South African
Law Reform Commission

THIRTY SECOND ANNUAL REPORT 2004/2005

South African
Law Reform Commission

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South African
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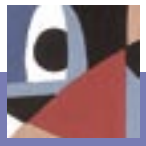
TO MINISTER



To: Ms. B Mabandla 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 2004 to 31 March 2005.

Yours sincerely

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

CHAPTER 1:
OVERVIEW

CHAPTER 1: OVERVIEW

Introduction

In the year under review a number of factors impeded the Commission's production in so far as it related to the publication of issue papers, discussion papers and reports. Of the nineteen full-time research posts on the Commission's establishment, seven were vacant and one researcher was seconded to Justice College. The vacancies were the result of four internal promotions, one resignation, and two transfers on request. In addition, on request of the Minister and Director-General of the Department of Social Development, two researchers were made available to assist with the parliamentary process in respect of the Children's Bill, and they became members of the Children's Bill Technical Task Team established by the Interdepartmental Children's Bill Steering Committee.

The importance and magnitude of Project 25: Statutory law revision necessitated a reprioritisation of the Commission's law reform programme and a re-allocation of the Commission's human resources to underpin the project. The progress made in the investigation is discussed in **Chapter 4**. With the advent of a Constitutional democracy in 1994 the legislation enacted before 1994 remained in force. Consequently there are many provisions on the statute book that do not comply with our Constitution, compounded by the fact that at least some of these provisions were enacted to promote the policy of apartheid. Although many of these Acts and provisions have been repealed or amended, many still remain, which lead to litigation to have these provisions declared unconstitutional. Many provisions contained in legislation enacted before 1994 are not only unconstitutional but also redundant or obsolete. The investigation is aimed at ensuring compliance with the Constitution. Government has previously endorsed the investigation and has subsequently requested the identification of all legislation enacted prior to 1994 relating to gender insensitivity, or which is discriminatory in nature and unconstitutional as well as the review of provisions in the legislative framework that would result in discrimination as defined in section 9 of the Constitution (the prohibition of unfair discrimination on the basis of gender, sex, pregnancy, marital status and ethnic and social orientation). Although the Commission's audit of national legislation does not, at this stage, include remnants of legislative enactments passed by the provincial legislatures, governments of the former self-governing territories and the so-called "homelands" of the previous political dispensation, the idea is to extend the investigation to other areas as the investigation progresses and sufficient manpower becomes available.

Most of the Commission's investigations are very complex in nature and necessitate an international perspective, for example the investigations into trafficking in persons and consolidated legislation pertaining to international co-operation in civil matters. In other investigations an entire branch of the law is examined and revised, for example a review of the law of evidence. Annexure C reflects the present research programme of the Commission.

The year under review

This annual report covers the period from **1 April 2004 to 31 March 2005.**

No issue papers were published for general information and comment in the year under review.

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

CHAPTER 1: OVERVIEW

Three discussion papers were published for general information and comment:

- Project 121: Consolidated legislation pertaining to international co-operation in civil matters (discussion paper 106)
- Project 123: Protected disclosures (discussion paper 107)
- Project 130: Stalking (discussion paper 108)

Discussion papers published by the Commission are listed in **Annexure F.**

No reports were approved by the Commission in the year under review.

The following Act emanating from a report of the Commission was promoted by Parliament in the year under review:

- The Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004

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 persons arrested in sexual offence cases: Compulsory HIV Testing of Sexual Offenders Bill
- Project 106: Juvenile justice: Child Justice Bill
- Project 107: Sexual offences: Criminal Law (Sexual Offences) Amendment Bill
- Project 110: Review of the Child Care Act, 1983: Children's Bill

The following Bills emanating from reports of the Commission have been approved by Cabinet and are receiving the attention of the State Law Advisers:

- Project 63: Review of the law of insolvency: Insolvency and Business Recovery Bill
- Project 94: Arbitration: International Arbitration Bill

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

- Project 25: Statutory law revision: Customary Law Matters Amendment Bill (Repeal of the Black Administration Act Amendment Bill)
- Project 59: Islamic marriages: Muslim Marriages Bill
- Project 73: Simplification of Criminal Procedure: Criminal Procedure Amendment Bill
- Project 73: Simplification of criminal procedure: Criminal Procedure Second Amendment Bill
- Project 90: Customary law: Traditional Courts Bill
- Project 90: Customary law: Application of Customary Law Bill
- Project 90: Customary law: Customary Law of Succession Amendment Bill
- Project 113: The use of electronic equipment in court proceedings: Criminal Procedure Third Amendment Bill

The following Bills emanating from reports of the Commission will be submitted to Parliament when they are ready for introduction with a view to finalizing 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 88: The recognition of class actions in South African Law: Public Interest and Class Actions Bill
- Project 94: Arbitration: Domestic Arbitration Bill
- Project 96: The Apportionment of Damages Act, 1956: Apportionment of Damages Amendment Bill
- Project 101: The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing: Criminal Procedure Fourth Amendment Bill
- Project 112: Sharing of pension benefits: Sharing of Pension Benefits Bill/Divorce Amendment Bill
- Project 114: Publication of divorce proceedings: 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 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)

The recommendations contained in the reports on surrogate motherhood (Project 65) and access to minor children by interested persons (Project 100) are incorporated in Chapter 20 and clause 23 respectively in the Children's Bill (Project 110: Review of the Child Care Act, 1983).

A report on a compensation fund for victims of crime in South Africa was approved by the Commission on 6 March 2004, and subsequently submitted to the Minister.

One investigation was removed from the Commission's programme in the year under review:

- Project 132: Abolition of the oath

A progress report on investigations not yet completed appears in **Chapter 4**.

CHAPTER 2:
OBJECTS, CONSTITUTION AND FUNCTIONING

CHAPTER 2:
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
Adv J J Gauntlett SC
Prof C E Hoexter (resigned with effect from 1 January 2005)
Mr Justice C T Howie
Prof I P Maithufi as full-time member
Ms Z Seedat
Mr Justice W L Seriti

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

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OBJECTS, CONSTITUTION AND FUNCTIONING

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 19 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 filled by the following persons:

Ms D M Clark (Principal State Law Adviser)
Mr M B Cronje (Principal State Law Adviser)
Ms A-M Havenga (Principal 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 (Principal State Law Adviser)
Mr M F Palumbo (Principal State Law Adviser)
Ms C J Pienaar (Senior State Law Adviser)
Ms L A Stuurman (Principal 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)
Mr M F Palumbo serves as Assistant Secretary to the Commission.

