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 Reform Commission Act 19 of 1973, the Commission's report on all its activities from 1 April 2002 to 31 March 2003

Yours sincerely

Madam Justice Y Mokgoro
Judge of the Constitutional Court
Chairperson of the South African Law Reform Commission

The offices of the South African Law Reform Commission are situated in the Sanlam Centre (12th floor), corner of Andries and Schoeman Streets, Pretoria

The postal address is as follows:

The Secretary
South African Law Reform Commission
Private Bag X668
PRETORIA
0001
REPUBLIC OF SOUTH AFRICA

Telephone: (012) 392-9540
Fax: (012) 320-0936
E-mail: reform@justice.gov.za
Internet: http://www.doj.gov.za/salrc/index.htm
Office hours: 07:15 to 15:45 (Mondays to Fridays)

South African Law Reform Commission

Thirtieth Annual Report

2002/2003

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OVERVIEW

Introduction

Seldom in the history of a nation do negotiated political and constitutional changes as dramatic as those in our country occur. Seldom in the history of a nation are the concomitant reforms to the legal system as penetrating and daunting as in our country.

There are major discrepancies between the content of the law and the ideal of justice that must be addressed. This necessitates a paradigm shift from the normal approach aimed at maintaining and modernising the legal system to an approach aimed at the transformation of the legal system.

Law is a dynamic and fragile human accomplishment. It mirrors, and partly moulds, the moral character of a society. Through its legal system a society is able to view and judge itself. Over time, the legal system expresses a society's values and convictions, as well as its prejudices and pathologies. In giving form to a debate about many of life's important questions, the law is a transparent symbol of how we imagine who we are and how we conceive our relationship with others.

Many South Africans question the way the law works. They feel uncomfortable in a legal system that, at times, appears overly adversarial, inaccessible, arbitrary and unfair. They do not see their concerns about justice reflected in the processes of and the results produced by the legal system. The impetus for change comes, for example, from victims, the poor, the disadvantaged, the disempowered, the elderly and the young people, many of whom feel that the assumptions currently underlying the law are outmoded or inappropriate.

South Africans want their law to embody justice, and their legal system to support this ideal. They expect legal institutions to be accessible and accountable. They want the law to respect and promote the values of the Constitution. At the same time they desire law that is responsive to the emerging needs of the South African society. The different socio-economic circumstances of South Africans, a shift in the patterns of rural and urban life, and the country's multicultural social fabric highlight the need for new understandings of law and for approaches emphasising restorative rather than retributive justice.

The pace and depth of social change in South Africa challenge the adequacy of contemporary law and legal institutions. The existing law emanating from our past is still outdated in many of its assumptions, its policies and its prescriptions. Government requires strategic and timely advice on law reform to assist it in recognising these deficiencies and finding appropriate remedies.

The procedures and practices of the Commission are open and inclusive. This requires canvassing a wide range of people affected by and concerned with the law and justice, and giving a voice to those not ordinarily heard. The Commission is committed to making its work responsive and accessible to South Africans. The Commission also understands the law as part of the broader social and economic environment. It will search for the underlying causes and inadequacies from a multidisciplinary perspective.

Promoting a creative relationship between law and justice is a collective challenge. To accomplish this, the Commission has built relationships with organisations from the public and private sectors and with Government departments. It works closely with academics and structures in the communities (rural and urban), as well as with centres of research which will accelerate change through partnership with the people.

Amendments to the South African Law Commission Act 19 of 1973

The Judicial Matters Amendment Act 55 of 2002, which commenced on 17 January 2003, amended the South African Law Commission Act 19 of 1973 as follows:

- **Change of name**

The Commission is now known as the South African Law **Reform** Commission.

- **Number of Commissioners**

The number of persons who appear to the President to be fit for appointment as Commissioners has been increased from “six persons” to “not more than eight persons”.

- **Period of review covered by the Annual Report**

The period of review covered by the Commission's Annual Report has been changed from a calendar year to a financial year (1 April – 31 March), so as to bring it in line with the requirements of the Public Finance Management Act 1 of 1999.

The year under review

This annual report covers the period from 1 April 2002 to 31 March 2003.

Three issue papers were published for general information and comment:

- Project 107: Sexual offences: Adult prostitution (issue paper 19)
- Project 123: Protected disclosures (issue paper 20)
- Project 121: Consolidated legislation pertaining to international co-operation in civil matters (issue paper 21)

Issue papers published by the Commission are listed in **Annexure E**.

No discussion papers were published for general information and comment in the year under review. Discussion papers published by the Commission are listed in **Annexure F**.

Seven reports were approved by the Commission:

- Project 73: Simplification of criminal procedure: A more inquisitorial approach to criminal procedure: police questioning, defence disclosure, the role of judicial officers and judicial management of trials
- Project 73: Simplification of criminal procedure: Out of court settlements in criminal cases
- Project 90: Customary law: Traditional courts and the judicial function of traditional leaders
- Project 105: Security legislation: Terrorism
- Project 107: Sexual offences
- Project 110: Review of the Child Care Act, 1983
- Project 114: Publication of Divorce Proceedings: Section 12 of The Divorce Act 70 of 1979

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

The following Acts emanating from reports of the Commission were promoted by Parliament in the year under review:

- Project 42: Time limits for the institution of actions against the state (Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002)
- Project 105: Security legislation: Interception and Monitoring Prohibition Act, 1992 (Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002)

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

- Project 85: Aspects of the law relating to AIDS: Compulsory HIV testing of offenders arrested in sexual offence cases (Compulsory HIV Testing of Sexual Offenders Bill, 2003)
- Project 105: Review of security legislation: (Anti-Terrorism Bill, 2003)
- Project 106: Juvenile justice (Child Justice Bill, 2002)

The following Bills emanating from reports of the Commission have been identified for submission to Cabinet and Parliament during the 2003 Session of Parliament with a view to finalising them as soon as circumstances permit:

- Project 73: Simplification of criminal procedure: The right of the Director of Public Prosecutions to appeal on questions of fact (Criminal Procedure Amendment Bill)
- Project 63: Review of the law of insolvency (Insolvency and Business Recovery Bill)
- Project 94: Arbitration: International arbitration (International Arbitration Bill)
- Project 107: Sexual offences (Sexual Offences Bill)

The following Bills emanating from reports of the Commission have been identified for submission to Parliament when they are ready for introduction with a view to finalising them when circumstances permit:

- Project 47: Unreasonable stipulations in contracts and the rectification of contracts (Control of Unreasonable or Oppressive Stipulations in Contracts Bill)

- Project 73: Simplification of criminal procedure: A more inquisitorial approach to criminal procedure: police questioning, defence disclosure, the role of judicial officers and judicial management of trials (Criminal Procedure Second Amendment Bill)
- Project 73: Simplification of criminal procedure: Out of court settlements in criminal cases (Out of courts settlements in Criminal Matters Bill)
- Project 88: Recognition of class actions and public interest actions in South African Law (Public Interest and Class Actions Bill)
- Project 90: Customary law: Conflicts of law (Application of Customary Law Bill)
- Project 90: Customary law: Traditional courts and the judicial function of traditional leaders (Traditional Courts Bill)
- Project 101: The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing (Bill to be named)
- Project 94: Arbitration: Domestic arbitration (Domestic Arbitration Bill)
- Project 112: Sharing of pension benefits (Sharing of Pension Benefits Bill)
  Project 114: Publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979 (Publication of Divorce Proceedings Bill)

The following reports emanating from the Law Reform Commission are receiving the attention of government departments other than the Department of Justice and Constitutional Development:

- Project 52: Investigation into the legal consequences of sexual realignment and related matters (Department of Home Affairs)
- Project 86: Euthanasia and the artificial preservation of life (Department of Health)
- Project 109: Review of the Marriage Act 25 of 1961 (Department of Home Affairs)
- Project 110: Review of the Child Care Act, 1983 (Minister of Social Development)

A report on a new sentencing framework (Project 82: Sentencing) was submitted to the Minister in December 2000. The Sentencing Framework Bill has been referred back to the Law Reform Commission to address concerns regarding an Appendix setting out amended and repealed legislation. Both the Commission's reports on juvenile justice and sentencing contain recommendations for the repeal of provisions of the Criminal Procedure Act dealing with sentencing. The Child Justice Bill, 2002 is already receiving the attention of Parliament, therefore the Annexure reflecting the repeal of the provisions of the Criminal Procedure Act as recommended in the sentencing report will only be finalised after finalisation of the Child Justice Bill.

The recommendations contained in the reports on surrogate motherhood (Project 65) and

access to minor children by interested persons (Project 100) will be incorporated in the Children's Bill (Project 110: Review of the Child Care Act, 1983).

Five new investigations were included in the Commission's programme in the year under review:

- Project 127: Review of administration orders
- Project 128: Review of aspects of the law of divorce
- Project 129: Review of aspects of matrimonial property law
- Project 130: Stalking
- Project 131: Trafficking in persons

A progress report on investigations not yet completed appears in **Chapter 5**.

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OBJECTS, CONSTITUTION AND FUNCTIONING

Establishment of the Commission

The South African Law Reform Commission was established by the South African Law Reform 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 Constitutional Court, the Supreme Court of Appeal or a High Court, as Chairperson.
- Not more than eight persons who appear to the President to be fit for appointment on account of the tenure of a judicial office or on account of experience as an advocate or as an attorney or as a professor of law at any university, or on account of any other

qualification relating to the objects of the Commission.

The following persons have been appointed as members of the Commission for a period of five years with effect from 1 January 2002:

Madam Justice Y Mokgoro as Chairperson
Madam Justice M L Mailula as Vice-Chairperson
Mr J J Gauntlett SC
Mr Justice C T Howie
Professor I P Maithufi as full-time member
Ms Z Seedat
Dr W L Seriti

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. On 27 October 1999 the President appointed Professor C Hoexter, School of Law, University of the Witwatersrand, as an additional member of the Commission.

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: committees appointed by the Commission and consisting of members of the Commission only (such as the working committee), and committees 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 committees the Commission has established a working committee which consists of members of the Commission co-opted 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 working committee may exercise all the functions of the Commission excluding the approval of reports. The committee also considers the inclusion of new investigations in the Commission's programme. Furthermore, the committee plans and manages the activities of the Commission's secretariat.

Project committees

Project committees fall under the second category of committees. The Commission follows the practice of instituting 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.

The names of the members of the project committees 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 and Constitutional Development. 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 issue papers, 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 Govender (Senior State Law Adviser)
Ms C T Hartley (Senior State Law Adviser)
Ms A-M Havenga (Principal State Law Adviser)
Mr G O Hollamby (Principal State Law Adviser)
Ms L J Jankie (Senior State Law Adviser)
Ms C P Kimble (Senior State Law Adviser)
Ms A M Louw (Principal State Law Adviser)
Ms P A Matshelo-Busakwe (Principal State Law Adviser)
Ms G M B Moloi (Senior State Law Adviser)
Mr M F Palumbo (Principal State Law Adviser)
Ms C J Pienaar (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 (Principal State Law Adviser)
Ms R van Zyl (Senior State Law Adviser – appointed on 1 June 2002)

Mr M F Palumbo serves as Assistant Secretary to the Commission.

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
Chief Administration Clerk	:	Ms P J Kotze
Senior Administration Clerk	:	Mr J D Kabini
Senior Administration Clerk	:	Ms J M Nkabinde
Senior Administration Clerk	:	Mr A Singh
Administration Clerk	:	Ms J A Jackson
Administration Clerk	:	Mr R Swart
Senior Secretary	:	Ms R Bronkhorst
Senior Operator	:	Mr K M Mahlangu
Senior Messenger	:	Ms Z A Mahlangu

As a result of increases in the workload of the administration, the services of a temporary staff

member, Ms A J G Kruger, have been obtained. One position of secretary is vacant.

The Commission wishes to express its appreciation to the members of the secretariat for their outstanding services to the Commission and the high standard of working documents and reports developed by the research staff.

The Commission also wishes to express its appreciation to 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 and Constitutional Development under the Law Reform Subprogramme. The Secretary is consulted on the compilation of the draft Vote.

The Commission's budget for the financial year 1 April 2002 – 31 March 2003 was R10, 220,000 which is made up as follows:

- Personnel expenditure R7,691,000
- Administrative expenditure R1,119,000
- Inventories R450,000
- Equipment R310,000
- Professional and special services R650,000

The Commission=s resources are supplemented by funding and technical assistance from foreign and local donors for specific projects. During the period under review the Commission has received technical and financial support from the German Technical Cooperation (GTZ) and Save the Children (Sweden). The Commission wishes to record its sincere appreciation to the GTZ and Save the Children.

The annual report of the Department of Justice and Constitutional Development contains

information on the Commission's programme performance and financial statements.

Programme

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

The Commission's present programme appears in **Annexure C**. **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 which 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. In most cases 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 for Justice and Constitutional Development.

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. There appears to be an increasing tendency in the faculties of law of various universities to prescribe the Commission's discussion papers and reports as literature 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 enactment 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 as well as a variety of other matters are dealt with. The papers are numbered in sequence as they serve 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 to 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 noters-up. A research paper relating to an empirical study of the sentencing practices in South Africa 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 are also obtainable from the Commission's offices. The annual report, papers in the research series and reports on investigations that are published can be purchased from the Government Printer in Pretoria.

