



REPORT ON ACTIVITIES OF THE SOUTH AFRICAN LAW REFORM COMMISSION

**South African**   
**Law Reform Commission**

The logo of the South African Law Reform Commission is a stylized geometric design. It consists of a central white diamond shape surrounded by four colored triangles: yellow (top), green (right), red (bottom), and blue (left). The triangles are arranged in a way that they appear to be pointing towards the center, creating a sense of movement and balance.



**South African**  
**Law Reform Commission**

The logo consists of a stylized shield-like shape composed of several geometric triangles. The top-left triangle is yellow, the top-right is green, the bottom-left is blue, and the bottom-right is red. In the center, there is a black triangle pointing downwards, which overlaps with the other colors, creating a white diamond shape in the middle.

South African Law Reform Commission

Report: 2016/ 2017



**TO: ADV TM MASUTHA, MP MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

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 2016 to 31 March 2017.

Yours sincerely



**Judge Jody Narandran Kollapen**

(Gauteng North Division of the High Court)

Chairperson of the South African Law Reform Commission

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## Gallery of Commissioners



Chairperson: Judge JN Kollapen  
Judge of the Gauteng North High Court



Professor Marita Carnelley  
Prof of family law and  
gambling law North West  
University



Prof V Jaichand  
Head: School of Law  
University of the Witwatersrand



Mr IBW Lawrence  
Practising attorney  
Durban



Professor Annet Wanyana Oguttu  
Professor of Tax Law at the  
University of South Africa (UNISA)



Adv M Sello  
Advocate of the High Court  
Johannesburg Bar



Judge NT Siwendu  
Judge of the Gauteng  
South High Court

## Vision, Mission and Values of South African Law Reform Commission

### **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 the needs of a changing society operating under the rule of law.

### **Values**

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.

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# CHAPTER 1

Overview

## **CHAPTER 1 OVERVIEW**

### **Appointment of SALRC Commissioner to the bench**

The most important event that took place during the year under review was the appointment by the Honourable President JG Zuma of Ms Namhla Thina Siwendu as Madam Justice of the Gauteng Division of the High Court with effect from 20 January 2017.

Ms Siwendu obtained a BA (Hons) in social science from the University of Cape Town in 1988, followed by an LLB at the University of Natal in 1991. She was employed as a Fellow by the Centre for Applied Legal Studies at Wits University in 1992. From 1993 to 1995 she served her articles at Cheadle, Thompson & Haysom. In 1996 she became a partner at Thina Siwendu & Associates, subsequently renamed Siwendu Ngakane and Partners Inc, thereafter, Siwendu and Partners Inc, where she practiced as a founder until 2012.

In 2003, Ms Siwendu became Director and head of corporate commercial law at the firm. The firm provided a unique blend of skills that combined property law, general commercial law, contract law and legislative drafting. Also, it provided advice in early mid-tier BEE joint-ventures (JV'S) in the shipping, hospitality and health sectors.

In 2008, Siwendu & Partners Inc was restructured into a refocused practice which specialized in Energy Law, Public Private Partnerships (PPP's), Commercial Transactions and Corporate Governance until a merger with DLA Cliffe Dekker Hofmeyr in 2012. Following this merger, Ms Siwendu became a Director at the law firm Cliffe Dekker Hofmeyr in the corporate and commercial practice, focusing on corporate governance.

Ms Siwendu qualified as an accredited arbitrator in 1997 through the Independent Mediation Services of South Africa. Since 2007, she has been a senior research Fellow at the Centre for Corporate Governance in Africa at Stellenbosch Business School (USB). She obtained a GFD Certificate from Wharton Business School in 2010.

She has worked with numerous Boards of Listed and unlisted companies in the Mining Sector, Telecommunications Sector, the Development Bank of Southern Africa and the Industrial Development Corporation; Financial Sector as well as (Reserve Bank of Uganda). In 2004 Ms Siwendu received the Regional Business Achiever Award (professional category) from the Business Women's Association, and from 2009 to 2011 she was a panellist for the Top 100 Business and Lifetime Achievers Award run by the Sunday Times.

### Current SALRC Commissioners

During the reporting period of 1 April 2016 to 31 March 2017, the Commission remained comprised of the following Commissioners appointed by the President:

- Judge Jody Kollapen, Judge of the Gauteng North High Court (Chairperson)
- Professor Marita Carnelley (Professor of Law – North-West University: Potch Campus)
- Professor Vinodh Jaichand (Former Head of School of Law- Wits University)
- Mr Irvin Lawrence, attorney in private practice
- Professor Annet Wanyana Oguttu (Professor of Law - UNISA)
- Adv Mahlape Sello, member of the Bar
- Judge Namhla Thina Siwendu, Judge of the Gauteng South High Court

Completed reports receiving the attention of government departments

The following reports emanating from investigations under Project 25: “Statutory Law Revision: Redundancy, obsolescence and unconstitutionality of legislation” were referred to government departments other than the Department of Justice:

1. Review of legislation administered by the Department of Energy: submitted to the Minister of Energy in March 2012.
2. Review of legislation administered by the Department of Human Settlements: submitted to the Minister of Human Settlements in March 2012.
3. Review of legislation administered by the Department of Labour: submitted to the Minister of Labour in March 2012.
4. Review of legislation administered by the Department of Mineral Resources: submitted to the Minister of Mineral Resources in March 2012.
5. Review of legislation administered by National Treasury (non-tax legislation): submitted to the Minister of Finance in February 2012.
6. Review of legislation administered by the Department of Public Works: submitted to the Minister of Public Works in March 2012.
7. Review of legislation administered by the Department of Rural Development and Land Reform: submitted to the Minister of Rural Development and Land Reform in March 2012.
8. Review of legislation administered by the Department of International Relations and Cooperation submitted to the Minister of International Relations and Cooperation in September 2015.
9. Review of legislation administered by the Department of Water and Sanitation submitted to the Minister of Water and Sanitation in March 2017.

The following reports emanating from investigations under Project 25: “Statutory Law Revision: Redundancy, obsolescence and unconstitutionality of legislation” were submitted to the Minister of Justice and Correctional Services for referral to other Ministers:

10. Review of legislation administered by the Department of Communications was submitted in March 2017 for referral to the Minister of Telecommunications and Postal Services and the Minister of Communications.

11. Review of legislation administered by the Department of Home Affairs was submitted in March 2017 for referral to the Minister of Home Affairs.

The following report emanating from Project 107: Sexual Offences was referred to the Minister of Justice and Correctional Services:

12. Project 107: Report on Sexual Offences (Adult Prostitution) – was submitted to the Minister of Justice and Correctional Services on 25 August 2014. The Minister and Deputy Minister were briefed on the content of the report in December 2014. Following engagement between the Ministry and the Commission an augmented report was submitted to the Minister in June 2015. The Commission was requested to expand on some of its findings but not to change the substance of the report. This is a very complex matter with a number of intersecting areas of law and competency. For this reason the Department has requested time to consider the content of the report before publication thereof.

The following report emanating from Project 122: Assisted Decision-making was referred to the Minister of Justice and Correctional Services:

13. Project 122: Report on Assisted Decision-making – was submitted to the Minister of Justice and Correctional Services on 19 September 2016.

### **The year under review**

This annual report covers the period from 1 April 2016 to 31 March 2017. The Commission published the following documents in the year under review:

#### ***Issue papers***

No issue papers were published during the year under review.

All issue papers published by the Commission from inception to date are listed in Annexure A.

#### ***Discussion papers***

1. Discussion Paper 142 – Project 25: Statutory Law Revision: Review of legislation administered by the Department of Public Service and Administration (DPSA) was published in August 2016.
2. Discussion Paper 143 – Project 25: Statutory Law Revision: Review of legislation administered by the Department of Social Development was published on 17 September 2016.
3. Discussion Paper 144 - Project 25: Statutory Law Revision: Review of legislation administered by the Department of Trade and Industry was published on 31 October 2016.

All discussion papers published by the Commission from inception to date are listed in **Annexure B**.

## **Reports**

1. Project 25: Report on Statutory Law Revision: Review of legislation administered by the Department of Communications was submitted to the Minister of Justice and Correctional Services on 24 March 2017 for referral to the Minister of Telecommunications and Postal Services and the Minister of Communications.
2. Project 25: Report on Statutory Law Revision: Review of legislation administered by the Department of Home Affairs was submitted to the Minister of Justice and Correctional Services on 28 March 2017 for referral to the Minister of Home Affairs.
3. Project 25: Report on Statutory Law Revision: The review of legislation administered by the Department of Justice and Constitutional Development (3): The review of the Criminal Procedure Act was approved for publication by the Commission on 28 May 2016.
4. Project 25: Report on Statutory Law Revision: The review of legislation administered by the Department of Water and Sanitation was submitted to the Minister of Justice and Correctional Services on 2 December 2016 (date of publication still to be announced).
5. Project 122: Report on Assisted Decision-making was submitted to the Minister of Justice and Correctional Services on 19 September 2016 (date of publication still to be announced).
6. Project 126: Report on the Review of the Law of Evidence was approved for publication by the Commission on 10 December 2016.

## **Investigations**

All Commission investigations that have been completed to date, or which are currently in progress, are listed in Annexure C.

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



# Chapter 2:

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 continual 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 the Chairperson and Vice-Chairperson on 19 July 2013 and the other five members on 12 August 2013, one of whom resigned in January 2014. On 19 December 2014 the President appointed two new Commissioners in the existing vacancies in the Commission with effect from 02 January 2015.

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



### **Powers and duties of the Commission**

The powers and duties of the Commission are set out in section 5 of the SALRC Act. Section 5 directs the Commission to draw up a programme that includes, in order of preference, the various matters which – in the Commission’s opinion – require consideration. The programme 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 SALRC is required to investigate the matters which appear on its programme (as approved by the Minister), and may consult any person or body during the investigations. The SALRC also 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 committee is to utilise the expertise of persons outside the Commission and to ensure direct community involvement in the activities of the Commission.

Both types of committee 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 purposes of remuneration the members of committees are deemed to be members of the Commission.

### **Working Committee**

Under the first category of committee the Commission has established a Working Committee which consists of members of the Commission who are co-opted for meetings according to their availability (section 7A(1)(a) of the SALRC Act).

The Working Committee is seen as the executive committee of the Commission. In accordance with the Commission’s directives, this committee attends on a continual basis to routine matters and other matters that require urgent attention. The Working Committee may exercise all functions of the Commission, excluding the approval of reports. The Working Committee also considers the inclusion of new investigations in the Commission’s programme. Furthermore, this committee plans and manages the activities of the Commission’s Secretariat.

### **Advisory committees**

Advisory committees fall under the second category of committees. The Commission institutes advisory committees consisting of experts to assist with investigations and to advise the Commission where necessary (Section 7A(1)(b) of the SALRC Act). The names of the members of the current 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 each 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 neither a Commissioner nor 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 Secretary and full-time Secretariat consisting of officials employed by the Department of Justice and Constitutional Development. The Secretariat includes a research component and an administrative component, which are broadly – together with the Commission itself – referred to as the SALRC. The Secretary, appointed at the level of Chief Director, is the head of the Secretariat and the head of office. Mr Tshisamphiri Nelson Matibe was appointed as the Secretary of the Commission with effect from 02 January 2015. Mr Masibulele Chris Mfunzana was appointed as Assistant Secretary (on the level of Principal Legal Administration Officer) with effect from 1 October 2013.

### **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 appointed by the Commission; to consult with interested parties; to compile proposal papers, consultation papers, 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 qualified legal professionals, 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 described in Chapter 4.

The research posts are filled by the following state law advisers:

Ms Veruksha Bhana

Ms Dellene Clark

Ms Theresa Häderli

Ms Anna-Marie Havenga

Mr Willie Jansen van Vuuren

Ms Jennifer Joni (The post is currently vacant since the employee resigned on 31 July 2016)

Ms Ananda Louw

Mr Simon Maphanga

Mr Fanyana Mdumbe

Mr Linda Mngoma

Ms Aura Mngqibisa

Ms Maite Modiba

Ms Maureen Moloi

Ms Tania Prinsloo

Ms Lowesa Roberts

Mr Pierre van Wyk

Ms Ronel van Zyl

Two posts of State Law Advisers are vacant.

