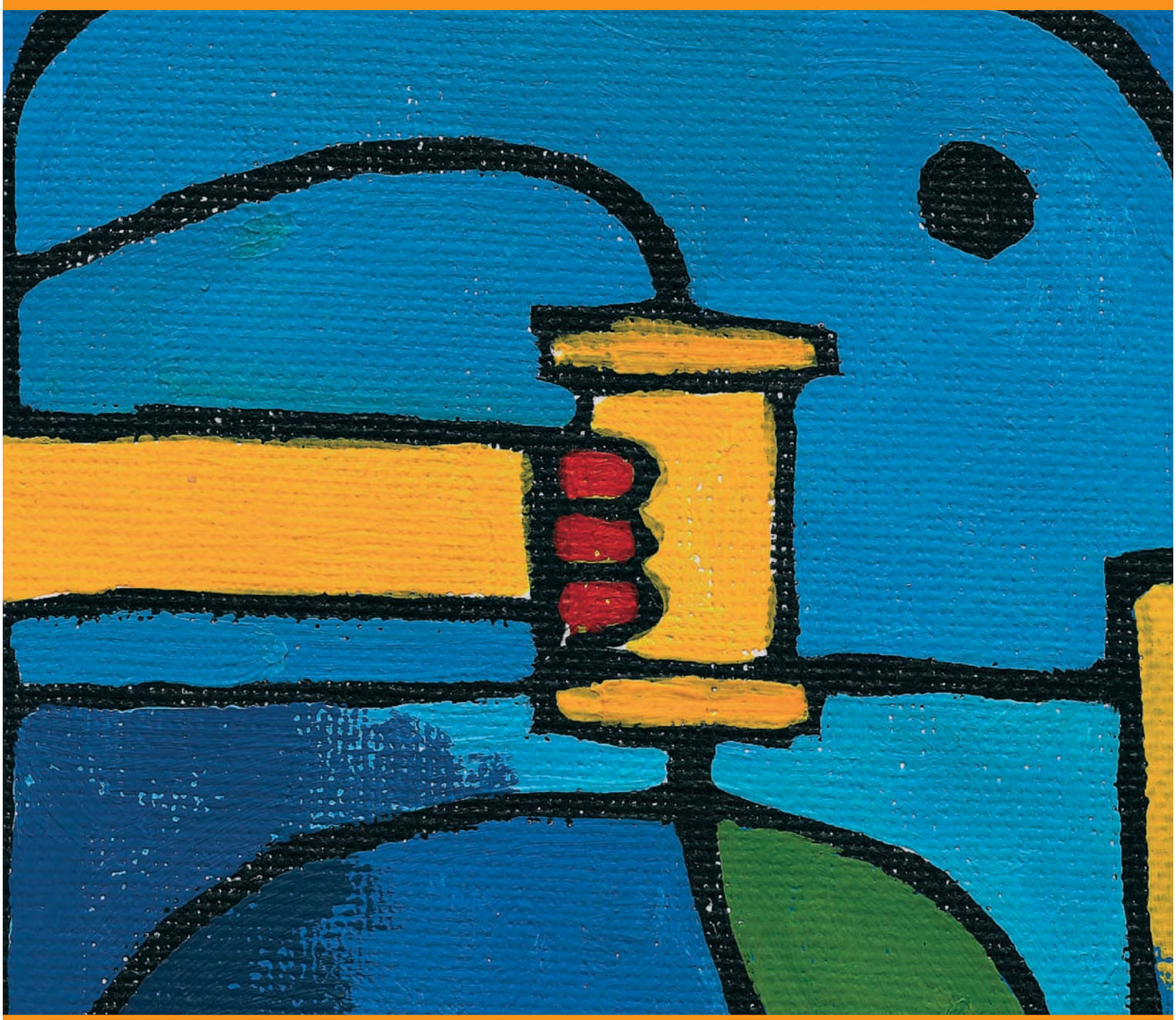
South African
Law Reform Commission

THIRTY FOURTH ANNUAL REPORT 2006/2007



South African
Law Reform Commission

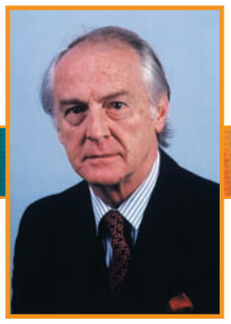
LAW REFORM COMMISSION

01/01/2002 – 31/12/2006

JUSTICE Y MOKGORO
Chairperson
Justice of the Constitutional Court

JUDGE M L MAILULA
Vice-Chairperson
Judge of the High Court

PROF I P MAITHUFI
Full-time Member
Faculty of Law, University of Pretoria



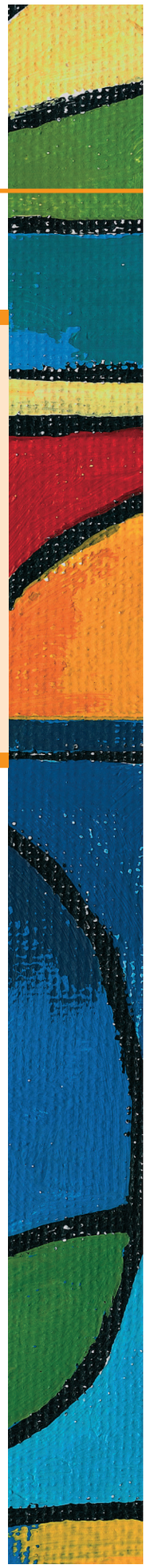
JUDGE C T HOWIE
Member
President,
Supreme Court of Appeal

MS Z SEEDAT
Member
Practising Attorney - Durban

ADV JJ GAUNTLETT SC
Member
Practising Advocate - Cape Town

PROF C E HOEXTER
Additional member
School of Law, University of the Witwatersrand
(Resigned with effect from 1 January 2005)

JUDGE W L SERITI
Member
Judge of the High Court



To: Mrs B S 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 2006 to 31 March 2007.

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

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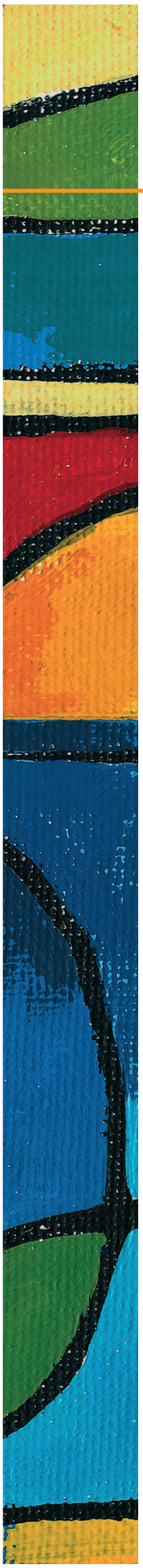


CHAPTER 1

OVERVIEW

Introduction

"Law must be stable, and yet it cannot stand still."
- Roscoe Pound (American Jurist, 1870 – 1964)

Indeed, the law is a dynamic concept - not only does it change along with society, but it often directs society on its path of change.

Across the world, law reform agencies are tasked with investigating the reform of laws in a way that adequately meets the demands and challenges posed by changing societies. This task is complicated by the conflict of values between, among others, different sectors of society, religious and cultural beliefs and the inclusive goal of justice for all.

This is true for any country in the world, but even more so for post-Apartheid South Africa, where many of the laws on the statute book are incompatible with the democratic, non-discriminatory and equality-based values espoused by the Constitution.

However, neither these values nor the fundamental human rights enshrined in the Bill of Rights can stand in isolation. The rights of citizens and the obligations flowing from these rights inevitably require the creation of new laws or the reform of existing ones, all of which must ultimately pass constitutional scrutiny.

During the period under review the South African Law Reform Commission (the Commission) continued its efforts to facilitate law reform that contributes to the realisation of a society based on democratic values, social justice and fundamental rights for all.

End of term of the Commission

31 December 2006 marked the end of the term of the Commission which was appointed for a period of five years with effect from 1 January 2002. The Commission consisted of the following members:

- Justice Y Mokgoro as Chairperson
- Judge M L Mailula as Vice-Chairperson
- Adv J J Gauntlett SC
- Prof C E Hoexter (resigned with effect from 1 January 2005)
- Judge C T Howie
- Prof I P Maithufi as full-time member
- Ms Z Seedat
- Judge W L Seriti

The transformation of our legal system presented the Commission with great challenges in the area of law reform, having regard to the relationship between reform and the wider social and political context in which it takes place, and focusing on various rights in the Bill of Rights in the absence of a fully developed constitutional jurisprudence. The research programme of the Commission during its tenure demonstrated that a very wide ambit of topics received the attention of the Commission.

Criminal justice reform was driven largely by progressive critiques of criminal justice practices and the rise of victim concerns. In this regard projects related to simplification of criminal procedure; the use of electronic equipment in court proceedings; a compensation fund for victims of crime; sexual offences; terrorism; stalking; and trafficking in persons.

A number of projects related to what could be termed "social law reform", indicated by criteria such as that the problem is described in social terms rather than by reference to an area of legal doctrine; the project requires moral or social value judgments to be made on politically controversial issues; the project explicitly addresses social justice issues; or the project proposes an entirely new approach to a social problem, rather than simply proposing minor changes to legal rules. Social law reform projects investigated by the Commission related to adult prostitution; protected disclosures; privacy and data protection; review of the Child Care Act, 1983; Islamic marriages; customary law; domestic partnerships; assisted decision-making: adults with impaired decision-making capacity; and publication of divorce proceedings.

As part of the Commission's extensive statutory law revision project, the Interpretation Act 33 of 1957 was reviewed.

The publications (excluding annual reports) which were completed by the Commission during its tenure of five years are reflected in Annexure A.

Appointment of a new Commission

Under section 3 of the South African Law Reform Commission Act 19 of 1973, the President appointed a new Commission, in which considerable academic and practical experience are combined, for a period of five years with effect from 1 January 2007:

- Justice Yvonne Mokgoro (Chairperson)
- Judge Willie Seriti (Vice-Chairperson)
- Judge Dennis Davis
- Advocate Mahlape Sello
- Advocate Dumisa Ntsebeza SC
- Mr Tembeka Ngcukaitobi
- Professor Pamela Schwikkard
- Ms Thuli Madonsela (Full-time member)
- Professor Cathi Albertyn

The new Commissioners are welcomed heartily and assured of the support of the Secretariat to face the challenges of law reform in South Africa.

