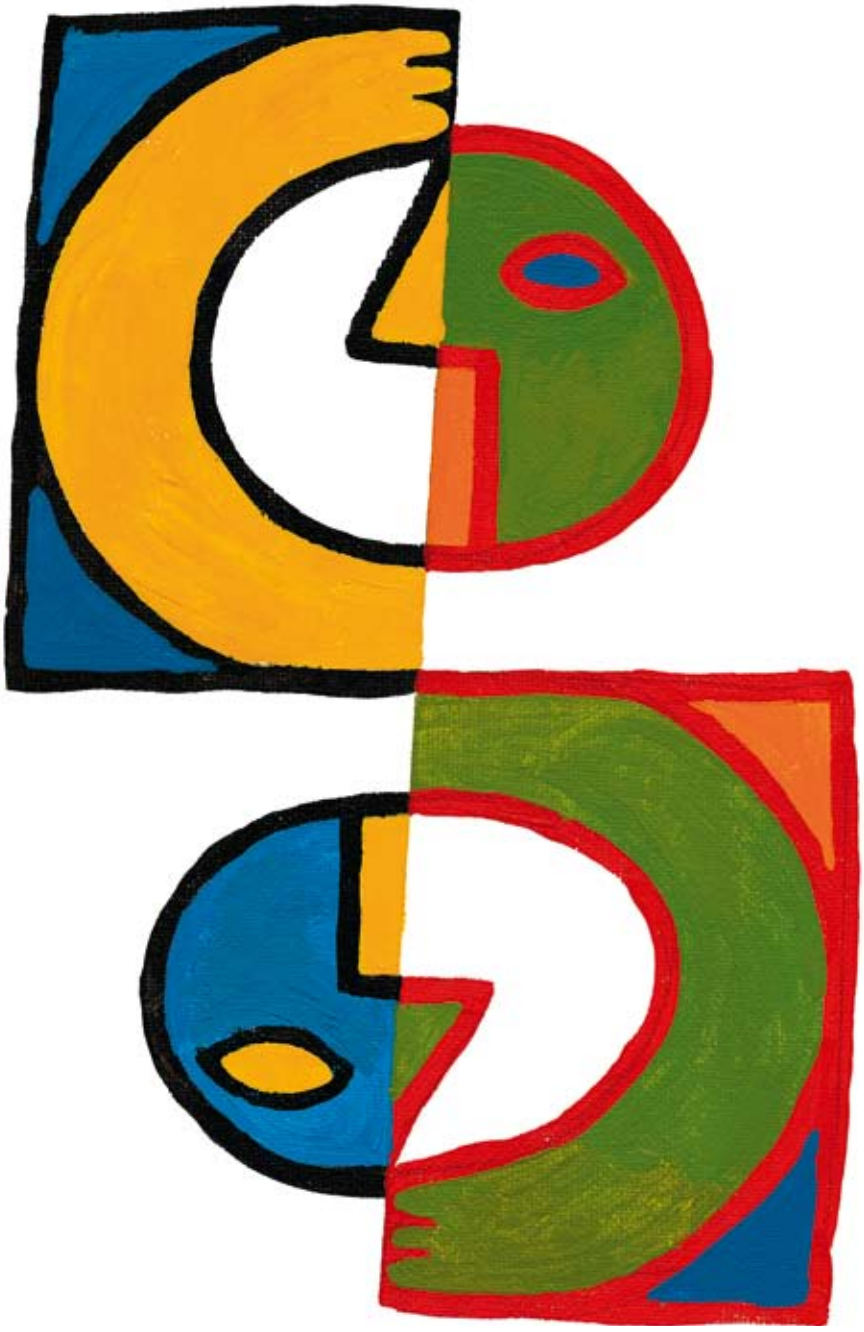
South African
Law Reform Commission



THIRTY THIRD ANNUAL REPORT 2005/2006

South African
Law Reform Commission

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Justice of the Constitutional Court

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RP: 246/2006
ISBN: 0-621-36916-0

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 2005 to 31 March 2006.

Yours sincerely

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

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South African Law Reform Commission

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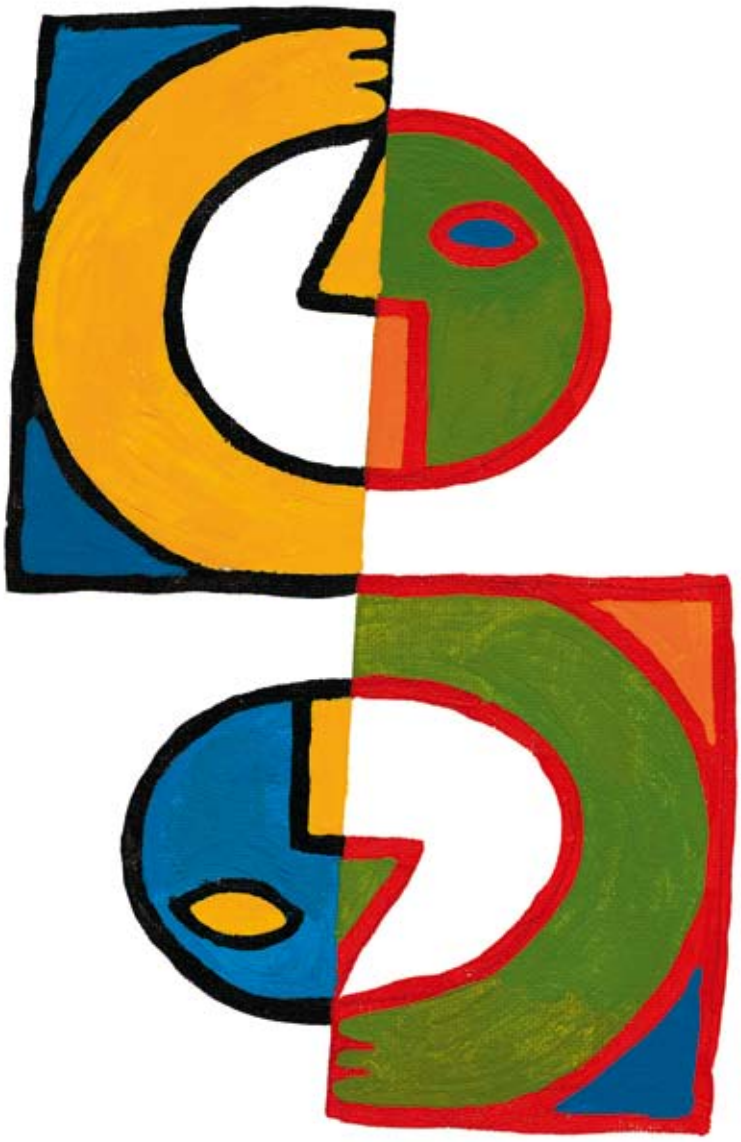
South African
Law Reform Commission



CHAPTER 1:
OVERVIEW

South African
Law Reform Commission

CHAPTER 1: OVERVIEW

OVERVIEW

Retirement of the Secretary of the South African Law Reform Commission

Mr Willie Henegan retired on 31 March 2006 after 43 years in the Public Service.

He joined the Law Reform Commission as a researcher (State Law Adviser) on 1 January 1977 and was promoted to senior researcher (Senior State Law Adviser) in 1981. He started off as part of a team responsible for statutory law revision, which led to the repeal of 1 200 pieces of pre-union legislation. He has now come to end of his career again as part of a team responsible for the review of post-union legislation. As a researcher he was responsible for the review of the law of divorce and the review of the matrimonial property law, which led to the enactment of the Divorce Act, 1979 and the Matrimonial Property Act, 1984. He was also the researcher in the investigation into customary marriages during 1986 and 1987. The investigation into the recognition of the Muslim marriages was also allocated to him during this period, but it was terminated because the Commission was not regarded as a legitimate institution.

