South African Law Commission
1999 Annual Report

To: Dr P M Maduna, MP, Minister for Justice and Constitutional Development.

I have the honour to submit to you in terms of section 7(2) of the South African Law Commission Act 19 of 1973, the Commission's report on all its activities during 1999.

Yours sincerely

SGD

Justice I Mahomed

Chief Justice of South Africa

Chairperson of the South African Law Commission

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Chapter 1
Overview

*** Introduction**

When the Commission assumed office on 1 January 1996 it committed itself to law reform processes that would be open, fair, relevant and responsive. This was a challenging task given the major discrepancies at the time between the ideal of justice and the content of law. The Commission shared the ideal of the South African population in expecting the legal system to embody justice and to promote respect for the democratic values of their Constitution. The different socio-economic circumstances of South Africans, the differing patterns of rural and urban life and the multicultural social fabric of our country emphasised the need for new approaches to law reform.

To achieve this ideal the Commission shifted the emphasis in its law reform programme to an approach that was responsive to the emerging needs of the new South African society. It was agreed that the execution of the Commission's mandate depends on establishing a creative and comprehensive process of consultation with South Africans to ensure that its work is responsive to their real needs. The Commission has consequently broadened its consultative base, while maintaining close cooperation with academic institutions, the private sector and non-governmental organisations. The Commission also extended its consultative process by conducting countrywide workshops in urban and rural areas. Inadequacies in the legal system have been approached from a multi-disciplinary perspective in appropriate cases.

To extend the basis for consultation and to involve interested parties and the community at an earlier stage in the process of law reform, the Commission 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 debate and to give direction to the reform which is to follow.

The Commission's three-year term of office expired on 31 December 1998 and a new Commission was appointed for a period of three years with effect from 1 January 1999. With the exception of Judge P J J Olivier who served as Vice-Chairperson in the previous Commission, all the members were re-appointed. Judge Olivier was requested by the Minister of Justice to head a Task Team to advise him on the issues of court management, case management and judicial training. Judge Y Mokgoro is congratulated on her appointment as the

new Vice-Chairperson and Judge M L Mailula whose appointment further advances race and gender representativeness, is welcomed as a new member of the Commission.

* **The year under review**

No issue papers were published during the year under review. Issue papers published by the Commission are listed in **Annexure E.**

Eight discussion papers were published for consultation purposes. They are:

Project 115	Administrative law (discussion paper 81)
Project 90	Customary law: Traditional courts and the judicial function of traditional leaders (discussion paper 82)
Project 94	Domestic arbitration (discussion paper 83)
Project 85	Aspects of the law relating to AIDS: Compulsory HIV testing of persons arrested in sexual offence cases (discussion paper 84)
Project 107	Sexual offences: The substantive law (discussion paper 85)
Project 63	Review of the law of insolvency (discussion paper 86)
Project 94	Arbitration: Community dispute resolution structures (discussion paper 87)
Project 109	Review of the Marriage Act 25 of 1961 (discussion paper 88)

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

Two discussion papers were approved for publication by the working committee on 2 December 1999 and will be published early in 2000:

Project 73	Simplification of the criminal procedure: The right of the Attorney-General to appeal on questions of fact

Project 101	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing

Five reports were approved by the Commission:

Project 63	Review of the law of insolvency: The enactment in South Africa of UNCITRAL's model law on cross-border insolvency (interim report)
Project 90	The harmonisation of the common law and indigenous law: Conflicts of law
Project 105	Security legislation: Monitoring and Interception Prohibition Act 127 of 1992
Project 112	Sharing of pension benefits
Project 115	Administrative law

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

Draft reports in two comprehensive investigations, namely juvenile justice and review of the law of insolvency, were all but completed during the year under review. It is envisaged that these draft reports will be considered by the Commission in February 2000. It is also envisaged that draft reports on the need for a statutory offence aimed at harmful HIV-related behaviour and the compulsory HIV testing of persons arrested in sexual offence cases will be considered by the Commission in the first half of 2000.

No Acts emanating from reports of the Commission were adopted by Parliament during 1999.

The following Bills emanating from reports of the Commission are receiving the attention of Parliament:

Project 42:	Limitation of Legal Proceedings Against Government Institutions Bill (Approved by Cabinet on 31 March 1999)

Project 63: Cross-Border Insolvency Bill (Approved by Cabinet on 29 September 1999)

Project 94: International Arbitration Bill (Approved by Cabinet on 28 April 1999)

Project 115: Administrative Justice Bill (Introduced into Parliament on 26 October 1999 - Referred to the Portfolio Committee)

The following completed investigations and recommendations of the Commission are receiving the attention of the Department of Justice (unless otherwise indicated):

Project 47: Unreasonable stipulations in contracts and the rectification of contracts

Project 52: Investigation into the legal consequences of sexual realignment and related matters

Project 65: Surrogate motherhood

Project 85: Legal aspects of the law relating to AIDS: Non-controversial matters - first interim report (Regulations emanating from the first interim report are under consideration by the Department of Health and the Department of Labour)

Project 85: Legal aspects of the law relating to AIDS: HIV/AIDS and discrimination in schools - third interim report (The Department of Education is in the process of finalising a national policy on HIV/AIDS for learners in public schools)

Project 86: Euthanasia and the artificial preservation of life (The Commission's report is under consideration by the Department of Health)

Project 88: The recognition of class actions and public interest actions in South

African law

Project 100: Family law and the law of persons: Access to minor children by interested persons

Project 104: Money laundering and related matters (The Commission's report is under consideration by the Department of Finance)

Project 111: Jurisdiction of Magistrates's Courts in constitutional matters

Project 112: Sharing of pension benefits

No new investigations were included in the Commission's programme during the year under review.

Chapter 2
Objects, Constitution and functioning

* Establishment of the Commission

The South African Law Commission was established by the South African Law Commission Act 19 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 High 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.

With effect from 1 January 1999 for a period of three years the Commission is constituted as follows:

Chairperson

The Honourable Mr Justice I Mahomed (Chief Justice)

Vice-Chairperson

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

Other members

Adv J J Gauntlett, SC (Member of the Cape Bar)
The Honourable Madam Justice M L Mailula (Judge of the High Court of South Africa)

Mr P Mojapelo (Practising attorney, Nelspruit)

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

Ms Z Seedat (Practising attorney, Durban)

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

In terms of section 3(2) of the Act the President may appoint one or more additional members if he deems it necessary for the investigation of any particular matter by the Commission. The volume of work generated by the research staff has increased considerably over the last few

years. This has substantially increased the workload of Commissioners, which now involves the holding of workshops, especially in relation to project leadership. On 27 October 1999 the President appointed Ms Cora Hoexter, part-time lecturer in the School of Law, University of the Witwatersrand, as an additional member of the Commission for the investigations into statutory law revision; publication of divorce proceedings; the legal position of voluntary associations; and domestic partnerships.

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

* Committees

Section 7A of the Act provides for the establishment of committees of the Commission. There are two categories of committee: 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 and to ensure direct community involvement in the activities of the Commission.

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 consisted of Professor R T Nhlapo as convenor, and any other members of the Commission coopted for meetings according to their availability.

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 committee. The Commission follows the practice of instituting project committees consisting of experts to assist with investigations and to advise the Commission if a specific investigation in the Commission's programme so requires.

During the course of the year under review a project committee was established on Islamic marriages and related matters. The names of the members of the committee appear in **Annexure B**. The Commission would like to express its appreciation to individuals and organisations for their willingness to serve on project committees of the Commission.

*** 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 Chief Director, Mr W Henegan, serves as the Secretary to the Commission.

The research component of the Secretariat consists of 17 state law advisers from diverse backgrounds. 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:

Ms D M Clark (Senior State Law Adviser)
Mr M B Cronje (Principal State Law Adviser)
Ms S N Dube (Senior State Law Adviser)
Ms A-M Havenga (Principal State Law Adviser)
Mr G O Hollamby (Principal State Law Adviser)
Mr M Kganakga (Senior State Law Adviser)
Ms C P Kimble (Senior State Law Adviser)
Ms A M Louw (Principal State Law Adviser)
Ms P Matshelo-Busakwe (Principal State Law Adviser)

Ms M Moloi (Senior State Law Adviser)
Ms P Moodley (Principal State Law Adviser)
Mr M F Palumbo (Principal State Law Adviser)
Mr P K Smit (Senior State Law Adviser)
Ms L A Stuurman (Senior State Law Adviser)
Mr A W F van Vuuren (Principal State Law Adviser)
Mr P A van Wyk (Senior State Law Adviser)

Mr M F Palumbo also serves as assistant to the Commission's Secretary. Currently there is one vacancy for a state law adviser. The filling of the post is receiving attention.

The librarian is Ms M A Kgasago.

The administrative component of the Secretariat currently consists of the following persons:

Senior Administrative Officer	:	Ms J M H Oosthuizen
Administrative Officer	:	Vacant
Administration Clerk	:	Mr J D Kabini
Senior Typist	:	Ms J M Nkabinde
Typist	:	Ms J A Jackson
Secretary	:	Ms L V Damons
Secretary	:	Vacant
Operator	:	Mr K M Mahlangu
Messenger	:	Ms Z A Mahlangu

The filling of vacancies in the establishment of the administration is in progress. As a result of revised working methods and a community-oriented approach to law reform there has been a considerable increase in the workload of the administration. A work study investigation resulted in the creation of two additional posts in the administration. These posts, however, could not be established due to a lack of money. The services of two senior administration clerks, Ms P J Kotze and Mr A Singh, who are carried against posts elsewhere in the Department of Justice have been acquired. As a result of further increases in the workload of the administration the services of an additional administration clerk, Mr R Swart, have been obtained on the same basis. From time to time temporary staff have also been employed.

A further work study investigation is currently in progress to assess the establishment of the administration. The Commission would like to record its appreciation for the assistance rendered by the Department of Justice in striving to ensure that support services at the Commission are up to strength.

The Commission wishes to express its appreciation to the members of the Secretariat for their outstanding services to the Commission. The Commission wishes to make special mention of the generally high standard of working documents and reports submitted to the working committee and the Commission by the research staff. The Secretariat, both on the professional and administrative levels, carried a considerable workload during the year under review. This was the result of additional work generated by the community-oriented and consultation-based approach adopted by the Commission and the high priority accorded to investigations commissioned by government.

The Commission also wishes to express its appreciation to the full-time member, Professor Nhlapo, and the various project leaders (from within and outside the Commission) 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 Secretary is consulted on the compilation of the draft Vote. The funds made available have up to now been sufficient for the Commission's requirements, taking into account the Commission's continuous efforts to limit expenditure. It should be noted, however, that the Commission will find it extremely difficult to fulfil its obligations adequately in the forthcoming financial year unless its budget is increased adequately. Factors necessitating such an increase are the increase both in personnel and in the work done by the Commission. In addition, the implementation of the strategic plan as contemplated by the Department’s Justice Vision 2000 document, in which the Commission is actively involved, will have a bearing on the Commission’s resources.

The Commission's budget for the 1997/98 financial year is R7 874 000, which is made up as follows:

	R
Staff expenditure	5 378 000
Administrative expenditure	1 008 000
Supplies and printing	433 000
Equipment	455 000
Professional and special services	522 000
Sundry expenditure	78 000

The Commission's resources are supplemented by funding and technical assistance from foreign and local donors for specific projects. During the year under review the Commission has received financial support from USAID; the Swedish Embassy (Rapid Response Fund); the Department for International Development (UK); Save the Children Fund (UK); Rädda Barnen (Swedish Save the Children); Save the Children Fund (Southern Africa); the German Development Co-operation (GTZ); the Nelson Mandela Children's Fund; and the Department of Welfare and Population Development. The Commission records its deep appreciation to these agencies.

*** 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.** An investigation removed from the Commission's programme during the year under review is dealt with in Chapter 3. **Annexure D** contains a list of all the investigations included in the Commission's programme since its inception and indicates the final result or current state of investigations.

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 the programme of its own accord.

Every effort is made to dispose of urgent matters with the least possible delay. However, 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 all determine the time spent on each project. 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. Consultation takes place between the researcher and project committee (where one exists) 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 experiences elsewhere in the world. The consultation process is facilitated by the Commission's policy (since 1996) of compiling issue papers as a first step. Issue papers outline the problems encountered with particular areas of the law and invite submissions on possible solutions. They are distributed as widely as possible for general information and comment and are in appropriate cases also supplemented by workshops. Responses to an issue paper and further intensive research form the basis for the preparation of a discussion paper.

Discussion papers contain essential information on the investigation and the Commission’s tentative proposals for reform. In particular, a discussion paper will include a statement of the existing legal position and its deficiencies, a comparative survey, and a range of possible solutions; importantly, the discussion paper will also include a draft Bill. 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. Its recommendations are embodied in comprehensive reports which are submitted to the Minister of Justice.

In making its recommendations the Commission bears in mind that there is a need to provide access to justice for all, to protect the rights of all parties - especially those of women and children, to make legal processes affordable, to make the law less complicated, and to give effect to the values and principles underlying the Constitution.

Judging from comments received, the Commission's discussion papers and reports are of a high standard and are well regarded. There appears to be an increasing tendency in faculties of law to prescribe the Commission's discussion papers and reports as reading 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 are well substantiated and are the product of thorough debate. They also facilitate the passage of the Commission's proposed legislation which embodies the recommendations.