Completed reports receiving the attention of Departments

The following reports were submitted to the Minister for Justice and Constitutional Development during previous reporting years:

- Project 47: Unreasonable stipulations in contracts and the rectification of contracts **(submitted to Minister in May 1998)**
- Project 59: Islamic marriages **(submitted to Minister in July 2003)**
- Project 63: Review of the law of insolvency **(submitted to Minister in February 2000)**
- Project 73: Simplification of criminal procedure: Appeal by the Director of Public Prosecutions on questions of fact **(submitted to Minister in December 2000)**
- Project 73: Simplification of criminal procedure: Out of court settlements **(submitted to Minister in August 2002)**
- Project 73: Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defense disclosure, the role of judicial officers and judicial management of trials **(submitted to Minister in August 2002)**
- Project 82: Sentencing: A new sentencing framework **(submitted to Minister in December 2000)**
- Project 82: Sentencing: A compensation fund for victims of crime in South Africa **(submitted to Minister in August 2004)**
- Project 88: The recognition of class actions in South African Law **(submitted to Minister in September 1998)**
- Project 90: Customary law: Traditional Courts **(submitted to Minister in January 2003)**
- Project 90: Customary law: Conflicts of law **(submitted to Minister in September 1999)**
- Project 90: Customary law of succession **(submitted to Minister in August 2004)**
- Project 94: Arbitration: Domestic arbitration **(submitted to Minister in June 2001)**
- Project 94: Arbitration: International arbitration **(submitted to Minister in July 1998)**
- Project 96: The Apportionment of Damages Act, 1956 **(submitted to Minister in July 2003)**
- Project 101: The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing **(submitted to Minister in June 2001)**
- Project 112: Sharing of pension benefits **(submitted to Minister in June 1999)**
- Project 113: The use of electronic equipment in court proceedings **(submitted to Minister in July 2003)**
- Project 114: Publication of divorce proceedings **(submitted to Minister in August 2002)**

The following reports emanating from the Commission were referred to government departments other than the Department of Justice and Constitutional Development during previous reporting years:

- 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 year under review

This annual report covers the period from **1 April 2006 to 31 March 2007.**

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 B.**

One discussion paper was published for general information and comment:

- Project 25: Statutory law revision: Review of the Interpretation Act 33 of 1957 (discussion paper 112)

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

Two reports were approved by the Commission in the year under review:

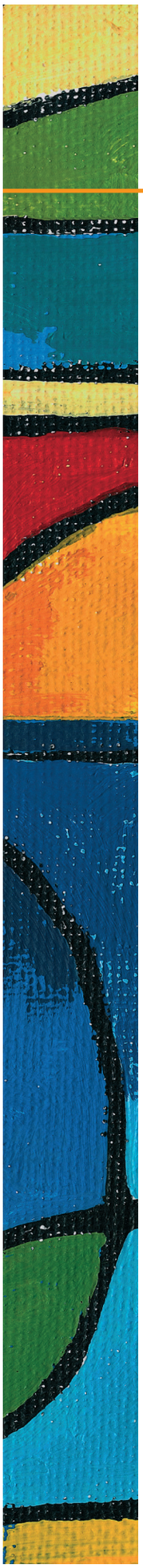
- Project 121: Consolidated legislation pertaining to international co-operation in civil matters (the report is still under Ministerial consideration)
- Project 130: Stalking (the report is still under Ministerial consideration)

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

The following Acts emanating from the Commission's reports on domestic partnerships and the review of the Child Care Act were promoted by Parliament in the year under review:

- Civil Union Act 17 of 2006
- Children's Act 38 of 2005 (assented to 8 June 2006)

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 section 23



CHAPTER 1

OVERVIEW

respectively of the Children's Act 38 of 2005 (Project 110: Review of the Child Care Act, 1983).

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

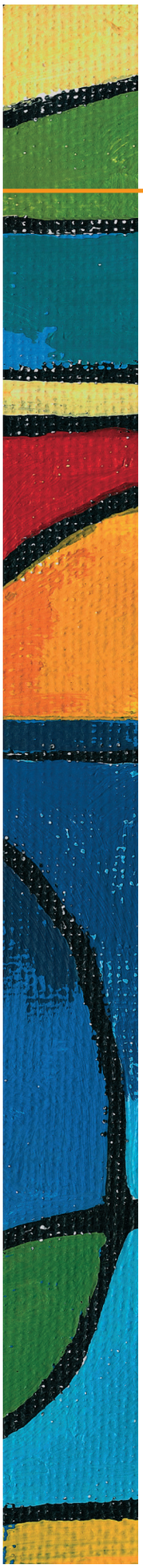
- Project 106: Juvenile justice: Child Justice Bill

- Project 107: Sexual offences: Criminal Law (Sexual Offences) Amendment Bill

  The recommendations contained in the report on compulsory HIV testing of persons arrested in sexual offence cases (Project 85) were initially reflected in the Compulsory HIV Testing of Alleged Sexual Offenders Bill. The Commission's recommendations regarding victims' need for information of their alleged offenders' HIV status have eventually been included in Chapter 5 of the Criminal Law (Sexual Offences) Amendment Bill.

  In the Commission's report on the need for a statutory offence aimed at harmful HIV-related behaviour (Project 85) the Commission concluded that a statutory offence was not necessary or desirable and that the current legal position should be maintained. During the course of the Portfolio Committee deliberations on the Criminal Law (Sexual Offences) Amendment Bill, 2003 and prior to the 2004 elections, the Committee suggested including in the Bill the criminalisation of the intentional non-disclosure of a person's HIV-positive status when engaging in intimate contact with another person. When the Bill was submitted to the newly constituted Cabinet for approval after the 2004 elections, Cabinet however expressed reservations about the inclusion of the suggested offence, and the final version of the Bill which was approved by the Portfolio Committee on 10 November 2006 did not include such an offence. The Committee however requested the Department of Justice and Constitutional Development to do further research in this regard, including comparative research, with a view to addressing Cabinet's reservations.

- Project 110: Review of the Child Care Act, 1983: Children's Act 38 of 2005; Children's Amendment Bill



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 Act).

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.

As indicated in Chapter 1, the President appointed a new Commission for a period of five years with effect from 1 January 2007.

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

Project leaders

Although the Act does not specifically refer to the appointment of project leaders, it is the Commission's practice to appoint a project leader for an investigation on its research programme. A project leader could be a Commissioner, a member of a project committee appointed by the Minister (section 7A(1)(b)(ii)), or any other person who is not a Commissioner and who is not a member of a project committee (section 8(2)).

The main task of a project leader is to guide the designated researcher's research by evaluating the research and giving advice to the researcher.

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 (section 7A(1)(a) of the Act).

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 (Section 7A(1)(b) of the Act).

The names of the members of the project committees appear in **Annexure E**. 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 Deputy Chief State Law Adviser (Chief Director) serves as the Secretary of the Commission. This post has been vacant since 1 April 2006. During the period under review the following Principal State Law Advisers have been appointed as acting Secretary:

- Mr M B Cronje (1 April – 30 April 2006)
- Mr M F Palumbo (1 May – 19 May 2006; 1 July 2006 – 30 April 2007)
- Ms A M Louw (20 May – 30 June 2006)

The research component of the Secretariat consists of 19 State Law Advisers from diverse backgrounds. Their task is to conduct the necessary research under the guidance of project leaders (who are appointed 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.

Law reform cannot be delivered without high quality research. The in-house researchers at the Commission are professionally qualified lawyers, the majority of whom have vast experience in the law reform environment. The result has been the development of scholarly research publications and the involvement of the researchers in various activities as highlighted in Chapter 5.

The research posts are filled by the following persons:

Ms U A Behrtel (Senior State Law Adviser)

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)

Mr M F Mdumbe (Senior State Law Adviser)

Ms G M B Moloi (Principal State Law Adviser)

Ms G E Nesbitt (Senior State Law Adviser)

Mr M F Palumbo (Principal State Law Adviser)

Ms C J Pienaar (Senior State Law Adviser)

Ms P Sukhraj – Ely (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.

Three 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:	Mr G Maseko

Financing of the Commission

The Commission's budget for the financial year 1 April 2006 – 31 March 2007 was R13, 329,000 which is made up as follows:

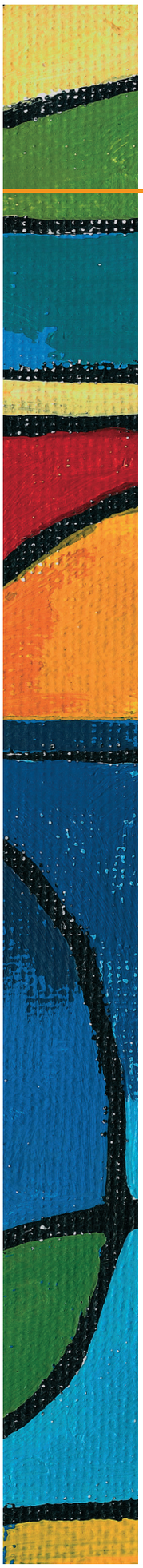
- Personnel expenditure R9, 586,800
- Current expenditure R3, 420,100
- RSCL (municipal levy) R2, 100
- Capital expenditure R320,000

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 preference 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 F. Annexure G** contains a list of all the investigations included in the Commission's programme since its inception and indicates the final result or current state of investigations.



CHAPTER 2

OBJECTS, CONSTITUTION AND FUNCTIONING

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, project leader, project committee (where one exists), the general public, stakeholders and 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, children and the poor - 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. The faculties of law of various universities often prescribe the Commission's research publications as literature for their students at undergraduate as well as postgraduate level.

The many valuable comments and proposals received on the Commission's recommendations as contained in its documents, confirm that its working methods are 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.