### **Administrative component**

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

Assistant Director:	(Vacant)
Copy Editor:	(Vacant)
Senior Secretary:	Ms Nomfundo Mhambi
Secretary	Ms Nelisiwe Moledi
Administrative Officer:	Mr Jacob Kabini
Administrative Officer:	Ms Johanna Msiza
Administrative Officer:	Mr Ajay Singh
Principal librarian:	Ms Rosinah Nkuna
Senior Librarian:	Ms Portia Bobodo
Administration Clerk:	Ms Chantelle Krebs
Administration Clerk:	Ms Edith Louw
Administration Clerk:	Mr Vusi Mavuso
Administration Clerk:	Ms Tumi Mofoka
Administration Clerk:	Ms Patricia Moumakwe
Administration Clerk:	Mr Renier Swart

Machine Operator: Mr Koos Mahlangu  
 Food Service Aid: Mr Mpolokeng Ledwaba  
 Messenger: Mr Giff Mpho Sambo (He joined the SALRC on 01 September 2016 to fill the vacancy left by Mr Ernest Rangwato who left on 03 May 2016 to join the Office of the Master of the High Court – Pretoria.)

### Internal committees

Three internal committees have been established to assist the SALRC with the execution of its functions. The internal committees are currently as follows:

#### Library Committee

Members	Purpose	Activities
Mr P van Wyk (Chairperson); Mr. T.N Matibe; Ms. S. Nkuna ; Ms. P. Bobodo; Ms. A Louw; Mr S Maphanga; Mrs M Moloi; Ms V Bhana; and Ms T Prinsloo.	The Library Committee is responsible for considering the acquisition of publications to ensure the relevance of the holdings of the SALRC library. The committee also liaises via its librarians with librarians at the DOJCD and elsewhere.	On 22 November 2016 the committee met to consider the acquisition of publications for the SALRC library and recommended the acquisition of publications to the Secretary of the SALRC. Eleven publications were acquired in this financial year. Membership to the Association of Family and Conciliation Courts which is based in the United States of America was also acquired.

#### Occupational Health and Safety Committee

Members	Purpose	Activities
Mr Mpolokeng Ledwaba Ms Edith Louw Ms Reitumetse Mofoka Mr Giff Mpho Sambo	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.	Since both the Chairperson and Secretary of the OHS Committee have not yet been appointed in line with section 10.1.1 of the DOJ&CD Safety, Health, Environment and Risk Policy and Procedures Manual, no meeting of this Committee had taken place during the year under review.

### Facilities Management Committee

Members	Purpose	Activities
Mr Masibulele Chris Mfunzana (Chairperson) Ms Aura Mngqibisa Ms Maithe Modiba Ms Ronel van Zyl	The Facilities Management Committee is responsible for the management and maintenance of the SALRC premises. This includes condition monitoring as well as overseeing that routine and preventative maintenance of the facilities is taking place regularly.	<p>No meeting of this Committee had taken place during the year under review. However, on 22 April 2016, the Chairperson of this Committee liaised with Ms Nokwanda Ngcobo of the Department of Public Works, providing her with information about the office space requirements for the SALRC employees. Ms Ngcobo wanted to compare the information with the request she had received from the Facilities Management Unit of the Department of Justice and Constitutional Development for the renewal of the SALRC Lease Agreement at Spooral Park Building.</p> <p>On 21 October 2016, the Chairperson of this Committee liaised with Ms Lerato Choane of the Department of Public Works requesting her to arrange for fumigation of the SALRC premises. Thanks to Ms Choane, Spooral Park is fumigated regularly.</p> <p>Also, on 01 February 2017, the Chairperson of this Committee liaised with Mr John Mothibi of DOJ&amp;CD's Facilities Management Unit. The purpose was to check whether there is any progress on the issue of renewal of the lease agreement of the SALRC.</p>

### Financing of the SALRC

The SALRC's budget for the financial year 1 April 2016 to 31 March 2017 was R27 585 000 broken down as follows:

- Personnel expenditure R24 529 000
- Current expenditure R 2 468 000
- Capital expenditure R 515 000
- Household R 73 000

## Programme

As described earlier in this chapter, the SALRC Act provides that the Commission must from time to time draw up a programme of investigation, subject to the Minister's approval. The Commission's current programme is shown in **Annexure F**. As indicated earlier, **Annexure C** lists all investigations on the Commission's programme since its inception, and indicates the final result or current status of each investigation.

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 as quickly as possible. However, the Commission must follow certain procedures which may take 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 a 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 about the matter under investigation. Comparative studies are performed so that the Commission can draw on experiences elsewhere in the world.

The consultation process is guided by the Commission's policy, which has been in place since 1996. According to this process, an issue paper is compiled as the first step. The issue paper outlines problems encountered with a particular area of the law and invites submissions on possible solutions. The paper is distributed as widely as possible for general information and comment, and where appropriate may be supplemented by workshops. Responses to an issue paper coupled with further intensive research form the basis for preparing a discussion paper.

A discussion paper contains essential information on the investigation and the Commission's tentative proposals for reform. In particular, a discussion paper includes 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 also includes a draft Bill. Members of the public are informed of the availability of discussion papers through 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. Responses to the provisional proposals are studied carefully before final decisions are made. The Commission also hears oral evidence in certain instances.

The Commission's recommendations are written up as comprehensive reports, which are submitted to the Minister. In making its recommendations, the Commission bears the following imperatives and needs in mind:

- to provide access to justice for all;
- to protect the rights of all parties, especially women, children and poor people;
- to make legal processes affordable;
- to make the law less complicated; and
- to give effect to the values and principles underlying the Constitution.

The SALRC strives to maintain a high standard of legal research and welcomes feedback in this regard. The law faculties of several South African universities regularly prescribe SALRC research publications for their students at both undergraduate and postgraduate levels. The many valuable comments and proposals received about the Commission's recommendations on various projects, as contained in SALRC reports, indicate the effectiveness of the research methods. These methods ensure that the Commission's final recommendations are well-substantiated and the product of thorough debate. The working methods also facilitate the enactment of the Commission's proposed legislation, in which the final recommendations are embodied.

### **Commission publications**

In the course of its activities, the Commission publishes various documents. The document series of the Commission is as follows:

#### **Commission papers and committee papers**

Commission papers and committee papers are internal documents that are not normally available beyond the ranks of the Commission. These papers typically contain proposals for the inclusion of matters in the Commission's programme, research results (intended to inform the Commission or for its consideration), draft issue papers, discussion papers, and reports, and a variety of other matters in respect of the functioning of the Commission. The papers are numbered in sequence as they serve before the Commission each year.

#### **Issue papers**

To involve the community actively at an early stage of an investigation, the Commission generally publishes an issue paper as the first step in the consultation process. The purpose of an issue paper is to announce an investigation, to clarify its aim and scope, and to suggest options for solving existing problems. Issue papers that have been 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 that contain the Commission's preliminary research results. In most cases a discussion paper also contains draft legislation. The main purpose of these documents is to test public opinion on solutions identified by the Commission. Discussion papers that have been 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 documents, but not all are published. **Annexure C** lists all the investigations reported on by the Commission since its establishment.

In addition to reports on specific investigations, the SALRC Act provides that the Commission must annually submit to the Minister a report on all its activities during the previous year.

### Consultation papers

A new category of Commission paper, referred to as a consultation paper, was introduced for the purpose of Project 25: Statutory Law Revision. Project 25 entails identifying provisions on the statute book that are unconstitutional, redundant or obsolete. Consultation papers are then prepared which contain preliminary findings and proposals for repeal or amendment in respect of the legislation reviewed. These consultation papers are submitted to relevant state departments for consideration and comment. Thus, the purpose of a consultation paper is to consult with the government department concerned. If the legislation in question affects more than one department, the paper is submitted to all departments involved. Consultation papers are not published for public reading.

### 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 that have been published to date are listed in **Annexure G**.

### How to obtain 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 obtainable from the Commission's offices. In addition, all issue papers and discussion papers that have been published since 1996 are available on the SALRC website.<sup>w</sup>

Annual reports, papers in the research series, and reports on completed investigations are available from the SALRC offices. All reports on investigations that have been published since 1996, and all annual reports since 1996, are available on the SALRC website.



**Commission and committee meetings**

During the period under report the Commission met on 28 May 2016; 17 September 2016 and 10 December 2016.

The advisory committee for Project 100D – Care of and contact with children/ Family dispute resolution met on 13 October 2016.

The advisory committee for Project 107 – Sexual Offences: Pornography and Children met on 7 July 2016 and 9 February 2017.

The advisory committee for Project 126 – Review of the law of Evidence met on 13 August 2016.

The advisory committee for Project 127 – The review of administration orders met on 26 January 2017.

The advisory committee for Project 135 – Review of the Witchcraft Suppression Act 3 of 1957 met on 1 July 2016.

The advisory committee for Project 143-Maternity and Paternity Benefits for Self-employed Workers met on 13 January 2017.



# Chapter 3:

Progress Report

## CHAPTER 3

### PROGRESS REPORT

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

### Research programme of the SALRC

For the year under review, the research programme of the SALRC was as follows:

Project	Title	Project leaders	Responsible researcher
25	Statute law: The establishment of a permanently simplified, coherent and generally accessible statute book <ul style="list-style-type: none"> <li>Statutory law revision: Redundancy, obsolescence and constitutionality of legislation</li> </ul>	Prof Marita Carnelley Prof Vinodh Jaichand Mr Irvin Lawrence Prof Annet Oguttu Adv Mahlape Sello Ms Tina Siwendu	Ms Veruksha Bhana Ms Anna-Marie Havenga Mr Simon Maphanga Mr Linda Mngoma Ms Aura Mngqibisa Ms Maureen Moloi Ms Tania Prinsloo Ms Lowesa Roberts Mr Willie van Vuuren Mr Pierre van Wyk Ms Ronel van Zyl
94	Arbitration <ul style="list-style-type: none"> <li>Alternative dispute resolution</li> </ul>	Ms Thina Siwendu	Ms Ananda Louw
100	Family law and the law of persons <ul style="list-style-type: none"> <li>Care of and contact with children</li> <li>Review of aspects of matrimonial property law</li> <li>Review of the law of maintenance</li> <li>Hindu marriages</li> </ul>	Adv Mahlape Sello / Judge Deon van Zyl  Adv Mahlape Sello / Judge Deon van Zyl  Mr Irvin Lawrence/ Prof de Jong  Prof Marita Carnelley	Ms Ananda Louw  Ms Anna-Marie Havenga  Ms Maithe Modiba  Ms Maureen Moloi

Project	Title	Project leaders	Responsible researcher
107	Sexual offences <ul style="list-style-type: none"> <li>• Adult prostitution</li> <li>• Pornography and children</li> </ul>	Judge Mandisa Maya Prof Annet Wanyana Oguttu	Ms Dellene Clark
122	Assisted decision-making	Ms Tina Siwendu / Judge Ben du Plessis	Ms Anna-Marie Havenga
125	Prescription periods	Adv Mahlape Sello	Ms Theresa Häderli
126	Review of the law of evidence <ul style="list-style-type: none"> <li>• Hearsay and relevance</li> <li>• Electronic evidence</li> <li>• Cyber crime</li> </ul>	Judge Jody Kollapen	Mr Willie van Vuuren
127	Review of administration orders	Prof Vinodh Jaichand	Ms Lowesa Roberts
135	Review of witchcraft legislation	Prof Marita Carnelley	Mr Willie van Vuuren
136	Multi-disciplinary legal practices	Judge Jody Kollapen	Mr Simon Maphanga
137	Expungement of certain criminal records	Judge Jody Kollapen	Mr Willie van Vuuren
138	The practice of <b>ukuthwala</b>	Prof Marita Carnelley / Prof Thandabantu Nhlapo	Ms Maite Modiba
139	Review of the Interpretation Act	Adv Mahlape Sello	Mr Pierre van Wyk
140	The Right to Knowledge of One's Own Biological Origins	Ms Tina Siwendu	Ms Ananda Louw Ms Veruksha Bhana
141	Medico-Legal Claims	Prof Vinodh Jaichand	Ms Ronel Van Zyl
142	Legal Fees	Judge Jody Kollapen	Mr Linda Mngoma
143	Maternity and Paternity Benefits for Self-employed Workers	Prof V Jaichand	Mr Linda Mngoma

### **SALRC research programme and government priorities**

The projects on the SALRC's programme support government's priorities as identified in the strategic plan developed by the Department of Justice and Constitutional Development (DOJCD) for 2013 to 2018.

The Strategic Plan of the DOJCD for 2013 to 2018 sets out the Department's commitment to, among others, the following:

- Ensuring that everyone in South Africa is and feels safe.
- Developing policies for protecting the rights of vulnerable groups and victims in our society.
- Promoting legislation to transform the state and society, and meet the needs of society.