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 publishes 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 clarify the aim and extent of the investigation, and suggest the options available for solving existing problems.

Discussion papers

Discussion papers, previously referred to as working papers, are documents in which the Commission's preliminary research results are contained. In most cases discussion papers also contain draft legislation. The main purpose of these documents is to test public opinion on solutions identified by the Commission.

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 F**.

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. **Annexure D** lists the investigations reported on by the Commission since its establishment.

In addition to the reports on particular 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. A research paper on the contemporary issue of domestic violence was published in the year under review. Papers published in this way are listed in **Annexure G**.

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 widely distributed and also 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 in Pretoria.

*** Meetings**

The Commission met five times during 1999, namely on 10 April, 5 June, 13 August, 22 October and 27 November.

The working committee of the Commission met four times, namely on 9 April, 4 June, 12 August and 2 December.
The following project committees of the Commission met on the dates indicated:

Administrative law	15 January
Sentencing	2 February
Juvenile justice	2 February
Review of the Child Care Act	4 - 5 February
Sexual offences	8 February
Review of the law of insolvency	11 February
Sentencing	29 March
Customary law	26 March
Sexual offences	7 April
Review of the Child Care Act	21 April
Administrative law	23 April
Sexual offences	4 May
Juvenile justice	4 May
Islamic marriages	15 May
Community courts	22 May
Security legislation	29 May
Aspects of the law relating to AIDS	31 May

Sexual offences	15 June
Domestic arbitration	19 June
Aspects of the law relating to AIDS	25 June
Review of the law of insolvency	29 June
Sentencing	16 July
Sexual offences	20 July
Islamic marriages	24 July
Administrative law	28 July
Juvenile justice	29 - 30 July
Sexual offences	5 August
Simplification of the criminal procedure	3 September
Sentencing	10 September
Juvenile justice	10 September
Review of the Child Care Act	17 September
Sexual offences	21 September
Aspects of the law relating to AIDS	22 September
Islamic marriages	9 October
Customary law	15 October
Aspects of the law relating to AIDS	18 October
Review of the Child Care Act	21 - 22 October
Sexual offences	22 - 23 October
Juvenile justice	26 October
Domestic arbitration	20 November
Simplification of criminal procedure	25 November
Sentencing: Victim empowerment	2 December
Aspects of the law relating to AIDS	6 December

Chapter 3
The Commission's Programme:

Investigations included and removed

No new investigations were included in the Commission's programme during the year under review.

The following investigation was removed:

Project 120 - Section 63(3) of the Insurance Act 27 of 1943

Three of the judges (Nienaber, Schutz and Marais JJA) in the Supreme Court of Appeal case of *Clifford v Commercial Union* 1998 (4) SA 150 (SCA) were of the view that consideration should be given to the amendment of the law to reverse the effect of the decision in *Qilingele v South African Mutual Life Assurance Society* 1993 (1) SA 69 (A). The other two judges refrained from expressing a view on the matter. The matter was referred to the Law Commission for consideration.

On 8 September 1998 the Commission approved that an investigation into section 63(3) of the Insurance Act 27 of 1943 be included in its programme. The Minister approved the inclusion on 6 October 1998.

The Insurance Act 27 of 1943 was repealed in 1998 and replaced by the Short Term Insurance Act 53 of 1998 and the Long Term Insurance Act 52 of 1998. Sections 52 and 59 of the respective new Acts correspond with section 63(3) of the repealed Act. It transpired that the Financial Services Board was giving attention to the amendment of sections 52 and 59 of the new Acts. On 26 April 1999 a meeting was held with the Financial Services Board and it was resolved that for practical reasons the Board would continue with its process of amending the legislation and that the Commission should remove the investigation from its programme. On 5 June1999 the Commission approved the removal of the investigation from its programme.

The Minister endorsed the Commission's decision to remove the investigation from its programme.

Chapter 4
Reports completed

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

* **Project 63 - Review of the law of insolvency: The enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency**

On 15 December 1997 the General Assembly of the United Nations adopted a resolution, co-sponsored by South Africa, recommending that States review their legislation on cross-border insolvency and in that review give favourable consideration to the Model Law on Cross-Border Insolvency developed by the United Nations Commission on International Trade Law (UNCITRAL), bearing in mind the need for internationally harmonised legislation governing instances of cross-border insolvency. The Model Law was developed by the United Nations Commission on International Trade Law in close cooperation with the International Association of Insolvency Practitioners (INSOL) over a number of years and benefited from INSOL's expert advice during all stages of the preparatory work. Active consultative assistance during the formation of the Law was also received from Committee J of the Section on Business Law of the International Bar Association.

The Objects of the Model Law are to promote—

cooperation between the courts and other competent authorities of the Republic and foreign States involved in cases of cross-border insolvency;

greater legal certainty for trade and investment;

fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

protection and maximization of the value of the debtor's assets; and

facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

There is strong support for the enactment of the Model Law in South Africa. As few changes as

possible have been made to the Model Law in order to strive for a satisfactory degree of harmonisation and certainty, but the Model Law has been adjusted in a draft Bill to suit South African law. In terms of the Bill the Insolvency Act is amended to indicate that foreign representatives and creditors have access to the court as provided in Chapter 2 of the Model Law and that applications for the liquidation of the estate of a debtor are limited as provided in Chapter 5 of the Model Law.

The interim report was submitted to the Minister on 23 June 1999.

*** Project 90 - Customary law: Conflicts of law**

This investigation was necessitated by the acknowledgement that it is not always clear when customary law should be applied in real life circumstances and the realisation that both Roman-Dutch law and customary law are now major components of the state's legal system.

Courts and litigants need clear and explicit choice of law rules to indicate when common law or customary law will be applicable to the facts of a particular case. A new enactment devoted exclusively to the application of customary law is now needed in order to disentangle choice of law rules. This report has attempted to achieve this purpose.

The Commission has made the following recommendations which have also been incorporated into the draft Bill:

> Application of customary law should remain a matter of judicial discretion, but more exact guides to choice of law are necessary to bring certainty to an issue that is currently vague and confused. These guides should be precise, flexible, simple and in keeping with the way in which courts have been used to solving choice of law problems.
>
> The new choice of law rules should indicate that parties are free to agree on the law that best suits their needs. If no express agreement was made, courts should attempt to discern which law the parties would reasonably have expected to apply in the circumstances of the case. In order to assist courts in this inquiry, a list of factors that typically indicate the parties' expectations should be provided. No one factor on its own should be regarded as decisive in indicating the applicable law; rather, all the factors should be considered in combination in order to discover the legal system with which the

case has its closest connection.

The procedure contained in the Black Administration Act for exempting individuals from customary law is so closely identified with colonialism and apartheid that it must now be repealed.

The repugnancy proviso no longer has a useful role to play and it should be repealed.

Race should be irrelevant either as a criterion for applying customary law or for determining the jurisdiction of traditional courts.

Section 23(1) of the Black Administration Act should be amended to provide that only the testator's *personal* interests in property may be disposed of by will and elements of gender discrimination should be removed from the regulations governing succession to land held under quitrent tenure.

Existing choice of law rules contained in regulations issued under the Black Administration Act and in the Act itself should be deleted or amended, since they are poorly worded, conflict with proposed reforms in the customary law of marriage or no longer serve any useful purpose.

Section 1(3) of the Law of Evidence Amendment Act should be repealed and a new provision should be drafted to give clearer rules on choice of law. Recognition should be given to the litigants' freedom to agree on the applicable law and, in the absence of an agreement, courts should apply the law with which the case has its closest connection.

The report was submitted to the Minister at a media conference on 8 September 1999.

*** Project 105 - Security legislation: Monitoring and Interception Prohibition Act 127 of 1992**

A review and rationalisation of South Africa's security legislation is undertaken to ensure that the legislation is in accordance with international norms, the Constitution and present requirements of the country.

The main provisions proposed in the Bill contained in the report are the following:

The regulation of the interception of cellular communications.

The insertion of a definition of “communication” into the Act to ensure that any conversation or communication can be intercepted.

The addition of further offences in the definition of “serious offence” to fall within the ambit of the Act.

That communications between a legal representative and his or her client may not be intercepted or monitored, except if on reasonable grounds, the judge is satisfied that such a legal representative is involved in, or aiding or abetting a serious offence or an offence threatening the security of the Republic.

That the judge upon application may direct further additions or amendments to an existing directive if he or she is satisfied that the addition or amendment is necessary.

That no person, body or organization rendering a telecommunication service, may provide any such service which does not have the capacity to be monitored and that the investment, technical, maintenance and operating costs in enabling a telecommunication service to be monitored, shall be carried by the person, body or organization rendering such a service.

That any person, body or organization rendering a telecommunication service shall at own cost and within the period specified in a directive by the Minister for Posts, Telecommunications and Broadcasting, acquire the necessary facilities and devices to enable the monitoring of communications and that the remuneration payable to telecommunication service providers referred to in the Act shall only be in respect of direct costs incurred in respect of personnel and administration and the lease of telecommunications systems, where applicable, and shall not include the costs of acquiring the facilities and devices.

That the South African Police Service, the South African National Defence Force, the Intelligence Agency and the Secret Service shall, at State expense, equip, operate and maintain central monitoring centres for the authorized monitoring of conversations or

communications and that an agreement on the sharing of any such central monitoring centre shall not be excluded.

That the availability of the procedures set out in the Bill in respect of the ongoing provisioning of call-related information shall exclude the use of any power in any other Act, to obtain evidence or information in respect of a person, body or organization.

That any person, body or organization rendering a telecommunication service shall ensure that proper records regarding identities and addresses are kept in respect of clients to whom a telecommunication service is provided, whether on a prepaid or contract basis and to require positive identification from a client to whom such a service is provided.

That any person, body or organization rendering a telecommunication service, shall provide such information regarding the customer who has contracted for the use of such telecommunication service to the South African Police Service, the South African National Defence Force, the Agency or the Service, as may be required by an officer or member, to fulfil the functions and exercise the powers authorized by law.

That if a judge considers any case to be sufficiently urgent, the procedure set out in the Act may be dispensed with and the matter may be dealt with in such manner and subject to such conditions as the judge may deem fit, including the grant in any appropriate case of an oral directive followed up by written application incorporating the terms of the directive within one week, and that where an oral directive was issued, the judge must reduce it to writing within two days.

That the use of any information obtained through the application of the Act, or any similar Act in another country, as evidence in any prosecution, is subject to the decision of a Director of Public Prosecutions or an Investigating Director.

That information regarding the commission of any criminal offence, obtained by means of any interception or monitoring in terms of the Act, or any similar Act in another country may be admissible as evidence in criminal proceedings.

The report was submitted to the Minister on 23 November 1999.

* Project 112 - Sharing of pension benefits

The provisions for the sharing of retirement fund benefits on divorce as provided for by the Divorce Act 70 of 1979, via the Divorce Amendment Act 7 of 1989, proved to be unsatisfactory in several respects.

The main recommendations contained in the report on the sharing of pension benefits are the following:

The sharing of retirement fund benefits between spouses on divorce must be governed by substantive legislation separate from the Divorce Act,1979.

Provision should be made for the division of retirement benefits as such and not merely for the exchange of compensatory assets in place of such benefits.

The exchange of compensatory assets in place of a share of retirement fund benefits should nevertheless remain as an option available to the spouses.

Spouses may exclude pension sharing in terms of their antenuptial contract.

A spouse may waive any right to retirement fund benefits.

Spouses may agree in writing to share retirement fund benefits in different proportions than those prescribed.

Subject to the principles contained in the proposed legislation, a retirement fund may make use of approximate calculations where exact data is not obtainable.

The costs that are recoverable from spouses in respect of the division of benefits may be prescribed by regulation.

The non-member spouse has a right to a share of the retirement fund benefits which accumulated in respect of the member during the marriage. The extent of the right is prescribed in the formulae set out in the proposed legislation in respect of the various types of retirement schemes.

Any share of retirement fund benefits to which a non-member spouse is entitled is made available on a locked-in basis - in other words, by way of deferred pension and not as a cash benefit.

Benefits to which a non-member spouse is entitled must be paid to him or her direct from the retirement fund by which the benefits are held on behalf of the non-member spouse.

If the non-member spouse dies before the date on which the benefits become payable to the member, the withdrawal value of the benefits on the date of the death of the non-member spouse is payable to his or her estate.

The sharing of retirement fund benefits is at this stage limited to spouses whose marriages are recognized as such in terms of existing law.

The proposed legislation should make it clear that retirement fund benefits are not divided as part of the matrimonial property of spouses.

The proposed legislation should be applicable in respect of marriages dissolved after the commencement of the new provisions.

The new provisions should not apply in respect of spouses who have in terms of their antenuptial contract chosen complete separation of their property, but such spouses should be allowed to make the said provisions applicable to them by way of written contract.

The report was submitted to the Minister on 22 June 1999.

* Project 115 - Review of administrative law

The Constitution of 1996 requires an Administrative Justice Act to be in place before 4 February 2000.