Meetings

The Commission met on 17 August 2002 and 7 December 2002. The working committee of the Commission met on 12 July 2002 and 26 November 2002.

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

Administration orders	26 February 2003
Arbitration	12 April 2002; 15 March 2003
Assisted decision-making: Adults with impaired decision-making capacity	18 September 2002
Customary law	22 June 2002; 13 September 2002
Islamic marriages and related matters	18 May 2002; 22 June 2002; 24 August 2002; 1 February 2003
Privacy and data protection	22 July 2002
Review of the Child Care Act	2-3 May 2002; 16 – 17 May 2002; 6 – 7 June 2002; 20 – 21 June 2002; 1 – 3 August 2002; 11 – 12 October 2002
Review of the law of evidence	13 March 2003
Security legislation	27 April 2002; 18 May 2002
Sentencing	31 July 2002; 7 March 2003
Sexual offences	9 May 2002; 31 October – 1 November 2002; 13 November

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THE COMMISSION'S PROGRAMME: INVESTIGATIONS INCLUDED AND REMOVED

Five new investigations were included in the Commission's programme in the year under review:

Project 127: Review of administration orders

The Centre for Advanced Corporate and Insolvency Law (CACIL) of the University of Pretoria released an interim research report in three volumes on the review of administration orders in terms of section 74 of the Magistrates' Courts Act 32 of 1944.

The report was handed to the Department of Justice and Constitutional Development with the recommendation that the Department prepare draft legislation to be published for comment by all the important role-players. This course of action was necessitated by the fact that CACIL had no legislative authority and that certain pertinent issues indicated in the report needed to be resolved before new legislation could be introduced.

The Minister for Justice and Constitutional Development requested the Chairperson of the Law Reform Commission to consider the inclusion of an investigation into the review of administration orders in the Commission's programme and to follow an incremental approach to distinguish between reforms that could be effected in the short and medium terms and reforms that could be effected in the medium to long terms.

On 17 August 2002 the Commission considered the Minister's request and approved that an investigation into the review of administration orders be included in the Commission's programme. The Commission agreed that the matter had become a burning issue with serious problems being experienced in practice. In its report on the related topic of insolvency, the Commission made minor recommendations regarding administration orders but did not investigate administration orders in detail. With developments in the micro-lending industry, administration orders had led to considerable problems and people being abused by so-called loan sharks and others. Section 74 was not adequate to deal with the problems.

The Minister approved the inclusion of the investigation in the Commission=s programme in December 2002.

Project 128: Review of aspects of the law of divorce

On 26 November 2002 the Commission considered the inclusion of an investigation into "children affected by the divorce of separation of their parents" in its programme.

The Commission highlighted the plight of children affected by the divorce or separation of their parents in the investigation into the review of the Child Care Act (discussion paper 103). In chapter 14 of this discussion paper the Commission made several preliminary recommendations regarding the protection of such children. However, these preliminary recommendations did not relate to amendments to the Child Care Act 74 of 1993, but related mainly to amendments to the Divorce Act 70 of 1979, the Matrimonial Affairs Act 37 of 1953 and the Mediation in Certain Divorce Matters Act 24 of 1987. Consequently, very little protection was offered to children affected by the divorce or separation of their parents in the proposed Children's Bill contained in the report on the review of the Child Care Act.

Given the inherent danger associated with piecemeal amendments to different pieces of legislation in the absence of a holistic framework, the Commission considered it judicious to conduct a separate investigation into the protection of children affected by the divorce or separation of their parents. With a view to ensuring that the scope of the investigation was sufficiently broad to investigate other existing problems relating to the law of divorce, the Commission decided that it be recommended that an investigation titled "review of aspects of the law of divorce" be included in the Commission's programme.

The Minister approved the inclusion of the investigation in the Commission=s programme in January 2003.

Project 129: Review of aspects of matrimonial property law

On 26 November 2002 the Working Committee of the Commission considered the inclusion of an investigation into "joint bank accounts" in its programme.

The Commission on Gender Equality referred a complaint of gender discrimination to the South African Law Commission for investigation. The complainant argued that although the banking industry allowed married couples to have a joint account, both partners did not enjoy equal status. The Banking Council commented that the legal environment in South Africa did not create a framework conducive to the operation of joint bank accounts.

The problems experienced with joint bank accounts related to matrimonial property law. With a view to ensuring that the scope of the investigation was sufficiently broad to investigate other existing problems relating to the Matrimonial Property Act 88 of 1984, the Commission decided that it be recommended that an investigation into the "review of aspects of matrimonial property law" be included in the Commission's programme.

The Minister approved the inclusion of the investigation in the Commission=s programme in January 2003.

Project 130: Stalking

Stalking refers to any type of harassing and intimidating conduct that causes a person to fear for his or her safety. The methods employed by stalkers to harass a victim can involve a series of actions which are unlawful, such as making obscene telephone calls, using threatening language and committing acts of violence. On the other hand, stalkers frequently exhibit behaviour which is perfectly legal and socially acceptable in isolation. This apparently harmless conduct, such as following someone or sending gifts, can be intimidating if done persistently and against the will of another person. Taken together, and in the context of the relationship between the stalker and the victim, seemingly innocuous behaviour becomes wrongful and dangerous. Typically, stalking commences with conduct that appears more annoying and irritating than dangerous. Then the frequency and magnitude of the conduct escalates, which causes increasing fear, emotional distress and disruption to the victim's life. Ultimately, stalking may intensify to physical violence and homicide.

In discussion paper 85: sexual offences - the substantive, law it was recommended as follows:

> No legal intervention will prevent all forms of stalking, but it is essential that the legal system does provide the greatest protection and remedies possible. It is the opinion of the Commission that including stalking and, or harassment in legislation specifically aimed at criminalising specific sexual conduct will not afford all victims of stalking or harassment the necessary protection which they deserve. In so doing, those instances where the motive of the stalker or harasser is not sexual, it will leave victims vulnerable. The motive of a person is often impossible to establish until real harm has already been done. There is a clear need for specific legislation criminalising stalking or harassment. Although the Domestic Violence Act will give recourse to those who fall within the definition of a domestic relationship, once the Act is put into operation, obtaining a protection order may not give victims the protection they need. <u>It is proposed that a separate investigation be conducted to ascertain the need to enact comprehensive legislation prohibiting stalking.</u>

The Minister approved the inclusion of the investigation in the Commission=s programme in January 2003.

Project 131: Trafficking in persons

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was signed by South Africa on 14 December 2000. For the purposes of this Protocol "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (section 3(a)).

According to the official explanatory notes to the UN Trafficking Protocol, the UN definition of trafficking in persons in section 3(a) describes in some detail the nature of the crime. However, this international definition is not appropriate for use in domestic criminal codes. It has too many elements that would have to be proven by prosecutors, thus making prosecutions more difficult. Also, some of the language is ambiguous, which could lead to legal challenges by defendants. It is therefore important to incorporate the essence of the definition into national legislation using simple and clear language.

Chapter 21 of the Law Reform Commission's proposed Children's Bill relates to the trafficking of children. However, the occurrence of trafficking of people in South Africa appears to be serious enough to warrant an investigation into separate trafficking legislation to provide holistically for the prosecution of all forms of trafficking. The illicit trade in persons is a profitable, criminally organised global industry. Traffickers use deception, force or coercion to move people into situations in which they are vulnerable and easily held in conditions of sexual exploitation, forced labour and slavery. Trafficked persons are often treated as criminals, rather than as victims of crime, while traffickers escape prosecution. Those who try to escape or seek help risk retaliation from traffickers. Although victims of traffickers can be of either gender, an overwhelming majority of victims are female.

The Minister approved the inclusion of the investigation in the Commission=s programme in January 2003.

Four investigations were removed from the Commission's programme in the period under review:

Project 95: The admissibility of computer-generated evidence
Project 108: Computer-related crime

In 1998 the Commission decided that the investigation into computer-related crime (project 108) should be completed first and that the same project committee should then proceed with the investigation into the admissibility of computer-generated evidence (project 95). No work was done in respect of project 95.

Because of the wide scope of the investigation into computer-related crime an incremental approach was 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 for general information and comment in August 1998.

A discussion paper on computer-related crime: preliminary proposals for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects was published for general information and comment in May 2001. The closing date for comment on the discussion paper had been extended to 31 July 2001, after which the investigation was suspended pending the outcome of the Electronic Communications and Transactions Bill (Minister of Communications).

The aim of the Electronic Communications and Transactions Act 25 of 2002 is, inter alia, to prevent abuse of information systems. Part XII of the Act relates to cyber crime and deals with unauthorized access to, interception of or interference with data; computer-related extortion, fraud and forgery; attempt and aiding and abetting; penalties; procedure; criminal jurisdiction; and saving of the common law.

Chapter 1 of Part III of the Act relates to the legal requirements of data messages and deals, inter alia, with the legal recognition of data and data messages; and with the admissibility and evidential weight of data messages.

The Commission decided that projects 95 and 108 should be removed from the Commission's programme in the light of the passing of the Electronic Communications and Transactions Act 25 of 2002.

The Minister approved the removal of the investigations from the Commission's programme in October 2002.

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.

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.

Prof R W Palmer of the University of Natal (Durban) was appointed as a consultant to assist with the research. The finalisation of a draft issue paper had been delayed until the enactment of the Firearms Control Act 60 of 2000. Prof Palmer was of the opinion that the investigation should be discontinued in the light of the Firearms Control Act 60 of 2000 whose objective had been the establishment of a comprehensive and effective system of firearms control.

The Commission agreed that the investigation should be removed from the Commission's programme in the light of the passing of the Firearms Control Act 60 of 2000.

The Minister approved the removal of the investigation from the Commission's programme in August 2002.

Project 119: Uniform national legislation on the fencing of national roads

Agri SA (the South African Agricultural Union at the time) requested the Commission in August 1997 to investigate the possibility of enacting national uniform legislation on the fencing of public roads. The request originated from a SAAU conference during which the problems encountered by farmers whose farms are adjacent to public roads were discussed. A consultant, Advocate Nazreen Bawa, was appointed to look into the matter and to draft an issue paper on to the possibility of national legislation for the fencing of national roads. The issue paper was published in June 2000. Only 5 institutions responded to the issue paper. No response was

received from Agri SA, the initiator of the investigation.

From the outset concern was expressed about the scope of the investigation. It appeared that the fencing of national roads was not the real problem, but the real concern was the fencing of public roads in general. However, it was uncertain whether an investigation into the fencing of all public roads would address the problem, as the legislative competence for roads and fencing mostly resided with the provinces. Even an investigation of that nature would not cover all concerns, as fencing of railway lines, for example, also warranted investigation, as did fencing in general.

In the light of the Commission's priorities it was proposed that the project be removed from the Commission's programme.

The Minister approved the removal of the investigation from the Commission's programme in December 2002.

4

REPORTS COMPLETED

In the period under review the following seven reports were completed:

Project 73: Simplification of criminal procedure: A more inquisitorial approach to criminal procedure: police questioning, defence disclosure, the role of judicial officers and judicial management of trials

The Commission's recommendations include the following:

- **Police questioning of the suspect/accused, its legitimacy, effectiveness and the right to silence and its consequences**

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

The Commission recommends that legislation be introduced in terms of which a suspect is placed under a duty to disclose particular matters to the police at the risk that a court might in due course draw an adverse inference from his or her failure to do so, in the following circumstances:

  - Where a suspect is questioned by the police in the course of their investigations and fails to disclose a matter that is subsequently relied upon in his or her defence.

Although the proposals raise a concern that to encourage the questioning of suspects by the police carries with it the danger that suspects would be overreached, it must be borne in mind that the present proposal does not introduce an innovation in that respect. There is nothing to

prevent the police from questioning suspects, and from thereby securing admissions or confessions, which might be admissible in evidence against the accused if the grounds for such admissibility are established. The proposal does no more than to place the suspect under the risk that if he or she fails to disclose something to the police which is later relied upon in support of the defence, a court might disbelieve the accused. Moreover, a court is not obliged to draw an adverse inference against a suspect, even where it is justified, and it will be open to a court to exclude evidence of what occurred during questioning if it is not satisfied that the accused was fairly treated.

The proposal is also moderated by limiting its application to questioning which has taken place substantially in accordance with a Code of Conduct promulgated in terms of the Police Act.

- Where, upon arrest, a suspect is asked to account for objects, substances or marks found on or in the suspect's possession.

- Where, upon arrest, the suspect is asked to account for his or her presence at the place where he or she was found.

The Commission concludes that there appears to be no substantial objection to a court's drawing an adverse inference if the person fails to provide an explanation of his or her possession of objects, substances or marks at the time of arrest, or the failure of the suspect to explain at the time of arrest his or her presence at the scene of a crime, nor does the Commission believe that to permit a court to do so will open the way to police misconduct.

- **Admissibility of admissions and confessions**

South African law draws a distinction between admissions (whether by words or by conduct) and confessions in determining the "threshold" requirements for admissibility. The significance of the distinction is that the requirements for admissibility are more onerous for confessions than for admissions. For an admission to be admitted into evidence it must be established that it was made "voluntarily", and that term has been restrictively interpreted. An admission is not voluntary if it has been induced by a promise or threat proceeding from a person in authority. A confession may be admitted into evidence only if it was made "freely and voluntarily" by the accused in his "sound and sober senses and without undue influence". If the confession was made to a peace officer other than a magistrate or justice, the confession must be reduced to

writing and confirmed in the presence of a magistrate or justice.

