. The closing dates were subsequently extended to 31 January 1997 in view of the workshops which the Department of Justice in collaboration with the Commission and the regional Offices on Gender Equality conducted on the issues raised in issue paper 3.

**It is expected that discussion papers will be published for general information and comment during the first half of 1997.**

**\* Project 94 - Arbitration**

Acting on a proposal by the Association of Arbitrators of South Africa, the Commission is currently investigating all facets of the law regarding international and domestic arbitration.

Political developments in South Africa are at present leading to increased regional trade and economic links with other countries. As business people favour arbitration as a means of resolving disputes, it is important that the country's arbitration law should be in line with international norms.

It is argued, however, that the present South African law is not suitable for international commercial arbitration. The Arbitration Act 42 of 1965 contains no provisions which expressly deal with international arbitration, while the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 is limited to the enforcement of foreign awards only. It is further felt that the court's statutory powers and powers of assistance and supervision during the arbitral process may be excessive.

The Commission supports the proposal that the reform of the Arbitration Act should be considered in order to create an effective legislative framework for the resolution of international trade disputes. In this process consideration should be given to the Model Law which was adopted by the United Nations Commission on International Trade (UNCITRAL) on 21 June 1985. It provides a framework within which international arbitration can be conducted with a minimum degree of judicial intervention and a significant degree of party autonomy.

As a first step the Commission published an issue paper dealing with international arbitration principles for general information and comment in September 1995. This was followed by the publication of a discussion paper during December 1996. In this paper a holistic approach to international arbitration legislation is adopted. It includes South Africa's response to the Model Law; possible changes to the legislation on the New York Convention (currently set out in Act 40 of 1977), and the proposed accession by South Africa to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The paper includes draft legislation with a commentary. **The closing date for comment on the discussion paper is 31 March 1997.**

In August 1996 the investigation into arbitration was broadened to include an investigation into alternative dispute resolution (ADR) at all levels. **An issue paper in this regard will be published for general information and comment early in 1997.**

**\* Project 95 - The admissibility of computer evidence**

The business world relies with confidence on the computer for the keeping and processing of information. However, when it comes to the presentation of evidence in civil and criminal proceedings, the law is reluctant to admit as evidence information produced by computer. The Computer Evidence Act 57 of 1983 sets strict requirements with which computer print-outs must comply in order to be admitted as evidence in civil proceedings.

Prof C H W Schmidt of the University of South Africa did a comparative survey of laws on this subject. The Commission also approached approximately 115 institutions, bodies and individuals to determine whether the provisions of the Computer Evidence Act, or similar provisions in an adapted form, should be made applicable to criminal proceedings.

According to information obtained by the Commission it is virtually impossible to meet the prescribed requirements. Although computer evidence is more readily admitted in criminal cases, its admissibility remains problematic.

The Commission's proposals for the improvement of the existing legal situation are aimed at simplifying the utilisation of computer evidence. In order to achieve this it is suggested that the Computer Evidence Act be repealed and the legal position in civil and criminal matters be uniformly regulated. The ordinary rules of evidence applicable to documentary evidence should also apply to computer print-outs.

**A working paper was published on 19 October 1995 for general information and comment. The closing date for comment was 31 December 1995.**

After considering the background and proposals made by respondents on the working paper the question was raised whether it was necessary to propose the enactment of a Computer Act and whether the issues, being of a practical nature, cannot be resolved by the Rules Board. **The matter was consequently referred to the Rules Board. Their reply is awaited.**

**\* Project 96 - The Apportionment of Damages Act, 1956**

On the recommendation of the project committee on the law of delict the above investigation has been included in the Commission=s programme. Since the Apportionment of Damages Act, 1956, causes several problems in practice, the committee was of the opinion that the Act should be reviewed in its entirety.

**A discussion paper was published on 18 October 1996 for general information and comment. The closing date for comment was 30 November 1996.**

With the introduction of the Apportionment of Damages Act in 1956 the common law relating to contributory negligence was amended. The Act empowers the courts to determine the degree of fault of each party in an action for damages based on negligence and to apportion the damages accordingly. The Act also repealed the common law rule of the last opportunity of avoiding an accident as the test of liability and amended the law relating to joint wrongdoers.

The provisions of the Act are frequently applied in motor vehicle accidents cases where both parties are partly to blame for the accident. The court apportions the liability of the respective parties and awards damages accordingly. The Act also makes it possible to sue joint wrongdoers in the same action. A multiplicity of actions is thus avoided.

The Act has been on our statute book since 1956 and has only been amended twice. It has been working fairly well especially if its frequency of use in our courts is considered. The Commission is therefore careful not to endanger the very foundation of our law of contributory negligence or of the law relating to joint wrongdoers.

In the discussion paper the Commission addresses, among others, the following possible matters for reform:

- \* The enforcement procedure against third parties. There is, for example, no equivalent to the third party rule (Rule 13) of the Supreme Court in the Magistrate=s Court. This makes the third party procedure in the Magistrate=s Court ineffective.
- \* The legal uncertainty as to the meaning of >fault= as defined in the Act. >Fault= ordinarily implies negligence or intent on the part of the wrongdoer. Two of the questions raised are whether the Act allows a defence of contributory intention and whether the Act applies to other intentional acts (e.g. assault). If the Act were to apply in the last instance, then the liability of the person assaulted can be apportioned and his or her damages reduced.
- \* At present the Act only applies to delictual damages. The possibility of making the Act applicable to contractual damages is being investigated. In the case of such an extension, the provisions of the Act should, in the Commission=s view, also apply to cases of breach of trust, breach of a statutory duty (where fault is a requirement) and breach of a fiduciary duty.
- \* Some consequential changes are also suggested. The Act, for instance, still refers to the Motor Vehicle Insurance Act, 1942 and the Administration of Justice Proclamation, 1919.

**A draft report will be considered by the Commission during the first half of 1997.**

\* **Project 100 - Review of family law and the law of persons**

Since the establishment of the Commission, aspects of family law and the law of persons have been investigated on a continuous basis. On the recommendation of the Commission, far-reaching amendments to divorce law, matrimonial property law and domicile have been effected.

There is considerable overlapping between family law and the law of persons and the opinion has been expressed that the inclusion of a single comprehensive investigation in the Commission's programme is justified. The inclusion of the investigation will enable the Commission to monitor, on a continuous basis, the reform measures that have been implemented in these branches of the law and, if necessary, to make additional recommendations in good time.

The following areas are currently receiving the Commission's attention:

\* **Family violence**

The background to this investigation is outlined in Chapter 3.