The key aspects contained in the report and draft Administrative Justice Bill are the following:

Following section 33 of the Constitution, at the core of the draft Bill is the concept of “administrative action”, which is widely defined. The key exclusions are the listed executive functions (which are not, properly viewed, administrative functions), and the legislative actions of Parliament, provincial legislatures and municipal councils. Administrative action by natural or juristic persons contemplated in section 8(2) of the Constitution and exercising a public power or performing a public function (e.g. non-statutory bodies controlling national sports codes) is specifically included. Collectively these bodies and organs of state are termed “administrators”.

Other important features of Chapter 1 are the wide definition of “standing” (in the definition of “qualified litigant”), and provision for a review jurisdiction which includes designated magistrates’ courts.

Chapter 2 of the Bill imposes a duty on all administrators to give effect to the rights in section 33(1) and (2) of the Constitution (clause 2 of the draft Bill, following section 33(3)(b) of the Constitution) and provides for the review of administrative action by the courts and independent and impartial tribunals (section 33(3)(a) of the Constitution).

In accordance with the requirement in section 33(3) of the Constitution that national legislation “be enacted to give effect to” the rights in section 33(1) and (2) of the Constitution, the draft Bill requires administrative action to be

procedurally fair. This is achieved by core requirements applying to all administrative action. Additional requirements may apply in appropriate circumstances. There is provision for a departure from the mandatory provisions if circumstances justify it, and then only to the extent necessary.

Another important part of the Bill relates to the provision of reasons for administrative action. This places a general obligation on an administrator (pursuant to the constitutional obligation in section 33(3) read with section 33(2) of the Constitution) to give reasons in writing when requested. This must be done within 90 days after the person was informed of the administrative action and the reasons for it, or becomes aware of it, or might reasonably have been expected to have become aware of it. (Provision is made for the amelioration of this time period, and also for the enforcement of the obligation to furnish reasons.) Flexibility is also introduced in the Bill to ensure again that administration is not stultified by unrealistic requirements, while at the same time giving effect in a practical way to the constitutional entitlement.

Chapter 4 focuses on the grounds of review, and the procedure for obtaining it. The Bill specifies the grounds of review established at common law, adapted in the light of recent formulations in South Africa and in other countries with a similar review jurisdiction. Two features are important: the distinction between review and appeal is retained, and the list is not a closed one. In this way, the opportunity exists for the courts to continue to develop and to define the South African law of review**,** in the spirit of section 8(3) of the Constitution.

The Bill specifies remedies available in proceedings for judicial review. These encompass both mandatory and prohibitory interdicts, declaratory orders, orders to give reasons, and review orders in the classic sense, setting aside the administrative action in question and either remitting it or, in exceptional cases, substituting or varying the administrative action and directing the payment of compensation.

Provision is also made for the extension of time periods specified in the statute. The solution proposed is to require the institution of proceedings in all cases without unreasonable delay, but with an outer limit of 180 days of the day on which the person was informed of the administrative action, or otherwise became aware of it, or might reasonably have been expected to have become aware of the action (the language of most prescription statutes, which have survived judicial scrutiny in the past). That outer limit, in turn, must be amenable to judicial dispensation in special cases where the interests of justice so require.

Chapter 5 deals with rules and standards. The Bill requires administrators in general and flexible terms to take appropriate steps to communicate rules to those likely to be affected by them, and to impose upon administrators flexible obligations relating to the manner in which this is to be achieved. In relation to rules and standards, administrators are required to compile registers and indices to ensure accessibility. There is also provision for the proposed Administrative Review Council to devise ways of making these measures more accessible, of pruning them, and of improving their content.

Chapter 6 focuses on the contemplated Administrative Review Council.

The last chapter of the Bill deals with general matters. It allows the President, in providing for the proposed Administrative Justice Act to come into operation, to set different dates for the commencement of certain clauses.

The report was submitted to the Minister at a media conference on 8 September 1999.

Chapter 5
Progress Report

In this Chapter the position regarding uncompleted investigations on the Commission's programme is discussed. Reports completed 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**.

The Commission resolved that the project should 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 deadwood 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 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.

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

As a result of the cost implications identified above, negotiations are currently underway with USAID on the possibility of donor funding for the establishment of a Unit for Statutory Law Revision.

*** 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 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. Further work in the investigation was delayed by the finalisation of the 1996 Constitution, among other factors.

Section 15(1) of the Constitution guarantees everyone the right to freedom of conscience, religion, thought, belief and opinion. Section 15(1) of the Constitution read with section 15(3) does not prevent legislation recognising marriages concluded under any tradition or under a system of religious, personal or family law, provided recognition is consistent with section 15 and the other provisions of the Constitution. These provisions now provide the constitutional framework for the future recognition of Islamic marriages.

The Commission reconsidered the status of the project in 1996 and decided to accord the investigation the highest possible priority rating and to recommend the appointment of a project committee.

In March 1997 two workshops were held in order to involve the public in the planning of the investigation and to elicit nominations for appointment to the project committee. As a result of advertisements in the press and the open invitation extended at the workshops 78 nominations were received. On 3 March 1999 the Minister appointed a project committee with Judge M S Navsa as project leader. The names of the project committee members are contained in **Annexure B**.

A task team consisting of four members of the committee was appointed to investigate the constitutionality of a system of choice in terms of which parties to an Islamic marriage may opt for the application of secular law as opposed to Islamic law. The task team was also to develop draft legislation. On 5 June 1999 the Commission approved the appointment Mr Marcus SC to assist the task team. It was decided that Mr Marcus would draft a constitutional framework within which a system of choice could operate. The framework was considered by the task team on 9 October 1999 and a structure for possible legislation was developed. Mr Marcus was tasked to refine the structure, which will be considered by the project committee in January 2000.

It is expected that a discussion paper will be ready for consideration by the Commission in the first quarter of 2000.

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

A project committee was appointed to assist with the investigation. The names of the project committee members are contained in **Annexure B**. 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

A comprehensive discussion paper (discussion paper 66) which contained a Draft Insolvency Bill and Explanatory Memorandum was published for comment. Detailed and well-considered comments on the Draft Insolvency Bill and Explanatory Memorandum were received. The Draft Insolvency Bill was amended to reflect the comments received, the results of further research and subsequent developments. Discussion paper 86 containing an amended Draft Insolvency Bill was published to elicit responses from key parties.

As a result of recommendations contained in a number of interim reports the following laws were 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.

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.

In May 1998 a proposed adaptation of UNCITRAL's Model Law on Cross-Border Insolvency for enactment in South Africa was distributed for comment. The Commission considered the comments and an interim report recommending the enactment in South Africa of UNCITRAL’s Model Law on Cross-Border Insolvency was submitted to the Minister on 23 June 1999. The Bill was approved by Cabinet on 29 September 1999.

The Standing Advisory Committee on Company Law agreed to investigate the undermentioned

subjects:

Disqualification and personal liability of directors.

Judicial management.

Compromises and arrangements.

The position of related companies.

Dissolution and deregistration of companies.

Provisions in respect of close corporations.

Provisions in respect of other legal persons.

In April 1998 the Standing Advisory Committee on Company Law agreed that the Centre for Advanced Corporate and Insolvency Law at the University of Pretoria should undertake a project aimed at merging the liquidation provisions of the Companies Act 61 of 1973 and the Close Corporations Act 69 of 1984 into the draft Insolvency Bill drawn up by the Commission. The Centre produced a working document that was discussed at a symposium presented by the Centre and the Transvaal Law Society on 23 October 1998. The Centre held workshops during December 1998 to refine the proposals in the working document. A conference on a draft unified Insolvency Act was held on 6 October 1999. The Centre undertook to finalise a report on a unified Insolvency Act as soon as possible.

According to current planning the investigation will be concluded in the first quarter of 2000.

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

The investigation entails a comprehensive review of the Criminal Procedure Act 51 of 1977. Owing to the extent of the task the Commission adopted an incremental approach to the investigation. The objects are to investigate the possibility of shortening and simplifying certain cumbrous procedures that give rise to the unnecessary protraction of trials as well as to

investigate the influence of the Bill of Rights on the Criminal Procedure Act.

The Minister appointed anew project committee with effect from 24 July 1998. On 26 November 1998 the project committee defined the scope of the investigation and resolved to proceed with the following investigations:

An investigation into the question whether or not the Director of Public Prosecution should be given the right to appeal on a question of fact relating to the merits of a case.

An investigation into the viability of the establishment of a dual system of criminal procedure for defended and undefended accused persons and the incorporation of inquisitorial elements in the procedure. The project committee requested Professor Steytler, a committee member, to conduct research in this regard and to prepare a discussion paper and a report. Financial assistance for the task was provided by the German Technical Corporation (GTZ).

An investigation into the application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing.

A draft discussion paper on the right of the Attorney-General to appeal on questions of fact was approved for publication by the working committee on 2 December 1999. **The discussion paper will be published early in 2000 and a summary of the recommendations contained in the discussion paper will appear in the 2000 annual report.**

A draft discussion document on the establishment of a dual system of criminal procedure for undefended accused persons and the incorporation of inquisitorial elements in the procedure was considered by the project committee on 24 November 1999. **The project committee requested Professor Schwikkard and Judge Nugent to do research and prepare a discussion paper during 2000.**

A draft discussion paper on the application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing was approved for publication by the working committee on 2 December 1999. **The discussion paper will be published early in 2000 and a summary of the recommendations contained in the discussion paper will appear in the 2000 annual report.**

*** Project 82 - Sentencing**

The objective is to develop a comprehensive Sentencing Act that would provide a permanent framework for sentencing in South Africa. In doing so the project committee, which was newly appointed in September 1998, plans to adopt a holistic approach to all issues related to sentencing, which would include placing victims at the centre of the criminal justice system. The names of the project committee members are reflected in **Annexure B**.

The project committee considered the Criminal Law Amendment Act 105 of 1997 and noted that it was a temporary measure and that its sentencing provisions would cease to have effect at the end of April 2000. On 30 November 1998 the committee met to formulate principles of a broad sentencing policy and to consider a broad framework for empirical research to assess the impact of the Criminal Law Amendment Act 105 of 1997. Tenders to farm out the research were invited. On 2 February 1999 the committee considered the tenders and the Institute for Criminology (UCT) and the Institute for Security Studies were contracted by the GTZ to do preliminary research. A provisional report was submitted on 26 March 1999. **Final research proposals were submitted in May 1999 and it is envisaged that the research will be completed in the beginning of 2000.**

On 10 September 1999 the project committee resolved to enter into a contractual agreement with the project leader to do research and prepare **a draft discussion paper on a comprehensive Sentencing Act by April 2000**. Financial assistance will be given by the GTZ.

On 2 February 1999 the project committee also considered the continuation of its investigation into restorative justice with the emphasis on victim issues. A focus group was requested to consider the matter and to report back to the project committee on a plan of action. The focus group met on 29 March 1999. Draft discussion documents on victim impact statements, a compensation fund for victims of crime, and victims' rights were considered by the focus group on 25 May 1999. A workshop to develop a work programme for the focus group was held on 29 - 30 July 1999. On 10 September 1999 a subcommittee on victim empowerment was established. On 2 December 1999 the subcommittee decided to co-opt members of existing project committees and appoint additional members if necessary. The committee also decided that research in respect of the investigation into establishing a compensation fund for victims of crime should be farmed out.

* Project 85 - Aspects of the law relating to AIDS

The Commission has been investigating aspects of the law relating to AIDS since 1993. Since then extensive research has been done, evidence has been 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. A project committee representative of divergent interests under the chairmanship of Judge E Cameron has been assisting the Commission in this task and developing final recommendations on several issues regarding HIV/AIDS since August 1996. The names of the other members of the project committee are reflected in **Annexure B**.

The project committee adopted an incremental approach in dealing with its mandate. During the past three and a half years the Commission published five discussion papers and three interim reports. These dealt with health care related issues (discussion paper 68 and first interim report); pre-employment HIV testing (discussion paper 72 and second interim report); and HIV/AIDS in schools (discussion paper 73 and third interim report). The Commission's 1997 annual report contains information regarding the first interim report. Information regarding the other two interim reports is contained in the Commission's 1998 annual report.

In 1998 the Commission completed a fourth discussion paper (discussion paper 80) dealing with the need for a statutory offence aimed at harmful HIV-related behaviour. The discussion paper was published in January 1999 and the closing date for comment was 31 March 1999. Information regarding the discussion paper is contained in the 1998 annual report. The project committee has since considered the comment on the discussion paper, proceeded with additional research, and received inputs from the Commission's sexual offences project committee. **In view of the divergent comments received a focus discussion group meeting with experts and stakeholders will be held in February 2000.**

A fifth discussion paper (discussion paper 84) dealing with the question of compulsory HIV testing of persons arrested in sexual offence cases was published for general information and comment in September 1999.

The discussion paper points out that our law at present provides for HIV testing only with the informed consent of the person concerned; that every person is entitled to privacy regarding

medical information; and that no general legislation exists which allows for disclosures. Furthermore, neither currently available public health law nor criminal procedure make provision for compulsory HIV testing of persons arrested for having committed sexual offences with a view to disclosing their HIV status to victims. The discussion paper consequently debates the need for legislative intervention concentrating on the following critical issues: the high national prevalence of HIV coupled with the high occurrence of rape and other sexual offences; the utility and limitations of HIV testing; women's international and constitutional rights, including victims' rights; and the arrested person's constitutional rights, especially the right to privacy.

