SOUTH AFRICAN

LAW REFORM COMMISSION

THIRTY FIFTH
ANNUAL REPORT **2007/2008**

South African
Law Reform Commission

JUSTICE JY MOKGORO
Chairperson and
Justice of the Constitutional Court

JUDGE WL SERITI
Vice-Chairperson and
Judge of the Transvaal
Provincial Division of the
High Court

PROF C ALBERTYN
Associate Professor and
Head of the Gender Research
Project at the Centre for
Applied Legal Studies

MR JUSTICE DM DAVIS
Judge of the Cape of Good
Hope Provincial Division of
the High Court

MR NT NGCUKAITOBI
Practising Attorney
at Bowman Gilfillan
Incorporated Attorneys

ADVOCATE DB NTSEBEZA SC
Advocate of the High Court of
South Africa

MS TN MADONSELA
Full-time Member

PROF PJ SCHWIKKARD
Professor of Criminal Justice
at the University of Cape
Town

ADVOCATE M SELLO
Advocate of the High Court
of South Africa

THIRTY FIFTH ANNUAL REPORT **2007/2008**

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

The postal address is as follows:

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

Telephone: (012) 392-9540

Fax: (012) 320-0936

E-mail: reform@justice.gov.za

Internet: http://salawreform.justice.gov.za

Office hours: 07:15 to 16:30 (Mondays to Fridays)

To Ms 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 2007 to 31 March 2008.

Yours sincerely

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

South African
Law Reform Commission

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CONTENTS

Chapter 1: Overview	8
Chapter 2: Objects, constitution and functioning	14
Chapter 3: Progress report	26
Chapter 4: Reports completed	38
Chapter 5: Public relations	42
Chapter 6: Acknowledgements	56
Annexure A: Issue papers published by the Commission	60
Annexure B: Discussion papers published by the Commission	64
Annexure C: Investigations included in Commission's programme since its establishment	74
Annexure D: Members of the Commission in order of appointment	94
Annexure E: Advisory committees of the Commission and their members	98
Annexure F: Present programme of the Commission	104
Annexure G: Papers published by the Commission in its research series	108

South African
Law Reform Commission

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 1

OVERVIEW

South African
Law Reform Commission

CHAPTER 1
OVERVIEW

Introduction

Review the past

Reform the present

Anticipate the future

There comes a time during the existence of any organisation when it becomes necessary to take a step back and critically evaluate what it has been doing and how it has been going about it. The South African Law Reform Commission (SALRC) has reached that stage in its existence during the year under review.

The SALRC over the past few years has been looking outwards: considering requests submitted to it by external sources, doing investigations into the affairs of others, evaluating and assessing the operations of outside institutions. This year, after many years, the SALRC has turned its critical eye inward to examine its own operations and processes, and to review its own goals and expectations. In the words of the logo of the SALRC, it is time for the SALRC to "Review the past, reform the present, and anticipate the future" in relation to its own processes.

The result of this inward focus has been the dawning of a period of review, reassessment and re-evaluation. Practices long forgotten or fallen into disuse have been taken from the shelf, dusted and put into use again. The overly familiar and well-trodden path has been reconsidered to judge whether it is still the best and most effective route to follow, and new directions have been forged.

This process of critical review has started in all earnest, but has not been completed yet. It has commenced with a review of the SALRC's processes following a two-pronged approach: an investigation into the development of the SALRC's research programme, and looking into the streamlining of the SALRC's processes and the release of its reports. In the course of reviewing the processes, the SALRC has also compared itself to other law reform agencies and made contact with several of them with a view to establishing best practices in law reform.

The review process culminated in the compilation of a draft implementation plan which was tabled at a meeting of the Commission on 1 December 2007. The implementation plan has been finalised and action has already been taken on a number of issues highlighted in the implementation plan, such as the revival of the SALRC Newsletter, relaunching the Ismail Mahomed competition for the best law reform essay by a law student, drafting a vision and mission statement for the Commission and the development of formal selection criteria for including investigations into the Commission's programme.

The process of evaluation and assessment is not completed, but everyone involved with the Commission is looking forward to the conclusion of this effort with great anticipation. The final outcome will not only serve to improve the Commission's work processes and procedures, but will ultimately serve the people of South Africa through improved service delivery on law reform that contributes to the realisation of a society based on democratic values, social justice and fundamental rights for all.

Commission

The Commission appointed under section 3 of the South African Law Reform Commission Act 19 of 1973, with effect from 1 January 2007, continued its excellent work. The Commission is comprised of the following Commissioners appointed by the President:

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

Completed reports receiving the attention of Departments

The following reports were submitted to the Department of Justice and Constitutional Development (DOJCD) during previous reporting years:

1. Project 47: Unreasonable stipulations in contracts and the rectification of contracts **(submitted to DOJCD in May 1998)**
2. Project 59: Islamic marriages **(submitted to DOJCD in July 2003)**
3. Project 63: Review of the law of insolvency **(submitted to DOJCD in February 2000)**
4. Project 73: Simplification of criminal procedure: Appeal by the Director of Public Prosecutions on questions of fact **(submitted to DOJCD in December 2000)**
5. Project 73: Simplification of criminal procedure: Out of court settlements **(submitted to DOJCD in August 2002)**
6. Project 73: Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence, disclosure, the role of judicial officers and judicial management of trials **(submitted to DOJCD in August 2002)**
7. Project 82: Sentencing: A new sentencing framework **(submitted to DOJCD in December 2000)**
8. Project 88: The recognition of class actions in South African Law **(submitted to DOJCD in September 1998)**
9. Project 90: Customary law: Traditional Courts **(submitted to DOJCD in January 2003)**
10. Project 90: Customary law: Conflicts of law **(submitted to DOJCD in September 1999)**
11. Project 94: Arbitration: Domestic arbitration **(submitted to DOJCD in June 2001)**
12. Project 94: Arbitration: International arbitration **(submitted to DOJCD in July 1998)**
13. Project 96: The Apportionment of Damages Act, 1956 **(submitted to DOJCD in July 2003)**
14. Project 101: The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing **(submitted to DOJCD in June 2001)**
15. Project 112: Sharing of pension benefits **(submitted to DOJCD in June 1999)**
16. Project 113: The use of electronic equipment in court proceedings **(submitted to DOJCD in July 2003)**
17. Project 114: Publication of divorce proceedings **(submitted to DOJCD 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:

1. Project 86: Euthanasia and the artificial preservation of life **(submitted to the Department of Health in 1999)**
2. Project 109: Review of the Marriage Act 25 of 1961 **(submitted to the Department of Home Affairs in May 2001).**

Reports awaiting approval for publication

The following reports were approved by the Commission during previous reporting years, but are still awaiting approval for publication by the Minister for Justice and Constitutional Development (the Minister):

1. Project 82: Sentencing: A compensation scheme for victims of crime in South Africa **(submitted to Minister in May 2004 and again in August 2006)**
2. Project 121: Consolidated legislation pertaining to international co-operation in civil matters **(submitted to Minister in January 2007)**
3. Project 130: Stalking **(submitted to Minister in November 2006).**

CHAPTER 1
OVERVIEW

The year under review

This annual report covers the period from 1 April 2007 to 31 March 2008. The Commission published the following documents in the year under review:

The Commission published a questionnaire as part of the investigation into Project 127: Review of administration orders.

One issue paper was published for general information and comment:

- Project 126: Review of the law of evidence (Issue paper 26)

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

One discussion paper was published for general information and comment:

- Project 126: Review of the law of evidence: Hearsay and relevancy (Discussion paper 113)

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

One report was approved for publication by the Minister on 7 March 2008:

- Project 90: Customary law of succession

All investigations completed or being undertaken by the Commission are listed in **Annexure C.**

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

The following Acts emanating from the Commission's reports on Project 107: Sexual offences and Project 110: Review of the Child Care Act were promoted by Parliament in the year under review:

1. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (assented to on 13 December 2007)
2. Children's Amendment Act 41 of 2007 (assented to on 13 March 2008)

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

- Project 107: Juvenile Justice: Child Justice Bill.

THIRTY FIFTH
ANNUAL REPORT **2007/2008**

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 2

OBJECTS, CONSTITUTION AND FUNCTIONING

South African Law Reform Commission

CHAPTER 2
OBJECTS, CONSTITUTION AND FUNCTIONING

Establishment of the Commission

The South African Law Reform Commission was established by the South African Law Reform Commission Act 19 of 1973 (the Act).

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.

Powers and duties of the Commission

The powers and duties of the Commission are set out in section 5 of the Act. Section 5 directs the Commission to draw up programmes that include, in order of preference, the various matters which in the Commission's opinion require consideration. The programmes must be submitted to the Minister for Justice and Constitutional Development (the Minister) for approval. The Commission may include any suggestion for investigation relating to the Commission's objects received from any person or body.

The Commission has to investigate the matters appearing on the programme as approved by the Minister and may consult any person or body for the purpose of the investigation. The Commission prepares draft legislation if it is of the opinion that legislation ought to be enacted with regard to the matter investigated.

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 functions 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.

Advisory committees

Advisory committees fall under the second category of committees. The Commission follows the practice of instituting advisory 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 advisory committees appear in **Annexure E.**

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 an advisory 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 an advisory committee (section 8(2)).

The main task of a project leader is to guide the designated researcher by providing advice and direction and evaluating the research. If the project leader is the designated chairperson of a committee as envisaged in section 7A(3) of the Act, he or she will also guide the proceedings of the advisory committee.

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 F Palumbo (1 April to 30 April 2007)
- Ms I Botha (1 May to 31 July 2007)
- Mr M F Palumbo (1 August 2007 to 31 March 2008).

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 South African Law Reform Commission (SALRC) are professionally qualified lawyers, the majority of whom have vast experience in the law reform environment.

CHAPTER 2
OBJECTS, CONSTITUTION AND FUNCTIONING

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) – until 29 February 2008

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) – until 31 March 2008

Mr M F Mdumbe (Senior State Law Adviser)

Ms G M B Moloi (Principal State Law Adviser)

Mr L Mngoma (Senior State Law Adviser) – from 1 February 2008

Ms G E Nesbitt (Senior State Law Adviser) – until January 2008

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.

Two 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
Personal Assistant:	Ms S P Gule (from 1 August 2007)
Senior Secretary:	Ms J M Nkabinde
Administrative Officer:	Mr A Singh
Administrative Officer:	Mr J D Kabini
Administrative Officer:	Ms M van den Berg
Librarian:	Mr N Makgoka (until 30 September 2007)
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.