The report considers a proposal that there should be common requirements for the admissibility of confessions and admissions and concludes that the proposal is largely uncontroversial. What is contentious is whether incriminatory statements made to police officers should be dealt with on a different basis. Bearing in mind that incriminating statements will be admissible only if it is established by the prosecution that the statement was made freely and voluntarily, while the person was in his or her sound and sober senses, and without having been unduly influenced thereto, the Commission is of the view that no purpose is served by an additional requirement that such statements made to the police should be reduced to writing. The Commission recommends that the Criminal Procedure Act be amended to provide for common requirements for the admissibility of all statements or conduct of the accused which might be self-incriminatory, without distinguishing between police officers and others.

- **Defence disclosure before and during the trial**

The proposals for reform fall into three distinct groups:

  - Disclosure by the defence of specific defences

The Commission concludes that there is merit in the proposal with regard to the disclosure of specific defences and the intention to call expert evidence, and recommends an amendment to the Criminal Procedure Act to this effect. The sanction that is sought to be imposed for failure to make such disclosure is that the accused will not be permitted to raise the particular defence, or call the expert witness, as the case may be, without the leave of the court. The proposal provides specifically, however, that the court may not refuse such leave if the accused was not informed of his or her obligations.

The Commission's recommendations are confined to specific defences, in respect of which the accused in any event has a duty either to introduce or disclose the defence. It is already well established in our law that an alibi might be regarded with scepticism if it is not disclosed in advance. A defence raising justification for otherwise unlawful conduct, or suggesting that the accused was not criminally capable at the time the offence was committed, must also be raised by the defence before the prosecution is required to exclude it. Moreover, there can be little doubt that where such an issue is raised by the defence at a late stage of the trial, the

prosecution will be permitted a postponement, or be permitted to reopen its case if necessary, in order to deal with the issue. Similar considerations apply in relation to the calling of expert evidence. Accordingly the proposals are not radical and merely seek to ensure that these matters are raised timely so as to avoid delays in the trial.

- Codifying prosecution disclosure

The Commission recommends that legislation be introduced in terms of which the prosecution is obliged to provide the defence with documents which tend to exculpate the accused; statements of witnesses, whether or not the state intends to call them; and any material which is reasonably required to enable the accused to prepare his or her defence. In addition the circumstances under which the prosecution may withhold information are outlined, for example, where it is not required in order to enable the accused to exercise his or her right to a fair trial; where disclosure of the information could lead to the disclosure of the identity of an informer or state secrets; and where there is reason to believe that disclosure of the information would prejudice the course of justice.

- Providing for reciprocal disclosure by the defence and the prosecution

The Commission does not support the proposal for reciprocal disclosure by the defence and the prosecution and is of the view that the proposal for reciprocal disclosure would be workable only if a distinction were to be made between those accused who are represented and those who are not. Such a distinction is not desirable, and to make such a distinction would in any event pave the way for the legislation to be circumvented.

- **A greater role in the criminal justice process by judicial officers**

The Commission recommends that the Criminal Procedure Act be amended to provide that, at the commencement of the trial, the judicial officer be placed in possession of the material which by that stage already is in the hands of both parties, and which will enable him or her to evaluate how to conduct the trial. One of the functions of the judicial officer is to control the conduct of the trial and this proposal does not purport to introduce any innovation in that respect: it merely aims at equipping the judicial officer to perform that task more effectively.

- **Possible ways of enhancing judicial management of trials and case management.**

The report considers whether provision should be made for pre-trial conferences and, if so, the extent to which legislation is necessary. The purpose of such a conference is to attempt to limit the issues in the trial and generally to facilitate the efficient disposal of the matter.

There are at least some cases in which a pre-trial conference could be of material assistance in the conduct of the trial. Bearing in mind that the holding of such a conference will not be compulsory, but in the discretion of the judicial officer, the Commission is of the view that it is desirable to provide a formal structure for that to take place. The Commission therefore recommends that statutory provision be made for pre-trial conferences. In terms of the proposal the presiding officer may on application of the prosecutor or the accused direct the prosecutor and the accused to appear before him or her to consider matters which may aid in the disposal of the trial, for example, the identification of issues not in dispute; the possibility of obtaining admissions of fact with the aim to avoid unnecessary evidence; and the disclosure of sufficient details where the defence intends to raise a special defence such as an alibi.

The Commission also recommends that section 115 of the Criminal Procedure Act be amended to oblige the presiding officer to inform an accused of the right to silence; of the consequences of remaining silent; that he or she is not obliged to make any confession or admission; and to ask him or her whether he or she wishes to make a statement indicating the basis for defence. It also obliges the presiding officer to question an accused where the accused fails to disclose the basis of the defence.

The report was submitted to the Minister for Justice and Constitutional Development on 29 August 2002.

Project 73: Simplification of criminal procedure: Out of court settlements in criminal cases

The report considers whether there is a need in South Africa to develop procedures that provide for the settling of criminal cases without having to go to court, and if so, the best way in which this can be achieved within the South African context.

The international trend to have some criminal cases dealt with out of court is based mainly on

two considerations: to increase the cost-efficiency of the criminal justice process through simplified and streamlined procedures, and to deal with mass crime outside of the traditional criminal process, so that the courts have more time to deal adequately with increasingly complex cases.

An out of court settlement is defined as an agreement between the prosecution and the defence in terms of which the accused undertakes to comply with conditions as agreed upon between the parties, in exchange for the prosecutor discontinuing the particular prosecution. Such conditional discontinuation of prosecution results in the diversion of the matter from the trial process. An out of court settlement needs to be distinguished from other pre-trial procedures and agreements. It is distinct from *sentence* and *plea agreements* in that these follow upon a decision by the prosecutor to institute a prosecution. The agreement may affect the offences for which the accused is finally charged, but it invariably results in the conviction and sentence of the offender. Therefore, such offender will have been put through the entire criminal process and will end up with a criminal record. An out of court settlement does not involve the entire criminal process, does not lead to a conviction and does not result in a criminal record.

The Commission concludes that the formal recognition of a procedure to settle criminal cases out of court will have particular advantages for the criminal justice process in South Africa. Such a process will, among other things -

- contribute to saving precious court time and costs, since cases can be finalised without going to court, and without the time-consuming task of settling factual disputes;

- improve the public's perception of the administration of justice;

- give the accused person certainty regarding the outcome of the case, provided the conditions of the agreement are complied with;

- give the accused person the opportunity not to end up with a record of previous convictions, a factor which often prompts people to dispute a criminal charge;

- provide ample opportunities for the application of restorative justice initiatives as an outcome of an out-of-court settlement; and

- protect victims from publicity, and from having to be subjected to cross-examination, while giving them the benefit from compensation or restitution by the accused.

It is recommended that the legislation provide for the following principles:

- The prosecutor may, before evidence has been adduced against the accused and considering all the facts at his or her disposal, enter into an out of court settlement with the accused if he or she is satisfied that it is in the public interest to do so and that the court would upon conviction impose a sentence other than imprisonment or imprisonment for a period not exceeding one year. In considering whether it will be in the public interest to enter into an out of court settlement, the prosecution must inter alia have regard to –

    - whether the accused poses a significant threat to the community and is likely to benefit from the settlement;
    - the effect of a conviction on the accused;
    - whether, in the case of an accused with two or more previous convictions for the same or similar offences or an accused who has entered into a settlement on two or more occasions for the same or similar offences, there are substantial and compelling circumstances meriting the settlement; and
    - the interests of the victim of the crime.

- In terms of the settlement the prosecution may undertake to discontinue the prosecution on condition that the accused complies with the conditions as agreed upon in the settlement.

- An out of court settlement can only be entered into once a charge sheet, setting out the offence or offences for which the accused is being charged, has been served on the accused (through the accused's legal representative, if the accused is legally represented); and if the prosecution is satisfied that there is sufficient evidence to warrant the prosecution of the accused.

- In exercising its discretion the prosecution must, if circumstances permit, obtain the views of the victim of the offence, and must consider such views, before entering into a settlement with the accused.

- An out of court settlement is, for a period as agreed upon between the parties, but not more than two years, subject to one or more of the following conditions:

- Compensation.
- The rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss.
- The performance without remuneration of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, promotes the interests of the community.
- Payment of an amount of money of not more than the amount prescribed from time to time by the Minister in the *Gazette*, to the State or a state agency as directed by the prosecution.
- Submission to instruction or treatment.
- Submission to supervision or control of a probation officer.
- The compulsory attendance or residence at some specified centre for a specified purpose.
- Referral to community dispute resolution structures that have been put into place in terms of an Act of Parliament.

- The terms of the out of court settlement must be in writing and must be signed by the prosecutor and the accused. In order to address the risks of fraud and abuse it is proposed that the settlement has to be approved by the Director of Public Prosecutions having jurisdiction. It is also proposed that a settlement should be subject to review and that the settlement may be amended on good cause shown.

- If the accused fails to comply with any of the conditions of the out of court settlement and the prosecutor is satisfied that such failure was beyond the accused's control, the prosecutor may, having due regard to the extent to which the conditions of the prior settlement has been complied with, enter into a further out of court settlement.

- If the accused fails to comply with any of the conditions of the out of court settlement the criminal proceedings against the accused on that charge can be resumed from the point when the out of court settlement was entered into.

- Once the accused has complied with the conditions of the out of court settlement, the charge is considered finalised and no prosecution resulting from the same offence may be instituted.

The report was submitted to the Minister for Justice and Constitutional Development on 29 August 2002.

Project 90: Customary law: Traditional courts and the judicial function of traditional leaders

The report contains draft legislation which is aimed at establishing customary courts and consolidating the different provisions governing chiefs= courts.

The administration of justice in rural South Africa is predominantly carried out by chiefs= courts, which administer justice largely on the basis of customary law. The operation of these courts is governed by a number of statutes, both of the old South Africa (Black Administration Act 38 of 1927) and of the former homelands and self-governing territories. The continued operation of homeland statutes is sanctioned by item 2 of Schedule 6 of the 1996 Constitution. The President has by proclamation assigned these laws to the relevant provinces. There is a need to consolidate the different provisions governing these courts and to modernise them so that their operation is in conformity with the principle of democracy and other values underlying the Constitution.

Wide consultation with stakeholders took place and many written submissions were made to the South African Law Reform Commission. The Commission also had the benefit of considering numerous precedents set by other African countries. The task team set up by the project committee on customary law to draft a Bill on customary courts had a wealth of information to guide its deliberations.

The following recommendations are made:

- Customary courts should be established and they should have full powers of hearing and determining cases in both criminal and civil matters subject to limitations. The project committee noted that customary courts are inexpensive, simple, informal, accessible and conversant with the community and its laws. It is recommended that Headmen=s tribunals which are currently not recognised as courts should be granted formal recognition.

- Customary courts should continue to be presided over by traditional leaders. However, to avoid gender discrimination, effect must be given to section 9(3) of the Constitution and section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 as to the need for the reasonable representation of both men and women in such institutions.

- In civil matters, customary courts should have jurisdiction over cases arising out of customary law. Issues relating to dissolution of marriage (whether customary or civil), custody and guardianship of minors, or maintenance, are excluded from the jurisdiction of these courts. As far as criminal jurisdiction is concerned, customary courts can handle offences which were committed in the area of the court=s jurisdiction except offences listed in the Schedule attached to the Bill. A monetary ceiling on the jurisdiction of customary courts will be fixed by the Minister from time to time.

- Legal practitioners are excluded from these courts. However, a person who is a party to a matter before a customary court may be represented by any other person of his or her choice in accordance with customary law.

- Provision is made for the establishment of the office of a Registrar for Customary Courts. The role of the Registrar for Customary Courts should be to guide and supervise customary courts, deal with complaints from members of the public about the operation of customary courts, consider the needs of customary courts, arrange for the training of members and clerks of customary courts and where necessary, transfer cases from one customary court to another.

- A litigant who is dissatisfied with a decision of a customary court has a right of appeal to a higher customary court and subsequently to a customary court of appeal (if one is established) or to a magistrate's court and then to the High Court.

The report was submitted to the Minister for Justice and Constitutional Development on 21 January 2003.

Project 105: Security legislation: Terrorism

The South African Police Service (SAPS) conducted the initial research on terrorism and drafted an Anti-Terrorism Bill which was submitted to the Commission's project committee on security legislation in October 1999. That Bill contained, amongst other things, a clause which provided for detention for purposes of interrogation. The motivation for the legislation was the spate of bombings which occurred during the last half of 1999 in the Western Cape. It was considered by the drafters that detention for interrogation would enable law enforcement to obtain information it would not otherwise be able to obtain.

A discussion paper on terrorism was published in August 2000. The Bill contained in the discussion paper elicited concerns particularly from members of the Muslim community, mainly from the Western Cape. They considered that the Bill targeted them in particular. They raised concern about the proposed provision criminalising the giving of support to terrorist organisations and financial support in particular. The events of 11 September 2001 in the USA gave rise to an international diplomatic initiative requiring every country to determine whether its legislation could be applied successfully to combat terrorism and to cooperate with other jurisdictions. Internationally the attention shifted to the combating of the financing of terrorism. South Africa is obliged to respond to these developments.