The Commission arrives at the preliminary conclusion that there is a need for statutory intervention to provide for compulsory HIV testing of arrested persons in sexual offence cases. The intervention is necessary in the light of women's undoubted vulnerability in South Africa today to widespread sexual violence amidst the increasing prevalence of a nationwide epidemic of HIV and in the absence of adequate institutional or other victim-support measures. In these circumstances there is a compelling argument for curtailing an arrested suspect's rights of privacy and bodily integrity to a limited extent to enable his accuser to know whether he has HIV. The benefit to alleged victims of the knowledge is not only immediately practical in that it enables them to make life decisions and choices for themselves and people around them; it is also profoundly beneficial to their psychological state to have even a limited degree of certainty regarding their exposure to a life-threatening disease. That the arrested person's rights are infringed must be acknowledged and this must be reflected in safeguards built into the process created. It is therefore suggested that the proposed change to the law should be based on the following principles:

Compulsory testing of an arrested person should in principle be victim-initiated. This will ensure that only a person with a material interest in the arrested person's HIV status may apply for a compulsory testing order.

In order to protect the victim from a further potentially traumatising confrontation, the arrested person should not be allowed to take part or give evidence in an application by the victim for compulsory testing, except to be able to challenge whether information on oath has in fact been placed before the magistrate in compliance with the provisions.

A specified standard of proof should be required on which to base an order for compulsory HIV testing. The Commission is of the opinion that this should consist of the

prosecution showing prima facie that the arrested person committed the sexual offence in question, and that the act was of a type that could indeed transmit HIV.

Compulsory HIV testing of an arrested person should take place only on authorisation by a court. Furthermore, this should be a discretionary power resting with the presiding officer hearing the application.

In order to guard against abuse of the procedure certain procedural and substantive safeguards must be provided for. These should include scrutiny by a magistrate of an application for the compulsory testing of the arrested person; a deposition on oath, whether oral or by affidavit; and prima facie evidence of a sexual offence in which exposure to the body fluids of the arrested person may have occurred.

A deliberately false complaint would amount to perjury and a malicious activation of the procedure would be actionable.

The procedure should ensure confidentiality of the test results so that the information is provided only to the victim and the arrested person.

The use of information relating to the HIV status of an arrested person obtained under the proposed amendment should be clearly limited: test results obtained through compulsory testing should not be admissible as evidence in a criminal trial.

The procedure need not necessarily be HIV specific.

On the basis of the above, the Commission provisionally recommends the adoption of a specific amendment to section 37 of the Criminal Procedure Act 55 of 1977. The closing date for comment on the discussion paper was extended from 15 to 30 October 1999. On 6 December 1999 the project committee considered the comment received. **In view of a need, reflected in the comment, for draft legislation to be supplemented by regulations dealing with the practical implementation of the recommended testing procedure, a focus discussion group with stakeholders will be held in February 2000.**

It is envisaged that interim reports dealing with the two issues expounded in the fourth and fifth discussion papers will be finalised in the first half of 2000.

*** Project 90 - Customary law**

On 22 October 1999 the Commission decided that the name of the project should be changed from “Harmonisation of the common law and indigenous law” to "Customary law”, since the name would be a more appropriate description of the work in which the project committee is presently engaged.

The aim of the investigation is to ensure the orderly development of customary law as a component of the plural legal system in a way that is compatible with the Constitution. The project committee appointed to assist the Commission in this investigation (the names of the members are reflected in **Annexure B)** identified the following issues for preferential treatment:

The recognition of customary marriages.

Conflict of laws.

Law of succession.

Traditional Courts.

Information regarding the report on customary marriages appears in the 1998 annual report.

A draft report on conflicts of law was considered by the Commission and approved for publication on 13 August 1999. The report was submitted to the Minister at a media conference on 8 September 1999. Information regarding the report appears in **Chapter 4**.

An issue paper on succession was published for general information and comment on 28 April 1998. The closing date for comments was 30 June 1998. Information regarding the issue paper is contained in the 1998 annual report. The development of a discussion paper was receiving attention when the Department of Justice introduced a Bill in Parliament entitled the “Customary Law of Succession Amendment Bill”. The Bill having since been withdrawn, the Minister ordered on 19 September 1999 that the investigation should go back to the Law Commission as a matter of urgency. **A discussion paper will be finalised by the end of March 2000.**

A discussion paper on the judicial powers of traditional leaders was published for general information and comment on 6 May 1999. The closing date for comments on the discussion paper was extended to 31 August 1999. **A draft report will be finalised in the first quarter of 2000.**

*** Project 94 - Arbitration**

The investigation initially dealt with international and domestic commercial arbitration only, but at the request of the Minister it was broadened to include an investigation into alternative dispute resolution (ADR) at all levels. The project committee was broadened for this purpose. The names of the project committee members are reflected in **Annexure B**.

International commercial arbitration

A report on international commercial arbitration was submitted to the Minister on 12 October 1998. Cabinet approval for the introduction of the Bill in Parliament was obtained on 28 April 1999.

Domestic commercial arbitration

A discussion paper on domestic arbitration was submitted to the Minister at a media conference on 8 September 1999. The closing date for comment was 29 October 1999.

The discussion paper contains proposals for a new domestic arbitration statute intended to replace the Arbitration Act 42 of 1965.

Arbitration is increasingly recognized as an important method of resolving commercial and other disputes, which can help to relieve the pressure on the civil justice system. Arbitration needs to be supported by appropriate legislation. The objects of a modern arbitration statute are the fair resolution of disputes by an impartial tribunal without unnecessary delay and expense; party autonomy; balanced powers for the courts; and adequate powers for the arbitral tribunal to conduct the reference effectively. It is clear that the existing Arbitration Act 42 of 1965 fails to meet these objectives adequately.

The Commission's investigation has revealed that there are three basic options for a new

domestic arbitration statute. The first is to improve the existing statute while retaining its basic provisions. In view of the dramatic improvements to arbitration legislation in other jurisdictions, notably England, during recent years, this option does not appear to be practical. The second is to follow the approach adopted by several other countries and to adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law for both domestic and international arbitration. Because of the need, in the context of international arbitration, to keep changes to the content and language of the Model Law to a minimum, this approach also appears to be inappropriate for the needs of a new domestic arbitration statute for South Africa. The third approach, and that proposed by the Commission for consideration in this Discussion Paper, is to have a new statute combining the best features of the Model Law and the English Arbitration Act of 1996, while retaining certain provisions of the 1965 Act which have worked well in practice.

It is well known that the potential advantages claimed for arbitration compared to litigation, as a more expeditious and cost-effective method of resolving disputes, are often not achieved in practice, particularly in complex commercial disputes and in the construction industry. The Commission therefore proposes that a statutory duty should be imposed on the arbitral tribunal to adopt procedures which, while fair, in the particular circumstances of the dispute will avoid unnecessary delay and expense. Increased powers are proposed for the tribunal to enable it to comply with this duty. These powers include the power to rule on its own jurisdiction, the power to depart from the ordinary rules of evidence, a limited power to order interim measures and security for costs, the power to call witnesses, more effective powers to deal with a party in default and the power to limit recoverable costs. True to the principle of party autonomy the tribunal's statutory powers can be excluded or modified by the parties in their arbitration agreement.

The Commission proposes that the powers of the court should be reviewed and generally brought into line with the powers of the court under the Model Law, while retaining certain powers of the court in the 1965 Act not found in the Model Law, but in modified form. Particular attention has been given to the need to prevent applications to court being abused by unscrupulous parties intent on delaying the arbitration process. There are also certain provisions designed to facilitate the use of conciliation by the parties to an arbitration agreement. In the interests of consumer protection, certain restrictions are imposed on arbitration clauses in standard-form contracts entered into by consumers.

The Commission's provisional proposals are that -

the UNCITRAL Model Law should not be adopted for domestic arbitrations in South Africa; and

the existing Arbitration Act 42 of 1965 should be repealed and replaced with a comprehensive new arbitration statute for domestic arbitration, based on the principles set out above.

A series of regional workshops was held countrywide during September 1999 to discuss the provisional proposals set out in the discussion paper. **It is envisaged that a report will be finalised in the first quarter of 2000.**

Alternative Dispute Resolution

Alternative dispute resolution (ADR) covers all forms of dispute resolution other than litigation or adjudication through the courts. It therefore includes a broad range of mechanisms and processes designed to assist parties in resolving disputes creatively and effectively. These mechanisms and processes are not intended to supplant court adjudication, but rather to supplement it. The most common types of ADR include negotiation, conciliation, mediation and arbitration.

In this investigation the Commission is addressing the question whether the administration of justice would be enhanced if a broader concept of dispute resolution could be accommodated within the formal legal system.

An issue paper dealing with all aspects of ADR was published for general information and comment during 1997. Information regarding the issue paper appears in the 1998 annual report.

A discussion paper on community dispute resolution structures was submitted to the Minister at a media conference on 8 September 1999. The closing date for comment was extended to 30 November 1999.

The investigation considers ways of getting community structures (whether indigenous, urban, township or religious) to play their proper role in ensuring that South Africans, particularly the poorest of the poor, receive access to justice. Community forums are at present diverse,

fragmentary and tentative. Most initiatives are private or individual efforts and they tend to be unfocused.

The following recommendations are made in the discussion paper:

> Because community-based dispute-resolution structures ("community forums") serve a useful purpose in meeting the needs of the majority of the South African population for accessible justice, these structures must now be recognised and supported by law.
>
> Reference to these structures as "community courts" is misleading and a new name should be found.
>
> Recognition of community structures should be based on an Act of Parliament setting out their status, role, functioning, jurisdiction, procedure and other related matters, such as the qualifications of personnel.
>
> Any such legislation should be drafted only after careful investigation and consultation and should take the form of creating a broad framework, to accommodate different models of local dispute resolution.
>
> Attendance at any community forum should be entirely voluntary and decisions of a community forum should be binding on the parties only if they have agreed beforehand to be bound by such decisions.
>
> Community forums should remain informal and flexible in their procedures, inexpensive in their operations as well as accessible, non-alienating and responsive to the needs of the communities in which they operate.
>
> There should be no appeal from community forums to the formal courts. If a matter remains unresolved, the dispute may be pursued in any other forum.
>
> An office of Ombudsman for Community Structures should be established to oversee the work of community forums and to enforce uniform standards.

Where there is a functioning customary court in a rural area, a community forum should not be introduced.

Persons operating in community forums should be empowered through training.

The Commission requests comment on whether community forums should have criminal jurisdiction and if such jurisdiction is supported, on the restrictions, if any, that should be placed on such jurisdiction.

A national workshop on the discussion paper was held in Pretoria on 27 - 28 October 1999. **It is envisaged that a draft report will be finalised in the first quarter of 2000.**

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

The business world relies with confidence on computers 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.

The Commission decided that the investigation should be kept in abeyance pending the finalisation of its investigation into computer-related crimes (project 108 below) in view of the overlap between the two investigations.

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

With the introduction of the Act in 1956 the common law relating to contributory negligence and joint wrongdoers was amended and the "last opportunity"-rule of avoiding an accident as the test of liability repealed. 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 makes it possible to sue joint wrongdoers in the same action. The investigation entails the review of the Act in question with special reference to the meaning of "fault" which is defined in the Act and the joinder of parties.

A discussion paper was published in October 1996 for general information and comment. The finalisation of a report has been deferred in the light of the researcher's involvement in more urgent investigations.

Toward the end of the year under review judge P J J Olivier, former Vice-Chairperson of the Commission, kindly indicated that he would finalise a report. **A draft report will be considered by the Commission in the first quarter of 2000.**

*** 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 were effected. Maintenance is currently receiving the Commission's attention:

It is widely acknowledged that South Africa's maintenance system is in disarray. Complaints range from the treatment, attitudes and facilities encountered at maintenance courts to the seeming impunity with which persons manage to evade their legal duty to maintain their dependants.

The Commission published an issue paper on the review of the maintenance system for general information and comment during March 1997. A project committee was appointed after the publication of the issue paper. The names of the project committee members are reflected in **Annexure B**.

The project committee resolved not to publish a discussion paper, but to proceed with the publication of an interim report. A summary of the recommendations contained in the interim report appears in the 1998 annual report.

The Maintenance Act 99 of 1998 came into operation on 26 November 1999. **In 2000 the position under the new Act will be assessed with a view to determining whether further reform is necessary.**

*** Project 101 - Investigation into the application of the Bill of Rights to the criminal law, criminal procedure and sentencing**

Matters relating to criminal procedure and sentencing are at present being dealt with as part of other investigations on the Commission's programme (see project 73 and project 82).

*** Project 105 - 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 so as to ensure that the legislation is in accordance with international norms, the Constitution and the current requirements of the country.

A project committee was appointed by the Minister on 2 September 1998. The names of the members of the project committee appear in **Annexure B**.

In November 1998 a discussion paper on the Interception and Monitoring Prohibition Act 127 of 1992 was published for general information and comment. Information regarding the discussion paper appears in the 1998 annual report.

A report on the Interception and Monitoring Prohibition Act was submitted to the Minister on 23 November 1999. A summary of the recommendations contained in the report appears in **Chapter 4**.