As part of the Project 25 investigation, the review of legislation administered by the Department of Justice and Constitutional Development has been instrumental towards the achievement of the DOJCD strategic goal of ensuring that everyone in South Africa is and feels safe. As it is publicly known, the primary objective of project 25 is to review the legislation administered by a particular department, with the aim of identifying inequality, obsolescence and redundancy in the statutes administered by that department; and to propose remedial amending or repealing legislation. By undertaking this legal exercise of identifying inequalities and recommending the repeal of the offensive provisions, the South African Law Reform Commission has helped to ensure that the statutes administered by DOJCD are aligned with the founding values of the Constitution of the Republic of South Africa, especially the requirement that every citizen should be equally protected by law.

Similarly, the investigation on Project 125: **Prescription Periods**, once completed, it will help to ensure the development of legislation that will protect the rights of vulnerable groups and victims in our society. This investigation deals with the harmonization of the laws of South Africa with regards to prescription. The harmonization of prescription laws of South Africa will ensure that vulnerable groups and victims, who are ordinary citizens of this country, understand the time-frames within which they should bring their cases before courts for adjudication. Simply put, finalisation of this investigation will help to fast-track the achievement of government's commitment towards realising the citizen's rights of access to courts. Along the same lines, Project 142: Legal Fees - reviews the current South Africa legal fees dispensation in order to ensure affordable access to the legal system by the citizens of this country.

Another investigation which is interesting to note is Project 126: The review of the law of evidence. The finalisation by the South African Law Reform Commission during the period under review of this investigation will help to ensure that the resolution of disputes brought before courts, is done in a procedurally fair manner.

Certainly, it is through the realisation of the guarantees of equal protection by the law; the right of access to courts as provided for in section 34 of the Constitution; as well as the adjudication of disputes that are before courts in a procedurally fair manner, that everyone in South Africa will feel safe.

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, obsolescence and constitutionality of legislation**

In 2004 the Commission embarked on a major investigation aimed at revising the entire statute book. The aim was to remove or adapt legislative provisions that are considered to be unconstitutional, redundant or obsolete. An audit by the Commission of all national legislation (excluding provincial and secondary legislation) 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 no longer applicable and others contain provisions that are in conflict with the Constitution. Redundant and obsolete provisions on the statute book continue to be identified, and government departments are being consulted to verify the findings.

The review of legislations administered by the following departments have been finalised: Communications; Defence; Energy; Home Affairs; Human Settlements; International Relations and Cooperation; Labour; Mineral Resources; National Treasury (non-tax legislation); Public Works; Rural Development and Land Reform; Tourism and Transport.

The following table indicates work in progress in respect of the revision of the Statute Book for constitutionality, redundancy and obsolescence:

Department	Progress
<p data-bbox="153 423 392 495">Agriculture, Forestry and Fisheries (DAFF)</p> <p data-bbox="153 600 411 633">Mr Simon Maphanga</p>	<p data-bbox="451 423 1441 1350">The statutes administered by DAFF were analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. A draft consultation paper was being developed using the research submitted by advisory committee members. The outline for the first draft of the consultation paper was submitted to the project leader on 31 March 2015 by the previous researcher. The investigation was reassigned to the current researcher in the first quarter of 2016/2017 financial year. A draft framework and inputs from Advisory Committee members as well as some correspondence were forwarded to the researcher on 22 August 2016. It has emerged on or about 15 February 2017, during the course of the investigation, that DAFF has undertaken a similar or even much broader review of all legislation administered by the department. General Notice 347 of 2010 (Government Gazette 33139 of 2010) stipulates that "The main objective of the review is to revitalize, repeal and/or amend legislation which are archaic and do not speak to the current mandate as well as the international obligations of Government and the department specifically". Mr Barry Beukes from DAFF confirmed telephonically that the department is indeed currently seized with the investigation and have, on a regular basis, referred Bills to the Portfolio Committee of the National Assembly. A copy of the legislative review programme indicating the current stages of each piece of legislation on DAFF's review programme was provided by Mr Beukes. As a result a proposal paper will be developed in the next financial year to request removal of the investigation from the Commission's programme.</p>
<p data-bbox="153 1373 421 1406">Arts and Culture (DAC)</p> <p data-bbox="153 1507 379 1541">Ms Lowesa Roberts</p>	<p data-bbox="451 1373 1441 1619">The discussion paper on legislation administered by the Department of Arts and Culture was approved by the Commission on 5 December 2015. The discussion paper was published in January 2016 and the deadline for submission of comments on the discussion paper was 31 March 2016. Several submissions were received on the discussion paper. The final report is being prepared and will be submitted to the Commission for approval in the 2017/2018 financial year.</p>
<p data-bbox="153 1641 421 1753">Basic Education (DBE) and Higher Education and Training (DHET)</p> <p data-bbox="153 1865 379 1899">Mr Linda Mngoma</p>	<p data-bbox="451 1641 1441 2058">The statutes administered by DBE were analysed to determine which are redundant, obsolete or unconstitutional. The draft report incorporating public comments received was considered by the Commission on 06 December 2014 and approved subject to amendments. On 3 March 2015, the amended report was forwarded to the project leader, Chairperson and Vice-Chairperson for consideration. The report was signed-off by the Chairperson on 12 June 2015. On 20 August 2015, the report was submitted to the Minister of Justice and Correctional Services. The Minister approved the report on 10 September 2015 and referred it to the Minister of Basic Education and the Minister of Higher Education and Training for consideration on the same date.</p>



<p>Communications (DOC)</p> <p>Ms Maureen Molo</p>	<p>The statutes administered by DOC were analysed to determine which are redundant, obsolete or unconstitutional. The consultation paper with repeal and amendment proposals was submitted to DOC on 31 May 2010 for comment and DOC comment was received on 18 August and 19 October 2010. On 14 May 2011 the Commission approved the publication of the discussion paper. Discussion Paper 122 was published on 27 May 2011 for general information and public comment. The researcher and the advisory committee finalised the draft report with proposed amending and repealing legislation in August 2012. The draft report was updated and finalised in October 2014. Work on the project could not proceed after this date as the Commissioner appointed as project leader had resigned in January 2014. Prof Oguttu was assigned as the project leader for this investigation in March 2015. The researcher met with her on 25 March 2015 to brief her about the investigation and to decide the way forward. It is envisaged that the report will be approved by the Commission in the first quarter of 2016. On 17 September 2016 the Commission considered and approved the report. The report was submitted to the Minister of Justice and Correctional Services on 24 March 2017 for referral to the Minister of Telecommunications and Postal Services and the Minister of Communication.</p>
<p>Cooperative Governance and Traditional Affairs (CoGTA)</p> <p>Mr Linda Mngoma</p>	<p>The statutes administered by CoGTA were analysed to determine which are redundant, obsolete or unconstitutional. On 24 June 2014, the Commission wrote a letter to CoGTA requesting for comments on the draft report. Comments were received from the Directors-General of Cooperative Governance and Traditional Affairs separately on 26 July 2014; 21 August 2014 and 1 October 2014. The Directors-General proposed that certain matters be referred to the Department of Justice and Constitutional Development for decision. On 8 September 2014, the Commission referred the said matters to the Director-General: Department of Justice and Constitutional Development for decision. The report was approved by the SALRC at the meeting held on 13 June 2015. The edited report was signed-off by the Chairperson on 17 September 2015 and referred to the Minister of Justice and Correctional Services for approval. The report was approved by the Minister of Justice and Correctional Services on 10 March 2016, and referred to the Minister of Cooperative Governance and Traditional Affairs and the Minister of Home Affairs for their information on 14 March 2016.</p>

<p>Correctional Services (DCS)</p> <p>Ms Veruksha Bhana</p>	<p>The project leader approved the consultation paper in August 2014. The researcher forwarded the consultation paper to the Department of Correctional Services for comments in September 2014. The researcher is liaising with the Department of Correctional Services regarding receiving comments from the DCS. Follow-ups have been made on 2 April 2015, 4 May, 12 May, 3 June, 3 July and 14 July 2015. However, as at 31 March 2016, there is still no response received from DCS.</p>
<p>Defence (DOD)</p> <p>Ms Maureen Molo</p>	<p>The statutes administered by DOD were analysed to determine which are redundant, obsolete or unconstitutional. The consultation paper with repeal and amendment proposals was submitted to DOD on 26 March 2010 for comment and was discussed with DOD at a workshop on 30 March 2010. DOD comment was received on 23 July 2010. On 14 May 2011 the Commission approved publication of the discussion paper. Discussion Paper 123 was published for general information and public comment on 27 May 2011. The Commission approved the report on 5 July 2014 for referral thereof to the Minister of Defence and Military Veterans. The Defence Laws Repeal and Amendment Bill [B7-2015] was introduced in Parliament on 10 November 2014. The President assented to the Defence Laws Repeal and Amendment Act 17 of 2015 on 8 December 2015. The Act was published in <b>Government Gazette</b> No. 39521 dated 15 December 2015. The date of commencement will be determined by the President by proclamation in the <b>Gazette</b>.</p>
<p>Environmental Affairs (DEA)</p> <p>Ms Aura Mngqibisa</p>	<p>The statutes administered by DEA were analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The consultation paper was submitted to DEA for comment on 30 September 2011 and DEA comments were received on 5 January 2012. The draft discussion paper has been completed. A project leader for this investigation was appointed in March 2015 and on 24 March 2015 the project leader was briefed on the status of the investigation. On 13 June 2015 the Commission approved the discussion paper for publication for public comments and general information. The discussion paper was published for public comments and general information on 19 October 2015 with a closing date of 31 January 2016. The final report is being prepared and it is anticipated that it will be submitted to the Commission for approval in the 2016/2017 financial year.</p>
<p>Health (DOH)</p> <p>Ms Ronel van Zyl</p>	<p>The statutes administered by DOH are being analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The first draft of the consultation paper was submitted to the project leader on 31 March 2015. The consultation paper was formally submitted to the DG of DOH on 10 February 2016 for comment. The return date for comments is 31 May 2016.</p>

<p>Higher Education and Training (DHET)</p> <p>Mr Linda Mngoma</p>	<p>The statutes administered by DHET were analysed to determine which are redundant, obsolete or unconstitutional. The draft report incorporating public comments received was considered by the Commission on 06 December 2014 and approved subject to amendments. On 3 March 2015, the amended report was forwarded to the project leader, Chairperson and Vice-Chairperson for consideration. The report was signed-off by the Chairperson on 12 June 2015. On 20 August 2015, the report was submitted to the Minister of Justice and Correctional Services. The Minister approved the report on 10 September 2015 and referred to the Minister of Basic Education and the Minister of Higher Education and Training on the same date.</p>
<p>Home Affairs (DHA)</p> <p>Ms Maureen Moloji</p>	<p>The statutes administered by DHA were analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The consultation paper was submitted to DHA on 31 January 2012 for comment. Comments from DHA were received on 13 August 2013. The Commission considered and approved the discussion paper to be published for general information and public comment on 6 December 2014. Discussion Paper 133 was posted on the Commission's website on 20 January 2015 and a media statement about the discussion paper was also released. The closing date for comment was 31 May 2015, but it was extended to 30 June 2015 at the request of various interested persons. On 10 December 2016 the Commission considered and approved the report. The report was submitted to the Minister of Justice and Correctional Services on 28 March 2017 for referral to the Minister of Home Affairs.</p>
<p>International Relations and Cooperation (DIRCO)</p> <p>Mr Pierre van Wyk</p>	<p>The statutes administered by DIRCO were analysed to determine which are redundant, obsolete or unconstitutional. The consultation paper with repeal and amendment proposals was submitted to DIRCO on 23 February 2011 for comment and DIRCO comment was received on 30 May 2011. On 22 October 2011 the Commission approved the publication of the discussion paper. Discussion Paper 128 was published on 4 November 2011 for general information and public comment, with a closing date of 31 January 2012. Two responses were received in January 2012. The researcher finalised the draft report with proposed amending and repealing legislation in July 2012. The draft report was submitted to the project leader for consideration and comment in February 2014. The researcher met with the project leader on 5 April 2014 to discuss the draft report. The draft report was finalised in November 2014. On 6 December 2014 the Commission considered the draft report and approved its submission to the Minister of Justice and Correctional Services for referral to the Minister of International Relations and Cooperation. The report was edited in February 2015. The report was submitted to the Minister of Justice and Correctional Services and forwarded to the Minister of International Relations and Cooperation in September 2015.</p>

Justice and Constitutional Development (DOJCD)	The statutes administered by DOJCD are being analysed to determine which are redundant, obsolete or unconstitutional. It was decided to develop separate research papers for dealing with the large volume of DOJCD legislation. These are listed below as DOJCD One, Two, Three and Four.
Ms Veruksha Bhana	DOJCD One deals with legislation pertaining to legal professions, courts and institutions, civil procedure and evidence, substantive criminal law, substantive civil law, wills, estates and insolvency and constitutional and political legislation. DOJCD Consultation Paper One was submitted to DOJCD on 21 June 2010 for comment and DOJCD comment was received on 12 January 2011. DOJCD was asked to give additional comment on 6 and 8 April 2011, which comment was received on 6 May 2011. On 22 October 2011 the Commission approved the discussion paper for publication. Discussion Paper 129 was published for general information and public comment on 23 November 2011. Limited comments were received on Discussion Paper 129. The researcher requested comments again from specific stakeholders. All comments received were considered in preparing the draft report. The draft report was submitted to project leader for consideration on 31 March 2015. The final draft report was approved at the Commission meeting on 5 December 2015. It is envisaged that the report will be submitted to the DOJ&CD Ministry during July 2016.
Ms Tania Prinsloo	DOJCD Two deals with legislation pertaining to family law and marriage. DOJCD Consultation Paper Two was submitted to DOJCD for comment on 10 January 2011, and DOJCD comment was received on 9 May 2011. Discussion Paper 130 was published on 30 January 2012 for general information and public comment. Discussion Paper 130 was then re-circulated for comment due to the limited comments that had been received. Further comments received in 2012 are being analysed and a need for further investigation in selected areas has been identified. The researcher finalised the first draft of the report in March 2014 for submission to the project leader for comment. The Advisory Committee consisting of Mr I Lawrence, Prof Skelton and Adv M Malete was convened and approved the draft report. The draft report was tabled and approved at the commission meeting of 13 June 2015. The Report is in the process of being forwarded to the Minister of Justice and Correctional Services.