Internal committees

Various internal committees have been established to assist the SALRC with the execution of its functions. The following internal committees are currently in existence:

Communication committee

Members	Purpose	Activities
Ms T Madonsela (chairperson) Mr MF Palumbo Mr MB Cronjé Ms A-M Havenga Ms R van Zyl Mr MF Mdumbe Ms R Bronkhorst Ms CJ Pienaar (for purposes of the *Justice Today* Newsletter)	The Communication Committee was established in December 2007 to address the communication needs of the SALRC. Specific areas of responsibility of this committee include: • The compilation and distribution of the SALRC Newsletter • The arrangement of media conferences • Marketing of the Commission • The Ismail Mahomed law reform essay competition • Liaison with DOJCD on the *Justice Today* Newsletter	The Committee arranged a media conference on 7 March 2008, which was also attended by the Minister for Justice and Constitutional Development. The first issue of the SALRC's revived Newsletter was distributed on 17 March 2008. The Committee also revived the Ismail Mahomed competition for the best law reform essay by a law student in conjunction with Juta.

Induction Committee

Members	Purpose	Activities
Ms L Stuurman (chairperson) Mr MB Cronjé Mr MF Mdumbe Ms P Sukhraj-Ely Ms JMF Oosthuizen Ms M van den Bergh Ms P Mashabela Ms N Singh (to assist with the induction of interns)	The Induction Committee is responsible for the following: • Co-ordination of study visits from other law reform agencies • Induction of new Commissioners, researchers and administrative staff	During the year under review, the Induction Committee received and facilitated the following: Work attachment of two researchers from the Namibian Law Reform Commission Study visit by three researchers from the Lesotho Law Reform Commission Induction of researcher who commenced service on 1 February 2008. The Committee submitted a memo to the Director-General of DOJCD on 11 March 2008 for the possible recruitment and appointment of interns at the Commission.

CHAPTER 2
OBJECTS, CONSTITUTION AND FUNCTIONING

Library Committee

Members	Purpose	Activities
Mr MF Palumbo (chairperson) Mr MB Cronjé Mr PA van Wyk Ms GMB Moloi Ms JMH Oosthuizen Ms S Gule.	The Library Committee is responsible for considering the acquisition of publications to ensure the relevance of the holdings of its library. The Committee also reflects annually on the SALRC's standing orders for publications and subscriptions to electronic data bases. The Committee liaises from time to time with the principal librarian at the DOJCD who, during the period under review, took the responsibility of acting as the supervisor of the librarian at the SALRC.	During the year under review the Committee considered and approved the acquisition of several new publications which were received during March 2008. During January 2008 the Library Committee finalised an advertisement for publication to fill the vacant post of librarian at the SALRC.

Occupational Health and Safety Committee

Members	Purpose	Activities
Ms U Behrtel (previous chairperson) Mr L Mngoma (chairperson) Mr MF Mdumbe Ms R Bronkhorst Ms E Louw Mr R Swart Mr G Maseko.	The Occupational Health and Safety (OHS) Committee was established on 11 April 2007 in terms of section 19(1) of the Occupational Health and Safety Act 85 of 1993. The Committee also liaises with the landlord of the building on OHS issues, evacuation plans, power outages, etc.	The Committee meets at least once per quarter. During the tenure of the Committee, emergency signs were installed, emergency equipment was procured and staff members were nominated to attend training. Regular consultation takes place between the Chairperson and the Operational Manager on general matters pertaining to the building.

Process and Procedure Committee

Members	Purpose	Activities
Ms AM Louw (chairperson) Mr AWF van Vuuren Ms GMB Moloi Ms R van Zyl Mr T Monare Mr J Kabini Ms AM Havenga Mr MF Mdumbe (for purposes of the Commission's implementation plan).	The Process and Procedure Committee was established in February 2005. This Committee is responsible for the review of existing procedures and the establishment of new procedures on working methods and operational systems for the Commission. The Committee is also responsible for corporate identity matters such as business cards and the appearance of Commission publications.	During the year under review the Committee undertook the following activities: • Developing a vision and mission statement for the Commission • Developing new guidelines for Commission publications • Developing selection criteria for new investigations • Developing an implementation plan for the Commission • Reviewing the Commission's style manual.

CHAPTER 2
OBJECTS, CONSTITUTION AND FUNCTIONING

Training Committee

Members	Purpose	Activities
Ms D Clark (chairperson) Ms A-M Havenga Ms C Pienaar Mr L Mngoma Ms N Singh Ms M Oosthuizen Mr A Singh Ms N Pillay	The Training Committee was established in February 2005 to identify training needs and source and co-ordinate training for the SALRC's personnel. The tasks of the Committee include the following: • Identify training needs of staff • Source service providers • Liaise with service providers on training needs • Format training courses • Arrange training courses • Obtain approval for training expenditure in accordance with the relevant financial prescripts • Liaise with DOJCD Human Resources on training matters • Represent the Branch: Legislative Development at the National Skills Development Forum. The Committee obtained approval to arrange group training for the entire SALRC staff component. Group training, particularly in-house group training, is a more cost effective way of utilising available funds. The Committee has to arrange training within the allocated budget, which requires balancing training needs with available funds and departmental and SALRC priorities.	The following courses attended by staff members of the SALRC were arranged and facilitated by the Training Committee: African Languages Cultural Diversity MS Word Advanced Law Teachers' Conference presented by the University of Pretoria Presentation Skills Managing your Personal Finances Social Economic Rights. Researchers on the level of Principal State Law Adviser attended training as part of Project Khaedu, an initiative of the Department of Public Service and Administration to strengthen the management capabilities of senior managers in the public service with the ultimate goal of improving service delivery. The Training Committee liaised with Human Resources at DOJCD and other relevant role-players to facilitate the attendance and participation of SALRC staff.

OBJECTS, CONSTITUTION AND FUNCTIONING

Financing of the SALRC

The SALRC's budget for the financial year 1 April 2007 – 31 March 2008 was R12 424 312-40, which is made up as follows:

- Personnel expenditure R10 390 521-22
- Current expenditure R1 933 991-20
- Capital expenditure R99 799-98

The annual report of the Department of Justice and Constitutional Development contains information on the SALRC'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**. As indicated, **Annexure C** contains a list of all the investigations included in the Commission's programme since its inception and indicates the final result or current state of investigations.

Any person or body is free to submit proposals for law reform to the Commission. In each case the Commission considers the merits of a proposal. In some instances a preliminary inquiry is instituted to determine whether the inclusion of a matter in the Commission's programme is justified. The Commission may also include 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, advisory 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 means of press releases and press conferences. In addition, copies are distributed to organisations and, sometimes, to 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.

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

CHAPTER 2
OBJECTS, CONSTITUTION AND FUNCTIONING

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. The working methods 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 proposals 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 in respect of the functioning of the Commission 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 A.**

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 B.**

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 C** 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. Research papers published are listed in **Annexure G.**

Issue papers and discussion papers are supplied free of charge to interested institutions and persons who wish to comment on a particular matter. These papers are widely distributed and are also obtainable from the Commission's offices. The annual report, papers in the research series and reports on investigations that are published, may be purchased from the Government Printer in Pretoria.

Meetings

The Commission met on 30 July and 1 December 2007. The working committee met on 23 June 2007. The advisory committee for Statutory Law Revision (Project 25) met on 15 May 2007 and the advisory committee for Privacy and data protection (Project 124) met on 28 June 2007.

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 3

PROGRESS REPORT

South African
Law Reform Commission

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 was 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
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 law 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 State of the Nation Address delivered by the President on 8 February 2008, the address by the Minister for Justice and Constitutional Development during the debate on the President's State of the Nation Address and the Government's Programme of Action for 2008.

The President highlighted the revamping of the criminal justice system and the need for the establishment of a new, modernised, efficient and transformed criminal justice system. He also identified the fight against organised crime as a matter of particular concern. In harmony with this, the Minister identified the fight against crime and the creation of a safe environment for all South Africans and the enhancement of our capacity to fight crime, in particular organised crime and corruption, as some of the main focus areas of the Department of Justice and Constitutional Development.

The Commission's investigations into the use of electronic equipment in court proceedings (Project 113), protected disclosures (Project 123) and the review of the law of evidence (Project 126) support the aim of establishing a new, modernised, efficient and transformed criminal justice system. The world-wide phenomenon of trafficking in persons is usually perpetrated by crime syndicates, one of the reasons why particular trafficking offences have to be created by statute. Trafficking legislation is also aimed at the protection of especially women and children, which is in line with another important governmental objective. The Commission's investigations into sexual offences: adult prostitution (Project 107) and stalking (Project 130) are also aimed at crime prevention and the protection of vulnerable groups such as women and children.

Another government and justice priority is the accessibility of justice for all. The creation of community courts, municipal courts and small claims courts supports this objective and the Commission's project on community dispute resolution structures (Project 94) is therefore highly relevant. A number of the Commission's investigations could be directly or indirectly linked to the acceleration of economic growth and development and the all-important goal of a better life for all the people of South Africa as highlighted by the President. Projects such as the investigations into assisted decision-making: adults with impaired decision-making capacity (Project 122), privacy and data protection (Project 124), prescription periods (Project 125), review of administration orders (Project 127), review of aspects of the law of divorce (Project 128), review of aspects of matrimonial property law (Project 129) and administration of estates (Project 134) relate to consumer protection and family law, aimed at a better life for all.

The Commission's statutory law revision project (Project 25) is aimed at reviewing the complete statute book in order to remove or adapt legislation considered to be unconstitutional, redundant or obsolete. Cabinet requested in 2001 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.

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

Redundancy, obsoleteness and constitutionality of legislation

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 the statute book, comprising Principal

CHAPTER 3
PROGRESS REPORT

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. The progress report was considered by Cabinet in September 2007.

Prof. 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 Prof. 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 Arts and Culture	The drafting of a consultation paper analysing the 32 statutes administered by the Department of Arts and Culture to determine which provisions are redundant, obsolete or unconstitutional commenced in July 2007. A consultation paper was forwarded to the Department of Arts and Culture during November 2007 for their consideration and comment. A response from the Department had still been awaited at the end of the period under review.
Legislation administered by the Department of Foreign Affairs	The drafting of a consultation paper analysing the 13 statutes administered by the Department of Foreign Affairs to determine which provisions are redundant, obsolete or unconstitutional has commenced during the period under review.
Legislation administered by the Department of Housing	The drafting of a consultation paper analysing the 14 statutes administered by the Department of Housing to determine which provisions are redundant, obsolete or unconstitutional commenced in January 2008.