During his term as researcher he was seconded to Parliament on two occasions: first, to assist the Select Committee on the Matrimonial Property Law with research and drafting of legislation and secondly, to the Select Committee on Parliamentary Privilege to do research and to draft proposals for the amendment of the applicable rules of Parliament.

He was promoted to the post of Chief Director: Law Reform and Secretary of the Law Reform Commission with effect from 1 December 1991. Mr Henegan regarded it as a great privilege to have been appointed to this post during the transition to a democratic government. In 1996 a new democratic Commission was appointed by the President under the chairmanship of the late Justice Ismail Mahomed. On 26 May 1997 Justice Mahomed paid homage to Mr Henegan by writing the following letter to him:

> "My attention has been drawn to the fact that during his speech in Parliament on the 20th of May 1997, the Honourable Minister of Justice announced your appointment as Chief Director. I write to send you my congratulations and my personal delight in your appointment. It is a well deserved appointment which gives recognition to your very high and consistent standards of integrity and efficiency".

This is an apt testimonial to a man under whose leadership the Commission has not received a single audit query since 1991.

In his capacity as Secretary of the Commission, Mr Henegan has mainly been responsible for the management and execution of the Commission's law reform programme in a time period where most of the investigations at the Commission have been aimed at rectifying injustices of the past. He has also been privileged to have been a part of the Commission's democratic facelift. At the first meeting of the newly constituted Commission on 23 and 24 February 1996 a number of new policies were adopted. The main one was that emphasis should be placed on making the Commission a community-orientated institution which could be seen by members of the public as a body concerned with, and driven by, their needs. Under Mr Henegan's capable direction a number of measures have been implemented to develop public participation in the Commission's activities and enhance the Commission's profile. These include the establishment of additional project committees, the employment of external expertise and knowledgeable persons to act as project leaders for investigations on the Commission's programme, the refinement of the Commission's document series, the holding of workshops and seminars and increased media exposure.

Another policy adopted by the new Commission was that there should be increased interaction with law reform agencies in other countries, particularly in Africa. In addition to attending law reform conferences and paying visits to other law reform agencies, Mr Henegan was also a key person in the establishment of the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA). ALRAESA was formally established in Windhoek, Namibia, in August 2003, and its purpose is to exchange and share ideas on best practices in law reform; exchange and share ideas on the development of law, within the countries of the member agencies in accordance with the principles of human rights, good governance and rule of law; and collectively contribute to the attainment of the objectives of member agencies. Consistent with his integrity and financial prudence, Mr Henegan was elected as the treasurer of ALRAESA.

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 South African Law Reform Commission. The theme of the conference was Law Reform in Action: Reviewing the Past, Reforming the Present, and Anticipating the Future. Mr Henegan undertook the mammoth task of organising this high calibre conference and his devotion resulted in a highly successful internationally acclaimed law reform conference.

The Commission and Secretariat bid farewell to a remarkable dedicated lawyer, Justice official and law reformer who has, over the years, become a trusted friend to many in the workplace.

The year under review

This annual report covers the period from 1 April 2005 to 31 March 2006.

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.**

Three discussion papers were published for general information and comment:

- **Project 124:** Privacy and data protection (discussion paper 109)
- **Project 134:** Administration of estates (discussion paper 110)
- **Project 131:** Trafficking in persons (discussion paper 111)

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

One report was approved by the Commission in the year under review:

- **Project 118:** Domestic partnerships (The report is still under Ministerial consideration)

CHAPTER 1:
OVERVIEW

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

- Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005

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 reports of the Commission are receiving the attention of the Department of Justice and Constitutional Development:

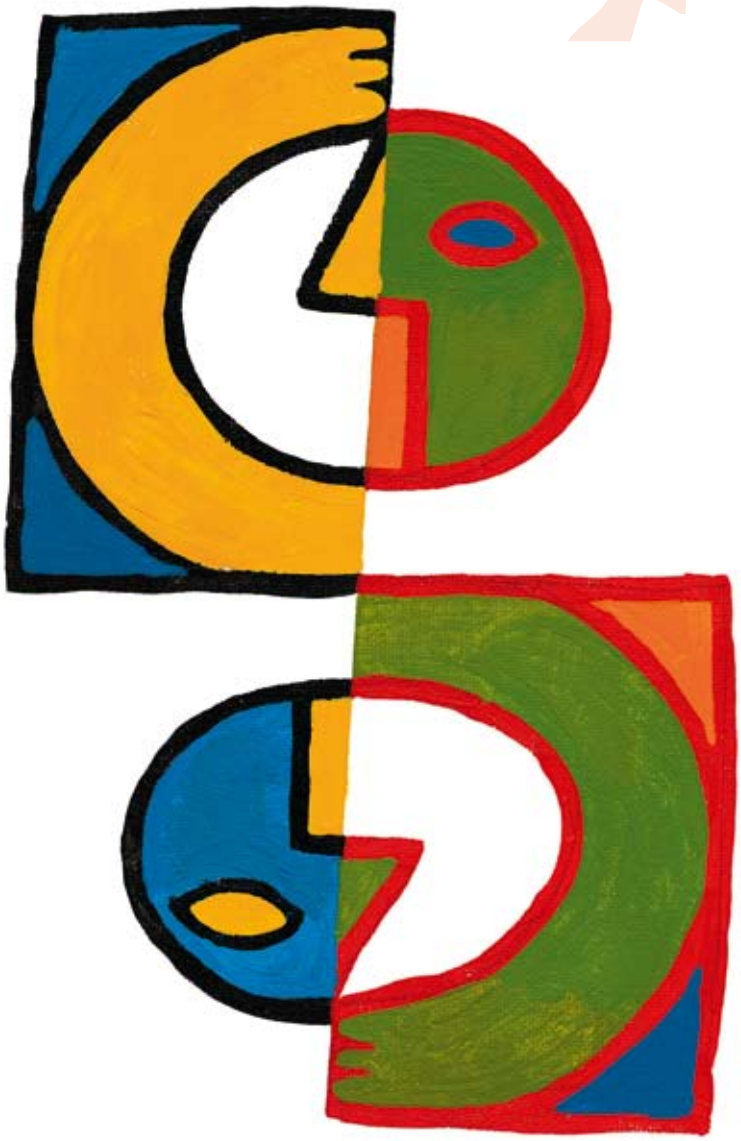
- **Project 47:** Unreasonable stipulations in contracts and the rectification of contracts
- **Project 59:** Islamic marriages
- **Project 73:** Simplification of Criminal Procedure: Appeal by the Director of Public Prosecutions on questions of fact
- **Project 73:** Simplification of criminal procedure: Out of court settlements
- **Project 73:** Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials
- **Project 83:** A compensation fund for victims of crime in South Africa
- **Project 88:** The recognition of class actions in South African Law
- **Project 90:** Customary law: Traditional Courts
- **Project 90:** Customary law: Conflicts of law
- **Project 90:** Customary law of succession
- **Project 94:** Arbitration: Domestic arbitration
- **Project 96:** The Apportionment of Damages Act, 1956
- **Project 101:** The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing
- **Project 112:** Sharing of pension benefits
- **Project 113:** The use of electronic equipment in court proceedings
- **Project 114:** Publication of divorce proceedings

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 progress report on investigations not yet completed appears in **Chapter 3**.



CHAPTER 2:
OBJECTS, CONSTITUTION AND FUNCTIONING

South African Law Reform Commission

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.

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 (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
Administrative Officer:	Mr A Singh
Administrative Officer:	Mr J D Kabini
Administrative Officer:	Ms M vd Berg
Librarian:	Mr N Makgoka
Administration Clerk:	Ms C Krebs
Administration Clerk:	Ms A J G Kruger
Administration Clerk:	Ms E Louw
Administration Clerk:	Ms P Mashabela
Administration Clerk:	Mr V Mavuso
Administration Clerk:	Mr R Swart
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 2005 – 31 March 2006 was R15, 530,095.00 which is made up as follows:

- Personnel expenditure R12, 347,197
- Current expenditure R2, 632,898
- RSCL R50, 000
- Capital expenditure R500, 000

During the period under review 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 con-tains 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.