Issue papers published since the introduction of the document series are listed in **Annexure B.**

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 published since the introduction of the document series are listed in **Annexure C**.

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 G** 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 H**.

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 9 September 2006 and 24 March 2007. There were no working committee or project committee meetings during the year under review.

CHAPTER 3

PROGRESS REPORT

It is axiomatic that the extent to which the South African Law Reform Commission can add value will be heavily influenced by the nature of the work it undertakes and its particular experience and suitability to do so. In selecting topics for law reform there is a need for independence from, but good liaison with, government. It is therefore important for the Commission to understand how its work will contribute to the government's overall strategic outcomes and priorities. There should also be explicit recognition by government of the particular contribution the Commission can make to the overall law reform environment.

For the year under review the research programme of the Commission has been as follows:

Project	Title
25	Statutory law revision
94	Arbitration: Community dispute resolution structures Arbitration: Family mediation
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

A number of the above-mentioned projects are in line with the government's priorities as identified in the Government's Programme of Action, 2007. The priorities and programmes arise from the January 2007 Cabinet Lekgotla and the President's State of the Nation Address on 9 February 2007.

Crime prevention and public safety is identified as a main action by the Justice, Crime Prevention and Security Cluster. A sub-action is the implantation of initiatives directed at preventing crimes against women and children. The Commission's investigations into sexual offences: adult prostitution (project 107); stalking (project 130); and trafficking in persons (project 131) are aimed at crime prevention and the protection of vulnerable groups. Another sub-action is the implementation of restorative justice and alternative dispute resolution, which relates to the Commission's project on community dispute resolution structures (project 94).

The Commission's statutory law revision project (project 25) is aimed at revising the complete statute book with a view to removing or adapting legislative provisions considered to be unconstitutional, redundant or obsolete. The investigation is endorsed by Cabinet – in 2001 Cabinet requested the identification of all discriminatory and unconstitutional legislation enacted prior to 1994, as well as the review of provisions in the legislative framework that would result

in unfair discrimination as defined in section 9 of the Constitution. In terms of a Cabinet decision the Commission is required to submit bi-annual reports on progress with the investigation to Cabinet.

Two of the strategic goals of the Department of Justice and Constitutional Development are "access to justice for all" and "transforming justice, state and society". A number of the Commission's projects are linked to the strategic objectives under these goals:

- ensuring access for vulnerable groups
- facilitating accessible deceased and insolvent estate services
- alternative dispute mechanisms
- develop a legislative framework for the promotion of access to justice for all
- transforming and maintaining the legal system by investigating, preparing and promoting legislation
- ensure the effectiveness and efficiency of the justice system

It is further significant to note that law reform agencies in the world often review similar areas of law. The research programme of the South African Law Reform Commission is no exception and this fact could be seen as an indicator to gauge the relevancy of projects undertaken by the South African Law Reform Commission.

The position regarding work in progress in respect of the Commission's research programme is as follows:

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. Redundant and obsolete provisions on the statute book are being identified and government departments are being consulted in order to verify these provisions. Numerous meetings were held to develop a methodology for conducting the investigation into the constitutionality and redundancy of existing legislation. 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.

In March 2007 a progress report on the investigation was forwarded to the Department of Justice and Constitutional Development for submission to the Minister with a view to informing Cabinet about the progress made in the investigation.

Professor Cathi Albertyn developed a document for the Commission setting out guidelines for the identification of legislative provisions that are obviously in conflict with section 9 of the Constitution. The guidelines are based on an analysis of Constitutional Court judgements. The tables of Constitutional cases as per Professor Albertyn's report have been updated and made available to the researchers involved with project 25. Future judgements of the Constitutional Court relating to the "equality" clause in the Constitution will be added as and when they become available.

The following table indicates work in progress in respect of the statutory law revision investigation:

Legislation administered by the Department of Agriculture	The 112 statutes administered by the Department of Agriculture are being analysed to determine which are redundant, obsolete or unconstitutional. Once this has been done, a consultation paper with repeal and amendment proposals will be submitted to the Department for further discussion.
Legislation administered by the Department of Transport	The 218 statutes administered by the Department of Transport were scrutinised and a draft repeal Bill and consultation paper were drafted. Discussions were held with the legal adviser of the Department of Transport in November 2006 to consult on the statutes which have been identified for repeal or amendment. The Department indicated that it agreed with the proposals made by the Commission. The consultation paper and draft repeal Bill will be reworked and converted into a discussion paper that will be published for public consultation.

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Legislation administered by National Treasury	The 624 statutes administered by National Treasury are being analysed to determine which are redundant, obsolete or unconstitutional. Once this has been done, a consultation paper containing repeal and amendment proposals will be submitted to the Department for further discussion.
Legislation administered by the Department of Public Works	The 67 statutes administered by the Department of Public Works have been analysed to determine which are redundant, obsolete or unconstitutional. A draft repeal Bill and draft consultation paper have been prepared. Once this has been reviewed the consultation paper containing repeal and amendment proposals will be submitted to the Department for further discussion.
Legislation administered by the Department of Trade and Industry	The approximately 220 statutes administered by the Department of Trade and Industry are being analysed with a view to determining which are redundant, obsolete or unconstitutional. Once this has been done, a consultation paper containing repeal and amendment proposals will be submitted to the Department for further discussion.
Legislation administered by the Department of Justice and Constitutional Development	The 385 statutes administered by the Department of Justice and Constitutional Development will be analysed to determine which are redundant, obsolete or unconstitutional. Once this has been done, a consultation paper containing repeal and amendment proposals will be submitted to the Department for further discussion. A review of the constitutionality of the Criminal Procedure Act 51 of 1977 was finalised and the report submitted to the Department during 2001 as Project 101: The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing.
Repeal of the Transkei Penal Code and the Dangerous Weapons Act, No. 71 of 1968	A consultation paper on the repeal of the Transkei Penal Code and the Dangerous Weapons Act 71 of 1968, as far as it is still in force in the territory of the former Transkei, is being drafted following a request from the Judge President of the Transkei High Court.

On 9 September 2006 the Commission approved the inclusion of an investigation into the recognition of Hindu Marriages into the programme. This investigation is conducted as part of project 25. Preliminary research with a view to developing an issue paper has commenced. The researcher is also studying the January 2007 judgement of the High Court in the Durban and Coast Local Division in **Suchitra Singh v Jailall Ramparsad and Others**.

The Commission approved the publication of a discussion paper on the review of the Interpretation Act 33 of 1957 on 9 September 2006. A media statement announcing the availability of discussion paper 112 was released on 6 October 2006. The closing date for comment on discussion paper 112 was initially 31 December 2006. In January 2007 the closing date was extended to 28 February 2007 to afford respondents more time to comment. In February 2007 the closing date was further extended to 30 March 2007 in view of the limited responses received.

The Interpretation Act was drafted during an era of parliamentary sovereignty. It is not in line with the current constitutional dispensation or with the principles and practices of drafting and interpretation adopted by the legislature and the courts since 1994.

The following are the main issues dealt with in the discussion paper on the review of the Interpretation Act 33 of 1957 and the proposed Interpretation of Legislation Bill:

- The meaning of the word legislation [original and assigned legislation; primary legislation (parliamentary and provincial legislation and municipal by-laws) and legislation issued by the executive (subordinate or secondary legislation); new legislation and old order legislation].
- The definitions to be included in the definition clause in the proposed Interpretation of Legislation Bill.

- The purpose of the Interpretation of Legislation Bill.
- The application of the Bill.
- Some principles of interpretation including the supremacy of the Constitution.
- Legislation to be interpreted in the light of changing circumstances.
- Inconsistencies between provisions in the same legislation.
- Elements of legislation to be considered during interpretation (intrinsic information) such as preambles, long titles, marginal notes, headings to chapters or sections, paragraphing and punctuation, footnotes, endnotes, diagrams and examples, and schedules.
- Extrinsic information as aids to interpretation such as preceding discussions and speeches in Parliament and explanatory material.
- Commencement of legislation.
- Exercise of powers before commencement of legislation.
- Publication of legislation.
- Parliamentary scrutiny of subordinate legislation.
- The expiration or demise of legislation including express repeal of legislation; effect of repeal; and implied repeal.
- Proposals for the implementation of measures for sun-setting of subordinate legislation whereby all subordinate legislation will have a limited life, for example five years or ten years, after which the legislation has to be scrutinised and re-enacted otherwise it ceases to be of force.
- The extent to which legislation binds the State.
- The application of the functus officio doctrine and revocation of administrative decisions generally and proposals for reform of section 10(1) of the Interpretation Act.
- Notification in the Gazette of official acts performed in terms of legislation.
- Directory and peremptory words in legislation.
- Amendment and repeal of subordinate legislation.
- The exercise of powers and performance of duties.
- The power to appoint persons.
- The power to differentiate when issuing subordinate legislation.
- Delegation of power.
- Transfer of legislation, powers and functions.
- A list of general definitions for words and expressions often used in legislation.
- Definitions in old order legislation.
- Derivatives and other grammatical forms of defined words and expressions.
- Gender provisions.
- Reckoning of time and measurement of distance.
- Standard provisions in legislation such as prescribed forms; methods of serving, delivering, sending or submitting documents; consultation procedures; and decisions of bodies consisting of members, quorums of bodies and distant participants.

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.

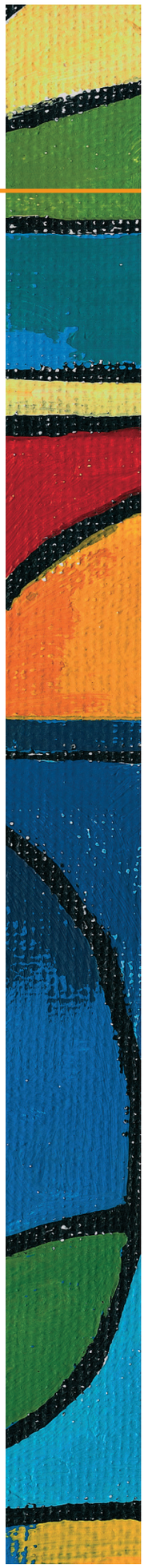
The finalisation of an amended draft report on community dispute resolution structures is receiving attention. Although a project committee meeting to discuss the draft Bill and re-assess the membership of the project committee is still pending as most of the active members are not available, the researcher, the project leader, Professor Schärf and Professor Cartwright have considered the draft Bill and a draft report is being finalised. In their consideration of the draft Bill, Professors Schärf and Cartwright had encountered a few problems which they brought to the attention of the project leader and the researcher. These are being attended to.