The finalisation of the Commission's investigation into terrorism occurred against this background. The Commission has had the benefit of considering numerous precedents set by other countries which have passed legislation since September 11, 2001.

The Commission ascertained that there are shortcomings in South African legislation and that they should be remedied. The offence of terrorism currently set out in section 54(1) of the Internal Security Act, 1982, relates only to terrorism aimed at the South African Government or population. International terrorism is, however, often directed at foreign officials, guests, embassies and the interests of foreign states. The offence of terrorism as it exists in South African law is therefore clearly inadequate as its operation is too narrow. The South African legislation for combating terrorism should be brought in line with the international conventions dealing with terrorism, our law should provide for extra-territorial jurisdiction, and financing of terrorism must be addressed. There is therefore a need for legislation dealing with terrorism.

The Bill recommended in the report differs fundamentally from the one provisionally proposed in the discussion paper. Detention for interrogation no longer forms part of the Bill. In its place it is suggested that provision should be made for investigative hearings which closely resemble

the procedure contained in section 205 of the Criminal Procedure Act, 1977 in order to obtain information from a person suspected of being in possession of information on terrorist acts. The provisions on investigative hearings are also based on recently introduced Canadian procedure. A brief period of detention is possible under the Bill but provision is made for legal representation and bail may be granted. As many other safeguards as possible have been incorporated to ensure that the Bill can withstand constitutional scrutiny.

Provision is also made in the Bill for preventative measures. This entails that a person suspected of being about to commit a terrorist act can be brought before a court to enter into an undertaking to refrain from certain activities. The Bill provides that the court may impose conditions to ensure compliance, such as that the person be prohibited from possessing any weapon or explosive for any period specified in the undertaking.

The Bill also provides for forfeiture of terrorist property and property used for terrorist purposes. Provision exists currently for asset forfeiture under the Prevention of Organised Crime Act, 1998. The provisions on forfeiture of terrorist property are based on these provisions. The recent challenge of the Prevention of Organised Crime Act in the case of **The National Director of Public Prosecutions v Mohamed** 2002 (4) SA 843 (CC) heard by the Constitutional Court was taken into account when the Bill was formulated. The Court raised concerns about owners being heard on applications for forfeiture of their property. The absence of a rule nisi procedure was also in contention in the **Mohamed** case. The Bill addresses these issues.

The Bill defines a terrorist act as one that is committed (inside or outside the country) for a political, religious or ideological purpose, objective or cause with the intention of intimidating the public with regard to its security, or of compelling a person a government or a domestic or an international organisation to do or to refrain from doing, any act, whether the person, government or organisation is inside or outside the Republic, and which act causes death or serious bodily harm to a person by the use of violence or endangers a person's life, or causes a serious risk to the health or safety of the public, or causes substantial damage to property, or causes serious interference with or serious disruption of an essential service, facility or system. The Bill excludes action taken as a result of lawful advocacy, protest, dissent or stoppage of work that does not involve an activity that is intended to result in the conduct or harm referred to in the Bill. The Bill also excludes conventional military action in accordance with customary international law or conventional international law.

The Bill in addition deals with offences set out in international conventions which identify certain acts as constituting terrorist acts. They are the hijacking of aircraft; endangering the safety of

maritime navigation; bombing offences; taking of hostages; the protection of internationally protected persons and the protection of property occupied by foreign governments; offences involving interference with fixed platforms on the high seas and on the continental shelf; and offences with regard to nuclear matter and facilities.

Provision is also made for the proscription of terrorist organisations by the Minister, for revocation of proscription by the Minister and for the Minister's decisions to be taken on review by the High Court.

Following the events of 11 September 2001, there has been nationally and internationally a significant number of false alarms involving packages or letters containing apparently hazardous material, which have highlighted the need to have specific offences on the statute book and for tough penalties to deter such malicious and irresponsible action.

Finally, extradition procedures are also incorporated in the Bill.

The report was submitted to the Minister for Justice and Constitutional Development on 29 August 2002.

Project 107: Sexual offences

The report specifically addresses the growing and complex problems relating to rape and sexual abuse in South Africa. The intention is to encourage victims of sexual violence to use the criminal justice system, to improve the experiences of those victims who choose to enter the system, and to increase the conviction rate whilst at the same time giving due regard to the rights accorded to alleged perpetrators of sexual offences. These recommendations are divided into legislative and non-legislative recommendations.

In the course of this investigation the Commission has established that despite mounting public and official concern about sexual offences and rape, South Africa has no clear strategy for dealing inclusively with child and adult victims of sexual offences, either on a primary, preventative level or on a secondary, protective level. It has found, for example, that standards of service vary greatly. In order to ameliorate these and related basic service dilemmas the Commission has made detailed non-legislative recommendations for the attention of critical role players within the criminal justice system and auxiliary services relating to their spheres of responsibility. Aspects addressed are, among others, resourcing, inter-sectoral co-operation, training, awareness raising, and capacity building.

The legislative recommendations are embodied in the draft Bill and include the following:

- A codification of the common-law offence of rape. This offence addresses the unlawful and intentional penetration of a person by the genital organs of one person into the anus or genital organs of another person.

- The creation of the related offences of *sexual violation* and *oral genital sexual violation*. These offences respectively provide for the unlawful and intentional use of an object to penetrate a person's anus or genital organs; and the penetration of a person's mouth by a person or animal's genital organs.

- Rather than to rely on the absence of consent to the sexual act, the Commission recommends that penetrative sexual acts (rape, sexual violation and oral genital sexual violation) will be deemed to be unlawful if coercive or fraudulent circumstances are present or if circumstances exist in which a person is incapable in law of appreciating the nature of the act.

- The Commission is of the opinion that intentional non-disclosure by a person that he or she is infected by a life-threatening sexually transmissible infection in circumstances in which there is a significant risk of transmission of such infection to that person prior to sexual relations with another (consenting) person amounts to sexual relations by false pretences and would therefore constitute rape.

- Confirmation that a marital or other relationship is not a defence to the offence of rape, sexual violation or oral genital sexual violation.

- The creation of the offence of promoting a sexual offence with a child where a person manufactures or distributes an article that promotes a sexual offence with a child or where a person sells, supplies or displays to a child an article which is intended to perform a sexual act.

- The decriminalisation of offences relating to children and mentally impaired persons who are prostitutes and in certain circumstances children benefiting from child prostitution, for example siblings in a child-headed household. A child is defined as a person younger than 18 years of age.

- The explicit criminalisation and severe penalisation of all role-players involved in child

prostitution and the prostitution of mentally impaired persons. This offence targets pimps, clients, brothel-keepers and all other role-players involved in the commercial sexual exploitation of children.

- The organisation or promotion of child sex tours is specifically prohibited. This provision criminalises the actions of both persons and bodies that facilitate such tours within or to South Africa in any way, whether by making travel arrangements for potential perpetrators or advertising such tours.

- A provision is included which allows for extra-territorial jurisdiction in respect of all offences under the Act and not only those committed in relation to children. This means that the provisions contained in the Sexual Offences Bill will be made applicable to South Africans travelling abroad.

- The state is to provide appropriate medical care, treatment and counselling to persons who have sustained physical, psychological or other injuries as the result of an alleged sexual offence.

- The Commission has critically assessed the rules of evidence and procedure which govern and/or are applied in sexual offence trials. In this regard the report recommends the following:

    - The creation of a category of vulnerable witnesses which will include all complainants and child witnesses in sexual offence cases and which will afford them new protective measures, in addition to protective measures already provided for in the Criminal Procedure Act, 1977 (such as *in camera* hearings, the appointment of intermediaries and the use of closed-circuit television). The new protective measures would include the appointment of a support person to assist the witness during the trial as well as at pre-trial procedures.
    - The abolition of the cautionary rule in relation to complainants in sexual offence cases and children, which currently requires or allows that such evidence should or can be treated with caution.

- In relation to sentencing and the post-trial phase of the criminal procedure process in relation to sexual offences, the following recommendations are made:

    - A court may upon conviction of a sexual offender subject him or her to a drug and alcohol rehabilitation order where it appears that the offender may benefit

from treatment for the misuse of alcohol and drugs.

- A court may declare a sex offender a dangerous sexual offender and place him or her under long-term supervision. Sex offender orders may prohibit a person convicted of a sexual offence from acting in a way that may cause harm to others, from frequenting specified locations and from contacting specified persons.
- An increase in the penalties for persons contravening the prohibition against publication of information or revealing the identities of complainants and witnesses in sexual offence cases.

The report was submitted to the Minister for Justice and Constitutional Development on 21 January 2003.

Project 110: Review of the Child Care Act, 1983

From the outset the Commission interpreted its mandate as going beyond the confines of the present Child Care Act, 1983, to include all statutory, common, customary and religious law affecting children. Given this broad scope, the report and draft Bill cover a wide range of issues:

- The general principles underpinning the draft Bill, including the best interests of the child standard are defined; children's rights and responsibilities are enumerated; and it is recommended that the age of majority be advanced to 18 years.

- The diversity of family forms in South Africa; the shift from parental power to parental responsibility; the acquisition and loss of parental responsibility by persons other than biological parents; co-exercise of parental responsibilities and rights; and the termination of parental responsibility are dealt with.

- Aspects such as legitimacy of children and the status of children born of artificial insemination and surrogate motherhood are considered.

- The draft Bill grants a new status and a wider jurisdiction to the existing children's courts in an effort to improve the experiences of children going through the formal system.

- Early childhood development and prevention and early intervention services are recognised as vitally important components of the child protection system.

- Formal measures for the protection of children from abuse and neglect are a central focus of the draft Bill. The draft Bill considers legal provisions and interventions which are designed to deal with children in especially difficult circumstances and situations in which specific children are being harmed, or are at immediate risk of harm, through abuse or neglect. Reporting of children in need of care and protection is made mandatory for certain professionals and voluntary for any other person. Elaborate provision is made in respect of a national child protection register.

- Partial care; shelters and drop-in centres; children in alternative care, foster care and care by relatives; adoption; and residential care are issues that are dealt with.

- International issues affecting children are addressed. These include inter-country adoptions; trafficking of children across borders; child abductions; and refugee children.

- Issues of grants and social security for children are addressed; and the introduction of a monitoring system is proposed in the form of a children's protector to ensure the effective implementation of the draft Children's Bill.

A number of the more contentious recommendations contained in the report and draft Bill are that -

- childhood begins at birth;

- the age of majority be lowered to 18 years of age;

- more than one (even more than two) persons be allowed to acquire and manage parental rights and responsibilities, or components thereof, in respect of the same child at the same time;

- mothers and married fathers be accorded such parental rights and responsibilities automatically, while some unmarried fathers and other persons will have to apply to court to acquire such rights and responsibilities;

- a child and family court be established at regional court level;

- a register of persons unsuitable to work with children be created;
- children of all ages be provided with confidential access to condoms;
- the common-law defense of reasonable chastisement be repealed;
- municipalities may establish and administer child and youth care centres;
- child-headed households be recognized by law; and
- a child grant be payable on a universal basis in respect of all children in need of care and protection.

The draft Bill makes specific provision for inter-sectoral implementation of the Act through a national policy framework to be prepared by the Minister for Social Development. Such framework must reflect core components of the national strategy to secure the protection and well-being of all children in the Republic, performance indicators to measure progress with the achievement of objectives, and measures to ensure adequate funds for securing such protection and well-being of all children.

The report was submitted to the Minister for Justice and Constitutional Development on 21 January 2003.

Project 114: Publication of Divorce Proceedings: Section 12 of the Divorce Act 70 of 1979

The South African media are, in terms of section 12 of the Divorce Act 70 of 1979, currently prohibited from publishing any particulars of a divorce action or any information which comes to light in the course of such an action other than the names of the parties to a divorce action, the fact that a divorce action between the parties is pending in a court of law and the judgment or order of the court. The prohibition does not apply to the publication of particulars or information for the purposes of the administration of justice, in a bona fide law report, or for the advancement of or use in a particular profession or science.

However, since the provision does not have extra-territorial operation, the foreign media who are allowed to attend proceedings in courts are unrestricted in their reportage of South African divorce proceedings. Since South African citizens have access to the foreign media and the

press, the whole purpose of the prohibition is defeated.

There are furthermore clear indications that at present section 12 of the Divorce Act is simply being defied by the South African media. An important reason why the section is not enforced is that it is seen as being unconstitutional. South Africa has a Constitution with a Bill of Rights which entrenches, amongst others, the right to freedom of speech, freedom of information and the rights to privacy and dignity. These rights are interactive and have to be balanced. Section 28(2) of the Constitution furthermore specifically protects the rights of children.

During its deliberations the Commission found unanimous support for its view that section 12, as it stands, is unlikely to survive constitutional scrutiny. The section is overly broad in that it imposes a blanket ban without giving the court any discretion to determine whether or in what respects the case should be held in camera or whether media disclosure should be permitted or prohibited. Since the section is also largely ineffectual for various reasons, it was clear that the section had to be either amended or repealed.

The Commission's investigation revealed four possible options for reform which were set out for comment in a discussion paper, published in 2001. In evaluating the response received to the discussion paper it was clear that most commentators felt that the privacy of parties to a divorce should be respected as far as possible; that in the context of divorce, it would be appropriate for the press to have to make out a case for publication; and that children involved in divorce cases stand in need of special protection.