Legislation administered by the Department of Public Works	The drafting of a consultation paper analysing the 67 statutes administered by the Department of Public Works to determine which provisions are redundant, obsolete or unconstitutional commenced in April 2007. In October 2007 a consultation paper was forwarded to the Department of Public Works for consideration and comment. On 31 October 2007 the Department indicated that some of the laws that are the possible subject of either repeal or amendment are property related laws, which fall under the administration of the Property Owner Activities unit in that Department. The consultation paper was forwarded to that unit for perusal. In November 2007 the Department of Public Works published a discussion paper on the revision of the Expropriation Act for public information and comment. That revision aims to introduce consistency and uniformity in the manner that all organs of state undertake expropriations. A response from the Department of Public Works on the Commission's consultation paper and the impact of their proposed revision on the Commission's consultation paper had still been awaited at the end of the period under review.
Legislation administered by the Department of Transport	The drafting of a consultation paper analysing the 218 statutes administered by the Department of Transport commenced in November 2006. The statutes that have been provisionally identified for repeal or amendment were discussed with the legal adviser of the Department of Transport in November 2006. The Department indicated that it agreed with the proposals made by the SALRC. The drafting of a discussion paper commenced in 2007. The finalisation of the discussion paper for submission to the Commission was imminent at the end the period under review.
Legislation administered by National Treasury.	The drafting of a consultation paper analysing the 624 statutes administered by National Treasury (other than the Income Tax Act, the Value Added Tax Act, the Abolition of Quitrents Act and the Savings Bank Borrowing Powers Act) to determine which are redundant, obsolete or unconstitutional commenced in January 2007. A consultation paper containing repeal and amendment proposals was submitted to the project leader for his consideration in December 2007 and in March 2008.

The Commission considered the status of project 25 on 23 June 2007. The Commission noted that internal research capacity to conduct statutory law review was limited due to the fact that the majority of researchers are attending to other projects on the Commission's programme. The Commission approved in principle the appointment of experts by the Minister for Justice and Constitutional Development (the Minister) to increase the Commission's research capacity in respect of fourteen national Government Departments administering a high number of statutes (the more involved and more complex statutes), namely the Departments of Agriculture, Communications, Defence, Education, Environmental Affairs and Tourism, Health, Home Affairs, Justice and Constitutional Development, Labour, Land Affairs, Minerals and Energy, National Treasury, Provincial and Local Government and Trade and Industry. The statutes of the remaining twelve Departments which administer a smaller number of statutes will be reviewed by SALRC researchers, namely Arts and Culture, Correctional Services, Foreign Affairs, Housing, National Intelligence, Public Enterprises, Public Service and Administration, Science and Technology, Social Development, Safety and Security, Sport and Recreation and Water Affairs and Forestry. A memorandum proposing the appointment of experts by the Minister was submitted to the Department of Justice and Constitutional Development (DOJCD) in September 2007 and has been under consideration by the Ministry since February 2008.

CHAPTER 3
PROGRESS REPORT

Review of the Interpretation Act

The ad hoc Joint Committee on the Open Democracy Bill, 1998 (which resulted in the Promotion of Access to Information Act, 1998) in its resolutions on the Bill adopted on 24 January 2000 *inter alia* requested the Minister for Justice and Constitutional Development to consider the amendment of the Interpretation Act 33 of 1957, to bring it in line with the principles of constitutional democracy and practices of interpretation used by Parliament and the courts since 1994. The Commission decided on 17 November 2000 that the review of the Interpretation Act should form part of its existing project on statutory law revision. This was subsequently approved by the Minister. The *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) agreed to provide funding for the remuneration of an expert legal drafter to assist with the investigation. An agreement between the consultant and the GTZ was concluded in November 2002. 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 discussion paper is discussed in the 2006/2007 annual report. After several extensions to afford respondents more time to comment, the final closing date for comments on Discussion paper 112 was determined as 30 April 2007. Comment on the discussion paper was received as late as September 2007. Evaluation of the comments and the development of a draft report commenced during 2007.

Hindu Marriages

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 *Singh v Ramparsad and Others* 2007(3) SA 445 (D).

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 an advisory committee meeting to discuss the draft Bill and re-assess the membership of the committee is still pending as most of the active members are not available, the researcher, the project leader, and two advisory committee members, 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 advisory 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

This investigation forms part of the larger project on Sexual Offences. An issue paper on adult prostitution was published for general information and comment in August 2002.

While it is often said that prostitution is one of the oldest professions, the legal response to it differs from society to society and over the course of time. Internationally, the topic of prostitution remains an emotive one and opinions on the legal treatment of prostitution are generally strongly polarised. This is no different in South Africa.

The finalisation of a draft discussion paper 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 2008.

Project 113 – The use of electronic equipment in court proceedings

The project is not currently receiving attention and will be assigned to a new researcher once the vacant posts of Senior State Law Adviser are filled.

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. The Commission's 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.

Although the present investigation revives the Commission's previous investigation, it covers a broader spectrum. Additional measures to protect the interests of persons whose legal capacity has for some reason been diminished have been researched.

An issue paper on this project was published at the end of 2001. A discussion paper was published for general information and comment in January 2004 and is discussed in the 2003/2004 annual report. Wide consultation preceded the development of an extensive draft Bill comprising about 150 clauses which has been finalised during the year under review. Consultation with a representative of the Departmental Policy Unit and with the Chief Master of the High Court to address policy issues took place during July and August 2007. Compilation of a draft report for submission to the Commission was partly suspended between June and December 2007 due to the researcher's involvement in work pertaining to research and improvement of the SALRC's processes (see chapter 1).

The draft report is receiving attention for consideration by the Commission by the end of 2008. Policy input from the DOJCD on the proposed draft Bill is awaited.

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 2004/2005 annual report. A draft report was submitted to DOJCD in October 2005. Comments received from DOJCD in the course of 2006 and 2007 have been incorporated into the draft report and proposed legislative amendments. The draft report was submitted to Commissioners and DOJCD on 21 November 2007 for comment. The draft report served before the Commission on 1 December 2007. The draft report has been amended to reflect the comments received to date. Policy input from the DOJCD on the draft report is awaited.

CHAPTER 3
PROGRESS REPORT

Project 124 – Privacy and data protection

Privacy is a valuable aspect of personality. While potential invasions of privacy can come from many sources, a chief concern in recent years has been information privacy. Information privacy has been defined as the claim of individuals, groups or institutions to determine for themselves how, when and to what extent information about them is collected, stored or communicated to others. Information about people and their activities can range from medical and financial records, purchasing habits and property ownership to borrowing habits at the video store, conversations via cellular telephone and surfing practices on the Internet – all mostly recorded in digital form. It is clear that personal information has acquired a market value. Ensuring the security of information has furthermore become very important since instances of identity theft and fraud have increased dramatically.

An issue paper was published for general information and comment in August 2003 and is discussed in the 2003/2004 annual report. A discussion paper was published for general information and comment in October 2005, which is discussed in the 2005/2006 annual report.

A series of workshops hosted by the SALRC were held in February and March 2006. The closing date for comments on the discussion paper was extended to 31 August 2006. Written submissions received on the discussion paper have been collated. A comprehensive draft Bill has been approved, in principle, by the advisory committee at its meeting on 28 June 2007. A draft report is being finalised. Policy input from the DOJCD on the draft report is awaited.

Project 125 – Prescription periods

No comprehensive review of the provisions providing for different prescription periods – whether of a contractual or delictual nature – has ever been undertaken by the Commission. When reporting on the Bill which subsequently became the Legal Proceedings Against Certain Organs of State Act 40 of 2002, the Portfolio Committee for 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 2003/2004 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 once the vacant posts of Senior State Law Adviser are filled.

Project 126 – Review of the law of evidence

The Commission approved the inclusion of an investigation into the law of evidence in the Commission's programme on 17 September 2001. An advisory committee for the investigation was approved on 26 November 2002 and appointed in January 2003. The advisory committee's first meeting took place on 13 March 2003.

Professor PJ Schwikkard, one of the advisory committee members at the time, was requested to prepare a draft discussion paper on the principle of relevance and the hearsay rule. The advisory 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 Judge Nugent. Judge Harms (project leader) and Judge Nugent (advisory committee member), however, resigned during February 2005. The Commission appointed Professor Schwikkard as the new project leader on 2 March 2007.

The Minister appointed two new advisory committee members in August 2007 and the first meeting of the new committee was held on 26 October 2007. The advisory committee resolved to publish an issue paper in the format of a questionnaire to invite input from all relevant role players. The Committee was of the

opinion that this was essential to determine the scope of the investigation. The Committee also approved the publication of a discussion paper on hearsay evidence and relevancy. The Committee recommended that a period of three months be allowed for comments on the documents.

The publication of an issue paper and a discussion paper on hearsay evidence and relevancy was announced at a media conference on 7 March 2008. The closing date for comments in respect of both publications is 30 June 2008.

Project 127 – Review of administration orders

The previous Minister for Justice and Constitutional Development requested the Commission to investigate administration orders by following 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 term.

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. DOJCD then indicated that it would consider the repeal of section 74 amendments along the lines suggested.

When the Department of Trade and Industry submitted a proposal for urgent amendments to the National Credit Act and the Magistrates' Courts Act, the Commission reconsidered the matter. The Commission decided on 23 June 2007 that it would continue with the investigation. During March 2008 the Commission published a questionnaire on the future of administration orders in view of the provisions of the National Credit Act 34 of 2005. A decision will be made on the way forward once the responses to the questionnaire have been considered.

Project 128 – Review of aspects of the law of divorce

A family counsellor from the Family Advocate's Office in Bloemfontein requested the Commission to conduct an investigation into access of fathers to children after divorce where the children were placed in the mother's custody. The project was initially approved as Project 128 – Review of aspects of the law of divorce.

The Commission approved on 23 June 2007 that the name of Project 128 be changed to "Custody of and access to minor children" in accordance with its focus and that, because of possible mutual elements in Project 128 and Project 129: Review of matrimonial property law, both investigations should be dealt with as sub-projects under the Commission's existing broad investigation into Family law and the law of persons (Project 100). The Commission also approved that the Minister be approached to appoint a joint advisory committee for the two sub-projects. Ministerial approval for inclusion of this project as a sub-project under Project 100 and for the appointment of an advisory committee is awaited.

The researcher concluded a pilot study in the Kwa-Zulu Natal province by means of questionnaires completed by family advocates, social workers, psychologists and legal practitioners. Subsequent to the pilot study, five questionnaires were developed and distributed nationally to family advocates, social workers, psychologists, legal practitioners and parents. A total of 163 responses were received. The researcher held separate focus group forums with family advocate offices in nine provinces. One national focus group forum with principal and senior family advocates and family counsellors was held in February 2008 to reach consensus on controversial issues.

The researcher also consulted representatives from key organisations including DOJCD, the South African Association of Mediators and the Family Association of Mediators of the Cape and tertiary institutions. Their responses have been transcribed and will also be used to inform a discussion paper. The data received from the questionnaires, the focus group forums and the

consultations will be analysed and collated and will be used to develop a discussion paper.