The project committee will consider other areas of the law relating to security during 2000. The following areas were provisionally identified at the first meeting of the project committee held on 17 November 1998:

The review of the crimes of terrorism and sabotage.

The protection of classified information in the possession of the State.

Regulation of private intelligence companies.

Economic espionage as a threat to national security.

Protection of the property and personnel of foreign governments and international organisations, including protection from intimidation, obstruction, coercion and acts of violence committed against foreign dignitaries, foreign officials and their family members.

Hostage-taking in order to compel any government to do or abstain from doing any act.

A discussion paper on terrorism will be developed during the first half of 2000.

*** Project 106 - Juvenile Justice**

South Africa does not have a coherent juvenile justice system. Limited provisions providing specifically for the management of young people caught up in the criminal justice system are spread throughout a number of separate statutes such as the Criminal Procedure Act, 1977, the Probation Services Act, 1991, the Child Care Act, 1983, and the Correctional Services Act, 1959.

The drafting of composite juvenile justice legislation was identified as a priority in the National Plan of Action for Children. The Minister accordingly requested the Commission to include an investigation on juvenile justice in its law reform programme. The project committee on juvenile justice was appointed on 5 December 1996. The names of the members appointed to the project committee appears in **Annexure B**.

A discussion paper containing proposals relating to a new structure to govern children under the age of 18 years who are accused of having committed offences was published for general information and comment during November 1998. The closing date for comments on the discussion paper was 31 March 1999. Information regarding the discussion paper is contained in the 1998 annual report.

A draft report will be considered by the Commission early in 2000.

*** Project 107 - Sexual offences**

The drafting of legislation to combat the sexual exploitation and abuse of children was another priority identified in the National Plan of Action for Children. The Minister of Justice accordingly requested the Commission to include an investigation into sexual offences by and against

children in its law reform programme. A project committee was appointed on 4 December 1996. The names of the members appointed to the project committee appear in **Annexure B**.

An issue paper was published in May 1997 for general information and comment. The closing date for comment was 30 September 1997. Information regarding the issue paper is contained in the 1998 annual report.

It became clear during the course of the investigation that any proposed changes to the law relating to sexual offences would have far-reaching effects on the position not only of children, but also of adults. Consequently, and as a result of various other requests, the Commission decided to expand the scope of the investigation to include sexual offences against adults.

A discussion paper on sexual offences: the substantive law, was submitted to the Minister at a media conference on 8 September 1999. An extensive consultation process on the discussion paper was launched. The closing date for comment was extended to 30 November 1999.

Some of the recommendations made in the discussion paper are the following:

> The criminal law is the appropriate mechanism to address sexual exploitation, abuse and violence against women and children in particular.
>
> The Commission does not recommend the repeal of all the common law sexual offences. However, the adoption of one comprehensive new Sexual Offences Act is recommended.
>
> The Commission proposes the repeal of the common law offence of rape and its replacement with a new gender-neutral statutory offence. This new offence centres around "unlawful sexual penetration". The Commission says sexual penetration is unlawful *per se* when it occurs under coercive circumstances. Coercive circumstances include the application of force, threats, the abuse of power or authority, the use of drugs, etc. "Sexual penetration" is defined very broadly to include the penetration "to any extent whatsoever" by a penis, any object or part of the body of one person, or any part of the body of an animal into the vagina, anus, or mouth of another person. Simulated sexual intercourse is also included under the Commission's definition of "sexual penetration".

Sexual penetration of any child below the age of 12 years should constitute rape.

Absence of consent to sexual intercourse should no longer be an element of the offence of rape. (The accused should obviously still be able to raise consent to sexual intercourse as justification for his or her unlawful conduct, but should carry the burden of proof in this regard.)

A husband can be convicted of raping his wife.

A statutory provision called “child molestation” is aimed at prohibiting sexual acts with children below 16 years of age. Consent by a child under 16 years of age to any sexual act should not be a defence to a charge under this provision.

As most cases of intra-familial sexual abuse take place repeatedly and over long periods of time, child victims often have difficulty recalling precise details of the time and place when and where the alleged offences are said to have occurred. It is thus recommended that the “persistent sexual abuse of a child” should constitute a separate offence.

The commercial sexual exploitation of children should be prohibited. Commercial sexual exploitation includes child prostitution, child pornography and trafficking in children.

Although the Commission supports a total prohibition of child pornography, it nevertheless does not propose the inclusion of provisions on child pornography in the new Sexual Offences Act. The Commission does not recommend any legislative amendments pending the review of the Films and Publications Act.

Specific provisions should deal with sexual offences against mentally impaired persons.

The Commission recognises that a clear need exists for specific legislation criminalising stalking (or harassment) and recommends that a specific investigation be conducted in this regard.

A statutory offence in respect of coercion to perform sexual acts covers the actions of a person who compels another person to engage in sexual acts with that person, a third person, an animal or the compelled person himself or herself.

Comment is invited on the prohibition of female genital mutilation.

On completion of the consultation process, a report on the substantive law relating to sexual offences will be prepared. An effort will be made to finalise the report in the first half of 2000 so as to enable the Minister to introduce legislation in August 2000.

Draft discussion papers on process and procedure as well as adult commercial sex work and adult pornography will be finalised during the first quarter of 2000.

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

This investigation is aimed at addressing problems experienced in the field of criminal law and criminal procedure with respect to the investigation and prosecution of computer-related crime. These problems stem mainly from the intangible nature of information stored on or used by computers. Current statutory and common law offences are not wide enough to include many of the activities carried out in respect of computers. Furthermore, procedures for the gathering and presentation of evidence were not designed to function in a computerised society.

A project committee for this investigation was appointed during September 1997. The names of the project committee members are reflected in **Annexure B**.

Six objectives have been set which the Commission aims to investigate :

The criminalisation of unauthorised access to computers as well as the unauthorised modification of computer data and software applications.

The possibility of providing for the procedural aspects associated with the investigation and prosecution of the above-mentioned offences.

The use of computers to commit offences such as theft and fraud.

Offences committed by means of the Internet.

Matters relating to encryption in order to protect information.

The continuing education of the investigating and prosecuting authorities as well as the judiciary to understand and correctly apply the legislation which may be forthcoming from the this investigation.

Because of the wide scope of the investigation an incremental approach will be adopted. The first issue paper on options for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects was published during August 1998. The closing date for comments was 26 October 1998. Information regarding the issue paper is contained in the 1998 annual report.

A draft discussion paper will be finalised for consideration by the Commission in January 2000.

* **Project 109 - Review of the Marriage Act 25 of 1961**

The Department of Home Affairs approached the Commission in 1996 with a request to investigate and recommend legislation relating to a new marriage dispensation for South Africa. The Minister approved the inclusion of the investigation in the Commission's programme on 27 January 1997.

A discussion paper was submitted to the Minister at a media conference on 8 September 1999. The closing date for comment was 30 November 1999.

The investigation focuses mainly on whether the provisions contained in the Marriage Act are adequate or whether they should be amended and, in that event, the way in which such amendments should be effected.

Some of the issues and recommendations raised in the discussion paper are the following:

The question arises whether there is a need to accord recognition to foreign embassy or consular marriages in South Africa in view of the absence of such statutory recognition.

Section 2(1) of the Act should provide that certain persons in the diplomatic and consular service of the Republic, namely Ambassadors, High Commissioners and Consuls should by virtue of their office and as long as they hold such office be *ex officio* marriage officers for the area in which they hold office.

The Act permits the designation as a marriage officer of any minister of, or person holding a responsible position in, "any religious denomination or organization". It is restrictive in that marriage officers can be designated only for the purpose of conducting marriages according to "Christian, Jewish or Mohammedan rites or the rites of any Indian religion." One option suggested to the Commission is the amendment of the provision by the substitution of the words concerned with the phrase “according to the rites of the religious denomination or organisation concerned”. Another option is to grant authority to the Minister of Home Affairs to appoint a person as a marriage officer who has been nominated by a religious denomination or organisation once the Minister is satisfied that the denomination or organisation concerned is a bona fide religious denomination or organisation. The problem with this option is that it suggests no other grounds for the Minister to refuse to appoint the person concerned (eg that he or she is unfit to be a marriage officer) except for a defect in the *bona fides* of the organisation. A third option is to empower the Minister to designate by proclamation recognised religious groups or religious organisations. The Marriage Act could then provide that ministers of religion or persons holding responsible positions in religious denominations or religious organisations recognised by the Minister by notice in the *Gazette,* may be designated by the Minister to be marriage officers. The Commission decided to leave the question to respondents and invites comment on these options. Comment is also invited as to whether criteria formulated to guide the Minister in the exercise of his or her powers should be included in the Act.

The decision made by the Minister to designate someone as a marriage officer or to revoke the designation of the marriage officer should be reviewable by any provincial or local division of the High Court of South Africa.

The Marriage Act provides for the *solemnisation* of marriages. It is clear that a marriage is not necessarily *solemnised*, but the alternative “celebrate” is not without its problems. The terms “conduct a marriage” or “join in marriage” are better substitutes and words to

that effect should be used in place of the terms “solemnize” or “solemnization” where appropriate in the Act.

A proposal was made that the joining of parties in marriage should be privatised, ie that persons other than those presently appointed should also be able to conduct marriages. In view of the limited requests calling for such a step, the Commission is not convinced that the appointment of marriage officers should be extended to include persons other than the present categories of marriage officers.

The minimum age for marriage (set out in section 26) should be 18 years of age for males and females.

Section 28 should make provision for the provincial or local division of the High Court to have jurisdiction to consent to a marriage between a man or a woman and the direct descendant of his or her deceased spouse if both parties have reached the age of 18 years and they are not related to each other by blood. This provision should correspond to the provision setting out the minimum age for marriage for males and females to be 18 years of age.

Section 29(2) presently sets out the following places for the conducting of marriage ceremonies: churches, other buildings used for religious services, public places and private dwelling-houses *with open doors.* There are two options to be considered. In terms of the first option the range of places where marriages may be conducted would be less limited than is presently the case although they should still be limited to some extent. This would require the deletion of the statutory requirement that parties be joined in marriage in a private dwelling with *open doors* and the addition of the words “or in any other building or facility used for conducting marriages”. The second option is that there should not be any limitations at all with regard to places where marriages may be conducted. Comment on these two options is requested: should the range of places where marriages may be conducted be limited or should there be no limitations? Should some limitations still be considered desirable, the Act should also provide for the validity of marriages conducted at places other than the appointed ones.

* The Act should further provide for a marriage conducted under or recognised in terms of the provisions of the Act to be recorded in the prescribed register, for the transmitting of

the marriage register and records concerned to a regional or district representative of the department in whose district or region the marriage was conducted, and for causing the particulars of the marriage concerned to be included in the population register in accordance with the provisions of the Identification Act of 1997.

The marriage formula set out in section 30(1) should be amended by the deletion of the words “and thereupon the parties shall give each other the right hand”. The proviso dealing with the validity of marriages where the requirement that the parties shall give each other the right hand has not strictly been complied with, should also be deleted.

Section 37 makes provision for South African courts having jurisdiction to try persons who contravene the provisions of the Marriage Act in any country outside the Republic of South Africa. There may be a number of offences parties may commit outside the geographical borders of South Africa in contravention of the provisions of the Marriage Act. One example is where a person who is already a party to a marriage contracts a second marriage in another country without obtaining a prior divorce and thereby committing the offence of bigamy. It should be possible under these circumstances to try the offender in South Africa. There is therefore no need to amend section 37 besides the substitution of the term “Republic” for the term “Union”.

A report on the review of the Marriage Act will be finalised during the first half of 2000.

* **Project 110 - Review of the Child Care Act, 1983**

One of the recommendations of the conference entitled "Towards redrafting the Child Care Act" hosted by the Community Law Centre (University of the Western Cape) and the Portfolio Committee on Welfare and Population Development held in Gordon's Bay from 26 to 28 September 1996 was that the Commission be requested to include the review of child care legislation in its programme in order to develop comprehensive draft legislation as a matter of urgency.

Following the conference and on representations from the Minister of Welfare and Population Development, the Minister requested the Commission to include an investigation into the review of the Child Care Act, 1983 in the Commission's programme. The Commission decided at its meeting held on 4 April 1997 to include the investigation in the Commission's programme and to

appoint a project committee. The names of the members of the project committee are reflected in **Annexure B**.

In scope, the investigation goes beyond the review of the present Child Care Act, 1983, and includes a comprehensive review and redraft of all child care legislation.

An issue paper was published in May 1998 for general information and comment. The closing date for comment was 31 July 1998. Information regarding the issue paper appears in the 1998 annual report.

To enable the project committee to prepare a discussion paper with draft legislation, the members of the project committee and contract researchers are preparing consultation papers on selected issues as background documents to stimulate debate within specific focus groups.

The consultative research process will be followed by the preparation of a discussion paper and draft legislation. **It is envisaged that a discussion paper will be published in August 2000.** Mr G G Smit, a former Law Commissioner, was contracted to draft the legislation. He assumed duty on 1 October 1999.

* **Project 113 - The use of electronic equipment in court proceedings**

In November 1996 the Minister requested the Commission to consider a proposal by Judge H C J Flemming regarding the adoption of legislation authorising video conferences in court.