In its report the Commission therefore recommends that section 12 of the Divorce Act, 1979 be amended to allow a court the discretion to -

- make an order to lift the general ban on publication and to grant leave to any party to publish such particulars of a divorce or such information or evidence which has come to light in the course of such an action, as the court may deem fit;

- protect the anonymity of parties in specific circumstances; and

- close the court at any stage of the proceedings where there is a likelihood that harm may result to a child as a result of the hearing of any evidence.

The amended section will also make it an offence to furnish particulars of a divorce action or

any information or evidence which emerges during the course of such an action unlawfully to third parties.

It is the opinion of the Commission that the proposed amendment of section 12 will achieve an appropriate balance between the very important constitutional right to freedom of expression on the one hand and the equally important right to privacy on the other.

The report was submitted to the Minister for Justice and Constitutional Development on 29 August 2002.

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 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 permanently simplified, coherent and generally accessible statute book. It is a task of immense proportions and deals with, among other things, the constitutionality of legislation; the rectification of discriminatory legislation and gender-insensitive provisions; the repeal of obsolete and redundant provisions; and the systemisation of the statute book by grouping provisions that belong together.

Technical assistance (including funding) has been made available by the German Technical Co-operation (GTZ) since January 2003. The review of the Interpretation Act 33 of 1957 and the Black Administration Act 38 of 1927 have been identified as priorities.

Work on a draft discussion paper on the review of the Interpretation Act 33 of 1957 has commenced. *It is envisaged that a draft discussion paper on the review of the Interpretation Act will be finalised in the third quarter of 2003.*

Consultants have been contracted to review the Black Administration Act 38 of 1927. *It is envisaged that a first draft interim report on the repeal of redundant provisions will be finalised in the third quarter of 2003.*

A project committee will also be appointed in the third quarter of 2003.

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 names of the project committee members appointed for the investigation are contained in **Annexure B**.

A discussion paper on Islamic marriages and related matters (discussion paper 101) was published in December 2001 (see previous annual report for details).

A draft report was approved by the project committee on 24 August 2002. Three workshops to elicit comment on the proposed draft Bill which is to be included in the report were held on 12, 19 and 26 October 2002 in Pretoria, Cape Town and Durban respectively. Further oral submissions were heard by the project committee on 16 November 2002 and 6 January 2003. The project committee met on 1 February 2003 and made decisions regarding final amendments to the draft Bill. The amendments and resultant changes to the draft report were made and will be considered by the project committee in April 2003. *It is envisaged that a draft report will be considered by the Commission in the second quarter of 2003.*

Project 82 - Sentencing

The project committee appointed for the investigation 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**.

A discussion paper on a compensation scheme for victims of crime in South Africa (discussion paper 97) was published for general information and comment in April 2001 (see previous annual report for details).

A draft report was considered by the project committee on 31 July 2002. A consultative meeting with the National Director of Public Prosecutions was held on 7 March 2003. Further research was requested with a view to finalising the draft report. *It was decided to make the committee's proposals in the draft report available to relevant role players at the National Prosecuting Authority for comment after which a further consultative meeting between the project committee and the office of the National Director of Public Prosecutions will be held.*

Project 90 - Customary law

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
- Conflicts of law
- Law of succession
- Traditional courts and the judicial function of traditional leaders

Reports on the recognition of customary marriages and conflicts of law are reflected in **Annexure D**.

A discussion paper (which includes a draft Bill) on succession in customary law was published for general information and comment in August 2000. The closing date for comment on the discussion paper was 22 September 2000. The project leader's resignation with effect from 1 October 2000 delayed the completion of the investigation. On 30 March 2001 Professor Maithufi was appointed as the new project leader and Ms Moloi was appointed as the researcher. Comments received on the discussion paper on succession in customary law were evaluated and workshops were held countrywide. Participants in the workshop process expressed the need for further consultation with persons living in remote areas. The Commission approved that the consultation phase be extended. It was decided that the process of further consultation should cover rural areas in seven provinces. *It is envisaged that a draft report will be finalised in the third quarter of 2003.*

A discussion paper on the administration of estates was published in December 2000. The Commission decided that an interim report should be submitted to the Minister. A progress report was submitted to the Minister in January 2002. The Administration of Estates Amendment Act 47 of 2002 was passed. *The project on the administration of estates will be finalised after completion of the review of customary law of succession.*

Project 94 - Arbitration

The investigation initially dealt with international and domestic commercial arbitration only. A report on international arbitration was submitted to the Minister in July 1998 and a report on domestic arbitration was submitted to the Minister in June 2001. At the request of the Minister the investigation 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**.

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.

An issue paper dealing with all aspects of ADR was published for general information and comment during 1997.

A discussion paper on community dispute resolution structures was published for general information and comment in September 1999. After it had already considered two draft reports, the project committee met on 15 March 2003 to finalise the draft report on community courts, but decided to obtain expert comment on the report before submitting it to the Commission. *An amended draft report will be considered by the project committee in the third quarter of 2003.*

Project 96 - The Apportionment of Damages Act, 1956

The investigation entails the review of the Act in question with special reference to the meaning of Afault@ and the concept of Acontributory negligence@ as used in the Act.

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

A new researcher who assumed duty on 1 February 2002 was allocated to the project. A discussion document had been finalised after which a meeting of experts was convened. *A draft report will be considered by the Commission in the second quarter of 2003.*

Project 107 - Sexual offences: Adult prostitution

An issue paper on adult prostitution was published for general information and comment in August 2002.

Generally prostitution is regarded as the exchange of sexual acts for reward. While it is often said that prostitution is one of the oldest professions, the legal response to it differs from society

to society and over the course of time. Internationally, the topic of prostitution remains an emotive one and opinions on the legal treatment of prostitution are generally strongly polarised. This is no different in South Africa.

The Sexual Offences Act, 1957, regulates various aspects of prostitution. The keeping of brothels, the procurement of women as prostitutes, soliciting by prostitutes, and living off the earnings of prostitution are inter alia criminalised. In addition, various other pieces of legislation such as the Liquor Act 27 of 1989 and municipal bye-laws apply to prostitutes. Of particular interest is section 20(1)(aA) of the Sexual Offences Act, 1957, which provides that any person who has unlawful carnal intercourse or commits an act of indecency with any other person for reward is guilty of an offence. This section was declared inconsistent with the Constitution and therefore invalid in the Transvaal Division of the High Court in **Jordan and others v The State** 2002 (1) SACR 19 (TPD).

The issue paper sets out three legal options in the management of adult prostitution:

- Criminalise all aspects of adult prostitution.
- Legalise adult prostitution within certain narrowly circumscribed conditions.
- Decriminalise adult prostitution which will involve the removal of laws that criminalise prostitution.

The Commission sets forth the implications should a particular option be adopted and poses questions as to all the options presented. Consequently no draft legislation is proposed in the issue paper.

A draft discussion paper on adult prostitution will be finalised in the last quarter of 2003.

Project 113 - The use of electronic equipment in court proceedings

The objective of the investigation is to determine whether or not the use of electronic equipment in court proceedings is a viable option to save costs or prevent delays in civil and criminal trials. The names of the project committee members are reflected in **Annexure B**.

At a meeting between the Department of Justice and Constitutional Development and the National Director of Public Prosecutions it was decided that a project be launched to accelerate

the initiative to postpone cases of awaiting trial prisoners by means of audio visual link between correctional facilities and courts. The project committee was requested to assist in the pilot project by reviewing the legislative implications. A draft discussion document was considered by the project committee at its first meeting on 13 March 2003. The committee was of the view that the procedure should also be allowed for postponements and bail applications but that it should not extend to the actual trial and the hearing of evidence. *A subcommittee will meet with the Office of the National Director of Public Prosecutions during April 2003.*

Project 118 - Domestic partnerships

The purpose of the investigation is *inter alia* to determine whether legal recognition should be given to same-sex and opposite sex partnerships and if so, what criteria should be used in determining the permanence of the relationship. The investigation is aimed at harmonising family law with the provisions of the Bill of Rights, and specifically with the constitutional values of equality and dignity. Consideration will also be given to the question whether the criteria should be status- or contract-based.

The following options will be considered in the investigation:

- The legalisation of same-sex marriages.
- The introduction of a scheme of registered partnerships.
- The granting of recognition to partnership contracts and the enforceability of such contracts against third parties.
- The formal extension of rights and obligations of partnership to adults living in an interdependent relationship which is not a conjugal relationship.

An issue paper on domestic partnerships (issue paper17) was published for general information and comment in September 2001 (see the previous annual report for details).

A draft discussion paper on domestic partnerships will be considered by the project committee in the second quarter of 2003.

Project 121 - Consolidated legislation pertaining to international co-operation in civil matters

In November 1999 a Justice Departmental workshop was held on international cooperation between South Africa and foreign states in civil matters. There have been no significant developments in the field of international civil matters and there is a need to revisit our legislation with a view to developing consolidated legislation. The workshop concluded that the Law Commission should be mandated, in consultation with business, to undertake thorough research of existing legislation with a view to preparing consolidated legislation on international cooperation in civil matters.

The Minister approved the inclusion of the investigation in the Commission's programme on 12 June 2000. The project did not receive attention due to a lack of research capacity.

A new researcher who assumed duty on 1 March 2002 was allocated to the project.

An issue paper on consolidated legislation pertaining to international co-operation in civil matters was published in January 2003.

The present position is that, subject to certain statutory exceptions, a foreign judgment is not directly enforceable in South Africa. The common-law procedures are expensive, time-consuming and complex. In response to this the legislature enacted various pieces of legislation providing for international co-operation in civil matters. This is achieved by way of designation of countries under the various pieces of legislation.

To date only a few countries have been designated in this way for the purpose of co-operation in civil matters. The introduction of statutory enforcement procedures was intended to overcome the cumbersome common-law procedures, but these have proved unsuccessful. For example, in respect of judgments relating to money, Namibia is the only country designated under enabling regulations as a country with reciprocal enforcement procedures.

A similar situation prevails in respect of the enforcement of other types of civil judgments such as maintenance orders. The relevant Act applies only to a limited number of designated countries. This means that maintenance orders emanating from countries which are not designated under the Act cannot be enforced in South Africa. This exclusion applies to most

countries. The reciprocal service of legal documents is hindered by the same issue of designation.

The necessary pieces of legislation exist in our statute book but are not achieving their purpose. The first possible reason is that there are too many statutes governing this area, thereby complicating rather than facilitating the process of co-operation. The second possible reason is that the relevant statutes operate on the basis of designation of foreign countries, thereby excluding most countries from their application.
The issue paper focuses mainly on three aspects of international co-operation:

- The recognition and enforcement of foreign judgments.
- The reciprocal service of legal documents.
- Mutual assistance in the obtaining of evidence.

The issue paper sets out the various pieces of legislation and the limited extent of their application, thereby highlighting their shortcomings and inadequacies. There is a dire need to review existing legislation in this area, especially in the light of South Africa's trade and other relations with foreign countries. It is clear that current statutory enforcement has limited scope, thus rendering it ineffective. The issue paper seeks ways to remedy this problem.

A draft discussion paper on consolidated legislation pertaining to international co-operation in civil matters will be finalised in the second quarter of 2003.

Project 122 – Assisted decision-making: Adults with impaired decision-making capacity

The Commission, as far back as 1988, undertook an investigation with a view to improving the plight of mentally incapacitated persons who cannot afford the costs involved in securing a High Court appointed curator. Its recommendations led to the adoption of the Mentally Ill Persons' Legal Interests Amendment Act 109 of 1990, which amended the Mental Health Act 18 of 1973. This amendment enabled an interested person to apply to the Master of the High Court (which entails insignificant costs) for the appointment of a curator to a person who is not declared to be mentally ill, but whom the applicant believes to be suffering from mental illness to such an extent that the person is incapable of managing his or her own affairs.

The present investigation means a revival of its previous investigation, but on a wider basis. Additional measures to protect the interests of those whose legal capacity has for some reason

been diminished are researched.

An issue paper on incapable adults (issue paper 18) was published in December 2001 (see the previous annual report for details).

The Minister approved the appointment of a project committee on 30 July 2002. The names of the project committee members are reflected in **Annexure B**. The project committee met on 18 September 2002 to evaluate the comment received on the issue paper. *A draft discussion paper on assisted decision-making: adults with impaired decision-making capacity is being prepared and it will be considered by the project committee in the third quarter of 2003.*

Project 123 - Protected disclosures

The Portfolio Committee on Justice and Constitutional Development submitted its report on the Protected Disclosures Bill to Parliament on 16 May 2000. The Bill aimed to protect employees in both the public and private sectors from suffering any occupational detriment on account of having disclosed information regarding unlawful or irregular conduct by their employers.

The Committee was of the view that certain matters referred to in its report should be investigated fully before a review of the provisions of the Bill could take place and it requested the Minister for Justice and Constitutional Development to consider referring these matters to the Commission for investigation. The Minister approved the inclusion of the investigation in the Commission's programme on 8 December 2000.

An issue paper dealing with the need for the extension of the ambit of the Protected Disclosures Act 26 of 2000 was published in the form of a questionnaire in January 2003.

The Act purports to protect employees from the victimisation of employers. It has three main objects, which are to—

- provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her employer;
- protect an employee, whether in the public or the private sector, from being subjected to an occupational detriment on account of having made a protected disclosure; and
- provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure.