Seven posts of Senior State Law Adviser are vacant.

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

Assistant Director:	Ms J M H Oosthuizen
Personal Assistant:	Ms R Bronkhorst
Senior Secretary:	Ms J M Nkabinde
Temp Chief Administration Clerk:	Ms A J G Kruger
Administrative Officer:	Mr A Singh
Administrative Officer:	Mr J D Kabini
Administrative Officer:	Ms M vd Berg
Librarian:	Ms S Petrie
Administration Clerk:	Ms C Krebs
Administration Clerk:	Mr R Swart
Administration Clerk:	Mr V Mavuso
Administration Clerk:	Ms P Mashabela
Administration Clerk:	Ms E Louw
Operator:	Mr K M Mahlangu
Food Service Aid:	Ms Z A Mahlangu
Messenger:	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

The Commission's budget for the financial year 1 April 2004 – 31 March 2005 was R16, 723,045 which is made up as follows:

- Personnel expenditure R 12,347,197
- Current expenditure R 3,825,848
- RSCL R 50,000
- Capital expenditure R500, 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

CHAPTER 2:
OBJECTS, CONSTITUTION AND FUNCTIONING

the Commission has received technical and financial support from the German Technical Cooperation (GTZ). The Commission wishes to record its sincere appreciation to the GTZ.

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 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.**

CHAPTER 2:
OBJECTS, CONSTITUTION AND FUNCTIONING

Reports

The Act requires the Commission to prepare a full report on any matter investigated by it and to submit such reports 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 has been used mainly for publications intended to make the common law more readily available and contains translated common law sources and noters-up. 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 12 March 2005. The working committee of the Commission met on 1 June and 7 September 2004.

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

Administration orders	19 – 20 November 04; 20 January 05
Assisted decision-making: Adults with impaired decision-making capacity	8 June 04; 18 October 04; 22 November 04
Domestic partnerships	19 October 04
Privacy and data protection	26 July 04
Review of the law of evidence	10 August 04
Arbitration: Community dispute resolution structures	22 – 23 October 04

CHAPTER 3:
THE COMMISSION'S PROGRAMME: INVESTIGATIONS INCLUDED AND REMOVED

CHAPTER 3:
THE COMMISSION'S PROGRAMME:
Investigations Included and Removed

- One investigation was included in the Commission's programme in the year under review:

Project 133: A specific civil action in respect of consequential damages arising from hoaxes

The Report of the Portfolio Committee on Safety and Security on the Anti-Terrorism Bill, dated 13 November 2003, recommended as follows:

> ...that the South African Law Reform Commission be requested to investigate the possibility of a specific civil action in respect of consequential damages arising from hoaxes (including the possibility of punitive damages) separate from the expenses incurred by the security services, to deal with such hoaxes. The civil action is intended to be separate from the reimbursement order, which may be made by a Court after a conviction in respect of the offence relating to hoaxes (Clause 18(2) of the Protection of Constitutional Democracy Against Terrorist and Related Activities Bill). A provision to this effect in our law is, for example, in respect of riot damage, which occurs as a result of gatherings and demonstrations (see section 11 of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)).

In March 2004 the Minister for Safety and Security requested the Minister for Justice and Constitutional Development to refer the Portfolio Committee's request to the South African Law Reform Commission for investigation. The request was referred to the Law Reform Commission in July 2004. In September 2004 the Commission approved the inclusion of the investigation in the Commission's programme.

The Minister approved the inclusion of an investigation into "a specific civil action in respect of consequential damages arising from hoaxes" in the Commission's programme in October 2004.

- One investigation was removed from the Commission's programme in the year under review:

Project 132: Abolition of the oath

The investigation had initially been included in the Commission's programme to consider, among others, the following:

- The retention of the oath in the Criminal Procedure Act, the Civil Proceedings Evidence Act or any other legislation governing the taking of an oath or making of an affirmation in affidavits, which would be flexible so that it can easily be adapted to religions which are not part of the Judeo-Christian tradition.
- The reversal of the current order so that the affirmation is the "standard" option and an oath the subordinate option.
- The removal of the religious oath and replacement with a non-religious affirmation or promise to tell the truth.

As a result of the reprioritisation of the Commission's research programme which was decided on in consultation with the Minister, the Minister approved the removal of the investigation into the abolition of the oath from the Commission's programme in September 2004.

CHAPTER 3:
THE COMMISSION'S PROGRAMME:
Investigations Included and Removed

CHAPTER 4:
PROGRESS REPORT

CHAPTER 4:
PROGRESS REPORT

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

Project 25 - Statutory law revision: The establishment of a permanently simplified, coherent and generally accessible statute book

Technical assistance (including funding) to run the project on statutory law revision has been made available by the German Technical Co-operation (GTZ) since January 2003. The investigation involves purging the statute book of redundant, obsolete and unconstitutional provisions.

All State Departments have been informed in writing during July 2004 of the investigation and requested to submit any views or proposals they may have. Departments were invited to bring to the Commission's attention any particular problems relating to legislation administered by them, and requested to nominate a senior management official to assist the Commission on policy issues. In addition, a provisional audit of national legislation appearing on the statute book from 1910 up until the present was compiled. The audit reflected that there are 2 809 individual statutes, which include principal Acts, amendment Acts, partially repealed Acts, private Acts, and supplementary or additional Acts. Departments were approached during August 2004 with copies of the audit to identify the statutes administered by them, and by the end of October 2004 responses were received from all 30 Departments. A total of 328 statutes are still unaccounted for in terms of Departmental responsibility (excluding all the private Acts which do not fall within the public sector). Follow-up letters were dispatched on 2 November 2004 in an attempt to establish Departmental responsibility in respect of the statutes that are unaccounted for. In addition, meetings were held with the Commission on Gender Equality and the South African Human Rights Commission respectively during November 2004 in order to discuss the investigation and to establish mutual co-operation. The respective Commissions were requested to alert the Law Reform Commission of legislation considered to be unconstitutional. A meeting with the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is also planned.