In brief, video conferences enable the “live” participation in court proceedings of a person in his or her physical absence. In Judge Flemming's view legislation is urgently required in the interests of access to the law and improvement of the operation of the courts since video conferences have the potential to reduce costs, for example, in cases involving witnesses having to travel from distant places or even residing in foreign countries. In certain instances inspections *in loco* could also be eliminated.

A letter by Mr D Dalling MP, directed to the Minister and dealing with electronic trials, was also referred to the Commission. Mr Dalling highlights the benefits that could be reaped in terms of savings and otherwise from adopting legislation authorising trials by telecommunication in respect of less serious offenses. Procedures abroad involve telecommunication between a

presiding officer in a court room in the usual court buildings or in his or her office and the accused person in a court room in the place of detention. Telecommunication systems also provide for communication between public prosecutors and the legal representatives in the proceedings concerned. Mr Dalling argues that the major benefit of utilising this particular form of trial is that transportation costs are saved, procedures are speeded up and prisoners do not have to be transported from one venue to another in circumstances which are often a danger to security.

The Minister endorsed the inclusion of the investigation in the Commission's programme on 14 June 1997.

In view of several investigations with a higher priority, it was not possible to commence with research during the year under review. **The investigation will commence early in 2000.**

* **Project 114 - Publication of divorce proceedings**

Section 12 of the Divorce Act 70 of 1979 deals with the limitation of publication of particulars of a divorce action. The provision does not purport to have extraterritorial operation and its effect is apparently that -

> foreign media are wholly unrestricted in their reportage of South African divorce proceedings; and
>
> South African media are wholly prohibited from disclosing any facet of divorce proceedings.

The divorce proceedings are, however, entirely open to the public. No discretion vests in the court to determine whether or in what respects disclosure should be permitted or prohibited.

The Constitution, 1996, entrenches *inter alia* free speech, freedom of information and the right to privacy. The question which arises is whether, in regulating the publication of particulars of divorce proceedings in terms which appear peremptory, inflexible and sweeping, the provision is unconstitutional. There are clear indications that at present section 12 of the Divorce Act is simply being defied.

On 23 January 1998 the Commission resolved to include an investigation into the “publication of divorce proceedings” in its programme. The Minister approved the inclusion on 30 January 1998.

The researcher initially allocated to the project has been transferred to the Department of Transport. As a result of the new researcher’s heavy involvement throughout June and July in the workshops on traditional courts and their aftermath, she was unable to start work on the project. She has also been appointed to do research on succession and administration of estates in customary law.

Another researcher had to be allocated to the project and he has commenced with research. **It is envisaged that a draft discussion paper on the publication of divorce proceedings will be finalised in April 2000.**

* **Project 116 - The carrying of firearms and other dangerous weapons in public or at gatherings**

The South African Agricultural Union requested the Commission to investigate certain issues pertaining to the carrying of firearms at gatherings and in public places in terms of the Dangerous Weapons Act 71 of 1968.

It is argued that the terms "place", "area" or "gathering" are given a generous interpretation in our law and that their use in the Dangerous Weapons Act leads to confusion amongst members of the public and especially the farming community. The gist of the problem therefore relates to the uncertainty as to when a person is allowed to carry a firearm in public or at a gathering.

An initial scrutiny of the Dangerous Weapons Act has uncovered additional problems:

> The term "dangerous weapon" is fundamentally tautologous. The difficulty is that dangerous weapons may include objects designed to be weapons (e.g. firearms, spears, etc) or objects not designed to be weapons but which may be used as such and are easily capable of causing bodily injury (e.g. scissors, chains, etc and even objects such as stones, matches, etc). In short, in terms of the Dangerous Weapons Act, an object qualifies as a weapon not so much by its physical nature but according to the intent with which it is employed.

Section 2(1) of the Dangerous Weapons Act penalises the possession of two distinct types of objects: a dangerous weapon as defined; and an object resembling a firearm (which object need not necessarily be a dangerous weapon). It appears that there are two distinct forms of the offence which would have to be separately alleged and proved.

Section 2(2) of the Dangerous Weapons Act empowers the Minister of Law and order to effect certain prohibitions by way of notice in the Gazette. It does not appear necessary to show that the prohibited object was one likely to cause serious bodily injury if used to commit an assault (as is required in terms of section 2(1) of the Act), and the defence that the possessor had no intention of using such object for an unlawful purpose is not available.

Section 4 prescribes certain penalties when dangerous weapons or firearms are used in the commission of offences involving violence. Although it was held that the definition of a dangerous weapon was the same for section 2(1) and 4(1) (hence something was either a dangerous weapon for all purposes of the Act or not a dangerous weapon for any of them), this appears to have been overlooked in many decisions concerning the application of section 4(1) of the Act.

Various other pieces of legislation regulate the carrying of firearms in public or at gatherings:

The Arms and Ammunition Act 75 of 1969. (Any person who has in his or her possession any arm, unless licenced to possess such arm, commits an offence. "Arm" is defined as any firearm other than a cannon or machine gun.)

The Control of Access to Public Premises and Vehicles Act 53 of 1985. (The definition of "dangerous object" in this Act includes any firearm, weapon, etc.)

The Regulation of Gatherings Act 205 of 1993. (In addition to the conditions that may apply to the holding of a gathering, this Act provides that participants at a gathering or demonstration shall abide by any law in respect of the carrying of dangerous weapons.)

People (including the farming community) are increasingly resorting to the carrying of firearms for a variety of reasons. The problem is compounded by the different legislative enactments, some of which are obscured in legislation.

On 30 March 1998 the Commission approved that an investigation into "the carrying of firearms and other dangerous weapons in public or at gatherings" be included in its programme. The Minister endorsed the inclusion on 21 April 1998.

Mr R W Palmer, a senior lecturer at the University of Natal, has been appointed as a consultant to assist with the research. A planning meeting was held with Mr Palmer on 27 August 1999. **Research is being done with a view to finalising a draft issue paper early in 2000.**

* **Project 117 - The legal position of voluntary associations**

The South African Agricultural Union requested the Commission to investigate urgently the position of voluntary associations with a view to the possible amendment of sections 30 and 31 of the Companies Act 61 of 1973, or advancing legislation that will take account of the peculiar requirements of voluntary associations.

In *Mitchell's Plain Town Centre Merchants Association v McLeod* 1996 (4) SA 159 (A) the Supreme Court of Appeal denied legal personality to a voluntary association with more than twenty members formed for "the purpose of carrying on any business that has for its objects the acquisition of gain by the ... association ... or by the individual members thereof". As a result of this decision, numerous voluntary associations such as the South African Agricultural Union, sport clubs, jockey clubs, etc. are uncertain as to their legal personality and consequently their future existence.

The Court held as follows (at 166):

> "Leaving aside exceptions and exemptions and dealing only with the formation of the association, the two sections [sections 30 and 31 of the Companies Act, 1973] can be synthesised as follows:
>
> (1) if the membership of the association exceeds 20, the association must be registered as a company if it is formed for the critical purpose [of carrying on business that had for its object the acquisition of gain by the appellant and or its individual members], failing which it will have no *locus standi in judicio*; if its

membership is less than 20, it is not illegal if it is formed for the critical purpose and is to operate as, say, a partnership;

(2) whatever its membership, if the association is formed for the critical purpose it must be registered as a company in order to enjoy corporate personality; if it is not formed for the critical purpose it may yet enjoy corporate personality if it possesses the characteristics of a *universitas*, ie if it is to operate as an unincorporated voluntary association.

In the instant case the plaintiff's membership exceeded 20 and it is not alleged that it was registered as a company. If it was formed for the critical purpose it would therefore be illegal in terms of s 30(1) and not have legal personality in terms of s 31. In either event it would lack *locus standi*: consequently the first exception would be good.

The critical issue is therefore whether the plaintiff was formed for the critical purpose [of carrying on business that had for its object the acquisition of gain by the appellant and or its individual members]."

Legal opinions that have come to the attention of the Commission maintain that the *Mitchell's Plain* decision has the following effects:

Voluntary associations such as the South African Agricultural Union and the Natal Agricultural Union fall within the ambit of sections 30(1) and 31 of the Companies Act, 1973. The South African Agricultural Union is therefore an illegal organisation in terms of the Companies Act with no *locus standi* or legal personality.

A voluntary association ceases to exist when its membership exceeds twenty or where it adopts objectives which fall within the ambit of the prohibitions contained in section 30(1) of the Companies Act. Any property it owns at such time will become *bona vacantia* and will vest in the State. Any contracts which may have been purportedly concluded on its behalf would be unenforceable both by and against it.

Whatever solution is found to the difficulty, provision must be made for carrying assets, liabilities, rights and obligations over into whatever regularised result is decided upon. This cannot be by transfer because that is not an appropriate means to create a new

vesting. For example, rights and obligations under the Income tax Act 58 of 1962 cannot be transferred. This is a weighty consideration - it was pointed out that an attorney's client affected by the *Mitchell's Plain* decision had in aggregate an assessed loss of R74 million. An attempt to "transfer" that right would be unsuccessful and disastrous.

On 30 March 1998 the Commission approved that an investigation into "the legal position of voluntary associations" be included in its programme. The Minister approved the inclusion on 21 April 1998.

Research has been kept in abeyance because of the researcher's involvement in projects 107 and 108.

* **Project 118 - Domestic partnerships**

Media reports have suggested that consideration be given to the adoption of legislation relating to the recognition in South Africa of same sex partnerships. The matter has been rendered particularly acute by a judgment reported in the media (*Langemaat v Minister of Safety and Security* 1998 (3) SA 312 (T)) in which Roux J held *ultra vires* certain provisions of Polmed (the medical aid scheme of the South African Police Service), evidently on grounds related to perceived discrimination on the basis of sexual orientation in its provisions. In the circumstances the working committee at its own initiative examined the need for an investigation.

Section 9 of the Constitution, 1996 (the so-called "equality clause") states:

> "(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
>
> (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
>
> (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social

origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

Bearing in mind that it cannot be said with certainty when the equality clause would have application between persons generally, the essential enquiry is whether the exclusion of domestic partners - whether of the same sex, or of a different sex - from the benefits of schemes such as medical aid schemes, or from other forms of legal recognition, is unconstitutional.

On 17 April 1998 the Commission approved that an investigation into "domestic partnerships" (heterosexual and homosexual) be included in its programme and the inclusion was affirmed by the Minister on 16 July 1998.

Research has commenced and it is envisaged that an issue paper will be published in the first half of 2000.

* **Project 119 - Uniform national legislation on the fencing of national roads**

The South African Agricultural Union requested the Commission to investigate the possibility of enacting uniform national legislation on the fencing of public roads.

Fences alongside public roads are sometimes wilfully removed or damaged. Where the damage is unintentionally caused by a motor vehicle accident, the farmer is often not informed of the damage. Because of damaged or stolen fencing, farm animals stray onto the roads and cause accidents. It appears that these days farmers are more often than not held liable for not maintaining the fence. This places a heavy burden on farmers who not only have to incur the expenses to maintain fences and pay insurance premiums, but who also loose life stock.

The problem is compounded by the fact that the Fencing Act 31 of 1963 is obsolete and that the various Provincial Ordinances lack uniformity as regards the fencing of national roads. In some provinces the farmer is held responsible for the fences, while in other provinces this task is assigned to the provincial authority. Arrangements concerning the responsibility for the cost of erection and maintenance of fences also differ from province to province.

On 11 July 1998 the Commission approved that an investigation into "uniform national legislation on the fencing of national roads" be included in its programme. The Minister approved the inclusion on 6 October 1998.

Ms N Bawa, a member of the Cape Bar, has been appointed as a consultant to assist with the research. A planning meeting was held with Ms Bawa on 7 September 1999. **A draft issue paper will be submitted to the project leader early in 2000.**

Chapter 6

Public Relations

For the efficient performance of its functions, the Commission depends on the 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 also submits issue papers and discussion papers of its own accord 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.

The Commission publishes a quarterly Bulletin, the aim of which is to inform people about 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.

A brochure introducing the Commission is made available to the public at workshops and on other occasions.

*** Interaction with law reform bodies in other countries**

The good relations that the Commission maintains with law reform bodies in other countries makes the exchange of working papers, reports and other information possible. In this way valuable information is exchanged that facilitates and expedites comparative law research. It is significant how various legal systems are often faced with similar problems. The exchange of documents enables the Commission to evaluate ways of thinking elsewhere in the world.

Two law reform officers of the Malawian Law Commission were attached to the South African Law Commission from 12 to 30 April 1999. The law reform officers were thoroughly exposed to the work of the Law Commission. They consulted with researchers in a number of projects which are of interest to the Malawian Law Commission. They were also briefed on the organisation of the library and received training on the law reform process, research methodology, the writing of research documents and networking. The visitors also received

computer training in Windows 95 and WordPerfect 8 Basic which was facilitated by the Subdirectorate: Training in the National Head Office.

From 19 to 20 October 1999 two researchers of the Law Reform Commission of Lesotho visited the South African Law Commission. They were briefed on working methods and research methodology and they had an opportunity to consult with researchers.