A disclosure is protected only if it has been made in accordance with the provisions of the Act Specific persons and bodies to whom protected disclosures may be made are identified in the Act. Disclosures made outside the requirements of the Act are not protected. All the disclosures under the Act are confined to the relationship between employer and employee in the public and private sectors. The Act does not provide protection to disclosures outside the employer/employee relationship.

Whistle-blowers who intend using the provisions of the Act to conceal their own involvement in criminal activities are not protected. Where a law has been contravened, the Act does not protect the employee from criminal prosecution or civil liability to third parties. Thus there is no exclusion of civil or criminal liability for making a protected disclosure.

The Act allows employees to pursue unspecified remedies where they have been subjected to an occupational detriment, but provides no particular remedy. Furthermore, it is not an offence in terms of the Act to subject an employee to occupational detriment or for an employee knowingly to make a false disclosure.

A draft discussion paper on protected disclosures will be finalised in the third quarter of 2003.

Project 124 - Privacy and data protection

The Ad Hoc Joint Committee on the Open Democracy Bill submitted its report on the Promotion of Access to Information Bill to Parliament on 24 January 2000.

The Committee noted that the Bill only dealt with the aspect of access to private information of an individual, be it access by that individual or another person, and did not regulate other aspects of the right to privacy, such as the correction of and control over personal information.

Foreign jurisdictions with freedom of information regimes enacted separate legislation which, as an important component of democracy legislation, regulates aspects such as the correction of and control over personal information. Privacy legislation generally provides for more detailed mechanisms and provisions dealing with personal information in the hands of another person by empowering that individual, amongst others, to demand the correction of incorrect information.

The Committee requested the Minister for Justice and Constitutional Development to introduce privacy and data protection legislation in Parliament as soon as possible. Since the preparation of this type of legislation will require extensive research, the Minister requested the Law Reform Commission to consider the possible inclusion of such an investigation in its programme. The Minister approved the inclusion of the investigation in the Commission's programme on 8 December 2000.

A project committee was established and the first meeting of the project committee was held on 22 July 2002. The names of the project committee members are reflected in **Annexure B**.

A draft issue paper is being prepared which will be considered by the project committee in the third quarter of 2003.

Project 125 - Prescription periods

The Limitation of Legal Proceedings against Government Institutions Bill was passed by the National Assembly in September 2000. The Portfolio Committee on Justice and Constitutional Development recommended in its report on the Bill that, as no comprehensive review of all the provisions providing for different prescription periods - whether of a contractual or delictual nature - has been performed, the Minister should be approached to request the Law Commission to include an investigation into the harmonisation of the provisions of existing laws providing for different prescription periods in the Commission's programme.

The Minister approved the inclusion of the investigation in the Commission's programme on 8 December 2000. Research was held in abeyance until the finalisation of the report on the administration of estates.

A draft issue paper was submitted to the project leader and it will be fjnalised in the second quarter of 2003.

Project 126 - Review of the rules of evidence

A project committee was established and the first meeting of the project committee was held on 13 March 2003. The names of the members of the project committee are reflected in **Annexure B**.

It was decided to follow an incremental approach in this investigation. "The principle of relevance" and "hearsay evidence" are aspects that have been identified for immediate research. The review of the law of evidence is a specialised field and experts will be contracted to do the research.

A draft discussion paper will be finalised in the third quarter of 2003.

Project 127 – Review of administration orders

The background to this investigation is provided in Chapter 3.

A project committee was established and the first meeting of the project committee was held on 26 February 2003. The names of the members of the project committee are reflected in **Annexure B**.

A draft discussion paper on administration orders will be finalised in the third quarter of 2003.

Project 128 – Review of aspects of the law of divorce

The background to this investigation is provided in Chapter 3.

A questionnaire was distributed in public*. A draft issue paper on review of aspects of the law of divorce will be finalised in the third quarter of 2003.*

Project 129 – Review of aspects of matrimonial property law

The background to this investigation is provided in Chapter 3.

Research will commence when the issue paper on review of aspects of the law of divorce (project 128) has been finalised.

Project 130 – Stalking

The background to this investigation is provided in Chapter 3.

A draft issue paper on stalking will be finalised in the second quarter of 2003.

Project 131 – Trafficking in persons

The background to this investigation is provided in Chapter 3.

A draft issue paper on trafficking in persons will be finalised in the third quarter of 2003.

6

PUBLIC RELATIONS

Ismail Mahomed prize for law reform

The Law Reform Commission offers a prize for the best essay on law reform by a student in the final year of LLB studies at a South African University. The aim of the competition is to provide an incentive for good legal writing while generating new ideas for the reform of the law.

The Ismail Mahomed Prize For Law Reform was established in honour of the late Chief Justice and Chairperson of the Law Reform Commission. For 2001 the Law Reform Commission is grateful to Juta Law for sponsoring a worthwhile prize valued at R10 000 and consisting of a personal computer and a set of Juta's Statutes of South Africa (in print and on CD-ROM).

The winner for 2001 is Mr Daniël Smit from the University of Stellenbosch for his excellent essay entitled "Legal Understanding: From Pre-understanding to Better Understanding". The prize was awarded at a ceremony hosted by the Commission on 16 August 2002.

It is sincerely hoped that Juta Law will be amenable to sponsoring future Ismail Mahomed Prizes in the interest of law reform in our country.

Public consultation

For the efficient performance of its functions, the Commission depends on the cooperation of institutions and persons who 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 issue papers and 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 regular 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 maintained by the Commission 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.

In the period under review the Commission received the following visitors:

- Malawi Law Commission (1)

A delegation from the Malawi Law Commission undertook a study visit to the South African Law Reform Commission from 22 – 26 April 2002. The delegation was briefed on the working methods of the Commission as well as on a number of research projects. Meetings were also facilitated with the Office on the Rights of the Child at the Presidency and with representatives of Save the Children (Sweden & UK).

- Malawi Law Commission (2)

Commissioners for the Gender and Law Reform Programme undertook a study visit to the South African Law Reform Commission from 3 – 7 June 2003. The delegation was briefed on the working methods of the Commission as well as on a number of research projects relating to relating to the delegation's brief. Meetings were facilitated with the National Director of Public Prosecutions; the South African Police Service; the National Network on Violence against Women; the Gender Commission; and the Department of Justice and Constitutional Development.

A member of the delegation, Ms M M Katopola (Assistant Chief Law Reform Officer), remained for a work attachment from 10 – 28 June 2003, during which time she acquainted herself fully with the operation of the South African Law Reform Commission.

- Judge of the United States of America

On 16 August 2002 Judge J C Wallace, Senior Judge and Chief Judge Emeritus of the United States Court of Appeals, visited the Commission to compare experiences on law reform issues.

- Zambia Law Development Commission

Dr M B Kamuwanga, Director of the Zambia Law Development Commission, visited the South African Law Reform Commission from 29 – 30 October 2002. She was briefed on the working methods of the Commission and interacted with researchers on various research projects.

- Uganda Law Reform Commission

A task team of the Uganda Law Reform Commission undertook a study visit on e-commerce, computer crime and e-evidence from 17 – 21 February 2003.

The task team was briefed on the Commission's working methods and visits were facilitated with the Pretoria Specialised Commercial Crime Court; the Department of Communication; the South African Revenue Service; Deloitte and Touche; and SITA.

Electronic and 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 29 August 2002 and 21 January 2003 the Commission hosted media conferences at which occasions discussion papers and reports were released for publication.

The Secretary and Assistant 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 participate in various programmes and discussions relating to their research projects. These take the form of, among other things, interviews with radio stations, television appearances, articles in law journals, and liaison with individuals and institutions.

In line with the Commission's policy to broaden its consultation base, extensive workshops and briefings in respect of relevant investigations are held. An effort is made to host the workshops and present briefings in as many different locations (urban and rural) as possible and the target audiences are, among others, the legal fraternity, relevant NGOS, state departments, Portfolio Committees, relevant experts, and the community in general.

Researchers and project committee members often participate in activities not initiated by the South African Law Reform Commission nationally and abroad. They are invited by government departments, non-governmental organisations and other institutions to attend seminars or conferences and to participate in workshops relating to investigations on the Commission's programme. In addition, they are frequently requested to present papers or lectures on the research projects that they are involved in. This approach facilitates cooperation between the Commission and other role players, serves to publicise the Commission's activities and ensures that duplication of initiatives is avoided.

Internet

An Internet site has been administered for the Commission free of charge by the Wits Law School since March 1997 (http://www.law.wits.ac.za/salc/salc.html). Any person with access to the Internet can subscribe to a free notification service. Subscribers are informed of the publication of new documents on the site.

7

ACKNOWLEDGEMENTS

During the period under review a substantial number of persons and institutions responded to specific or general invitations by the Commission to comment on particular issues or to assist it with its activities in some respect. It is impossible, within the scope of this report, to mention all contributors. However, the Commission expresses its sincere thanks to all concerned - without their goodwill and assistance the Commission would not be able to perform its duty satisfactorily.

The Commission would like to express its sincere appreciation for the generous assistance given by the following foreign donors and contributors:

- The German Government through the German Technical Cooperation (GTZ)

- Save the Children (Sweden)

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 for Justice and Constitutional Development for their personal interest in and support of the Commission's work. The Department of Justice and Constitutional Development 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 2000-06-17
Madam Justice Y Mokgoro*, Judge of the Constitutional Court	2000-11-03 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 2000-11-02
Madam Justice M L Mailula*, Judge of the High Court	2002-01-01 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 2000-09-30
Prof I P Maithufi*, University of Pretoria, seconded to the Commission	2001-03-26 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

Title/Name	Term of office
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
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
Judge Y Mokgoro	1996-01-01 to 1998-12-31
Mr J J Gauntlett SC*, practising advocate	1996-01-01 to date
Mr P Mojapelo	1996-01-01 to 2001-12-31
Ms Z Seedat*, practising attorney	1996-01-01 to date
Judge M L Mailula	1999-01-01 to 2001-12-31
Prof C E Hoexter*, additional member, University of the Witwatersrand	1999-10-27 to date
Judge C T Howie*, President of the Supreme Court of Appeal	2000-11-03 to date
Dr W L Seriti*, practising attorney	2002-01-01 to date

ANNEXURE B

PROJECT COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

Administration orders	Dr W Seriti (Project leader)	Member, Law Reform Commission
	Prof A Boraine	University of Petoria
	Ms A Lotheringen	Department of Trade and Industry
	Mr P Maluleke	Banking Council
	Mr R Mandelstam	Magistrate: Johannesburg
	Mr X May	Black Sash
	Mr P Setou	Micro Finance Regulatory Council
	Ms H van der Merwe	Attorney nominated by the National Association of Administrators and the Law Society of the Northern Provinces
	Mr M Weiner	Attorney nominated by the National Association of Administrators

Arbitration: Alternative dispute resolution	Prof R Christie (Project leader)	University of Cape Town
	Prof D Butler	University of Stellenbosch
	Prof J Cartwright	Community Peace Programme
	Mr R Choudree	Society of Advocates, KwaZulu Natal
	Mr J Gauntlett SC	Member, Law Reform Commission
	Ms B Hechter	Office of the Family Advocate
	Mr A Jooste	Chief Magistrate, Cape Town
	Ms N Mkefa	Cape Town Metropolitan Council
	Mr P Pretorius	Johannesburg Bar
	Prof W Schärf	Institute of Criminology, UCT

Assisted decision-making: Adults with impaired decision-making capacity	Judge B du Plessis (Project leader)	
	Prof J Bekker	Retired Dean of the Faculty of Law, Vista University
	Ms D Mahlangu	Department of Social Development
	Ms Z Seedat	Member, Law Reform Commission
	Dr S Selemani	Psychiatrist attached to Sterkfontein Mental Hospital and the University of the Witwatersrand
	Mr L Vitus	Retired Executive Manager of the SA Federation for Mental Health

Customary law	Prof I Maithufi (Project leader)	Full-time member, Law Reform Commission
	Ms L Baqwa (resigned with effect from 12 December 2002)	Attorney
	Prof T Bennett	Faculty of Law, University of Cape Town
	Prof C Dlamini	Department of Education, KwaZulu Natal
	Prof C Himonga	University of Cape Town
	Ms M Mashao	Commission on Gender Equality
	Mr P Mawila	University of Venda
	Ms L Mbatha	Centre for Applied Legal Studies, WITS
	Judge Y Mokgoro	Chairperson, Law Commission
	Prof R Mqeke	Rhodes University
	Prof S Rugege	University of the Western Cape

Domestic partnerships	Judge C Howie (Project leader)	Member, Law Reform Commission
	Ms B Goldblatt	Centre for Applied Legal Studies, WITS
	Prof C Hoexter	Member, Law Commission
	Prof R Louw	University of Natal (Durban)
	Prof T Mosikatsana	University of the Witwatersrand

Islamic marriages and related matters	Judge M Navsa (Project leader)	
	Sheikh M Gamieldien	Islamic law consultant
	Moulana A Jeena	United Ulama Council
	Ms F Mahomed	Member of Parliament
	Prof N Moosa	University of the Western Cape
	Mr M Omar	Attorney, United Ulama Council
	Dr R Salojee	Member of Gauteng Legislature
	Ms Z Seedat	Member, Law Reform Commission