In August 2004 a draft discussion paper on the review of the Interpretation Act 33 of 1957 was considered in group discussions in Pretoria, Durban and Cape Town. The draft Bill is being finalised by a consultant.

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.

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.

CHAPTER 4:
PROGRESS REPORT

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

A draft report on community dispute resolution structures was considered by the Commission in March 2005. Amendments are being effected to the draft report and Bill.

The preparation of a draft discussion paper on family mediation is receiving attention.

Project 107 - Sexual offences: Adult prostitution

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

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 finalisation of a draft discussion paper has been delayed as a result of the researcher's resignation. The preparation of a draft discussion paper is receiving attention subject to the finalisation of the investigations into protected disclosures (project 123), stalking (project 130) and trafficking in persons (project 131).

Project 113 - The use of electronic equipment in court proceedings

The project will receive further attention after the completion of Project 126: Review of the law of evidence.

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 is being given to the question whether the criteria should be status, or contract-based.

The following options are being 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 was published for general information and comment in September 2001. A discussion paper was published for general information and comment in August 2003 and is discussed in the 03/04 annual report.

A report with final recommendations and draft legislation will be finalised after the Constitutional Court judgment in respect of same sex marriages.

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

There is a need to review existing legislation in this area especially in the light of South Africa's trade and other relations with foreign countries. The present position is that, subject to certain statutory exceptions, a foreign judgment is not directly enforceable in South Africa. Common law procedures are available to litigants but these are expensive, time-consuming and complex.

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

A discussion paper was published for general information and comment in June 2004. The discussion 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 discussion paper examines the various pieces of legislation and the limited extent of their application, thereby highlighting their shortcomings and inadequacies. It is clear that current statutory enforcement has limited scope, thereby rendering it ineffective. The discussion paper identifies the gaps, overlaps, inadequacies and obstacles which hinder progress in this area.

Possible remedies to these problems are also recommended in the discussion paper. The recommendations relate to accession to the relevant Hague Conventions; the provision of a uniform procedure relating to the obtaining of foreign evidence; making the procedure for service of documents abroad applicable to all foreign states; clarity regarding the common law; clarity regarding the international competence of foreign courts; amendments to the Prescription Act; amendments to the Protection of Businesses Act; the use of only one statute for the enforcement of foreign maintenance orders; and the amendment of the Foreign Civil Judgments Act.

The researcher assigned to the project was transferred to the Rules Board with effect from 1 November 2004. A new researcher will be assigned to the project when capacity becomes available.

CHAPTER 4:
PROGRESS REPORT

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 was published in December 2001. A discussion paper was published for general information and comment in January 2004 and is discussed in the 03/04 annual report. It was decided to do further research and consult with certain experts in the process of collating comments and refining the proposed draft legislation. A draft report is being prepared.

Project 123 - Protected disclosures

The purpose of the Protected Disclosures Act 26 of 2000 (the PDA) is to provide for procedures and to offer protection to employees who blow the whistle on their employers.

An issue paper dealing with the need for the extension of the ambit of the PDA was published in the form of a questionnaire in January 2003.

A discussion paper was published for general information and comment in June 2004. The Commission proposes, among others, the following:

- The ambit of the PDA should be extended beyond the strict employer-employee relationship to include independent contractors, consultants, agents and other such workers. This would considerably extend the legal environment in which disclosures may safely be made. Comment is invited on the further extension of the protection of the Act to all persons, i.e. the introduction of what is provisionally termed citizens' whistleblowing.
- The list of forms of victimisation should be left open-ended to allow additional forms, bearing in mind that any form of victimisation suffered by a whistleblower will inevitably have to be shown to be related to an act of whistleblowing. Further, the definition of 'occupational detriment' should be extended to include reprisals such as defamation actions; suits based on the alleged breach of a confidentiality agreement or duty; and the loss of a contract or the failure to acquire a contract.
- The PDA should provide for the exclusion of criminal and civil liability on making a protected disclosure.
- Where the identity of a whistleblower is known, it should as far as possible be kept confidential and protected.
- Section 4 of the PDA should be amended to provide expressly for claims for damages with no ceiling; and courts and tribunals should be directed to take into account the actual loss suffered by a claimant when awarding damages.
- It is proposed that, without reducing the existing flexibility of section 4 of the Act, the PDA should expressly provide for specific remedies such as interdicts, including mandatory interdicts.
- The PDA should not criminalise the act of knowingly making a false disclosure, and nor should it make it an offence for an employer to subject a person to an occupational detriment.

The comment received on the discussion paper has been collated. The researcher is awaiting comment from the members of the Anti-Corruption Co-ordinating Committee and for the re-submission of comment withdrawn by NEDLAC. The preparation of a draft report is receiving attention.

Project 124 - Privacy and data protection

Privacy is a valuable aspect of personality. While potential invasions of privacy can come from many sources, a chief concern in recent years has been information privacy. Information privacy has been defined as the claim of individuals, groups or institutions to determine for themselves how, when and to what extent information about them is collected, stored or communicated to others. Information about people and their activities can range from medical records, purchasing habits and property ownership to borrowing habits at the video store, cell phone conversations and surfing practices on the Internet - all mostly recorded in digital form. It is clear that personal information has acquired a market value.

An issue paper was published for general information and comment in August 2003 and is discussed in the 03/04 annual report. A draft discussion paper and draft Bill are being finalised.

Project 125 - Prescription periods

No comprehensive review of all the provisions providing for different prescription periods - whether of a contractual or delictual nature - has been undertaken. When reporting on the Bill which subsequently became the Legal Proceedings Against Certain Organs of State Act 40 of 2002, the Portfolio Committee on Justice and Constitutional Development recommended that the Minister for Justice and Constitutional Development be approached to request the Commission to include in its programme an investigation into the harmonisation of the provisions of existing laws providing for different prescription periods. An investigation into the review of prescription periods was subsequently included in the Commission's programme.

An issue paper was published for general information and comment in August 2003 and is discussed in the 03/04 annual report. The researcher involved in the preparation of a draft discussion paper was transferred to another department. A new researcher will be assigned to the project when capacity becomes available.

Project 126 - Review of the rules of evidence

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 have been contracted to do the research.