In order to facilitate a focused debate, Issue Paper 2 on Family Violence, in which possible problem areas were highlighted, was published at the beginning of July 1996. The closing date for comments was 15 August 1996, but at the request of several role players the closing date was extended until 31 August 1996. Issue Paper 2 on Family Violence was the first issue paper on a matter in which people at all levels of society had a direct interest. There has been an excellent response from all role players, including NGOs.

A draft discussion paper on Family Violence is being compiled and will be considered by the working committee on 7 February 1997.

\* **Maintenance**

The background to this investigation is outlined in Chapter 3.

**A draft issue paper is being compiled and will be considered by the Working Committee on 7 February 1997.**

**\* Project 101 - Investigation into the application of the bill of rights to the criminal law, law of criminal procedure and sentencing**

The research has commenced. Matters relating to criminal procedure and sentencing are at present dealt with as part of existing investigations on the Commission's programme. (See project 73 and project 82.)

**\* Project 102 - The civil jurisdiction of the courts**

The Commission has already completed an investigation into the existence of a jurisdictional lacuna in the Supreme Court Act and the report was presented to the Minister. This investigation focused on the elimination of a lacuna in the Supreme Court Act related to attachment and arrest as grounds of jurisdiction in claims against foreigners. An amendment of section 19 of the Supreme Court Act, 1959, was recommended.

During the investigation, however, a number of respondents also highlighted other problems concerning the jurisdiction of the courts. In recent years the courts also handed down conflicting decisions on consent to jurisdiction and its effect on attachment or arrest as grounds of jurisdiction. It was also proposed that section 28 of the Supreme Court Act, 1959, should be amended. The view was also expressed that the current legal position regarding attachment should be subjected to a fundamental investigation because the South African law is not in line with developments elsewhere in the world.

In the light of the new constitutional dispensation and the establishment of nine provinces, the question also arises whether the present rules governing attachment and arrest as grounds of jurisdiction are not outdated.

**According to preliminary planning, research will commence in 1997.**

\* **Project 103 - Capping of claims against the Multilateral Motor Vehicle Accidents Fund**

The Department of Transport approached the Commission with a request to include the investigation in its programme, which the Commission subsequently did. The inclusion of the investigation in the Commission=s programme was confirmed by the Minister on 4 September 1995.

The need for the investigation emanates from the unsatisfactory financial position of the Multilateral Motor Vehicle Accidents Fund (>the MMF=). The Auditor-General annually reports on the financial statements of the MMF and has found that the fund is technically insolvent, that there is uncertainty regarding the long-term position of the fund due especially to the actuarial liability for outstanding claims and that it is impossible to give an opinion on the continued existence of the fund as a going concern.

Research has commenced. However, at the Commission=s meeting of 23 and 24 February 1996 it was decided to keep the investigation in abeyance pending clarification on the possible introduction by the Department of Transport in Parliament of a Bill and a White Paper dealing with this subject. Since then the Department of Transport has published draft legislation and a draft White Paper.

The Department of Transport was asked to indicate why the Commission should not recommend to the Minister that this investigation be removed from its programme. **The Department of Transport supports the removal of the investigation from the Commission=s programme. The Minister=s approval is awaited.**

\* **Project 105 - Security legislation**

The background to this investigation is outlined in Chapter 3.

The Commission is considering the establishment of a project committee for this investigation.

**A draft issue paper will be compiled for consideration by the Commission as soon as possible.**

**\* Project 106 - Juvenile Justice**

The background to this investigation is outlined in Chapter 3.

A project committee in respect of this investigation was appointed by the Minister on 5 December 1996. The names of the members of the committee are reflected in **Annexure B**.

**The committee's first meeting, during which the planning of the investigation will be discussed, is due to take place on 29 January 1997.**

**\* Project 107 - Sexual offences by and against children**

The background to this investigation is outlined in Chapter 3.

A project committee in respect of this investigation was appointed by the Minister on 4 December 1996. The names of the members of the committee are reflected in **Annexure B**.

**The committee's first meeting, during which the planning of the investigation will be discussed, is due to take place on 17 February 1997.**

**\* Project 108 - Computer related crimes**

The background to this investigation is outlined in Chapter 3.

**According to preliminary planning research will commence in 1997.**

## PUBLIC RELATIONS

It is important for the Commission to project the image of an objective law reformer, and it therefore appreciates the value of public relations. For the efficient performance of its functions, the Commission depends on the good co-operation of institutions and persons that have an interest in its investigations. In order to ensure the best possible involvement of interested parties, therefore, it is the Commission's policy to inform the public as far as possible of new investigations undertaken and of discussion papers published for general information and comment. Issue papers and discussion papers of the Commission are released by way of press statements so as to ensure good coverage. However, the Commission of its own accord also submits issue papers and discussion papers to institutions that have an interest in the investigation concerned. The reaction to these documents is an indispensable link in the process of law reform and it plays an important role in the eventual recommendations made by the Commission in its reports.

During the year under review the Commission intensified its liaison with law faculties and NGOs in order to broaden its consultation base. The Commission's full-time member, Professor R T Nhlapo, and its secretary Mr W Henegan, visited the Law Faculties at the University of Cape Town, the University of the Western Cape, the University of Durban-Westville, the University of Natal (both the Durban and the Pietermaritzburg campuses), the University of Zululand, the University of the North and the University of Venda. Representatives from the campus branches of Street Law were also invited to attend the meetings at the law faculties. In addition the following institutions and NGOs have been visited:

National Association of Democratic Lawyers

Durban: 15 March 1996 and

: 4 November 1996

Cape Town: 25 March 1996

Black Lawyers' Association

Durban: 15 March 1997

Lawyers for Human Rights

Durban:15 March 1996  
Cape Town:26 March 1996  
Pietermaritzburg:6 November 1996

Cape Law Society

Cape Town:25 March 1996

Natal Law Society

Durban:4 November 1996

Transvaal Law Society

Witbank circle:29 July 1996

Nelspruit circle:30 July 1996

Venda circle:31 July 1996

Pietersburg circle:1 August 1996

Legal Resources Centre

Cape Town:25 March 1996

Community Peace Foundation

Cape Town:25 March 1996

Street Law (National Head Office)

Cape Town:27 March 1996

Community Law Centre

Cape Town:27 March 1996

The purpose of these visits was to introduce the new Commission and its vision for law reform as well as to discuss its policies and working methods. The Commission would like to express its appreciation for the warm receptions and constructive discussions. The visits will continue during 1997.

To promote the image of the Commission as a community orientated organisation, a brochure introducing the Commission was published and distributed in all official languages.

The Commission is now publishes a quarterly Bulletin. The aim of the Bulletin is to inform people about and interest them in the work of the Commission. The Bulletin contains information on the activities of the Commission, an update on current projects and items on new and completed investigations. The Commission=s secretary submitted several articles dealing with the work of the Commission for publication in De Rebus and Consultus.