Mr Willie van Vuuren	DOJCD Three deals with legislation pertaining to criminal procedure. Legislation dealing with criminal procedure was analysed to determine which are redundant, obsolete or unconstitutional, in order to develop a consultation paper with repeal and amendment proposals. The consultation paper was submitted to DOJCD for comment on 21 June 2011 and DOJCD comments were received on 14 February 2012. A new project leader was appointed in December 2013. The Commission approved a discussion paper for general information and comment on 6 December 2014. The closing date for comments was 31 July 2015. The report was finalised and approved by the Commission on 28 May 2016.
Mr Simon Maphanga	DOJCD Four deals with the Transkei Penal Code. The Judge President of the Transkei High Court requested a review of the Transkei Penal Code and the Dangerous Weapons Act 71 of 1968, as far as they are still in force in the territory of the former Transkei, as part of Project 25. A draft consultation paper was developed with a view to determine which provisions of the Code are obsolete, redundant or in conflict with the equality provisions of the Constitution and to develop repealing legislation. The draft consultation paper was submitted to the Department of Justice and Constitutional Development on 5 August 2015. The Deputy Director-General for Legislative Development advised the researcher that the Department has resolved to refer the investigation to the Legislative Development Chief Directorate of the department in order to speed up the repeal process. On 5 December 2015 the Secretary of the Commission requested the Commission to remove the investigation from its programme. A Commission paper was developed and submitted to the Commission requesting the removal of this investigation from the Commission's programme in the first quarter of the 2016/2017 financial year. The investigation was removed from the Commission's programme in the first quarter of 2016.

<p>National Treasury</p> <p>Mr Linda Mngoma</p>	<p>Tax legislation</p> <p>The statutes administered by National Treasury that are tax-related were analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The consultation paper was finalised on 27 February 2014. On 11 April 2014, the consultation paper was submitted to National Treasury for comment. On 31 March 2015, the Secretary of the SALRC and the researcher attended a meeting at National Treasury to discuss comments on the consultation paper. The meeting agreed that National Treasury will submit a written feedback to the SALRC stating the steps that will be taken by National Treasury to implement the SALRC's recommendations. As at the end of March 2016, no comments were received from the National Treasury. On 9 May 2016, the Chief Director: Legal Tax Design forwarded an email to the researcher stating that "tax laws administered by National Treasury are Money Bills and fall under section 77 of the Constitution. This implies that amendments to the tax laws should follow the Money Bill process and those amendments may only be effected through the normal yearly process of amending the tax laws, i.e. the Taxation Laws Amendment Bill process. Based on the above, National Treasury is dealing with the amendments of tax laws on a yearly basis."</p> <p>On 17 September 2016, the Commission considered a proposal paper for the removal of this project from the Commission's programme. The Commission approved the removal of the project from the SALRC's research programme on the grounds that National Treasury is dealing with amendments of tax laws on yearly basis and has taken the initiative to bring the statutes they administer in line with section 9 of the Constitution.</p> <p>On 10 January 2017, the Minister of Justice and Correctional Services approved the removal of the investigation from the Commission's programme and a letter was forwarded to the Minister of Finance informing him of the Minister's approval in this regard. This investigation has now been finalised.</p>
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<p>Police (DOP)</p> <p>Ms Aura Mngqibisa</p>	<p>The statutes administered by DOP are being analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. A draft consultation paper was drafted and submitted to the supervisor for consideration on 19 November 2014 and a feedback from the supervisor was received on 30 January 2015. The draft consultation paper was then submitted to the project leader for consideration and guidance on 5 May 2015. The consultation paper was received back from the project leader on 27 May 2015. It is anticipated that the consultation paper will be submitted to DOP during the first quarter of the 2016/2017 financial year.</p>
<p>Public Service and Administration (DPSA)</p> <p>Ms Tania Prinsloo</p>	<p>The statutes administered by DPSA have been analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The draft Consultation paper has been completed and was discussed with the DPSA during August 2015. Once the submission of the DPSA was included into the draft consultation paper it became a draft discussion paper. The project leader has approved that the discussion paper can be tabled at the Commission meeting of 28 May 2016.</p> <p>Following its approval by the Commission, the DPSA discussion paper 142 was published on 13 September 2016. The draft report on Legislation Administered by the Department of Public Service and Administration was finalised on 30 June 2017 for submission to the project leader.</p>
<p>Science and Technology (DST)</p> <p>Mr Veruksha Bhana</p>	<p>The statutes administered by DST are being analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The researcher submitted the draft consultation paper to the project leader on 18 August 2014. The researcher effected changes to the paper and resubmitted the paper to the project leader who approved the paper. The researcher circulated the consultation paper for comments to DST and other agencies on 29 August 2014. The target date for receiving comments on the consultation paper was 30 November 2014. After receipt of comments from the DST, a draft discussion paper was finalised for consideration by the project leader. The draft discussion paper was presented to the project leader on 16 March 2015. The project leader approved discussion paper on 26 March 2015. The final draft report was approved at the Commission meeting on 5 December 2015. It is anticipated that the report will be submitted to the Minister of Justice and Correctional Services for referral to the Minister of Science and Technology during the 2016/2017 financial year.</p>

<p>Social Development (DSD)</p> <p>Ms Tania Prinsloo</p>	<p>The statutes administered by DSD have been analysed to determine which are redundant, obsolete or unconstitutional in order to develop a consultation paper with repeal and amendment proposals. The draft consultation paper has been completed. A meeting took place on 26 November 2015 between the SALRC and the DSD discussing the consultation paper. A response was received during March 2016. The consultation paper is in the process of being converted into a draft discussion paper.</p> <p>The Discussion Paper on the Legislation Administered by the Department of Social Development was published on 27 September 2017. The time frame for comments from relevant role players was extended as few responses have been received. Responses are therefore awaited from role players.</p>
<p>State Security (DSS)</p> <p>Mr Simon Maphanga</p>	<p>The statutes administered by DSS are being analysed to determine which are redundant, obsolete or unconstitutional. The target date for finalising the draft consultation paper is 28 February 2017.</p>
<p>Tourism (DT)</p> <p>Ms Maureen Moloji</p>	<p>The statutes administered by DT were analysed to determine which are redundant, obsolete or unconstitutional. The consultation paper with repeal and amendment proposals was submitted to DT on 28 January 2011 for comment and DT comments were received on 22 June 2011. On 22 October 2011 the Commission approved the publication of the discussion paper. Discussion Paper 127 was published on 4 November 2011 for general information and public comment with a closing date of 31 January 2012. The researcher finalised the draft report with proposed repealing and amending legislation in August 2012. The Commissioner appointed as project leader resigned in January 2014. In March 2015 Prof Carnelley was assigned as the new project leader for this investigation. The researcher met with the project leader on 7 April 2015 where progress and the way forward will be discussed. On 13 June 2015 the Commission considered the draft report and approved its submission to the Minister of Justice and Correctional Services for referral to the Minister of Tourism. The report was edited at the end of March 2016. It is envisaged that the report will be submitted to the Minister of Justice and Correctional Services during the second quarter of 2016.</p>



<p>Trade and Industry (DTI)</p> <p>Ms Maureen Moloji</p>	<p>The statutes administered by DTI were analysed to determine which are redundant, obsolete or unconstitutional. A consultation paper with repeal and amendment proposals was submitted to DTI on 1 June 2010 for comment. DTI suggested amendments to Schedules 1 and 3 of the proposed draft Department of Trade and Industry Acts Repeal and Amendment Bill on 1 August 2011. On 23 November 2012 an official from DTI informed the researcher that the process may be taken forward subject to suggested changes. The researcher met with the project leader on 20 February 2014. The researcher effected amendments to the draft discussion paper to deal with anomalies in the legislation reviewed. The updated draft discussion paper was submitted to the project leader on 30 May 2014. On 22 August 2014 the project leader forwarded a memorandum relating to issues raised in relation to the Companies Act of 2008 for the researcher to attend to. The draft discussion paper was considered by the Commission at its meeting on 06 December 2014. The Commission resolved that the discussion paper should be augmented by the inclusion of current developments in the intellectual property and other related terrains. It is envisaged that the discussion paper will be published for general information and comment during the second quarter of 2016. A draft discussion paper was approved by the Commission for publication for general comment on 17 September 2016. Discussion Paper 144 was published on 30 October 2016 for general information and public comment. The closing date for comments is 28 February 2017.</p>
<p>Water and Sanitation (DWS)</p> <p>Ms Anna-Marie Havenga</p>	<p>The statutes administered by DWS were analysed to determine which are redundant, obsolete or unconstitutional. A draft discussion paper, incorporating provisional comments from DWS received on 30 September 2015, was considered and approved by the Commission on 5 December 2015. The discussion paper was published for public comment on 28 January 2016. The closing date for comments was 31 March 2016. Comments were received up to 5 May 2016. The report was approved by the SALRC at its meeting held on 17 September 2016 and was submitted to the Minister of Justice and Correctional Services on 2 December 2016. The Minister approved the report on 26 January 2017, and referred it to the Minister of Water and Sanitation, and the Ministers of the following other government departments on 6 March 2017: Health; Public Enterprises; Agriculture, Forestry &amp; Fisheries; Environmental Affairs; and Energy.</p>

### **Project 94 – Alternative Dispute Resolution**

Project 94 originally dealt only with arbitration. The investigation into arbitration was, however, broadened on 8 July 1996 at the request of the Minister of JCD to include an investigation into all the other aspects of alternative dispute resolution (“ADR”). Project 94 was, therefore, constituted of three subprojects with three separate advisory committees: International Arbitration; Domestic Arbitration; and ADR (all forms of ADR except arbitration). The ADR subproject was divided into three parts and it was decided to develop three separate discussion papers: ADR and the civil law; Family mediation; and Community courts.

An Issue Paper (Project 94, Issue Paper 8, Alternative Dispute Resolution) was published in 1997 that dealt with all aspects of alternative dispute resolution, including arbitration, mediation, conciliation, etc. The paper, which explained the broadening of the investigation, has been the basis for all the various subprojects of Project 94. Discussion papers and reports (in 1998 and 2001) were published in the International and Domestic Arbitration subprojects. The community courts investigation was discontinued and the investigation into family mediation became part of

### **Project 100 – Care of and contact with minor children.**

What remained of Project 94 for investigation was the first part of the ADR subproject: ADR and the civil law, which had not yet received attention. Project 94 (including all its subprojects) was dormant for a number of years due to the fact that policy considerations in the DOJCD changed after the term of Mr Dullah Omar as Minister of JCD ended. The Commission, however, reprioritised the project at the end of 2011 as a result of the impact of the Civil Justice Review Project, launched by the DOJCD in 2010.

In reprioritising Project 94 an incremental approach has been followed. In the International and Domestic Arbitration subprojects, the two Bills have been updated by the Commission and submitted to DOJCD. Cabinet approved the International Arbitration Bill for submission to Parliament on 1 March 2017.

Family mediation is being dealt with in Project 100D.

In 2014 a separate subproject (Mediation) was included in Project 94. It dealt with court-annexed mediation. However, at its meeting of 13 June 2015, the Commission confirmed that the aspects of the alternative dispute resolution investigation are interlinked with the court-annexed mediation investigation, and resolved that the two subprojects should be dealt with together, in one investigation. On 10 September 2015 the Minister approved the combination of the two subprojects of Project 94 into one investigation, to be referred to as “Alternative Dispute Resolution”.