Project 127 – Review of administration orders

The previous Minister requested the Commission to investigate administration orders 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. The project committee decided in January 2005 to suspend this investigation until the National Credit Bill has been enacted in Parliament. A subcommittee of the project committee has recommended that administration orders in its present form should be abolished since appropriate debtor relief is available in terms of the National Credit Bill provided certain adjustments are made to the Bill. This decision will be submitted to the Commission for consideration.

Project 128 – Review of aspects of the law of divorce

A questionnaire was distributed publicly and the closing date was extended to 31 May 2003. The processing of questionnaires is still continuing. Although nearly 400 inquiries were received as a result of the publicity that the investigation had received, less than 100 questionnaires were returned to the Commission. In view of the fact that this investigation is of interest to the public in general, the response was not considered as sufficient. By contacting inquirers that had requested questionnaires, the response rate was more than doubled.

The researcher is involved in a departmental task team on the Children's Bill. The investigation will continue when capacity becomes available.

Project 129 – Review of aspects of matrimonial property law

Research will commence when capacity becomes available.

Project 130 – Stalking

Stalking can broadly be defined as any type of harassing and intimidating conduct that causes a person to fear for his or her safety. There are different categories of stalkers for example delusional erotomanics, "former intimate" stalkers, sociopathic stalkers, disgruntled clients, cyberstalkers and debt collectors.

An issue paper was published for general information and comment in August 2003 and is discussed in the 03/04 annual report.

A discussion paper was published in September 2004. The discussion paper contains a draft Bill which embodies a civil and a criminal remedy to address stalking behaviour. The primary focus of the Bill is to interrupt the pattern of behaviour before physical harm ensues. The civil remedy mirrors the Domestic Violence Act, 1998. The aim of this remedy is to enable victims of stalking, who fall outside the protection of the Domestic Violence Act, with the option of obtaining a protection order. The Commission also recommends that stalking be made a crime so as to holistically address the pattern of behaviour which constitutes stalking, as opposed to the current situation where individual acts of stalking are dealt with and prosecuted independently. The Commission proposes that persistent unwanted attention that causes one to fear or which causes detriment or distress, should be the point at which mere unwanted attention or annoying behaviour becomes criminal behaviour. This remedy would be applicable to more serious instances of stalking and where the identity of the stalker is unknown to the person being stalked.

A draft report on stalking is being finalised.

Project 131 – Trafficking in persons

An issue paper was published for general information and comment in January 2004 and is discussed in the 03/04 annual report. The submissions received on the issue paper have been collated. A draft discussion paper is being developed, but its finalization is being delayed by the researcher's involvement in the Children's Bill process.

Project 133 – A specific civil action in respect of consequential damages arising from hoaxes

The background to this investigation is provided in Chapter 3. Research in the investigation has commenced.

Project 134 – Administration of estates

The Administration of Estates Amendment Act 47 of 2002 was passed. In view of the wording of the order of the majority in the Bhe case (Bhe and Others v Magistrate Khayelitsha and Others 2005 (1) SA 580 (CC)) the law on administration of estates has been unified and no urgent amendments are required. Amendments to provide for more than one spouse and implement the Bhe decision are receiving the attention of the Department of Justice and Constitutional Development. Measures to improve the administration process and reduce the work of the supervising authority and executors, as far as can be justified, have been investigated and a discussion paper dealing with this is being developed.

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Public consultation

The Commission depends for the efficient performance of its functions on the co-operation 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 investigations 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 and institutions in other countries

The good relations maintained by the Commission with law reform bodies and institutions in other countries make the exchange of consultation 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 and information enables the Commission to evaluate thinking elsewhere in the world.

Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA)

Towards the end of 2001 a conference was convened in Tanzania on best practices in law reform following a visit of the Law Reform Commission of Tanzania to its South African counterpart. The conference resolved that an Association of Law Reform Agencies for Eastern and Southern Africa be established, and a steering committee to take the process forward was elected. In January 2003 a meeting of the steering committee took place in Tanzania where a draft Constitution for the Association was finalised.

Subsequently a meeting was held in Namibia in August 2003, where representatives of law reform agencies in Eastern and Southern Africa convened to finalise the establishment of the Association, to consider the draft Constitution, to finalise the terms of reference of the Executive Committee of the Association, and to deliberate on the future functioning of the Association.

March 2004

The first general meeting of ALRAESA after its formal establishment was hosted by the South African Law Reform Commission in Cape Town from 2 – 4 March 2004

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in conjunction with a workshop on law reform. The event was significant since it created an occasion to extend the membership of ALRAESA and it also afforded the opportunity to participate in the discussions and decisions affecting the development of ALRAESA. From the perspective of developing trends in law reform as well as strengthening ties with other law reform agencies in Africa, the ALRAESA workshop was of great consequence. The following countries were represented at the general meeting and workshop: Botswana; Kenya; Lesotho; Malawi; Namibia; Rwanda; South Africa; Swaziland; Tanzania; Uganda; Zambia; and Zimbabwe.

March 2005

An international law reform conference took place in Cape Town from 15 - 17 March 2005 as an ALRAESA initiative, but which was hosted by the Commission. The theme of the conference was "Law Reform in Action: Reviewing the Past, Reforming the Present, and Anticipating the Future". The conference was attended by 90 representatives from 19 countries in Africa as well as Australia, Austria, Canada, China, England, Ireland, Mauritius, New Zealand and Scotland. Developing constitutional democracies in Africa benefited greatly from interacting with law reform agencies that have for many years been operating in a constitutional democracy and have kept abreast with an intricate and rapidly changing social climate. Globalisation and the development of MODEL laws have brought legal systems closer together. In many respects the spotlight of the world has been turned on Africa and its emerging constitutional democracies where there is a particularly strong need for law reform. The conference presented a unique opportunity to exchange and share ideas in this regard and to strengthen ties with law reform agencies in Africa as well as with other Commonwealth countries.

Parallel sessions at the conference focussed on methodology and operational issues applicable to law reform agencies and others who are not specifically attached to law reform agencies, but who are involved in the development of legislation. Issues that were covered included project planning and management as well as different forms of research methodology. These sessions offered a significant training opportunity to researchers at law reform agencies that are members of ALRAESA, in particular, as well as other law reformers, in general.