The Commission=s researchers are invited to attend meetings of the Parliamentary Committees when legislation recommended by the Commission is considered. The Commission appreciates the opportunity to be directly involved in the Parliamentary process when reports and draft legislation emanating from the Commission are considered. During the course of the year under review the seven Bills dealt with in Chapter 1 were considered by the Justice Portfolio Committee and enacted by Parliament. During the second reading debate the Chairperson of the Justice Portfolio Committee, Adv Johny de Lange MP, referred to the participation of the researchers concerned in the following terms:

I also want to say something about the SA Law Commission because without them, their support and research we would definitely not have been able to have these Bills here before Parliament.... Here we are particularly thinking of Mr Pieter Smit, Mr Willie van Vuuren and Mr Van Wyk. These three have almost lived down here permanently over the past few weeks to help and assist us, and to make sure that the work was done on time. Not only have they been diligent, but they are also people with tremendous potential and intellect, and it is through their wisdom and assistance that we have been able to get the legislation to the state that we have in the time available.

Where possible, members of the Commission and its Secretariat attend conferences and seminars dealing with matters relating to the Commission=s investigations.

The good relations that the Commission maintains with foreign law reform bodies make the exchange of working papers, reports and other information possible. In this way valuable information is exchanged that facilitates and expedites comparative law research. A number of law reform agencies have been established throughout the Commonwealth. In August 1996, representatives of some of these agencies met in Vancouver immediately before the start of the Eleventh Commonwealth Law Conference and spent a day discussing issues of common concern. Professor Nhlapo, the Commission=s full-time member, represented the Commission. The triennial meeting is only one of the ways in which contact takes place between law reform agencies. Mr Gauntlett SC, while on private business, visited the Law Reform Commission in Sydney, Australia as well as the Law Reform Commission of Western Australia. The discussions were particularly beneficial to us. The Commission=s secretary was particularly pleased to receive his counterpart, Dr Sipula Kabanje from the Law Development Commission in Zambia accompanied by Mr Konsolo, the Permanent Secretary attached to the Ministry of Legal Affairs. During

the discussions working methods were compared and avenues for closer co-operation were explored. It is significant how various legal systems often grapple with the same problems, and the exchange of documents and ideas enables the Commission to evaluate ways of thinking elsewhere in the world. It was also a particular privilege to receive Mr Justice Singini and his delegation from the newly established Law Commission in Malawi who were briefed on the working methods of the Commission.

The Commission maintains good relations with the news media. Information that, in the Commission's opinion, is newsworthy is supplied to the news media and enquiries from the media are, as far as possible, replied to fully and promptly. The Commission wishes to express its gratitude for the friendliness and kind co-operation it receives from the media. Members of the Commission participated in a variety of television and radio programmes during the year under review.

The Commission's doors are open to visitors who wish to obtain information concerning its activities or who wish to discuss matters of interest. During the year, numerous foreign visitors from different countries visited the offices of the Commission. The majority of visitors were interested in the changes taking place in South Africa and the role of the Commission in this process.

## ACKNOWLEDGEMENTS

During the year under review a substantial number of persons and bodies responded to specific or general invitations by the Commission to comment on particular matters or to assist it with its activities in some respect or other. These contributions and comments received by the Commission in respect of its working papers are indispensable links in the process of law reform. It is impossible, within the scope of this report, to mention all such individual bodies. However, the Commission wishes to avail itself of this opportunity to express its sincere thanks to all concerned - without their goodwill and assistance it would not be able to perform its duty satisfactorily.

The Commission does, however, wish to make special mention of the Government Printer and his staff who are responsible for the printing of the Commission=s reports. The Commission requested, almost without exception, that the printing of these reports be expedited. The Commission wishes to express its sincere gratitude that the printed reports were delivered on the dates fixed.

In conclusion, the Commission also wishes to thank the Minister and Deputy Minister of Justice for their personal interest in and support of the Commission=s work. The Commission wishes to thank, too, the Department of Justice for its co-operation and goodwill.

## ANNEXURE A

### PRESENT AND FORMER MEMBERS OF THE COMMISSION IN ORDER OF APPOINTMENT

(Present members marked with an asterisk, see Chapter 2.)

Title/Name	Term of office
<b>Chairpersons</b>	
The Honourable D H Botha, Judge of Appeal	1973-09-28 to 1975-12-28
The Honourable Chief Justice P J Rabie DMS	1976-02-27 to 1982-05-31
The Honourable G Viljoen, OMSG, Judge of Appeal	1982-09-30 to 1988-11-30
The Honourable H J O van Heerden, Judge of Appeal	1988-12-01 to 1995-12-31
The Honourable Justice I Mahomed*, Vice-President of the Constitutional Court and Chief Justice designate	1996-01-01 to date
<b>Vice-Chairpersons</b>	
The Honourable Judge President N James DMS	1973-09-28 to 1977-07-13
The Honourable G Viljoen, OMSG, Judge of Appeal	1977-09-22 to 1982-09-27
The Honourable H J O van Heerden, Judge of Appeal	1982-09-30 to 1988-11-30
The Honourable P J J Olivier*, Judge of Appeal	1988-12-01 to date
<b>Full-time members</b>	
Adv G G Smit	1982-01-01 to 1995-12-31
The Honourable Mr Justice P J J Olivier	1986-02-01 to 1995-03-31
Professor R T Nhlapo*	1996-01-01 to date
<b>Members</b>	
Mr D J du P Geldenhuys	1973-09-28 to 1975-10-31
Adv C P Joubert SC	1973-09-28 to 1974-08-20
Mr J E Knoll OMSS	1973-09-28 to 1995-12-31

Title/Name	Term of office
Adv D D van Niekerk SC	1973-09-28 to 1979-01-31
Prof A D J van Rensburg	1973-09-28 to 1982-08-30
Adv H J O van Heerden SC	1974-09-30 to 1976-08-11
Adv J C Ferreira SC	1975-09-22 to 1979-10-31
Adv M Bliss QC	1976-10-07 to 1977-02-24
Adv F H Grosskopf SC	1977-07-01 to 1980-11-21
Adv G G Smit	1979-02-01 to 1982-01-01
Mr P A J Kotzé	1979-11-01 to 1988-10-30
Adv P M Nienaber SC	1981-06-14 to 1982-07-27
Adv P J J Olivier SC	1982-09-30 to 1988-12-01
Prof J T Delpont	1982-09-30 to 1987-05-27
Prof D J Joubert	1987-12-21 to 1995-12-31
Dr W G M van Zyl	1988-11-01 to 1991-10-31
Adv R P McLaren SC	1989-07-24 to 1990-10-31
Prof C R M Dlamini SC	1991-05-08 to 1995-12-31
Mr J A Venter	1992-03-12 to 1995-12-31
Justice Y Mokgoro*	1996-01-01 to date
Adv J J Gauntlett SC*	1996-01-01 to date
Mr P Mojaelo*	1996-01-01 to date
Ms Z Seedat*	1996-01-01 to date

## ANNEXURE B

### PROJECT COMMITTEES OF THE COMMISSION AND MEMBERS THEREOF

(Chairpersons of committees are marked with an asterisk.)

