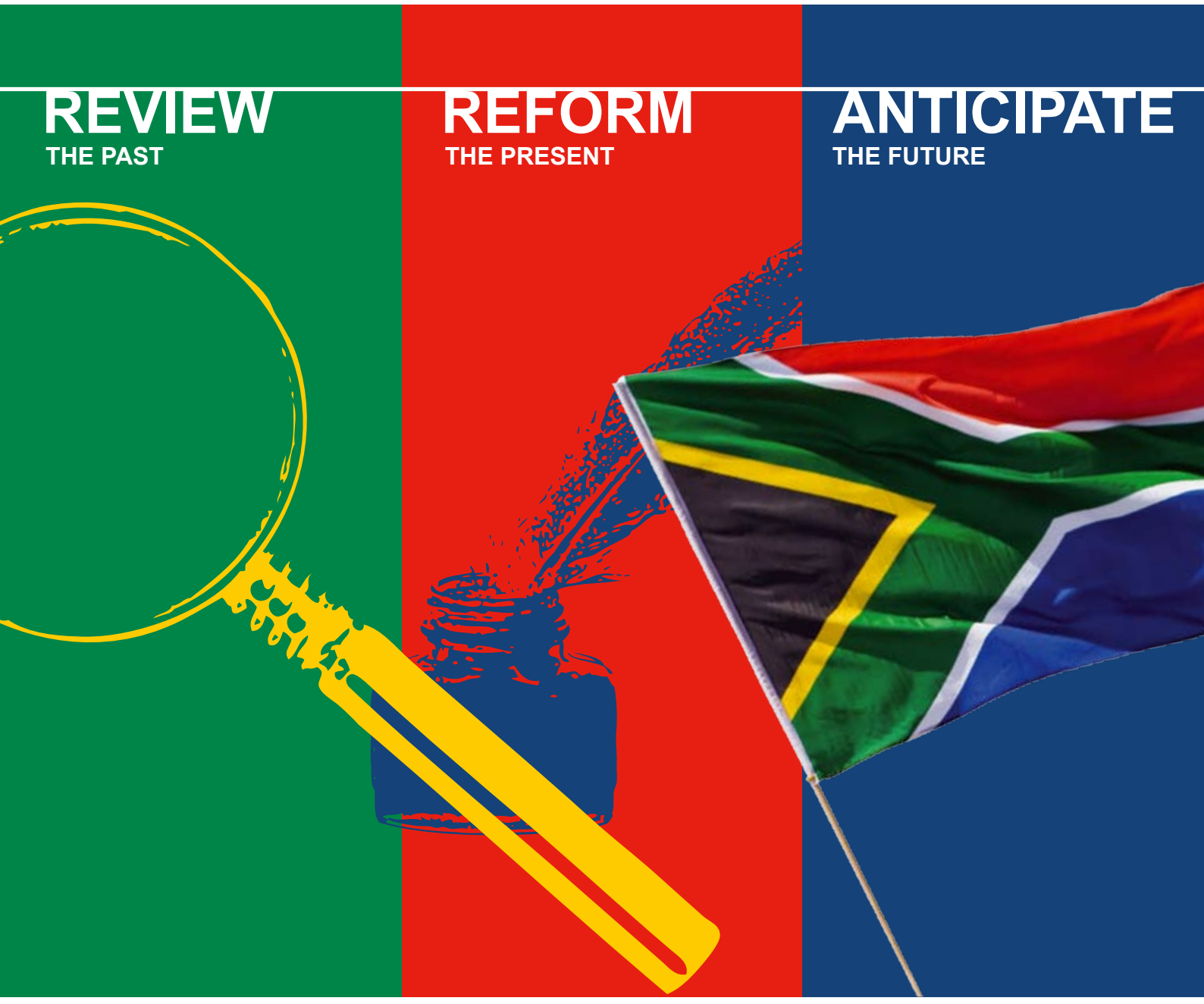
SOUTH AFRICAN LAW REFORM COMMISSION

THIRTY-SIXTH **ANNUAL REPORT**
2008/2009



South African
Law Reform Commission

To Mr J T Radebe MP

Minister of 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 2008 to 31 March 2009

Yours sincerely

Madam Justice JY Mokgoro

Justice of the Constitutional Court

Chairperson of the
South African Law Reform Commission

GALLERY OF COMMISSIONERS

2008/2009

Justice JY Mokgoro
Chairperson and Justice of the Constitutional Court

Judge WL Seriti
Vice-Chairperson and Judge of the Gauteng North High Court

Ms TN Madonsela
Full-time Member

Prof C Albertyn
Professor of Law University of the Witwatersrand

Judge DM Davies
Judge President of the Competition Appeal Court

Mr NT Ngcukaitobi
Practising Attorney Bowman Gilfillan Incorporated Attorneys

Advocate DB Ntsebeza SC
Advocate of the High Court of South Africa

Prof PJ Schwikkard
Dean of Law University of Cape Town

Advocate M Sello
Advocate of the High Court of South Africa

VISION

To be a centre for excellence, producing ground-breaking research pivotal to the improvement and renewal of the legal system of South Africa

MISSION

The continuous reform of the law of South Africa in accordance with the principles and values of the Constitution to meet

VALUES

the needs of a changing society operating under the rule of law

In the execution of its duties the SALRC strives to uphold the values of equality, integrity, inclusiveness, professionalism, impartiality, excellence, responsiveness, efficiency and respect for the dignity of others.

The South African Law Reform Commission

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

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REPUBLIC OF SOUTH AFRICA

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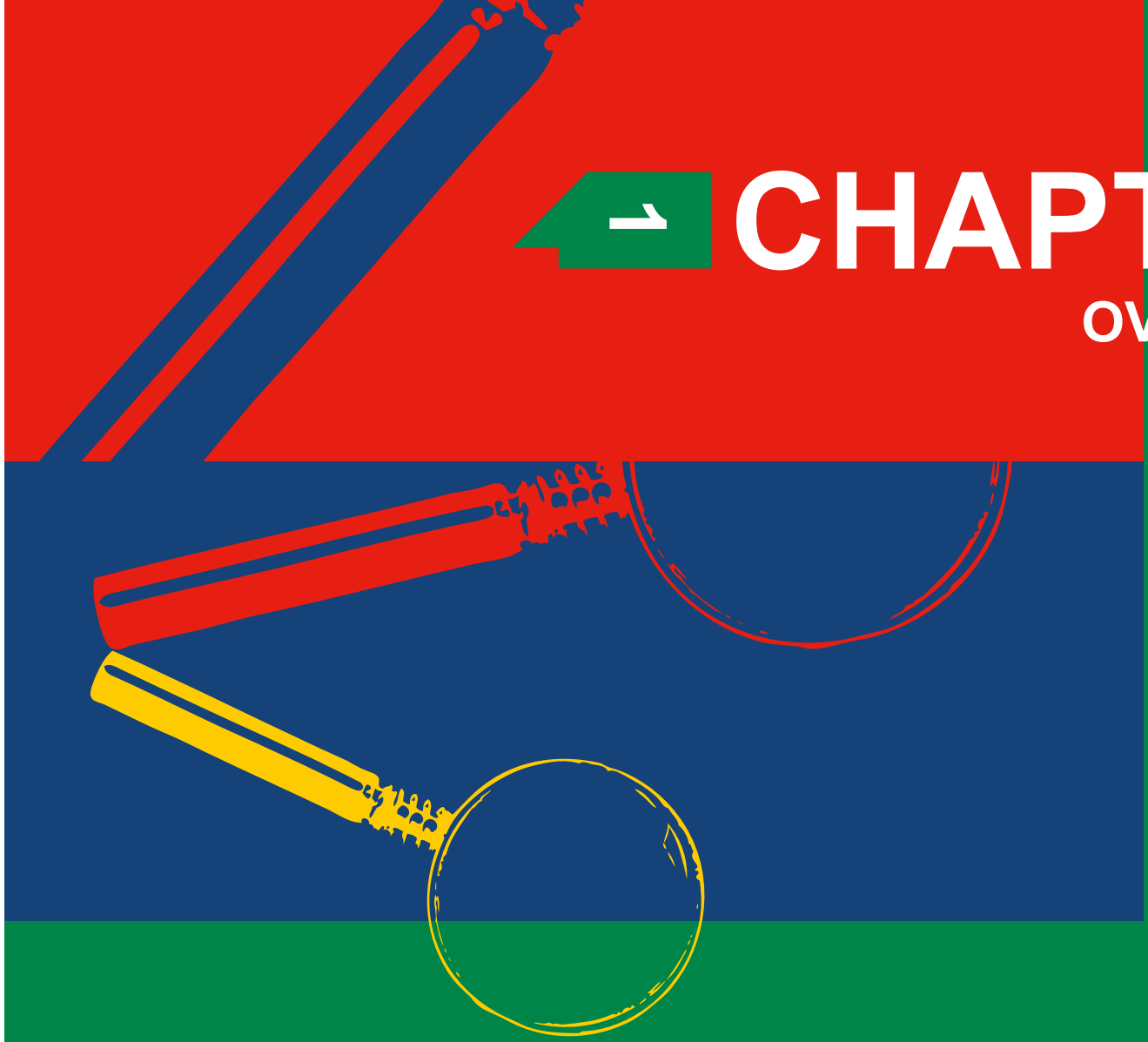


١ CHAPTER

OVERVIEW

CHAPTER 1 OVERVIEW

Introduction

The reform of the law of South Africa is the core business of the South African Law Reform Commission.

The South African Law Reform Commission Act 19 of 1973 states in section 4 that the objects of the South African Law Reform Commission (SALRC) are to do research with reference to all branches of the law of the Republic of South Africa in order to make recommendations for the development, improvement, modernisation or reform thereof.

However, before the SALRC can make recommendations for legal reform by executing its objects, the SALRC must be made aware of matters that require investigation. In terms of section 5 of the South African Law Reform Commission Act (SALRC Act) the Commission, in order to achieve its objects, must draw up a programme of the matters that in its opinion require consideration. It is significant that the SALRC Act states that the Commission may include in its programme any suggestion relating to its objects received from **any person or body.**

The fact that the SALRC may include law reform proposals for investigation in its programme irrespective of the status or capacity of the source of the proposal may be illustrated by examining the origin of some of the current investigations. The Project 25 subproject reviewing the South African statute book for constitutionality, redundancy and obsoleteness originated in a request from Cabinet following a submission by the Minister of Justice and Constitutional Development. Another Project 25 subproject, review of the Interpretation Act, as well as Project 124 - Privacy and data protection, are the result of a request from a parliamentary committee, the ad hoc Joint Committee on the Open Democracy Bill, 1998 (the Bill resulted in the Promotion of Access to Information Act, 1998).

The Project 100 subproject on custody and access to minor children originated from a family adviser at the Bloemfontein office of the Family Advocate, who became aware of particular problems with access to children after divorce during research for her Master's degree in social work. The other current Project 100 subproject, review of aspects of matrimonial property

law, was approved subsequent to among others a complaint lodged with the Commission for Gender Equality by a member of the public in respect of so-called 'joint' bank accounts.

Project 122, the investigation into assisted decision-making with regard to adults with impaired decision-making capacity, was approved after a request for such an investigation was received from a member of the public. Project 124, the investigation into prescription periods, was referred to the SALRC on request of the Minister of Justice and Constitutional Development following a recommendation by the Portfolio Committee for Justice and Constitutional Development. Project 126, the review of the law of evidence, emanates from a proposal by a SALRC committee that had been appointed to look into the simplification of criminal procedure.

"It is significant that the SALRC Act states that the Commission may include in its programme any suggestion relating to its objects received from any person or body."

Given the human and financial resources and the amount of time expended on an investigation, it is clear that the SALRC is unable to investigate each and every proposal received. Since many more proposals are received than what are possible for the SALRC to deal with at a given time, it is clear that the SALRC needs some method to determine when a proposal for an investigation will be entertained and when it will be rejected. Although proposals for investigation are subjected to preliminary investigation, even a preliminary investigation takes up valuable time and resources and may not always be necessary.

After the period of introspection that the SALRC had embarked upon as alluded to in Chapter 1 of the SALRC's 2007 / 2008 Annual Report, it became clear that the SALRC had to develop selection criteria to determine which proposals should be taken on as investigations, starting with a decision on which proposals should be subjected to preliminary investigation. The selection criteria therefore provide for a two-phased process to determine the inclusion of an investigation in the SALRC's programme.

The first set of criteria is used to determine whether a proposal should be rejected even before a preliminary investigation is done. It creates a sifting mechanism to reduce the number of preliminary investigations. If the proposal does not meet the initial criteria set for inclusion, it is rejected and a recommendation on this basis is made to the Commission for consideration. However, where the initial criteria are met, a preliminary investigation is indicated and the second set of criteria is then used to evaluate the proposal and to determine the ultimate inclusion or rejection of the proposal.

Whereas all the initial criteria need to be met when deciding whether to go ahead with a preliminary investigation, a proposal need not meet all the secondary criteria to be included in the programme. All the criteria in the second phase are considered and such weight is attached to a specific matter as the Commission deems appropriate in the circumstances of each case.

The criteria used in the two-phased approach are the following:

1. Criteria used in the initial sifting process to determine whether a proposal should be subjected to a preliminary investigation or whether it should be dealt with summarily

    a. Whether the issues concerned are predominantly legal

    b. Whether the legal problem can be addressed in a way that does not require a change of the law, for example through a mere change in policy or improved implementation of existing legislation

    c. Whether there is another institution or government department better placed to deal with the topic in question

    d. Pending legal developments (for example court cases or other draft legislation) that could influence the relevance of the investigation

e. The availability of current resources in terms of capacity, funding and the effective management of the research programme

2. Second phase criteria used in conjunction with those set out in 1 above during a preliminary investigation

   a. Extent to which the law is unsatisfactory (for example unconstitutional, unduly complex, inaccessible or outdated)

   b. Scale of the problem in terms of the proportion of the community affected

   c. Potential benefits likely to accrue from undertaking reform or repeal of the law

   d. The extent to which the investigation contributes to the implementation of a broader government policy

   e. Enhanced constitutionality

   f. Development and enhancement of the constitutional democracy

   g. Whether the issues span the interests of a number of government departments or professional groups

   h. Whether the investigation would require substantial long-term commitment and fundamental review

   i. Whether extensive public or professional consultation would be necessary

   j. Whether the investigation needs to be done independently of central government departments or other stakeholders because of –

      - the existence of vested interests; or
      - significant difference of views or objectives in the different entities

   k. Whether the investigation would promote informed public debate on future policy direction

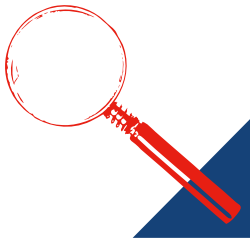
   l. The extent to which the investigation will benefit poor and previously disadvantaged communities

The procedure explained above to determine the ultimate inclusion or rejection of a proposal for investigation has already been implemented and has proved to be a success. In addition to affording the SALRC a valuable tool to assist with the execution of its objects, it also gives potential proposers of investigations an indication of the issues that are taken into consideration when a proposal is considered, thus facilitating the submission and motivation of investigations.

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)
- Ms Thuli Madonsela (Full-time member)
- Professor Cathi Albertyn
- Mr Justice Dennis Davis
- Mr Tembeka Ngcukaitobi
- Advocate Dumisa Ntsebeza SC
- Professor Pamela Schwikkard
- Advocate Mahlape Sello



Completed reports receiving the attention of Parliament

- Project 90 - Customary law: Traditional Courts (introduced into Parliament as the Traditional Courts Bill, Bill 15 of 2008)

Completed reports receiving the attention of government departments

Department of Justice and Constitutional Development

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: Conflicts of law **(submitted to DOJCD in September 1999)**

10. Project 94 - Arbitration: Domestic arbitration **(submitted to DOJCD in June 2001)**

11. Project 94 - Arbitration: International arbitration **(submitted to DOJCD in July 1998)**

12. Project 96 - The Apportionment of Damages Act, 1956 **(submitted to DOJCD in July 2003)**

13. 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)**

14. Project 112 - Sharing of pension benefits **(submitted to DOJCD in June 1999)**

15. Project 113 - The use of electronic equipment in court proceedings **(submitted to DOJCD in July 2003)**

16. Project 114 - Publication of divorce proceedings **(submitted to DOJCD in August 2002)**

Other government departments

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 of Justice and Constitutional Development (the Minister):

1. Project 82 - Sentencing: A compensation scheme for victims of crime in South Africa **(submitted to the Minister in May 2004 and again in August 2006)**

2. Project 124 - Privacy and data protection **(submitted to the Minister on 26 February 2009)**

The year under review

This annual report covers the period from **1 April 2008 to 31 March 2009**. The Commission published the following documents in the year under review:

Issue papers

No issue papers were published during the course of the reporting period.

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

Discussion papers

Two discussion papers were published for general information and comment as part of Project 25: The establishment of a permanently simplified, coherent and generally accessible statute book.

- Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation – Legislation administered by the Department of Transport (Discussion Paper 114) was published on 1 June 2008

- Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation – Legislation administered by the Department of Housing (Discussion Paper 115) was published on 25 November 2008

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

Reports

The Minister of Justice and Constitutional Development approved five reports for publication:

- Project 121 - Consolidated legislation pertaining to international cooperation in civil matters (approved for publication on 19 June 2008)

- Project 123 - Protected disclosures (approved for publication on 23 September 2008)

- Project 130 - Stalking (approved for publication on 27 October 2008)

- Project 131 - Trafficking in persons (approved for publication on 23 September 2008)

- Project 134 - Interim report on the administration of estates (approved for publication on 23 September 2008)

Investigations

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.**

2 CHAPTER

OBJECTS, CONSTITUTION AND FUNCTIONING

CHAPTER 2

OBJECTS, CONSTITUTION AND FUNCTIONING

Establishment of the Commission

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

Objects of the Commission

The objects of the Commission are set out as follows in section 4 of the SALRC 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 SALRC 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.