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.

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 co-operation between the Commission and other role players, serves to publicise the Commission's activities and ensures that duplication of initiatives is avoided.

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In the year under review researchers at the Law Reform Commission were involved in the following workshops, briefings, consultative meetings and expert meetings:

Project	Activity	Date
100: Domestic violence	Lecture to women's church group	11 September 2004
	Briefing of Department of Water Affairs and Forestry	25 November 2004
25: Statutory law revision – Review of the Interpretation Act 33 of 1957	Consultative meetings with judges, the profession, academics and public servants on draft legislation:	
	Pretoria	13 August 2004
	Durban	16 August 2004
	Cape Town	17 August 2004
25: Statutory law revision - general	Meetings on mutual co-operation with –	
	SA Human Rights Commission	8 November 2004
	Commission on Gender Equality	17 November 2004
107: Sexual offences	Briefing: Lesotho Law Reform Commission	21 January 2004
	Attended Portfolio Committee on Justice and Constitutional Development deliberations on the Criminal Law (Sexual Offences) Amendment Bill	26 – 29 January 2004
	Attended Portfolio Committee on Justice and Constitutional Development deliberations on the Criminal Law (Sexual Offences) Amendment Bill	24 February 2004
	Interdepartmental Steering Committee meeting on Sexual Offences Bill	8 March;23 March; 12 July; 29 July; 21 September 2004
	Interdepartmental meeting with Departments of Justice and Social Development on Sex Offender Registers	2 August; 8 December 2004
	Consultative meeting on Sexual Offences Bill – Department of Justice	18 - 20 August 2004
	Victim Empowerment briefing: Sexual Offences Bill	10 November 2004
110: Review of the Child Care Act	Children's Bill Workshop with non-governmental organisations and provincial departments of Social Development	22 – 23 July 2004
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	4 – 6 August 2004
	Meeting with Portfolio Committee for Social Development to deliberate on the Children's Bill	20 August 2004
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	25 – 27 August 2004
	Meeting with Portfolio Committee for Social Development to deliberate on the Children's Bill	8 September 2004
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	2, 3, 5 November 2004
	Workshop on the implications of the Children's Bill for various State departments	1 – 2 December 2004

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Project	Activity	Date
	Follow-up workshop on the implications of the Children's Bill for various State departments	13 January 2005
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	18 – 21 January 2005
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	8 – 9 February 2005
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bil	15 – 16 February 2005
	Meetings with Portfolio Committee for Social Development to deliberate on the Children's Bill	22 – 23 February 2005
118: Domestic partnerships	Focus group meeting with representatives of the Departments of Home Affairs, Justice and Constitutional Development and Public Service and Administration	18 October 2004
	Focus group meetings with representatives of the Government Employees Fund; Council for Medical Schemes; Banking Council of South Africa; Road Accident Fund; Standard Bank Division of South Africa; Pension Lawyers' Association; Institute for Retirement Funds; Pension Funds Adjudicator; Financial Services Board; and COSATU	18 October 2004
122: Assisted decision-making: Adults with impaired decision-making capacity	Presentation on proposed draft legislation at the Annual General Meeting of Multiple Sclerosis, South Africa (Inland Branch)	17 July 2004
	Presentation on the proposed draft legislation at the Germiston Forum for Older Persons	29 July 2004
	Project committee meeting with management of Masters Division	16 September 2004
	Project committee meeting with constitutional law and medical experts from WITS Law School; WITS Medical School; University of Stellenbosch Faculty for Health Sciences; UNISA Department of Criminal Law and Procedure; UP Centre for Human Rights	28 September 2004
	Meetings with various experts in Edinburgh (Scotland) and Utrecht (the Netherlands): Branchevereniging voor Professionele Bewindvoerders en Inkomens Beheerders; Bewindvoering Zuidlaren; Edinburgh University School of Law; Civil Justice Division, Justice Department; Deputy Public Guardians, Office of the Public Guardian; Mental Welfare Commission; Alzheimer Scotland Action Dementia; District Mental Health Officer, South West Edinburgh	4 – 8 October 2004
	Project committee meeting with academic from Department of Private Law, Vrije University of Amsterdam, the Netherlands	18 October 2004
123: Protected disclosures	Briefing on the protected disclosures discussion paper: 2nd Anti-Corruption Summit	22 March 2005

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Project	Activity	Date
127: Administration orders	Briefing of project committee by Ms Layman of Department of Trade and Industry on National Credit Bill	19 November 2004
130: Stalking	Expert Meeting: Durban	20 January 2004
	Briefing on Stalking: SAPS Detectives: SAPS College	1 September 2004
	Provincial workshops on stalking discussion paper:	
	Pretoria	27 September 2004
	Cape Town	4 October 2004
	Durban	6 October 2004
	Bloemfontein	11 October 2004
	Nelspruit	25 October 2004
	University of Pretoria: Criminology Honours students	26 October 2004
131: Trafficking in persons	Interdepartmental workshop on issues affecting relevant departments	31 August 2004

Internet

The Law Reform Commission's comprehensive website can be located at http://www.doj.gov.za/salrc/index.htm. Any person with access to the Internet can subscribe to a free notification service for new Law Reform Commission publications.

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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 German Government through the German Technical Co-operation (GTZ)

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.