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 3 December 2005 and 25 March 2006. The working committee of the Commission met on 30 September 2005.

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

Project committees	Date
Assisted decision-making: Adults with impaired decision-making capacity	24 October
Customary law: Administration of estates	22 August
Domestic partnerships	1 March
Privacy and data protection	17 August

CHAPTER 3:
PROGRESS REPORT

South African
Law Reform Commission

CHAPTER 3:
PROGRESS REPORT

In this Chapter the position regarding work in progress is discussed.

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

In 2004 the Commission embarked upon a major investigation aimed at revising the complete statute book with a view to removing or adapting legislative provisions considered to be unconstitutional, redundant or obsolete. An audit of all national legislation (excluding provincial and secondary legislation) by the Commission revealed that there are close to 3 000 statutes on our statute book, comprising Principal Acts, Amendment Acts, Supplementary or Additional Acts and Private Acts. Many of these Acts are not being applied anymore while others contain provisions that are in conflict with the Constitution. Research focusing on discrimination on the basis of the various grounds listed in section 9 of the Constitution has commenced. The stage has now been reached where the internal capacity of the Secretariat has to be increased by forging external partnerships to give impetus to the investigation. To this end a number of institutions and persons with expertise in gender and constitutional law have been identified. Exploratory discussions with these institutions and persons have been held during September and October 2005 in order to establish their respective areas of expertise as well as their willingness to become involved. The Commission also envisages an instrumental role in assisting Provinces with the alignment of provincial legislation vis-à-vis the Constitution by rendering such support as may be required. It is estimated that the investigation will continue for at least three years.

A draft Bill and draft discussion paper on the review of the Interpretation Act 33 of 1957 have been completed in March 2006 and are subject to departmental discussions.

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.

An issue paper dealing with all aspects of ADR was published for general information and comment during 1997. An amended draft report on community dispute resolution structures was considered by the Commission in March 2006. The development of a draft Bill is receiving attention.

The preparation of a draft discussion paper on family mediation will receive attention subject to the finalisation of the investigation into community dispute resolution structures.

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.

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 had been considered and approved by the Commission in March 2006 and was subsequently submitted to the Minister for Justice and Constitutional Development.

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 researcher assigned to the project was transferred to the Rules Board. Professor Tom Bennett (UCT) has been contracted to develop a draft report in the course of 2006.

CHAPTER 3:
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. Consequential amendments to other legislation are receiving attention. A draft report is being developed.

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 and is discussed in the 04/05 annual report.

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 discussion paper was published for general information and comment in October 2005.

Privacy is a valuable aspect of personality. Data or information protection forms an element of safeguarding a person's right to privacy. The essence of information protection is to provide a person with (a degree of) control over his or her personal information in instances where his or her personal information is being collected, stored, used or communicated by another person or institution. The recognition and protection of the right to privacy as a fundamental human right in the Constitution provides an indication of its importance. It is, however, not an absolute right and in protecting a person's personal information, consideration should also be given to competing interests such as the administering of national social programmes, maintaining law and order, and protecting the rights, freedoms and interests of others, including the commercial interests of industry sectors such as banking, insurance, direct marketing, health care, pharmaceuticals and travel services. The task of balancing these opposing interests is a delicate one.

Concern about information protection has increased worldwide since the 1960's as a result of the expansion in the use of computer and telecommunications technologies. Worldwide, the surveillance potential of powerful computer systems has prompted demands for specific rules governing the collection and handling of personal information. In addition, the use of and reliance on electronic information for aiding in all kinds of decision-making processes have reached critical levels in all walks of life. For example, the increasingly wide-spread use of on-line shopping, telebanking and electronic funds transfer services has given rise to new sources of personal information concerning a person's spending habits and lifestyles. Extensive medical records are now kept on computers by both hospital authorities and private insurers alike. Thanks to computer networking, this plethora of personal information can be accessed from many different locations and transferred amongst them easily and quickly. In addition, different information sources may be easily mixed and matched in any desirable way so as to create highly sensitive and private personal electronic profiles which, apart from being used by the primary owners of the information, may be made available to anyone who is willing to pay. In reality decisions having major impacts on individuals (such as whether a loan is granted, a sensitive job is offered, or a life insurance proposal is accepted) are all too often made on the basis of these electronic profiles without necessarily having confirmed their accuracy or perhaps without the knowledge of the individuals concerned. There are now well over thirty countries that have enacted information protection statutes at national or federal level and the number of such countries is steadily growing. Examples are the United Kingdom (Data Protection Act 1998); Canada (Privacy Act 1983 and Personal Information Protection and Electronic Documents Act, 2000), Australia (Privacy Act, 1988 and The Privacy Amendment (Private Sector) Act 2000), New Zealand (Privacy Act 1993) and most European countries. The investigation into the development of information privacy legislation for South Africa is therefore in line with international trends. Early on it was, furthermore, recognised that information privacy could not simply be regarded as a domestic policy problem. The increasing ease with which personal information could be transmitted outside the borders of the country of origin produced a history of international harmonisation efforts, and a concomitant effort to regulate transborder information flows.

In 1995, the European Union enacted the Data Protection Directive which states that countries lacking adequate information protection law will be denied general access to personal information from these states possessing it. Privacy is therefore an important trade issue, as information privacy concerns can create a barrier to international trade. South Africa cannot afford to be denied general access to personal information from its major trading partner countries, most of which have already implemented proper information protection legislation.

The preliminary recommendations of the Commission, as set out in the Bill accompanying the discussion paper, can be summarised as follows:

- The protection of personal information in the public and the private sector should be regulated in an act of general application, called the Protection of Personal Information Act, supplemented by codes of conduct for specific sectors. Both automatic and manual processing of information will be covered and identifiable natural and juristic persons will be protected.

- The proposed Bill gives effect to eight core information protection principles which, inter alia, prescribes the following duties and obligations for responsible parties and provides for the following rights for data subjects (i.e. persons whose information is being collected):
  - Information can only be collected or stored if it is necessary for or directly related to a lawful, explicitly defined purpose and does not intrude upon the privacy of the data subject to an unreasonable extent.
  - Information must be collected directly from and with the consent of the data subject.
  - Data subjects must be informed of the purpose of any such collection and of the intended recipients of the information, at the time of collection.
  - Information must not be kept for any longer than is necessary for achieving the purpose for which it was collected.
  - Information must not be distributed in a way incompatible with the purpose for which it was collected.
  - Reasonable steps must be taken to ensure that the information processed is accurate, up to date and complete. Appropriate technical and organisational measures have to be taken to safeguard the data subject against the risk of loss, damage, destruction of or unauthorised access to personal information.
  - Data subjects are allowed a right of access to their personal information and a right to demand correction if such information should turn out to be inaccurate.

- Exceptions to the information protection principles are provided for and exemptions are furthermore possible for specific sectors in applicable circumstances. Special provision has furthermore been made for the protection of special (sensitive) personal information such as those revealing racial or ethnic origin, political opinions, religious beliefs, philosophical or ethical persuasions, trade union membership, health and sexual life.

- Provision has been made for an independent Information Protection Commission with a full-time Information Commissioner to direct the work of the Commission. The Commission will be responsible for the implementation of both the new, envisaged Protection of Personal Information Act and the current Promotion of Access to Information Act 2 of 2000. Data subjects will be under an obligation to notify the Commission of any processing of personal information before they undertake such processing. Provision has also been made for investigations to be conducted by the Commission prior to commencement of the processing to establish whether it complies with the law in instances where the nature of the information being collected warrants a stricter regime.