"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."

Powers and duties of the Commission

The powers and duties of the Commission are set out in section 5 of the SALRC 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 of 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 SALRC 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 SALRC 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 on the Commission's programme so requires (Section 7A(1)(b) of the SALRC Act).

The names of the members of the advisory committees appear in **Annexure E.**

Project leaders

Although the SALRC 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 SALRC 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 a research component and an administrative component. The Deputy Chief State Law Adviser (Chief Director) serves as the Secretary of the Commission. Mr Michael Palumbo was appointed as Deputy Chief State Law Adviser with effect from 1 June 2008.

The post of Assistant Secretary to the Commission is vacant.

Research component

The research component of the Secretariat consists of 18 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. 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 Dellene Clark (Principal State Law Adviser)
- Mr Tienie Cronje (Principal State Law Adviser)
- Ms Anna-Marie Havenga (Principal State Law Adviser)
- Ms Ananda Louw (Principal State Law Adviser)
- Mr Fanyana Mdumbe (Senior State Law Adviser)
- Mr Linda Mngoma (Senior State Law Adviser)
- Ms Maureen Moloi (Principal State Law Adviser)
- Mr Tshepang Monare (Senior State Law Adviser) – since 1 May 2008
- Ms Carien Pienaar (Senior State Law Adviser)
- Ms Nerisha Singh (Senior State Law Adviser) – since 1 May 2008
- Ms Praveena Sukhraj-Ely (Senior State Law Adviser)
- Ms Lowesa Stuurman (Principal State Law Adviser)
- Mr Willie van Vuuren (Principal State Law Adviser)
- Mr Pierre van Wyk (Principal State Law Adviser)
- Ms Ronel van Zyl (Senior State Law Adviser)

One post of Principal State Law Adviser and two posts of Senior State Law Adviser are vacant.

Administrative component

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

ADMINISTRATIVE COMPONENT	
Assistant Director:	Ms Maryna Oosthuizen
Personal Assistant:	Ms Ronell Bronkhorst
Senior Secretary:	Ms Julliet Nkabinde
Administrative Officer:	Mr Ajay Singh
Administrative Officer:	Mr Jacob Kabini
Administrative Officer:	Ms Magda van den Berg

ADMINISTRATIVE COMPONENT	
Librarian:	Ms Sindiswa Gule (since 1 March 2009)
Administration Clerk:	Ms Chantelle Krebs
Administration Clerk:	Ms Meisie Kruger
Administration Clerk:	Ms Edith Louw
Administration Clerk:	Ms Patricia Mashabela
Administration Clerk:	Mr Vusi Mavuso
Administration Clerk:	Ms Natalie Pillay
Administration Clerk:	Mr Renier Swart

ADMINISTRATIVE COMPONENT	
Operator:	Mr Koos Mahlangu
Food Service Aid:	Ms Anna Mahlangu
Messenger:	Mr George 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 Thuli Madonsela (chairperson) Mr Michael Palumbo Mr Tienie Cronje Ms Anna-Marie Havenga Ms Ronel van Zyl Mr Fanyana Mdumbe Ms Ronell Bronkhorst Ms Carien 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 SA Law Reform Briefs • 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 was involved with planning a SALRC media conference that was held on 25 November 2008. Mr Mdumbe is involved in the promotion of the Ismail Mahomed Law Reform Essay Competition. Mr Mdumbe visited various universities from July to October 2008 to promote the competition. A panel consisting of Judge Willie Seriti (Deputy Chairperson of the SALRC and Chairperson of the Panel); Ms Thuli Madonsela (Full-time Commissioner, SALRC); Professors Cathi Albertyn (University of the Witwatersrand); Christof Heyns (Dean: University of Pretoria); Thandabantu Nhlapo (Deputy Vice Chancellor, University of Cape Town); Managay Reddi (Dean: University of KwaZulu-Natal); and Pamela Schwikkard (Dean: University of Cape Town) and Ms Yasmin Sooka, (Executive Director: Foundation for Human Rights) evaluated the essays received for the Ismail Mahomed Law Reform Essay Competition on 26 February 2009.

Induction Committee

MEMBERS	PURPOSE	ACTIVITIES
Ms Lowesa Stuurman (chairperson) Mr Tienie Cronje Mr Fanyana Mdumbe Ms Praveena Sukhraj-Ely Ms Maryna Oosthuizen Ms Magda van den Bergh Ms Patricia Mashabela Ms Nerisha Singh (to assist with arrangements relating to and the induction of interns)	The Induction Committee is responsible for the following: • Coordination of study visits from other law reform agencies • Induction of new Commissioners, researchers, legally qualified interns and administrative staff	During the year under review the Committee undertook the following activities: • Developed a work plan outlining issues that must be in place before the recruitment and appointment of legally qualified interns for the SALRC (recruitment and appointment of ten legally qualified interns at the SALRC approved by the DG on 14 August 2008). • Liaised with Learning and Development of DOJCD Human Resources (HR) on the training of mentors and the job description and performance agreements of interns. • Compiled an induction programme for two researchers that assumed duty on 1 May 2008 and ensured the researchers were provided with necessities such as stationary and access cards. • Attended meetings of the National Internship Committee, which Committee deals with issues relating to the DOJCD internship programme such as the recruitment, selection and appointment of interns and the performance management and training of mentors. • Liaised with HR: Learning and Development on the attendance of new SALRC personnel of DOJCD's induction programme for new employees. • Arranged for SALRC researchers to make presentations on the SALRC's vision, mission, objectives and working methods at DOJCD induction sessions. • Participated in DOJCD's Disability Campaign by briefing candidates on the Commission's objects and working methodology. The Committee undertook the following activities with regard to international visitors and liaison: • Briefed the Executive Secretary of the Ghanaian Law Reform Commission and a representative from the Women's Legal Centre of SA on 27 May 2008 on the

MEMBERS	PURPOSE	ACTIVITIES
		SALRC's working methods, the funding of the SALRC's activities and possible cooperation between the SALRC and the Ghanaian Law Reform Commission. • Assisted the Uganda Law Reform Commission (ULRC) with information to arrange with SARS for the ULRC to meet with experts on customs and excise duty. • Provided the ULRC with information on suitable accommodation in South Africa. • Met with an Indonesian delegation to share good practices on efforts to eliminate violence against women on request of the United Nations Development Fund for Women. • Arranged with relevant researchers to brief the Indonesian delegation on projects relating to violence against women. • Liaised with Maryland University to host two of their students as interns later in 2009 on request of Maryland University.

Library Committee

MEMBERS	PURPOSE	ACTIVITIES
Mr Michael Palumbo (previous chairperson) Mr Tienie Cronje (chairperson) Mr Pierre van Wyk Ms Maureen Moloi Ms Carien Pienaar Ms Maryna Oosthuizen Ms Sindiswa Gule	The Library Committee is responsible for considering the acquisition of publications to ensure the relevance of the holdings of the SALRC library. The Committee reflects annually on the SALRC's standing orders for publications and subscriptions to electronic data bases. The Committee also liaises with the principal librarian at the DOJCD.	During the year under review the Committee considered and approved the acquisition of several new publications at its meetings held on 10 June 2008, 18 November 2008, 5 March 2009 and 31 March 2009 respectively. Members of the committee also participated in the short-listing of candidates and the activities of the selection committee to fill the vacant librarian post.

Occupational Health and Safety Committee

MEMBERS	PURPOSE	ACTIVITIES
Mr Linda Mngoma (chairperson) Mr Willie van Vuuren Ms Dellene Clark Ms Edith Louw Mr George 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 and matters such as evacuation plans, power outages and problems with the lifts.	During the year under review the Committee undertook the following activities: • Held meetings to discuss problems experienced with the lifts, which meetings were attended by representatives of the landlord, other employers in the building and the service provider responsible for the maintenance of the lifts • Facilitated an emergency evacuation drill on 21 November 2008 • Liaised with the landlord's operational manager on various health and safety matters in the workplace, particularly in respect of the lifts

Process and Procedure Committee

MEMBERS	PURPOSE	ACTIVITIES
Ms Ananda Louw (chairperson) Mr Willie van Vuuren Ms Maureen Moloi Ms Ronel van Zyl Mr Tshepang Monare Mr Jacob Kabini	The Process and Procedure Committee was established in February 2005. This Committee is responsible for the review and documentation of existing polices and procedures of the SALRC and the development of new policies and procedures on working methods and operational systems for the SALRC. 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: • Finalised a vision and mission statement for the Commission • Developed a policy document for the Commission • Finalised selection criteria for new investigations • Reviewed the Commission's style manual • Finalised new guidelines for the formatting of Commission publications • Determined printing guidelines for Commission reports

Training Committee

MEMBERS	PURPOSE	ACTIVITIES
Ms Dellene Clark (chairperson) Ms Anna-Marie Havenga Ms Carien Pienaar Mr Linda Mngoma Ms Nerisha Singh Ms Maryna Oosthuizen Mr Ajay Singh Ms Natalie Pillay	The Training Committee was established in February 2005 to identify training needs and to source and coordinate training for the SALRC's personnel. The tasks of the Committee include the following: • Identify training needs • Source and liaise with service providers • Arrange and format training courses • Obtain approval for training expenditure in accordance with financial prescripts • Liaise with DOJCD Human Resources on training matters • Represent the Branch: Legislative Development at the National Skills Development Forum 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 • MS Word 1, 2 and 3 • MS Excel 1, 2 and 3 • MS Outlook • Siyanqoba Symposium • Legislative drafting • Plain language writing • Law Teachers' Conference presented by the University of Pretoria • St Johns First Aid Training • Human Rights • Social Economic Rights • Stephen Covey • First Aid Level III • Fire Fighting • SHE representative training • Jutastat Researchers on the level of Principal State Law Adviser have 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. Most of them have also been deployed at service delivery sites, such as the Johannesburg General Hospital. The Training Committee liaised with Human Resources at DOJCD and other relevant role players to facilitate the attendance and participation of SALRC staff.

Financing of the SALRC

The SALRC's budget for the financial year 1 April 2008 to 31 March 2009 was R16 076 000-00, which is made up as follows:

Personnel expenditure	R12 648 000-00
Current expenditure	R3 278 000-00
Capital expenditure	R150 000-00

The annual report of the Department of Justice and Constitutional Development contains information on the SALRC's programme performance and financial statements.

Programme

The SALRC 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.

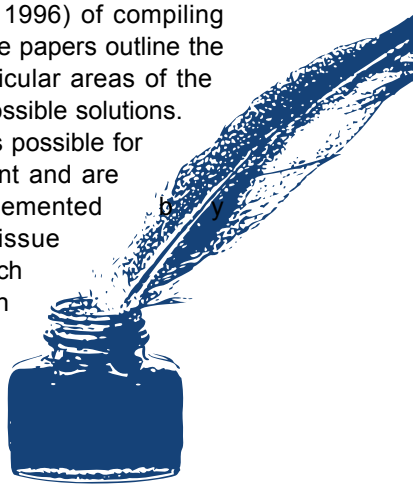
The Commission's present programme appears in **Annexure F**. As indicated, **Annexure C** contains a list of all the investigations included in the Commission's programme since its inception and indicates the final result or current state of investigations.

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 media releases and media 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"

In making its recommendations, the Commission bears in mind that there is a need to provide access to justice for all; to protect the rights of all parties – especially those of women, children and the poor; to make legal processes affordable; to make the law less complicated;

and to give effect to the values and principles underlying the Constitution.

Judging from comments received, the Commission's discussion papers and reports are of a high standard. The faculties of law of various universities often prescribe the Commission's research publications as literature for their students at undergraduate as well as postgraduate level.

The many valuable comments and proposals received on the Commission's recommendations as contained in its documents, confirm that its working methods are successful. These methods ensure that the Commission's final recommendations are well-substantiated and are the product of thorough debate. The working methods also facilitate the enactment of the Commission's proposed legislation, which embodies the recommendations.

Commission publications

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 each year.

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 SALRC 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 all the investigations reported on by the Commission since its establishment.

In addition to the reports on particular investigations, the SALRC 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**.

Obtaining Commission publications

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. All issue papers and discussion papers published since 1996 are available on the SALRC website.

The annual report, papers in the research series and reports on investigations are available from the Commission's offices. All reports on investigations published since 1996 and the Commission's most recent annual report are available on the SALRC website.

Meetings

The Commission met during the reporting period on 31 May 2008, 25 October 2008 and 14 January 2009. The Working Committee met on 23 April 2008 and 28 March 2009. The advisory committee for Project 100 – Family law and the law of persons: Custody of and access to minor children and Review of aspects of matrimonial property law met on 29 August 2008. The advisory committee met again on the Subproject: Custody of and access to minor children on 9 March 2009. The advisory committee for Project 126: The Review of the law of evidence and Project 113: The use of electronic equipment in court proceedings met on 15 November 2008.

Project 25 - Statutory Law Review had been divided into various subprojects by state department for the review of legislation as administered by each state department. The advisory committees for legislation administered by the following Departments met during the reporting period:

MEETINGS	
Agriculture:	22 November 2008
Communications:	15 October 2008 and 19 February 2009
Defence:	22 November 2008
Education:	25 October 2008
Environmental Affairs and Tourism:	11 October 2008 and 7 February 2009
Health:	8 October 2008 and 21 February 2009
Home Affairs:	28 November 2008
Justice and Constitutional Development:	27 November 2008 and 16 March 2009
Labour:	30 October 2008 and 11 March 2009
Land Affairs:	20 November 2008
Minerals and Energy:	22 November 2008 and 21 February 2009
Provincial and Local Government:	22 October 2008 and 20 February 2009
Trade and Industry:	30 October 2008 and 11 March 2009

3 CHAPTER

PROGRESS REPORT

CHAPTER 3

PROGRESS REPORT

It is axiomatic that the extent to which the South African Law Reform Commission can add value will to a large extent be 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	RESPONSIBLE RESEARCHER
25	Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book • Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation • Review of the Interpretation Act • Hindu marriages	Mr Pierre van Wyk Ms Maureen Moloi Ms Ronel van Zyl Mr Fanyana Mdumbe Mr Linda Mngoma Mr Tshepang Monare Mr Pierre van Wyk Ms Maureen Moloi
94	Arbitration • Community dispute resolution structures • Family mediation	Ms Maureen Moloi
100	Family law and the law of persons • Custody of and access to minor children • Review of aspects of matrimonial property law	 Ms Praveena Sukhraj-Ely Ms Anna-Marie Havenga
107	Sexual offences: Adult prostitution	Ms Dellene Clark Ms Carien Pienaar
113	The use of electronic equipment in court proceedings	Ms Nerisha Singh
122	Assisted decision-making: Adults with impaired decision-making capacity	Ms Anna-Marie Havenga
124	Privacy and data protection	Ms Ananda Louw
125	Prescription periods	Mr Tshepang Monare
126	Review of the law of evidence	Mr Willie van Vuuren
127	Review of administration orders	Mr Tienie Cronje
131	Trafficking in persons	Ms Lowesa Stuurman
133	A specific civil action in respect of consequential damages arising from hoaxes	Ms Ananda Louw
134	Administration of estates	Mr Tienie Cronje

During the period under review, the SALRC was involved with the following preliminary investigations following requests for investigations by other organs of state or members of the public:

- The need for reform of the legal position regarding the culpable and unlawful killing of a foetus
- Insurance non-disclosure
- Review of the Witchcraft Suppression Act 3 of 1957 and the Mpumalanga Witchcraft Suppression Bill 2007
- Multi-disciplinary legal practices
- Regulating the rental property business
- Audit of conditions of service and rules governing student activities at universities impacting on academic freedom

The projects on the SALRC's programme are in line with the government's priorities as identified in the State of the Nation Address delivered by President Kgalema Motlanthe on 6 February 2009, Government's Programme of Action for 2008 and the strategic goals of the Department of Justice and Constitutional Development (DOJCD).

In the State of the Nation Address, the President highlighted the scourge of crime and the problem with siphoning off resources through corruption as particular matters of concern. Crimes against women and children were specifically alluded to. The President also referred to systemic weaknesses in the criminal justice system, which point to weaknesses in the efficiency of the court system. The President mentioned that these are the issues that the comprehensive revamp of the criminal justice system has started to address. He reiterated the country's commitment to pay attention to the most vulnerable in the society and to improve the conditions of children, women, people with disability and the elderly. The President lauded the opportunities afforded by events such as the FIFA World Cup in 2010.

The SALRC's investigation into protected disclosures (Project 123) will be an important tool in the fight against crime, particularly the fight against corruption. The efficiency of the criminal justice system will definitely be enhanced by the investigations into the use of electronic equipment in court proceedings (Project 113) and the review of the law of evidence (Project 126). The world-wide phenomenon of trafficking in persons is usually perpetrated by crime syndicates, one of the reasons why specific trafficking offences have to be created by statute. The legislation proposed in the report on trafficking in persons (Project 131) will be vital in the fight against organised crime. Trafficking legislation is also aimed at the protection of especially women and children, which is in line with the important government objective of improving the conditions of these vulnerable groups. 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. The investigation into assisted decision-making – adults with impaired decision-making capacity (Project 122) will go a long way towards affording better protection to the elderly, another identified vulnerable group.

Government's Programme of Action (GPA) sets out government's planned actions to achieve identified results during a particular year. A number of the actions listed in the 2008 Government Programme of Action ties in with SALRC investigations. The proposed Protection of Personal Information Bill contained in the report on privacy and data protection (Project 124) supports the goal of strengthening international cooperation as listed under the International Relations, Peace and Security Cluster. In an era of the free flow of information across international borders, greatly increased international travel and a global economy, a country's ability to protect the personal information of its own and another country's citizens is vital to sound international relations. The expected increase in international travellers to South Africa for the 2010 FIFA World Cup lends additional urgency to this important legislation.