Project 129 – Review of aspects of matrimonial property law

The Matrimonial Property Act was passed in 1984 in order to deal with shortcomings in the matrimonial property law at the time. The Act has been in place for nearly 25 years. Apart from the problems which have in particular been brought to the Commission's attention, a number of social and legal changes since 1984 (including the adoption of the 1996 Constitution and the recognition of customary marriages and of civil unions) suggest that a review of the law is necessary to ensure that it meets current needs. The purpose of the investigation is to review the current law for greater legislative fairness and justice in governing interpersonal relationships between spouses.

In view of possible mutual elements (such as a need to reform current divorce procedures) between Project 129 and Project 128 (Review of aspects of the law of divorce) the Commission on 23 June 2007 decided to include these two investigations as sub-projects under its existing broad investigation into Family law and the law of persons (Project 100). The Commission also decided to appoint a single advisory committee to assist the Commission with these two investigations. The Minister's approval of these decisions is awaited.

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 2003/2004 annual report.

The Commission approved a discussion paper on trafficking in persons for publication in March 2006. The discussion paper is expounded in the 2005/2006 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.

A draft report on trafficking in persons has been finalised, but is subject to pending policy input from DOJCD.

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 205 of 1993).

The project was assigned to the researcher in June 2005. A draft discussion paper has been submitted to the project leader for his consideration and comments.

Project 134 – Administration of estates

A discussion paper dealing with measures to improve the administration process and to reduce the work of the supervising authority and executors was approved

for publication by the Commission in September 2005 and is discussed in the 2005/2006 annual report.

It would take a considerable time for the Commission to approve a report on the comprehensive review of administration of estates and for the enactment of proposed legislation. Two matters however require urgent resolution, namely administration of "small" estates and streamlined procedures for other estates. An interim report dealing with these issues will be considered by the Commission at its next meeting.

Preliminary investigations

Medical negligence and related aspects

A preliminary investigation into medical negligence and related aspects as a potential project for inclusion in the Commission's programme was conducted during the year under review. The researchers concerned conducted the following activities:

- Ensuring a thorough understanding of the issues and purpose of the investigation requested
- Conducting preliminary research on medical negligence and related aspects, and selecting and processing relevant research material
- Consulting with the South African Medical Association and other role players regarding the purpose and scope of the investigation requested
- Preparing a proposal paper for consideration by the Commission.

Several meetings were held with officials from the South African Medical Association (SAMA) and other role players. In spite of several requests for the information and meetings to discuss the information required, no information could unfortunately be obtained from the South African Medical Association and other relevant role players. In view of the fact that the matter therefore could not be taken forward, the Commission resolved on 1 December 2007 not to include this investigation in its programme.

Culpable and unlawful killing of an unborn foetus

In South African law, the common law offence of murder consists in the intentional and unlawful killing of another person. The culpable and unlawful killing of an unborn baby by a third party does not constitute a crime since a foetus is not considered to be a person. The current position in South African law is that a person only attains legal subjectivity at birth.

The Commission received a request from the Deputy Director of Public Prosecutions: Eastern Cape to investigate this legal position. The purpose of the preliminary investigation is to determine the necessity and propriety of creating a separate offence of the culpable and unlawful killing of a foetus by a third party. Depending on the outcome of this determination, the Commission will be formally requested to include an investigation into this matter in its programme in order to develop a definition and the elements of such an offence for purposes of proposing legislation.

Mis- and non-disclosure in insurance law

The Ombudsman for Long-term Insurance requested the Commission to consider an investigation into mis- and non-disclosure in insurance law. The preliminary investigation was assigned to a researcher in February 2008, who has commenced with preliminary research.

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 4

REPORT COMPLETED

South African
Law Reform Commission

CHAPTER 4
REPORT COMPLETED

Project 90: Customary law of succession

The report on Project 90: Customary law of succession was submitted to the Minister for Justice and Constitutional Development in August 2004. The Minister approved the report for publication on 7 March 2008.

The South African Law Reform Commission has been involved in an investigation into the customary law of succession since 1998. The customary law of succession is based on the principle of male primogeniture, which has been a bone of contention since the promulgation of the 1993 and 1996 Constitutions. This principle entails that the eldest male descendant of the deceased inherits the estate. The application of this rule means that women and children who are not the eldest, cannot inherit. This principle prevents women, daughters and other male children from inheriting in the event of the deceased dying intestate. The principle of male primogeniture also enjoys legislative recognition. Section 23 of the Black Administration Act 38 of 1927 provides that all intestate estates of deceased Blacks must devolve according to customary law. This means that only males are allowed to succeed to status and property in the family.

The Commission published an issue paper in 1998 which generated immediate public interest and elicited continuing oral and written responses. In May 1998, as the responses were being received by the Commission, the Department of Justice and Constitutional Development developed a draft Bill. This Bill was submitted to Cabinet in June 1998 and introduced in Parliament as the Customary Law of Succession Amendment Bill, 1998. The Bill extended the general law of succession as embodied in the Wills Act 7 of 1953 and the Intestate Succession Act 81 of 1987 to all persons by the simple expedient of including within the terms of the latter Act all persons previously covered by section 23 of the Black Administration Act 38 of 1927. A discussion paper was published in 2000 after eliciting comments from various interested parties, including prominent non-governmental and community-based organisations concerned with women's issues and customary law. A series of workshops were held which were attended, among others, by traditional leaders in all the provinces. A follow-up consultative meeting of expert role-players was also held.

The Commission had the benefit of considering numerous precedents set by other African countries. This report gives an overview of the discussions and debates that took place in the different *fora* during this process. It explains the dilemma faced by the Commission in choosing the options eventually adopted in the report and draft Bill.

The Commission finalised and submitted the report to the Minister in April 2004. The purpose of the investigation was to reform the customary law of succession in order to bring it in line with the Constitution. The reform is necessary as the application of the customary law of succession is discriminatory on the basis of gender and age. The report contains draft legislation which is intended to modify the customary law of succession so as to provide for the devolution of certain property in terms of the law of intestate succession; to clarify certain matters relating to the law of succession in relation to persons subject to customary law; and to amend certain laws in this regard.

In October 2004 the Constitutional Court, in *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae); Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC), ruled that the customary rule of male primogeniture was unconstitutional.

In its report the Commission recommends the repeal of section 23 of the Black Administration Act 38 of 1927. The Commission also considered statutes that govern the application of the customary law of succession, namely the KwaZulu Act on the Code of Zulu Law 16 of 1985 and the Natal Code of Zulu Law, Proclamation R151 of 1987. Sections 79 to 82 make provision for testate and intestate inheritance of property and stipulate that succession and inheritance have to be in accordance with the rule of male primogeniture if the deceased family head had contracted a customary marriage.

One of the most important recommendations of the Commission, with regard to the reform of the customary law of succession, is the amendment of the Intestate Succession Act 81 of 1987. The proposed Bill provides that upon a person's death, the estate has to devolve in accordance with that person's will or, where there is no will, according to the law of intestate succession prescribed by the Intestate Succession Act

81 of 1987. This would apply to all estates, including estates of persons who had contracted a customary marriage that existed at the time of death. It is also recommended that the definition of a spouse be extended to include a spouse or spouses of customary marriages. All children born as a result of a customary marriage are, irrespective of age and gender, regarded as heirs *ab intestato.*

Another important recommendation relates to the recognition of supporting marital relationships for the purposes of intestate succession. Children of these relationships are to be regarded as heirs of a deceased person, on whose behalf such relationships were contracted. The relationships concerned are the *ukungena, ukuvusa, ukuzalela* and similar relationships. It is further recommended that children adopted according to customary law be regarded as children of their adoptive parents for purposes of intestate succession.

Generally, Africans do not adopt children in accordance with the prescripts of the Child Care Act 74 of 1983. The Intestate Succession Act 81 of 1987 places adopted children of a deceased in the same position as other children for purposes of intestate succession. The Commission recommends that children adopted in terms of customary law should also inherit from their adoptive parents.

In Western societies the law emphasises the interests, rights and liberties of individuals. African customary law, on the other hand, is general, traditional and aimed at preserving group interests. In the circumstances it is foreseen that the rigid application of the rules of succession will not always meet the needs of the persons concerned. The Commission therefore also recommends a procedure for resolving disputes and uncertainties pertaining to the devolution of family property. Disputes or uncertainties in connection with the devolution of family property will be determined by the Master of the High Court who has jurisdiction.

When a dispute arises in connection with the status of, or any claim by, any person in relation to a person whose estate or part thereof devolves in accordance with the Intestate Succession Act 81 of 1987, or the nature or content of any asset in such estate or the devolution of family property, the Master of the High Court is authorised to make a determination as seems to be just and equitable in order to resolve the dispute or remove the uncertainty. The intention here is to provide for a mechanism that is aimed at resolving, speedily and without resorting to court action, disputes that may arise in the determination of these issues.

Before the passing of the Marriage and Matrimonial Property Law Amendment Act 3 of 1988, the effect of a civil marriage on an existing customary marriage was that the latter marriage was dissolved. The material rights of the spouses and children of the dissolved customary marriage were, however, protected in terms of the repealed section 22(7) of the Black Administration Act 38 of 1927. Realising that there might still be customary marriages that had been dissolved by civil marriages, the Commission made recommendations regarding the protection of the material rights of such wives and children in its draft Bill.

It is possible in customary law to allot property to a wife in a customary marriage. Moreover, certain kinds of property are, in terms of customary law, regarded as accruing to the wife or house created by a customary marriage. Although such property is under the control of the husband, it is regarded as belonging to the house created by the customary marriage and as such, to the wife. The property has to be used exclusively for the benefit of the wife and her children. The draft Bill recommends that this property has to be divisible by means of the will of the wife and if she dies intestate, it has to devolve in terms of the Intestate Succession Act 81 of 1987.

Finally, it is recommended that the Maintenance of Surviving Spouses Act 27 of 1990 be amended to include within the definition of *"survivor"* a spouse in a customary marriage.

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 5

PUBLIC RELATIONS

South African
Law Reform Commission

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, 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 media 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 South African Law Reform Commission (SALRC) 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 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 SALRC was privileged to host the following visits and work attachments:

- Work attachment of researcher from the Kenya Law Reform Commission: 21 to 25 May 2007
- Work attachment of two researchers from the Namibian Law Reform Commission: 12 to 16 November 2007
- Study visit by three researchers from the Lesotho Law Reform Commission: 25 January 2008.

Ms T Madonsela, the full-time Commissioner, attended the 46th session of the Asian-African Legal Consultancy Organization in Cape Town from 2 to 6 July 2007.

The SALRC, in the course of reviewing its processes (see Chapter 1), made contact with the following law reform agencies with a view to establishing best practices in law reform:

- Queensland Law Reform Commission
- Australian Law Reform Commission
- Law Reform Commission of Hong Kong
- England Law Commission
- Scottish Law Commission
- New South Wales Law Reform Commission.