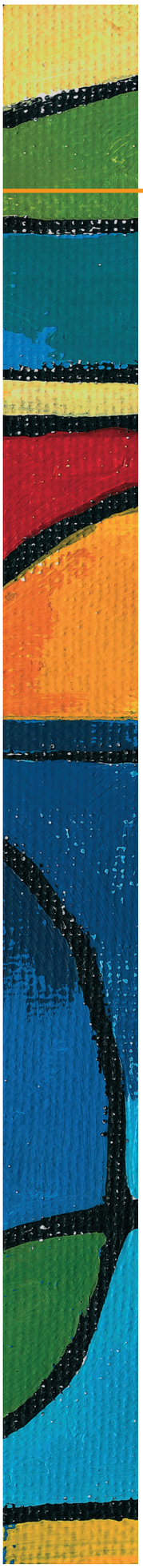
Although the project committee decided that a discussion paper on family mediation would be completed subject to the finalisation of the investigation into community dispute resolution structures, preliminary research is being carried out whenever time allows as the researcher has been appointed to serve on the task team on Judicial Functions of Traditional Leaders: Policy Formulation.

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.





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The finalisation of a draft discussion paper on adult prostitution has been receiving attention subject to the finalisation of the investigations into protected disclosures (project 123), stalking (project 130) and trafficking in persons (project 131). A draft discussion paper will be finalised during the second quarter of 2007.

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 and is also subject to the researcher's involvement in the implementation of the Service Charter for Victim's of Crime and the review of the criminal justice system.

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. The project leader approved final amendments to a proposed draft Bill containing about 150 clauses in July 2006. The draft Bill was submitted to the project committee in September 2006. A draft report will be submitted to the project leader during the third quarter of 2007.

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. A draft report was submitted to the Department of Justice and Constitutional Development in October 2005. The completion of the report is subject to departmental discussions. The draft report has been submitted to the project leader.

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 which is discussed in the 05/06 annual report.

A series of workshops hosted by the Commission were held in February and March 2006. The closing date for comments on the discussion paper was extended to 31 May 2006. The researcher presented the draft Bill at a series of workshops hosted countrywide during July 2006 by the E-law Committee of the Law Society of South Africa. Written submissions received on the discussion paper have been collated. The draft Bill has been amended in accordance with the comments received and submitted to the project committee for comment in March 2007. A draft report is being finalised.

Project 125 - Prescription periods

No comprehensive review of all the provisions providing for different prescription periods - whether of a contractual or delictual nature - has been undertaken. When reporting on the Bill which subsequently became the Legal Proceedings Against Certain Organs of State Act 40 of 2002, the Portfolio Committee on Justice and Constitutional Development recommended that the Minister for Justice and Constitutional Development be approached to request the Commission to include in its programme an investigation into the harmonisation of the provisions of existing laws providing for different prescription periods. An investigation into the review of prescription periods was subsequently included in the Commission's programme. An issue paper was published for general information and comment in August 2003 and is discussed in the 03/04 annual report. The researcher involved in the preparation of a

draft discussion paper was transferred to another department. The project is not currently receiving attention and it will be assigned to a new researcher when the three vacant posts of Senior State Law Adviser are filled.

Project 126 - Review of the rules of evidence

Professor Schwikkard was requested to prepare a draft discussion paper on the principle of relevance and the hearsay rule. The project committee considered a revised discussion paper on 10 August 2004, after which the committee requested Professor Schwikkard to do further research with the assistance of Justice Nugent. Justice Harms (project leader) and Justice Nugent (project committee member) resigned during February 2005.

The Commission directed on 9 September 2006 that the project should proceed and that new project committee members should be appointed to replace Justice Harms and Nugent. The appointment of new project committee members was pursued, but abandoned because of limited response and in view of the allocation of the researcher to Project 25: Statutory law revision, the Commission's highest priority at present.

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 term and reforms that could be effected in the medium to long terms.

The Commission decided on 30 September 2005 that a proposal should be made to the Department of Trade and Industry that the National Credit Bill, 2005 should provide 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 will consider the repeal of section 74 amendments along the lines suggested. The Commission will be requested to approve the removal of this investigation from the Commission's programme.

Project 128 – Review of aspects of the law of divorce

The researcher's involvement in the Children's Bill process has contributed to the delay in finalising a draft discussion paper. A newly appointed researcher has also been allocated to the project. Questionnaires received from members of the public on problems experienced with access to children after divorce and divorce procedures are being collated. Questionnaires for the family advocates and for legal practitioners and social workers dealing with divorce are being developed. Preliminary research with a view to developing a draft discussion paper has commenced.

Project 129 – Review of aspects of matrimonial property law

Preliminary research with a view to developing an issue paper is conducted when time allows while the researcher is still involved in Project 122.

Project 131 – Trafficking in persons

An issue paper was published for general information and comment in January 2004 and is discussed in the 03/04 annual report.

The Commission approved a discussion paper on trafficking in persons for publication in March 2006. The discussion paper is expounded in the 05/06 annual report. The closing date for comments on the discussion paper had been 30 June 2006, but was extended to 31 July 2006. As part of the consultative process, meetings were held to provide interested parties with an opportunity to discuss the Commission's preliminary recommendations as set out in the discussion paper and draft Bill. Consultative meetings were held in Pretoria on 6 June 2006, in Nelspruit on 13 June 2006, in Cape Town on 20 June 2006, in the Eastern Cape on 22 June 2006, in Durban on 27 June 2006, and in Bloemfontein on 29 June 2006.

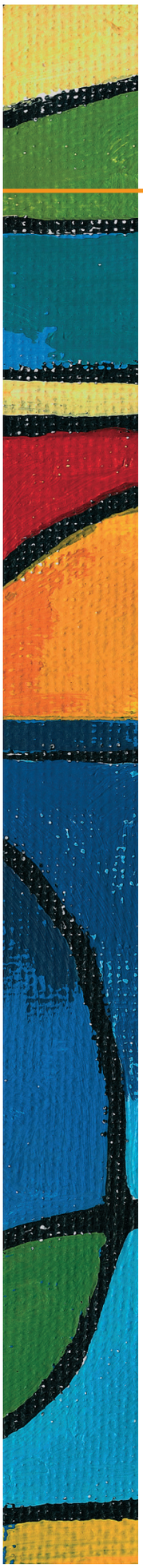
Comments on the discussion paper have been collated. Comment by the Department of Justice and Constitutional Development is awaited.

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

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

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

The project was assigned to the researcher in June 2005. A draft discussion paper is being finalised.



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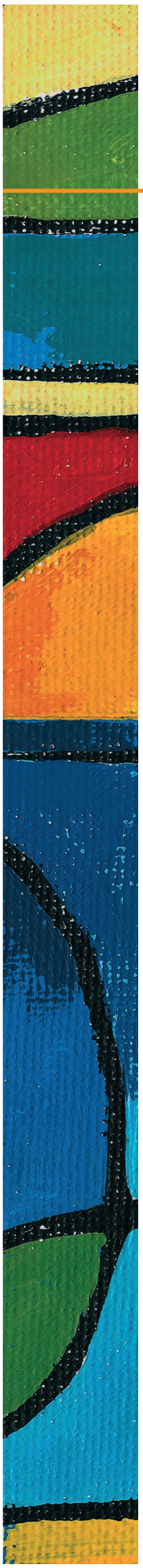
Project 134 – Administration of estates

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 and is discussed in the 05/06 annual report. Comments are being evaluated. The researcher is exploring interim solutions in consultation with the Office of the Chief Master of the High Court.



CHAPTER 4

REPORTS COMPLETED

Project 118: Domestic partnerships

A report on domestic partnerships was approved in the 2005/2006 reporting year. In the 2005/2006 annual report it was mentioned that the report had still been under Ministerial consideration. Subsequently the report was published on 28 September 2006 and the Civil Union Act 17 of 2006 commenced on 30 November 2006.

The term "domestic partnership" is used in the report to describe all established permanent life partnerships, whether between people of the same or the opposite sex, which currently exist outside the ambit of the institution of marriage.

The report deals with the lack of legal recognition and regulation of permanent life partnerships against the background of section 9 of the Constitution which, amongst others, prohibits discrimination on the grounds of sexual orientation and marital status. It seeks to establish a new family law framework that will provide for marriage (irrespective of the system under which it is celebrated) as well as various other permanent life partnerships.

In the recent past, the courts have carried much of the responsibility for drafting family law and policy with regard to permanent life partnerships by creatively applying non-family laws, including the law of unjust enrichment, estoppel and contract. The Constitutional Court has furthermore, on more than one occasion, upheld constitutional challenges under the equality clause on the ground of sexual orientation. Furthermore, with the ad hoc extension of statutorily defined benefits (sometimes including same-sex and opposite-sex partners into the definition of "spouse" for various purposes) there has been an increasing recognition of these relationships outside marriage. These developments have, however, led to a patchwork of laws that do not express a coherent set of family law rules.

In its comparative study the Commission has furthermore researched various models for recognition of permanent life partnerships in other jurisdictions. Owing to the diverse nature and the wide variety of relationships under discussion, it has not been possible to select only a single model to regulate all partnerships. Also, none of the researched models emanated from a constitutional dispensation with an equality clause exactly like section 9(3) of the Constitution. These facts meant that a uniquely South African solution had to be found.

The aim was to combine different models in such a way as to afford the desired protection to the parties in established permanent life partnerships as well as third parties with an interest in the regulation of these relationships, without imposing on individuals' autonomy or over-regulating the position. The constitutionality of the recommended models was the determinative factor.