"In an era of the free flow of information across international borders, greatly increased international travel and a global economy, a country's ability to protect the personal information of its own and another country's citizens is vital to sound international relations".

Organised crime and the need for sustained interventions against organised crime and corruption is listed under the Justice, Crime Prevention and Security Cluster section. As mentioned above, the proposed Prevention and Combating of Trafficking in Persons Bill contained in the report on trafficking in persons creates specific offences that can also be used against crime

syndicates, an important cog in the engine of organised crime. The GPA also lists the need to counter human trafficking and people smuggling as one of the actions to be executed under the topic of upholding national security. Improving the effectiveness of the criminal justice system is another area of concern mentioned in the GPA. Criminal justice is an important factor in projects such as the investigation into sexual offences concentrating on adult prostitution and the review of the law of evidence.

Project 25 - The establishment of a permanently simplified, coherent and generally accessible statute book, and particularly the subprojects on the review of the statute book for redundancy, obsoleteness and constitutionality and the Interpretation Act, tie in with DOJCD's strategic goal of transforming justice, state and society in line with the democratic values of the Constitution. 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. Project 100: Family law and the law of persons, Project 125: Prescription periods, Project 127: Review of administration orders and Project 134: Administration of estates similarly enhance the goal of access to justice for all.

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 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 to the Constitution by rendering such support as may be required. In March 2009 a progress report on the investigation was forwarded to DOJCD for submission to the Minister of Justice and Constitutional Development (the Minister) with a view to informing Cabinet about the progress made in the investigation. The progress report must still be considered by Cabinet.

Prof Cathi Albertyn developed a document for the SALRC 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 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 advisory committee members by the Minister to increase the Commission's research capacity in respect of fourteen national government departments. These are departments which administer 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 Departments that administer a smaller number of statutes are being or will be reviewed by SALRC researchers, namely Arts and Culture, Correctional Services, Foreign Affairs, Housing, National Intelligence, Public Enterprises, Public Service and Administration, Public Works, Safety and Security, Science and Technology, Social Development, Sport and Recreation, Transport, and Water Affairs and Forestry.

The SALRC submitted a memorandum to DOJCD in September 2007 proposing the appointment of advisory committees by the Minister. DOJCD referred the memorandum to the Ministry in February 2008. The Minister appointed 112 advisory committee members on 31 July 2008. The first meetings of the advisory committees took place during October and November 2008.

The following table indicates work in progress in respect of the revision of the statute book for constitutionality, redundancy and obsoleteness:

DEPARTMENT	PROGRESS
Legislation administered by the Department of Agriculture (DOA)	The first advisory committee meeting was held on 22 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the review of the statutes administered by DOA. Due to the diversity of agricultural legislation and the lack of experts in this field, it was decided that the SALRC will develop the consultation paper in-house, using the research submitted by advisory committee members. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOA for comment is October 2009.
Legislation administered by the Department of Communications (DOC)	The first advisory committee meeting was held on 15 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DOC. The second meeting of the committee to consider the draft consultation paper was held on 19 February 2009. The committee effected amendments to the consultation paper during February and March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOC for comment is September 2009.
Legislation administered by the Department of Defence (DOD)	The first advisory committee meeting was held on 22 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DOD. The second advisory committee meeting has been provisionally scheduled for July 2009. Some advisory committee members have already submitted their input to the compilers for consideration. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOD for comment is October 2009.

DEPARTMENT	PROGRESS
Department of Education (DOE)	The first advisory committee meeting was held on 25 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DOE. The second meeting of the committee to consider the draft consultation paper is proposed to be held during October 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOE for comment is September 2009.
Department of Environmental Affairs and Tourism (DEAT)	The first advisory committee meeting was held on 11 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DEAT. The committee met on 7 February 2009 to discuss the research submitted by committee members. The committee effected amendments to the consultation paper during February and March 2009. The first draft of the consultation paper was submitted to the SALRC on 31 March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DEAT for comment is October 2009.
Legislation administered by the Department of Health (DOH)	The first advisory committee meeting was held on 18 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DOH. The second meeting of the committee to consider the draft consultation paper was held on 21 February 2009. The first draft of the consultation paper was submitted to the SALRC on 6 March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOH for comment is October 2009.
Legislation administered by the Department of Home Affairs (DHA)	The first advisory committee meeting was held on 28 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DHA. Some advisory committee members have already submitted their input to the compilers and researcher for consideration. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DHA for comment is September 2009.
Legislation administered by the Department of Housing (DH)	The Commission approved on 25 October 2008 publication of the discussion paper in respect of legislation administered by DH. Discussion Paper 115 was published for public information and comments on 25 November 2008 with a closing date of 28 February 2009. The target date for submitting a draft report containing repeal and amendment proposals to the Commission for consideration is December 2009.
Legislation administered by the Department of Justice and Constitutional Development (DOJCD)	The first advisory committee was held on 27 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a consultation paper analysing the statutes administered by DOJCD. The second meeting of the advisory committee to consider the draft consultation paper was held on 16 March 2009. It was decided that members would revise their draft papers and submit them to the SALRC. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOJCD for comment is October 2009.

DEPARTMENT	PROGRESS
Legislation administered by the Department of Labour (DOL)	The first advisory committee meeting was held on 30 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the review of the statutes administered by DOL. The second meeting of the committee to consider the draft consultation paper was held on 11 March 2009. The committee decided on amendments that needed to be effected to the draft consultation paper. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DOL for comment is September 2009.
Legislation administered by the Department of Land Affairs (DLA)	The first advisory committee meeting was held on 20 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DLA. The second meeting of the committee to consider the draft consultation paper is proposed to be held during August 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DLA for comment is September 2009.
Legislation administered by the Department of Minerals and Energy (DME)	The first advisory committee meeting was held on 22 November 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DME. The second meeting of the committee to consider the draft consultation paper was held on 21 February 2009. The committee effected amendments to the consultation paper during March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DME for comment is September 2009.
Legislation administered by the Department of Provincial and Local Government (DPLG)	The first advisory committee meeting was held on 22 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DPLG. The second meeting of the committee to consider the draft consultation paper was held on 20 February 2009. The committee decided on amendments that needed to be effected to the draft consultation paper. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DPLG for comment is July 2009.
Legislation administered by the Department of Public Works (DPW)	DPW requested the SALRC in May 2008 to be allowed sufficient time to consult with regional offices, the Deeds Office and the relevant archives prior to commenting on the consultation paper forwarded to them in October 2007. Comments on the Consultation Paper were received from DPW on 28 October 2008. A meeting attended by the project leader and officials from DPW was held on 13 November 2008 to discuss comments received with a view to preparing a draft discussion paper. It was agreed at the meeting that the draft discussion paper will be forwarded to the Minister of Public Works for approval prior to consideration thereof by the Commission. The target date for submitting the draft discussion paper containing proposals for repeal or amendment of legislation to the Minister of Public Works for approval is June 2009.

DEPARTMENT	PROGRESS
Legislation administered by the Department of Trade and Industry (DTI)	The first advisory committee meeting was held on 30 October 2008. The committee agreed on the division of work, methodology to be followed and time-frames for the development of a draft consultation paper analysing the statutes administered by DTI. The second meeting of the committee to consider the draft consultation paper was held on 11 March 2009. The committee effected amendments to the consultation paper during March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of legislation to DTI for comment is September 2009.
Legislation administered by the Department of Transport (DOT)	The compilation of a consultation paper analysing the statutes administered by DOT commenced in November 2006. Discussion Paper 114 containing the Commission's preliminary findings and proposals with regard to the redundancy and unconstitutionality of legislation administered by DOT and an amendment Bill were published for general information and comment in May 2008. The closing date for comments was 31 August 2008. DOT concurred with the findings and proposals for reform made by the Commission. DOT subsequently included the draft legislation proposed in Discussion Paper 114 in their legislative programme for 2009. A notice of intention to repeal redundant statutes, which notice contained the draft legislation proposed by the Commission, was subsequently published in Government Gazette No. 31864 of 13 February 2009. The SALRC informed the Minister of JCD of this development on 19 March 2009. A letter was submitted to the Office of the Chief State Law Adviser on the same date, informing the Chief State Law Adviser that the Commission has no objection to DOT's decision to initiate parliamentary proceedings to have obsolete Acts repealed. Further interaction aimed at confirming some of the findings contained in Discussion Paper 114 took place between officials from DOT, Transnet Freight Rail Legal Services and the SALRC in March 2009. The compilation of a draft report also commenced during the period under review. The target date for submitting a draft report containing repeal and amendment proposals to the Commission for consideration is October 2009.
Legislation administered by National Treasury	The first consultation paper with provisional proposals for the repeal or amendment of legislation other than tax legislation administered by National Treasury was submitted to the head of Legal Services at National Treasury on 23 June 2008 for consideration and comments. The paper is still under consideration by National Treasury. The Minister appointed advisory committee members on 31 July 2008 to assist with the review of the Income Tax Act, the Value Added Tax Act, the Abolition of Quitrents Act and the Savings Bank Societies Borrowing Powers Act administered by the National Treasury. The second consultation paper dealing specifically with income tax and value added tax legislation and containing preliminary findings and proposals was submitted to the project leader for consideration and comment in March 2009. The target date for submitting a consultation paper containing provisional proposals for repeal or amendment of tax legislation to National Treasury for comment is September 2009.

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, amongst others requested the Minister 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 Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book. 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 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 and continued during the period under review.

Hindu Marriages

The Commission approved on 9 September 2006 the inclusion of an investigation into the recognition of Hindu Marriages in the SALRC'S programme. This investigation is conducted as part of Project 25 – Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book. South African law does not recognise marriages by Hindu rites; therefore all the legal consequences of marriage do not apply to such marriages entered into in South Africa. Couples in a Hindu marriage for example need not use the court if they want to get divorced. Spouses can also not claim any of the legal consequences of divorce, such as maintenance, after the relationship has ended. The aim of this investigation is to look into the recognition of Hindu marriages in order to afford these marriages full legal recognition and the same status as marriages concluded in accordance with civil rites.

It was decided in November 2008 to convert an issue paper developed on the recognition of Hindu marriages into a discussion paper and to recommend the appointment of an advisory committee to the Minister in order to expedite progress on the investigation.

PROJECT 94

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

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 have considered the draft Bill and a draft report is being finalised. In their consideration of the draft Bill the committee members concerned had encountered a number of problems which were brought to the attention of the project leader and the researcher.

Family mediation

The field of family and divorce mediation developed in a highly segmented fashion as services in the past were provided along lines of race, culture and income level. Family advocates and the divorce courts do utilise mediation, but family advocates have been criticised for not making proper use of mediation procedures, while mediation in the divorce courts is a limited, irregular and informal part of the settlement process. Social

workers in provincial institutions are also involved in this area and court referrals often result in intervention requests.

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.

Project 100 – Family law and the law of persons

The Commission approved on 23 June 2007 that the name of Project 128, 'Review of aspects of the law of divorce', 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 subprojects 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 subprojects.

The Minister on 20 May 2008 approved the inclusion of the former Project 128 – Review of aspects of the law of divorce and the former Project 129 – Review of aspects of matrimonial property law as subprojects under Project 100 - Family law and the law of persons. The Minister also appointed a single advisory committee for the two investigations.

Custody of and access to minor children

A family counsellor from the Family Advocate's Office in Bloemfontein requested the SALRC 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 researcher conducted a pilot study in the KwaZulu-Natal province, after which five different questionnaires were developed and distributed to family advocates, social workers, psychologists, legal practitioners and parents. The researcher held focus group forums with family advocate offices in the provinces and one national focus group forum with principal and senior family advocates and family counsellors.

The researcher consulted representatives from key organisations, including tertiary institutions, DOJCD, the South African Association of Mediators and the Family Association of Mediators of the Cape. The researcher met with professionals in the field and held a consultative workshop with Gauteng stakeholders in May 2008. The data received from the questionnaires, the focus group forums and the consultations were analysed and collated for the first draft of the discussion paper. The first meeting of the advisory committee took place on 29 August 2008. The advisory committee met again on 9 March 2009 to discuss the first draft of the discussion paper.

Review of aspects of matrimonial property law

The Matrimonial Property Act 88 of 1984 was passed 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 problems which have in particular been brought to the SALRC'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 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.

The Minister on 20 May 2008 approved a request by the Commission to include the review of matrimonial property law and its investigation into custody of and access to minor children as subprojects under its existing broad investigation into Family law and the law of persons (Project 100). This was done in view of possible mutual elements – such as a possible need to reform current divorce procedures – between these two subprojects. The Minister also appointed a single advisory committee to assist with the two investigations. The advisory committee met on 29 August 2008 to identify possible issues for reform for inclusion in the issue paper.

The question whether sharing of pension benefits on divorce should be included in the investigation in view of the envisaged pending implementation of draft legislation dealing with this issue was resolved through consultation with DOJCD in January 2009. It was agreed that in view of the fact that DOJCD will not promote the Sharing of Pension Benefits Bill / Divorce Amendment Bill (which emanated from a 1999 report of the Commission) in the near future, problems pertaining to the sharing of pension benefits on divorce would also be addressed in the review of matrimonial property law.

PROJECT 107

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. This leg of the investigation was left in abeyance for a while as priority was given to the completion of the investigations into protected disclosures (Project 123), stalking (Project 130) and trafficking in persons (Project 131). Research on law reform in respect of adult prostitution commenced in earnest again in 2008 and the Commission approved a discussion paper on this investigation on 28 March 2009.

The legal response to prostitution 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. To ensure full public participation in the investigation and afford all interested parties an opportunity to express their views, the researchers responsible for this investigation are liaising with various organisations, institutions and individuals that would be interested in attending countrywide workshops on prostitution to be hosted by the SALRC during the course of 2009.

PROJECT 113

Project 113 – The use of electronic equipment in court proceedings

This investigation was included in the Commission's programme on 14 June 1997. The objective of the investigation is to determine whether the use of electronic equipment in court proceedings is a viable option to save costs or prevent delays in civil and criminal trials.

In view of several investigations with higher priority and lack of personnel due to vacancies, this investigation did not receive attention until 2003 when the Commission was requested by the office of the National Director of Public Prosecutions to expedite the investigation and to conduct a separate investigation into the possibility of postponement of cases via video conferencing. The Commission's report titled *The Use of Electronic Equipment in Court Proceedings (Postponement of Criminal Cases via Audiovisual Link)* was finalised in July 2003. In its final report the Commission recommended the use of audio-visual links for applications for leave to appeal and appeals in respect of accused persons in custody in prison. The recommendations of this report have been incorporated in the Criminal Procedure Amendment Act 65 of 2008, which was passed by Parliament on 22 October 2008.

After publication of the report in July 2003, the investigation was held in abeyance pending the availability of a researcher to deal with the investigation. With the appointment of senior state law advisers to fill vacant researcher posts, the project was assigned to a newly-appointed researcher on 13 May 2008. The continuation of the project is currently under review and a decision to this effect will be taken by the Commission at its next meeting. A recommendation will be made to the Commission that Project 113 be treated as finalised in view of the completion and publication of the report on the postponement of criminal cases via audiovisual link in July 2003.

Advancements in technology with the concomitant rapid growth of electronic / computer crimes have brought about a plethora of new forms of evidence. In the broader context it has been recognised that any further investigation of the impact of technological developments on the law should extend beyond 'equipment' and focus holistically on procedures for collecting, storing and presenting electronic evidence in court. As a result, it will also be recommended to the Commission that the remainder of the issues relating to evidence in Project 113 be included as a subproject under Project 126, the comprehensive review of the law of evidence.

In proceeding under Project 126 an important consideration would be whether many of the technology-related evidentiary questions can be resolved under the existing rules of evidence. This would require an overarching investigation into aspects of criminal and

civil law with subprojects focusing on rules of evidence and procedure to address concerns over the challenges presented by technological developments with regard to legal proceedings.

An issue paper dealing with the admissibility of electronic evidence in criminal and civil proceedings will be published for comment during 2009.

PROJECT 122

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

The SALRC, 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 had also 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.

> **"Additional measures to protect the interests of persons whose legal capacity has for some reason been diminished had also been researched."**

Consultation with the DOJCD policy unit and with the Chief Master of the High Court on policy issues took place during 2007. An extensive draft Bill comprising about 150 clauses was developed after broad consultation. During the year under review flow charts of processes reflected in the draft Bill were prepared at the request of the Chief Master to enable long-term planning for the envisaged implementation of the proposed legislation. Policy input on the draft Bill was received from DOJCD on 27 January 2009.

The compilation of a draft report for submission to the Commission was partly suspended between June and December 2007 and September 2008 and March 2009 due to the researcher's involvement in work pertaining to the improvement of the SALRC's processes (see Chapter 1 of the 2007/2008 annual report). This led to the postponement of the target date for the finalisation of the draft report to November 2009.

PROJECT 124

Project 124 – Privacy and data protection

Privacy is a valuable aspect of personality. While potential invasions of privacy may originate 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.

The investigation deals with the protection of personal information of people whose information is being processed by another person or institution. The investigation was included in the Commission's programme at the request of the Minister of JCD who was, in turn, requested by the Ad hoc Parliamentary Committee on the Open Democracy Bill (later referred to as the Promotion of Access to Personal Information Act) to introduce privacy and data protection legislation in Parliament. The main focus of the project has been the investigation of all aspects

regarding the protection of personal information in relation to the processing (collection, storage, use and communication) of information by the State or another person and to recommend legislation or other steps that should be taken in this regard.

The SALRC published an issue paper on privacy and data protection for general information and comment in August 2003. The issue paper is discussed in the 2003/2004 annual report. A discussion paper with a draft Bill was published for general information and comment in October 2005, which is discussed in the 2005/2006 annual report. The SALRC hosted a series of workshops throughout the country in 2006. The closing date for comments on the discussion paper was extended to 31 August 2006.