The appointment of an Advisory Committee for this investigation is in process. A memo in this regard was submitted to the Minister of Justice and Constitutional Development on 9 December 2016. The development of a Discussion Paper (including a Mediation Act) is receiving attention.

## **Project 100 – Family law and the law of persons**

Three investigations are currently being dealt with as subprojects under the Commission's existing broad investigation into family law and the law of persons (Project 100). The three subprojects are "Care of and contact with minor children", "Review of aspects of matrimonial property law", "Review of the law of maintenance" and "Hindu marriages". These are described briefly below.

### **Care of and contact with minor children**

The object of this investigation is to develop an integrated approach to the implementation of family law in South Africa, with specific reference to disputes relating to minor children after relationship breakdown between their parents. The investigation into family mediation (Project 94) now forms part of this project.

An issue paper was published for information and comment on 23 February 2016. The issue paper focuses on the broader issues of process determining care and contact, including the role of alternative dispute resolution in family law disputes, the effect of *pendente lite* applications, and the importance of a child-centred approach. It sets out to consider the interests of all children, including children from customary marriages and children living in rural areas. The paper therefore examines cost-effective, accessible, efficient and integrated processes that would help to address family law disputes, both in and outside the court system, and from both a private and public family law perspective. In addition, appropriate structures to accommodate the above processes are discussed. The ultimate object of the investigation is to ensure access to justice for the most vulnerable people in our society, namely children.

The SALRC hosted a two day national consultative meeting on Issue paper 31 on 5 and 6 April 2016 attended by hundred delegates from all relevant professions across South Africa. After collating the written submissions received on Issue paper 31, an experts meeting on family dispute resolution, attended by 40 delegates, was held in Cape Town on 16 February 2017. A Discussion paper is being developed.

On 27 October 2016, the researcher provided Committee members, at their request, with a document containing information with respect to the interpretation of section 52 of the Children's Act. On the instruction of the Committee the researcher submitted a memo in this respect to the Secretary on 7 December 2016 for his consideration. It transpired that section 52 was enacted due to a parliamentary oversight and could not be regarded as the basis for the promulgation of Rules with respect to the voice of the child.

### **Review of aspects of matrimonial property law**

The Matrimonial Property Act was passed in 1984 to deal with shortcomings in the matrimonial property law at the time. The Act has now been in place for more than 30 years. In addition to

specific problems which have been brought to the SALRC's attention, a number of social and legal changes since 1984 (including the 1996 Constitution and 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 law for greater legislative fairness and justice in governing interpersonal relationships between spouses.

Extensive further research has been done towards the development of a draft issue paper in accordance with comments received from the advisory committee, public input and enquiries, and developments throughout the period under report. The focus of the issue paper is wide and include matters relating to matrimonial property agreements (such as the change of matrimonial property system after marriage, and the suitability of the current system with regard to customary marriages); as well as issues related to the division of property on divorce (including the forfeiture of benefits, the redistribution of assets, settlement agreements, the marital home, and dissipation of assets).

### **Review of the law of maintenance**

At the Commission meeting held on 22 October 2011 the Commission approved the inclusion of this investigation in the SALRC programme. The Commission agreed that the investigation should be included under Project 100: "Family Law and the Law of Persons". On 31 October 2011 a letter was sent to the Minister of Justice and Constitutional Development advising him of the inclusion of the investigation in the SALRC programme.

The researcher finalised the first draft of the draft issue paper in September 2012. During August and September 2013 the researcher considered and incorporated comments received from her supervisor in August 2013. The researcher submitted a detailed report to the project leader on the status of the investigation on 28 February 2014. The researcher met with the project leader to discuss the investigation in April 2014.

On 5 July 2014 the Commission approved the publication of the Issue Paper on the Review of the Maintenance Act for public comment. They also approved the recommendation to appoint an Advisory Committee to assist with the investigation and designated Professor de Jong as project leader for the investigation. The Issue Paper was published for public comment on 9 September 2014 and the closing date for receipt of comments was 30 November 2014.

The appointment of an advisory committee was approved by the Commission at its meeting held on 5 July 2014. The appointment of the members of the advisory committee was approved by the Minister of Justice and Constitutional Services on 9 May 2015. The researcher held various meetings with the project leader to discuss the scope of the discussion paper and reviewed relevant literature to assist in the development of the scope of the investigation. The advisory committee held its first meeting on 10 July 2015 to deliberate on the development of the discussion paper. A framework of the scope of the discussion paper was developed and discussed at the advisory committee meeting. The framework was finalised on 9 October 2015 and was distributed to advisory committee

members. Work on the discussion paper commenced in November 2015 and various sections of the discussion paper were developed during the remainder of the last quarter of the reporting period. The researcher resigned end of July 2016 and the project was allocated to the new researcher (Ms Modiba) on 08 March 2017. The new researcher continues with the development of the discussion paper.

### **Hindu marriages**

South African law does not recognise marriages by Hindu rites; therefore all the legal consequences of a marriage do not apply to such marriages 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 consequence 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. The Commission resolved at its meeting of 5 December 2015 that the Hindu Marriages investigation should come back into the programme of the Commission.

The researcher met with Prof Carnelley on 1 Jul 2016 to discuss the way forward and the appointment of advisory committee members. The meeting did not take place; Prof Carnelley was involved in a car accident. The project leader and the researcher discussed the issue of advisory committee members on 17 September 2016 and the project leader promised to talk to her colleagues. Research is being done when time allows with a view to develop a draft discussion paper for submission to the project leader. Work on this investigation was put on hold as the researcher is giving priority to a draft proposal paper on community courts for the Commission's attention.

### **Project 107 – Sexual offences**

The larger project on sexual offences has so far seen the completion of an investigation into the substantive and procedural law regulating sexual offences, excluding adult prostitution and pornography and children. The earlier research culminated in the promulgation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

### **Adult prostitution**

This investigation is the third leg of the larger project on sexual offences. Issue Paper 19: "Sexual offences: Adult prostitution" was published for general information and public comment in August 2002. This leg of the investigation was held in abeyance for a while as priority was given to the promotion of the Criminal Law (Sexual Offences and Related Matters) Amendment Act through Parliament, as well as the completion of three investigations, namely 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 in 2008 and the Commission approved a discussion paper on 28 March 2009. Discussion Paper 1/2009: "Sexual Offences: Adult Prostitution" was published on 6 May 2009 for comment. Several workshops facilitated

by the SALRC were held throughout the country during May, June and July 2009. A number of focus group meetings were also held at the invitation of various sector-specific organisations in 2010 and 2011.

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 response to prostitution are generally strongly polarised. Within the current “totally criminalised” setting, this is no different in South Africa. The researcher assigned to this project received more than 2 600 email submissions.

The Report on Sexual Offences: Adult Prostitution was tabled and approved for submission to the Minister of Justice and Correctional Services at the Commission meeting held on 11 May 2014. Approval was granted subject to minor amendments being effected to the Report and on 5 July it was decided that this should be done to the satisfaction of a working committee comprising of the Chairperson, Vice-chairperson and the researcher. The Report containing the suggested amendments was circulated to the Chairperson and Vice-Chairperson on 8 July 2014. A working committee meeting was held on 24 July to finalise the Report. The working committee approved the amendments to the Report on 16 August 2014. The Report was submitted to the Department on 25 August 2014. A briefing of the Minister of Justice and Correctional Services and the Deputy Minister of Justice and Constitutional Development was conducted on 5 December 2014. Following discussions between the Ministry and the Commission an augmented report was submitted to the Ministry in June 2015. The Report is under consideration of the Department.

### **Pornography and children**

On 15 September 2009 the Deputy Minister of Home Affairs requested the SALRC to advise on the possibility of a ban on the dissemination and circulation of pornography through electronic or print media and mobile technology. The SALRC responded to the then Deputy Minister in December 2010, informing him that the existing legislative framework protecting children from exposure to pornography is inadequate, and that ways of regulating and screening for pornography need to be explored in a holistic manner and not just in respect of a ban. The Commission decided that this matter warrants inclusion in Project 107: Sexual Offences, where it will be dealt with alongside other matters pertaining to pornography and children.

At its meeting of 22 October 2011 the Commission approved the appointment of an advisory committee member, Mr I Chetty, to assist with this leg of the sexual offences investigation. The Minister appointed the advisory committee member on 15 November 2011.

Additional advisory committee members were appointed on 15 September 2014, as follows: Mr Cull, Adv Meintjes (SC), Ms van Niekerk, Colonel Pienaar and Ms Sedumedi. Professor Oguttu took over the role of project leader in February 2015 following her appointment to the Commission. Mr Risiba, CEO of the FPB, replaced Ms Sedumedi on 6 March following her resignation. Ms Linders of the Department of Telecommunications and Postal Services was nominated to assist the committee

on 31 March 2015. Mr S Robbertse, state law adviser, in the Department of Justice and Constitutional Development and Mr K Rutsha, legal services, in the Department of Communications are also ad hoc members of the Committee.

The investigation focuses on four identified areas of concern:

- Access to or exposure of a child to pornography and child pornography (child abuse material);
- Creation and distribution of child pornography (child abuse material);
- Explicit self-images created and distributed by a child; and
- Grooming of a child and other sexual contact crimes associated with or which are facilitated by pornography.

Issue Paper 30 was published for comment on 6 August 2015. Five workshops were held around the country in Pretoria, Nelspruit, Cape Town, Durban and Kimberley. Work has commenced with the compiling of a Discussion Paper.

### **Project 122 – Assisted decision-making**

The investigation deals with the manner in which South African law addresses the needs of persons whose ability to make choices, to exercise their legal capacity, has been impaired (“persons with disability”). A legitimate expectation for the law is that it should establish a structure within which autonomy and self-determination are recognised and protected, while also protecting persons with decision-making impairment from abuse, neglect and exploitation. South African law does not fulfill these requirements at present. In the development of recommendations and draft legislation the Commission aimed to provide suitable solutions for this deficiency with regard to existing impairment as well as possible future impairment. In doing so, the Commission was requested to take into account relevant requirements of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

As far back as 1988 the SALRC undertook an investigation with a view to improving the plight of persons with mental illness 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 minimal costs) for the appointment of a curator to a person who is not declared to be mentally ill, but whom the applicant believes to be suffering from mental illness to such an extent that the person is incapable of managing his or her own affairs. The Mental Health Act, 1973 has since been replaced by the Mental Health Care Act, 2002. The latter Act, however, does not deal comprehensively with the needs of persons with impaired decision-making skills. The Commission, under a separate investigation in 1988, also recommended the introduction of the enduring power of attorney into South African law. These recommendations were not implemented at the time.



The current investigation was undertaken as a result of attention being drawn to the declining decision-making ability of persons with Alzheimer's disease and the out-dated and inappropriate ways in which the South African law addresses this challenging scenario. However, the investigation has a broader focus. It deals with the shared problems faced by persons who need support with decision-making, irrespective of the reason for this (e.g. mental illness, intellectual disability, brain injury, stroke or dementia).

The SALRC published an issue paper on the matter for general information and comment at the end of 2001, and a discussion paper with a proposed draft Bill in January 2004. The issue paper and discussion paper are discussed in the annual reports of 2001/2002 and 2003/2004, respectively. The extensive consultation process that followed is recorded in subsequent annual reports. A request from the Human Rights Commission in September 2009 to take into account the legal capacity requirements of the CRPD considerably extended and complicated the Commission's work at a time when the investigation was for all practical considerations already at report stage. Information on this request and the additional research and consultation undertaken is reflected in the annual reports since 2009/2010. This process culminated in a revised draft Bill being submitted to prime stakeholders on 16 February 2012, and thereafter in further refinement of the draft Bill on the basis of comments from these stakeholders. Information on the latter is reported on in the annual reports of 2011/2012 up to that of 2014/2015.

The advisory committee considered and approved a final draft report and draft Bill on 10 March 2015. The Commission approved the report and draft Bill on 5 December 2015. The report was, after copy-editing, submitted to the Department for submission to the Minister of Justice and Correctional Services on 19 September 2016. The Minister acknowledged submission of the report on 7 October 2016.

### **Project 125 – Prescription periods**

No comprehensive review of the provisions providing for different prescription periods, whether of a contractual or delictual nature, had been undertaken by the SALRC prior to this investigation. When reporting on the Bill which later became the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002, the Portfolio Committee on Justice and Constitutional Development recommended that the Minister of Justice and Constitutional Development 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 programme

**Issue Paper 23: Prescription Periods** was published for general information and public comment in August 2003. On 17 November 2010 the Commission approved the discussion paper for publication.