Two judgments of the Constitutional Court, namely **Volks v Robinson** and **Minister of Home Affairs v Fourie** in particular served as a guide to the Commission in making its final recommendations. In both the Volks and Fourie cases the majority judgments left it to the legislature to correct the defects currently existing in the law.

In **Minister of Home Affairs v Fourie** the question of the exclusion of same-sex couples from the institution of marriage was raised. The State and amici in their appeal to the Constitutional Court acknowledged that partners to same-sex relationships suffer discrimination and that this violation of their rights had to be corrected. However, they objected against any remedial measures being assimilated into the traditional institution of marriage or permitting unions of same-sex couples to be referred to as marriages. The answer, they said, was to provide appropriate alternative forms of recognition to same-sex family relationships.

The Constitutional Court stated that the need to accord an appropriate degree of respect to the traditional concept of marriage did not as a matter of law constitute a bar to vindicating the constitutional rights of same-sex couples to take part in the institution of marriage. The Court furthermore considered and rejected the possibility that there might be a justification, in terms of section 36 of the Constitution, for the violation of the equality and dignity of same-sex couples wanting to get married. It found that the failure of the common law definition of marriage and section 30(1) of the Marriage Act of 1961 (the marriage formula) to provide for same-sex couples to celebrate their unions in the same way that it enable opposite-sex couples, is discriminative.

However, since this matter touches deep public and private sensibilities and has great public significance, the Court thought it best to leave it to Parliament to correct the defect in the law. Parliament was provided with one year to effect this change, failing which the marriage formula in the Marriage Act of 1961 would forthwith be read to refer to "husband", "wife" and "spouse". The effect of such an amendment would be to include same-sex couples in the institution of marriage.

The Court acknowledged that there are different ways in which the legislature could correct the defects and pointed to certain principles of special constitutional relevance to guide Parliament. It stated clearly that any option would have to be considered within the framework of the judgment. The Court furthermore warned against a remedy that would, on the face of it, provide equal protection but, in effect, produce new forms of marginalisation. The Court further said that the chosen remedy had to be as generous and accepting towards same-sex couples as towards opposite-sex couples.

The Court's views set out above, served to confirm the Commission's decision to abandon two of the options previously canvassed in the Discussion Paper as possible solutions to the problem, namely that of civil unions and secondly, the separation of the civil and religious aspects of marriage.

The Commission's final legislative recommendations for the recognition and regulation of permanent same-sex life partnerships are therefore as follows:

a) Generic Marriage Act

The Commission recommends, as its first choice for legal reform, the amendment of the Marriage Act of 1961. A definition of marriage should be inserted in the Marriage Act of 1961 that makes the Act applicable to all couples wanting to get married, irrespective of their religion, race, culture or sexual orientation. The Commission is of the opinion that this amendment will give effect to the equality provision set out in section 9 of the Constitution and complies with the Constitutional Court's decision in **Minister of Home Affairs v Fourie**.

The Commission supports the view of the Canadian government in this regard where it stated that a government cannot pick and choose whose rights they want to defend and whose rights they will ignore. If the fundamental rights of one minority can be denied, so potentially can those of others.

b) Orthodox Marriage Act

However, from a policy viewpoint, the Commission considers it advisable not to disregard the strong objections that were raised against the recognition of same-sex marriages by many respondents to the Commission's Discussion paper. Concern for these objections is an important consideration in the strive to accommodate religious sentiments to the extent that it is constitutionally possible.

As stated above, it is not possible to attain this goal through a separate institution such as a civil union as has been done in some countries. In terms of the Constitution, the State has to accord equal protection to all people. However, the Constitution does allow for specific protection of religious practices under section 15 (3).

The Commission therefore recommends, as its second choice, the enactment of an Orthodox Marriage Act in addition to the recommended amendment of the Marriage Act of 1961. In this context "orthodox" refers to the "confirmation of closely followed traditional beliefs and practices of a religion". This Orthodox Marriage Act will be applicable to opposite-sex couples only. In terms of this proposal, the amended Marriage Act will be referred to as the Reformed Marriage Act.

A separate Act, the Orthodox Marriage Act, will therefore provide State sanction for the solemnisation of a marriage according to the specific dogma of a religious group in its own sphere of operation. The Commission does not believe that such a sanction will impact on the dignity of same-sex couples who do not subscribe to such a church's dogma.

If Parliament accepts these recommendations, religious marriage officers will have the choice to decide in terms of which Act they wish to be designated as marriage officers. This will be a matter best left for individual faiths to decide. The State will designate its civil marriage officers in terms of the Reformed Marriage Act.

The Constitutional Court referred to this combination of the two pieces of legislation as a firm proposal. It stated that one of the features of this option would be to provide for equal status for all marriages, irrespective of the system under which they are celebrated. It is foreseen that the Orthodox Marriage Act will ultimately resort with the Islamic Marriage Act, the Recognition of Customary Act and perhaps a Hindu Marriage Act in a religious or cultural marriages category of legislation. The Reformed Marriage Act will be the generic Act which will be open to everybody and any religions that choose not to make use of their own unique Acts.

c) Domestic Partnerships Act

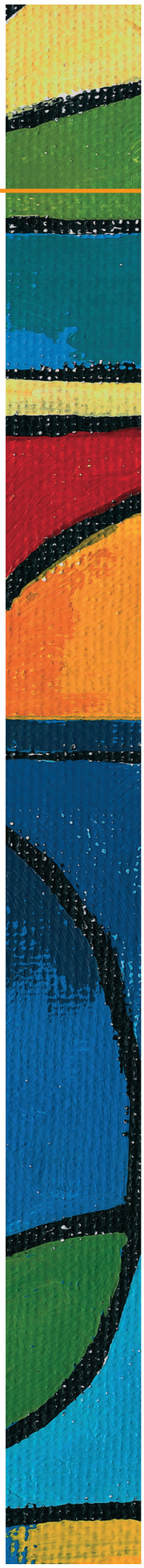
The Commission also considered the lack of legal protection for same- and opposite-sex couples who do not wish to or are unable to get married. It was noted that not every family today is founded on a marriage recognised as such in law.

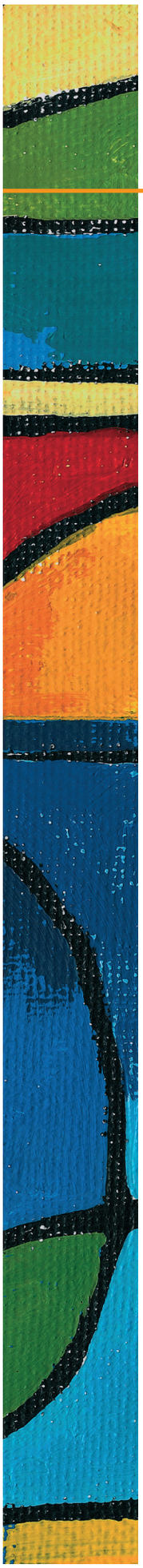
In the Constitutional Court case of **Volks v Robinson** the court dealt with the question of maintenance of a surviving opposite-sex partner after the death of her life-partner. The Court found that in the context of the provision for maintenance of the survivor of a marriage by the estate of the deceased, it is appropriate not to impose an obligation posthumously that did not exist before death. Nevertheless, the Court expressed concern for the plight of vulnerable parties (mostly women and children) in cohabitation relationships where the structural dependence of women in marriage results in real suffering and misery. It stated that the plight of these women is the result of the absence of any law that places rights and obligations on people who are partners within relationships during their lifetimes. The Court indicated that the answer lies in the legal regulation of partnerships through legislation in order to ensure that vulnerable partners in such relationships are not taken advantage of.

The Commission therefore recommends the enactment of a Domestic Partnerships Act to provide for the legal recognition and regulation of registered and unregistered partnerships.

(i) Registered partnerships

The Commission recommends that partners who do not wish to get married, but nevertheless want to commit themselves formally to support and assist each other, can do so by complying with a simple prescribed registration procedure before a registration officer who will be a public servant appointed by the Minister of Home





CHAPTER 4

REPORTS COMPLETED

Affairs for that purpose. A registered partnership is ended when one or both partners die or can be terminated through a simple procedure before a registration officer. However, in order to protect the interests of children, registered partners who have minor children from the registered partnership have to apply to the court for a termination order. The court will then ensure that the best interests of the child are attended to.

The Commission recommends that partners who want to register their relationship comply with requirements that are comparable to that of marriage, such as affinity. The Commission further recommends that there be no automatic community of property between registered partners. It would, however, be open to the parties who register their partnership to conclude a written agreement which regulates the consequences of their relationship, including the division of property when the relationship ends. In the event of a dispute regarding the division of property that both have contributed to, the court will have the final say about a fair and equitable division.

A significant recommendation is that registered partners be obliged to support each other. This obligation forms the legal basis for claims by registered partners that are usually only available to married couples, such as pension and medical aid fund benefits. Ad hoc legislative provision is currently already made for some of these benefits.

As is the case between married partners, where a child is born into a registered partnership between persons of the opposite sex, the male partner in the registered partnership is deemed to be the biological father of that child. This presumption is refutable.

(ii) Unregistered partnerships

Finally, the Commission considered the legal position of same- and opposite-sex couples who are not married and who have not registered their relationship for whatever reason. Many women are economically dependent on men and are left destitute and suffer hardship on the termination of the relationship. In the case of the very poor and illiterate the effects of vulnerability are more pronounced. It would be a fallacy to proclaim that these women have a real choice as to whether they want to get married or have their relationships registered, or not.

The Commission therefore recommends that the Domestic Partnerships Act provides for the regulation of the consequences of terminated unregistered partnerships.

Where partners have not registered their relationship, one or both partners can approach a court for assistance after the relationship has been terminated by separation of the partners or due to the death of one of the partners. This would be the case where there is a dispute regarding the financial consequences of the former relationship. In terms of this recommendation, the court then has the discretion to make a maintenance order in favour of a former partner and an intestate succession order where there is no valid will. The court may also make an order for the division of property to which both partners have contributed. No arbitrary definition is given for unregistered partnerships and a court deciding such an application must have regard to all the circumstances of the relationship with the view to reaching an equitable outcome. Contributions by women to a joint household through labour and emotional support have to be acknowledged.