Committee	Members	
AIDS	Judge E Cameron*	
	Mr Z Achmat	Former Head, AIDS Law Project; Centre for Applied Legal Studies at the University of the Witwatersrand
	Mr B Botha	General Manager, Human Resources, AECI Ltd
	Ms M Makhalemele	Community representative
	Dr J Matjila	Department of Community Health, MEDUNSA
	Dr G J Mtshali	Chief Director, National Programmes, Department of Health
	Prof T Nhlapo	Full-time member of the Commission
	Ms A Strode	National Co-ordinator, Lawyers for Human Rights: AIDS and Human Rights Programme
	Prof C van Wyk	Professor of law, Department of Jurisprudence, UNISA
Arbitration	Judge J Steyn*	
	Prof D W Butler	Professor: Law Faculty, University of Stellenbosch
	Mr R H Christie QC	Formerly Professor of Law; University of Zimbabwe
	Adv J J Gauntlett SC	Member of the Commission
	Ms Y S Meer	Attorney
	Prof R Choudree	Professor of law, Department of

<b>Committee</b>	<b>Members</b>	
		Mercantile law, University of Durban-Westville
	Ms B Hechter	Office of the Family Advocate
	Mr A Jooste	Chief Magistrate, Cape Town
	Ms N Mkefa	Community Peace Foundation
	Adv P Pretorius	Johannesburg Bar
Class actions	Judge P J J Olivier*	Vice-Chairperson of the Commission
	Adv J J Gauntlett SC	Member of the Commission
	Prof C Loots	Professor in Civil Procedure and Environmental law, University of the Witwatersrand
	Mr E Makgoba	Attorney
	Ms S Meer	Attorney, Legal Resources Centre, Cape Town
	Mr P Mojapelo	Member of the Commission
	Mr D Nkadimeng	Attorney
Harmonisation of the common law and indigenous law	Prof T Nhlapo*	Full-time member of the Commission
	Ms L G Baqwa	Attorney
	Prof T W Bennett	Law Faculty, University of Cape Town
	Adv F Bosman SC	Formerly the Chief Family Advocate
	Prof C R M Dlamini SC	Rector of the University of Zululand
	Judge Y Mokgoro	Judge of the Constitutional Court and member of the Commission
Insolvency	Judge R H Zulman*	
	Mr N Coetzer	Attorney

Committee	Members	
	Dr E de la Rey	Department Legal Services, Financial Services Board, formerly Professor: Law Faculty, University of South Africa
	Mr A J Esterhuyse	Chief Master of the Supreme Court
	Prof M M Katz	Attorney and nominee of the Standing Advisory Committee on Company Law
	Mr L F Pereira	Attorney and nominee of the Association of Insolvency Practitioners of Southern Africa
Juvenile justice	Ms A Skelton*	Lawyers for Human Rights, Pietermaritzburg
	Ms P Moodley	Lecturer, Department of Public law, University of Durban-Westville
	Ms Z Seedat	Member of the Commission
	Ms J Sloth-Nielsen	Community Law Centre, University of the Western Cape
	Mr T Thipanyane	SA Human Rights Commission
	Ms M Tserere	Lawyers for Human Rights, Umtata
Money laundering	Adv J J Gauntlett SC*	Member of the Commission
	Mr T Coetzee	Assistant General Manager: Exchange Control; SA Reserve Bank
	Prof A Itzikowits	Professor: Law Faculty, University of the Witwatersrand
	Mr A V Pienaar	Group Legal Adviser: Standard Bank Investment Corporation
	Mr H Stark	Divisional Head: Bank Supervision, SA Reserve Bank
	Dr F H Van Zyl	Head: Department Legal Services,

<b>Committee</b>	<b>Members</b>	
		Financial Services Board
Sentencing	Ms Justice L van den Heever*	
	Mr K Govender	Attorney
	Adv M R Hellens SC	Johannesburg Bar
	Mr N Kollapen	National Projects Director of Lawyers for Human Rights
	Mr M A Makume	Attorney
	Ms P Moodley	Lecturer, Department of Public law, University of Durban-Westville
	Judge P J J Olivier	Vice-Chairperson of the Commission
	Prof D van Zyl Smit	Professor of law, Department of Criminal and Procedural law, University of Cape Town
Sexual offences by and against children	Ms Z Seedat*	Member of the Commission
	Ms C McClain	Community Law Centre, University of the Western Cape
	Ms E H Mthombeni	Department of Correctional Services, Durban-Westville
	Mr B Pillay	Attorney
	Ms E M Schurink	Centre for Social Welfare Policy, HSRC
	Ms R L September	Institute of Child Family Development, University of the Western Cape
	Ms J van Niekerk	Childline, Durban
Simplification of criminal procedure	Ms Justice L van den Heever*	
	Prof A E B Dhlokhlo	Dean, Faculty of Law, University of

Committee	Members	
		Zululand
	Adv M R Hellens SC	Johannesburg Bar
	Mr P A J Kotze	Retired Regional Court President
	Prof B Majola	Director, Legal Resources Centre
	Mr K J Moloji	Attorney
	Judge P J J Olivier	Vice-Chairperson of the Commission
	Ms A Ramgobin	Director of the Legal Aid Centre, UND and associate member of the Durban Bar

## ANNEXURE C

### PRESENT PROGRAMME OF THE COMMISSION

Project number	Title
8	Steps aimed at making the common law more readily available
25	Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book
47	Unreasonable stipulations in contracts and the rectification of contracts
59	Islamic marriages and related matters
63	Review of the law of insolvency
67	The Usury Act and related matters
70	Limitation of civil liability of professional persons
73	The simplification of criminal procedure
82	Sentencing
85	Aspects of the law relating to AIDS
86	Euthanasia and the artificial preservation of life
88	The recognition of a class action in South African law
90	Harmonisation of the common law and indigenous law
94	Arbitration
95	The admissibility of computer evidence
96	The Apportionment of Damages Act, 1956
100	Family law and the law of persons * Family Violence * Maintenance
101	The application of the bill of rights on the criminal law, the law of criminal procedure and sentencing
102	The civil jurisdiction of courts
103	Capping of claims against the Multilateral Motor Vehicle Accidents Fund

Project number	Title
105	Security legislation
106	Criminal juvenile justice system
107	Sexual offences committed by and against children
108	Computer related crimes

## ANNEXURE D

### INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT: RESULT

(Current investigations marked with an asterisk,  
see Chapter 5.)