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. This was especially apparent at the highly successful media conference held by the Commission on 7 March 2008.

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, other state departments, the professions, universities, NGOs and members of the public.

Apart from dealing with routine enquiries on a regular basis, researchers and advisory committee members also participate in various programmes and discussions relating to their research projects. These take the form of, among others, 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, parliamentary committees, relevant experts and the community in general.

Researchers and advisory 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 or have been 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 SALRC were involved in the following conferences, workshops, briefings, consultative meetings and expert meetings:

Project	Activity	Date
Project 25: Statutory law revision	Meeting with Ms Mavis Monama, the then Head of Legal Services at the Commission for Gender Equality (CGE) on Project 25 and possible co-operation between the SALRC and CGE	4 July 2007
	Meeting with representatives of the Department of Trade and Industry to discuss Project 25 and the way forward regarding the project and co-operation between the Commission and the Department	30 August 2007
	Meeting with Commissioner Boggie Khutsoane, and Keketso Maema, Legal Researcher, and Victor Mavhinudla, Senior Complaints Officer of the Commission on Gender Equality, on co-operation between the SALRC and CGE and to provide an overview of Project 25	26 September 2007
	Meeting with Advocate Okgabile Dibetso-Bodibe, Chief State Law Adviser, Office of the Premier, North West, to discuss their provincial legislative review programme and Project 25	26 September 2007
	Attend workshop of legal advisers of the KwaZulu-Natal Provincial Legislature on the province's rationalisation of laws project	9 – 12 December 2007
	Media conference on a number of projects, including Project 25	7 March 2008
	Live interview on SA FM about the scope and way forward regarding Project 25	12 March 2008

CHAPTER 5
PUBLIC RELATIONS

Project	Activity	Date
Project 73: Simplification of criminal procedure	A decision was taken during the Cabinet Lekgotla in July 2003 to review the South African Criminal Justice System (CJS). Mr AWF van Vuuren was nominated by the Chairperson of the Commission to participate in the Departmental Review of the criminal justice system. The terms of reference is as follows: • To consider the impact, effectiveness, efficiency, appropriateness and economy of the criminal justice system with reference to current budgets, procedures and practises in the criminal justice system • To consider the impact of the organisational structure and governance practises of the criminal justice system • Co-ordination between and co-operation of role players in the criminal justice system The review of the criminal justice system includes the following specific issues: • A review of the existing practices and procedures applied at all levels of the criminal justice system • A review of the existing budget, human and other resources used in the criminal justice processes, including the roles and responsibilities of the various role players and the relationship between the various role players • A review of current practises or processes relating to co-ordination and co-operation across the entire criminal justice sector, especially between departments, including the use of information technology and practises relating to case management, which includes the role of information technology • A review of the application of the law of evidence and law of criminal procedure, its role and impact on the finalisation of criminal cases • A review of current bail and sentencing practises and law and the overcrowding of prisons, including the impact of bail and sentencing practises and awaiting trial prisoners on the overcrowding of prisons	During the reporting period Mr Van Vuuren attended meetings of the Criminal Justice Review Team on 20 April 2007; 22 May 2007, 20 June 2007, 23 July 2007, 22 November 2007, 14 February 2008 and 13 March 2008
Project 85: Aspects of the law relating to AIDS	Attendance of expert meeting hosted by AIDS and Human Rights Research Unit of the University of Pretoria pertaining to the development by the SADC Parliamentary Forum of model legislation on HIV for Southern Africa Briefing of researchers attached to Namibian Law Reform Commission on completed investigation and results thereof	13 October 2007 13 November 2007
Project 90: Customary law	Meeting with Adv Nthai on the policy framework on the traditional justice system	8 August 2007

Project	Activity	Date
	Meeting with law enforcement legal administration officers of the Department of Justice and Constitutional Development to brief them and counsel for the Department on the Gasa v RAF and Others matter which was to be heard by the Supreme Court of Appeal in November 2007	04 October 2007
	Consultative workshops with stakeholders and representatives of traditional leaders in the various provinces on the policy framework on traditional courts	7 November 2007 – Nelspruit; 15 November 2007 – Polokwane; 19 November 2007 – East London; 21 November 2007 – Harrismith; 23 November 2007 – Durban
	Live interview on Thobela FM on the purpose of the workshop on the Policy Framework on Traditional Courts held in Polokwane	14 November 2007
	Live interview on Radio Turf on the Policy Framework on Traditional Courts held in Polokwane	14 November 2007
	Live interview on Capricorn FM on the purpose of the workshop on the policy framework on traditional courts	14 November 2007
	Live interview on Lesedi FM on the purpose of the workshop on the policy framework on traditional courts held in Harrismith on 21 November 2007	20 November 2007
	Workshops on traditional courts with traditional leaders in Benoni	12 – 13 December 2007
	Briefing media on the report on customary law of succession at a media event were the report was released for publication	7 March 2008
	Live interview on Motsweding FM Tsele-le tsele on the Reform of Customary Law of Succession and Related Matters Bill 2008	10 March 2008
	SA FM radio station: participate in programme, giving inputs on and responding to live telephonic public enquiries on the Reform of Customary Law of Succession and Related Matters Bill, 2008	15 March 2008
	Live interview on Motsweding: Bosele relating to the launch of the Department of Justice and Constitutional Development's policy framework on the traditional justice system	28 March 2008
	Clarification provided on clauses 2, 3, 5 and 7 of the Reform of Customary Law of Succession and Related Matters Bill to Caiphus Kgosana, a reporter for City Press (Parliament)	29 March 2008
Project 107: Sexual offences	Participate in meetings of the Inter-sectoral Committee on the implementation of the Sexual Offences Act	June 2007

CHAPTER 5
PUBLIC RELATIONS

Project	Activity	Date
	Briefing of the National Assembly Portfolio Committee on Justice and Constitutional Development and the National Council of Provinces Select Committee on Security and Constitutional Affairs re Criminal Law (Sexual Offences and Related Matters) Amendment Bill	August to November 2007
	Assist the Department of Justice and Constitutional Development in the matter of Phaswane with regards to several constitutional issues relating to the position of children in criminal trials	September 2007
	Meeting with a sexual health educator with regard to updating the curriculum in line with legislative developments	September 2007
	Briefing of Namibian Law Reform Commission regarding the Sexual Offences Bill	November 2007
	Participate in meetings of the Inter-sectoral Committee on the implementation of the Sexual Offences Act	January 2008
	Interview on Radio 702 with Keenu Cummies on statutory sexual assault and statutory rape and the "Kissing Law"	January 2008
	Interview on 104.9 FM on statutory rape and the "Kissing Law"	January 2008
	SABC Kids News televised interview on statutory assault, statutory rape and the "Kissing Law"	January 2008
	Presentation to the Peri-Natal HIV Research Unit at Baragwanath Hospital on adolescents and the Sexual Offences Act and the Termination of Pregnancy Act	March 2008
Project 107: Sexual offences: adult prostitution	Attend inter- governmental FIFA 2010 feedback sessions	October 2007
	Attend the HHP State of the Art Sex Workers Symposium in Hillbrow	October 2007
	Respond to a Parliamentary question on the current status of prostitution in South Africa	6 June 2007
	Briefing of the Namibian Law Reform Commission regarding the adult prostitution investigation	November 2007
Project 110: Review of the Child Care Act	Meeting on the sections of the Children's Act referring to mediation and supporting regulations with Mr Alan José of the South African Association of Mediators	2 April 2007
	Meeting with official from the Legal Aid Board on training of the staff of the Legal Aid Board on the Children's Act and Children's Amendment Bill	3 April 2007

Project	Activity	Date
	Present training on the Children's Act and Children's Amendment Bill to staff of the Legal Aid Board	20 April 2007
	Meeting on early childhood development as provided for in the Children's Amendment Bill with officials from the Department of Social Development (DSD)	2 May 2007
	Meeting in Cape Town with official from DSD and the official from the Office of the Chief State Law Adviser responsible for the vetting and certification of the Children's Amendment Bill	7 May 2007
	Attend and participate in workshop on a National Policy Framework for the Children's Act arranged by DSD	16 May 2007
	Meeting of the Select Committee for Social Services (NCOP) to discuss final mandates from the provinces for the Children's Amendment Bill	22 May 2007
	Vote on the Children's Amendment Bill in the National Council of Provinces (NCOP)	29 May 2007
	Attend and participate in Steering Committee meeting on the Children's Act regulations	31 May 2007
	Meeting of the Portfolio Committee on Social Services (National Assembly): Deliberation of the Children's Amendment Bill	6 June 2007
	Attend and participate in a workshop on children's constitutional rights to social services arranged by the Children's Institute of the University of Cape Town	12 June 2007
	Meeting of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill	13 June 2007
	Meeting with official from the Department of Justice and Constitutional Development (DOJCD) on the Children's Act regulations pertaining to children's courts	15 June 2007
	Meeting with the drafters of the Children's Act regulations and the official from DOJCD responsible for the drafting of the Children's Act regulations that pertain to the DOJCD	21 June 2007
	"Radio Sonder Grense" radio station: participate in radio programme "Praat Saam", giving inputs on and responding to public enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	3 July 2007
	"SA FM" radio station: participate in radio programme giving inputs on and responding to public enquiries on the commencement of 43 sections of the Children's Act with effect from 1 July 2007	4 July 2007
	"Radio Sonder Grense" radio station: participate in radio programme "Monitor", giving inputs on and responding to enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	5 July 2007

CHAPTER 5
PUBLIC RELATIONS

Project	Activity	Date
	"Radio Pretoria" radio station: participate in radio programme, giving inputs on and responding to enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	5 July 2007
	Attend and participate in Steering Committee meeting on the Children's Act regulations	9 July 2007
	"Cape Talk" radio station: participate in radio programme, giving inputs on and responding to enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	10 July 2007
	Attend and participate in Steering Committee meeting on the Children's Act regulations	24 July 2007
	Participate in a round-table discussion with legal practitioners arranged by Roodt & Wessels Attorneys on problems with the implementation of the 43 sections of the Children's Act put into operation with effect from 1 July 2007	27 July 2007
	Presentation on parental responsibilities and rights as contained in the Children's Act to the Pro Bono organisation in Johannesburg	31 July 2007
	Meeting with legal practitioners on problems with the implementation of the 43 sections of the Children's Act put into operation with effect from 1 July 2007	1 August 2007
	"Radio Sonder Grense" radio station: pre-record two radio programmes for "Wat sê die prokureur" on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	13 August 2007
	"Radio Sonder Grense" radio station: participate in radio programme "Wat sê die prokureur", giving inputs on and responding to public enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	13 August 2007
	"Radio Kansel" radio station: participate in radio programme giving inputs on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	15 August 2007
	Presentation on issues pertaining to health aspects as contained in the Children's Act to officials from the Department of Health	15 August 2007
	Presentation on issues affecting family advocates as contained in the Children's Act to senior officials from the Office of the Family Advocate and participate in discussion on problems with the implementation of the 43 sections of the Children's Act put into operation with effect from 1 July 2007	17 August 2007
	Attend and participate in Steering Committee meeting on the Children's Act	20 August 2007
	Co-present lecture on the Children's Act with an official from DSD to social work students of the University of Johannesburg	31 August 2007