- Enforcement of the Bill will be through the Commission using as a first step a system of notices where conciliation or mediation has not been successful. Failure to comply with the notices will be a criminal offence. The Commission may furthermore assist a data subject in claiming compensation from a responsible party for any damage suffered. Obstruction of the Commission's work is regarded in a very serious light and constitutes a criminal offence.

- A flexible approach will be followed in which industries will develop their own codes of conduct (in accordance with the principles set out in the legislation) which will be overseen by the regulatory agency. Codes of conduct for individual sectors may be drawn up for specific sectors on the initiative of the specific sector or of the Commission itself. This will include the possibility of making provision for an adjudicator to be responsible for the supervision of information protection activities in the sector. The Commission will, however, retain oversight authority. Although the codes will accurately reflect the information protection principles as set out in the Act, it should furthermore assist in the practical application of the rules in a specific sector.

- It is the Law Reform Commission's objective to ensure that the legislation provides an adequate level of information protection in terms of the EU Directive. In this regard a provision has been included that prohibits the transfer of personal information, except under special circumstances, to countries that do not, themselves, ensure an adequate level of information protection.

It should be noted that the promulgation of information protection legislation in South Africa will necessarily result in amendments to other South African legislation, most notably the Promotion of Access to Information Act 2 of 2000, the Electronic Communications and Transactions Act 25 of 2002 and the, still to be enacted, National Credit Bill [B18-2005]. All these Acts contain interim provisions regarding information protection in South Africa.

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 Commission decided in September 2005 that a proposal should be made to the Department of Trade and Industry that the National Credit Bill, [B18-2005] should make provision for certain amendments which would pave the way for the abolishment of administration orders in terms of section 74 of the Magistrates' Courts Act 32 of 1944. However, the Bill was passed by Parliament without any of the envisaged provisions. The Department of Justice and Constitutional Development has indicated that it would consider amendments along the lines suggested (and the repeal of section 74).

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 researcher's involvement in the Children's Bill process has contributed to the delay in finalizing a draft discussion paper. The investigation will be reallocated 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 and is discussed in the 04/05 annual report. A draft report and Bill were considered by the Commission in March 2006. The Commission suggested certain amendments to the Bill which are being effected.

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.

A discussion paper on trafficking in persons was approved for publication by the Commission in March 2006. The closing date for comments on the discussion paper is 30 June 2006.

The discussion paper sets out the Commission's preliminary recommendations for law reform regarding trafficking in persons. The legislative proposals can be summarised as follows:

A) OFFENCES

The proposed Bill criminalises the act of trafficking in persons. In addition to this, the proposed Bill criminalises the following acts: debt bondage; the destruction, confiscation, possession and concealment of documents; using the services of victims of trafficking; and conduct facilitating trafficking in persons.

B) PROTECTION OF VICTIMS OF TRAFFICKING

The proposed Bill lists several guiding principles which must be considered when deciding the question as to whether a person is a victim of trafficking. This will facilitate the identification of victims of trafficking. Apart from dealing with the trauma of being trafficked, victims of trafficking are faced with arrest and prosecution for offences committed as a direct result of their situation as victims of trafficking. In South Africa, victims of trafficking may be prosecuted for prostitution, even though they were forced into prostitution by their traffickers. Victims of trafficking may also be prosecuted for illegal entry in terms of the Immigration Act 13 of 2002. The proposed Bill therefore provides that the decision as to whether criminal proceedings should be instituted against a victim of trafficking for an offence committed as a direct result of his or her situation as a victim of trafficking should rest with the National Director of Public Prosecutions. Foreign victims of trafficking are provided with a non-renewable suspension of their deportation period. This will allow such victims to come to terms with what has happened to them and to make informed decisions as to whether they want to assist in the investigation of and the prosecution of their traffickers. The decision whether to grant such a period should rest with the Director-General of the Department of Home Affairs. If victims of trafficking decide to assist with the investigation of and prosecution of traffickers, they should be provided with a temporary residence permit. The Commission has taken cognisance of the fact that some victims of trafficking may never be able to return to their countries of origin or the countries from where they have been trafficked because they may be harmed, killed or trafficked again by their traffickers or the associates of their traffickers. In this regard the following options are proposed:

Option one

In terms of this option section 3 of the Refugees Act should be amended to provide that a person qualifies for refugee status, if that person is a victim of trafficking and proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked. Such victims would be able to apply for a permanent residence permit in terms of section 27(d) of the Immigration Act which states that the Director-General of the Department of Home Affairs may issue a permanent residence permit to a foreigner of good and sound character who is a refugee referred to in section 27(c) of the Refugees Act. Section 27 (c) of the Refugees Act provides that a refugee is entitled to apply for an immigration permit after five years continuous residence in the country from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely.

Option two

In terms of this option a victim of trafficking should be entitled to apply for a permanent residence permit in terms of the Immigration Act 13 of 2002, after five years continuous residence in the country from the date on which he or she was granted a temporary residence permit. This should, however, be on the condition that the victim of trafficking proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed,

killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked.

Option three
Instead of providing victims of trafficking with some kind of permanent residency status, this option proposes that the Director-General of the Department of Home Affairs may, on humanitarian grounds, extend a temporary residence permit granted to a victim of trafficking. The Director-General's decision should further be guided by the likelihood that the person may be harmed, killed or trafficked again.

With regard to the provision of services to victims of trafficking, the following options are proposed:

Option one
The Department of Social Development should have the responsibility to establish centres for adult victims of trafficking.

Option two
The Director-General of the Department of Social Development should accredit organisations to provide accommodation to adult victims of trafficking. A centre for adult victims of trafficking or an accredited organisation as proposed above must offer a programme suited for the needs of victims of trafficking. Such a programme should be aimed at the provision of counselling and rehabilitation services to victims as well as the reintegration of victims into their families and communities. Moreover it is important that the safety of adult victims of trafficking should be ensured if they are at risk of retaliation by their traffickers. In respect of the provision of compensation to victims of trafficking, the proposed Bill provides that a court may, in addition to any punishment which it may impose in respect of any offence provided for in the Bill, order a person convicted of such offence to pay appropriate compensation to any victim of the offence. Foreign victims of trafficking are often deported. This is because they are not identified as victims, but labelled as illegal immigrants. Furthermore, victims of trafficking are being returned to their countries of origin without an investigation into their circumstances in order to establish whether protective systems are in place in their countries so as to ensure that they are not returned to the same circumstances that made them vulnerable to being trafficked in the first instance. It is therefore proposed that the summary deportation of victims of trafficking be prohibited prior to an investigation being done into their circumstances. Victims of trafficking should therefore be repatriated in terms of a process that takes cognisance of their safety not only during the repatriation process, but also in the countries to which they are to be returned as well as the possibility that they might be harmed, killed or trafficked again. With regard to child victims of trafficking, due consideration should be given to the availability and suitability of care arrangements in the countries to which they are to be returned.

C) PREVENTION OF TRAFFICKING IN PERSONS
The proposed Bill provides that public awareness programmes or other measures should be established in order to:

(a) inform and educate persons at risk of becoming victims of trafficking on issues relating to trafficking in persons;
(b) inform and educate victims of trafficking on their rights as victims; legal or other measures in place to ensure their safety, recovery and repatriation; and organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
(c) discourage the demand that fosters the exploitation of victims of trafficking, especially women and children.

Furthermore, the proposed public awareness programmes or other measures must include appropriate measures aimed at reaching rural communities and should be reviewed biennially in order to determine their effectiveness.

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 inves-tigate the possibility of a specific civil action in respect of consequential damages arising from hoaxes (including the possibility of punitive dam-ages) 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)).

Research with a view to compiling a draft discussion paper has commenced.

Project 134 – Administration of estates

A discussion paper dealing with measures to improve the administration process and reduce the work of the supervising authority and executors was approved for publication by the Commission in September 2005. The closing date for comments on discussion paper 110 was 18 November 2005. Comments are being evaluated.