*** Electronic/printed media and liaison**

The Commission maintains good relations with the electronic and the printed media. Information that, in the Commission's opinion, is newsworthy is supplied to the media and enquiries are replied to fully and promptly. The Commission wishes to express its gratitude for the interest displayed by the media in investigations conducted by the Commission.

On 8 September 1999 the Commission hosted a media conference in Cape Town. The conference was attended by the Minister and Deputy Minister for Justice and Constitutional Development as well as the Minister of Health.

The full-time member participated in the following programmes and interviews:

14 June	Radio interview "The Law Report" (Safm on traditional courts)
2 August	Newspaper interview (Sunday Independent on traditional courts)
8 September	Television interview (e-tv news on rape sentencing)
13 September	Newspaper interview (The Star on community courts)
16 September	Newspaper interview (UNESCO Courier on customary law)

The full-time member and the Secretary deal with enquiries on the work of the Commission virtually on a daily basis. These include enquiries from the media, the professions, the universities, NGOs and members of the public.

Apart from dealing with routine enquiries on a regular basis, researchers and project committee members also participated in the following programmes and discussions:

PROJECT	ELECTRONIC/PRINTED MEDIA	LIAISON
82: Sentencing		Researcher had interviews with the Chief Executive Officer and personnel of the office for the administration of the compensation scheme for victims of crime in the UK: Glasgow, Scotland 29/6/99
85: Aspects of the law relating to AIDS	Project committee member supplied input on the HIV/AIDS project committee's work for the AIDS Legal Quarterly, March 1999 edition Project committee member took part in talk shows on HIV and attempted murder, criminalisation of HIV exposure and transmission: SABC Radio Sonder Grense and Punt Radio 28/7/99 Project committee member took part in a talk show on HIV testing of people accused of sexual offences and the proposed Sexual Offences Bill: Radio Sonder Grense 2/9/99 Project committee member was interviewed by the press on 12/7/99 for an article on HIV and the law for publication in the Sunday Times Chair of project committee interviewed by Radio 702 on compulsory HIV testing of people accused of sexual offences 13/9/99	Researcher liaised with Justice officials on departmental HIV/AIDS training needs 23/7/99 Meeting between researcher and project committee member and representatives of the Directorate: Occupational Health and Hygiene, Department of Labour and the Infection Control Association re the implementation of recommendations in the Commission's first interim report into aspects of the law relating to AIDS in the draft Hazardous Biological Agent Regulations 21/4/99 Chairing by project committee member of AIDS Legal Network (KwaZulu Natal) meetings on discussion paper 80 on 19/2/99, 12/3/99
94: Community courts	Researcher had interviews with reporters from the Cape Argus, Daily	Researcher shared ideas with James W

PROJECT	ELECTRONIC/PRINTED MEDIA	LIAISON
courts	Dispatch, Star and Mirror.	Zion, a Solicitor to the Court of the Navajo nation (an Indian nation within the USA located in the State of Arizona) which uses indigenous community dispute resolution structures to solve community disputes Researcher had discussions with Marie-Dominique Parent of the Paris Penal Reform International office Researcher had discussions with Joanna Stevens who was preparing a document for the consultative group meeting that was held in Kampala and Egham, UK on 18-20/3/99 and 13-17/4/99 respectively
100: Maintenance	Researcher participated in “Justice for All” pre-recorded radio talk show.	
107: Sexual offences	Researcher participated in “Justice for All” pre-recorded radio talk show.	

In line with the Commission's policy to broaden its consultation base the following workshops and briefings were held:

* **Workshops and briefings initiated by the Commission**

PROJECT	VENUE/LOCATION	TARGET AUDIENCE	DATE
90: Traditional courts and the judicial function of traditional leaders	Pretoria	National House of Traditional Leaders	18/5/99
	Thohoyandou	Traditional leaders, magistrates, Department of Justice, Northern Province Universities, rural NGOs, communities	9/6/99
	Giyani	As above	10/6/99
	Lebowakgomo	As above	11/6/99
	Kwa Mhlanga	As above	22/6/99
	Eersterhoek	As above	23/6/99
	Nkomazi	As above	24/6/99
	Nsikazi	As above	25/6/99
	Thaba Nchu	As above	28/6/99
	Qwaqwa	As above	29/6/99
	Mmabatho	As above	1/7/99
	Taung	As above	2/7/99
	Umtata		5/7/99
	King Williams Town		6/7/99
	Ulundi		12/7/99
	Durban		13/7/99
94: Community courts	Law Commission	Experts in the field, researchers, field workers, practitioners, community	27 - 28/10/99

PROJECT	VENUE/LOCATION	TARGET AUDIENCE	DATE
		representatives, SAPS, magistrates, prosecutors, traditional leaders, NGO representatives, Dept of Justice	
107: Sexual offences	Justice College Detective Academy Law Commission Law Commission	Intersectoral training for sexual offences Component Heads, CPU, SAPS National intersectoral workshop Prosecutors Forum	17/9/99 27/9/99 13/10/99 14/10/99
110: Review of the Child Care Act Parent/child relationship Children living on the street Children and the courts Children living with HIV/AIDS Child protection Child participation	Cape Town Law Commission Law Commission Durban Law Commission Pretoria Johannesburg Durban Port Elizabeth Kimberley Cape Town	Experts Experts Experts Experts Experts NGOs NGOs NGOs NGOs NGOs NGOs	12-13/3/99 8/4/99 15/4/99 26/3/99 22/4/99 3/2/99 4/2/99 5/2/99 9/2/99 10/2/99 11/2/99
115: Administrative law	Pretoria	Government representatives, academics, law societies,	8/6/99

PROJECT	VENUE/LOCATION

Review of the Child Care Act
Sexual offences

Department for International Development (UK)
Review of the Child Care Act

Save the Children Fund (UK)
Review of the Child Care Act

Save the Children Fund (Southern Africa)
Review of the Child Care Act

Nelson Mandela Children's Fund
Review of the Child Care Act

Department of Welfare and Population Development
Review of the Child Care Act

The Commission would also like to thank the Government Printer and staff who are responsible for the printing of the Commission's reports for their professional supporting service.

In conclusion, the Commission wishes to thank the Minister and Deputy Minister of Justice for their personal interest in and support for the Commission's work. The Department of Justice as a whole is thanked for its co-operation and goodwill.

ANNEXURE A

MEMBERS OF THE COMMISSION
IN ORDER OF APPOINTMENT

(Present members are marked with an asterisk, see **Chapter 3**)

Title/Name	Term of office
Chairpersons	
Judge D H Botha, Judge of Appeal	1973-09-28 to 1975-12-28
Chief Justice P J Rabie DMS	1976-02-27 to 1982-05-31
Judge G Viljoen, OMSG, Judge of Appeal	1982-09-30 to 1988-11-30
Judge H J O van Heerden, Judge of Appeal	1988-12-01 to 1995-12-31
Chief Justice I Mahomed*	1996-01-01 to date
Vice-Chairpersons	
Judge President N James DMS	1973-09-28 to 1977-07-13
Judge G Viljoen, OMSG, Judge of Appeal	1977-09-22 to 1982-09-27
Judge H J O van Heerden, Judge of Appeal	1982-09-30 to 1988-11-30
Judge P J J Olivier, Judge of Appeal	1988-12-01 to 1998-12-31
Madam Justice Y Mokgoro*, Judge of the Constitutional Court	1999-01-01 to date
Full-time members	
Mr G G Smit	1982-01-01 to 1995-12-31
Judge P J J Olivier	1986-02-01 to 1995-03-31
Prof R T Nhlapo*	1996-01-01 to date
Members	
Mr D J du P Geldenhuys	1973-09-28 to 1975-10-31
Mr C P Joubert SC	1973-09-28 to 1974-08-20
Mr J E Knoll OMSS	1973-09-28 to 1995-12-31
Mr 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
Mr H J O van Heerden SC	1974-09-30 to 1976-08-11

Title/Name	Term of office
Mr J C Ferreira SC	1975-09-22 to 1979-10-31
Mr M Bliss QC	1976-10-07 to 1977-02-24
Mr F H Grosskopf SC	1977-07-01 to 1980-11-21
Mr G G Smit	1979-02-01 to 1982-01-01
Mr P A J Kotzé	1979-11-01 to 1988-10-30
Mr P M Nienaber SC	1981-06-14 to 1982-07-27
Mr P J J Olivier SC	1982-09-30 to 1988-12-01
Prof J T Delport	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
Mr 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
JudgeY Mokgoro	1996-01-01 to 1998-12-31
Mr J J Gauntlett SC*	1996-01-01 to date
Judge M L Mailula*	1999-01-01 to date
Mr P Mojapelo*	1996-01-01 to date
Ms Z Seedat*	1996-01-01 to date

ANNEXURE B

PROJECT COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

(Chairpersons of committees are marked with an asterisk.)

Committee	Members	
Administrative law	Mr J J Gauntlett SC*	Member, Law Commission
	Prof H Corder	Faculty of law, University of Cape Town
	Ms C Hoexter	Faculty of law, University of the Witwatersrand
	Prof P Iya	Faculty of law, University of Fort Hare
AIDS	Judge E Cameron*	
	Mr Z Achmat	Former Head, AIDS Law Project, Centre for Applied Legal Studies at the University of the Witwatersrand
	Dr P J Haasbroek	Group economist, Barlows Ltd
	Ms M Makhalemele	Community representative
	Dr M J Matjila	Department of Community Health, MEDUNSA
	Prof R T Nhlapo	Full-time member, Law Commission
	Ms L Seftel	Chief Director, Labour Relations, Department of Labour
	Dr N Simelela	Director, HIV AIDS/STDs, Department of Health
	Ms A Strode	National Co-ordinator, Lawyers for Human Rights: AIDS and Human Rights Programme
	Prof C van Wyk	Faculty of law, University of South Africa

Committee	Members	
Arbitration	*International arbitration:*	
	Judge J Steyn*	
	Prof D W Butler	Faculty of law, University of Stellenbosch
	Mr R H Christie QC	Formerly Professor of law, University of Zimbabwe
	Mr J J Gauntlett SC	Member, Law Commission
	Additional members for domestic arbitration:	
	Prof D A Ailola	Faculty of law, University of South Africa
	Judge J M Hlophe	Commissioner, CCMA
	Ms S Pather	Attorney, Ladysmith
	Mr C M Sardiwalla	Natal Bar
	Mr N Singh SC	
	Additional members for ADR:	
	Prof R Choudree	Faculty of 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
	Mr P Pretorius	Johannesburg Bar
Computer related crimes	Prof D P van der Merwe*	Faculty of law, University of South Africa
	Capt B Grobler	SAPS, Computer Crime Investigations
	Capt J B Grobler	SAPS, Commercial Crime Unit

Committee	Members	
	Mr L W Mahlati	Office of the Attorney-General, Port Elizabeth
	Mr I M Melamed	Computer Systems Consultant
	Prof R T Nhlapo	Full-time member, Law Commission
	Judge C O'Regan	Judge of the Constitutional Court
	Prof S H von Solms	Department of Computer Science, Rand Afrikaans University
	Judge R H Zulman	
Customary law	Prof T Nhlapo*	Full-time member, Law Commission
	Ms L G Baqwa	Attorney
	Prof T W Bennett	Faculty of Law, University of Cape Town
	Ms F Bosman SC	Former Chief Family Advocate
	Prof C R M Dlamini SC	Rector of the University of Zululand
	Judge Y Mokgoro	Member, Law Commission
Insolvency	Judge R H Zulman*	
	Mr N Coetzer	Attorney
	Dr E de la Rey	Department Legal Services, Financial Services Board, formerly Professor of law, University of South Africa
	Prof M M Katz	Attorney and nominee of the Standing Advisory Committee on Company Law
	Mr N Matlala	Attorney
	Mr S S Moodley	Master of the High Court, Grahamstown
	Mr B C Nel	Master of the High Court, Pretoria

Committee	Members	
	Mr L F Pereira	Attorney and nominee of the Association of Insolvency Practitioners of Southern Africa
Islamic marriages and related matters	Judge MS Navsa*	
	Sheikh E Essop	Darul Waqaf Islamic Trust, Port Elizabeth
	Sheikh M F Gamieldien	Muslim Judicial Council, Cape
	Mr J J Gauntlett SC	Member, Law Commission
	Moulana A A Jeena	United Ulama Council, Erasmia
	Ms F Mahomed	Member of Parliament
	Prof N Moosa	Faculty of Law, University of the Western Cape
	Mr M S Omar	Attorney, Durban; United Ulama Council
	Dr R A M Salojee	Member of Parliament
Juvenile justice	Ms A Skelton*	Lawyers for Human Rights, Pietermaritzburg
	Ms P Moodley	Researcher, Law Commission
	Ms Z Seedat	Member, Law Commission
	Prof J Sloth-Nielsen	Community Law Centre, University of the Western Cape
	Mr T Thipanyane	S A Human Rights Commission
	Ms M Tserere	Lawyers for Human Rights, Umtata
Maintenance	Prof S S Burman*	Centre for Socio-Legal Research, University of Cape Town
	Ms B Makhene	Ministry of Justice