PUBLIC RELATIONS

Project	Activity	Date
	Meeting of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill	5 September 2007
	Meeting on the training of magistrates on the Children's Act at DOJCD	6 September 2007
	Meeting with official from DSD on the National Child Protection Register as provided for in the Children's Act	7 September 2007
	Meeting with official from the Dutch Reformed Church on the implications of the Children's Act	10 September 2007
	Meeting of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill and consideration of comments received during public hearings on the Children's Amendment Bill	18 September 2007
	Meetings of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill and consideration of comments received during public hearings on the Children's Amendment Bill	2 – 4 October 2007
	Meeting of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill and consideration of comments received during public hearings on the Children's Amendment Bill	9 – 11 October 2007
	Present training on the Children's Act and Children's Amendment Bill to social workers from Child Welfare SA and other child protection organisations	12 October 2007
	Meeting of the Portfolio Committee on Social Development (National Assembly): Deliberation of the Children's Amendment Bill and consideration of comments received during public hearings on the Children's Amendment Bill	16 – 18 October 2007
	Attend and participate in workshop on the Children's Act and the Children's Amendment Bill with DSD, the Department of Local and Provincial Government and local authorities.	22 October 2007
	Portfolio Committee on Social Development (National Assembly): Vote on Children's Amendment Bill	23 October 2007
	Presentation on parental responsibilities and rights at seminar on the Children's Act hosted by the Centre for Child Law at the University of Pretoria	24 October 2007
	Presentation on the Children's Act at the 6th Annual Conference on dealing with children and divorce	1 November 2007
	Second Reading debate on the Children's Amendment Bill in the National Assembly	6 November 2007

CHAPTER 5
PUBLIC RELATIONS

Project	Activity	Date
	Briefing to the Select Committee for Social Services (NCOP) on the differences between version 19B-2006 and version 19D-2006 of the Children's Amendment Bill	7 November 2007
	Briefing to representatives from the various provinces on the differences between version 19B-2006 and version 19D-2006 of the Children's Amendment Bill	13 November 2007
	Present training on the Children's Act and Children's Amendment Bill to social workers from the SAVF and other child protection organisations	16 November 2007
	Meeting with officials from the Office of the Chief State Law Adviser, the Parliamentary committee section, DSD and Parliamentary legal advisers on errors in the D version of the Children's Amendment Bill	19 November 2007
	Meeting of the Select Committee for Social Services (NCOP) on the D version of the Children's Amendment Bill	20 November 2007
	Meeting of the Mediation Committee established in terms of section 78 of the Constitution on the Children's Amendment Bill	21 & 22 November 2007
	Children's Amendment Bill as presented by the Mediation Committee passed by both the National Assembly as well as the National Council of Provinces	22 November 2007
	Attend and participate in Steering Committee meeting on the Children's Act regulations	26 November 2007
	Attend and participate in DSD Workshop on vulnerable children over the age of 14 years	12 December 2007
	"Radio Sonder Grense" radio station: participate in radio programme "Praat Saam", giving inputs on and responding to public enquiries on the Children's Act and the commencement of 43 sections of the Act with effect from 1 July 2007	13 December 2007
	Meeting with official from the DOJCD on the Children's Act regulations pertaining to children's courts	29 January 2008
	Meeting with one of the drafters of the Children's Act regulations on possible amendments to the Children's Act to address regulatory authorisation	18 February 2008
	Workshop with senior officials from the office of the Chief Family Advocate to discuss shortcomings in the Children's Act	21 February 2008
	Meeting with Prof. Jan Bekker to discuss impact of the Children's Act on customary law	10 March 2008
	Meeting with Prof. Jan Bekker to discuss impact of the Children's Act on customary law	28 March 2008
Project 118: Domestic partnerships	Provide inputs as requested by the Department of Home Affairs	28 May 2007 and 9 January 2008

Project	Activity	Date
	Consultant on technical matters to Alliance for the recognition of domestic partnerships	March 2007 onwards
	Presentation on the Bill at workshop entitled "Developing and consolidating strategies for the recognition of domestic partnerships"	29 June 2007
	Presentation on the Domestic Partnerships Bill at Alliance for the recognition of domestic partnerships meeting	7 February 2008
	Presentation at SAWLA Tshwane forum launch and round-table on the Domestic Partnerships Bill	11 February 2008
Project 122: Assisted decision-making: Adults with impaired decision-making capacity	Briefing of Department of Justice and Constitutional Development representative, Chief Directorate: Policy Research, Co-ordination and Monitoring	20 July 2007
	Consultative meeting with Chief Master of the High Court	7 August 2007
	Briefing by advisory committee member at Alzheimer's South Africa's support group leader training	3 October 2007
Project 123: Protected disclosures	Comment on model legislative provisions on "whistle-blowing" prepared by the Commonwealth Secretariat's anti-corruption project while attending the Commonwealth Secretariat meeting for senior law officials in London	October 2007
	Briefing of Namibian Law Reform Commission	November 2007
Project 124: Privacy and data protection	Participation in work of Patient Confidentiality Subcommittee of the Health Professions Council resulting in the publication of the Patient Confidentiality Code on 18 July 2007	May 2006 onwards
	Meetings with NIA on the overlap between the proposed Protection of Personal Information Act (POPIA) and the Protection of Information Bill	29 March 2007 onwards
	Various meetings with Adv Ashina Singh, Credit Bureaux Association to discuss the impact of the proposed POPIA on the credit industry	April 2007 onwards
	Briefing of the Policy Unit, Department of Justice on the proposed POPIA	7 April 2007
	Various meetings with Tim O'Hanlon Programme Manager, Old Mutual on the impact of the proposed POPIA on the insurance industry	May 2007 onwards
	Meetings with Departments of Trade and Industry and Communications on impact of the proposed POPIA on the ECT Act and the Consumer Protection Bill	25 May 2007 onwards
	Briefing of Direct Marketing Association on the applicable European Union Directives	31 May 2007
	Meeting with Banking Association	12 June 2007

CHAPTER 5
PUBLIC RELATIONS

Project	Activity	Date
	Briefing to the Minister for Justice and Constitutional Development on the proposed POPIA	25 June 2007
	Various meetings with the Director: Risk and compliance, Premier Group	26 June – September 2007
	Briefing of the heads of department in DOJCD on the proposed POPIA	23 July 2007
	Presentation at Vodacom on regulation of cell-phone information	26 Jul 2007
	Power Point presentation at In-house legal congress conference on privacy and business	1 Aug 2007
	Attendance of three international privacy conferences in Vancouver, Toronto and Montreal where important contact was made with privacy commissioners from other jurisdictions	September 2007
	Participated in the Marketing law workshop	13 November 2007
	Briefing of the Deputy Minister for Justice and Constitutional Development on POPIA	15 November 2007
	Presentation to LOA's Consumer Affairs Standing Committee on the impact of POPIA on the long-term insurance industry	4 December 2007
	Power Point presentation at First National Bank on compliance processes	29 January 2008
	Meeting with SA Breweries and Bowman Gilfillan to discuss employment privacy	30 January 2008
	Advisory committee meeting with David Young, Canadian Bar Association's privacy and access law section	27 February 2008
	Key-note speaker at the launch of the DMA's database regulatory committee	6 March 2008
	Meeting with member companies of LOA	26 March 2008
Project 129: Review of matrimonial property law	Briefing of representatives of Divorce & Family Mediators (Pty) Ltd	6 March 2008
Project 130: Stalking	Meeting with the Psychologically Motivated Crimes Unit of the South African Police Service	June 2007
	Briefing of the Policy Unit and branch heads of the DOJCD	July 2007
	Meeting with forensic psychologist	August 2007
	Media discussions with Beeld, Sunday Times, Cape Town Community Newspaper and Fairlady Magazine	
131: Trafficking in persons	Attend the 2010 FIFA World Cup Committee meeting for purposes of participating in discussions relating to the proposed legalisation of prostitution for the period of the World Cup	14 – 15 May 2007

Project	Activity	Date
	Meet with the Institute for Security Studies and the Sex worker education and advocacy task force to discuss their research findings on the sex work industry in Cape Town, with specific reference to human trafficking	19 June 2007
	Brief Ms Araujo, a master student at Wits University, on the SALRC's processes and investigation into trafficking in persons	24 June 2007
	Meet with Land borderline control: Visible policing, South African Police Service to discuss the role of the police with regard to the control of South Africa's borders	1 August 2007
	Meet with Crime intelligence, South African Police Service, to discuss the management of information on trafficking in persons	6 August 2007
	Present a paper titled "Recommendations for new legislation in South Africa" at a conference on human trafficking hosted by the University of the Free State	17 August 2007
	Participate in a workshop arranged by the European Union and the National Prosecuting Authority to discuss the implementation of phase 1 of the programme "Assistance to the South African government to prevent and react to human trafficking"	19 November 2007
	Brief consultants for the programme co-ordinating unit of the NPA lead human trafficking programme on the country's response to the human trafficking phenomenon	23 January 2008
	Brief a delegation from the USA State Department on investigation into trafficking in persons and other legislative processes relating to trafficking in persons.	30 January 2008

INTERNET

The South African Law Reform Commission's comprehensive website can be accessed at http://salawreform.justice.gov.za

THIRTY FIFTH ANNUAL REPORT **2007/2008**

CHAPTER 6

ACKNOWLEDGEMENTS

South African
Law Reform Commission

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 gratitude 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 providing advice and direction to researchers, evaluating the research and for the documents and reports compiled under their guidance. The Commission would also like to express its appreciation to individuals and organisations for their willingness to serve on advisory committees of the Commission.

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 researchers of the Secretariat for their dedication and the consistently high levels of excellence and professionalism maintained by them. A special word of gratitude is reserved for the persons who acted as Secretary during the period when the post of Secretary to the Commission was vacant.

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.