The Commission further recommends that some legal consequences of the termination of certain multiple (polygamous-like) unregistered partnerships also be regulated. These consequences are maintenance after separation, maintenance of a surviving partner, intestate succession and property division. For these purposes, a court has a discretion to consider the circumstances of both relationships to ensure an equitable outcome when making an order.

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

The report was submitted to the Minister for Justice and Constitutional Development in January 2007 and it is still under Ministerial consideration.

Project 130: Stalking

The report was submitted to the Minister for Justice and Constitutional Development in November 2006 and it is still under Ministerial consideration.

CHAPTER 5

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.

In the year under review the Commission was privileged to host the following visits and work attachments.

- Study visit by two Commissioners and one researcher from the Law Reform Commission of Tanzania, 8 – 12 May 2006
- Work attachment of a senior researcher of the Law Reform and Development Commission of Namibia, 22 May – 8 June 2006
- Briefing of the UK Under Secretary of State (Baroness Ashton of Upholland) on 6 September 2006
- A Sudanese delegation from their Ministry of Legal Affairs in terms of agreement between governments (Four Sudanese Judges hosted from 19 – 20 October 2006 acquainting them with the functioning of the SALRC)
- Study visit by Commissioners from Malawi Law Commission, 30 November – 1 December 2006
- Work attachment of Secretary of Namibian Law Reform Commission and a researcher, 19 – 30 March 2007

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 legal adviser of the Department of Transport to discuss legislation identified by the Commission as possibilities for repeal or amendment	20 Oct 2006
	Attendance of workshop of legal advisers of the KwaZulul-Natal Provincial Legislature on the province's Rationalisation of Laws Project	21 – 22 Nov 2006
	Workshop hosted by the National Intelligence Agency on NIA's draft Protection of Information Act	29 March 2007
Project 63: Review of the law of insolvency	Seventh Colloquium on the International Exchange of Experience on Insolvency Law	17 to 19 May 2006
	Updates at seminars of Association of Insolvency Practitioners in Southern Africa	18 Oct 2006 and 1 March 2007
	Briefing of Labour Chamber at NEDLAC on status of insolvency legislation	23 Nov 2006
Project 82: Sentencing	Open Society Foundation for South Africa (OSF-SA) - a two-day conference focusing on sentencing in South Africa	25 – 26 Aug 2006
Project 90: Customary law	Briefing Ziona Tanzer, a Crowley Fellow of the Joseph R Crowley Program in International Human Rights, Fordham University School of Law, and her delegation on "Comparing situations of women living under regimes of culture (African customary law) post Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another 2005 (1) SA 580 (CC) to that of women living under regimes of religion (Islam), in a post-Apartheid liberal democracy"	30 – 31 May 2006
	Briefing (together with Legislative Development) the Minister on the proposed draft Bill on the Reform of Customary Law of Succession	14 March 2007
	Met and briefed Adv Vas Soni, who was representing the Minister of Home Affairs in a High Court application in Durban on the Recognition of Customary Marriages Act 120 of 1998	21 August 2006
Project 105: Terrorism	Informal meeting at the Department of Foreign Affairs with the UN Special Rapporteur on Human Rights and Counter Terrorism measures, Mr Martin Scheinin, on South Africa's counter terrorism measures	19 April 2006
Project 107: Sexual offences	Briefing to Tanzanian Law Reform Commission Regarding Sexual Offences Bill and Adult Prostitution	9 – 10 May 2006
	Briefing of Portfolio Committee on Justice and Constitutional Development re: Criminal Law (Sexual Offences and Related Matters) Amendment Bill	11 May 2006 18 – 23 Jun 2006 1 Aug 2006 7 – 11 Aug 2006 14 – 16 Aug 2006 21 – 25 Aug 2006 28 – 31 Aug 2006 11 Sept 2006 18 Sept 2006 9 – 10 Oct 2006 16 – 20 Oct 2006 25 – 27 Oct 2006
	Briefing to Namibian Law Reform Commission regarding Sexual Offences Bill and Adult Prostitution	26 May 2006 20 March 2007

CHAPTER 5

PUBLIC RELATIONS

Project	Activity	Date
Project 110: Review of the Child Care Act	Presentation on the Children's Act, focusing on sections providing for mediation, to Family Life South Africa (FAMSA)	9 May 2006
	Workshops for interdepartmental Children's Bill Steering Committee, provinces and non-governmental organisations on the Children's Amendment Bill	12, 18 and 19 May 2006
	Presentation on the Children's Act to the Law Society of the Northern Province at a family law seminar hosted by the Gauteng Law Society	31 May 2006
	Workshops with provinces and NGOs on redrafted chapters of the Children's Amendment Bill	7, 9, 12 and 13 June and 17 July 2006
	Training of staff of the University of the Western Cape on the Children's Act and Children's Amendment Bill to prepare them for the training of the officials of the Western Cape Department of Social Services	20 and 21 June 2006
	Meeting with members of the South African Association of Mediators on the implications of the Children's Act for mediation in South Africa	5 July 2006
	Present training on the Children's Act and Children's Amendment Bill to the senior officials of the Western Cape Department of Social Services	7 and 8 August 2006
	"SAFM" radio station: participate in programme, giving inputs on and responding to live telephonic public enquiries on the Children's Act	11 August 2006
	"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	14 August 2006
	Social Services Policy Workshop with relevant state departments, provinces and NGOs	24 and 25 August 2006
	Briefing to the KwaZulu-Natal provincial legislature on the Children's Amendment Bill	5 October 2006
	Workshop on the National Policy Framework for the Children's Act and Children's Amendment Bill with relevant state departments, provinces and NGOs	11 October 2006
	Workshop arranged for the parliamentary committees to discuss the Children's Amendment Bill	12 and 13 October 2006
	Presentation on the Children's Act, focusing on sections providing for mediation, to the South African Association of Mediators (SAAM)	15 November 2006

Project	Activity	Date
	Meeting with officials from the Department of Justice and Constitutional Development (Court Services and Legislative and Constitutional Development) on the Children's Act and the Children's Amendment Bill	20 November 2006
	Seminar on international developments in respect of corporal punishment and how they impact on South Africa (Children's Amendment Bill deals with corporal punishment of children)	30 November 2006
	Consider and evaluate inputs made during and comments resulting from the June and July workshops with officials from the Department of Social Development	7, 8, 13 and 14 December 2006 and 30 January 2007
	Meeting with the drafters of the Children's Act regulations	17 January 2007
	Workshop for family advocates on the regulations for the Children's Act	24 January 2007
	Presentation on and attendance of the new developments in the Children's Act and the Children's Amendment Bill at the International Family Law Conference hosted by Miller & Du Toit Attorneys	25 and 26 January 2007
	Meeting with the Department of Social Development on the Children's Amendment Bill	30 January 2007 and 5 March 2007
	Meeting of the interdepartmental Children's Bill Steering Committee on the Children's Amendment Bill	7 February 2007
	Meeting with the State Law Advisers on the technical aspects of the redrafted Children's Amendment Bill	2 March 2007
	Meeting of the Select Committee for Social Services of the National Council of Provinces (NCOP) to discuss negotiating mandates and final mandates from provinces on the Children's Amendment Bill	15, 20 and 27 March 2007
	Meeting with members of the Namibian Law Society to discuss the Children's Bill	23 March 2007
	Workshop for the ANC study group on the Children's Amendment Bill	26 March 2007
Project 122: Assisted decision-making: Adults with impaired decision-making capacity	Briefing Department of Justice and Constitutional Development representative, Chief Directorate Policy Research, Coordination and Monitoring	15 March 2007

CHAPTER 5

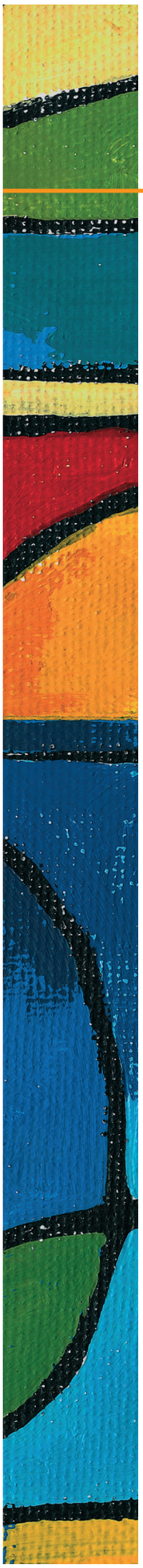
PUBLIC RELATIONS

Project	Activity	Date
Project 123: Protected disclosures	Meetings with the Department of Justice and Constitutional Development	30 May 2006 27 June 2006 25 July 2006 15 Aug 2006 16 Oct 2006
	Briefing to Tanzanian Law Reform Commission	9 – 10 May 2006
	Briefing to Namibian Law Reform Commission	26 May 2006 20 March 2007
Project 129: Review of matrimonial property law	Consultative meeting with Ms Kallie Wolvaardt, Shapiro & Shapiro Inc	7 June 2006
	Consultative meeting with Adv Francis Bosman	11 August 2006
Project 130: Stalking	Briefing to Tanzanian Law Reform Commission	9 – 10 May 2006
	Briefing to SAPS: Detective Services	10 May 2006
	Briefing to Namibian Law Reform Commission	26 May 2006 20 March 2007
Project 131: Trafficking in persons	Briefed the International Association of Women Judges on the international framework on trafficking in persons, the Commission's investigation into trafficking in persons and current legislation that could be used to deal with trafficking cases	7 July 2006
	Presented the Commission's discussion paper and proposed draft Bill on trafficking in persons at a Seminar on Prosecuting Trafficking in Persons in the South African context hosted by the National Prosecuting Authority: Sexual Offences and Community Affairs Unit, Pretoria	10 August 2006
	Participated in the trafficking in persons consultative forum hosted by the National Prosecuting Authority: Sexual Offences and Community Affairs Unit, Pretoria	13 Sept 06
	Gave a lecture on trafficking in persons to master students at the University of Pretoria: Centre for Child Law	21 September 2006
	Met with representative from the University of South Africa regarding their advocacy programme on trafficking in persons	27 September 2006
	Participated in the third session of the Conference of the State Parties to the United Nations Convention against Transnational Organised Crime held in Vienna, Austria	9 -18 October 2006
	Met with delegation from the embassy of the USA to discuss developments regarding trafficking in persons in South Africa	6 February 2007
	Guest speaker at the first annual general meeting of the New Life Centre held in Mayfair, Jhb	10 February 2007
	Briefed the Portfolio Committee of Safety and Security on the Commission's process and preliminary recommendations on trafficking in persons	19 February 2007