The advisory committee considered and approved the final report and draft Bill on 14 November 2008. The Commission approved the report and draft Bill in February 2009. The report on Project 124 - Privacy and data protection was finalised and submitted to the Minister on 26 February 2009. The Minister acknowledged receipt of the report and Bill on 13 March 2009. Approval for the publication of the report is still awaited.

PROJECT 125

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 be approached to request the Commission to conduct 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 SALRC'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 the draft discussion paper was transferred to another department, and the project was assigned to a newly appointed researcher in June 2008. For the purpose of involving the public at an early stage of the investigation, the researcher presented a paper entitled 'Prescription on Sexual Abuse Cases' at a conference on Law, Gender and Social Transformation, which was held at the University of the North from 31 August to 3 September 2008. The researcher is in the process of compiling a draft discussion paper.

PROJECT 126

Project 126 – Review of the law of evidence

The Commission's advisory committee dealing with the simplification of criminal procedure proposed in 2001 that consideration should be given to an investigation to review the rules of evidence. The Commission endorsed the decision of the advisory committee and recommended the inclusion of the project in its programme with the understanding that the investigation was to run concurrently with other relevant SALRC investigations. The Minister in December 2001 approved the inclusion of an investigation to review the rules of evidence in the Commission's programme. An advisory committee for the investigation was approved on 26 November 2003. The Commission resolved that the advisory committee on the review of the rules of evidence should also direct the investigation into the use of electronic equipment in court proceedings.

The advisory committee dealing with the simplification of criminal procedure made the proposal for this investigation with a view to simplifying this area of the law and aligning it with technological developments. The last decade has seen a rapid development in technology and with it unforeseen forms of evidence and attendant difficulties in determining admissibility. In addition thereto, the new constitutional dispensation has impacted on the law of evidence in a number of ways. The right of access to information, the entrenchment of the right to a fair trial and the exclusion of evidence obtained in an unconstitutional manner have all had an impact on the law of evidence and gave rise to a large body of new case law. In addition, the right to equality requires a re-examination of evidence in so far as it departs from the requirements of formal equality. The right to equality also necessitates a reconsideration of the rules of evidence in so far as the rules relate to effective equal access to justice.

Legal certainty on the extent of constitutionally enforceable rights is in the public interest. It is equally important to be able to ascertain the rules of evidence for the sake of case preparation. This issue impacts on the accused, the prosecution and the police in criminal cases, and on the parties to litigation in civil cases. The law of evidence is integral to the enforcement of substantive law and consequently has attracted the

interest of non-governmental organisations working in specific fields such as child justice and the abuse of women.

One of the advisory committee members 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 the committee member to do further research with the assistance of the project leader and another advisory committee member. The project leader and the latter advisory committee member however, resigned during February 2005 and the Commission appointed a 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 Issue Paper 26 and Discussion Paper 113 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 was 30 June 2008. The closing date for comments on both publications was extended at the request of a number of role players and because of limited response to the papers. The advisory committee met on 15 November 2008. In view of the limited responses received to the issue paper and the discussion paper, the committee decided that the documents should be submitted to all relevant role players again. The issue paper and the discussion paper were redistributed in January 2009 under cover of a letter summarising the contents of both and requesting comment by the end of March 2009.

The committee also considered a request to include a proposal from the South African Professional Society on the Abuse of Children (SAPSAC) dealing with a code of ethics and an appropriate oath for expert witnesses. The committee resolved to submit the proposal to all professional bodies for comment before deciding on the inclusion of the proposal in the scope of the investigation. Letters requesting comment together with copies of the proposal were submitted to all professional bodies. The committee will consider the next phase of the investigation at its meeting in May 2009.

Project 127 – Review of administration orders

The Minister of 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 to 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 proposed 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. The Commission considered a document on 14 January 2009 detailing the researcher's response to comments on the questionnaire and approved the researcher's proposals on the way forward.

The Commission's preliminary views include the following:

- It would be to the detriment of debtors and others to abolish administration orders at this stage.
- If administration orders are retained a comprehensive review should be undertaken, but amendments which could be dealt with urgently must be identified.
- Administration orders should lapse after a specified number of years and all outstanding debts subject to the administration order should be discharged.

This is subject to a court order on good cause shown made on the basis of an application by a creditor before the lapsing of the order that the debtor should not obtain a discharge for some or all of the outstanding debts.

- This is a matter where further consultation is advisable. The consultation can be started with stakeholder meetings and workshops with debtors under administration.

PROJECT 133

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

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

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

The project was assigned to the researcher in June 2005. Another researcher was allocated to the investigation in April 2008 when the original researcher left the Commission. A draft discussion paper has been submitted to the project leader for his consideration and comments.

PROJECT 134

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 was submitted to the Minister on 19 August 2008 and was released at a media conference on 25 November 2008.

The report recommends that the Administration of Estates Act 66 of 1965 should be amended to provide that an executor must be appointed in each estate with assets and that the Master may in accordance with guidelines issued by the Chief Master dispense with compliance by an executor with any of the requirements of the Act. The report also recommends that the Chief Master should consider issuing directives on the following:

- Examination of accounts in deceased estates
- Follow up of requirements after a final account has been advertised
- Removal of executors

Preliminary investigations

The need for reform of the legal position regarding the culpable and unlawful killing of a 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 Deputy Director of Public Prosecutions in Grahamstown requested the inclusion of an investigation with regard to the culpable and unlawful killing of an unborn baby by a third party in the SALRC's programme. A proposal paper dealing with the South African legal position (referring to the Constitution, the 'born alive' rule in the common law, delict and succession, procedural law, murder, attempted murder, abortion and sentencing), the international legal position, relevant international instruments, regional treaties, foreign jurisdictions, the phenomenon of violence against

pregnant women and local cases to recommend the inclusion of the investigation served before the Commission on 25 October 2008. A decision on the matter was postponed pending empirical research by a social scientist on the prevalence of such killings.

Insurance non-disclosure

The Ombudsman for Long-term Insurance requested the Commission to consider an investigation into mis- and non-disclosure in insurance law. During the course of the preliminary investigation, the matter was discussed with the Financial Services Board (FSB). The FSB responded on 9 June 2008 that the changes proposed by the Ombudsman will receive attention when amendments to the Long-term Insurance Act are next considered. The FSB stated that any input from the SALRC would be welcomed and should be forwarded to the FSB for incorporation into a draft amendment Bill for consideration by National Treasury.

The Commission at its meeting on 25 October 2008 approved the recommendation not to include an investigation into insurance non-disclosure in the Commission's programme. The Ombudsman for Long-term Insurance was subsequently informed of the Commission's decision by letter.

Review of witchcraft legislation in South Africa

The Commission received two submissions from the South Africa Pagan Council and the Traditional Healers' Organisation respectively, requesting that the Witchcraft Suppression Act 3 of 1957 and the proposed Mpumalanga Witchcraft Suppression Bill 2007 be investigated to determine their constitutionality.

A meeting was held with stakeholders on 4 September 2008 to explain the process to be followed in determining whether this investigation should be included in the SALRC's programme as well as to clarify the substantive issues raised in the submissions. A document has since been prepared for consideration by the Commission at its next meeting. It provides background information on the concept of witches and witchcraft in South Africa; sets out the current legal framework; describes existing attempts at and suggestions for law reform in this area and measures the relevant facts against the Commission's criteria for the inclusion of an investigation.

Multi-disciplinary legal practices

The request for the inclusion of this investigation emanates from the SALRC's media conference of 7 March 2008. The Cape Law Society submitted a proposal to the SALRC on the possible recognition of multi-disciplinary practices for attorneys and the parameters that would need to be set should multi-disciplinary practices be recognised.

The SALRC sent a memorandum to DOJCD on 6 June 2008 seeking guidance from the Director-General on the inclusion of the investigation in the SALRC programme, as it seems to fall within the purview of the Legal Practice Bill currently being developed by DOJCD. The DG agreed with the DOJCD recommendation that the SALRC should investigate the issue of multi-disciplinary practices for attorneys.

The Commission approved the inclusion of an investigation into multi-disciplinary legal practices in the programme of the SALRC on 25 October 2008. However, the Commission decided to put the request to the Minister to approve the inclusion of the investigation on the SALRC programme on hold until the Commission has had the opportunity to discuss whether this investigation fits in with the SALRC's strategic plan.

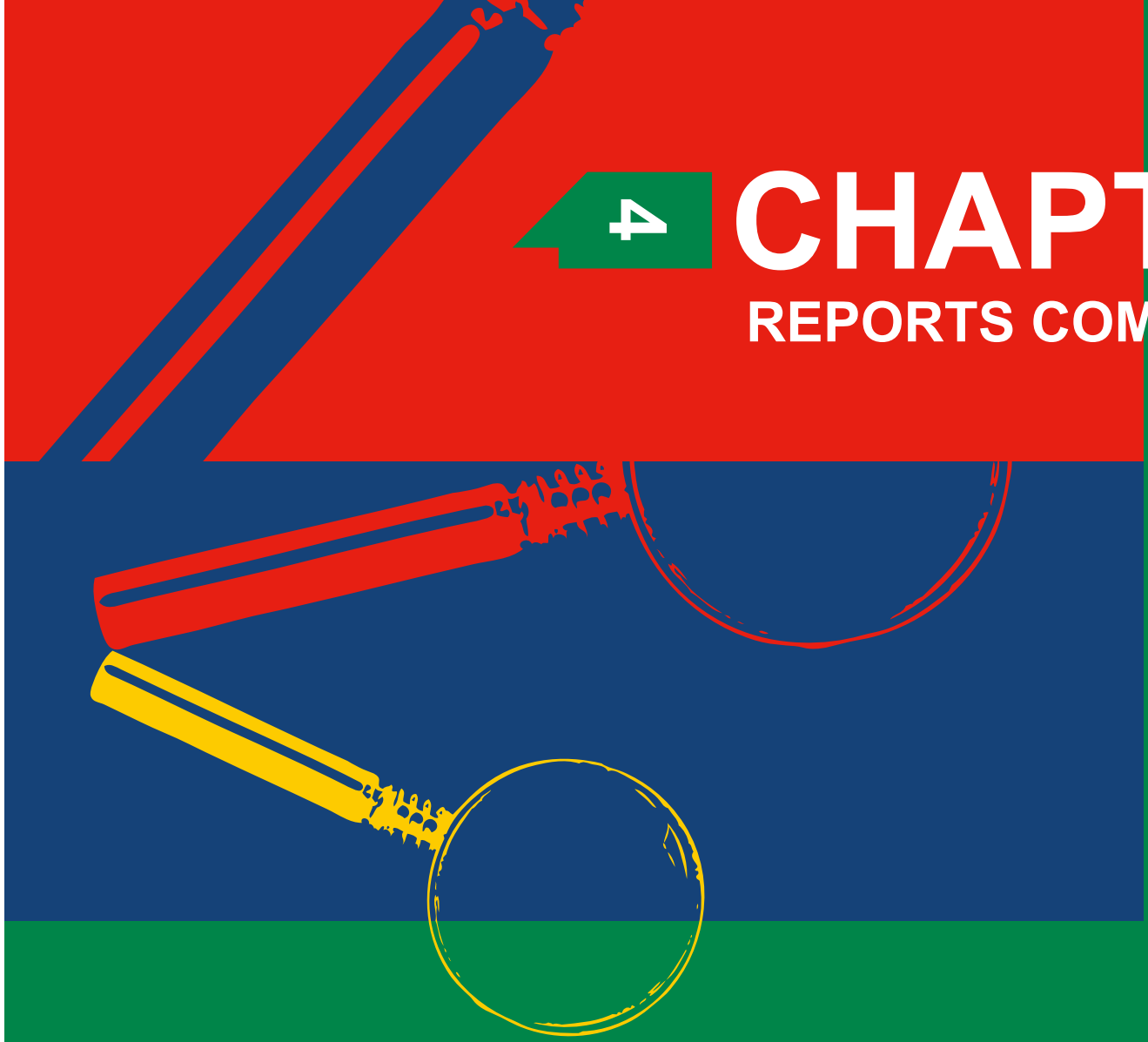
Regulating the rental property business

The request for the inclusion of the investigation was received from Mr Morgan Phaahla in March 2007. The crux of the request is that legislative measures regulating rental property business operators should be enacted. The researcher completed a project plan for the pre-investigation.

Proposed audit of conditions of service and rules governing student activities at universities impacting on academic freedom

A former lecturer at the University of Fort Hare requested this investigation. He had learned about the statutory law revision project on SABC radio news and enquired from the SALRC whether the scope of Project 25 could be extended to cover subordinate legislation. His request relates to conditions of service and rules governing student activities in public higher education institutions that impact on the right to academic freedom.

The purpose of the request is to test the constitutionality of these measures as there are growing indications that there are problems with a number of these subsidiary rules. The question is asked whether academic freedom and institutional autonomy, the core values underpinning the higher education system and enshrined in the South African Constitution and the National Higher Education Policy are being eroded by, amongst others, government policy and institutional management.



4 CHAPTER

REPORTS COMPLETED

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REPORTS COMPLETED

PROJECT 121

Project 121 – Consolidated legislation pertaining to international cooperation in civil matters

The Minister of Justice and Constitutional Development (the Minister) on 5 June 2000 approved an investigation by the SALRC into consolidated legislation pertaining to international cooperation in civil matters. The SALRC completed this investigation in December 2006. The Minister on 19 June 2008 approved the publication of the report. A media release announcing the publication of the report was issued on 15 August 2008.

The terms of this inquiry include recognition and enforcement of foreign judgments, the service of judicial process abroad and the taking of evidence for use in civil proceedings. This investigation was prompted by the need to end South Africa's legal isolation and to allow South Africa to participate more actively in global attempts to improve judicial cooperation. In order to achieve this goal, South Africa needs to clarify and improve its law and remedy gaps and ambiguities in the common law. Reform of this area also provides an excellent opportunity to consider the state of our statute law. The repeal of the Protection of Businesses Act 99 of 1978 is essential if the South African legal system is to be opened to international cooperation. These reforms will obviously benefit litigants seeking to serve process, take evidence or enforce judgments locally. Urgent attention, however, also has to be paid to the plight of South African litigants who wish to perform the same acts abroad.

This investigation reviewed the South African law on the recognition and enforcement of foreign civil judgments, maintenance orders, service of documents abroad and the obtaining of evidence from abroad. The inquiry was concerned only with civil and commercial matters. Fiscal and criminal matters, as well as questions about personal status (such as adoption, custody and guardianship) and marriage (including divorce) were excluded. Matters that were excluded on the grounds that these matters are self-contained topics already adequately provided for in existing legislation are foreign orders of insolvency, admiralty jurisdiction and the administration of foreign deceased estates. The enforcement of foreign arbitral awards, although an

important method for settling commercial disputes, was excluded because it had already been the subject of an intensive investigation by the Commission.

The SALRC made the following recommendations in this report:

The application of the Reciprocal Service of Civil Process Act 12 of 1990 should be extended to make the Act's procedures for serving process available to litigants in countries with which South Africans have frequent dealings. When deciding which countries to designate under the Act, the Minister should take the promise of reciprocal treatment and the judicial standards prevailing in selected countries to ensure compatibility with the South African Constitution into consideration. South Africa should also accede to the 1965 Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil and Commercial Matters.

The laws governing procedures to be followed by a foreigner who wants to gather evidence within South Africa need to be consolidated. The most appropriate vehicle for the consolidation is the Foreign Courts Evidence Act 80 of 1962, since the Act is designed to control requests to and from foreign countries. South Africa should incorporate the 1970 Hague Convention on Taking of Evidence in Civil or Commercial Matters into our domestic law, subject to certain qualifications.

"Executive rather than judicial action is appropriate, since the executive is better placed to discern the long-term domestic and international implications for national security or the economy."

The Enforcement of Foreign Civil Judgments Act 32 of 1988, even if amended, would only apply to judgments emanating from countries designated by the Minister of Justice under the Act. The enforcement of judgments in and from all other countries remains subject to the common law. In view of gaps and ambiguities in the applicable rules, amendments to the common law are necessary with regard to the following matters:

- Survival of the original cause of action
- Definition of judgment and grounds of international competence for orders regarding immovable property
- Validity of the judgment
- Conflicting judgments
- Date for converting foreign currencies
- Period for the running of interest and the applicable interest rate
- International competence

The Protection of Businesses Act 99 of 1978 is a major obstacle to international judicial cooperation and must be repealed. A straightforward repeal of the Act would leave the courts free to construct new rules to achieve this aim under the rubric of public policy. However, in the interests of certainty and predictability, it is preferable to specify in advance areas in which requests for service, evidence or the enforcement of foreign judgments may be refused. New legislation with regard to requests for service, evidence and the enforcement of foreign judgments should be based on the assumption that cooperation by the South African judicial system will be forthcoming. Only if it can be proved that giving effect to a request will entail the award of penal or multiple damages may the courts refuse to cooperate. The Minister should be entitled to intervene by prohibiting action in the courts if a particular request for international judicial cooperation poses a threat to national security or the economy. Executive rather than judicial action is appropriate, since the executive is better placed to discern the long-term domestic and international implications for national security or the economy.

The Enforcement of Foreign Civil Judgments Act 32 of 1988 provides for an accelerated procedure for enforcing foreign judgments in South Africa and for assisting local litigants to enforce the judgments of

South African courts. The scope of the Act must be extended to more countries. The Act however should not be made the exclusive method for enforcement and common law action should be retained as a residual option.