Although a role for traditional leaders and customary law is not excluded, a unitary system for the administration of all estates must be applied following the decision of the Constitutional Court in **Bhe and Others v Magistrate Khayelitsha and Others** 2005 (1) SA 580 (CC). The discussion paper invites comment on a proposal that all estates should be administered subject to the supervision of the Master of the High Court. It is proposed that special protective measures should apply in small estates, but that in other estates beneficiaries should protect their own interests and the Master should not be obliged to examine all accounts or call for requirements after a liquidation and distribution account has been advertised for inspection free of objections. Regulations which prohibit classes of persons from being appointed as executor or assisting with the administration of estates should be replaced by a requirement that security must be lodged in all cases where the executor is not a duly qualified person or the executor is not assisted by a duly qualified person. Comment is invited on a long list of practical and technical proposals, for instance, should the Master decide factual questions, should there be an Ombud for the administration of estates and should electronic payments be recognised by legislation.

CHAPTER 4:
PUBLIC RELATIONS

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PUBLIC RELATIONS

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.

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.

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.

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

Project	Activity	Date
Project 25: Statutory law revision	Meeting with Lawyers for Human Rights	20 Sept 2005
	Meeting with Foundation for Human Rights	20 Sept 2005
	Meeting with Centre for Human Rights (UP)	21 Sept 2005
	Meeting with School of Law (Wits)	22 Sept 2005
	Meeting with Law, Race and Gender Unit (UCT)	3 Oct 2005
	Meeting with Community Law Centre (UWC)	4 Oct 2005
	Meeting with Office on the Status of Women	6 Oct 2005
	Meeting with legal advisers of the KwaZulul-Natal Provincial Legislature	14 Oct 2005
	Meeting with Human Rights Commission	24 Oct 2005
	Meeting with Legal Resources Centre	26 Oct 2005
Project 63: Review of the law of insolvency	Sixth Colloquium on the International Exchange of Experience on Insolvency Law	4 to 6 May 2005
	UNCITRAL International Insolvency Colloquium, Vienna	14 – 16 Nov 2005

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Project	Activity	Date
Project 82: Sentencing	Conference on overcrowding in prisons	14 – 16 Sept 2005
Project 90: Customary law	Briefing of women at Katlehong on "Equality and the right of African women to inherit under the African customary law of intestate succession - Bhe and Others v The Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa ". Briefing of women at Nelspruit and Daantjie on the "Recognition of Customary Marriages Act and the implications of the judgment in the Constitutional Court case of Bhe".	9 Aug 2005 19 – 20 Aug 2005
Project 110: Review of the Child Care Act	Meetings with Portfolio Committee on Social Development: Deliberation of the Children's Bill: Presentation of the contents of the Bill to the Committee, explaining the implications of provisions, responding to queries Legal Aid Board Workshop: Legal representation needs of Children: Presentation on provisions of the Children's Bill that could impact on the legal representation of children by the Legal Aid Board "Radio Sonder Grense" radio station: participate in programme "Praat Saam", giving inputs on and responding to live telephonic public enquiries on the Children's Bill Select Committee on Social Services: Workshop on Children's Bill: Presentation on Surrogate Motherhood (as regulated by the Children's Bill) Johannesburg Institute of Social Services: present short overview of the Children's Bill as keynote speaker at the Institute's annual general meeting Child Welfare South Africa: present one day workshop on the Children's Bill to representatives of the various Gauteng branches of Child Welfare Child Welfare South Africa: present one day workshop on the Children's Bill to the Pretoria branch of Child Welfare University of Pretoria: present lecture to Child Law LLM students on the Children's Bill	6 – 8 April; 17 – 20 May; 23 – 27 May; 30 May – 1 June; 10 June; 14 June 2005 15 July 2005 17 Aug 2005 30 Aug 2005 3 Sept 2005 7 Oct 2005 3 Feb 2006 16 March 2006
Project 118: Domestic partnerships	Briefing of interdepartmental meeting at Presidency	2 Feb 2006
Project 122: Assisted decision-making: Adults with impaired decision-making capacity	Consultative meeting with representatives of Master of the High Court, Pretoria on proposed draft legislation Briefing on proposed draft legislation at Medico-Legal Symposium hosted by Alzheimer's South Africa, Cape Town Workshop on proposed draft legislation with representatives of all Offices of Master of the High Court Briefing on proposed draft legislation and attendance at Department of Social Development Workshop on Older Persons Bill Consultative meeting on proposed draft legislation with National and Provincial Houses of Traditional Leaders Consultative meeting with representatives of Master of the High Court, Pretoria on proposed draft legislation	27 – 28 June 2005 23 July 2005 29 – 31 Aug 2005 21 – 23 Sept 2005 7 Nov 2005 7 Feb 2006
Project 124: Privacy and data protection	Consultative meetings on draft Bill: Pretoria, Johannesburg, Cape Town and Durban Briefings: Banking Association, Direct Marketing Association, Health Professions Council, Credit Bureau Association, National Intelligence Agency	Feb – March 2006 Oct 2005 – March 2006

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Project	Activity	Date
Project 131: Trafficking in persons	Participated in a meeting on the commercial sexual exploitation of children hosted by the S A National Council for Child Welfare, Johannesburg	19 April 05
	Presented paper on the South African experience on trafficking in persons at a conference held in Nairobi, Kenya	23 May 05
	Met with delegation from the Embassy of the Ukraine to discuss the Commission's proposed recommendations on trafficking in persons, Pretoria	15 June 05
Project 131: Trafficking in persons (continued)	Met with delegation from the Malawi Law Reform Commission to discuss the Commission's proposed recommendations on trafficking in persons, Pretoria	17 June 05
	Participated in a Trafficking in Persons Strategy Validation Workshop hosted by the European Union and the National Prosecuting Authority, SOCA Unit, Pretoria	20 June 05
	Briefed the Child Support Week Forum on the chapter on trafficking in children contained in the Children's Bill and the Commission's investigation into trafficking in persons, Pretoria	30 June 05
	Met with representatives from the US Department of State to discuss the South African experience relating to trafficking in persons and current measures to address the problem, Pretoria	3 Aug 05
	Presented a paper on trafficking in persons at an ALRAESA Conference held in Uganda	5–8 Sept 05
	Met with the Immigration Branch of the Department of Home Affairs to discuss how the proposed trafficking legislation will affect the Department, Pretoria	27 Sept 05
	Participated in the second session of the Conference of the State Parties to the United Nations Convention against Transnational Organised Crime in Vienna, Austria	9-21Oct 05
	Participated as a resource person in the training workshop on trafficking in persons for legal drafters hosted by the United Nations Office on Drugs and Crime, Pretoria	22-24Nov 05
	Participated in the Conference on Human Trafficking held in Courmayeur, Italy	2-4 Dec 05
	Presented paper on trafficking in persons at the Miller du Toit Conference in Cape Town	24 Jan 06
Project 134: Administration of estates	Consultative meeting with National and Provincial Houses of Traditional Leaders	7 Nov 2005
	Stakeholders meeting	28 Nov 2005
	Fiduciary Forum Convention	15 March 2006

INTERNET

The Law Reform Commission's comprehensive website can be located at www.doj.gov.za/salrc/index.htm

CHAPTER 5:
ACKNOWLEDGEMENTS

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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.

The Department of Justice and Constitutional Development as a whole is thanked for its co-operation and goodwill.