Project number	Title	Year of report	Reference number of published report	Result
1	The codification of certain crimes against the State	1974	RP 17/1976	Recommended legislation not implemented
2	Investigation into a proposed new process for the administration of certain estates	1974	Not published	No new legislation recommended
3	The submission of questions of law in civil cases to the Appellate Division of the Supreme Court	1974	Not published	Section 36 of Act 94 of 1974 enacted
4	Investigation into the element of fault in <i>injuria</i>	1978	Not published	No legislation recommended, see also project 44
5	The safeguarding of money held in trust by an agent on behalf of a client	1974	Not published	No legislation recommended
6	Review of the law of evidence: <input type="checkbox"/> The admissibility in civil proceedings of evidence generated by computers	1982	RP 95/1982	Act 57 of 1983 passed
	<input type="checkbox"/> Final report	1986	ISBN 0 621 11348 4	Act 45 of 1988 passed
7	Revision of pre-Union statutes: <input type="checkbox"/> Repeal of certain pre-Union statutes	1975	Not published	Act 36 of 1976 passed
	<input type="checkbox"/> Repeal of certain pre-Union	1976	Not published	Act 43 of 1977 passed

Project number	Title	Year of report	Reference number of published report	Result
	statutes			
	☐ Retention of certain pre-Union statutes	1977	Not published	Act 24 of 1979 passed
8*	Steps aimed at making the common law more readily available	-	-	Several works published, see previous annual reports, Chapter 5 and Annexure F
9	Review of the law of trusts	1986	June 1987	Act 57 of 1988 passed
10	Draft convention for a uniform law of agency of an international character in respect of the sale of goods	1974	Not published	No legislation recommended
11	Investigation into the common law rule that interest may not accrue beyond the principal debt	1974	RP 18/1975	Recommendations not implemented, but see section 68A of the Insurance Act 27 of 1943 in respect of policy loans
12	Review of the law of divorce ☐ Report	1977	RP 57/1978	Act 70 of 1979 passed, see also project 40
	☐ Section 7(3) of Act 70 of 1979	1991	ISBN 0 621 14140 2	Act 44 of 1992 passed, see also project 100
13	Investigation into the right of recourse of spouses in respect of contributions towards necessities for the joint household	1974	RP 79/1975	Act 13 of 1976 passed, see also project 15
14	The prescribing of a rate of interest in respect of debts where no rate of interest applies in law	1974	Not published	Act 55 of 1975 passed
15	The matrimonial property law with special reference to the Matrimonial Affairs Act, 1953, the status of the married woman, and the law of succession in so	1982	RP 26/1982	Act 88 of 1984 passed, see also projects 41 and 51

Project number	Title	Year of report	Reference number of published report	Result
	far as it affects the spouses			
16	Investigation into the application of set-off in insolvency	1975	Not published	No legislation recommended, see project 63
17	Examination of the convention on the form of an international will	1975	Not published	No legislation recommended, see project 22
18	Investigation into the enforceability of foreign arbitration awards in the Republic	1975	Not published	Act 40 of 1977 passed
19	Investigation into the shifting of the onus of proof in bribery charges	1975	Not published	No legislation recommended, see project 75
20	Investigation into the substitution of petition proceedings in superior courts	1975	Not published	Act 35 of 1976 passed
21	Limitation of the institution of legal actions against the State	1977	Not published	No legislation recommended, see also project 42
22	Review of the law of succession: <input type="checkbox"/> Intestate succession	1985	ISBN 0 621 09611 3	Act 81 of 1987 passed
	<input type="checkbox"/> Legitimate portion or right to maintenance	1987	Not published	Act 27 of 1990 passed
	<input type="checkbox"/> Formalities of a will, alteration and revocation of wills, disqualification from inheriting, substitution and the succession rights of adopted children	1991	ISBN 0 621 14189 5	Act 43 of 1992 passed
23	Risk as a ground for liability in delict	1985	ISBN 0 621 10202 4	No legislation recommended
24	Investigation into the courts= powers of review of administrative acts			

Project number	Title	Year of report	Reference number of published report	Result
	☐ Report	1992	ISBN 0 621 15356 7	Implementation of recommendations under consideration by the Minister of Justice
	☐ Supplementary report	1994	Not published	Implementation of recommendations under consideration by the Minister of Justice
25*	Statute law: The establishment of a permanently simplified, coherent and generally accessible book:			See Chapter 5
	☐ Repeal of Laws Act	1980	Not published	Act 94 of 1981 passed
	☐ Investigation into certain aspects of the Prescription Act 68 of 1969	1983	Not published	Act 11 of 1984 passed
	☐ Investigation into further aspects of the Prescription Act 68 of 1969	1984	Not published	No legislation recommended
26	Criminal law consolidation: Theft and house-breaking	1977	Not published	Recommendations regarding legislation not implemented, now forms part of project 25
27	Abolition of civil imprisonment	1976	Not published	Act 2 of 1977 passed, see also project 54
28	Investigation into leases in respect of movables	1976	Not published	No legislation recommended
29	Investigation into the application of <i>mens rea</i> in statutory offences	1982	GP-S 300	No legislation recommended
30	Investigation into an unlimited right of appeal for convicted persons in criminal proceedings	1976	RP 73/1977	No legislation recommended
31	Investigation into the law relating to presumption of death	1977	Not published	Act 23 of 1979 passed
32	Review of the law of admiralty	1982	RP 12/1983	Act 105 of 1983 passed
33	Review of the law of prize	1987	-	Recommendations not imple-

<b>Project number</b>	<b>Title</b>	<b>Year of report</b>	<b>Reference number of published report</b>	<b>Result</b>
				mented
34	Examination of the legal consequences of artificial insemination and the duty of support in respect of certain adulterine children	1978	Not published	No legislation recommended, see also project 38
35	Negligent use of fire-arms	1978	Not published	No legislation recommended
36	Investigation into delictual liability in cases of misrepresentation	1983	Not published	No legislation recommended
37	Review of preferent claims in insolvency	1984	ISBN 0 621 090840 X	Recommendations not implemented, see project 63
38	Investigation into the legal position of illegitimate children	1985	ISBN 0 621 10205 9	Act 82 of 1987 passed
39	Investigation into the legal consequences of suspensive conditions in contracts of sale	1985	ISBN 0 621 11350 6	No legislation recommended
40	Evaluation of the effect of the Divorce Act 70 of 1979	1983	Not published	No legislation recommended
41	The division of pension benefits on divorce			
	☐ Report	1986	ISBN 0 621 11357 3	Act 7 of 1989 passed
	☐ Supplementary report	1994	RP 158/1995 ISBN 0 621 16869 6	Implementation of recommendations under consideration by the Minister of Justice
42	Investigation into time limits for the institution of actions against the State	1985	Not published	Recommendations not implemented
43	Investigation into the advancement of the age of majority	1985	ISBN 0 621 10246 6	No legislation recommended
44	A comprehensive and comparative inquiry into the protection	-	-	Struck off