South African Law Reform Commission

THIRTY FIFTH
ANNUAL REPORT **2007/2008**

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE A

ISSUE PAPERS PUBLISHED BY THE COMMISSION

South African Law Reform Commission

ANNEXURE A
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
15	59	Islamic marriages and related matters	0 621 30089 6 May 2000

ISSUE PAPERS PUBLISHED BY THE COMMISSION

Serial number of issue paper	Project number	Title of investigation	ISBN/ Publication date
16	119	Uniform national legislation on the fencing of national roads	0 621 30188 4 July 2000
17	118	Domestic partnerships	0 621 31574 5 September 2001
18	122	Incapable adults	0 621 31797 7 November 2001
19	107	Sexual offences: Adult prostitution	0 621 33159 7 July 2002
20	123	Protected disclosures	0 621 33555 X November 2002
21	121	Consolidated legislation pertaining to international cooperation in civil matters	0 621 33553 3 November 2002
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
26	126	Review of the law of evidence	0 978 0 621 37676 0 March 2008

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE B

DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

South African Law Reform Commission

ANNEXURE B
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

DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

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

ANNEXURE B
DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
35	63	Insolvency: Insolvency interdicts	0 7970 2296 1 May 1991
36	62	The protection of a purchaser of securities	0 7970 23003 September 1991
37	68	Access to police dockets	0 7970 2316 X July 1991
38	65	Surrogate motherhood	0 7970 2381 X September 1991
39	63	Insolvency: Rehabilitation	0 7970 2490 5 April 1992
40	78	Interest on damages	0 7970 2607 X May 1992
41	63	Insolvency: Voidable dispositions and dispositions that may be set aside and the effect of sequestration on the spouse of the insolvent	0 7970 2638 X July 1992
42	73	Simplification of the criminal procedure: Working paper on appeal procedure	0 7970 2641 X July 1992
43	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband: Matters relating to the Divorce Amendment Act 7 of 1989	0 621 15039 8 December 1992
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

DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
50	74	Debt collecting	0 621 15933 6 November 1993
51	70	Limitation of professional liability	0 621 15955 7 December 1993
52	84	Application of the trapping system	0 621 15959 X December 1993
53	86	Euthanasia and the artificial preservation of life	0 621 15994 8 February 1994
54	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 16038 5 May 1994
55	89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	0 621 16358 9 December 1994
56	98	International co-operation in criminal prosecutions	0 621 16820 3 May 1995
57	88	The recognition of a class action in South African law	0 621 16928 5 September 1995
58	85	Aspects of the law relating to AIDS	0 621 16964 1 September 1995
59	94	Arbitration	0 621 16971 4 September 1995
60	95	Investigation into the Computer Evidence Act 57 of 1983	0 621 17259 6 October 1995
61	63	Review of the law of insolvency: Statutory provisions that benefit creditors	0 621 17297 9 November 1995
62	100	The granting of visitation rights to grandparents of minor children	0 621 17344 4 March 1996
63	93	Speculative and contingency fees	0 621 17353 3 March 1996
64	104	Money laundering and related matters	0 621 17453 X June 1996

ANNEXURE B
DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 August 1996
	63	Review of the law of insolvency: Draft Bill and explanatory memorandum: Executive summary	0 621 17510 2 August 1996
67	96	Apportionment of Damages Act, 1956	0 621 17543 9 October 1996
68	85	Aspects of the law relating to AIDS	0 621 17550 1 October 1996
69	94	International commercial arbitration	0 621 176028 December 1996
70	100	Family law and the law of persons: Domestic violence	0 621 17650 8 February 1997
71	86	Euthanasia and the artificial preservation of life	0 621 17724 5 April 1997
72	85	Aspects of the law relating to AIDS: Pre-employment HIV testing	0 621 27350 3 June 1997
73	85	Aspects of the law relating to AIDS: HIV/AIDS and discrimination in schools	0 621 27697 9 August 1997
74	90	Customary law: Customary marriages	0 621 27723 1 September 1997
75	111	Constitutional jurisdiction of magistrates' courts	0 621 27997 8 March 1998
76	90	Customary law: Conflicts of law	0 621 28007 0 April 1998
77	112	Sharing of pension benefits	0 621 280208 April 1998
78	105	Review of security legislation: The Interception and Monitoring Prohibition Act 127 of 1992	0 621 28847 0 November 1998
79	106	Juvenile justice	0 621 28851 9 November 1998

DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
80	85	Aspects of the law relating to AIDS: The need for a statutory offence aimed at harmful HIV-related behaviour	0 621 28854 3 December 1998
81	115	Administrative law	0 621 28895 0 January 1999
82	90	Customary law: Traditional courts and the judicial function of traditional leaders	0 621 29273 7 May 1999
83	94	Arbitration: Domestic arbitration	0 261 29371 7 September 1999
84	85	Aspects of the law relating to AIDS: Compulsory HIV testing of persons arrested in sexual offence cases	0 621 29372 5 September 1999
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

ANNEXURE B
DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
96	73	Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials	0 621 30683 5 April 2001
97	82	Sentencing: A compensation scheme for victims of crime	0 621 30687 8 April 2001
98	114	Publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979	0 621 30715 7 May 2001
99	108	Computer-related crime: Preliminary proposals for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 30718 1 May 2001
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

DISCUSSION PAPERS PUBLISHED BY THE COMMISSION

Serial number of discussion paper	Project number	Title of investigation	ISBN/ Publication date
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
113	126	Review of the law of evidence: Hearsay evidence and relevance	0 978 0 621 37675 3 March 2008

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

South African Law Reform Commission

ANNEXURE C

INVESTIGATIONS INCLUDED IN 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 Second General Law Amendment 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	Computer Evidence Act 57 of 1983 passed
	Final report	1986	ISBN 0 621 11348 4	Law of Evidence Amendment Act 45 of 1988 passed
7	Revision of pre-Union statutes:			
	Repeal of certain pre-Union Statutes	1975	Not published	Pre-Union Statute Law Revision Act 36 of 1976 passed
	Repeal of certain pre-Union statutes	1976	Not published	Pre-Union Statute Law Revision Act 43 of 1977 passed
	Retention of certain pre-Union statutes	1977	Not published	Pre-Union Statute Laws Revision 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	Trust Property Control Act 57 of 1988 passed
10	Draft convention for a uniform law of agency of an international character in respect of the sale of goods	1974	Not published	No legislation recommended

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
11	Investigation into the common law rule that interest may not accrue beyond the principal debt	1974	RP 18/1975	Recommendations not implemented, but see section 68A of the Insurance Act 27 of 1943 in respect of policy loans.
12	Review of the law of divorce:			
	Report	1977	RP 57/1978	Divorce Act 70 of 1979 passed. See also Project 40
	Section 7(3) of Act 70 of 1979	1991	ISBN 0 621 14140 2	Divorce Amendment 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	Matrimonial Affairs Amendment 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	Prescribed Rate of Interest 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	Matrimonial Property Act 88 of 1984 passed. See also Projects 41 and 51.
16	Investigation into the application of set-off in insolvency	1975	Not published	No legislation recommended. See Project 63
17	Examination of the convention on the form of an international will	1975	Not published	No legislation recommended. See Project 22
18	Investigation into the enforceability of foreign arbitration awards in the Republic	1975	Not published	Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 passed
19	Investigation into the shifting of the onus of proof in bribery charges	1975	Not published	No legislation recommended. See Project 75
20	Investigation into the substitution of petition proceedings in superior courts	1975	Not published	Petition Proceedings Replacement Act 35 of 1976 passed

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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	Intestate Succession Act 81 of 1987 passed
	Legitimate portion or right to maintenance	1987	Not published	Maintenance of Surviving Spouses 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	Law of Succession Amendment 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 statute book:			See Chapter 3
	Repeal of Laws Act	1980	Not published	Repeal of Laws Act 94 of 1981 passed
	Investigation into certain aspects of the Prescription Act 68 of 1969	1983	Not published	Prescription Amendment 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	Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 passed
26	Criminal law consolidation: Theft and house-breaking	1977	Not published	Recommendations regarding legislation not implemented
27	Abolition of civil imprisonment	1976	Not published	Abolition of Civil Imprisonment Act 2 of 1977 passed. See also Project 54.

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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	Dissolution of Marriages on Presumption of Death Act 23 of 1979 passed
32	Review of the law of admiralty	1982	RP 12/1983	Admiralty Jurisdiction Regulation 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	Children's Status 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

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

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	Divorce Amendment 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	Law of Evidence and the Criminal Procedure Amendment Act 103 of 1987, Criminal Law and the Criminal Procedure Act Amendment Act 39 of 1989 and Prevention of Family Violence Act 113 of 1993 passed
46	The giving of security by means of movable property:			
	Report	1991	ISBN 0 621 14544 0	Security by means of Movable Property Act 57 of 1993 passed
	Supplementary report	1993	Not published	Act 57 of 1993 passed

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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 Department in May 1998.
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	Criminal Law Amendment 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 Laws on Co-operation and Development Act 90 of 1985 enacted
	Final report	1986	-	Marriage and Matrimonial Property Law Amendment 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	Alteration of Sex Description and Sex Status Act 49 of 2003 passed
53	Investigation into the amendment of section 26 of the Insolvency Act 24 of 1936	1983	Not published	Insolvency Amendment 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)

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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	Constitution of the Republic of South Africa Act 200 of 1993 passed
	Final report	1994	RP 66/1995 ISBN 0 621 16727 4	Made available to the Constitutional Assembly
59	Islamic marriages and related matters	2003	RP 210/2003 ISBN 0 621 34989 5	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in July 2003.
60	Domicile	1991	ISBN 0 621 14255 7	Domicile 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	Mentally Ill Persons' Legal Interests Amendment 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	Companies Amendment Act 35 of 1998 passed

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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	Insolvency Amendment Act 122 of 1993 passed
	Interim report: Appeals against sequestration orders	1993	ISBN 0 621 15421 0	Section 1 of the General Law Third Amendment 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	Insolvency Amendment Act 32 of 1995 passed
	Interim report: The enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency	1999	Not printed	Cross-Border Insolvency Act 42 of 2000 passed
	Report: The review of the law of insolvency	2000	RP 89/2000 ISBN 0 621 30069 1	Insolvency and Business Recovery Bill approved by Cabinet and receiving the attention of the State Law Advisers
64	The legal protection of information	-	-	Struck off
65	Surrogate motherhood	1992	ISBN 0 621 15353 2	Recommendations 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 of the Republic of South Africa Act 200 of 1993
	Report	1994	RP 82/1995 ISBN 0 621 16746 0	Criminal Procedure Second Amendment Act 75 of 1995 passed
67	The Usury Act and related matters	-	-	Struck off

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
68	Access to police dockets	1992	ISBN 0 621 15349 4	Not implemented in view of the subsequent provision in section 23 of the Constitution of the Republic of South Africa Act 200 of 1993
69	The acquisition and loss of ownership of game	1991	ISBN 0 621 14138 0	Game Theft 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	Criminal Law Amendment Act 135 of 1991 passed
72	The alienation of personal servitudes	-	-	Struck off