Project	Activity	Date
Project 131: Trafficking in persons	Participated in a meeting on the Protocol against the Smuggling of Migrants	21 February 2007
	Briefed representative from the Department of Justice: Policy Unit on the Commission's investigation into trafficking in persons	15 March 2007
	Briefed representative from the Namibian Law Reform Commission on the Commission's investigation into trafficking in persons	22 March 2007
	Presented paper on the Children's Act 38 of 2005 at the Civil Society Regional Conference on Exploring Strategies for Prevention and Intervention to Trafficking and Abuse of Children held in Jhb	27-28 March 2007
	Provided input on Parliamentary Question 297 regarding the Commission's progress on the proposed trafficking legislation and mechanisms in place to raise awareness on trafficking in women and girl children	October 2006
	Drafted the report on the third session of the Conference of the Parties to the United Nations Convention against Transnational Organised Crime	December 2006
	Provided the Department of Justice: International Affairs with comments on the model legislation of the Asian African Legal Consultative Organisation	February 2007
	Wrote the key note address for the Minister of Justice for the Civil Society Regional Conference on Exploring Strategies for Prevention and Intervention to Trafficking and Abuse of Children held in Jhb	March 2007
Project 134: Administration of estates	Attended and presented at Lekgotla of Master of the High Court	6 – 9 Mar 07

INTERNET

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



CHAPTER 6

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 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.

The Commission has received technical and financial support from the German Technical Cooperation (GTZ) in respect of Project 25: Statutory law revision: Review of the Interpretation Act 33 of 1957. The Commission wishes to record its sincere appreciation to the 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.

The Secretariat of the Commission wishes to thank the Commission members for their guidance, dedicated service and commitment to law reform.

The administrative staff members are thanked for their invaluable contribution which is indispensable for the success of the law reform process.

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ANNEXURE A

Publications published by the Commission from 1 January 2002 to 31 December 2006

Year	Reports	Discussion Papers	Issue Papers
2002	Security legislation: Terrorism		Sexual offences: Adult prostitution
	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		Protected disclosures
	Simplification of criminal procedure: Out-of-court settlements in criminal cases		Consolidated legislation pertaining to international co-operation in civil matters
	The publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979		
2003	Sexual offences	Domestic partnerships	Privacy and data protection
	Review of the Child Care Act, 1983		Prescription periods
	Customary law: Traditional courts and the judicial function of traditional leaders		Stalking
	Islamic marriages and related matters		
	The Apportionment of Damages Act 34 of 1956		
	The use of electronic equipment in court proceedings (postponement of criminal cases via audiovisual link)		

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Year	Reports	Discussion Papers	Issue Papers
2004	Review of the Black Administration Act 38 of 1927	Assisted decision-making: Adults with impaired decision-making capacity	Trafficking in persons
	A compensation fund for victims of crime	Consolidated legislation pertaining to international co-operation in civil matters	
	Customary law of succession	Protected disclosures	
		Stalking	
2005		Privacy and data protection	
		Administration of estates	
2006	Domestic partnerships	Trafficking in persons	
	Stalking	Review of the Interpretation Act 33 of 1957	
	Consolidated legislation pertaining to international co-operation in civil matters		

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ANNEXURE B

Issue papers published by the Commission

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

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

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ANNEXURE C

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

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Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
19	22	Review of the law of succession: Disqualification from inheriting, substitution and the succession rights of adopted children	0 7970 1401 2 26 February 1988
20	60	Domicile	0 7970 1435 7 26 August 1988
21	62	The protection of a purchaser of securities	0 7970 1460 8 31 March 1988
22	50	Proposals for the reform of the Bills of Exchange Act	0 621 1198 9 X 19 December 1988
23	46	The giving of security by means of movable property	0 7970 1558 2 7 October 1988
24	52	Investigation into the legal consequences of sexual realignment and related matters	0 7970 1589 2 17 June 1994
25	58	Group and human rights	GPS 003 9160 10 March 1989
26	12	Amendment of section 7(3) of the Divorce Act, 1979	0 7970 1667 8 1 March 1989
27	69	The acquisition and loss of ownership of game	0 7970 1727 5 29 May 1989
28	71	The protection of child witnesses	0 7970 1826 3 12 June 1989
29	63	Insolvency: Requirements for and alternatives to sequestration	0 7970 1854 9 7 August 1989
30	63	Insolvency: Qualifications, appointment and discharge of trustees	0 7970 1954 5 10 November 1989
31	66	Reform of the South African law of bail	0 7970 2078 0 December 1990
32	75	Bribery	0 7970 2126 4 March 1990
33	63	Insolvency: Effect of insolvency on assets, civil proceedings and contracts	0 7970 2185 X November 1990
34	24	Investigation into the courts' powers of review of administrative acts	0 7970 2292 9 December 1991
35	63	Insolvency: Insolvency interdicts	0 7970 2296 1 May 1991

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

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Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
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
	63	Review of the law of insolvency: Draft Bill and explanatory memorandum: Executive summary	0 621 17510 2 August 1996

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Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
67	96	Apportionment of Damages Act, 1956	0 621 17543 9 October 1996
68	85	Aspects of the law relating to AIDS	0 621 17550 1 October 1996
69	94	International commercial arbitration	0 621 176028 December 1996
70	100	Family law and the law of persons: Domestic violence	0 621 17650 8 February 1997
71	86	Euthanasia and the artificial preservation of life	0 621 17724 5 April 1997
72	85	Aspects of the law relating to AIDS: Pre-employment HIV testing	0 621 27350 3 June 1997
73	85	Aspects of the law relating to AIDS: HIV/AIDS and discrimination in schools	0 621 27697 9 August 1997
74	90	Customary law: Customary marriages	0 621 27723 1 September 1997
75	111	Constitutional jurisdiction of magistrates' courts	0 621 27997 8 March 1998
76	90	Customary law: Conflicts of law	0 621 28007 0 April 1998
77	112	Sharing of pension benefits	0 621 280208 April 1998
78	105	Review of security legislation: The Interception and Monitoring Prohibition Act 127 of 1992	0 621 28847 0 November 1998
79	106	Juvenile justice	0 621 28851 9 November 1998
80	85	Aspects of the law relating to AIDS: The need for a statutory offence aimed at harmful HIV-related behaviour	0 621 28854 3 December 1998
81	115	Administrative law	0 621 28895 0 January 1999
82	90	Customary law: Traditional courts and the judicial function of traditional leaders	0 621 29273 7 May 1999
83	94	Arbitration: Domestic arbitration	0 261 29371 7 September 1999

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Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
84	85	Aspects of the law relating to AIDS: Compulsory HIV testing of persons arrested in sexual offence cases	0 621 29372 5 September 1999
85	107	Sexual offences: The substantive law	0 621 29374 1 September 1999
86	63	Review of the law of insolvency	0 621 29377 6 September 1999
87	94	Arbitration: Community dispute resolution structures	0 621 29381 4 September 1999
88	109	The review of the Marriage Act 25 of 1961	0 621 29428 4 September 1999
89	73	Simplification of criminal procedure: The right of the Attorney-General to appeal on questions of fact	0 621 29935 9 January 2000
90	101	The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing	0 621 29936 7 January 2000
91	82	Sentencing: A new sentencing framework	0 621 30070 5 April 2000
92	105	Review of security legislation: Terrorism: Section 54 of the Internal Security Act 74 of 1982	0 621 30184 1 July 2000
93	90	Customary law: Succession	0 621 30205 8 August 2000
94	73	Simplification of criminal procedure: Sentence agreements	0 621 30337 2X December 2000
95	90	Customary law: Administration of estates	0 621 30338 0 December 2000
96	73	Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials	0 621 30683 5 April 2001
97	82	Sentencing: A compensation scheme for victims of crime	0 621 30687 8 April 2001
98	114	Publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979	0 621 30715 7 May 2001

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Serial number of discussion paper	Project number	Title of investigation	ISBN/Publication date
99	108	Computer-related crime: Preliminary proposals for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 30718 1 May 2001
100	73	Simplification of criminal procedure: Out-of-court settlements in criminal cases	0 621 31591 5 October 2001
101	59	Islamic marriages and related matters	0 621 31794 2 December 2001
102	107	Sexual offences: Process and procedure	0 621 31809 4 December 2001
103	110	Review of the Child Care Act	0 621 31810 8 December 2001
104	118	Domestic partnerships	0 621 34421 4 August 2003
105	122	Assisted decision-making: Adults with impaired decision-making capacity	0 621 35014 1 January 2004
106	121	Consolidated legislation pertaining to international co-operation in civil matters	0 621 35115 6 June 2004
107	123	Protected disclosures	0 621 35116 4 June 2004
108	130	Stalking	0 621 35379 5 September 2004
109	124	Privacy and data protection	0 621 36326 X October 2005
110	134	Administration of estates	0 621 36328 6 October 2005
111	131	Trafficking in persons	0 621 36526 2 March 2006
112	25	Statutory revision: Review of the Interpretation Act 33 of 1957	0 621 36904 7 September 2006

ANNEXURE D

Members of the Commission in order of appointment

(Present members are marked with an asterisk.)