<b>Project number</b>	<b>Title</b>	<b>Year of report</b>	<b>Reference number of published report</b>	<b>Result</b>
	of all rights of personality			
45	Women and sexual offences in South Africa	1985	ISBN 0 621 09609 1	Acts 103 of 1987, 39 of 1989 and 113 of 1993 passed
46	The giving of security by means of movable property:  ☐ Report	1991	ISBN 0 621 14544 0	Act 57 of 1993 passed
	☐ Supplementary report	1993	Not published	Act 57 of 1993 passed
47*	Unreasonable stipulations in contracts and the rectification of contracts	-	-	See Chapter 5
48	Examination of the limits of criminal defamation	1983	Not published	No legislation recommended
49	Offences committed under the influence of liquor or drugs	1985	ISBN 0 621 10207 5	Act 1 of 1988 passed
50	Investigation into the payments system in South African law	1994	RP 105/1995 ISBN 0 621 16776 2	Implementation of recommendations under consideration by the Minister of Finance
51	Marriages and customary unions of black persons:  ☐ Problems relating to the acquisition of leasehold	1985	Not published	Section 1 of Act 90 of 1985 enacted
	☐ Final report	1986	-	Act 3 of 1988 passed
52	Investigation into the legal consequences of sexual realignment and related matters	1995	RP 32/1996 ISBN 0 621 17334 7	Implementation of recommendations under consideration by the Minister of Justice
53	Investigation into the amendment of section 26 of the Insolvency Act 24 of 1936	1983	Not published	Act 84 of 1984 passed, see also project 63
54	Committal to prison in respect of debt	1985	ISBN 0 621 11346 8	Implementation of recommendations under consideration by

Project number	Title	Year of report	Reference number of published report	Result
				the Minister of Justice, see project 74
55	Removal of certain restrictions in respect of land	1984	Not published	No legislation recommended
56	Submission of a question of law to the Appellate Division of the Supreme Court relating to the calculation of finance charges under the Limitation and Disclosure of Finance Charges Act 73 of 1968	1976	Not published	<i>Ex parte Minister of Justice</i> 1978 2 SA 572 (A)
57	Anton Piller type of orders	1987	Not published	Recommendations not implemented
58	Group and human rights ☐ Interim report	1991	Report ISBN 0 621 14128 3 Summary: ISBN 0 621 14127 5	Act 200 of 1993 passed
	☐ Final report	1994	RP 66/1995 ISBN 0 621 16727 4	Made available to the Constitutional Assembly
59*	Islamic marriages and related matters	-	-	See Chapter 5
60	Domicile	1991	ISBN 0 621 14255 7	Act 3 of 1992 passed
61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	1988	ISBN 0 621 12107 X	Act 108 of 1990 passed
62	The protection of a purchaser of shares ☐ Report	1993	ISBN 0 621 16287 6	Implementation of recommendations under consideration by the Minister of Finance

Project number	Title	Year of report	Reference number of published report	Result
	☐ Supplementary report on section 138 of the Companies Act 61 of 1973	1994	RP 152/1995 ISBN 0 621 16847 5	Implementation of recommendations under consideration by the Minister of Finance
63*	Review of the law of insolvency:  ☐ Interim report on section 34 of the Insolvency Act, 1936 (Act 24 of 1936)	1990	(Unpublished/ Informal)	Section 1 of the Insolvency Amendment Act 6 of 1991 enacted, see also Chapter 5
	☐ Interim report on insolvency interdicts	1992	ISBN 0 621 14964 0	Act 122 of 1993 passed, see also Chapter 5
	☐ Interim report on appeals against sequestration orders	1993	ISBN 0 621 15421 0	Section 1 of Act 129 of 1993 enacted, see also Chapter 5
	☐ Interim report on the protection of the financial markets in the event of insolvency	1994	RP 63/1995 ISBN 0 621 16721 5	Act 32 of 1995 passed, see also Chapter 5
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Implementation of recommendations under consideration by a Select Committee of Parliament
66	Reform of the South African law of bail:  ☐ Report	1992	Not published	Referred back for consideration, <i>inter alia</i> , in the light of the provisions of the Constitution Act 200 of 1993
	☐ Report	1994	RP 82/1995 ISBN 0 621 16746 0	Act 75 of 1995 passed
67*	The Usury Act and related matters	-	-	See Chapter 5
68	Access to police dockets	1992	ISBN 0 621 15349 4	Not implemented in view of the interpretation of the subsequent

Project number	Title	Year of report	Reference number of published report	Result
			15349 4	provision in section 23 of the Constitution Act 200 of 1993
69	The acquisition and loss of ownership of game	1991	ISBN 0 621 14138 0	Act 105 of 1991 passed
70*	Limitation of civil liability of professional persons	-	-	See Chapter 5
71	The protection of child witnesses	1991	ISBN 0 621 14139 9	Act 135 of 1991 passed
72	The alienation of personal servitudes	-	-	Struck off
73*	The simplification of criminal procedure: ☐ Interim report on appeal procedures	1994	-	Appeal procedures under consideration by the Hoexter Commission of Inquiry, see Chapter 5
	☐ First interim report on the simplification of the criminal procedure	1995	RP 70/1996 ISBN 0 621 17405 X	Act 86 of 1996 passed
74	Debt collecting: ☐ Interim report on imprisonment for debt	1994	RP 199/1995 ISBN 0 621 16956 0	Implementation of recommendations under consideration by the Minister of Justice
	☐ Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Implementation of recommendations under consideration by the Minister of Justice
75	Bribery	1991	ISBN 0 662 15184 43	Act 94 of 1992 passed
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Act 95 of 1996 passed
77	Constitutional models	1991	Report (3 Volumes):	No legislation recommended