Maintenance awards are generally not enforceable under the common law. The Reciprocal Enforcement of Maintenance Orders Act 80 of 1963 and the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989 provide procedures for enforcing awards emanating in South Africa and in countries abroad, but only apply to countries designated by the Minister of Justice. Of the two Acts, the 1989 Countries in Africa Act is considered the more effective Act as it applies to a wider range of orders and provides for a simpler and more streamlined procedure. Although some 27 countries were designated under the 1963 Act, none have been designated under the 1989 Act. The two Acts should be consolidated along the lines of the 1989 Act and more countries designated. To facilitate the enforcement of maintenance awards in a greater range of countries and to obviate the need to negotiate bilateral agreements, it is advisable that South Africa accede to the 1957 UN Convention on Recovery Abroad of Maintenance and the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

There is no pressing need to consolidate all Acts governing international judicial cooperation into a single instrument. In particular, Acts governing enforcement of maintenance orders and other civil judgments should be kept separate. When enacting changes to the Foreign Courts Evidence Act 80 of 1962, the High Court Act 59 of 1959 and the Magistrates' Courts Act 32 of 1944 should be amended to ensure a uniform procedure for foreigners wishing to obtain evidence in South Africa.

The scope of application of the following Acts is too limited at present: Foreign Courts Evidence Act 80 of 1962, Enforcement of Foreign Civil Judgments Act 32 of 1988, Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989 and the Reciprocal Service of Civil Process Act 12 of 1990. It is recommended that the South African law should be amended to make statutory procedures more widely available. Reciprocal treatment from foreign states must be ensured. The most practical solution for achieving this aim in the short term is the negotiation of bilateral treaties with South Africa's immediate neighbours and major trading partners, an initiative that will require action by the Department of Justice and Constitutional Development together with the Department of Foreign Affairs.

A further stage of reform entails South Africa's accession to certain multilateral conventions. Two immediate targets are the 1957 UN Convention on the Recovery Abroad of Maintenance and the 1973 Hague Convention on the Recognition and Enforcement of Maintenance Obligations. Moreover, in order to keep abreast of global developments, South Africa should participate actively in the Hague Conferences on international law. In the longer term South Africa should take the lead to encourage closer regional cooperation in the Southern African Development Community. For this purpose, regional conventions in Africa, Europe and South America would provide useful models.

PROJECT 123

Project 123 – Protected disclosures

The Minister approved on 20 July 2000 the inclusion of the investigation into protected disclosures in the SALRC's programme. This was done pursuant to deliberations before the Portfolio Committee for Justice and Constitutional Development (the Committee) on the Open Democracy Bill and the subsequent promulgation of the Protected Disclosures Act 26 of 2000 (the PDA). The Commission approved the report on 25 April 2008. The Minister on 23 September 2008 approved the report for publication and the report was released at a media conference held on 25 November 2008.

The main focus of the investigation into protected disclosures was to explore the possibility of extending the ambit of the PDA beyond the purview of the traditionally understood employer / employee relationship. The investigation further sought to:

- Determine whether provision should be made for the exclusion of criminal and civil liability upon making a protected disclosure in terms of the PDA.
- Consider the creation of a new cause of action for an employee who has been victimised by an employer in contravention of the PDA and the possible inclusion of the concept of punitive damages.
- Consider the appropriateness of creating offences in the PDA in terms of which an employer would be committing an offence by unlawfully subjecting an employee to an occupational detriment, and an employee would be committing an offence by making a false disclosure or by making a disclosure without knowing or believing it to be true.

- Recommend any legislative or other steps that should be taken in this regard.

In the report the Commission has made a number of findings and has recommended that certain amendments be made to the PDA and the draft Practical Guidelines for Employees.

The remedies presently provided for in the PDA are confined to the relationship between an employer and employee in the public and private sectors. The PDA expressly excludes independent contractors from its ambit and would seem to also exclude agency workers (employees of a temporary employment service) and other such workers. The Commission recommends that the protection of the PDA should be extended to all persons 'working' in the work environment who are not defined as employees. It recommends the insertion of the definition of 'workers' to cover volunteers, independent contractors, agents, consultants and similar persons.

The inclusion of the definition of 'worker' means that the definition of 'employer' encompasses the hirers of services and is not confined to employers as defined in the Labour Relations Act 66 of 1995. For the purposes of the PDA this will mean that an employee or worker who is rendering services to a client, for example a security officer, will have two employers. The Commission recommends that where one of the employers on the express or implied instructions of the other employer subjects the employee or worker to an occupational detriment as a result of blowing the whistle, both employers should be held jointly and severally liable for the detriment suffered.

The definition of 'occupational detriment' is amended to make express reference to a detriment typically experienced by contract workers, namely the loss of a contract or the inexplicable failure to be given a contract.

In terms of section 8 of the PDA a disclosure may only be made to the Public Protector or the Auditor-General and then only in relation to their particular functions. In order to encourage and facilitate compliance with the PDA, the Commission recommends that an extended list of persons or bodies should be provided for in regulations to the PDA.

The need to protect certain information either in the national interest of the country or in the interest of the livelihood of an employer by way of confidentiality or secrecy agreements militates against granting blanket immunity from liability for disclosures. Immunity from civil and criminal liability is recommended in instances where the content of the disclosure is sufficiently serious, that is, where the disclosure relates to the commission of a criminal offence. However, immunity may only be granted subject to the discretion of the court in which the action is brought and the immunity does not extend to whistleblowers who have participated in the wrongdoing.

As whistle blowing is essentially a public duty that may attract detrimental financial and private consequences, the Commission found it apt to propose an amendment to the PDA which expressly provides that the actual damage suffered may be claimed.

Criminal offences have not been introduced into the PDA. Where an employee or a worker knowingly makes a false disclosure such disclosure will not be a protected disclosure. The employee or worker not only forfeits the protection offered by the PDA, but also exposes him- or herself to various criminal charges such as criminal defamation, *crimen injuria* or fraud at common law.

The DOJCD is enjoined to consider including the following in the practical guidelines to the PDA:

- Stipulation of timeframes within which action should be taken by the recipient of a disclosure and within which feedback should be given to the whistleblower

- Provision for referral of disclosures to more appropriate agencies or persons where the original recipient does not have the power or jurisdiction to appropriately deal with the disclosure

- Submission of statistics and details of protected disclosures dealt with by employers

The guidelines to be issued in terms of the PDA should, in addition to an explanation of the procedures available, include the pre-conditions which need to be complied with in order to obtain the protection of the PDA.

PROJECT 130

Project 130 – Stalking

The Minister in January 2003 approved the inclusion of an investigation into stalking in the programme of the Commission. This approval was granted pursuant to a recommendation by the Commission contained in the Research Paper on Domestic Violence and the Discussion Paper on Sexual Offences: The Substantive Law. The Commission had recommended that in keeping with numerous foreign jurisdictions, a separate investigation should be conducted to ascertain the need to enact comprehensive legislation prohibiting stalking. The Minister on 27 October 2008 approved the report for publication and the report was released at a media conference held on 25 November 2008.

The stalking investigation sought to:

- Investigate all aspects regarding the growing and complex problems relating to stalking and to define stalking behaviour in a South African context
- Identify appropriate legal remedies to prevent or reduce harm brought about by such behaviour
- Recommend any legislative or other steps that should be taken in this regard

It is the Commission's view that stalking behaviour should be regulated by way of legislation under the broader term 'harassment'. Internationally the legal understanding of stalking has evolved to the point where it now resorts under what is broadly termed 'harassment'. The term 'harassment' is used in order to provide greater protection. The proposed Protection from Harassment Bill provides a specific civil remedy for stalking aimed at interrupting the stalker's pattern of behaviour before physical harm to the victim occurs. With the exception of domestic violence specific provisions, the Bill mirrors the civil remedy provided for in the Domestic Violence Act, namely a protection order against harassment (as defined) coupled with a suspended warrant of arrest.

The report also recommends that practical mechanisms be developed by relevant government departments to effectively utilise existing common law crimes such as assault, crimen injuria, trespassing or malicious damage to property in cases of stalking behaviour.

This may include:

- public statements by DOJCD and SAPS to make the public aware of the applicability of existing common law crimes to certain stalking behaviour, coupled with the assurance that the criminal law will indeed be used for this purpose; and
- implementation of practical measures such as training and the development of guidelines and protocols by DOJCD and SAPS to ensure effective intervention.

PROJECT 131

Project 131 – Trafficking in persons

South Africa has ratified various international instruments, including the United Nations Protocol on Trafficking in Persons, which recognise trafficking in persons as a world-wide problem. This places an obligation on the RSA to align its domestic laws and policies with the standards set by the international instruments. The Minister on 21 January 2003 approved the inclusion of an investigation into trafficking in persons in the SALRC's research programme. The Report on trafficking in persons was submitted to the Minister in August 2008. The Minister on 23 September 2008 approved the report for publication and the report was released at a media conference held on 25 November 2008.

With its root causes in poverty and lack of economic opportunities, trafficking in persons has become one of the most lucrative businesses today with linkages around the world. Trafficking in persons involves the trading of persons as commodities by various means and is often connected to organised crime, the sex trade and modern-day slavery. South Africa is increasingly becoming a transit country and a country of destination for the trafficking of persons, especially women and children. There have been sporadic reports of the trafficking of South Africans to other parts of the world.

It is the Commission's view that the trafficking of persons should be regulated by way of legislation. The Prevention and Combating of Trafficking in Persons Bill contained in the Report on trafficking in persons addresses three main aspects, namely the prevention of trafficking in persons, the prosecution of traffickers and other role-players, and the protection of victims of

trafficking. The legislation provides for the establishment of public awareness programmes or other measures for the prevention of trafficking in persons. It criminalises trafficking in persons and related acts such as subjecting a victim of trafficking to debt bondage and destroying or confiscating the documents of victims of trafficking.

With regard to protective measures, the legislation provides for the reporting and referral of child and adult victims of trafficking. The protective measures in terms of the Children's Act 38 of 2005 apply to all child victims of trafficking. A foreign adult person certified as a victim of trafficking has the right to apply for a recovery and reflection period which will allow him or her to stay in the country for up to 90 days. Furthermore, no criminal prosecution may be instituted against an adult or child victim of trafficking for crimes committed as a direct result of his or her situation as a victim of trafficking. Victims of trafficking who agree to cooperate with law enforcement and prosecuting authorities may be issued with a temporary residence permit. A permanent residence permit can be provided to a victim under certain circumstances if he or she may be harmed, killed or trafficked again if returned to his or her country of origin.

The legislation provides for the accreditation of organisations to provide certain services to adult victims of trafficking. Unlike the Criminal Procedure Act, the legislation provides for compensation to victims of trafficking for physical or psychological injury or for being infected with a life-threatening disease. In conclusion, the legislation provides that victims of trafficking should be repatriated in terms of a process that takes cognisance of their safety not only during the repatriation process, but also in the countries to which they are to be returned or when returned to South Africa.

Project 134 – Interim report on administration of estates

Project 134 - Administration of estates previously formed part of Project 90 - Harmonisation of the common law and indigenous law, which was included in the Commission's programme in 1993. In 1999 the project was changed to 'Customary law', but was later changed to 'Administration of estates'. Discussion Paper 110 dealing with measures to improve the administration process and reduce the work of executors and the supervising authority and which also called for comment on the future role of customary law in the administration of estates was published in October 2005.

It would take the SALRC considerable time to approve a report on the comprehensive review of the administration of estates and for the legislature to enact legislation recommended in a report. The interim report deals with two matters that require urgent resolution, namely administration of 'small' estates and streamlined procedures for other estates. The interim report was submitted to the Minister during August 2008. The Minister on 23 September 2008 approved the report for publication and the report was released at a media conference held on 25 November 2008.

The administration of 'small' estates in terms of section 18(3) of the Administration of Estates Act 66 of 1965 is problematic and urgent measures are required to protect beneficiaries in these estates. A 'small' estate is an estate with a value of less than the amount fixed by the Minister from time to time – at present R125 000-00. The following concerns with 'small' estates were indentified:

- Measures to protect beneficiaries in small estates are necessary because these beneficiaries are often less able to protect their own interests than beneficiaries in large estates. There is a laudable practice in the Master's office and at service points at magistrates' offices to assist beneficiaries to report and finalise small estates without delay or costs. This practice should be continued or expanded and protective measures in large estates should rather be relaxed to ease the Master's burden.

- Small estates in which minors, incapacitated or other vulnerable persons have an interest deserve special consideration. Resources should be devoted to the protection of such persons and the Master should play a role from case to case to safeguard their interests without causing delays or costs for the beneficiaries.

- The Administration of Estates Act endows the Master of the High Court with wide powers to act against executors who fail to comply with their duties, but contains no express powers to act against persons given directions in terms of section 18(3).

The Commission made the following recommendations in the interim report:

- The Administration of Estates Act should be amended to provide that an executor must be appointed in each estate with assets and that the Master may in accordance with guidelines issued by the Chief Master dispense with compliance by an executor with any of the requirements of the Act.

- The size of the estate remains a factor when deciding on the requirements to be complied with during the administration of an estate, but other factors should also be taken into account, for instance, whether an account of assets, liabilities and intended distribution signed by or on behalf of beneficiaries has been lodged; the nature of the relationship between the beneficiaries and the executor; and the sophistication of the beneficiaries.

Following the decision in *Bhe and Others v Magistrate, Khayelitsha and Others* 2005 (1) SA 580 (CC), all customary law estates must be administered under the supervision of the Master. This and other factors have significantly increased the Master's workload and have placed the Master's Office under severe pressure. Some procedures can be streamlined without the need for statutory amendment. The procedures to be followed in cases where protective measures are relaxed must contain safeguards to ensure a balance between the streamlining of procedures and the protection of beneficiaries.

The interim report recommends that the Chief Master should consider issuing directives on the following:

- examination of accounts in deceased estates

- follow-up of requirements after a final account has been advertised

- removal of executors

The examination of accounts in deceased estates represents a substantial percentage of the work of the Master's Office and leads to considerable delays. The advantages derived from examining all accounts must be weighed against the disadvantages of the delays and costs caused by the examination of all accounts. The interim report recommends that in the examination of accounts the Master should concentrate on the correctness of distribution and administration costs; accounts where examination is necessary to enable the Master to deal with complaints, objections or disputes; accounts where it appears that there are absentee, unborn, minor or other vulnerable beneficiaries (such as illiterate people and beneficiaries with limited capacity); accounts where beneficiaries requested the Master to examine the account; and accounts where it appears that there is a possibility that estate duty will be payable.

A liquidation and distribution account should be deemed to have been examined by the Master without preconditions before the account is advertised for inspection if the Master does not issue a list of requirements within a specified number of working days after receipt of the account.

The follow-up of requirements is standard procedure and often serves no purpose in protecting beneficiaries. The interim report recommends that the Chief Master consider issuing a directive on the follow-up of requirements after an account has been advertised free of objections. Requirements should not be followed up unless circumstances are present that give rise to a belief that an estate is insolvent, that there are beneficiaries lacking full capacity or that vulnerable beneficiaries are involved.

Section 54(1)(b)(v) of the Administration of Estates Act 66 of 1965 provides that an executor may be removed from office if the executor fails to perform satisfactorily any duty imposed upon the executor by or under the Act or to comply with any lawful request of the Master. Before removing an executor from office the Master must, in terms of section 54(2), forward to the executor by registered post a notice setting out the reasons for the removal and informing the executor that he may apply to the Court within 30 days from the date of the notice for an order restraining the Master from removing the executor from office.

There is no legal requirement that a 'final reminder' must be issued before the Master may remove an executor from office. There is also no requirement that the Master should notify an executor of the Master's intention to remove the executor from office. All that is required is that the Master must forward a notice setting out the reasons for the removal and informing the executor of the possibility of applying to court within 30 days for an order restraining the Master from removing the executor from office. The interim report recommends that the Chief Master considers issuing a directive streamlining the removal of executors.

5 CHAPTER

PUBLIC RELATIONS

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PUBLIC RELATIONS

Public consultation

The SALRC relies extensively on the cooperation of institutions and persons who have an interest in its investigations for the efficient performance of the SALRC's functions.

In order to ensure the best possible involvement of interested parties, it is the SALRC'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. The SALRC's issue papers and discussion papers are released by way of media statements so as to ensure good coverage. However, the SALRC 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 foreign law reform bodies and institutions

The good relations maintained by the 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 a number of foreign visitors and work attachments.

Ms Anita Ababio, the Executive Secretary of the Ghanaian Law Reform Commission and Ms Cherith Sanger of the Women's Legal Centre in South Africa visited the SALRC on 27 May 2008 to gain insight into the legal process, research methodology, funding of the SALRC, training provided to SALRC officials, the different phases of investigations, consultative processes and cooperation between the Ghanaian Law Reform Commission and the SALRC.

The SALRC hosted an Indonesian delegation on 5 March 2009 on request of the United Nations Development Fund for Women (UNIFEM). The delegation was comprised of Ms Asmawati Hasan, Head of Social Division, Aceh Peace-Reintegration Board; Mr Hamid Zein, Head of the Provincial Law Bureau, Aceh Province; Ms Nursiti Amin, Law Lecturer at Syiah Kuala University Aceh and Secretary General of Balai Syura Ureung Inong, a women's NGO in Aceh; Ms Rasyidah, Lecturer at Institut Agama Islam Negeri ArRaniry (Arranity Islamic State Institute and a member of the Aceh Women Policy Network); and Mr Akhiruddin, a board member of Gerak, a human rights NGO. The purpose of the visit was to share good practices on efforts to eliminate violence against women. SALRC researchers briefed the delegation on human trafficking, adult prostitution, stalking, protected disclosures, domestic violence, sexual offences and Hindu marriages.

"The good relations maintained by the SALRC with law reform bodies and institutions in other countries make the exchange of consultation papers, reports and other information possible"

Study visits by delegations from the Democratic Republic of Congo and the Namibian Law Reform Commission were cancelled at short notice and will hopefully take place in the near future.

International liaison

SALRC researchers frequently liaise with international organisations, as well as experts and officials from other countries.

Ms Anna-Marie Havenga met with Dr Kees Blankman, an associate Professor of Family Law at the Free University Faculty of Law, Amsterdam in Cape Town on 25 August 2008. Dr Blankman is an expert on assisted decision-making and he is chairing a European Union working party developing guidelines on enduring powers of attorney. Dr Blankman also attended a round-table discussion where aspects of the SALRC's draft Bill on Assisted Decision-making were discussed.