Committee	Members	
	Mr P Mojapelo	Member, Law Commission
	Ms A Ramlal	Magistrate, Maintenance Section, Johannesburg
	Mr E Rasefate	Department of Justice
	Prof I D Schäfer	Professor Emeritus, Rhodes University
	Ms Z Seedat	Member, Law Commission
	Prof J Sinclair	Executive Director, University of Pretoria
	Ms D Singh	Office of the Family Advocate, Durban
	Ms A Thornton	Department of Health and Welfare, Western Cape
Review of the Child Care Act	Prof N Zaal*	Faculty of law, University of Durban-Westville
	Ms J Cronje	Department of Welfare
	Dr J Loffell	Johannesburg Child Welfare Society
	Dr M Mabetoa	Department of Welfare
	Mr M Masutha	Department of Welfare
	Dr C Matthias	Department of Social Work, University of Durban-Westville
	Ms B Mbambo	Social Worker (Private Consultant)
	Mr M Mtshali	Magistrate, Pietermaritzburg
	Ms Z Seedat	Member, Law Commission
	Ms A Skelton	Lawyers for Human Rights, Pietermaritzburg
	Prof J Sloth-Nielsen	Community Law Centre, University of the Western Cape
	Dr E Harvey	Department of Welfare
	Mr A Theron	Department of Welfare
	Prof B van Heerden	Faculty of law, University of

Committee	Members	
		Cape Town
Security legislation	Judge C T Howie*	
	Ms P Jana	Member of Parliament
	Mr G J Marcus SC	Johannesburg Bar
	Judge Y Mokgoro	Member, Law Commission
	Mr D Tabata	Attorney
	Mr D Nkadimeng	Attorney
Sentencing	Prof D van Zyl Smit*	Faculty of law, University of Cape Town
	Ms L Camerer	Institute for Security Studies
	Mr K Govender	State Attorney
	Mr N Kollapen	Human Rights Commission
	Mr V Peterson	Department of Welfare, Mpumalanga
	Ms M E M Ramagoshi	National Network on Violence Against Women
	Mr P M Shabangu	Magistrate, Durban
Sexual offences	Ms Z Seedat (Chairperson)	Member, Law Commission
	Ms J van Niekerk (Project leader)	Childline, Durban
	Ms L Malepe	Tshwaranang Legal Advocacy Centre
	Ms C McClain	Commissioner, Human Rights Commission
	Prof J Milton	Faculty of law, University of Natal (Pietermaritzburg)
	Ms E H Mthombeni	Department of Correctional Services, Durban-Westville
	Judge T Pillay	
	Ms B Pithey	Rape Crisis, Cape Town
	Ms E M Schurink	Centre for Social Welfare

Committee	Members	
		Policy, HSRC
	Ms R L September	Institute of Child Family Development, University of the Western Cape
Simplification of criminal procedure	Judge L T C Harms*	
	Judge A E B Dhlodlo	
	Mr P A J Kotze	Johannesburg Bar
	Prof B Majola	Director, Legal Resources Centre
	Prof N C Steytler	Faculty of law, University of the Western Cape

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
59	Islamic marriages and related matters
63	Review of the law of insolvency
73	Simplification of criminal procedure
82	Sentencing
85	Aspects of the law relating to AIDS
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 * Maintenance
101	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing
105	Security legislation
106	Juvenile justice
107	Sexual offences
108	Computer related crimes
109	Review of the Marriage Act, 1961
110	Review of the Child Care Act, 1983
113	The use of electronic equipment in court proceedings
114	Publication of divorce proceedings
116	The carrying of firearms and other dangerous weapons in public or at gatherings
117	The legal position of voluntary associations
118	Domestic partnerships
119	Uniform national legislation on the fencing of national roads

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 *injuria*	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:			
	The admissibility in civil proceedings of evidence generated by computers	1982	RP 95/1982	Act 57 of 1983 passed
	Final report	1986	ISBN 0 621 11348 4	Act 45 of 1988 passed
7	Revision of pre-Union statutes:			
	Repeal of certain pre-Union statutes	1975	Not published	Act 36 of 1976 passed
	Repeal of certain pre-Union statutes	1976	Not published	Act 43 of 1977 passed
	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 G
9	Review of the law of trusts	1986	June 1987	Act 57 of 1988 passed

Project number	Title	Year of report	Reference number of published report	Result
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 projects 100 and 114
13	Investigation into the right of recourse of spouses in respect of contributions towards necessaries 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 far as it affects the spouses	1982	RP 26/1982	Act 88 of 1984 passed, see also projects 41 and 51
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	1975	Not published	Act 35 of 1976 passed

Project number	Title	Year of report	Reference number of published report	Result
	proceedings in superior courts			
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:			
	Intestate succession	1985	ISBN 0 621 09611 3	Act 81 of 1987 passed
	Legitimate portion or right to maintenance	1987	Not published	Act 27 of 1990 passed
	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			
	Report	1992	ISBN 0 621 15356 7	See project 115
	Supplementary report	1994	Not published	See project 115
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
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

Project number	Title	Year of report	Reference number of published report	Result
29	Investigation into the application of *mens rea* 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-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 imple-mented, 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 con-sequences 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	Referred back to the Commission, see project 112
42	Investigation into time limits for the institution of actions against the State:			

Project number	Title	Year of report	Reference number of published report	Result
	Report	1985	Not published	Recommendations not implemented.
	Supplementary report	1998	ISBN 0 621 28862 4	Limitation of Legal Proceedings Against Government Institutions Bill approved by Cabinet on 31 March 1999
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 of all rights of personality	-	-	Struck off
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	1998	RP 133/1998 ISBN 0 621 28678 8	Control of Unreasonableness or Oppressiveness in Contracts or Terms Bill to be submitted to Cabinet in February 2000
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	Recommendations not implemented
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 con-	1995	RP 32/1996	Regulation of Sexual

Project number	Title	Year of report	Reference number of published report	Result
	sequences of sexual realignment and related matters		ISBN 0 621 17334 7	Realignment Bill to be submitted to Cabinet in January 2000
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	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	*Ex parte Minister of Justice* 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	Recommendations not implemented
	Supplementary report on section 138 of the Companies Act 61 of 1973	1994	RP 152/1995 ISBN 0 621 16847 5	Recommendations not implemented

Project number	Title	Year of report	Reference number of published report	Result
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 en-acted, 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
	Interim report on the enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency	1999	-	See Chapters 4 and 5
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Final report by Select Committee of Parliament Tabled on 17 March 1999. Legislation to be prepared by the Department of Justice
66	Reform of the South African law of bail:			
	Report	1992	Not published	Referred back for consideration, *inter alia*, 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	-	-	Struck off
68	Access to police dockets	1992	ISBN 0 621 15349 4	Not implemented in view of the interpretation of the subsequent provision in section 23 of the Constitution Act 200 of

Project number	Title	Year of report	Reference number of published report	Result
				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	-	-	Struck off
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	-	Under consideration by the Minister of Justice following the report of the Hoexter Commission of Inquiry
	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	Act 81 of 1997 passed
	Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Acts 81 of 1997 and 114 of 1998 passed
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): ISBN 0 621 14239 5 Summary: ISBN 0 621 14197 6	No legislation recommended
78	Interest on damages	1994	ISBN 0 621 16231 0	Act 7 of 1997 passed
79	Natural fathers of children born out of wedlock	1994	RP 55/1995 ISBN 0 621 16706 1	Act 86 of 1997 passed

Project number	Title	Year of report	Reference number of published report	Result
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	*Ex parte Minister of Justice in re: Nedbank v Abstein Distri-butors and Donelly v Barclays National Bank* 1995 3 SA 1 (A)
82*	Sentencing	-	-	See Chapter 5
83	Review of the Moratorium Act, 1963	-	-	Struck off
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
	First interim report (Health-related aspects)	1997	RP 106/1997 ISBN 0 621 27345 7	Implementation of recommendations receiving attention of Department of Health
	Second interim report (Pre-employment HIV testing)	1998	RP 120/1998 ISBN 0 621 28049 6	Recommendations incorporated in the Employment Equity Act 55 of 1998
	Third interim report (HIV/AIDS and discrimination in schools)	1998	RP 121/1998 ISBN 0 621 28048 8	Department of Education promulgated Commission's draft National Policy on HIV/AIDS for Learners in Public Schools on 10 August 1999
86	Euthanasia and the artificial preservation of life	1998	-	Report submitted to Minister of Justice on 25 May 1999, referred to Department of Health
87	Jurisdictional lacuna in the Supreme Court Act, 1959	1994	RP 64/1995 ISBN 0 621 16723 1	Act 122 of 1998 passed
88	The recognition of a class action in South African law	1998	-	Public Interest and Class Actions Bill submitted to Cabinet in December 1999
89	Declaration and detention of persons as State patients in	1995	RP 100/1996 ISBN 0 621	Act 68 of 1998 passed

Project number	Title	Year of report	Reference number of published report	Result
	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		17494 7	
90*	Customary law:			
	Customary marriages	1998	-	Act 120 of 1998 passed
	Conflicts of law	1999	-	Report submitted to Minister of Justice on 8 September 1999
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
92	The re-evaluation of the offence created by section 1 of Act 1 of 1988	-	-	Struck off
93	Speculative and contingency fees	1996	-	Act 66 of 1997 passed
94*	Arbitration			
	International arbitration	1998	RP 30/1999 ISBN 0 621 28861 6	International Arbitration Bill approved by Cabinet on 28 April 1999
95*	The admissibility of computer evidence	-	-	See Chapter 5
96*	Apportionment of Damages Act, 1956	-	-	See Chapter 5
97	Unjustified enrichment	-	-	Struck off
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 *huur gaat voor koop* with reference to the question whether a lessee has a choice to continue the lease with a new lessor after the sale of the leased property	-	-	Struck off
	Family law and the law of			

Project number	Title	Year of report	Reference number of published report	Result
100*	persons			
	Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Access to Minor Children Bill to be submitted to Cabinet in January 2000
	Domestic violence	-	See Annexure G	Act 116 of 1998 passed
	Maintenance			
	Interim report	1998	RP 137/1998 ISBN 0 621 28685 0	Act 99 of 1998 passed, see Chapter 5
101*	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing	-	-	See Chapter 5
102	The civil jurisdiction of courts	-	-	Struck off
103	Capping of claims against the Multilateral Motor Vehicle Accidents Fund	-	-	Struck off
104	Money laundering and related matters	1996	RP 31/1997 ISBN 0 621 17621 4	Implementation of recommendations under consideration by the Minister of Finance
105*	Review of security legislation			
	Monitoring and Interception Prohibition Act 127 of 1992	1999	-	Report submitted to Minister of Justice on 23 November 1999, see also Chapter 5
106*	Juvenile Justice	-	-	See Chapter 5
107*	Sexual offences	-	-	See Chapter 5
108*	Computer related crimes	-	-	See Chapter 5
109*	Review of the Marriage Act	-	-	See Chapter 5
110*	Review of the Child Care Act	-	-	See Chapter 5
111	Jurisdiction of magistrates' courts in constitutional matters	1999	-	Jurisdiction of Lower Courts Amendment Bill to be submitted to Cabinet in January 2000
112	Sharing of pension benefits	1999	-	Report submitted to Minister of Justice on 22

Project number	Title	Year of report	Reference number of published report	Result
				June 1999
113*	Use of electronic equipment in court proceedings	-	-	See Chapter 5
114*	Publication of divorce proceedings	-	-	See Chapter 5
115	Review of administrative law	1999	-	Administrative Justice Bill referred to Justice Portfolio Committee, see Chapter 4
116*	The carrying of firearms and other dangerous weapons	-	-	See Chapter 5
117*	The legal position of voluntary associations	-	-	See Chapter 5
118*	Domestic partnerships	-	-	See Chapter 5
119*	Uniform national legislation on the fencing of national roads	-	-	See Chapter 5
120	Section 63(3) of the Insurance Act 27 of 1943	-	-	See Chapter 3

ANNEXURE E

ISSUE PAPERS PUBLISHED BY THE COMMISSION

(In order to actively involve the community at an earlier stage, the Commission decided to publish issue papers in 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.)

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
5	100	Family law and the law of persons: Review of the maintenance system	0 621 17652 6 January 1997
6	73	Simplification of the criminal procedure: Access to the criminal justice system	0 621 17705 9 April 1997
7	82	Sentencing: Restorative justice (compensation for victims of crime and victim empowerment)	0 621 17718 0 April 1997
8	94	Arbitration: Alternative dispute resolution	0 621 27319 8 May 1997
9	106	Juvenile Justice	0 621 27335 X June 1997
10	107	Sexual offences against children	0 621 27352 X June 1997
11	82	Sentencing: Mandatory minimum sentences	0 621 27353 8 July 1997
12	90	Harmonisation of the common law and the indigenous law: Succession in customary law	0 621 8 008 9 April 1998
13	110	The review of the Child Care Act	0 621 28026 April 1998
14	108	Computer related crime: Options for reform in respect of unauthorised access	0 621 28710 5 August 1998

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
		to computers, unauthorised modification of computer data and software applications and related procedural aspects	

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	Not published
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
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	0 7970 1381 4

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
		appointment of curators for mentally incapacitated persons	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 alterna-tives to sequestration	0 7970 1854 9 7 August 1989
30	63	Insolvency: Qualifications, appointment and discharge of trustees	0 7970 1954 5 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