Project number	Title	Year of report	Reference number of published report	Result
			ISBN 0 621 14239 5 Summary: ISBN 0 621 14197 6	
78	Interest on damages	1994	ISBN 0 621 16231 0	Implementation of recommendations under consideration by the Parliamentary Portfolio Committee on Justice
79	The rights of a father in respect of his illegitimate child	1994	RP 55/1995 ISBN 0 621 16706 1	Implementation of recommendations under consideration by the Minister of Justice
80	Accession to the Hague Convention on the Civil Aspects of International Child Abduction	1992	Not published	Act 72 of 1996 passed
81	Submission of a question of law to the Appellate Division of the Supreme Court concerning certificates under instruments of debt as conclusive proof of liability	1991	Not published	<i>Ex parte Minister of Justice in re: Nedbank v Abstein Distributors and Donnelly v Barclays National Bank</i> 1995 3 SA 1 (A)
82*	Sentencing	-	-	See Chapter 5
83	Review of the Moratorium Act, 1963	-	-	Struck off, see Chapter 3
84	Application of the trapping system	1994	RP 174/1995 ISBN 0 621 16896 3	Act 85 of 1996 passed
85*	Aspects of the law relating to AIDS	-	-	See Chapter 5
	□ Interim report	1996	-	See Chapter 4
86*	Euthanasia and the artificial preservation of life	-	-	See Chapter 5
87	Jurisdictional lacuna in the Supreme Court Act, 1959	1994	RP 64/1995 ISBN 0 621 16723 1	Implementation of recommendations under consideration by the Minister of Justice

Project number	Title	Year of report	Reference number of published report	Result
88*	The recognition of a class action in South African law	-	-	See Chapter 5
89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	1995	RP 100/1996 ISBN 0 621 17494 7	Implementation of recommendations under consideration by the Minister of Justice
90*	Harmonisation of the common law and indigenous law	-	-	See Chapter 5
91	The review of the offences created by sections 36 and 37 of the General Law Amendment Act 62 of 1955, and section 1 of Act 50 of 1956 and related matters	-	-	Struck off, see Chapter 3
92	The re-evaluation of the offence created by section 1 of Act 1 of 1988	-	-	Struck off, see Chapter 3
93	Speculative and contingency fees	1996	-	See Chapter 4
94*	Arbitration	-	-	See Chapter 5
95*	The admissibility of computer evidence	-	-	See Chapter 5
96*	Apportionment of Damages Act, 1956	-	-	See Chapter 5
97	Unjustified enrichment	-	-	Struck off, see Chapter 3
98	International co-operation in criminal prosecutions	1995	RP 47/1996 ISBN 0 621 17357 6	Acts 75 of 1996, 76 of 1996 and 77 of 1996 passed
99	The application of the rule <i>huur gaat voor koop</i> with reference to the question whether a lessee	-	-	Struck off

<b>Project number</b>	<b>Title</b>	<b>Year of report</b>	<b>Reference number of published report</b>	<b>Result</b>
	has a choice to continue the lease with a new lessor after the sale of the leased property			
100*	Family law and the law of persons  ☐ Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Implementation of recommendations under consideration by the Minister of Justice, see Chapter 4
	E Family violence	-	-	See Chapters 3 and 5
	E Maintenance	-	-	See Chapters 3 and 5
101*	The application of the bill of rights on the criminal law, the law of criminal procedure and sentencing	-	-	See Chapter 5
102*	The civil jurisdiction of courts	-	-	See Chapter 5
103*	Capping of claims against the Multilateral Motor Vehicle Accidents Fund	-	-	See Chapter 5
104	Money laundering and related matters	1996	-	Implementation of recommendations under consideration by the Minister of Justice, see Chapter 4
105*	Review of security legislation	-	-	See Chapters 3 and 5
106*	Juvenile Justice	-	-	See Chapters 3 and 5
107*	Sexual offences by and against children	-	-	See Chapters 3 and 5
108*	Computer related crimes	-	-	See Chapters 3 and 5

## ANNEXURE E

### ISSUE PAPERS PUBLISHED BY THE COMMISSION

(In order to actively involve the community at an earlier stage, the Commission decided during the year under review to publish issue papers in appropriate investigations in future as the first step in the consultation process.

The purpose of an issue paper is to announce an investigation, to elucidate the aim and extent of the investigation, to point to possible options available for solving existing problems and to initiate and stimulate debate on identified issues.)

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
1	104	Money laundering and related matters	0-631-17404-1 May 1996
2	100	Family violence	0-621-17495-5 July 1996
3	90	Harmonisation of the common law and the indigenous law: Customary marriages	0-621-17531-5 September 1996
4	90	Harmonisation of the common law and the indigenous law: The application of customary law: Conflict of personal laws	0-621-17532-3 September 1996

## ANNEXURE F

### DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

(Since March 1983 a serial number has been assigned to all discussion papers - previously referred to as working papers - and only these are listed below. Discussion papers are numbered consecutively.)

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
1	37	Preference on insolvency	18 March 1983
2	22	Law of succession: Intestate succession	17 February 1984
3	9	Law of trusts	24 February 1984
4	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband	21 September 1996
5	49	Offences committed under the influence of liquor or drugs	10 August 1984
6	43	Investigation into the advancement of the age of majority	15 February 1985
7	38	Investigation into the legal position of illegitimate children	22 February 1985
8	33	Review of the law of prize	12 April 1985
9	25	Statute law: Investigation into the law relating to theft and house-breaking	Publication deferred
10	51	Marriages and customary unions of Black persons	13 September 1985
11	6	Review of the law of evidence	25 April 1986
12	57	Anton Piller type of orders	Not published
13	22	Review of the law of succession: The introduction of a legitimate portion or the granting of a right to maintenance to a surviving spouse	8 August 1986
14	22	Review of the law of succession: Formalities of a will	17 October 1986

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
15	24	Investigation into the courts= powers of review of administrative acts	2 January 1987
16	62	The protection of a purchaser of securities	27 April 1987
17	22	Review of the law of succession: Amendment and repeal of wills	23 September 1987
18	61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	0 7970 1381 4 18 March 1988
19	22	Review of the law of succession: Disqualification from inheriting, substitution and the succession rights of adopted children	0 7970 1401 2 26 February 1988
20	60	Domicile	0 7970 1435 7 26 August 1988
21	62	The protection of a purchaser of securities	0 7970 1460 8 31 March 1988
22	50	Proposals for the reform of the Bills of Exchange Act	0 621 1198 9 X 19 December 1988
23	46	The giving of security by means of movable property	0 7970 1558 2 7 October 1988
24	52	Investigation into the legal consequences of sexual realignment and related matters	0 7970 1589 2 17 June 1994
25	58	Group and human rights	GPS 003 9160 10 March 1989
26	12	Amendment of section 7(3) of the Divorce Act, 1979	0 7970 1667 8 1 March 1989
27	69	The acquisition and loss of ownership of game	0 7970 1727 5 29 May 1989
28	71	The protection of child witnesses	0 7970 1826 3 12 June 1989
29	63	Insolvency: Requirements for and alternatives to sequestration	0 7970 1854 9 7 August 1989
30	63	Insolvency: Qualifications, appointment and	0 7970 1954 5