**Discussion Paper 126: Prescription Periods** was published on 28 July 2011 for general information and public comment. The researcher allocated to the investigation on prescription periods resigned



from the Commission on 31 May 2011. The investigation was then assigned to a newly-appointed researcher in September 2012.

This researcher has since reviewed Discussion Paper 126 and has identified the need to develop an additional discussion paper. The researcher has also motivated for the establishment of an Advisory Committee based on the complexity of the subject matter of prescription and the scope of the work that needs to be covered. Whilst awaiting approval for the appointment of the Advisory Committee, the researcher commenced developing the Revised Discussion Paper.

During November 2015, the Prescription Periods Advisory Committee was established. By then, the researcher had already finalised development of the Revised Discussion Paper. The researcher and the Advisory Committee are in the process of reviewing the contents of the Revised Discussed Paper in order to ensure that the law and proposals for reform are correctly reflected and formulated. The 1<sup>st</sup> Meeting of the Advisory Committee was held on 28 January 2016.

### **Project 126 – Review of the law of evidence**

The advisory committee dealing with the simplification of criminal procedure (Project 73) proposed in 2001 that the Commission should review the rules of evidence. Subsequently, on 17 September 2001, the Working Committee recommended the inclusion of an investigation to review the rules of evidence into the SALRC programme. In December 2001 the Minister approved this inclusion. An advisory committee for the investigation was approved on 26 November 2003.

The last decade has seen a rapid development in technology, and with it unforeseen forms of evidence and the attendant difficulties in determining their admissibility. In addition, the new constitutional dispensation has affected 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. These issues 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 about 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 (e.g. child justice and the abuse of women). When the investigation was included on the SALRC programme, the advisory committee resolved to follow an incremental approach to the project and identified a number of subprojects to be dealt with separately. The subprojects identified for investigation under Project 126 are –

- Review of the law of evidence (incorporating general issues and electronic evidence)
- Hearsay and relevance
- Cybercrime.
- To date, in the course of this investigation, the following research papers have been published:
- Issue Paper 26 – Review of the Law of Evidence (general issues)
- Issue Paper 27 – Electronic evidence in civil and criminal matters: Admissibility and related issues
- Discussion Paper 113 – Review of the Law of Evidence: Hearsay Evidence and Relevance

The researcher allocated to the investigation dealing with electronic evidence resigned from the Commission on 31 May 2011. On 11 December 2011, the Minister approved the appointment of an additional advisory committee member, Dr D Collier, to conduct further research and to complete a discussion paper and the final report. With the appointment of an additional advisory committee member in 2011, the Advisory Committee reconsidered its incremental approach and resolved instead to consolidate all matters identified for investigation into one discussion paper. Issue Papers 26 and 27 and the comments received on these issue papers and the content of Discussion Paper 113 and comments received on the recommendations were consolidated into a new discussion paper. The Committee approved that a consolidated discussion paper would form the basis for a single final report dealing with all the matters raised during the investigation.

In December 2013 the project leader and Commissioner designated to the Advisory Committee, Professor PJ Schwikkard, resigned as Project Leader and Commissioner. Dr Collier appointed as designated researcher, with the assistance of Professor Schwikkard, developed a consolidated Discussion Paper. In July 2014 Dr D Collier, advisory committee member and designated researcher in the investigation submitted her resignation as Committee Member. The Commission accepted her resignation and resolved that a new Advisory Committee Member should be appointed to replace her. In March 2014 the Commission appointed Judge Jody Kollapen as the Project Leader and a memorandum for the appointment of a member to replace Dr Collier was submitted for approval by the Minister. The consolidated discussion paper (131) was submitted for consideration of the Commission in March 2014. The Commission approved its publication on 5 July 2014. The closing date for comment was 31 March 2015, but it was extended to 31 October 2015 at the request of various interested persons.

On 5 August 2015 the Minister approved the appointment of Professor Pistorius as an advisory committee member to replace Dr Collier. An Advisory Committee meeting was held on 25 September 2015. The Advisory Committee considered whether or not to continue with an investigation of the subproject into the review of cybercrime. It resolved to remove the investigation from its terms of reference since the Department of Justice was mandated to undertake a review of cybercrime under auspices of the Review Panel established by the Minister of Communications to review cyber security in 2013. On 28 August 2015 the Department of Justice published a draft Bill on cybercrime for general information and comment. The Advisory Committee considered the planning of its

investigation and its mandate after publication of the consolidated Discussion Paper (dealing with all identified and outstanding issues). The Committee resolved to request Professor Pistorius to assist in the investigation and approved that she assists the Commission in this regard and prepare a draft report with provisional recommendations for consideration by the Committee. The Committee also mandated her to consult with role players in particular judges to obtain their views. A draft report with recommendations was considered by the Advisory Committee on 12 March 2016. A revised draft report was considered and approved by the Committee on 13 August 2016. The Commission approved the final report at its meeting held on 10 December 2016.

### **Project 127 – Review of administration orders**

The then Minister of Justice and Constitutional Development requested the SALRC to investigate administration orders, by following an incremental approach to distinguish between reforms that could be effected in 1) the short to medium term, and 2) 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. These amendments 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.

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 light of the provisions of the National Credit Act 34 of 2005. On 14 January 2009, the Commission considered a document that detailed the researcher's response to comments on the questionnaire, and approved the researcher's proposals on the way forward.

A workshop was held at the University of Pretoria on 31 May 2011. The workshop was attended by 62 persons representing administrators, debt counsellors, creditors, magistrates, and debtors under administration and the NGOs representing them. The researcher has compiled a draft discussion paper containing proposed amendment legislation. This work takes into account those comments received on the background document titled "Administration Orders: proposed amendments to section 74-74W of the Magistrates Court Act, 32 of 1944".

A proposal paper titled "Should administration orders be repealed taking into account consumers' access to debt review" was distributed to government stakeholders on 20 July 2015. This was followed by a roundtable discussion on administration orders held on 30 March 2016.

The advisory committee for project 127 was appointed on 1 November 2016. The advisory committee met on 26 January 2017 to consider proposed draft legislation. Instructions and input received at the meeting are being attended to.

### **Project 135 – Review of witchcraft legislation**

The Commission received submissions from the South African Pagan Rights Alliance, 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 programme. The meeting also clarified the substantive issues raised in the submissions. A proposal paper was then prepared for consideration by the Commission. It provided background information on the concept of witches and witchcraft in South Africa; set out the current legal framework; described existing attempts at and suggestions for law reform in this area; and measured the relevant facts against the Commission's criteria for the inclusion of an investigation.

The Commission approved a review of legislation pertaining to witchcraft on 1 August 2009. The Minister approved the inclusion of Project 135: "Review of witchcraft legislation" in the SALRC programme on 23 March 2010.

The researcher finalised the draft issue paper on 31 October 2012. A project leader was appointed in February 2014, and the draft issue paper was submitted to the project leader for consideration and comment. The project leader approved the draft issue paper and the proposed members of the advisory committee.

On 11 May 2014 the Commission deliberated upon the draft Issue Paper on the Review of the Witchcraft Suppression Act. The main issues in the paper are around; firstly whether there is a need to regulate witchcraft, and the extent of such regulation should it be desirable. Secondly, the extent to which existing laws should encroach on the rights of others in the free exercise of their religion. The Commission approved the publication of the Issue Paper for public comment and the Advisory Committee members that had been identified to assist with the investigation. The issue paper was published for public comment on 9 September 2014 and the closing date for comments was 30 October 2014.

On 26 September 2014 the Minister of Justice and Constitutional Development appointed members of the Advisory Committee to assist with the investigation. The first meeting of the Advisory Committee was held on 20 March 2015 to deliberate on the issues involved in the investigation and the development of the Discussion Paper.

The draft discussion paper was discussed at the advisory committee meeting held on 31 July 2015 where members with expertise in certain areas were identified and tasked with assisting with the development of issues within their area of expertise. The draft discussion paper, together with a draft Bill, was finalised on 30 September 2015 and was further discussed and approved at the advisory

committee meeting held on 9 November 2015. The discussion paper was approved for publication by the commission at its meeting held on 5 December 2015. The discussion paper was published for public comment on 19 January 2016. The closing date for receipt of comments was 30 April 2016.

During April to June 2016 comments received on the discussion paper were collated. The Discussion Paper was also translated into African languages with the assistance of the Office of the Chief State Law Adviser (OCSLA). During May 2016 the researcher started arrangements for the hosting of an Advisory Committee meeting with the Project Leader. An Advisory Committee meeting was held on 1 July 2016. At the Advisory Committee meeting the comments received on the discussion paper were discussed as well as the way forward in preparation for the development of a final report. The researcher allocated to the investigation resigned with effect from 1 August 2016. Mr Willie van Vuuren has been designated to take over the investigation with effect from 1 April 2017.

### **Project 136 – 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, including 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 the topic seems to fall within the purview of the Legal Practice Bill. The Director-General: DOJCD agreed with the DOJCD recommendation that the SALRC should pursue a separate investigation into the issue of multi-disciplinary practices for attorneys.

The Commission approved the inclusion of an investigation into multi-disciplinary legal practices on 25 October 2008. The Minister approved the inclusion of Project 136: "Multi-disciplinary legal practices" in the SALRC programme on 23 March 2010. The Legal Practice Act 28 of 2014 (the Act) was subsequently assented to by the President of the Republic of South Africa on 22 September 2014. The Act established a Legal Practice Council in terms of Section 4 and bestowed upon it, amongst others, the duty to investigate multi-disciplinary legal practices. Section 34 (9) of the Act provides as follows:

*"The Council must, within two years after the commencement of Chapter 2 of this Act, investigate and make recommendations to the Minister on—*

- (a) the creation of other forms of legal practice, including—*
  - (i) limited liability legal practices;*
  - (ii) multi-disciplinary practices*

As a result of this, the Commission removed the investigation from its programme in the first quarter of 2016.

### **Project 137 – Expungement of certain criminal records**

During the deliberations on the Criminal Procedure Amendment Bill (enacted as the Criminal Procedure Amendment Act 65 of 2008), the Portfolio Committee on Justice and Constitutional Development received a number of inputs on the expungement of criminal records. The Portfolio Committee concluded that it is a complex matter that requires a balance between, on the one hand, the right of citizens to be protected against criminals and, on the other, the recognition that having a criminal record may cause undue hardship for a person.

The Portfolio Committee decided to request that the Minister for JCD should –

- Conduct further research on the different systems followed in the keeping of criminal records and their expungement. This research should draw, among others, on international best practice.
- Consult more widely with relevant stakeholders and the public on this issue.
- Report to Parliament on his findings within 24 months of the adoption of this report by the National Assembly.

On 2 October 2009, the SALRC received a letter from the Minister requesting the Commission to include a new investigation in its programme dealing with the expungement of certain criminal records. The Commission approved inclusion of the investigation in its program on 13 March 2010 and the Minister approved the inclusion of Project 137: “Expungement of certain criminal records” in the SALRC programme on 28 April 2010. The Commission approved the appointment of Commissioner Thembeka Ngcukaitobi as Project Leader and Mr van Vuuren as the designated researcher. The researcher prepared a draft discussion paper for submission to the Project Leader. The term of office of Mr Ngcukaitobi expired in December 2011. A new project leader, Judge J Kollapen, was appointed in December 2013. A draft discussion paper was finalised in August 2014. The Commission approved the publication of a discussion paper on 5 December 2014. The discussion paper has since been published and the closing date for comments is 31 July 2015 but it was extended at the request of a number of role players to the end of February 2016.

During the consultation phase on the content and provisional recommendations in the Discussion Paper, contact have been established with the Offices of the Department of Correctional Services, the National Office and all sub offices of Nicro and Mr Lukas Muntingh with the view to facilitate input on the draft discussion paper. Meetings were also arranged with Mr Muntingh in the second week of July 2015, formal meetings were held with members of the SAPS Criminal Record Centre (6 July 2015), and the Department of Correctional Services (9 July 2015) during which presentations on the content on recommendations in the discussion paper were made.

On 23/24 July 2015 the researcher attended a conference “Ex Offender Conference” presented by



the Department of Correctional Services and made a presentation on “Employability and criminal record”. The conference was attended by approximately 500 persons, which included ex-offenders from the regions Gauteng, Northern Cape, Western Cape and the Free State. Further regional conferences were planned by the Department of Correctional Services and the researcher has been requested to attend these conferences and make further presentations on the expungement of criminal records and the Commission’s discussion paper. During August 2015 the Department of Correctional Service submitted its comments as well as the comments received during the conference.