Ms Dellene Clark, who represents DOJCD on the inter-ministerial task team on child pornography, held a meeting with INHOPE, an international hotline organisation on child pornography, and the Film and Publication Board (FPB) at the SALRC offices on 4 March 2009. The meeting was arranged at the request of FPB. At this meeting, Ms Clark gave an overview of the Sexual Offences investigation (Project 107) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which came about as a result of investigations conducted and recommendations made by the SALRC.

Ms Clark attended a seminar on Harmful Traditional Practices on 30 March 2009 for a Joint Research Undertaking on the Convention on the Elimination of Discrimination against Women. The seminar flowed from a bilateral meeting between the Minister for Women and Public Administration of Austria and the Minister in the Presidency. The outcome of this meeting was that the Governments of South Africa and Austria agreed to collaborate closely on joint programmes to promote the rights of women. The seminar was preceded by a meeting at the SALRC which was attended by the Full-time Commissioner of the SALRC; the Secretary of the SALRC; Judge Hofmeister, an Austrian judge; and Ms Wörgetter, deputy at the Austrian Embassy, to discuss assistance that the SALRC could offer.

Mr Mike Chinoko, Law Reform Officer of the Malawi Law Commission, contacted the Secretary of the SALRC on 12 June 2008 to enquire about the distinction between an advocate, an attorney and a conveyancer. Mr Pierre van Wyk provided him with the necessary information.

Ms Sandra Petersson, the Research Manager and acting Director of the Alberta Law Reform Institute, approached the SALRC on 3 February 2009 with an enquiry on whether the SALRC had conducted research on specific performance under a contract for the sale and purchase of land. Mr Pierre van Wyk provided Ms Petersson with the relevant information.

The Uganda Law Reform Commission (ULRC) requested the SALRC during February 2009 to assist with arrangements for the ULRC to meet with South African

experts on customs and excise duty and to provide them with information on suitable accommodation. The Induction Committee referred ULRC's request to meet with experts to the South African Revenue Services (SARS). The Induction Committee provided ULRC with information as received from SARS and a list of hotels and bread and breakfast establishments with contact details and costs.

The SALRC received a request from Maryland University in the United States of America to host two of their students as interns for six weeks during the course of 2009. The Induction Committee liaised with Maryland University in this regard.

The SALRC, in the course of reviewing its processes since the previous reporting period, continued liaison with the following law reform agencies with a view to establishing best practices in law reform:

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

Attendance of international conferences and meetings

The Secretary and Mr Fanyana Mdumbe attended the Australasian Law Reform Agencies Conference (ALRAC) in Port Villa, Vanuatu, which was held from 10 to 12 September 2008. The conference focussed on reforming the law and legal institutions to promote human rights – a theme particularly relevant to the Commission in the light of the Project 25 subproject on statutory law revision. ALRAC also afforded the SALRC delegates the opportunity to engage with representatives from other law reform agencies on their processes of consultation, review and reporting.

Mr Fanyana Mdumbe attended a meeting of the Ministers of Justice, attorneys-general and legal experts of all member states of the African Union in Kigali, Rwanda from 29 October to 4 November 2008 as part of the South African delegation. The South African delegation was comprised of officials from the Departments of Justice and Constitutional Development and Foreign Affairs. The purpose of the meeting was to consider the study on the Procedure of the Ratification of Member States and the draft African Charter on Statistics, and to finalise the draft Statute of the African Union Commission on International Law.

Ismail Mahomed Law Reform Essay Competition for 2008

The SALRC, in partnership with Juta Publishers, launched the Ismail Mahomed Law Reform Essay Competition for 2008 in April 2008. The closing date for the submission of essays initially was 31 October 2008, but it was extended to 30 November 2008. Officials of the SALRC and Juta visited the law faculties of the Universities of Johannesburg, Pretoria, Limpopo, Venda, the North West (Potchefstroom and Mafikeng campuses), the Walter Sisulu University and the University of South Africa between August and September 2008 to promote the competition. The SALRC received essays from students registered at the Rhodes University, University of the Witwatersrand, Nelson Mandela Metropolitan University, University of Cape Town, University of South Africa; University of Pretoria, University of Limpopo and the University of Johannesburg.

A panel consisting of Judge Willie Seriti (Deputy Chairperson of the SALRC and Chairperson of the panel); Professors Thandabantu Nhlapo (Vice Chancellor, University of Cape Town); PJ Schwikkard (Dean, Faculty of Law, University of Cape Town); Managay Reddi (Dean: Faculty of Law, University of KwaZulu-Natal); Cathi Albertyn (Professor at Wits and part-time Commissioner: SALRC); Christof Heyns (Dean, University of Pretoria); Ms Yasmin Sooka (Executive Director: Foundation for Human Rights); and Ms Thuli Madonsela (Full-time Commissioner: SALRC) was appointed to evaluate the essays and decide on the winner.

The panel met at the SALRC offices on 23 February 2009 and unanimously decided that the prize for the best essay of the 2008 competition should be jointly awarded to Mr Chris McConnachie, a penultimate LLB student at Rhodes University, for his essay entitled 'With such changes as may be required by context: Section 13 of the Civil Union Act, absurdity and gender discrimination in the legal consequences of marriage', and Ms Suzanna Harvey, a student at the University of Cape Town, for her essay entitled 'Closing a loophole

in the Labour Relations Act: The Constitutionality of s198'.

Electronic and printed media and liaison

The SALRC maintains good relations with the electronic and the printed media. Information that, in the SALRC's opinion, is newsworthy is supplied to the media and enquiries are replied to fully and promptly. The SALRC wishes to express its gratitude for the interest displayed by the media in investigations conducted by the SALRC. This was especially apparent at the highly successful media conference held by the SALRC on 25 November 2008.

The Secretary and Assistant Secretary deal with enquiries on the work of the SALRC 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.

The SALRC holds extensive workshops and briefings in respect of relevant investigations, which is in line with the Commission's policy of broadening its consultation base. 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 state departments, parliamentary committees, relevant NGOs, the legal fraternity, relevant experts and the community in general.

Researchers and advisory committee members often participate in activities not initiated by the SALRC 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 SALRC'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 cooperation between the SALRC and other role players, serves to publicise the SALRC's activities and ensures that duplication of initiatives is avoided.

External conferences, workshops, briefings, consultative meetings and expert meetings

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 Mr Pierre van Wyk Mr Linda Mngoma	Brief Ms Anita Ababio, the Executive Secretary of the Law Reform Commission of Ghana and Ms Cherith Sanger of the Women's Legal Centre of South Africa on Project 25	27 May 2008
	Attend workshop for legal advisers of the KwaZulu-Natal Provincial Legislature on the province's rationalisation of laws project	04 to 08 August 2008

PROJECT	ACTIVITY	DATE
Project 73 - Simplification of criminal procedure Mr Willie van Vuuren	A decision was taken during the Cabinet Lekgotla in July 2003 to review the South African criminal justice system. The Chairperson of the Commission nominated Mr Willie van Vuuren to participate in DOJCD's 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 • Coordination between and cooperation of role players in the criminal justice system	During the reporting period Mr Van Vuuren attended meetings of the Criminal Justice Review Team on 14 February, 13 March, 24 April, 29 May, 26 June, 23 July, 28 August, 25 September, 22 October and 27 November 2008, and 14 February and 13 March 2009
	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 coordination and cooperation 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	

PROJECT	ACTIVITY	DATE
Project 85 - Aspects of the law relating to AIDS Ms Anna-Marie Havenga	Supply comment at the request of Prof Frans Viljoen of the AIDS and Human Rights Research Unit of the University of Pretoria on a draft SADC Model Law on HIV in Southern Africa	July 2008
Project 107 - Sexual offences Ms Dellene Clark	Follow-up briefing on sexual offences and youths arranged by Khanya Moswa, the Perinatal HIV Research Unit, at Baragwanath Hospital in Soweto	8 May 2008
	Brief Ghanian Law Reform Commission on the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	27 May 2008
	Participate and serve on the Inter-Ministerial Committee on combating of pornography	Attended meetings on 20 October 2008 and 23 February 2009
	Present on the topic 'New Sexual Offence Legislation – practical implications in practice' at the Pretoria Study Group Programme of the SA Sexual Health Association (SASHA)	16 October 2008
	Field numerous enquiries regarding the application of the new Act and related legislation, for example: • Enquiry from SAAM regarding the obligation to fill in the J88 form and the obligation to testify to its contents by medical doctors • Enquiry from the NPA on the framing of incest charges in terms of the Act where a foster father impregnated his foster daughter • Enquiry regarding the fact that possessing and importing pornography in terms of the Act is not a schedule 5 and 6 offence indicating the need for an amendment to the Act • Explaining the import of the Act telephonically to various interested parties • Providing research material to a lecturer at the North West University regarding consent and rape within the family setting	Throughout the reporting period

PROJECT	ACTIVITY	DATE
	• Assisting Adv Vass Soni SC with research material and information on Parliamentary deliberations around the age of consent for the Phaswane matter serving before the Constitutional Court • Drafting a letter in response to requests for law reform with respect to the offences of rape, sexual assault, compelling a child to witness sexual offences, sexual acts and sexual grooming • Telephonic enquiry relating to age of consent and homosexual youths.	Throughout the reporting period
	Exploratory meeting and interview session with INHOPE and the Film and Publication Board with a view to accrediting the FPB hotline against child pornography internationally	4 March 2009
	Brief an Indonesian delegation and UNIFEM on the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	5 March 2009
Project 107 - Sexual offences: adult prostitution Ms Dellene Clark Ms Carien Pienaar	Exploratory meeting with SAPS and the NPA on their approach to visible policing as well as prostitution and trafficking during the FIFA World Cup in 2010	17 September 2008
Project 110 - Review of the Child Care Act	Attend the Child Care Protection Forum meeting in Pretoria	10 April 2008
Ms Ronel van Zyl	Give presentation on the medical aspects of the Children's Act, 2005 to youth groups and representatives from sexual health clinics	8 May 2008
	Present training on the Children's Act, 2005 to social workers on invitation of the 'Christelik Maatskaplike Raad' in Ermelo, Mpumalanga	23 May 2008
	Attend and participate in a workshop on the implementation of the Children's Act, 2005 hosted by the Department of Social Development	27 and 28 May 2008

PROJECT	ACTIVITY	DATE
	Present training on the Children's Act, 2005 to social workers and related professions on invitation of the 'SA Vrouefederasie' in Potchefstroom, North West Province	10 and 11 June 2008
	Meeting with official from the Department of Social Development on lacunas and shortcomings in the Children's Act, 2005	7 and 14 July 2008
	Present training on the Children's Act, 2005 to social workers and related professions on invitation of Child and Family Welfare in Polokwane, Limpopo Province	17 and 18 July 2008
	Present training on the Children's Act, 2005 to officials from various state departments and child welfare organisations on invitation from the Free State Department of Social Development in Bloemfontein, Free State Province	20 and 21 August 2008
	Discussions with family advocates from the Family Advocate's office on Chapter 3 (parental responsibilities and rights) of the Children's Act, 2005	28 July, 2 September and 8 October 2008 and 20 February 2009
	Present training on the first four chapters of the Children's Act, 2005 to family advocates, family advisers and private legal practitioners on invitation of the Office of the Family Advocate, KwaZulu-Natal in Durban	4 September 2008
	Present training on the Children's Act, 2005 to social work and post-graduate clinical psychology students and lecturers on invitation of the Department of Social Work of the University of North West in Potchefstroom, North West Province	6 and 7 October 2008
	Meeting with judges and legal professionals specialising in family law on the Children's Act, 2005 at the Gauteng North High Court, Pretoria	8 October 2008
	Present training on the first four chapters of the Children's Act, 2005 to family advocates, family advisers and private legal practitioners on invitation of the Office of the Family Advocate, Eastern Cape Province in Port Elizabeth	30 October 2008

PROJECT	ACTIVITY	DATE
	Attend the 10th anniversary function for the Centre for Child Law at the University of Pretoria	20 November 2008
	Meeting with official from DOJCD on the implications of the implementation of the Children's Act for DOJCD	25 November 2008
	Field enquiries and assist with information regarding the Children's Act, for example:	
	• Enquiry for information to assist with a case being dealt with by the 'Christelik Maatskaplike Raad' in Ermelo, Mpumalanga	8 April 2008
	• Request for information on mediation provided for in the Children's Act from a social worker in private practice	21 April 2008
	• Liaise with journalist from the Bouquet magazine, the magazine for the SAVLU, on an article on the Children's Act, 2005	22 August 2008
	• Liaise with researcher from the Centre for Child Law, University of Pretoria on a fact sheet on the ages stipulated in various pieces of legislation when persons are eligible to perform certain acts independently	25 and 26 August 2008
	• Assist various members of the public, family advocates and officials from the Departments of Justice and Constitutional Development and Social Development with information on the Children's Act, 2005	Throughout the reporting period

PROJECT	ACTIVITY	DATE
Project 122 - Assisted decision-making: Adults with impaired decision-making capacity	Participate in Dementia South Africa round-table discussion in Cape Town and brief attendants on draft Assisted Decision-making Bill	25 August 2008
Ms Anna-Marie Havenga	Consultative meeting with Prof Kees Blankman, Chairperson of the European Union Working Party on Assisted Decision-making, to obtain his comment on the SALRC's proposed draft Bill on Assisted Decision-making	25 August 2008
Project 123 - Protected disclosures Ms Dellene Clark	Comment on the Commonwealth Secretariat Anti-corruption Project: Paper on 'Whistle-blowing' model legislative provisions given to the Chief Directorate: International Affairs in DOJCD in anticipation of the meeting of Commonwealth law ministers in Edinburgh from 7 to 10 July 2008	13 June 2008
	Brief Ghanaian Law Reform Commission	27 May 2008
	Radio interview with Keenu Cummies on Radio 702	February 2009
	Brief an Indonesian delegation linked to UNIFEM	5 March 2009
Project 124 - Privacy and data protection	Presentation on Bill at a workshop with member companies of the Life Offices Association	26 March 2008
Ms Ananda Louw	Follow-up discussion with the Deputy Minister of Justice and Constitutional Development on the proposed Protection of Personal Information Bill	27 May 2008
	Meeting with Mr Geoff Ogle, Head of the International Pension Centre in the UK Department for Work and Pensions, and his deputy Mr Jim Rynn	4 June 2008
	Presentation at the Direct Marketing Association Legislative Subcommittee meeting at Hollard Place, Johannesburg	22 July 2008

PROJECT	ACTIVITY	DATE
	Meeting with Ritasha Jethva, Service Line Leader for Privacy and Compliance with Deloittes Security and Privacy Services	August 2008
	Keynote address at the two day conference on the proposed Protection of Personal Information Bill hosted by the Intelligence Transfer Centre	22 to 24 October 2008
	Presentation at 3rd Annual Cyber Law Conference on the impact of the Bill on e-government	28 to 30 October 2008
	Presentation at In-house Legal Counsel Conference on Best Business Practices	25 March 2009
	Various meetings with Tim O'Hanlon, Programme Manager at Old Mutual, mandated by the Old Mutual Executive	Throughout the reporting period
	Two-monthly meetings with Adv Ashina Singh, Credit Bureaux Association, to discuss the impact of the proposed POPIA on the credit industry	Throughout the reporting period
	Various briefings of the DOJCD Policy Unit on the proposed Protection of Personal Information Bill	Throughout the reporting period
Project 130 - Stalking Ms Dellene Clark	Brief DOJCD officials on content of the Stalking Report and draft Protection from Harassment Bill	22 July 2008 and 13 February 2009
	Convene a round table on stalking with a view to popularising the work of the Commission	March & April 2009
	Brief Ghanaian Law Reform Commission	27 May 2008
	Brief an Indonesian delegation linked to UNIFEM.	5 March 2009
	Various newspaper interviews regarding the proposals in the Stalking Report	From 25 November 2008 to 31 March 2009
Project 131 - Trafficking in persons	Participate in the Trafficking in Persons Consultative Forum held by the NPA	16 April 2008

PROJECT	ACTIVITY	DATE
Ms Lowesa Stuurman	Participate in the consultative meeting on trafficking in persons hosted by Masimanyane Women Support Group in Cape Town	14 July 2008
	Participate in exploratory meetings with SAPS and the NPA regarding their approach to visible policing as well as prostitution and trafficking during the FIFA World Cup in 2010	July 2008
	Participate in meeting with European Union migration experts held in Pretoria	11 September 2008
	Attend preparatory meetings in anticipation of the Fourth Conference of State Parties to the Convention against Transnational Organised Crime	18 and 25 September 2008
	Part of the delegation that represented the South African Government at the Fourth Conference of the State Parties to the Convention against Transnational Organised Crime which was held in Vienna, Austria	8 to 17 October 2008
	Attend the launch of the Internal Trafficking in Persons Research Report by the International Organisation for Migration in Pretoria	28 October 2008
	Attend the 10th anniversary of the Centre for Child Law of the University of Pretoria	20 November 2008
	Interviewed by presenter of Youth Expression (a youth current affairs television programme) for broadcast on SABC International	20 March 2009
	Participate in a conference titled “Towards an integrated human trafficking national action plan” held in Durban	25 to 27 March 2009

Internet

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

6
CHAPTER
ACKNOWLEDGEMENTS

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 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 execute its mandate properly.

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.