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

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	Criminal Procedure Amendment 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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in December 2000.
	Fourth interim report: Sentence agreements	2001	RP 120/2001 ISBN 0 621 31452 8	Criminal Procedure Second Amendment Act 62 of 2001 passed
	Fifth interim report: A more inquisitorial approach to criminal procedure	2002	RP 219/2002 ISBN 0 621 33510 X	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in August 2002.
	Final report: Out-of-court settlements in criminal cases	2002	RP 218/2002 ISBN 0 621 33511 8	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in August 2002.
74	Debt collecting:			
	Interim report on imprisonment for debt	1994	RP 199/1995 ISBN 0 621 16956 0	Magistrates' Courts Amendment Act 81 of 1997 passed
	Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Act 81 of 1997 and Debt Collectors Act 114 of 1998 passed
75	Bribery	1991	ISBN 0 662 15184 43	Corruption Act 94 of 1992 passed

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Divorce Amendment 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	Prescribed Rate of Interest Amendment Act 7 of 1997 passed
79	Natural fathers of children born out of wedlock	1994	RP 55/1995 ISBN 0 621 16706 1	Natural Fathers of Children born out of Wedlock Act 86 of 1997 passed
80	Accession to the Hague Convention on the Civil Aspects of International Child Abduction	1992	Not published	Hague Convention on the Civil Aspects of International Child Abduction 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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in December 2000.
	A compensation scheme for victims of crime in South Africa	2004	Ministerial approval of publication of report is awaited	Report was submitted to the Minister for Justice and Constitutional Development for approval of publication in May 2004 and again in August 2006.
83	Review of the Moratorium Act, 1963	-	-	Struck off

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
84	Application of the trapping system	1994	RP 174/1995 ISBN 0 621 16896 3	Criminal Procedure Second Amendment Act 85 of 1996 passed
85	Aspects of the law relating to AIDS:			
	First interim report: Health related aspects	1997	RP 106/1997 ISBN 0 621 27345 7	Regulations on Hazardous Biological Agents 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 on their alleged offenders' HIV status have been included in Chapter 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
	Fifth interim report: The need for a statutory offence aimed at harmful HIV-related behaviour	2001	RP 78/2001 ISBN 0 621 30750 5	No legislation recommended
86	Euthanasia and the artificial preservation of life	1998	RP 186/1999 ISBN 0 621 29831 X	Report under consideration by the Department of Health. Report submitted to the Department in 1999.
87	Jurisdictional lacuna in the Supreme Court Act, 1959	1994	RP 64/1995 ISBN 0 621 16723 1	Judicial Matters Amendment Act 122 of 1998 passed

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department 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	Criminal Matters Amendment Act 68 of 1998 passed
90	Customary law:			
	Customary marriages	1998	RP 170/1998 ISBN 0 621 28755 5	Recognition of Customary Matters Act 120 of 1998 passed
	Conflicts of law	1999	RP 81/2000 ISBN 0 621 30061 6	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in September 1999.
	Traditional courts and the judicial function of traditional leaders	2003	RP 209/2003 ISBN 0 621 34988 7	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in January 2003.
	Customary law of succession	2004	Report being printed	Publication of report approved by Minister for Justice and Constitutional Development on 7 March 2008. Report was submitted to the Minister in August 2004.

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
91	The review of the offences created by sections 36 and 37 of the General Law Amendment Act 62 of 1955, and section 1 of Act 50 of 1956 and related matters	-	-	Struck off
92	The re-evaluation of the offence created by section 1 of Act 1 of 1988	-	-	Struck off
93	Speculative and contingency fees	1996	RP 37/1997 ISBN 0 621 17648 6	Contingency Fees Act 66 of 1997 passed
94	Arbitration:			
	International arbitration	1998	RP 30/1999 ISBN 0 621 28861 6	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in July 1998.
	Domestic arbitration	2001	ISBN 0 621 31453 6	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department 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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in July 2003.
97	Unjustified enrichment	-	-	Struck off

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
98	International co-operation in criminal prosecutions	1995	RP 47/1996 ISBN 0 621 17357 6	International Co-operation in Criminal Matters Act 75 of 1996, Proceeds of Crime Act 76 of 1996 and Extradition Amendment Act 77 of 1996 passed
99	The application of the rule huur gaat voor koop with reference to the question whether a lessee has a choice to continue the lease with a new lessor after the sale of the leased property	-	-	Struck off
100	Family law and the law of persons:			
	Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Recommendations incorporated in the Children's Act 38 of 2005
	Domestic violence	-	See Annexure G	Domestic Violence Act 116 of 1998 passed
	Maintenance: Interim report	1998	RP 137/1998 ISBN 0 621 28685 0	Maintenance Act 99 of 1998 passed
101	The application of the Bill of Rights to the criminal law, the law of criminal procedure and sentencing	2001	RP 118/2001 ISBN 0 621 31451 X	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department 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	Financial Intelligence Centre Act 38 of 2001 passed

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
105	Review of security legislation:			
	Monitoring and Interception Prohibition Act 127 of 1992	1999	RP 203/1999 ISBN 0 621 29897 2	Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 passed
	Terrorism	2002	RP 216/2002 ISBN 0 621 33513 5	Protection of Constitutional Democracy against Terrorism and Related Activities 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 and Related Matters) Amendment Act 32 of 2007 passed
	Adult prostitution	-	-	See Chapter 3
108	Computer-related crimes	-	-	Struck off
109	Review of the Marriage Act	2001	RP 117/2001 ISBN 0 621 31454 4	Report under consideration by the Department of Home Affairs. Report submitted to the Department in 2001.
110	Review of the Child Care Act	2003	RP 17/2003 ISBN 0 621 33584 3	Children's Act 38 of 2005 and Children's Amendment Act 41 of 2007 passed
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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in June 1999.

ANNEXURE C

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
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	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in July 2003.
114	Publication of divorce proceedings	2002	RP 217/2002 ISBN 0 621 33572 6	Report under consideration by the Department of Justice and Constitutional Development. Report submitted to the Department in August 2002.
115	Review of administrative law	1999	ISBN 0 621 29881 6	Promotion of Administrative Justice Act 3 of 2000 passed
116	The carrying of firearms and other dangerous weapons	-	-	Struck off
117	The legal position of voluntary associations	-	-	Struck off
118	Domestic partnerships	2006	ISBN 978-0-621-37255-7	Civil Union Act 17 of 2006 passed Proposed Domestic Partnerships Bill under consideration by Department of Home Affairs
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	-	Ministerial approval of publication of report is awaited	Report was submitted to the Minister for Justice and Constitutional Development for approval of publication in January 2007
122	Assisted decision-making: Adults with impaired decision-making capacity	-	-	See Chapter 3
123	Protected disclosures	-	-	See Chapter 3

INVESTIGATIONS INCLUDED IN COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT

Project number	Title	Year of report	Reference number of published report	Result
124	Privacy and data protection	-	-	See Chapter 3
125	Prescription periods	-	-	See Chapter 3
126	Review of the law of evidence	-	-	See Chapter 3
127	Review of administration orders	-	-	See Chapter 3
128	Review of aspects of the law of divorce	-	-	See Chapter 3
129	Review of aspects of matrimonial property law	-	-	See Chapter 3
130	Stalking	-	Ministerial approval of publication of report is awaited	Report was submitted to the Minister for Justice and Constitutional Development for approval of publication in November 2006
131	Trafficking in persons	-	-	See Chapter 3
132	Abolition of the oath	-	-	Struck off
133	A specific civil action in respect of consequential damages arising from hoaxes	-	-	See Chapter 3
134	Administration of estates.	-	-	See Chapter 3

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE D

MEMBERS OF THE COMMISSION IN ORDER OF APPOINTMENT

South African Law Reform Commission

ANNEXURE D

MEMBERS OF THE COMMISSION IN ORDER APPOINTMENT

Title/Name	Term of office
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
Madam Justice JY 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
Madam Justice JY Mokgoro, Justice of the Constitutional Court	01/01/1999 to 02/11/2000
Madam Justice M L Mailula, Judge of the High Court	01/01/2002 to 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 TN Madonsela *	01/01/2007 to date
Members	
Mr D J du P Geldenhuys	28/09/1973 to 31/10/1975
Mr C P Joubert SC	28/09/1973 to 20/08/1974
Mr J E Knoll	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

MEMBERS OF THE COMMISSION IN ORDER APPOINTMENT

Title/Name	Term of office
Mr P M Nienaber SC	14/06/1981 to 27/07/1982
Mr P J J Olivier SC	30/09/1982 to 01/12/1988
Prof. J T Delport	30/09/1982 to 27/05/1987
Prof. D J Joubert	21/12/1987 to 31/12/1995
Dr W G M van Zyl	01/11/1988 to 31/10/1991
Mr R P McLaren SC	24/07/1989 to 31/10/1990
Prof. C R M Dlamini SC	08/05/1991 to 31/12/1995
Mr J A Venter	12/03/1992 to 31/12/1995
Justice JY 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 31/12/2001
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
Judge DM Davis *	01/01/2007 to date
Advocate M Sello *	01/01/2007 to date
Advocate DB Ntsebeza SC *	01/01/2007 to date
Mr NT Ngcukaitobi *	01/01/2007 to date
Professor P J Schwikkard *	01/01/2007 to date
Professor C Albertyn *	01/01/2007 to date

* Current members

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE E

ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

South African Law Reform Commission

ANNEXURE E

ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

Project	Members	Background
Project 127: Review of administration orders	Judge W Seriti (Project leader)	Vice-chairperson: 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
Project 94: 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
	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

ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

Project	Members	Background
Project 122: Assisted decision-making: Adults with impaired decision-making capacity	Judge B du Plessis (Project leader)	Judge of the High Court, Pretoria
	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 (since 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
Project 118: 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
Project 124: 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

ANNEXURE E

ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

Project	Members	Background
Project 126: Review of the law of evidence	Prof. P J Schwikkard (Project leader)	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
	Judge T Ndita	Judge of the High Court, Eastern Cape
	Judge M Nhlantla	Judge of the High Court, Eastern Cape

THIRTY FIFTH ANNUAL REPORT **2007/2008**

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE F

PRESENT PROGRAMME OF THE COMMISSION

South African Law Reform Commission

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
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 law 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

THIRTY FIFTH
ANNUAL REPORT **2007/2008**

THIRTY FIFTH ANNUAL REPORT **2007/2008**

ANNEXURE G

PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

South African Law Reform Commission

ANNEXURE G

PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

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

PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

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

NOTES

NOTES

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

The postal address is as follows:
The Secretary
South African Law Reform Commission
Private Bag X668
PRETORIA
0001
REPUBLIC OF SOUTH AFRICA

Telephone: (012) 392-9540
Fax: (012) 320-0936
E-mail: reform@justice.gov.za
Internet: http://salawreform.justice.gov.za
Office hours: 07:15 to 16:30 (Mondays to Fridays)