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
		discharge of trustees	10 November 1989
31	66	Reform of the South African law of bail	0 7970 2078 0 December 1990
32	75	Bribery	0 7970 2126 4 March 1990
33	63	Insolvency: Effect of insolvency on assets, civil proceedings and contracts	0 7970 2185 X November 1990
34	24	Investigation into the courts= powers of review of administrative acts	0 7970 2292 9 December 1991
35	63	Insolvency: Insolvency interdicts	0 7970 2296 1 May 1991
36	62	The protection of a purchaser of securities	0 7970 23003 September 1991
37	68	Access to police dockets	0 7970 2316 X July 1991
38	65	Surrogate motherhood	0 7970 2381 X September 1991
39	63	Insolvency: Rehabilitation	0 7970 2490 5 April 1992
40	78	Interest on damages	0 7970 2607 X May 1992
41	63	Insolvency: Voidable dispositions and dispositions that may be set aside and the effect of sequestration on the spouse of the insolvent	0 7970 2638 X July 1992
42	73	Simplification of the criminal procedure: Working paper on appeal procedure	0 7970 2641 X July 1992
43	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband: Matters relating to the Divorce Amendment Act 7 of 1989	0 621 15039 8 December 1992
44	79	A father=s rights in respect of his illegiti-mate child	0 621 15329 X

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
			February 1993
45	76	Jewish divorces	0 621 15331 1 January 1993
46	67	The Usury Act and related matters	0 621 15021 5 April 1993
47	87	Jurisdictional lacuna in the Supreme Court Act 59 of 1959	0 621 15429 6 April 1993
48	62	The protection of a purchaser of shares	0 621 15848 8 October 1993
49	73	Simplification of criminal procedure	0 621 15923 9 November 1993
50	74	Debt collecting	0 621 15933 6 November 1993
51	70	Limitation of professional liability	0 621 15955 7 December 1993
52	84	Application of the trapping system	0 621 15959 X December 1993
53	86	Euthanasia and the artificial preservation of life	0 621 15994 8 February 1994
54	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 16038 5 May 1994
55	89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	0 621 16358 9 December 1994
56	98	International co-operation in criminal prosecutions	0 621 16820 3 May 1995
57	88	The recognition of a class action in South African law	0 621 16928 5 September 1995

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
58	85	Aspects of the law relating to AIDS	0 621 16964 1 September 1995
59	94	Arbitration	0 621 16971 4 September 1995
60	95	Investigation into the Computer Evidence Act 57 of 1983	0 621 17259 6 October 1995
61	63	Review of the law of insolvency: Statutory provisions that benefit creditors	0 621 17297 9 November 1995
62	100	The granting of visitation rights to grandparents of minor children	0 621 17344 4 March 1996
63	93	Speculative and contingency fees	0 621 17353 3 March 1996
64	104	Money laundering and related matters	0 621 17453 X June 1996
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 August 1996
	63	Review of the law of insolvency: Draft Bill and explanatory memorandum: Executive summary	0 621 17510 2 August 1996
67	96	Apportionment of Damages Act, 1956	0 621 17543 9 October 1996
68	85	Aspects of the law relating to AIDS	0 621 17550 1 October 1996
69	94	International Commercial Arbitration	0 621 176028 December 1996

## ANNEXURE G

### PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
1	Adv J P J Coetzer SC	A critical legal comparative study of law reform in South Africa (translation)	ISBN 0 621 09442 0
2	Prof Ellison Kahn	The life and works of Hugo Grotius (1583-1645)	GP-S 3 00344
3	Mrs M A Olwage (ed)	Women and sexual offences in South Africa: Proceedings of a seminar held by the Institute for Criminology at the University of South Africa in conjunction with the South African Law Commission, Pretoria, 18 October 1984 (translation)	ISBN 0 621 09779 9
4	Adv S I E van Tonder SC (ed)	Index to the Opinions of the Roman-Dutch Lawyers and the Decisions of the Courts of the Netherlands which have been digested in the Algemeen Berede-neerd Register of Nassau La Leck (1741-1795), by Dr A A Roberts, Vols 1(A-B), 2(C-D), 3(E-H), 4(I-L), 5(M), 6(N-R), 7(S-T) and 8(U-W)	Vol 1: ISBN 0 621 09382 3 Vol 2: ISBN 0 621 09646 6 Vol 3: ISBN 0 621 09778 0 Vol 4: ISBN 0 621 10254 7 Vol 5: ISBN 0 621 10295 4 Vol 6: ISBN 0 621 10686 0 Vol 7: ISBN 0 621 10710 7 Vol 8: ISBN 0 621 10709 3
5	Profs F J Bosman, J Th de Smidt, H W van Soest & P van Warmelo	Observations on decided cases concerning antenuptial contracts written by Cornelius Neostadius	ISBN 0 621 09855 8
	Profs R Feenstra,	Some cases heard in the Hooge Raad	

Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
6	P van Warmelo & D T Zeffertt	reported by Willem Pauw	ISBN 0 621 09715 2
7	Mr P J J Viljoen	South African Noter-up to the Institute of Justinian	ISBN 0 621 09743 8
8	Prof P van Warmelo and Adv C J Visser	Aantekeninge van Johannes Voet oor die Inleidinge van Hugo de Groot (text and translation)	Vol 1: ISBN 0 621 10641 0 Vol 2: ISBN 0 621 10642 9
9	Prof L J du Plessis	Translation of Vinnius= <i>Tractatus de Pactis</i>	ISBN 0 621 10277 6
10	Prof W J Hosten (ed and transl), Mrs C van Soelen and Mr P Ellis	Treatise on the quasicontract called <i>promutuum</i> and on the <i>condiction indebiti</i> by Robert-Joseph Pothier	ISBN 0 621 10722 0
11	Prof R Whitaker	<i>Quaestiones juris privati</i> by Cornelius van Bijkershoek	Vol 1: ISBN 0 621 10657 7 Vol 2: ISBN 0 621 10675 5
12	Profs J T Delpont and C R M Dlamini	Two lectures on law reform	ISBN 0 621 10670 4
13	Adv H C Smuts (ed)	Report on the Fourth International Congress with the theme <i>Law and Computers</i> , which was held in Rome from 16 to 21 May 1988	ISBN 0 621 12639 X
14	Mr P J J Viljoen	South African Noter-up to the <i>Corpus Juris Civilis</i> of Justinian including the Institutes of Gaius	ISBN 0 621 13088 5
15	Margaret Hewett (transl)	<i>Censura Forensis</i> Part I Book V by Simon van Leeuwen	ISBN 0 7970 2231 7