The Discussion paper has also been distributed to members of EXCO of the Department of Justice for comment who distributed the Discussion Paper to all relevant stake holders in the Department and the National Prosecuting Authority. A number of respondents have requested an extension for comment. Extension for comment was again granted until 30 September 2015 and to the end of February 2016. During the course of September the outstanding comments were followed up with the Department of Justice, EXCO, the South African Police Services and Nicro. The Commission received the Comment from the Department of Justice on 28 September 2016. The outstanding comments were followed up regularly. The regional workshops planned by the Department of Correctional Services were held during February and March 2016. During February 2016 the researcher prepared a draft presentation on behalf of the Department of Correctional Services for discussion at the regional workshops. The researcher also responded to questions raised during the course of the regional workshops. In view of the extended time frames for comment the target date for submission of a draft report, including the collation of comments and provisional recommendations to the Project Leader was extended until December 2016. A draft report was submitted to the Project Leader in December 2016. After collating the input of the Project Leader a draft report was resubmitted to the Project Leader in February 2017. The final report will be submitted to the Commission for consideration at its first meeting in 2017.

### **Project 138 – The practice of ukuthwala**

On 15 March 2009, the South African Broadcasting Corporation (SABC) and e-TV gave news coverage to a practice that is prevalent in parts of the country, namely the forced marriage or sale of young girls into marriages with adult men. The girls are generally aged between 12 and 15 years. On 24 August 2009, the SALRC received a request from the Gender Directorate of DOJCD to investigate this practice of **ukuthwala**. Specific issues were the effect of **ukuthwala** on girl children; the appropriateness and adequacy of the current laws on **ukuthwala**; and protection of the human rights of girl children, taking the principle of the best interest of the child into consideration.

The Commission hosted a round-table discussion on **ukuthwala** on 30 November 2009. The purpose of the discussion was to gather information on the subject to enable the Commission to decide whether or not to include an investigation into this issue in the SALRC programme. About 50 people representing various stakeholders attended the discussion.

The Commission approved an investigation into the practice of **ukuthwala** on 14 August 2010. The Minister approved the inclusion of Project 138: "The practice of ukuthwala" in the SALRC programme on 2 December 2010. The advisory committee met for the first time on 18 September 2011 to discuss the project. On 16 January 2012, the chairperson of the advisory committee submitted a letter to the National House of Traditional Leaders requesting an audience with the House to discuss the project. The project leader and the researcher met with the National House of Traditional Leaders on 19 April 2012. A telephonic conference was held with advisory committee members on 05 March 2013.

The researcher distributed questionnaires to various stakeholders on 19 April 2013. The purpose of the questionnaire was to source opinions from stakeholders on the practice of **ukuthwala**. Seven responses were received from various NGOs, and Professors Meyiwa and Sithole evaluated the responses received. Advisory committee meetings were held on 9 November 2013 and 10 January 2014, and an advisory committee writing retreat took place from 16 to 19 January 2014. The draft discussion paper was tabled at the Commission meeting on 11 May 2014 for consideration and it was approved.

The media statement and discussion paper were published on 01 September 2014 and the closing date for comments was 31 October 2014. The researcher and project leader were interviewed by various media houses after publication of the discussion paper. The researcher presented the discussion paper to the Young Communist League of South Africa National Committee meeting on 05 September 2014. The researcher developed worksheets for the discussion paper and were posted on the SALRC's website on 29 September 2014.

The researcher compiled comments on the Discussion Paper and sent such to the Advisory Committee on 13 May 2015. The researcher sent the paper on civil remedies for the prevention of forced marriages and Draft Bill to the Advisory Committee for consideration on 22 June 2015. In the advisory committee meeting and writing retreat held on 28 and 29 June 2015 it was decided that Discussion Paper 132: The practice of ukuthwala should be revised to include a chapter on public consultations, review a chapter on options for law reform and include a Draft Bill. The researcher sent the Draft Revised Discussion Paper and Bill to the Advisory Committee for comments and consideration during July 2015. The Draft Revised Discussion Paper and Bill were approved by the project leader on 30 July 2015.

The Secretary advised the researcher that he will liaise with the Chairperson to establish a working committee to approve the Draft Discussion Paper and Bill. The Draft Revised Discussion Paper was approved by the Commission, through round robin on 19 October 2015. The media statement and Revised Discussion Paper were published on the SALRC's website on 30 October 2015.



The consultative workshops on the Revised Discussion Paper took place as follows: 28 January 2016 (KwaZulu-Natal); 04 February 2016 (Eastern Cape); 11 February 2016 (Limpopo); 18 February 2016 (Mpumalanga); 25 February 2016 (Free State) and 03 March 2016 (Gauteng). The researcher received comments on the Revised Discussion Paper from various stakeholders and started consolidating such for inclusion in the draft report. The researcher sent the draft report to the project leader for consideration on 22 September 2016. The project leader advised the researcher to circulate the draft report to the advisory committee and this was done on 21 November 2016.

The researcher wrote an e-mail to the advisory committee requesting their inputs on the draft report on 31 January 2017. The researcher called the project leader on 22 February 2017 informing him that she had not received any inputs from the advisory committee members to date and the project leader agreed to contact them and will advise on the way forward.

The project leader and one advisory committee member responded on 06 and 07 March 2017 respectively that they were swamped with other commitments and will only give their inputs in May 2017.

### **Project 139 – 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 requested the Minister to consider, among others, an amendment of the Interpretation Act 33 of 1957. The Joint Committee advised that such amendment was needed to bring the Act in line with the principles of constitutional democracy and practices of interpretation that have been 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 25 on Statute Law: "The establishment of a permanently simplified, coherent and generally accessible statute book". This inclusion was subsequently approved by the Minister.

The Commission approved the publication of a discussion paper on the review of the Interpretation Act on 9 September 2006. **Discussion Paper 112 – Statutory law revision: Review of the Interpretation Act** was released by media statement on 6 October 2006. After several extensions to give respondents more time to comment the final closing date for comments on Discussion Paper 112 was set as 30 April 2007. However, comments were received as late as September 2007.

Due to his involvement in Project 25 the researcher was unable to attend to this project for an extended period. The researcher has been developing the draft report since November 2010. On 8 November 2010 he participated in a round-table discussion with officials from National Treasury, the Financial Intelligence Centre, SARS, the Reserve Bank and the Financial Services Board on this review. He met with the newly appointed project leader on 5 April 2014 to discuss the investigation. The further development of the draft report continued with developments in South Africa and other jurisdictions during the period under review being considered. In February 2016 the draft report was submitted to the project leader for her consideration. The researcher and the project leader met on

4 November and 25 November 2016 to discuss the draft recommendations made in the draft report. The researcher attended to specific matters identified during the two meetings and augmented the draft report. The draft report was submitted to Commissioners for noting at the Commission meeting held on 10 December 2016. At this meeting it was resolved that the draft report would be considered at the following Commission meeting which was envisaged would have been held in March 2017.

#### **Project 140 – Right to Knowledge of One’s Own Biological Origins**

The object of this investigation is to perform research into a person’s right to knowledge of his/her biological origins. A proposal paper containing the pre-investigation as approved by the Project Leader was considered by the Commission on 13 June 2015. The Commission decided to recommend to the Minister that the investigation should be included in the SALRC’s programme. A ministerial memo was prepared and submitted to the Minister for his consideration on 7 August 2015. The Minister approved the inclusion of the investigation in the Commission’s programme on 10 September 2015. The researcher took over the project on 20 January 2016 and is performing research in this regard.

#### **Project 141 – Medico-Legal Claims**

The investigation seeks to strengthen the legal position for the effective handling of medical legal claims. At the Commission meeting of 13 June 2015 the Commission approved the recommendation in the proposal paper that the investigation be included in the SALRC’s programme. On 10 September 2015 the Minister approved the inclusion of the investigation in the SALRC’s programme.

During the reporting period, the researcher conducted research and collected legal data and information on medico-legal claims. The researcher completed a document with preliminary proposals on an aspect of the investigation (Common law “once and for all rule”) on 31 March 2016. It is envisaged that the document will be submitted to the Commission for noting at its meeting of the first quarter of the 2016/2017 financial year.

#### **Project 142 – Legal Fees**

The investigation aims to review the current fees dispensation in terms of which attorneys and advocates are paid for rendering legal services to their client. The parameters are set out in section 35 of the Legal Practice Act, 2014. The Legal Practice Act, 2014 (Act No.28 of 2014) was promulgated on 22 September 2014. However, section 35 of the Act, which provides for an investigation to be conducted by the SALRC on fees charged in respect of legal services, will, in terms of section 120(4) of the Act, come into operation on a date to be fixed by the President by proclamation. This will take place after commencement of Chapter 2 of the Act, which will commence three years after commencement of Chapter 10 of the Act. Parts I and II of Chapter 10 of the Act (establishment of the National Forum) were brought into operation with effect from 1 February 2015 by Proclamation No. R.2 of 2015 published in GG No.38412 dated 23 January 2015. On 09 February 2015 the Minister approved the inclusion of the investigation in the SALRC’s programme.

On 1 June 2016, the researcher met with the project leader to discuss developments to date on this investigation. It was agreed at this meeting that the researcher will prepare a Commission Paper for consideration by the Commission at its next meeting scheduled to take place in September 2016. On 17 September 2016 the Commission considered a proposal paper on options available to approach the Legal Fees investigation. Two options were presented for consideration by the Commission, namely: (1) pre-investigation and (2) full investigation. The Commission approved option 1. The researcher undertook to identify suitable experts and officials of the Department of Justice and Constitutional Development to serve in the interim advisory committee. It is anticipated that the experts to be identified will be presented to the Commission at its first meeting of the 2017/2018 financial year for consideration. If approved, a memorandum will be prepared to the Minister requesting approval for initiating a pre-investigation on Legal Fees and the appointment of interim advisory committee members.

### **Project 143 – Maternity and Paternity benefits for Self-employed Workers**

The proposal received from the Commission for Gender Equality (CGE) for inclusion of the investigation into maternity benefits for self-employed women emanates from the SALRC's engagement with key role-players during its planning workshop held on 6 December 2013.

The main problem identified by the CGE is that there is currently a gap in the South African social security system in that the vast majority of self-employed workers in the formal and informal sectors of the economy are excluded from receiving maternity and paternity benefits offered by the State. The object of the preliminary investigation is to consider for inclusion in the SALRC's programme the review of the law of the Republic of South Africa with the object of extending maternity and paternity protection to self-employed workers in the formal and informal sectors of the economy. This has to take into account the provisions of, among others, section 9 of the Constitution that prohibits discrimination on any grounds including gender, sex, pregnancy and marital status.

At its meeting held on 28 May 2016, the Commission approved the request for inclusion of the investigation into Maternity and Paternity benefits for Self-employed Workers in its programme. On 27 July 2016, the Minister gave approval for inclusion of this investigation in the SALRC Programme.

On 17 September 2016, the Commission considered a proposal paper for appointment of Ms Janine Hicks and Dr Meryl du Plessis as advisory committee members. The Commission approved the appointment of Ms Hicks and Dr Du Plessis. On 9 November 2016, the Minister approved the appointment of Ms Hicks and Dr Du Plessis as advisory committee members.

The first advisory committee meeting was held on 13 January 2017. The advisory committee considered the draft research proposal paper prepared by the researcher and decided that Ms Hicks and Dr Du Plessis will provide further input to the researcher. The meeting identified the need for appointment of additional advisory committee members by the Minister.

On 17 February 2017, letters were written by the Secretary of the SALRC to the Directors-General of National Treasury; Labour; Health; Social Development; Statistician General; Chiefs of Staff of the Departments of Women and Small Business Development, as well as to the Acting Chairperson of the Commission for Gender Equality requesting them to nominate suitable officials to serve as ad hoc advisory committee members. As at the end of the 2016/2017 financial year, no feedback has been received from the heads of the above mentioned departments and chapter nine institutions.

### **Proposals for new investigations**

#### **Evaluation of proposals for new investigations**

The SALRC has developed selection criteria to determine which proposals for new investigations should be included as investigations. The process starts with a decision on which proposals should become preliminary investigations. 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 every proposal received. The SALRC therefore requires a method to determine when a proposal for an investigation will be entertained and when it will be rejected. Although proposals for investigation are usually subjected to preliminary investigation, even a preliminary investigation takes up valuable time and resources and may not always be necessary.

The selection criteria that have been developed provide for a two-phased process. In the first stage, an initial set of criteria is used to determine whether a proposal should be rejected without even a preliminary investigation. This stage entails a sifting mechanism to reduce the number of preliminary investigations. If a proposal does not meet the initial criteria, it is rejected and the person or institution that requested the investigation is informed accordingly. Proposals that pass the initial criteria are put through the second stage of the selection process, namely a preliminary investigation as described below.