ANNEXURE A

South African
Law Reform Commission

ANNEXURE A

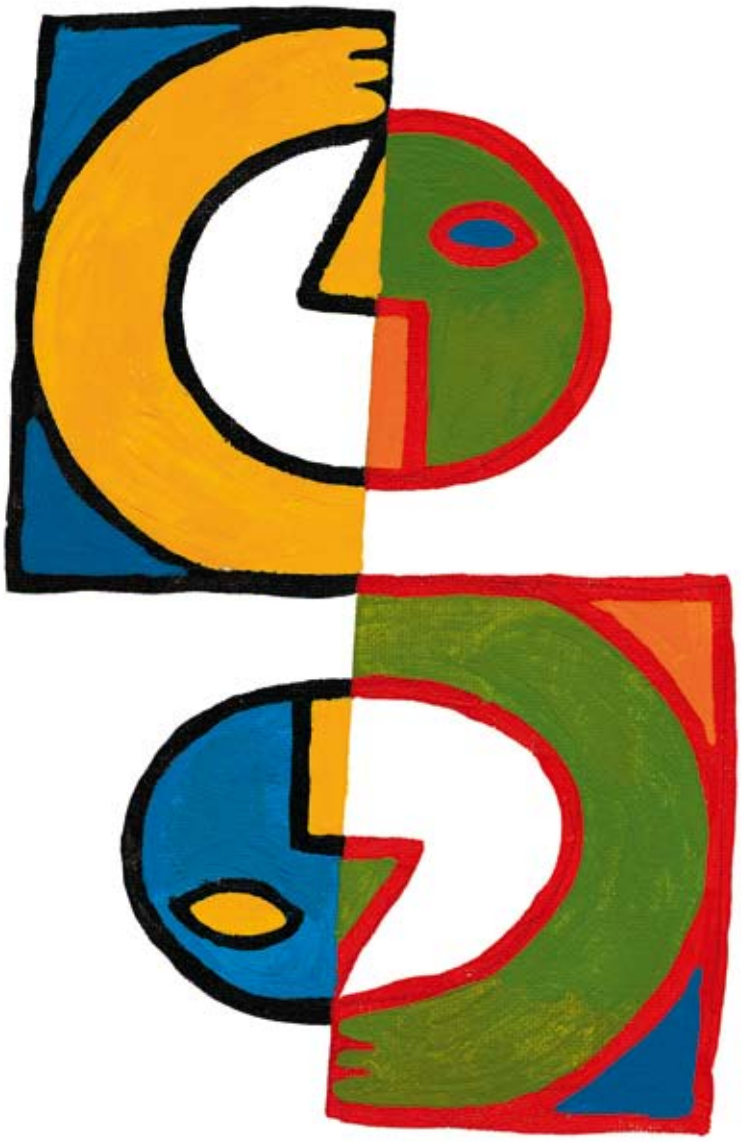
Members of the Commission in order of appointment

(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*, Justice 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, Justice 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
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

ANNEXURE A

Title/Name	Term of office
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

South African
Law Reform Commission

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 H Pienaar	Attorney and practising administrator
	Mr P Setou	Micro Finance Regulatory Council
	Mr P Sham	Attorney nominated by the Law Society of South Africa
	Mr M Weiner	Attorney nominated by the National Association of Administrators

Arbitration: Community dispute resolution structures	Prof R Christie (Project leader)	University of Cape Town
	Prof D Butler	University of Stellenbosch
	Adv B Hechter	Deputy President of Central Divorce Court
	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, University of Cape Town

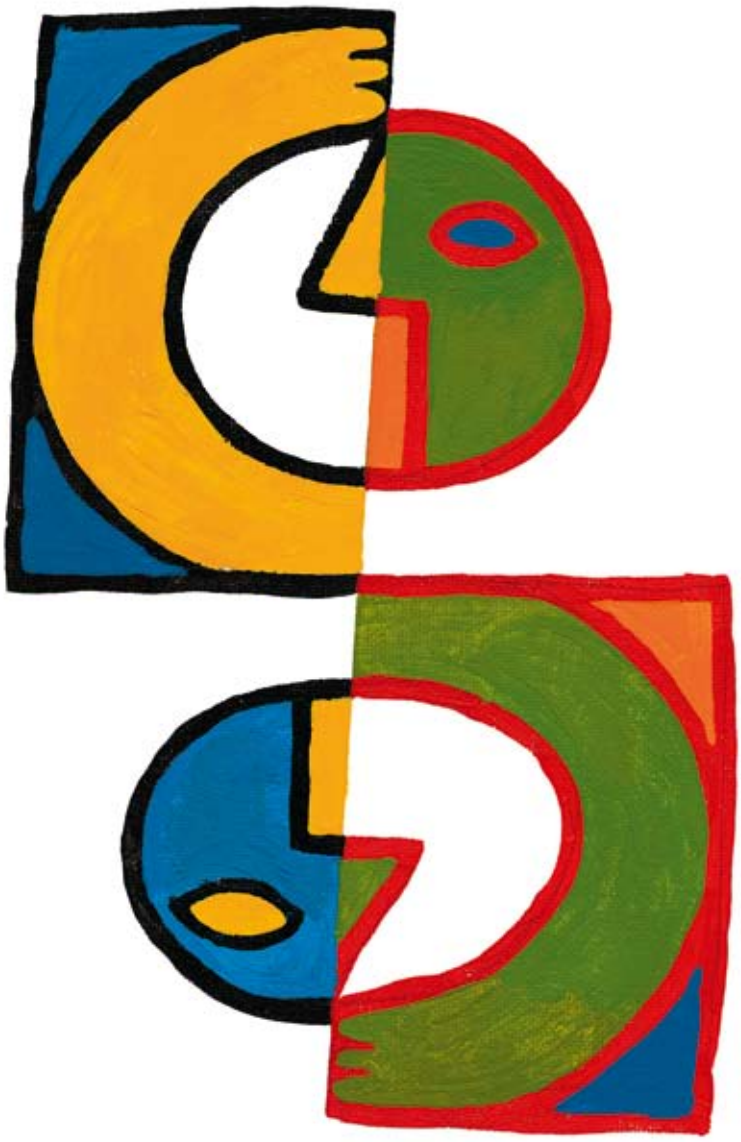
Assisted decision-making: Adults with impaired decision-making capacity	Judge B du Plessis (Project leader)	
	Prof J Bekker	Retired Dean of the Faculty of Law, Vista University
	Ms D Mahlangu	Department of Social Development
	Ms Z Seedat	Member, Law Reform Commission Attorney, Durban
	Dr S Selemani	Psychiatrist in private practice
	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

Domestic partnerships	Judge C Howie (Project leader)	Member, Law Reform Commission
	Ms B Goldblatt	Centre for Applied Legal Studies, WITS
	Prof C Hoexter	WITS Law School
	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

South African
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

South African
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Investigations included in the Commission's programme since its establishment

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 published, see also project 15
14	The prescribing of a rate of interest in respect of debts where no rate of interest applies in law	1974	Not published	Act 55 of 1975 passed
15	The matrimonial property law with special reference to the Matrimonial Affairs Act, 1953, the status of the married woman, and the law of succession in so far as it affects the spouses	1982	RP 26/1982	Act 88 of 1984 passed, see also projects 41 and 51
16	Investigation into the application of set-off in insolvency	1975	Not published	No legislation recommended, see project 63
17	Examination of the convention on the form of an international will	1975	Not published	No legislation recommended, see project 22

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Project number	Title	Year of report	Reference number of published report	Result
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 3
	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	ISBN 0 621 35472 4 RP 213/2004	Act 28 of 2005 passed
26	Criminal law consolidation: Theft and house-breaking	1977	Not published	Recommendations regarding legislation not implemented
27	Abolition of civil imprisonment	1976	Not published	Act 2 of 1977 passed, see also project 54
28	Investigation into leases in respect of movables	1976	Not published	No legislation recommended
29	Investigation into the application of mens rea in statutory offences	1982	GP-S 300	No legislation recommended
30	Investigation into an unlimited right of appeal for convicted persons in criminal proceedings	1976	RP 73/1977	No legislation recommended
31	Investigation into the law relating to presumption of death	1977	Not published	Act 23 of 1979 passed
32	Review of the law of admiralty	1982	RP 12/1983	Act 105 of 1983 passed
33	Review of the law of prize	1987	-	Recommendations not implemented
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