ANNEXURES

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	28/09/1973 to 28/12/1975
Chief Justice P J Rabie DMS	27/02/1976 to 31/05/1982
Judge G Viljoen, OMSG, Judge of Appeal	30/09/1982 to 30/11/1988
Judge H J O van Heerden, Judge of Appeal	01/12/1988 to 31/12/1995
Chief Justice I Mahomed	01/01/1996 to 17/06/2000
Madam Justice Y Mokgoro*, Judge of the Constitutional Court	03/11/2000 to date
Vice-Chairpersons	
Judge President N James DMS	28/09/1973 to 13/07/1977
Judge G Viljoen, OMSG, Judge of Appeal	22/09/1977 to 27/09/1982
Judge H J O van Heerden, Judge of Appeal	30/09/1982 to 30/11/1988
Judge P J J Olivier, Judge of Appeal	01/12/1988 to 31/12/1998
Madam Justice Y Mokgoro, Judge of the Constitutional Court	01/01/1999 to 02/11/2000
Madam Justice M L Mailula*, Judge of the High Court	01/01/2002 to date
Full-time members	
Mr G G Smit	01/01/1982 to 31/12/1995
Judge P J J Olivier	01/02/1986 to 31/03/1995
Prof R T Nhlapo	01/01/1996 to 30/09/2000
Prof I P Maithufi*, University of Pretoria, seconded to the Commission	26/03/2001 to date
Members	
Mr D J du P Geldenhuys	28/09/1973 to 31/10/1975
Mr C P Joubert SC	28/09/1973 to 20/08/1974
Mr J E Knoll OMSS	28/09/1973 to 31/12/1995
Mr D D van Niekerk SC	28/09/1973 to 31/01/1979
Prof A D J van Rensburg	28/09/1973 to 30/08/1982
Mr H J O van Heerden SC	30/09/1974 to 11/08/1976
Mr J C Ferreira SC	22/09/1975 to 31/10/1979
Mr M Bliss QC	07/10/1976 to 24/02/1977
Mr F H Grosskopf SC	01/071977 to 21/11/1980
Mr G G Smit	01/02/1979 to 01/01/1982
Mr P A J Kotzé	01/11/1979 to 30/10/1988

ANNEXURE A

Members of the Commission in order of appointment

Title/Name	Term of office
Mr P M Nienaber SC	14/06/1981 to 27/07/1982
Mr P J J Olivier SC	30/09/1982 to 01/12/1988
Prof J T Delport	30/09/1982 to 27/05/1987
Prof D J Joubert	21/12/1987 to 31/12/1995
Dr W G M van Zyl	01/11/1988 to 31/10/1991
Mr R P McLaren SC	24/07/1989 to 31/10/1990
Prof C R M Dlamini SC	08/05/1991 to 31/12/1995
Mr J A Venter	12/03/1992 to 31/12/1995
Justice Y Mokgoro*	01/01/1996 to 31/12/1998
Mr J J Gauntlett SC*, practising advocate	01/01/1996 to date
Mr P Mojapelo	01/01/1996 to 31/12/2001
Ms Z Seedat*, practising attorney	01/01/1996 to date
Judge M L Mailula	01/01/1999 to 31/12/2001
Prof C E Hoexter, University of the Witwatersrand	27/10/1999 to 31/12/2004
Judge C T Howie*	03/11/2000 to date
Judge W L Seriti*	01/01/2002 to date

ANNEXURE B

Project Committees of the Commission and their members

Administration orders		
	Judge W Seriti (Project leader)	Member, Law Reform Commission
	Prof A Boraine	University of Pretoria
	Ms A Lotheringen	Department of Trade and Industry
	Mr P Maluleke	Banking Council
	Mr R Mandelstam	Magistrate: Johannesburg
	Ms M Boyce	Black Sash
	Mr P Setou	Micro Finance Regulatory Council
	Ms H Pienaar	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
	Mr A Jooste	Chief Magistrate, Cape Town
	Prof I P Maithufi	Full-time member, Law Reform Commission
	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 the Medical University of South Africa (MEDUNSA)
	Mr L Vitus	Retired Executive Manager of the SA Federation for Mental Health
	Ms M Meyer	Office of the Master of the High Court

ANNEXURE B

Project Committees of the Commission and their members

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 Reform Commission
	Prof R Louw	University of Natal (Durban)
	Prof T Mosikatsana	University of the Witwatersrand
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
Review of the law of evidence		
	Judge L Harms (Project leader)	
	Prof L Fernandez	University of the Western Cape
	Adv T Masuku	Cape Bar
	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	Statutory law revision
94	Arbitration
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
133	A specific civil action in respect of consequential damages arising from hoaxes
134	Administration of estates

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	1982	RP 95/1982	Act 57 of 1983 passed
	Final report	1986	ISBN 0 621 11348 4	Act 45 of 1988 passed
7	Revision of pre-Union statutes:			
	Repeal of certain pre-Union Statutes	1975	Not published	Act 36 of 1976 passed
	Repeal of certain pre-Union statutes	1976	Not published	Act 43 of 1977 passed
	Retention of certain pre-Union statutes	1977	Not published	Act 24 of 1979 passed
8	Steps aimed at making the common law more readily available	-	-	Several works published, see previous annual reports 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
11	Investigation into the common law rule that interest may not accrue beyond the principal debt	1974	RP 18/1975	Recommendations not implemented, but see section 68A of the Insurance Act 27 of 1943 in respect of policy loans
12	Review of the law of divorce			
	Report	1977	RP 57/1978	Act 70 of 1979 passed, see also project 40
	Section 7(3) of Act 70 of 1979	1991	ISBN 0 621 14140 2	Act 44 of 1992 passed, see also projects 100 and 114
13	Investigation into the right of recourse of spouses in respect of contributions towards necessaries for the joint household	1974	RP 79/1975	Act 13 of 1976 passed, see also project 15
14	The prescribing of a rate of interest in respect of debts where no rate of interest applies in law	1974	Not published	Act 55 of 1975 passed
15	The matrimonial property law with special reference to the Matrimonial Affairs Act, 1953, the status of the married woman, and the law of succession in so far as it affects the spouses	1982	RP 26/1982	Act 88 of 1984 passed, see also projects 41 and 51
16	Investigation into the application of set-off in insolvency	1975	Not published	No legislation recommended, see project 63

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
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	1985	ISBN 0 621 09611 3	Act 81 of 1987 passed
	Legitimate portion or right to maintenance	1987	Not published	Act 27 of 1990 passed
	Formalities of a will, alteration and revocation of wills, disqualification from inheriting, substitution and the succession rights of adopted children	1991	ISBN 0 621 14189 5	Act 43 of 1992 passed
23	Risk as a ground for liability in delict	1985	ISBN 0 621 10202 4	No legislation recommended
24	Investigation into the courts' powers of review of administrative acts			
	Report	1992	ISBN 0 621 15356 7	See project 115
	Supplementary report	1994	Not published	See project 115
25*	Statute law: The establishment of a permanently simplified, coherent and generally accessible book:			See Chapter 4
	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
	Repeal of the Black Administration Act, 1927	2004	To be printed	Bill identified for submission to Parliment during the 2004 Session
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