Sentencing	Mr J Kollapen (Project leader)	Human Rights Commission
	Ms L Camerer	Institute for Security Studies
	Mr K Govender	State Attorney
	Judge L Mailula	Member, Law Reform Commission
	Mr V Peterson	Department of Welfare, Mpumalanga
	Ms M Ramagoshi	National Network on Violence Against Women
	Mr P Shabangu	Magistrate, Durban
	Prof D van Zyl Smit	University of Cape Town

Privacy and data protection	Judge C Howie (Chairperson)	Member, Law Reform Commission
	Prof J Neethling (Project leader)	University of South Africa
	Prof I Currie	University of the Witwatersrand
	Ms C da Silva	SA Insurance Association
	Ms C Duval	Direct Marketing Association: Consumer Affairs Committee
	Prof B Grant	University of Natal
	Ms A Grobler	Banking Council of SA
	Mr M Heyink	Chairperson, E-commerce committee, Law Society of SA
	Ms S Jagwanth	University of Cape Town
	Ms A Tilly	Open Democracy Advice Centre

The use of electronic equipment in court proceedings AND Review of the law of evidence	Judge L Harms (Project leader)	
	Prof L Fernandez	University of the Western Cape
	Adv T Masuku	IDASA
	Judge R Nugent	
	Prof P Schwikkard	University of Cape Town
	Dr W Seriti	Member, Law Reform Commission

ANNEXURE C

PRESENT PROGRAMME OF THE COMMISSION

Project number	Title
25	Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book
59	Islamic marriages and related matters
82	Sentencing
90	Customary law
94	Arbitration
96	The Apportionment of Damages Act, 1956
107	Sexual offences: Adult prostitution
113	The use of electronic equipment in court proceedings
118	Domestic partnerships
121	Consolidated legislation pertaining to international co-operation in civil matters
122	Assisted decision-making: Adults with impaired decision-making capacity
123	Protected disclosures
124	Privacy and data protection
125	Prescription periods
126	Review of the rules of evidence
127	Review of administration orders
128	Review of aspects of the law of divorce
129	Review of aspects of matrimonial property law
130	Stalking
131	Trafficking in persons

ANNEXURE D

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

(Current investigations marked with an asterisk,
see Chapters 3 and 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 • Final report	 1982 1986	 RP 95/1982 ISBN 0 621 11348 4	 Act 57 of 1983 passed Act 45 of 1988 passed
7	Revision of pre-Union statutes: • Repeal of certain pre-Union Statutes • Repeal of certain pre-Union statutes • Retention of certain pre-Union statutes	 1975 1976 1977	 Not published Not published Not published	 Act 36 of 1976 passed Act 43 of 1977 passed Act 24 of 1979 passed
8	Steps aimed at making the common law more readily available	-	-	Several works published, see previous annual reports and Annexure G
9	Review of the law of trusts	1986	June 1987	Act 57 of 1988 passed
10	Draft convention for a uniform law of agency of an international character in respect of the sale of goods	1974	Not published	No legislation recommended

Project number	Title	Year of report	Reference number of published report	Result
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 • Section 7(3) of Act 70 of 1979	 1977 1991	 RP 57/1978 ISBN 0 621 14140 2	 Act 70 of 1979 passed, see also project 40 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 house-hold	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 enforce-ability of foreign arbitration awards in the Republic	1975	Not published	Act 40 of 1977 passed
19	Investigation into the shifting of the onus of proof in bribery charges	1975	Not published	No legislation recommended, see project 75
20	Investigation into the substitution of petition proceedings in superior courts	1975	Not published	Act 35 of 1976 passed
21	Limitation of the institution of legal actions against the State	1977	Not published	No legislation recommended, see also project 42
22	Review of the law of succession: • Intestate succession • Legitimate portion or right to maintenance	 1985 1987	 ISBN 0 621 09611 3 Not published	 Act 81 of 1987 passed Act 27 of 1990 passed

Project number	Title	Year of report	Reference number of published report	Result
	• 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
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 implemented

Project number	Title	Year of report	Reference number of published report	Result
34	Examination of the legal consequences of artificial insemination and the duty of support in respect of certain adulterine children	1978	Not published	No legislation recommended, see also project 38
35	Negligent use of fire-arms	1978	Not published	No legislation recommended
36	Investigation into delictual liability in cases of misrepresentation	1983	Not published	No legislation recommended
37	Review of preferent claims in insolvency	1984	ISBN 0 621 090840 X	Recommendations not implemented, see project 63
38	Investigation into the legal position of illegitimate children	1985	ISBN 0 621 10205 9	Act 82 of 1987 passed
39	Investigation into the legal consequences of suspensive conditions in contracts of sale	1985	ISBN 0 621 11350 6	No legislation recommended
40	Evaluation of the effect of the Divorce Act 70 of 1979	1983	Not published	No legislation recommended
41	The division of pension benefits on divorce: • Report • Supplementary report	 1986 1994	 ISBN 0 621 11357 3 RP 158/1995 ISBN 0 621 16869 6	 Act 7 of 1989 passed Referred back to the Commission, see project 112
42	Investigation into time limits for the institution of actions against the State: • Report • Supplementary report	 1985 1998	 Not published ISBN 0 621 28862 4	 Recommendations not implemented Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 passed

Project number	Title	Year of report	Reference number of published report	Result
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 • Supplementary report	 1991 1993	 ISBN 0 621 14544 0 Not published	 Act 57 of 1993 passed 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 Unreasonable or Oppressive Stipulations in Contracts Bill to be introduced when circumstances permit
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 • Final report	 1985 1986	 Not published -	 Section 1 of Act 90 of 1985 enacted Act 3 of 1988 passed
52	Investigation into the legal consequences of sexual realignment and related matters	1995	RP 32/1996 ISBN 0 621 17334 7	Report being considered by the Department of Home Affairs
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

Project number	Title	Year of report	Reference number of published report	Result
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 • Final report	1991 1994	Report: ISBN 0 621 14128 3 Summary: ISBN 0 621 14127 5 RP 66/1995 ISBN 0 621 16727 4	Act 200 of 1993 passed 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 • Supplementary report on section 138 of the Companies Act 61 of 1973	1993 1994	ISBN 0 621 16287 6 RP 152/1995 ISBN 0 621 16847 5	Recommendations not implemented Act 35 of 1998 passed
63	Review of the law of insolvency: • Interim report: Section 34 of the Insolvency Act, 1936 (Act 24 of 1936) • Interim report: Insolvency interdicts • Interim report: Appeals against sequestration orders	1990 1992 1993	(Unpublished/ Informal) ISBN 0 621 14964 0 ISBN 0 621 15421 0	Section 1 of the Insolvency Amendment Act 6 of 1991 enacted, see also Chapter 5 Act 122 of 1993 passed, see also Chapter 5 Section 1 of Act 129 of 1993 enacted, see also Chapter 5

Project number	Title	Year of report	Reference number of published report	Result
	• Interim report: The protection of the financial markets in the event of insolvency • Interim report: The enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency • Report: The review of the law of insolvency	1994 1999 2000	RP 63/1995 ISBN 0 621 16721 5 Not printed RP 89/2000 ISBN 0 621 30069 1	Act 32 of 1995 passed Act 42 of 2000 passed Insolvency and Business Recovery Bill to be introduced in the 2003 Session of Parliament
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Recommendations to be incorporated in the Children's Bill (Project 110)
66	Reform of the South African law of bail: • Report • Report	1992 1994	Not published RP 82/1995 ISBN 0 621 16746 0	Referred back for consideration, *inter alia*, in the light of the provisions of the Constitution Act 200 of 1993 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 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: • First interim report: Appeal procedures	1994	-	Recommendations not implemented

Project number	Title	Year of report	Reference number of published report	Result
	• Second interim report: The simplification of criminal procedure • Third interim report: The right of the Director of Public Prosecutions to appeal on questions of fact • Fourth interim report: Sentence agreements • Fifth interim report A more inquisitorial approach to criminal procedure • Final report Out of court settlements in criminal cases	1995 2000 2001 2002 2002	RP 70/1996 ISBN 0 621 17405 X RP 58/2001 ISBN 0 621 30678 9 RP 120/2001 ISBN 0 621 31452 8 RP 219/2002 ISBN 0 621 33510 X RP 218/2002 ISBN 0 621 33511 8	Act 86 of 1996 passed Criminal Procedure Amendment Bill to be introduced in the 2003 Session of Parliament Act 62 of 2001 passed Criminal Procedure Second Amendment Bill to be introduced when circumstances permit See Chapter 4 Out of Court Settlements in Criminal Matters Bill to be introduced when circumstances permit See Chapter 4
74	Debt collecting: • Interim report on imprisonment for debt • Final report	1994 1995	RP 199/1995 ISBN 0 621 16956 0 RP 198/1995 ISBN 0 621 16960 9	Act 81 of 1997 passed 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 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
80	Accession to the Hague Convention on the Civil Aspects of International Child Abduction	1992	Not published	Act 72 of 1996 passed

Project number	Title	Year of report	Reference number of published report	Result
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 Distributors and Donelly v Barclays National Bank* 1995 3 SA 1 (A)
82*	Sentencing: • A new sentencing framework • A compensation scheme for victims of crime in South Africa	2000 -	RP 57/2001 ISBN 0 621 30679 7 -	Referred back to the Law Reform Commission (see Chapter 1) 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 • First interim report: Health related aspects • Second interim report: Pre-employment HIV testing • Third interim report: HIV/AIDS and discrimination in schools • Fourth interim report: Compulsory HIV testing of persons arrested in sexual offence cases • Fifth interim report: The need for a statutory offence aimed at harmful HIV-related behaviour	1997 1998 1998 2000 2001	RP 106/1997 ISBN 0 621 27345 7 RP 120/1998 ISBN 0 621 28049 6 RP 121/1998 ISBN 0 621 28048 8 RP 40/2001 ISBN 0 621 30618 5 RP 78/2001 ISBN 0 621 30750 5	Regulations on Hazardous Biological Agents were promulgated on 27 December 2001 National policy on HIV testing expected to be promulgated in terms of the National Health Bill, 2003 Recommendations incorporated in the Employment Equity Act 55 of 1998 Department of Education promulgated Commission's draft National Policy on HIV/AIDS for Learners in Public Schools on 10 August 1999 Compulsory HIV Testing of Sexual Offenders Bill introduced in Parliament No legislation recommended

Project number	Title	Year of report	Reference number of published report	Result
86	Euthanasia and the artificial preservation of life	1998	RP 186/1999 ISBN 0 621 29831 X	Report under consideration by the 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	RP 181/1999 ISBN 0 621 29818 2	Public Interest and Class Actions Bill to be introduced when circumstances permit
89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	1995	RP 100/1996 ISBN 0 621 17494 7	Act 68 of 1998 passed
90*	Customary law: • Customary marriages • Conflicts of law • Traditional courts and the judicial function of traditional leaders	1998 1999 2003	RP 170/1998 ISBN 0 621 28755 5 RP 81/2000 ISBN 0 621 30061 6 Being printed	Act 120 of 1998 passed Report being considered by the Department of Justice and Constitutional Development Traditional Courts Bill to be introduced when circumstances permit See Chapter 4
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	RP 37/1997 ISBN 0 621 17648 6	Act 66 of 1997 passed
94*	Arbitration: • International arbitration	1998	RP 30/1999 ISBN 0 621 28861 6	The International Arbitration Bill to be introduced in Parliament

Project number	Title	Year of report	Reference number of published report	Result
	• Domestic arbitration	2001	RP 119/2001 ISBN 0 621 31453 6	Report being considered by the Department of Justice and Constitutional Development
	• Community dispute resolution structures	-	-	See Chapter 5
95	The admissibility of computer-generated evidence	-	-	Struck off See Chapter 3
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
100	Family law and the law of persons:			
	• Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Recommendations to be incorporated in the Children's Bill (Project 110)
	• 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
101	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing	2001	RP 118/2001 ISBN 0 621 31451 X	Report under consideration by the Department of Justice and Constitutional Development
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	Act 38 of 2001 passed

Project number	Title	Year of report	Reference number of published report	Result
105*	Review of security legislation			
	• Monitoring and Interception Prohibition Act 127 of 1992	1999	RP 203/1999 ISBN 0 621 29897 2	Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 passed
	• Terrorism	2002	RP 216/2002 ISBN 0 621 33513 5	Anti-Terrorism Bill introduced in Parliament See Chapter 4
106	Juvenile Justice	2000	RP 159/2000 ISBN 0 621 30228 7	Child Justice Bill introduced in Parliament
107*	• Sexual offences	2002	RP 16/2003 ISBN 0 621 33583 5	Sexual Offences Bill to be introduced in the 2003 Session of Parliament See Chapter 4
	• Adult prostitution	-	-	See Chapter 5
108	Computer-related crimes	-	-	Struck off See Chapter 3
109	Review of the Marriage Act	2001	RP 117/2001 ISBN 0 621 31454 4	Report under consideration by the Department of Home Affairs
110	Review of the Child Care Act	2002	RP 17/2003 ISBN 0 621 33584 3	Report under consideration by the Department of Social Development See Chapter 4
111	Jurisdiction of magistrates' courts in constitutional matters	1999	RP 80/2000 ISBN 0 621 30062 4	Recommendations not implemented
112	Sharing of pension benefits	1999	RP 82/2000 ISBN 0 621 30060 8	Sharing of Pension Benefits Bill to be introduced when circumstances permit
113*	Use of electronic equipment in court proceedings	-	-	See Chapter 5
114	Publication of divorce proceedings	2002	RP 217/2002 ISBN 0 621 33572 6	Publication of Divorce Proceedings Bill to be introduced when circumstances permit See Chapter 4
115	Review of administrative law	1999	ISBN 0 621 29881 6	Promotion of Administrative Justice Act 3 of 2000 passed
116	The carrying of firearms and other dangerous weapons	-	-	Struck off See Chapter 3
117	The legal position of voluntary associations	-	-	Struck off
118*	Domestic partnerships	-	-	See Chapter 5