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Project number	Title	Year of report	Reference number of published report	Result
37	Review of preferent claims in insolvency	1984	ISBN 0 621 090840 X	Recommendations not implemented, see project 63
38	Investigation into the legal position of illegitimate children	1985	ISBN 0 621 10205 9	Act 82 of 1987 passed
39	Investigation into the legal consequences of suspensive conditions in contracts of sale	1985	ISBN 0 621 11350 6	No legislation recommended
40	Evaluation of the effect of the Divorce Act 70 of 1979	1983	Not published	No legislation recommended
41	The division of pension benefits on divorce:			
	Report	1986	ISBN 0 621 11357 3	Act 7 of 1989 passed
	Supplementary report	1994	RP 158/1995 ISBN 0 621 16869 6	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	Recommendations 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
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

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Project number	Title	Year of report	Reference number of published report	Result
56	Submission of a question of law to the Appellate Division of the Supreme Court relating to the calculation of finance charges under the Limitation and Disclosure of Finance Charges Act 73 of 1968	1976	Not published	Ex parte Minister of Justice 1978 2 SA 572 (A)
57	Anton Piller type of orders	1987	Not published	Recommendations not implemented
58	Group and human rights			
	Interim report	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 approved by Cabinet and receiving the attention of the State Law Advisers
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Recommendations to be incorporated in the Children's Bill (Project 110)

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Project number	Title	Year of report	Reference number of published report	Result
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 Cabinet and Parliament
	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 Cabinet and Parliament
	Final report: Out of court settlements in criminal cases	2002	RP 218/2002 ISBN 0 621 33511 8	Under consideration by the Department of Justice and Constitutional Development
74	Debt collecting:			
	Interim report on imprisonment for debt	1994	RP 199/1995 ISBN 0 621 16956 0	Act 81 of 1997 passed
	Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Acts 81 of 1997 and 114 of 1998 passed
75	Bribery	1991	ISBN 0 662 15184 43	Act 94 of 1992 passed
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Act 95 of 1996 passed
77	Constitutional models	1991	Report: ISBN 0 621 14239 5 Summary: ISBN 0 621 14197 6	No legislation recommended

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Project number	Title	Year of report	Reference number of published report	Result
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 Distributors 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	Under consideration by the Department of Justice and Constitutional Development
	A compensation scheme for victims of crime in South Africa	2004	Publication of report subject to ministerial approval	
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 Employment Equity Act 55 of 1998
	Third interim report: HIV/AIDS and discrimination in schools	1998	RP 121/1998 ISBN 0 621 28048 8	Department of Education promulgated Commission's draft National Policy on HIV/AIDS for Learners in Public Schools on 10 August 1999
	Fourth interim report: Compulsory HIV testing of persons arrested in sexual offence cases	2000	RP 40/2001 ISBN 0 621 30618 5	Compulsory HIV Testing of Sexual Offenders receiving 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 introduced when circumstances permit

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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	Publication of report subject to ministerial approval	Customary Law of Succession Amendment Bill identified for submission to Cabinet and Parliament
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 approved by Cabinet and receiving the attention of the State Law Advisers
	Domestic arbitration	2001	ISBN 0 621 31453 6	Domestic Arbitration Bill to be introduced when circumstances permit
	Community dispute resolution structures	-	-	See Chapter 3
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

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Project number	Title	Year of report	Reference number of published report	Result
100	Family law and the law of persons:			
	Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Recommendations to be incorporated in the Children's Bill (Project 110)
	Domestic violence	-	See Annexure G	Act 116 of 1998 passed
	Maintenance: Interim report	1998	RP 137/1998 ISBN 0 621 28685 0	Act 99 of 1998 passed
101	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing	2001	RP 118/2001 ISBN 0 621 31451 X	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 3
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 3
	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 Cabinet and Parliament
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

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Project number	Title	Year of report	Reference number of published report	Result
116	The carrying of firearms and other dangerous weapons	-	-	Struck off
117	The legal position of voluntary associations	-	-	Struck off
118	Domestic partnerships	2006	Publication of report under ministerial consideration	
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 3
122*	Assisted decision-making: Adults with impaired decision-making capacity	-	-	See Chapter 3
123*	Protected disclosures	-	-	See Chapter 3
124*	Privacy and data protection	-	-	See Chapter 3
125*	Prescription periods	-	-	See Chapter 3
126*	Review of the rules of evidence	-	-	See Chapter 3
127*	Review of administration orders	-	-	See Chapter 3
128*	Review of aspects of the law of divorce	-	-	See Chapter 3
129*	Review of aspects of matrimonial property law	-	-	See Chapter 3
130*	Stalking	-	-	See Chapter 3
131*	Trafficking in persons	-	-	See Chapter 3
132	Abolition of the oath	-	-	Struck off
133*	A specific civil action in respect of consequential damages arising from hoaxes	-	-	See Chapter 3
134*	Administration of estates	-		See Chapter 3

ANNEXURE E

South African
Law Reform Commission

ANNEXURE E

Issue papers published by the Commission

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

Serial number of issue paper	Project number	Title of investigation	ISBN/Publication date
1	104	Money laundering and related matters	0 631 17404 1 / May 1996
2	100	Family violence	0 621 17495 5 / July 1996
3	90	Harmonisation of the common law and the indigenous law: Customary marriages	0 621 17531 5 / September 1996
4	90	Harmonisation of the common law and the indigenous law: The application of customary law: Conflict of personal laws	0 621 17532 3 / September 1996
5	100	Family law and the law of persons: Review of the maintenance system	0 621 17652 6 / January 1997
6	73	Simplification of the criminal procedure: Access to the criminal justice system	0 621 17705 9 / April 1997
7	82	Sentencing: Restorative justice (compensation for victims of crime and victim empowerment)	0 621 17718 0 / April 1997
8	94	Arbitration: Alternative dispute resolution	0 621 27319 8 / May 1997
9	106	Juvenile Justice	0 621 27335 X / June 1997
10	107	Sexual offences against children	0 621 27352 X / June 1997
11	82	Sentencing: Mandatory minimum sentences	0 621 27353 8 / July 1997
12	90	Harmonisation of the common law and the indigenous law: Succession in customary law	0 621 8 008 9 / April 1998
13	110	The review of the Child Care Act	0 621 28026 / April 1998
14	108	Computer related crime: Options for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 28710 5 / August 1998
15	59	Islamic marriages and related matters	0 621 30089 6 / May 2000
16	119	Uniform national legislation on the fencing of national roads	0 621 30188 4 / July 2000
17	118	Domestic partnerships	0 621 31574 5 / September 2001
18	122	Incapable adults	0 621 31797 7 / November 2001
19	107	Sexual offences: Adult prostitution	0 621 33159 7 / July 2002
20	123	Protected disclosures	0 621 33555 X / November 2002
21	121	Consolidated legislation pertaining to international cooperation in civil matters	0 621 33553 3 / November 2002
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

ANNEXURE F

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Discussion papers published by the Commission

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

Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
1	37	Preference on insolvency	18 March 1983
2	22	Law of succession: Intestate succession	17 February 1984
3	9	Law of trusts	24 February 1984
4	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband	October 1984
5	49	Offences committed under the influence of liquor or drugs	10 August 1984
6	43	Investigation into the advancement of the age of majority	15 February 1985
7	38	Investigation into the legal position of illegitimate children	22 February 1985
8	33	Review of the law of prize	12 April 1985
9	25	Statute law: Investigation into the law relating to theft and house-breaking	Not published
10	51	Marriages and customary unions of Black persons	13 September 1985
11	6	Review of the law of evidence	25 April 1986
12	57	Anton Piller type of orders	Not published
13	22	Review of the law of succession: The introduction of a legitimate portion or the granting of a right to maintenance to a surviving spouse	8 August 1986
14	22	Review of the law of succession: Formalities of a will	17 October 1986
15	24	Investigation into the courts' powers of review of administrative acts	2 January 1987
16	62	The protection of a purchaser of securities	27 April 1987
17	22	Review of the law of succession: Amendment and repeal of wills	23 September 1987
18	61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	0 7970 1381 4 / 18 March 1988
19	22	Review of the law of succession: Disqualification from inheriting, substitution and the succession rights of adopted children	0 7970 1401 2 / 26 February 1988
20	60	Domicile	0 7970 1435 7 / 26 August 1988
21	62	The protection of a purchaser of securities	0 7970 1460 8 / 31 March 1988
22	50	Proposals for the reform of the Bills of Exchange Act	0 621 1198 9 X / 19 December 1988