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
33	Review of the law of prize	1987	-	Recommendations not implemented
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 con-sequences of suspensive conditions in contracts of sale	1985	ISBN 0 621 11350 6	No legislation recommended
40	Evaluation of the effect of the Divorce Act 70 of 1979	1983	Not published	No legislation recommended
41	The division of pension benefits on divorce:			
	Report	1986	ISBN 0 621 11357 3	Act 7 of 1989 passed
	Supplementary report	1994	RP 158/1995 ISBN 0 621 16869 6	Referred back to the Commission, see project 112
42	Investigation into time limits for the institution of actions against the State:			
	Report	1985	Not published	Recomendations not implemented
	Supplementary report	1998	ISBN 0 621 28862 4	Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 passed
43	Investigation into the advancement of the age of majority	1985	ISBN 0 621 10246 6	No legislation recommended
44	A comprehensive and comparative inquiry into the protection of all rights of personality	-	-	Struck off
45	Women and sexual offences in South Africa	1985	ISBN 0 621 09609 1	Acts 103 of 1987, 39 of 1989 and 113 of 1993 passed
46	The giving of security by means of movable property:			
	Report	1991	ISBN 0 621 14544 0	Act 57 of 1993 passed
	Supplementary report	1993	Not published	Act 57 of 1993 passed
47	Unreasonable stipulations in contracts and the rectification of contracts	1998	RP 133/1998 ISBN 0 621 28678 8	Control of 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	1985	Not published	Section 1 of Act 90 of 1985 enacted
	Final report	1986		Act 3 of 1988 passed

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
52	Investigation into the legal consequences of sexual realignment and related matters	1995	RP 32/1996 ISBN 0 621 17334 7	Act 49 of 2003 passed
53	Investigation into the amendment of section 26 of the Insolvency Act 24 of 1936	1983	Not published	Act 84 of 1984 passed, see also project 63
54	Committal to prison in respect of debt	1985	ISBN 0 621 11346 8	See project 74
55	Removal of certain restrictions in respect of land	1984	Not published	No legislation recommended
56	Submission of a question of law to the Appellate Division of the Supreme Court relating to the calculation of finance charges under the Limitation and Disclosure of Finance Charges Act 73 of 1968	1976	Not published	Ex parte Minister of Justice 1978 2 SA 572 (A)
57	Anton Piller type of orders	1987	Not published	Recommendations not implemented
58	Group and human rights			
	Interim report	1991	Report: ISBN 0 621 14128 3 Summary: ISBN 0 621 14127 5	Act 200 of 1993 passed
	Final report	1994	RP 66/1995 ISBN 0 621 16727 4	Made available to the Constitutional Assembly
59	Islamic marriages and related matters	2003	RP 210/2003 ISBN 0 621 34989 5	Islamic Marriages Bill to be introduced when circumstances permit
60	Domicile	1991	ISBN 0 621 14255 7	Act 3 of 1992 passed
61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	1988	ISBN 0 621 12107 X	Act 108 of 1990 passed
62	The protection of a purchaser of shares			
	Report	1993	ISBN 0 621 16287 6	Recommendations not implemented
	Supplementary report on section 138 of the Companies Act 61 of 1973	1994	RP 152/1995 ISBN 0 621 16847 5	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)	1990	(Unpublished/ Informal)	Section 1 of the Insolvency Amendment Act 6 of 1991 en-acted
	Interim report: Insolvency interdicts	1992	ISBN 0 621 14964 0	Act 122 of 1993 passed
	Interim report: Appeals against sequestration orders	1993	ISBN 0 621 15421 0	Section 1 of Act 129 of 1993 enacted
	Interim report: The protection of the financial markets in the event of insolvency	1994	RP 63/1995 ISBN 0 621 16721 5	Act 32 of 1995 passed
	Interim report: The enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency	1999	Not printed	Act 42 of 2000 passed
	Report: The review of the law of insolvency	2000	RP 89/2000 ISBN 0 621 30069 1	Insolvency and Business Recovery Bill identified for submission to Parliament during the 2004 Session
64	The legal protection of information	-	-	Struck off

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
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	1992	Not published	Referred back for consideration, inter alia, in the light of the provisions of the Constitution Act 200 of 1993
	Report	1994	RP 82/1995 ISBN 0 621 16746 0	Act 75 of 1995 passed
67	The Usury Act and related matters	-	-	Struck off
68	Access to police dockets	1992	ISBN 0 621 15349 4	Not implemented in view of the interpretation of the subsequent provision in section 23 of the Constitution Act 200 of 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
	Second interim report: The simplification of criminal procedure	1995	RP 70/1996 ISBN 0 621 17405 X	Act 86 of 1996 passed
	Third interim report: The right of the Director of Public Prosecutions to appeal on questions of fact	2000	RP 58/2001 ISBN 0 621 30678 9	Criminal Procedure Second Amendment Bill identified for submission to Parliament during the 2004 Session
	Fourth interim report: Sentence agreements	2001	RP 120/2001 ISBN 0 621 31452 8	Act 62 of 2001 passed
	Fifth interim report: A more inquisitorial approach to criminal procedure	2002	RP 219/2002 ISBN 0 621 33510 X	Criminal Procedure Amendment Bill identified for submission to Parliament during the 2004 Session
	Final report: Out of court settlements in criminal cases	2002	RP 218/2002 ISBN 0 621 33511 8	Criminal Procedure Amendment Bill identified for submission to Parliament during the 2004 Session
74	Debt collecting:			
	Interim report on imprisonment for debt	1994	RP 199/1995 ISBN 0 621 16956 0	Act 81 of 1997 passed
	Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Acts 81 of 1997 and 114 of 1998 passed
75	Bribery	1991	ISBN 0 662 15184 43	Act 94 of 1992 passed
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Act 95 of 1996 passed