Project number	Title	Year of report	Reference number of published report	Result
119	Uniform national legislation on the fencing of national roads	-	-	Struck off See Chapter 3
120	Section 63(3) of the Insurance Act 27 of 1943	-	-	Struck off
121*	Consolidated legislation pertaining to international co-operation in civil matters	-	-	See Chapter 5
122*	Assisted decision-making: Adults with impaired decision-making capacity	-	-	See Chapter 5
123*	Protected disclosures	-	-	See Chapter 5
124*	Privacy and data protection	-	-	See Chapter 5
125*	Prescription periods	-	-	See Chapter 5
126*	Review of the rules of evidence	-	-	See Chapter 5
127*	Review of administration orders	-	-	See Chapters 3 and 5
128*	Review of aspects of the law of divorce	-	-	See Chapters 3 and 5
129*	Review of aspects of matrimonial property law	-	-	See Chapters 3 and 5
130*	Stalking	-	-	See Chapters 3 and 5
131*	Trafficking in persons	-	-	See Chapters 3 and 5

ANNEXURE E

ISSUE PAPERS PUBLISHED BY THE COMMISSION

(In order to involve the community actively 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

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
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 to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 28710 5 August 1998
15	59	Islamic marriages and related matters	0 621 30089 6 May 2000
16	119	Uniform national legislation on the fencing of national roads	0 621 30188 4 July 2000
17	118	Domestic partnerships	0 621 31574 5 September 2001
18	122	Incapable adults	0 621 31797 7 November 2001
19	107	Sexual offences: Adult prostitution	0 621 33159 7 July 2002
20	123	Protected disclosures	0 621 33555 X November 2002
21	121	Consolidated legislation pertaining to international cooperation in civil matters	0 621 33553 3 November 2002

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	October 1984
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

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
18	61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	0 7970 1381 4 18 March 1988
19	22	Review of the law of succession: Disqualification from inheriting, substitution and the succession rights of adopted children	0 7970 1401 2 26 February 1988
20	60	Domicile	0 7970 1435 7 26 August 1988
21	62	The protection of a purchaser of securities	0 7970 1460 8 31 March 1988
22	50	Proposals for the reform of the Bills of Exchange Act	0 621 1198 9 X 19 December 1988
23	46	The giving of security by means of movable property	0 7970 1558 2 7 October 1988
24	52	Investigation into the legal consequences of sexual realignment and related matters	0 7970 1589 2 17 June 1994
25	58	Group and human rights	GPS 003 9160 10 March 1989
26	12	Amendment of section 7(3) of the Divorce Act, 1979	0 7970 1667 8 1 March 1989
27	69	The acquisition and loss of ownership of game	0 7970 1727 5 29 May 1989
28	71	The protection of child witnesses	0 7970 1826 3 12 June 1989
29	63	Insolvency: Requirements for and alternatives to sequestration	0 7970 1854 9 7 August 1989
30	63	Insolvency: Qualifications, appointment and 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 March 1990
33	63	Insolvency: Effect of insolvency on assets, civil proceedings and contracts	0 7970 2185 X November 1990
34	24	Investigation into the courts' powers of review of administrative acts	0 7970 2292 9 December 1991
35	63	Insolvency: Insolvency interdicts	0 7970 2296 1 May 1991

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
36	62	The protection of a purchaser of securities	0 7970 23003 September 1991
37	68	Access to police dockets	0 7970 2316 X July 1991
38	65	Surrogate motherhood	0 7970 2381 X September 1991
39	63	Insolvency: Rehabilitation	0 7970 2490 5 April 1992
40	78	Interest on damages	0 7970 2607 X May 1992
41	63	Insolvency: Voidable dispositions and dispositions that may be set aside and the effect of sequestration on the spouse of the insolvent	0 7970 2638 X July 1992
42	73	Simplification of the criminal procedure: Working paper on appeal procedure	0 7970 2641 X July 1992
43	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband: Matters relating to the Divorce Amendment Act 7 of 1989	0 621 15039 8 December 1992
44	79	A father's rights in respect of his illegiti-mate child	0 621 15329 X February 1993
45	76	Jewish divorces	0 621 15331 1 January 1993
46	67	The Usury Act and related matters	0 621 15021 5 April 1993
47	87	Jurisdictional lacuna in the Supreme Court Act 59 of 1959	0 621 15429 6 April 1993
48	62	The protection of a purchaser of shares	0 621 15848 8 October 1993
49	73	Simplification of criminal procedure	0 621 15923 9 November 1993
50	74	Debt collecting	0 621 15933 6 November 1993
51	70	Limitation of professional liability	0 621 15955 7 December 1993
52	84	Application of the trapping system	0 621 15959 X December 1993

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
53	86	Euthanasia and the artificial preservation of life	0 621 15994 8 February 1994
54	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 16038 5 May 1994
55	89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	0 621 16358 9 December 1994
56	98	International co-operation in criminal prosecutions	0 621 16820 3 May 1995
57	88	The recognition of a class action in South African law	0 621 16928 5 September 1995
58	85	Aspects of the law relating to AIDS	0 621 16964 1 September 1995
59	94	Arbitration	0 621 16971 4 September 1995
60	95	Investigation into the Computer Evidence Act 57 of 1983	0 621 17259 6 October 1995
61	63	Review of the law of insolvency: Statutory provisions that benefit creditors	0 621 17297 9 November 1995
62	100	The granting of visitation rights to grandparents of minor children	0 621 17344 4 March 1996
63	93	Speculative and contingency fees	0 621 17353 3 March 1996
64	104	Money laundering and related matters	0 621 17453 X June 1996
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 August 1996
	63	Review of the law of insolvency: Draft Bill and explanatory memorandum: Executive summary	0 621 17510 2 August 1996
67	96	Apportionment of Damages Act, 1956	0 621 17543 9 October 1996

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
68	85	Aspects of the law relating to AIDS	0 621 17550 1 October 1996
69	94	International commercial arbitration	0 621 176028 December 1996
70	100	Family law and the law of persons: Domestic violence	0 621 17650 8 February 1997
71	86	Euthanasia and the artificial preservation of life	0 621 17724 5 April 1997
72	85	Aspects of the law relating to AIDS: Pre-employment HIV testing	0 621 27350 3 June 1997
73	85	Aspects of the law relating to AIDS: HIV/AIDS and discrimination in schools	0 621 27697 9 August 1997
74	90	Customary law: Customary marriages	0 621 27723 1 September 1997
75	111	Constitutional jurisdiction of magistrates' courts	0 621 27997 8 March 1998
76	90	Customary law: Conflicts of law	0 621 28007 0 April 1998
77	112	Sharing of pension benefits	0 621 280208 April 1998
78	105	Review of security legislation: The Interception and Monitoring Prohibition Act 127 of 1992	0 621 28847 0 November 1998
79	106	Juvenile justice	0 621 28851 9 November 1998
80	85	Aspects of the law relating to AIDS: The need for a statutory offence aimed at harmful HIV-related behaviour	0 621 28854 3 December 1998
81	115	Administrative law	0 621 28895 0 January 1999
82	90	Customary law: Traditional courts and the judicial function of traditional leaders	0 621 29273 7 May 1999
83	94	Arbitration: Domestic arbitration	0 261 29371 7 September 1999
84	85	Aspects of the law relating to AIDS: Compulsory HIV testing of persons arrested in sexual offence cases	0 621 29372 5 September 1999

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
85	107	Sexual offences: The substantive law	0 621 29374 1 September 1999
86	63	Review of the law of insolvency	0 621 29377 6 September 1999
87	94	Arbitration: Community dispute resolution structures	0 621 29381 4 September 1999
88	109	The review of the Marriage Act 25 of 1961	0 621 29428 4 September 1999
89	73	Simplification of criminal procedure: The right of the Attorney-General to appeal on questions of fact	0 621 29935 9 January 2000
90	101	The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing	0 621 29936 7 January 2000
91	82	Sentencing: A new sentencing framework	0 621 30070 5 April 2000
92	105	Review of security legislation: Terrorism: Section 54 of the Internal Security Act 74 of 1982	0 621 30184 1 July 2000
93	90	Customary law: Succession	0 621 30205 8 August 2000
94	73	Simplification of criminal procedure: Sentence agreements	0 621 30337 2X December 2000
95	90	Customary law: Administration of estates	0 621 30338 0 December 2000
96	73	Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials	0 621 30683 5 April 2001
97	82	Sentencing: A compensation scheme for victims of crime	0 621 30687 8 April 2001
98	114	Publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979	0 621 30715 7 May 2001
99	108	Computer-related crime: Preliminary proposals for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 30718 1 May 2001

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
100	73	Simplification of criminal procedure: Out-of-court settlements in criminal cases	0 621 31591 5 October 2001
101	59	Islamic marriages and related matters	0 621 31794 2 December 2001
102	107	Sexual offences: Process and procedure	0 621 31809 4 December 2001
103	110	Review of the Child Care Act	0 621 31810 8 December 2001

ANNEXURE G

PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
1	Mr J P J Coetzer SC	A critical legal comparative study of law reform in South Africa (translation)	ISBN 0 621 09442 0
2	Prof Ellison Kahn	The life and works of Hugo Grotius (1583-1645)	GP-S 3 00344
3	Mrs M A Olwage (ed)	Women and sexual offences in South Africa: Proceedings of a seminar held by the Institute for Criminology at the University of South Africa in conjunction with the South African Law Commission, Pretoria, 18 October 1984 (translation)	ISBN 0 621 09779 9
4	Mr S I E van Tonder SC (ed)	Index to the Opinions of the Roman-Dutch Lawyers and the Decisions of the Courts of the Netherlands which have been digested in the Algemeen Beredeneerd Register of Nassau La Leck (1741-1795), by Dr A A Roberts, Vols 1(A-B), 2(C-D), 3(E-H), 4(I-L), 5(M), 6(N-R), 7(S-T) and 8(U-W)	Vol 1: ISBN 0 621 09382 3 Vol 2: ISBN 0 621 09646 6 Vol 3: ISBN 0 621 09778 0 Vol 4: ISBN 0 621 10254 7 Vol 5: ISBN 0 621 10295 4 Vol 6: ISBN 0 621 10686 0 Vol 7: ISBN 0 621 10710 7 Vol 8: ISBN 0 621 10709 3
5	Profs F J Bosman, J Th de Smidt, H W van Soest & P van Warmelo	Observations on decided cases concerning antenuptial contracts written by Cornelius Neostadius	ISBN 0 621 09855 8
6	Profs R Feenstra, P van Warmelo & D T Zeffertt	Some cases heard in the Hooge Raad reported by Willem Pauw	ISBN 0 621 09715 2
7	Mr P J J Viljoen	South African Noter-up to the Institute of Justinian	ISBN 0 621 09743 8

Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
8	Prof P van Warmelo and Adv C J Visser	Aantekeninge van Johannes Voet oor die Inleidinge van Hugo de Groot (text and translation)	Vol 1: ISBN 0 621 10641 0 Vol 2: ISBN 0 621 10642 9
9	Prof L J du Plessis	Translation of Vinnius' *Tractatus de Pactis*	ISBN 0 621 10277 6
10	Prof W J Hosten (ed and transl), Mrs C van Soelen and Mr P Ellis	Treatise on the quasicontract called *promutuum* and on the *condictio indebiti* by Robert-Joseph Pothier	ISBN 0 621 10722 0
11	Prof R Whitaker	*Quaestiones juris privati* by Cornelius van Bijnkershoek	Vol 1: ISBN 0 621 10657 7 Vol 2: ISBN 0 621 10675 5
12	Profs J T Delport and C R M Dlamini	Two lectures on law reform	ISBN 0 621 10670 4
13	Mr H C Smuts (ed)	Report on the Fourth International Congress with the theme *Law and Computers*, which was held in Rome from 16 to 21 May 1988	ISBN 0 621 12639 X
14	Mr P J J Viljoen	South African Noter-up to the *Corpus Juris Civilis* of Justinian including the Institutes of Gaius	ISBN 0 621 13088 5
15	Margaret Hewett (transl)	*Censura Forensis* Part I Book V by Simon van Leeuwen	ISBN 0 7970 2231 7
16	Law Commission	Domestic Violence	Not printed, but accessible on SA Law Commission Website
17	Law Commission/GTZ	Empirical study of the sentencing practices in South Africa	ISBN 0 621 30091 8
18	Law Commission/GTZ	Sentencing: An empirical, quantitative study on the progress and finalisation, including by conviction, of criminal matters reported to the police	ISBN 0 621 31582 6
19	Law Commission/GTZ	Simplification of criminal procedure: Settlements out of court - a comparative study of European criminal justice systems	ISBN 0 621 29881 6