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	27/02/1976 to 31/05/1982
Judge G Viljoen, 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
Justice Y Mokgoro*, Justice of the Constitutional Court	03/11/2000 to 31/12/2006 01/01/2007 to date
Vice-Chairpersons	
Judge President N James	28/09/1973 to 13/07/1977
Judge G Viljoen, 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
Justice Y Mokgoro, Justice of the Constitutional Court	01/01/1999 to 02/11/2000
Judge M L Mailula, Judge of the High Court	01/01/2002 to 31/12/2006
Judge W L Seriti, Judge of the High Court*	01/01/2007 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	26/03/2001 to 31/12/2006
Ms T Madonsela*	01/01/2007 to date

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ANNEXURE D

Title/Name	Term of office
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	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 D

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	01/01/1996 to 31/12/2006
Mr P Mojapelo	01/01/1996 to 31/12/2001
Ms Z Seedat	01/01/1996 to 31/12/2006
Judge M L Mailula	01/01/1999 to 31/12/200
Prof C E Hoexter	27/10/1999 to 31/12/2004
Judge C T Howie	03/11/2000 to 31/12/2006
Judge W L Seriti	01/01/2002 to 31/12/2006
Professor C Albertyn*	01/01/ 2007 to date
Judge D Davis*	01/01/ 2007 to date
Mr T Ngcukaitobi*	01/01/ 2007 to date
Advocate D Ntsebeza SC*	01/01/ 2007 to date
Professor P Schwikkard*	01/01/ 2007 to date
Advocate M Sello*	01/01/ 2007 to date

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ANNEXURE E

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 (until 31 December 2006)
	Mr A Jooste	Chief Magistrate, Cape Town

ANNEXURE E

Arbitration: Community dispute resolution structures (continued)	Prof I P Maithufi	Full-time member, Law Reform Commission (until 31 December 2006)
	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
	Justice Y Mokgoro	Chairperson, Law Reform Commission (from 1 January 2007)
	Ms Z Seedat	Member, Law Reform Commission Attorney, Durban (until 31 December 2006)
	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

Domestic partnerships	Judge C Howie (Project leader)	Member, Law Reform Commission (until 31 December 2006)
	Ms B Goldblatt	Centre for Applied Legal Studies, WITS
	Prof C Hoexter	WITS Law School
	Prof T Mosikatsana	University of the Witwatersrand

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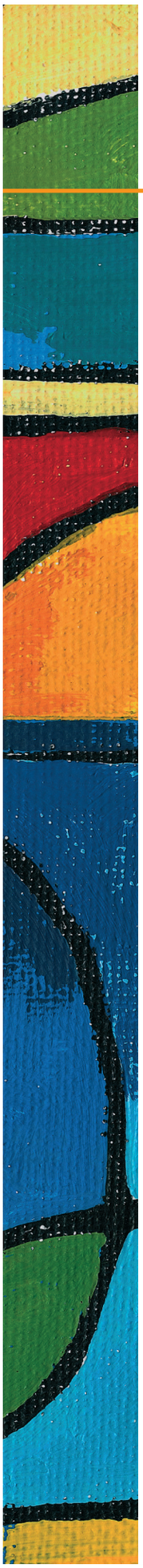
Privacy and data protection	Judge C Howie (Chairperson)	President of the Supreme Court of Appeal
	Prof J Neethling (Project leader)	University of South Africa
	Prof I Currie	University of the Witwatersrand
	Ms C da Silva	SA Insurance Association
	Ms C Duval	SANTAM
	Prof B Grant	University of Natal
	Ms A Grobler	Banking Council of SA
	Mr M Heyink	Chairperson, E-commerce committee, Law Society of SA
	Ms S Jagwanth	University of Cape Town
	Prof P J Schwikkard	Member, Law Reform Commission (since 1 January 2007)
	Ms A Tilly	Open Democracy Advice Centre

Review of the law of evidence	Prof P J Schwikkard	Member, Law Reform Commission (since 1 January 2007)
	Judge W Seriti	Vice-Chairperson, Law Reform Commission (since 1 January 2007)
	Prof L Fernandez	University of the Western Cape
	Adv T Masuku	Cape Bar

ANNEXURE F

Present programme of the Commission

Project number	Title
25	Statutory law revision
94	Arbitration: Community dispute resolution structures Arbitration: Family mediation
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



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ANNEXURE G

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

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Project number	Title	Year of report	Reference number of published report	Result
10	Draft convention for a uniform law of agency of an international character in respect of the sale of goods	1974	Not published	No legislation recommended
11	Investigation into the common law rule that interest may not accrue beyond the principal debt	1974	RP 18/1975	Recommendations not implemented, but see section 68A of the Insurance Act 27 of 1943 in respect of policy loans
12	Review of the law of divorce:			
	Report	1977	RP 57/1978	Act 70 of 1979 passed, see also project 40
	Section 7(3) of Act 70 of 1979	1991	ISBN 0 621 14140 2	Act 44 of 1992 passed, see also projects 100 and 114
13	Investigation into the right of recourse of spouses in respect of contributions towards necessaries for the joint household	1974	RP 79/1975	Act 13 of 1976 passed, see also project 15
14	The prescribing of a rate of interest in respect of debts where no rate of interest applies in law	1974	Not published	Act 55 of 1975 passed
15	The matrimonial property law with special reference to the Matrimonial Affairs Act, 1953, the status of the married woman, and the law of succession in so far as it affects the spouses	1982	RP 26/1982	Act 88 of 1984 passed, see also projects 41 and 51
16	Investigation into the application of set-off in insolvency	1975	Not published	No legislation recommended, see project 63
17	Examination of the convention on the form of an international will	1975	Not published	No legislation recommended, see project 22
18	Investigation into the 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

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

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

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Project number	Title	Year of report	Reference number of published report	Result
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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in May 1998

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Project number	Title	Year of report	Reference number of published report	Result
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 re-alignment and related matters	1995	RP 32/1996 ISBN 0 621 17334 7	Act 49 of 2003 passed
53	Investigation into the amendment of section 26 of the Insolvency Act 24 of 1936	1983	Not published	Act 84 of 1984 passed, see also project 63
54	Committal to prison in respect of debt	1985	ISBN 0 621 11346 8	See project 74
55	Removal of certain restrictions in respect of land	1984	Not published	No legislation recommended
56	Submission of a question of law to the Appellate Division of the Supreme Court relating to the calculation of finance charges under the Limitation and Disclosure of Finance Charges Act 73 of 1968	1976	Not published	Ex parte Minister of Justice 1978 2 SA 572 (A)
57	Anton Piller type of orders	1987	Not published	Recommendations not implemented
58	Group and human rights:			
	Interim report	1991	Report: ISBN 0 621 14128 3 Summary: ISBN 0 621 14127 5	Act 200 of 1993 passed
	Final report	1994	RP 66/1995 ISBN 0 621 16727 4	Made available to the Constitutional Assembly

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Project number	Title	Year of report	Reference number of published report	Result
59	Islamic marriages and related matters	2003	RP 210/2003 ISBN 0 621 34989 5	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in July 2003
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, 24 of 1936	1990	(Unpublished/ Informal)	Section 1 of the Insolvency Amendment Act 6 of 1991 enacted
	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

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Project number	Title	Year of report	Reference number of published report	Result
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Recommendations incorporated in the Children's Act 38 of 2005
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

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Project number	Title	Year of report	Reference number of published report	Result
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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in December 2000.
	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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in August 2002
	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. Submitted to the Minister in August 2002
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

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Project number	Title	Year of report	Reference number of published report	Result
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Act 95 of 1996 passed
77	Constitutional models	1991	Report: ISBN 0 621 14239 5 Summary: ISBN 0 621 14197 6	No legislation recommended
78	Interest on damages	1994	ISBN 0 621 16231 0	Act 7 of 1997 passed
79	Natural fathers of children born out of wedlock	1994	RP 55/1995 ISBN 0 621 16706 1	Act 86 of 1997 passed
80	Accession to the Hague Convention on the Civil Aspects of International Child Abduction	1992	Not published	Act 72 of 1996 passed
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. Submitted to the Minister in December 2000
	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

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Project number	Title	Year of report	Reference number of published report	Result
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	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	Recommendations regarding victims' need for information of their alleged offenders' HIV status have been included in Chapter 5 of the Criminal Law (Sexual Offences) Amendment Bill which is 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 submitted to the Department of Health in 1999
87	Jurisdictional lacuna in the Supreme Court Act, 1959	1994	RP 64/1995 ISBN 0 621 16723 1	Act 122 of 1998 passed

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Project number	Title	Year of report	Reference number of published report	Result
88	The recognition of a class action in South African law	1998	RP 181/1999 ISBN 0 621 29818 2	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in September 1998
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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in September 1999
	Traditional courts and the judicial function of traditional leaders	2003	RP 209/2003 ISBN 0 621 34988 7	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in January 2003
	Customary law of succession	2004	Publication of report subject to ministerial approval	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in August 2004
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

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Project number	Title	Year of report	Reference number of published report	Result
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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in July 1998
	Domestic arbitration	2001	ISBN 0 621 31453 6	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in June 2001
	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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in July 2003
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 incorporated in the Children's Act 38 of 2005
	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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in June 2001
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

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Project number	Title	Year of report	Reference number of published report	Result
108	Computer-related crimes	-	-	Struck off
109	Review of the Marriage Act	2001	RP 117/2001 ISBN 0 621 31454 4	Report submitted to the Department of Home Affairs in 2001
110	Review of the Child Care Act	2003	RP 17/2003 ISBN 0 621 33584 3	Act 38 of 2005 passed. Children's Amendment 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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in June 1999
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	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in July 2003
114	Publication of divorce proceedings	2002	RP 217/2002 ISBN 0 621 33572 6	Under consideration by the Department of Justice and Constitutional Development. Submitted to the Minister in August 2002
115	Review of administrative law	1999	ISBN 0 621 29881 6	Act 3 of 2000 passed
116	The carrying of firearms and other dangerous weapons	-	-	Struck off

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Project number	Title	Year of report	Reference number of published report	Result
117	The legal position of voluntary associations	-	-	Struck off
118	Domestic partnerships	2006	Report being printed	Act 17 of 2006 passed
119	Uniform national legislation on the fencing of national roads	-	-	Struck off
120	Section 63(3) of the Insurance Act 27 of 1943	-	-	Struck off
121	Consolidated legislation pertaining to international co-operation in civil matters	-	-	See Chapter 4
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
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ANNEXURE H

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