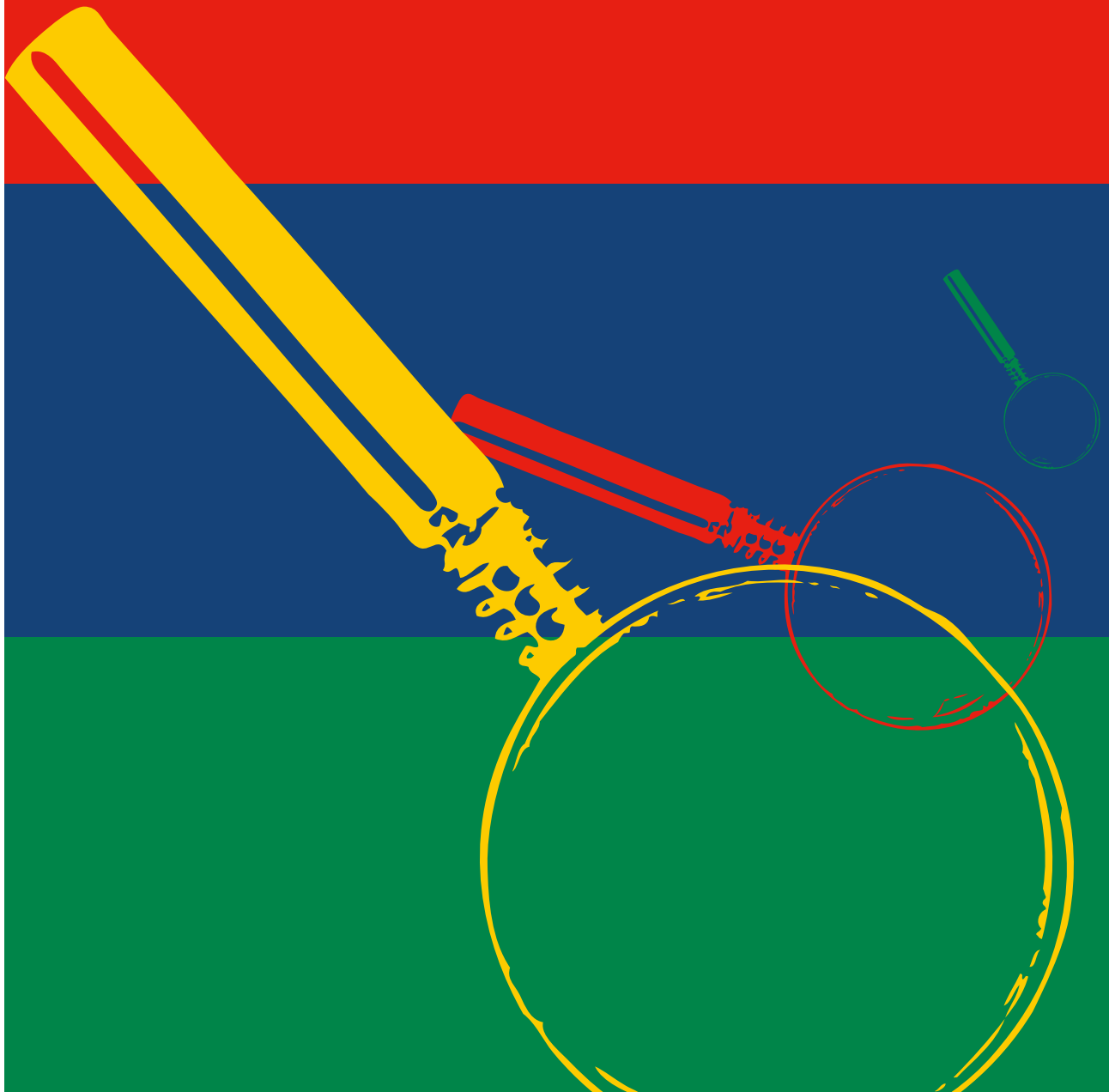
The Commission has received financial support from the German Technical Cooperation (GTZ) in respect of Project 25 - Statutory law revision: Review of the Interpretation Act 33 of 1957 during the reporting period. The Commission wishes to record its sincere appreciation to the GTZ.

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. The Department of Justice and Constitutional Development as a whole is thanked for its cooperation 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.

ANNEXURES



ANNEXURE A

ANNEXURE A: ISSUE PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	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 criminal procedure: Access to the criminal justice system	0 621 17705 9 April 1997
7	82	Sentencing: Restorative justice (compensation for victims of crime and victim empowerment)	0 621 17718 0 April 1997
8	94	Arbitration: Alternative dispute resolution	0 621 27319 8 May 1997
9	106	Juvenile Justice	0 621 27335 X June 1997
10	107	Sexual offences against children	0 621 27352 X June 1997
11	82	Sentencing: Mandatory minimum sentences	0 621 27353 8 July 1997
12	90	Harmonisation of the common law and the indigenous law: Succession in customary law	0 621 8 008 9 April 1998
13	110	The review of the Child Care Act	0 621 28026 April 1998
14	108	Computer related crime: Options for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 28710 5 August 1998
15	59	Islamic marriages and related matters	0 621 30089 6 May 2000
16	119	Uniform national legislation on the fencing of national roads	0 621 30188 4 July 2000

ANNEXURE A: ISSUE PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
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 35016 8 January 2004
26	126	Review of the law of evidence	0 978 0 621 37676 0 March 2008

ANNEXURE B

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.

ANNEXURE B: DISCUSSION PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
1	37	Preference on insolvency	18 March 1983
2	22	Law of succession: Intestate succession	17 February 1984
3	9	Law of trusts	24 February 1984
4	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband	October 1984
5	49	Offences committed under the influence of liquor or drugs	10 August 1984
6	43	Investigation into the advancement of the age of majority	15 February 1985
7	38	Investigation into the legal position of illegitimate children	22 February 1985
8	33	Review of the law of prize	12 April 1985
9	25	Statute law: Investigation into the law relating to theft and house-breaking	Not published
10	51	Marriages and customary unions of black persons	13 September 1985
11	6	Review of the law of evidence	25 April 1986
12	57	Anton Piller type of orders	Not published
13	22	Review of the law of succession: The introduction of a legitimate portion or the granting of a right to maintenance to a surviving spouse	8 August 1986
14	22	Review of the law of succession: Formalities of a will	17 October 1986
15	24	Investigation into the courts' powers of review of administrative acts	2 January 1987
16	62	The protection of a purchaser of securities	27 April 1987
17	22	Review of the law of succession: Amendment and repeal of wills	23 September 1987
18	61	Enduring powers of attorney and the appointment of curators for mentally incapacitated persons	0 7970 1381 4 18 March 1988
19	22	Review of the law of succession: Disqualification from inheriting, substitution and the succession rights of adopted children	0 7970 1401 2 26 February 1988
20	60	Domicile	0 7970 1435 7 26 August 1988
21	62	The protection of a purchaser of securities	0 7970 1460 8 31 March 1988
22	50	Proposals for the reform of the Bills of Exchange Act	0 621 1198 9 X 19 December 1988
23	46	The giving of security by means of movable property	0 7970 1558 2 7 October 1988

ANNEXURE B: DISCUSSION PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
24	52	Investigation into the legal consequences of sexual realignment and related matters	0 7970 1589 2 17 June 1994
25	58	Group and human rights	GPS 003 9160 10 March 1989
26	12	Amendment of section 7(3) of the Divorce Act, 1979	0 7970 1667 8 1 March 1989
27	69	The acquisition and loss of ownership of game	0 7970 1727 5 29 May 1989
28	71	The protection of child witnesses	0 7970 1826 3 12 June 1989
29	63	Insolvency: Requirements for and alternatives to sequestration	0 7970 1854 9 7 August 1989
30	63	Insolvency: Qualifications, appointment and discharge of trustees	0 7970 1954 5 10 November 1989
31	66	Reform of the South African law of bail	0 7970 2078 0 December 1990
32	75	Bribery	0 7970 2126 4 March 1990
33	63	Insolvency: Effect of insolvency on assets, civil proceedings and contracts	0 7970 2185 X November 1990
34	24	Investigation into the courts' powers of review of administrative acts	0 7970 2292 9 December 1991
35	63	Insolvency: Insolvency interdicts	0 7970 2296 1 May 1991
36	62	The protection of a purchaser of securities	0 7970 2300 3 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

ANNEXURE B: DISCUSSION PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
48	62	The protection of a purchaser of shares	0 621 15848 8 October 1993
49	73	Simplification of criminal procedure	0 621 15923 9 November 1993
50	74	Debt collecting	0 621 15933 6 November 1993
51	70	Limitation of professional liability	0 621 15955 7 December 1993
52	84	Application of the trapping system	0 621 15959 X December 1993
53	86	Euthanasia and the artificial preservation of life	0 621 15994 8 February 1994
54	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 16038 5 May 1994
55	89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	0 621 16358 9 December 1994
56	98	International co-operation in criminal prosecutions	0 621 16820 3 May 1995
57	88	The recognition of a class action in South African law	0 621 16928 5 September 1995
58	85	Aspects of the law relating to AIDS	0 621 16964 1 September 1995
59	94	Arbitration	0 621 16971 4 September 1995
60	95	Investigation into the Computer Evidence Act 57 of 1983	0 621 17259 6 October 1995
61	63	Review of the law of insolvency: Statutory provisions that benefit creditors	0 621 17297 9 November 1995
62	100	The granting of visitation rights to grandparents of minor children	0 621 17344 4 March 1996
63	93	Speculative and contingency fees	0 621 17353 3 March 1996
64	104	Money laundering and related matters	0 621 17453 X June 1996
65	47	Unreasonable stipulations in contracts and the rectification of contracts	0 621 17503 X August 1996
66	63	Review of the law of insolvency: Draft Bill and explanatory memorandum	0 621 17509 9 August 1996
	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 17602 8 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

ANNEXURE B: DISCUSSION PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
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 28020 8 April 1998
78	105	Review of security legislation: The Interception and Monitoring Prohibition Act 127 of 1992	0 621 28847 0 November 1998
79	106	Juvenile justice	0 621 28851 9 November 1998
80	85	Aspects of the law relating to AIDS: The need for a statutory offence aimed at harmful HIV-related behaviour	0 621 28854 3 December 1998
81	115	Administrative law	0 621 28895 0 January 1999
82	90	Customary law: Traditional courts and the judicial function of traditional leaders	0 621 29273 7 May 1999
83	94	Arbitration: Domestic arbitration	0 261 29371 7 September 1999
84	85	Aspects of the law relating to AIDS: Compulsory HIV testing of persons arrested in sexual offence cases	0 621 29372 5 September 1999
85	107	Sexual offences: The substantive law	0 621 29374 1 September 1999
86	63	Review of the law of insolvency	0 621 29377 6 September 1999
87	94	Arbitration: Community dispute resolution structures	0 621 29381 4 September 1999
88	109	The review of the Marriage Act 25 of 1961	0 621 29428 4 September 1999
89	73	Simplification of criminal procedure: The right of the Attorney-General to appeal on questions of fact	0 621 29935 9 January 2000
90	101	The application of the Bill of Rights to criminal procedure, criminal law, the law of evidence and sentencing	0 621 29936 7 January 2000
91	82	Sentencing: A new sentencing framework	0 621 30070 5 April 2000
92	105	Review of security legislation: Terrorism: Section 54 of the Internal Security Act 74 of 1982	0 621 30184 1 July 2000
93	90	Customary law: Succession	0 621 30205 8 August 2000
94	73	Simplification of criminal procedure: Sentence agreements	0 621 30337 2X December 2000
95	90	Customary law: Administration of estates	0 621 30338 0 December 2000
96	73	Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials	0 621 30683 5 April 2001

ANNEXURE B: DISCUSSION PAPERS PUBLISHED BY THE COMMISSION			
SERIAL NUMBER	PROJECT NUMBER	TITLE OF INVESTIGATION	ISBN/ PUBLICATION DATE
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
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 law 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
114	25	Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation – Legislation administered by the Department of Transport	978 0 621 37829 0 June 2008
115	25	Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation – Legislation administered by the Department of Housing	978 0 621 38319 5 November 2008

ANNEXURE C

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
1	The codification of certain crimes against the State	1974	RP 17/1976	Recommended legislation not implemented
2	Investigation into a proposed new process for the administration of certain estates	1974	Not published	No new legislation recommended
3	The submission of questions of law in civil cases to the Appellate Division of the Supreme Court	1974	Not published	Section 36 of 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 enacted, since repealed
	Final report	1986	ISBN 0 621 11348 4	Law of Evidence Amendment Act 45 of 1988 enacted
7	Revision of pre-Union statutes:			
	Repeal of certain pre-Union Statutes	1975	Not published	Pre-Union Statute Law Revision Act 36 of 1976 enacted
	Repeal of certain pre-Union statutes	1976	Not published	Pre-Union Statute Law Revision Act 43 of 1977 enacted
	Retention of certain pre-Union statutes	1977	Not published	Pre-Union Statute Laws Revision Act 24 of 1979 enacted
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 enacted
10	Draft convention for a uniform law of agency of an international character in respect of the sale of goods	1974	Not published	No legislation recommended
11	Investigation into the common law rule that interest may not accrue beyond the principal debt	1974	RP 18/1975	Recommendations not implemented – 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 enacted – see also Project 40
	Section 7(3) of Act 70 of 1979	1991	ISBN 0 621 14140 2	Divorce Amendment Act 44 of 1992 enacted – 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 enacted, since repealed – 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 enacted
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 enacted – see also Projects 41 and 51

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
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 enacted
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 enacted
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 enacted
	Legitimate portion or right to maintenance	1987	Not published	Maintenance of Surviving Spouses Act 27 of 1990 enacted
	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 enacted
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:			
	Repeal of Laws Act	1980	Not published	Repeal of Laws Act 94 of 1981 enacted
	Investigation into certain aspects of the Prescription Act 68 of 1969	1983	Not published	Prescription Amendment Act 11 of 1984 enacted
	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 enacted
	Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation	-	-	See Chapter 3
	Review of the Interpretation Act	-	-	See Chapter 3
	Hindu marriages	-	-	See Chapter 3
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 enacted – see also Project 54
28	Investigation into leases in respect of movables	1976	Not published	No legislation recommended
29	Investigation into the application of *mens rea* in statutory offences	1982	GP-S 300	No legislation recommended

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
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 enacted
32	Review of the law of admiralty	1982	RP 12/1983	Admiralty Jurisdiction Regulation Act 105 of 1983 enacted
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 enacted, since repealed and re-enacted in the Children's Act 38 of 2005
39	Investigation into the legal consequences of suspensive conditions in contracts of sale	1985	ISBN 0 621 11350 6	No legislation recommended
40	Evaluation of the effect of the Divorce Act 70 of 1979	1983	Not published	No legislation recommended
41	The division of pension benefits on divorce:			
	Report	1986	ISBN 0 621 11357 3	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 enacted
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 Criminal Procedure Act Amendment Act 39 of 1989 and Prevention of Family Violence Act 133 of 1993 enacted
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 enacted
	Supplementary report	1993	Not published	Act 57 of 1993 enacted

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE 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 – report 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 enacted
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 enacted
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 enacted
53	Investigation into the amendment of section 26 of the Insolvency Act 24 of 1936	1983	Not published	Insolvency Amendment Act 84 of 1984 enacted – see also Project 63
54	Committal to prison in respect of debt	1985	ISBN 0 621 11346 8	See Project 74
55	Removal of certain restrictions in respect of land	1984	Not published	No legislation recommended
56	Submission of a question of law to the Appellate Division of the Supreme Court relating to the calculation of finance charges under the Limitation and Disclosure of Finance Charges Act 73 of 1968	1976	Not published	*Ex parte Minister of Justice* 1978 2 SA 572 (A)
57	Anton Piller type of orders	1987	Not published	Recommendations not implemented
58	Group and human rights:			
	Interim report	1991	Report: ISBN 0 621 14128 3 Summary: ISBN 0 621 14127 5	Constitution of the Republic of South Africa Act 200 of 1993 enacted, since repealed Constitution of the Republic of South Africa 1996 enacted
	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 enacted
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 enacted

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
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
63	Review of the law of insolvency:			
	Interim report: Section 34 of the Insolvency Act 24 of 1936	1990	Not Published	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 enacted
	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 enacted
	Interim report: The enactment in South Africa of UNCITRAL's Model Law on Cross-Border Insolvency	1999	Not Published	Cross-Border Insolvency Act 42 of 2000 enacted
	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 in March 2003 to be revived following the enactment of business rescue provisions in the Companies Act 71 of 2008
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
	Report	1994	RP 82/1995 ISBN 0 621 16746 0	Criminal Procedure Second Amendment Act 75 of 1995 enacted
67	The Usury Act and related matters	-	-	Struck off
68	Access to police dockets	1992	ISBN 0 621 15349 4	Not implemented in view of the access to information provisions in the 1993 and 1996 Constitutions
69	The acquisition and loss of ownership of game	1991	ISBN 0 621 14138 0	Game Theft Act 105 of 1991 enacted
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 enacted
72	The alienation of personal servitudes	-	-	Struck off
73	The simplification of criminal procedure:			
	First interim report: Appeal procedures	1994	-	Recommendations not implemented
	Second interim report: The simplification of criminal procedure	1995	RP 70/1996 ISBN 0 621 17405 X	Criminal Procedure Amendment Act 86 of 1996 enacted
	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

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

PROJECT NUMBER	TITLE	YEAR OF REPORT	REFERENCE NUMBER OF PUBLISHED REPORT	RESULT
73	Fourth interim report: Sentence agreements	2001	RP 120/2001 ISBN 0 621 31452 8	Criminal Procedure Second Amendment Act 62 of 2001 enacted
	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 enacted
	Final report	1995	RP 198/1995 ISBN 0 621 16960 9	Debt Collectors Act 114 of 1998 enacted, since repealed Act 81 of 1997 enacted
75	Bribery	1991	ISBN 0 662 15184 43	Corruption Act 94 of 1992 enacted, since repealed
76	Jewish divorces	1994	RP 56/1995 ISBN 0 621 16707 X	Divorce Amendment Act 95 of 1996 enacted
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 enacted
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 enacted, since repealed
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 enacted
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 of 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
84	Application of the trapping system	1994	RP 174/1995 ISBN 0 621 16896 3	Criminal Procedure Second Amendment Act 85 of 1996 enacted