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Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
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
81	Submission of a question of law to the Appellate Division of the Supreme Court concerning certificates under instruments of debt as conclusive proof of liability	1991	Not published	Ex parte Minister of Justice in re: Nedbank v Abstein Distri-butors and Donelly v Barclays National Bank 1995 3 SA 1 (A)
82	Sentencing:			
	A new sentencing framework	2000	RP 57/2001 ISBN 0 621 30679 7	Sentencing Framework Bill to be finalised after finalisation of the Child Justice Bill
	A compensation scheme for victims of crime in South Africa	2004	To be printed	
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	1997	RP 106/1997 ISBN 0 621 27345 7	Regulations on Hazardous Biological Agents were promulgated on 27 December 2001
	Second interim report: Pre-employment HIV testing	1998	RP 120/1998 ISBN 0 621 28049 6	National policy on HIV testing expected to be promulgated in terms of the National Health Bill Recommendations incorporated in the Em-ployment Equity Act 55 of 1998
	Third interim report: HIV/AIDS and discrimination in schools	1998	RP 121/1998 ISBN 0 621 28048 8	Department of Education promulgated Com-mission's draft National Policy on HIV/AIDS for Learners in Public Schools on 10 August 1999
	Fourth interim report: Compulsory HIV testing of persons ar-rested in sexual offence cases	2000	RP 40/2001 ISBN 0 621 30618 5	Compulsory HIV Testing of Sexual Offenders re-ceiving the attention of Parliament
	Fifth interim report: The need for a statutory offence aimed at harmful HIV-related behaviour	2001	RP 78/2001 ISBN 0 621 30750 5	No legislation recommended
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 intro-duced when circumstances permit

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
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	1998	RP 170/1998 ISBN 0 621 28755 5	Act 120 of 1998 passed
	Conflicts of law	1999	RP 81/2000 ISBN 0 621 30061 6	Application of Customary Law Bill to be introduced when circumstances permit
	Traditional courts and the judicial function of traditional leaders	2003	RP 209/2003 ISBN 0 621 34988 7	Traditional Courts Bill to be introduced when circumstances permit
	Customary law of succession	2004	To be printed	Customary Law of Succession Amendment Bill identified for submission to Parliament during the 2004 Session
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	International Arbitration Bill identified for submission to Parliament during the 2004 Session
	Domestic arbitration	2001	ISBN 0 621 31453 6	Domestic Arbitration Bill to be introduced when circumstances permit
	Community dispute resolution structures	-	-	See Chapter 4
95	The admissibility of computer-generated evidence	-	-	Struck off
96	Apportionment of Damages Act, 1956	2003	RP 208/2003 ISBN 0 621 34987 9	Apportionment of Damages Amendment Bill to be introduced when circumstances permit
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

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
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	Criminal Procedure Fourth Amendment Bill to be introduced when circumstances permit
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
105	Review of security legislation			
	Monitoring and Interception Prohibition Act 127 of 1992	1999	RP 203/1999 ISBN 0 621 29897 2	Act 70 of 2002 passed
	Terrorism	2002	RP 216/2002 ISBN 0 621 33513 5	Act 33 of 2004 passed
106	Juvenile Justice	2000	RP 159/2000 ISBN 0 621 30228 7	Child Justice Bill receiving the attention of Parliament
107*	Sexual offences	2003	RP 16/2003 ISBN 0 621 33583 5	Criminal Law (Sexual Offences) Amendment Bill receiving the attention of Parliament
	Adult prostitution	-	-	See Chapter 4
108	Computer-related crimes	-	-	Struck off
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	2003	RP 17/2003 ISBN 0 621 33584 3	Children's Bill receiving the attention of Parliament
111	Jurisdiction of magistrates' courts in constitutional matters	2000	RP 80/2000 ISBN 0 621 30062 4	Recommendations not implemented
112	Sharing of pension benefits	2000	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 4
	Postponement of criminal cases via audiovisual link	2003	RP 211/2003 ISBN 0 621 34990 9	Criminal Procedure Third Amendment Bill identified for submission to Parliament during the 2004 Session
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
115	Review of administrative law	1999	ISBN 0 621 29881 6	Act 3 of 2000 passed
116	The carrying of firearms and other dangerous weapons	-	-	Struck off
117	The legal position of voluntary associations	-	-	Struck off
118*	Domestic partnerships	-	-	See Chapter 4
119	Uniform national legislation on the fencing of national roads	-	-	Struck off
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 4

ANNEXURE D

Investigations included in the Commission's programme since its establishment: Result

Project number	Title	Year of report	Reference number of published report	Result
122*	Assisted decision-making: Adults with impaired decision-making capacity	-	-	See Chapter 4
123*	Protected disclosures	-	-	See Chapter 4
124*	Privacy and data protection	-	-	See Chapter 4
125*	Prescription periods	-	-	See Chapter 4
126*	Review of the rules of evidence	-	-	See Chapter 4
127*	Review of administration orders	-	-	See Chapter 4
128*	Review of aspects of the law of divorce	-	-	See Chapter 4
129*	Review of aspects of matrimonial property law	-	-	See Chapter 4
130*	Stalking	-	-	See Chapter 4
131*	Trafficking in persons	-	-	See Chapter 4

ANNEXURE E

Issue papers published by the commission

Project number	Title	Year of report	Reference number of published report	Result
132	Abolition of the oath	-	-	See Chapter 3
133*	A specific civil action in respect of consequential damages arising from hoaxes	-	-	See Chapter 3
134*	Administration of estates	-		See Chapter 4

(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
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

ANNEXURE E

Issue papers published by the commission

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
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

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
22	130	Stalking	0 621 34410 9 August 2003
23	125	Prescription periods	0 621 34444 3 August 2003
24	124	Privacy and data protection	0 621 34530 X August 2003
25	131	Trafficking in persons	0 621 350168 January 2004

(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
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

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Discussion papers published by the Commission

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
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
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

ANNEXURE F

Discussion papers published by the Commission

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
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
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 condi-tion 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

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Discussion papers published by the Commission

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
63	93	Speculative and contingency fees	0 621 17353 3 March 1996
64	104	Money laundering and related matters	0 621 17453 X June 1996
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 August 1996
	63	Review of the law of insolvency: Draft Bill and explanatory memorandum: Executive summary	0 621 17510 2 August 1996
67	96	Apportionment of Damages Act, 1956	0 621 17543 9 October 1996
68	85	Aspects of the law relating to AIDS	0 621 17550 1 October 1996
69	94	International commercial arbitration	0 621 176028 December 1996
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

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Discussion papers published by the Commission

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
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
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
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