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

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45	76	Jewish divorces	0 621 15331 1 / January 1993
46	67	The Usury Act and related matters	0 621 15021 5 / April 1993
47	87	Jurisdictional lacuna in the Supreme Court Act 59 of 1959	0 621 15429 6 / April 1993
48	62	The protection of a purchaser of shares	0 621 15848 8 / October 1993
49	73	Simplification of criminal procedure	0 621 15923 9 / November 1993
50	74	Debt collecting	0 621 15933 6 / November 1993
51	70	Limitation of professional liability	0 621 15955 7 / December 1993
52	84	Application of the trapping system	0 621 15959 X / December 1993
53	86	Euthanasia and the artificial preservation of life	0 621 15994 8 / February 1994
54	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 16038 5 / May 1994
55	89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	0 621 16358 9 / December 1994
56	98	International co-operation in criminal prosecutions	0 621 16820 3 / May 1995
57	88	The recognition of a class action in South African law	0 621 16928 5 / September 1995
58	85	Aspects of the law relating to AIDS	0 621 16964 1 / September 1995
59	94	Arbitration	0 621 16971 4 / September 1995
60	95	Investigation into the Computer Evidence Act 57 of 1983	0 621 17259 6 / October 1995
61	63	Review of the law of insolvency: Statutory provisions that benefit creditors	0 621 17297 9 / November 1995
62	100	The granting of visitation rights to grandparents of minor children	0 621 17344 4 / March 1996
63	93	Speculative and contingency fees	0 621 17353 3 / March 1996
64	104	Money laundering and related matters	0 621 17453 X / June 1996
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X / August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 / August 1996

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	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
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South African
Law Reform Commission

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Papers published by the Commission in its research series

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1	Mr J P J Coetzer SC	A critical legal comparative study of law reform in South Africa (translation)	ISBN 0 621 09442 0
2	Prof Ellison Kahn	The life and works of Hugo Grotius (1583-1645)	GP-S 3 00344
3	Mrs M A Olwage (ed)	Women and sexual offences in South Africa: Proceedings of a seminar held by the Institute for Criminology at the University of South Africa in conjunction with the South African Law Commission, Pretoria, 18 October 1984 (translation)	ISBN 0 621 09779 9
4	Mr S I E van Tonder SC (ed)	Index to the Opinions of the Roman-Dutch Lawyers and the Decisions of the Courts of the Netherlands which have been digested in the Algemeen Berede-neerd Register of Nassau La Leck (1741-1795), by Dr A A Roberts, Vols 1(A-B), 2(C-D), 3(E-H), 4(I-L), 5(M), 6(N-R), 7(S-T) and 8(U-W)	Vol 1: ISBN 0 621 09382 3 Vol 2: ISBN 0 621 09646 6 Vol 3: ISBN 0 621 09778 0 Vol 4: ISBN 0 621 10254 7 Vol 5: ISBN 0 621 10295 4 Vol 6: ISBN 0 621 10686 0 Vol 7: ISBN 0 621 10710 7 Vol 8: ISBN 0 621 10709 3
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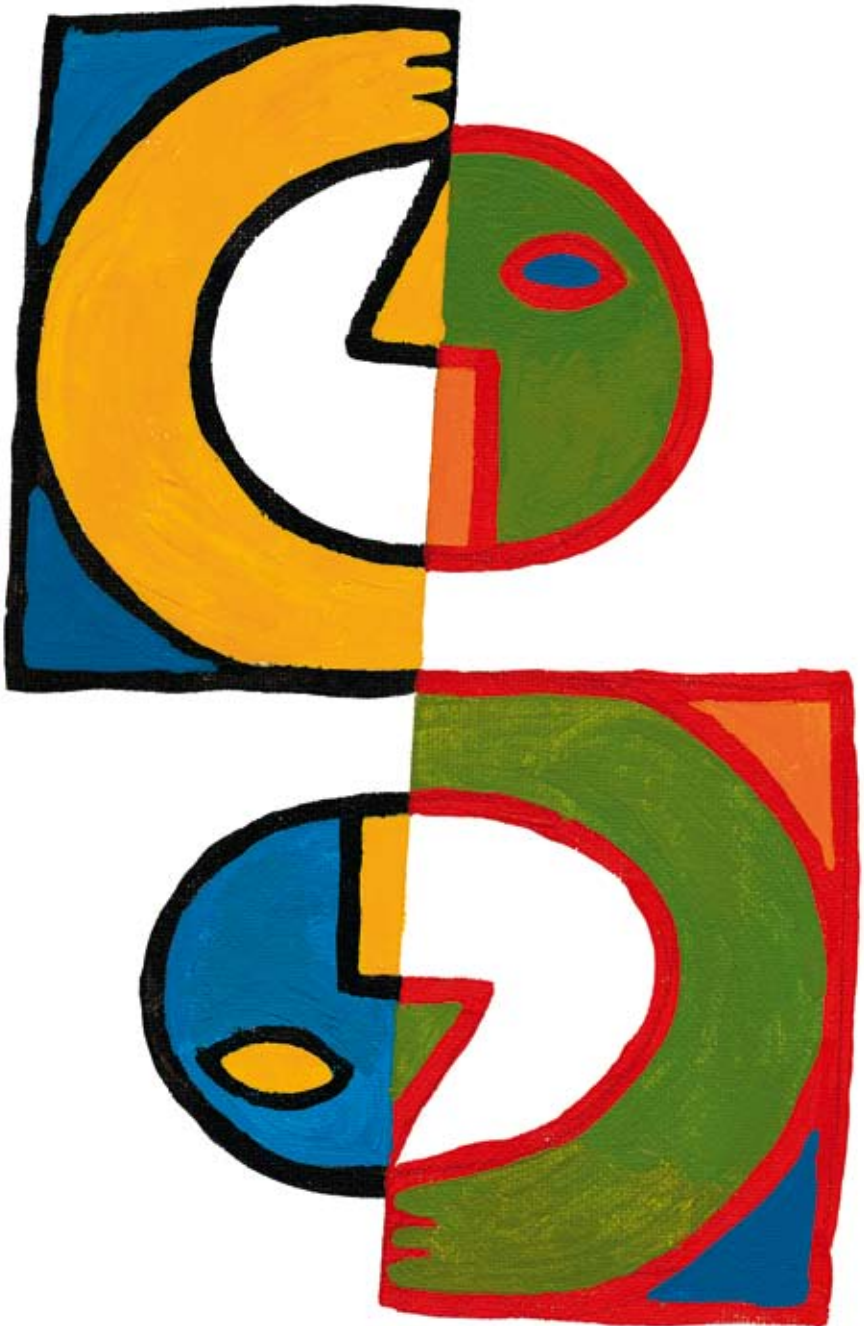
16	Law Commission	Domestic Violence	Not printed, but accessible on SA Law Reform Commission Website
17	Law Commission/GTZ	Empirical study of the sentencing practices in South Africa	ISBN 0 621 30091 8
18	Law Commission/GTZ	Sentencing: An empirical, quantitative study on the progress and finalisation, including by conviction, of criminal matters reported to the police	ISBN 0 621 31582 6
19	Law Commission/GTZ	Simplification of criminal procedure: Settlements out of court - a comparative study of European criminal justice systems	ISBN 0 621 29881 6

NOTES



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