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
85	Aspects of the law relating to AIDS:			
	First interim report: Health related aspects	1997	RP 106/1997 ISBN 0 621 27345 7	Regulations on Hazardous Biological Agents 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 enacted
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 enacted
90	Customary law:			
	Customary marriages	1998	RP 170/1998 ISBN 0 621 28755 5	Recognition of Customary Marriages Act 120 of 1998 enacted
	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	ISBN 978-0-621-38482-6	Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 passed

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE 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 enacted
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
	Family mediation		-	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
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 enacted Proceeds of Crime Act 76 of 1996 enacted, since repealed Extradition Amendment Act 77 of 1996 enacted
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 enacted
	Maintenance: Interim report	1998	RP 137/1998 ISBN 0 621 28685 0	Maintenance Act 99 of 1998 enacted
	Custody of and access to minor children	-	-	See Chapter 3
	Review of aspects of matrimonial property law	-	-	See Chapter 3
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

ANNEXURE C: INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT				
PROJECT NUMBER	**TITLE**	**YEAR OF REPORT**	**REFERENCE NUMBER OF PUBLISHED REPORT**	**RESULT**
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 enacted
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 enacted
	Terrorism	2002	RP 216/2002 ISBN 0 621 33513 5	Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004 enacted
106	Juvenile Justice	2000	RP 159/2000 ISBN 0 621 30228 7	Child Justice Act 75 of 2008 passed
107	Sexual offences	2003	RP 16/2003 ISBN 0 621 33583 5	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 enacted
	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
113	Use of electronic equipment in court proceedings:	-	-	See Chapter 3
	Postponement of criminal cases via audiovisual link	2003	RP 211/2003 ISBN 0 621 34990 9	Criminal Procedure Amendment Act 65 of 2008 passed
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

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

PROJECT NUMBER	TITLE	YEAR OF REPORT	REFERENCE NUMBER OF PUBLISHED REPORT	RESULT
118	Domestic partnerships	2006	ISBN 978 0 621 37255 7	Civil Union Act 17 of 2006 enacted 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	-	ISBN 978 0 621 38480 2	Report under consideration by the Department of Justice and Constitutional Development – report submitted to the Department in August 2008
122	Assisted decision-making: Adults with impaired decision-making capacity	-	-	See Chapter 3
123	Protected disclosures	-	ISBN 978 0 621 38278 5	Report under consideration by the Department of Justice and Constitutional Development – report submitted to the Department in November 2008
124	Privacy and data protection	-	-	Report was submitted to the Minister of Justice and Constitutional Development for approval of publication on 26 February 2009
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	-	-	Struck off – see Project 100
129	Review of aspects of matrimonial property law	-	-	Struck off – see Project 100
130	Stalking	-	ISBN 978 0 621 38320 1	Report under consideration by the Department of Justice and Constitutional Development – report submitted to the Department in November 2008
131	Trafficking in persons	-	ISBN 978 0 621 38926 5	Report under consideration by the Department of Justice and Constitutional Development – report submitted to the Department in November 2008
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	-	-	Interim report under consideration by the Department of Justice and Constitutional Development – interim report submitted to the Department in November 2008

ANNEXURE D

ANNEXURE D: MEMBERS OF THE COMMISSION IN ORDER OF APPOINTMENT	
TITLE / NAME	**TERM OF OFFICE**
Chairpersons	
Judge DH 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 HJO van Heerden, Judge of Appeal	01/12/1988 to 31/12/1995
Chief Justice I Mahomed	01/01/1996 to 17/06/2000
Justice JY Mokgoro, Judge 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 HJO van Heerden, Judge of Appeal	30/09/1982 to 30/11/1988
Judge PJJ Olivier, Judge of Appeal	01/12/1988 to 31/12/1998
Justice JY Mokgoro, Judge of the Constitutional Court	01/01/1999 to 02/11/2000
Judge ML Mailula, Judge of the High Court	01/01/2002 to 31/12/2006
Judge WL Seriti, Judge of the High Court *	01/01/2007 to date
Full-time members	
Mr GG Smit	01/01/1982 to 31/12/1995
Judge PJJ Olivier	01/02/1986 to 31/03/1995
Prof RT Nhlapo	01/01/1996 to 30/09/2000
Prof IP Maithufi	26/03/2001 to 31/12/2006
Ms TN Madonsela *	01/01/2007 to date
Members	
Mr DJ du P Geldenhuys	28/09/1973 to 31/10/1975
Mr CP Joubert SC	28/09/1973 to 20/08/1974
Mr JE Knoll	28/09/1973 to 31/12/1995
Mr DD van Niekerk SC	28/09/1973 to 31/01/1979
Prof ADJ van Rensburg	28/09/1973 to 30/08/1982
Mr HJO van Heerden SC	30/09/1974 to 11/08/1976
Mr JC Ferreira SC	22/09/1975 to 31/10/1979
Mr M Bliss QC	07/10/1976 to 24/02/1977
Mr FH Grosskopf SC	01/071977 to 21/11/1980
Mr GG Smit	01/02/1979 to 01/01/1982
Mr PAJ Kotzé	01/11/1979 to 30/10/1988
Mr PM Nienaber SC	14/06/1981 to 27/07/1982
Mr PJJ Olivier SC	30/09/1982 to 01/12/1988
Prof JT Delport	30/09/1982 to 27/05/1987
Prof DJ Joubert	21/12/1987 to 31/12/1995
Dr WGM van Zyl	01/11/1988 to 31/10/1991
Mr RP McLaren SC	24/07/1989 to 31/10/1990

ANNEXURE D: MEMBERS OF THE COMMISSION IN ORDER OF APPOINTMENT	
TITLE / NAME	**TERM OF OFFICE**
Prof CRM Dlamini SC	08/05/1991 to 31/12/1995
Mr JA Venter	12/03/1992 to 31/12/1995
Justice JY Mokgoro	01/01/1996 to 31/12/1998
Mr JJ 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 ML Mailula	01/01/1999 to 31/12/2001
Prof C Hoexter	27/10/1999 to 31/12/2004
Judge President CT Howie	03/11/2000 to 31/12/2006
Judge WL Seriti	01/01/2002 to 31/12/2006
Prof C Albertyn, Professor of Law, University of the Witwatersrand *	01/01/2007 to date
Judge DM Davis, Judge President of the Competition Appeal Court *	01/01/2007 to date
Mr NT Ngcukaitobi, practising attorney *	01/01/2007 to date
Mr DB Ntsebeza SC, Advocate of the High Court *	01/01/2007 to date
Prof PJ Schwikkard, Dean of Law, University of Cape Town *	01/01/2007 to date
Ms M Sello, Advocate of the High Court *	01/01/2007 to date

* Current members

ANNEXURE E

ANNEXURE E: ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS		
PROJECT	**MEMBERS**	**BACKGROUND**
Project 25 - Legislation administered by the Department of Agriculture	Adv D Ntsebeza SC (project leader)	Part-time Commissioner SALRC
	Ms D Collier	University of Cape Town
	Prof ML Mbao	University of the North West
	Ms M Moselakgomo	Agricultural Research Council
Project 25 - Legislation administered by the Department of Communications	Adv T Madonsela (project leader)	Full-time Commissioner SALRC
	Dr T Cohen	Neotel Regulatory Affairs
	Ms J Limpitlaw	University of Pretoria
	Ms N Mabandla	Edward Nathan Sonnenbergs Attorneys
	Ms C Raffinetti	Edward Nathan Sonnenbergs Attorneys
	Ms LA Thornton	Lisa Thornton Inc
	Ms H Zondo-Kabini	Bowman Gilfillan Inc Attorneys
Project 25 - Legislation administered by the Department of Defence	Adv D Ntsebeza SC (project leader)	Part-time Commissioner SALRC
	Adv T Norman	Durban Bar
	Admiral D Smart	Formerly of the SANDF
	Mr A Tshivhase	University of Cape Town
Project 25 - Legislation administered by the Department of Education	Judge D Davis (project leader)	Part-time Commissioner SALRC
	Prof E Bray	University of South Africa
	Ms S Budhu	University of South Africa
	Dr R Joubert	University of Pretoria
	Ms W Kaguongo	University of Pretoria
	Prof R Malherbe	University of Johannesburg
	Dr M Smit	University of the North West
	Prof BP Wanda	University of Fort Hare
Project 25 - Legislation administered by the Department of Environmental Affairs and Tourism	Prof PJ Schwikkard (project leader)	Part-time Commissioner SALRC
	Prof L Feris	University of Pretoria
	Prof L Kotze	University of the North West
	Ms KO Lefenya	University of the North West
	Mr T Murombo	University of the Witwatersrand
	Mr A Paterson	University of Cape Town
	Prof W Scholtz	University of the North West
Project 25 - Legislation administered by the Department of Health	Judge W Seriti (project leader)	Vice Chairperson SALRC
	Dr P Andanda	University of the Witwatersrand
	Adv A Hassim	The Aids Law Project
	Ms M Mushariwa	University of the Witwatersrand
	Ms K Pillay	University of the Witwatersrand
	Dr J Singh	University of KwaZulu-Natal
	Dr M Slabbert	University of South Africa

ANNEXURE E: ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

PROJECT	MEMBERS	BACKGROUND
Project 25 - Legislation administered by the Department of Home Affairs	Justice Y Mokgoro (project leader)	Chairperson SALRC
	Ms A Bhamjee	University of the Witwatersrand
	Prof M Carnelley	University of KwaZulu-Natal
	Prof T Davel	University of Pretoria
	Prof J Heaton	University of South Africa
	Ms MAB Majoko	University of KwaZulu-Natal
	Adv N Morei	University of the North West
	Prof T Mosikatsana	University of the Witwatersrand
	Mr J Pokroy	Pokroys Attorneys
	Mr C Watters	Watters Attorneys
Project 25 - Legislation administered by the Department of Justice and Constitutional Development	Adv T Madonsela Prof C Albertyn (joint project leaders)	Full-time Commissioner SALRC Part-time Commissioner SALRC
	Mr G Bradfield	University of Cape Town
	Ms K Lehmann	University of Cape Town
	Mr MM Mongake	University of the North West
	Mr T Mutangi	University of Pretoria
	Ms C Ncube	University of Cape Town
	Dr I Nonjongo	University of Cape Town
	Mr M Paleker	University of Cape Town
	Ms K Phelps	University of Cape Town
Project 25 - Legislation administered by the Department of Land Affairs	Prof C Albertyn (project leader)	Part-time Commissioner SALRC
	Prof J Bekker	University of Pretoria
	Prof W du Plessis	University of the North West
	Prof W Freedman	University of KwaZulu-Natal
	Ms L Mbatha	University of the Witwatersrand
	Prof H Mostert	University of Cape Town
	Prof N Olivier	University of Pretoria
	Prof J Pienaar	University of Stellenbosch
	Prof A van der Walt	University of Stellenbosch
	Prof J van Wyk	University of South Africa
Project 25 - Legislation administered by the Department of Labour	Judge D Davis (project leader)	Part-time Commissioner SALRC
	Dr K Calitz	University of Stellenbosch
	Prof M Christianson	University of the Witwatersrand
	Ms M Conradie	University of the Free State
	Prof C Cooper	University of the Witwatersrand
	Mr HJ Deacon	University of the Free State
	Mr A K Funnah	University of Pretoria
	Prof E Kalula	University of Cape Town
	Prof R le Roux	University of Cape Town
	Adv R Letseku	University of Limpopo
	Ms N Lubisi-Nkoane	University of Fort Hare

ANNEXURE E: ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS		
PROJECT	**MEMBERS**	**BACKGROUND**
Project 25 - Legislation administered by the Department of Labour	Mr K N Matshekga	University of Johannesburg
	Prof O Sibanda	University of South Africa
	Mr C Todd	Bowman Gilfillan Inc Attorneys
	Prof BPS van Eck	University of Pretoria
	Ms T Zondeki	University of Fort Hare
Project 25 - Legislation administered by the Department of Minerals and Energy	Adv D Ntsebeza SC (project leader)	Part-time Commissioner SALRC
	Ms PV Mnonopi	University of Fort Hare
	Dr OJ Olowu	Walter Sisulu University
	Mr C Stevens	Tabacks and Associates Attorneys
	Prof E van der Schyff	University of the North West
Project 25 - Tax legislation administered by National Treasury	Judge D Davis (project leader)	Part-time Commissioner SALRC
	Prof R Franzen	University of South Africa
	Ms T Gutuza	University of Cape Town
	Mr C Louw	University of Pretoria
	Prof L Olivier	University of Johannesburg
	Dr MO Mhango	University of the Witwatersrand
	Ms E Muller	University of Pretoria
	Prof L van Schalkwyk	University of Stellenbosch
Project 25 - Legislation administered by the Department of Provincial and Local Government	Adv T Madonsela (project leader)	Full-time Commissioner SALRC
	Prof M Beukes	University of South Africa
	Mr J Brickhill	Legal Resources Centre
	Ms A du Plessis	University of the North West
	Mr T Madlingozi	University of Pretoria
	Prof N Olivier	University of Pretoria
	Dr DM Pretorius	Bowman Gilfillan Inc Attorneys
	Ms R Roos	University of the North West
	Mr M Tenza	Walter Sisulu University
	Prof H van As	Nelson Mandela Metropolitan University
Project 25 - Legislation administered by the Department of Trade and Industry	Judge D Davis (project leader)	Part-time Commissioner SALRC
	Prof F Cassim	University of the Witwatersrand
	Prof P Delport	University of Pretoria
	Dr A Govindjee	Nelson Mandela Metropolitan University
	Prof M Havenga	University of South Africa
	Prof A Itzikowitz	Edward Nathan Sonnenbergs Attorneys
	Mr MM Mnisi	University of Johannesburg
	Mr JR Modise	University of the North West
	Mr TK Mojela	University of Limpopo
	Prof TH Mongalo	University of Cape Town
	Prof M Roestoff	University of Pretoria
	Prof EC Schlemmer	University of South Africa

ANNEXURE E: ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS

PROJECT	MEMBERS	BACKGROUND
Project 25 - Legislation administered by the Department of Trade and Industry	Prof E Snyman-Van Deventer	University of the Free State
	Prof JC Sonnekus	University of Johannesburg
	Ms A Stern	Formerly of the University of the Witwatersrand
Project 94 - Arbitration Community dispute resolution structures	Prof R Christie (Project leader)	University of Cape Town
	Prof D Butler	University of Stellenbosch
	Prof J Cartwright	Community Peace Programme
	Adv R Choudree	Society of Advocates, KwaZulu-Natal
	Adv J Gauntlett SC	Part-time Commissioner SALRC (until 31 December 2006)
	Adv B Hechter	Deputy President of Central Divorce Court
	Mr A Jooste	Chief Magistrate, Cape Town
	Prof I P Maithufi	Full-time Commissioner SALRC (until 31 December 2006)
	Ms N Mkefa	Cape Town Metropolitan Council
	Mr P Pretorius	Johannesburg Bar
	Prof W Schärf	Retired Head of the Institute of Criminology, University of Cape Town
Project 100 - Family law and the law of persons Custody of and access to minor children Review of aspects of matrimonial property law	Judge D van Zyl (Chairperson)	Judge of the Western Cape High Court
	Prof E Bonthuys	University of the Witwatersrand
	Adv F Bosman	Advocate of the High Court Former Chief Family Advocate
	Prof IP Maithufi	University of Pretoria
	Ms Z Moletsane	Central Divorce Court, Johannesburg
	Prof T Mosikatsana	University of the Witwatersrand
	Prof J Mowatt	Rhodes University
	Adv M Sello	Part-time Commissioner SALRC
Project 122 - Assisted decision-making: Adults with impaired decision-making capacity	Judge B du Plessis (Project leader)	Judge of the North Gauteng High Court
	Prof J Bekker	Retired Dean of the Faculty of Law, Vista University
	Ms D Mahlangu	Department of Social Development
	Ms M Meyer	Office of the Master of the High Court
	Justice Y Mokgoro	Chairperson SALRC (since 1 January 2007)
	Ms Z Seedat	Part-time Commissioner SALRC (until 31 December 2006)
	Dr S Selemani	Psychiatrist in private practice
	Mr L Vitus	Retired Executive Manager of the SA Federation for Mental Health
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

ANNEXURE E: ADVISORY COMMITTEES OF THE COMMISSION AND THEIR MEMBERS		
PROJECT	**MEMBERS**	**BACKGROUND**
Project 124 - Privacy and data protection	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 PJ Schwikkard	Part-time Commissioner SALRC (since 1 January 2007)
	Ms A Tilly	Open Democracy Advice Centre
Project 126 - Review of the law of evidence	Prof PJ Schwikkard (Project leader)	Part-time Commissioner SALRC (since 1 January 2007)
	Prof L Fernandez	University of the Western Cape
	Adv T Masuku	Cape Bar
	Judge T Ndita	Judge of the Eastern Cape High Court
	Judge M Nhlantla	Judge of the Eastern Cape High Court
	Judge W Seriti	Vice-Chairperson SALRC (since 1 January 2007)
Project 127 - Review of administration orders	Judge W Seriti (Project leader)	Vice-chairperson SALRC
	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 SA
	Mr M Weiner	Attorney nominated by the National Association of Administrators

ANNEXURE F

ANNEXURE F: PRESENT PROGRAMME OF THE COMMISSION	
PROJECT NUMBER	**TITLE**
25	The establishment of a permanently simplified, coherent and generally accessible statute book • Statutory law revision: Redundancy, obsoleteness and constitutionality of legislation • Review of the Interpretation Act • Hindu marriages
94	Arbitration • Community dispute resolution structures • Family mediation
100	Family law and the law of persons • Custody of and access to minor children • Review of aspects of matrimonial property law
107	Sexual offences • Sexual offences: Adult prostitution
113	The use of electronic equipment in court proceedings
122	Assisted decision-making: Adults with impaired decision-making capacity
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ANNEXURE G

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