#### **Proposals received**

In the year under report, the SALRC received one new request for consideration for inclusion in its law reform programme. A request to re-instate the investigation on community courts was received from the Minister of Justice and Correctional Services on 7 September 2016.

#### **Preliminary investigations**

If a proposal for a new investigation meets the SALRC's initial criteria for the inclusion of new investigation into its programme, a preliminary investigation is indicated. The second set of criteria is then used to evaluate the proposal further, 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.

As indicated in the 2013-2014; 2014/2015 and 2015/2016 annual reports that the SALRC had received few requests for consideration for inclusion in its law reform programme, during the period under review, the following preliminary investigations were conducted:

### **Lesbians, Gays, Bisexuals, Transgendered and Intersexed (LGBTI) in detention**

At the Commission meeting held on 5 December 2013 the Commission for Gender Equality (CGE) presented issues which it had identified for inclusion on the program of the Commission. One of these issues was the “law regulating imprisonment of LGBTI people”.

The researcher received the assignment in May 2014. Ms Prinsloo is the lead researcher assisted by Ms Clark as supervisor.

On 4 June 2014 the two Commission researchers assigned to this pre-investigation met with officials from the Chief Directorate: Constitutional Development in the Department of Justice and Constitutional Development to ascertain whether there is not already any type of programme in place or investigation ongoing in this regard.

On 5 September a meeting took place between the SALRC and the CGE. The meeting was attended by the Parliamentary Liaison of the CGE, Mr Kamraj Anirudhra, the researchers from the SALRC and Justice Maya, chairperson of the SALRC and (then) project leader of this investigation. This meeting was held to ascertain the scope of the pre-investigation.

On 25 March 2015 a meeting took place between the researcher and the Project Leader, Professor Oguttu, to discuss the proposal paper.

The LGBTI pre-investigation came before the Commission on 13 June 2015.

The Commission requested that further research be done in order to determine the scope of the investigation before final consideration is given to the inclusion of the investigation on the program of the SALRC. The project leader has been provided with regular updated documents on this topic as requested by the Commission. Regular meetings between the SALRC and the project leader on this pre-investigation took place. Regular meetings with stakeholders were sought and held.

The pre-investigation is at a stage where final approval is to be obtained from the project leader to submit it to the next commission meeting during the 2016/2017 financial year.

### **Enacting a single marriage Act**

A request for the inclusion of an investigation into the enactment of a single marriage Act was received from the honourable Deputy Minister of Home Affairs, Ms F Chohan, in September 2014. The object of this pre-investigation is to investigate the possibility of enacting a single marriage

Act that will enable South Africans of different religious and cultural persuasions to conclude legal marriages that will accord with the doctrine of equality as encapsulated in the Constitution of the Republic of South Africa.

On 6 December 2014, the Commission approved the inclusion of this research request into its programme. A resolution was taken that a letter should be forwarded to the Deputy Minister of Home Affairs for the following reasons:

- to acknowledge receipt and importance of her research request;
- to advise her that this research request will be included in the programme of the Commission in the 2015/2016 financial year;
- to further inform her of the existing possibility that the investigation may go beyond the term of office of the current Commission, having regard to the wide range of stakeholders who will need to be consulted;
- to also highlight to her that the research will be substantial in nature because the request proposes an introduction of a new principle in the law of marriage.

During the reporting period 2015–2016 a proposal paper which applied the Commission's selection criteria for considering the inclusion of a research proposal in the Commission's research programme was developed which on 31 March 2016 was submitted to the project leader for consideration. The proposal paper was further developed during the reporting period, and in September finalised and submitted to the Commission for consideration. The proposal paper served at the Commission meeting on 17 September 2016. At the meeting the Chairperson advised the Commission that the Deputy Minister of Home Affairs contacted him and raised the issue of sham marriages in South Africa and other jurisdictions and measures taken against these marriages. The Commission decided that the proposal paper should be adapted for purposes of a meeting to be held with the Deputy Minister of Home Affairs. During the last week of September 2016 the researcher commenced adapting the proposal paper. The prevalence of sham marriages in South Africa and in foreign jurisdictions and the measures adopted to combat sham or bogus marriages and marriages of convenience was dealt with. The project leader and researcher met to discuss the proposal paper on 21 November 2016. The adjusted paper was submitted to the Chairperson on the same day and on 22 November 2016 forwarded to the Deputy Minister of Home Affairs for her consideration. Arrangements were made for the envisaged meeting between the Chairperson of the Commission with the Deputy Minister of Home Affairs to discuss the scope of the investigation and the way forward regarding the investigation. It is envisaged that the meeting will occur early in the 2017–2018 reporting period.

### **Review of National legislation that impact on local government**

In May 2014, the then Minister of Cooperative Governance and Traditional Affairs requested the Commission to 'consider the inclusion within the new Research Programme a review of all national legislation that impact on local government, with the objective of reducing regulatory compliance

and reporting burden on municipalities and simplifying implementation.’ In his referral letter, the Minister of COGTA referred to a whole host of other impediments that render local government inefficient and diminish its ability to deliver services to communities. These ‘ancillary’ issues are: the prevalence of unfunded mandates; poor alignment between pre-1994 and post-1994 dispensation; the functional uncertainty occasioned by overlapping between local government matters and functional areas assigned to provincial and national governments itemized in Schedules 4 and 5 of the Constitution; the usurpation and dictation of power or function contrary to the dictates of the Constitution; and failure to conduct impact assessment of legislation, both **horizontally** and **vertically**, on existing legislation, policy or service delivery.

At the time of going to print, the assessment of all the above mentioned strands against the Commission’s criteria, the most significant of which are whether the issues are predominantly legal; whether there is another institution better placed to deal with the issues in question; the extent to which the law is unsatisfactory; and whether the difficulties can be overcome by change in the law, was at an advance stage. It is envisaged that the outcome of this preliminary investigation will be tabled before the Commission for its consideration during the course of the 2017/2018 financial year.

### **Research on the intergovernmental relations framework and implementation of MINMEC decisions**

In May 2014, the Commission received a law reform proposal from the Department of Social Development (DSD) to conduct an investigation into the best model that the Minister of Social Development (Minister) can utilise to enforce the decisions agreed upon at MINMEC for the Social Development Sector established in terms of section 9(1) of the Intergovernmental Relations Framework Act 13 of 2005. Decisions affecting the sector are often taken at the aforementioned MINMEC. However, these are difficult to implement or to monitor as a result of a lack of a clear legislative authority empowering the Minister or the DSD to enforce such decisions. As a result, there is no uniformity in the implementation of social development mandates by provinces as some provinces follow through on decisions and some do not. Essentially, the DSD suggests that there is a mischief or defect in the legislation enacted pursuant to section 41(2) of the Constitution that needs to be remedied namely the lack of a statutory enforcement mechanism in the Intergovernmental Relations Framework Act.

It was deemed prudent to assess the aforesaid request against the Commission’s criteria for the selection of new projects. The Commission’s preliminary investigation confirmed, inter alia, that indeed there is a **lacuna** in the legislative framework that needs to be remedied either through the amendment of Act 13 of 2005 or the adoption of sectoral-based legislation along the line envisaged in section 146 of the Constitution. On this basis alone, the Commission was persuaded that this project



should be formally included in its programme. On 10 December 2016, the Commission considered the outcome of the preliminary investigation and approved the inclusion of this investigation in its programme. And, due to the centrality of the issues to the DSD and provincial governments' ability to discharge their constitutional mandate to alleviate poverty and eradicate inequality, the Commission assigned priority "A" rating to this inquiry.

### **Ordinances for the abolition of Dog Racing with regards to Sled dog sports**

The President of South African Federation of Sleddog Sports, Dr Wolfgang H. Meyer, requested the SALRC to examine the Ordinances for Abolition of Dog Racing with regards to Sleddog Sports. On 18 June 2015 the Secretary gave the researcher a copy of a request for assessment.

The researcher commenced with research for a viability study to ascertain whether an investigation should be included in the SALRC's research programme. The researcher submitted the first draft preliminary investigation report to the supervisor on 18 April 2016. The researcher received comments from the supervisor on 12 May 2016. The researcher met with supervisor and Secretary to decide on the way forward and it was decided that letters should be written to the Department of Trade and Industry and the Department of Sport and Recreation to inform them about the request the SALRC received and to request their views on the matter. The letters were written to the Department of Trade and Industry and Department of Sport and Recreation and delivered to the respective departments on 05 August 2016. The researcher has made several follow-ups but has received no response.

The researcher, her supervisor and the Secretary met on 8 December 2016 to discuss the way forward. It was decided that in light of limited research capacity and the low priority assigned to the investigation that the pre-investigation should not continue. A letter was written to the requester informing them of the decision and such letter was posted on 10 February 2017.

### **Investigation into the fairness of the Revised Rules of the South African Local Authorities Pension Fund**

The Public Protector South Africa proposed consideration of an investigation into the fairness of the Revised Rules of the South African Local Authorities Pension Fund in relation to the submission of insurance claims.

A pre-investigation into the matter took place in order to determine whether the request falls within the mandate of the Commission, and if so, whether it should be included on its programme.

During November 2016, the proposal was referred to the Financial Services Board for investigation by the Registrar of Pension Funds, after it was determined that the latter office would be better placed, in line with its mandate, to deal with the issue arising from the proposal.



### **Proposal calling for amendment of the laws relating to interruption of extinctive prescription**

The group called Real People, a financial services and credit provider proposed consideration of an investigation into amendment of the Prescription Act in relation to the principles of interruption of extinctive prescription with special reference to debt collection processes provided for in the National Credit Act. The view is held that the principles of interruption in relation to the prosecution of debts to finality are prejudicial to both credit providers and consumers.

A pre-investigation into the matter is currently underway in order to determine whether the request falls within the mandate of the Commission, and if so, whether it should be included on its programme.

### **Re-instating the investigation on community courts**

On 7 September 2016 the SALRC received an electronic mail from the Deputy Director General: Legislative Development with an attached letter from the Minister of Justice and Correctional Services to the Chairperson of the SALRC. The Minister requested the Commission to favourably consider re-instating the investigation into community courts. The reason given for the request was that Parliament's Portfolio Committee on Justice and Correctional Services (Committee) is of the view that greater consideration should be given to using structures that are already in place to bring justice closer to communities. The Committee pointed out that although there are some community courts, in practice these have been subsumed into the mainstream system. The Minister further pointed out that the Committee had urged the Department to consider reviving the investigation by the Commission. The researcher was requested to deal with this issue as she was the researcher who worked previously on the investigation that was removed from the program of the SALRC.

The Commission met on Saturday 17 September 2017 to consider, among others, proposal papers, discussion papers and reports. The Proposal paper on community courts was also considered. After discussion the Commission resolved that the Chairperson should submit a letter to the Minister relating to the proposed SALRC investigation on community courts informing the Minister that the Commission has not yet decided to revive the investigation. The Commission identified a number of issues for further research before taking a final decision. A further communication would be addressed to the Minister as soon as the Commission has decided on the issue.

On 4 November 2016 the researcher requested from the DDG further information and clarification relating to the request by the Committee. The DDG: Legislative Development responded to the questions on 11 November 2016.

On 24 January 2017 the researcher provided quarter 3 progress on community courts to the DDG: Legislative Development through the Secretary. The researcher also provided a progress report to the DDG on 3 March 2017. At a meeting held on 14 March 2017 the DDG promised to arrange a meeting with the Deputy Minister and Mr Skosana for clarification on the mandate in relation to

community courts. The draft proposal paper, which applies the Commission's selection criteria for considering the inclusion of a research proposal in the Commission's research programme, will be considered by the Commission at its meeting on 20 May 2017.

## **Research proposals awaiting Minister's decision**

### **Violence against pregnant women**

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 in the SALRC programme of an investigation on the culpable and unlawful killing of an unborn baby by a third party. A proposal paper dealing with the South African legal position served before the Commission on 25 October 2008. This paper made reference to the Constitution, the "born alive" rule in common law, delict and succession, procedural law, murder, attempted murder, abortion and sentencing. It examined the international legal position, relevant international instruments, regional treaties, foreign jurisdictions, the phenomenon of violence against pregnant women, and local cases, and recommended the inclusion of the investigation.

After consideration of a supplementary proposal paper on 10 October 2009, the Commission approved the inclusion of the project under an amended title, "Violence against Pregnant Women". A memorandum to request the Minister for JCD to approve the inclusion of the project in the SALRC programme was submitted to the DOJCD in November 2009.

### **Protection of journalistic sources**

The Freedom of Expression Institute (FXI) requested the SALRC to investigate the amendment of section 205 of the Criminal Procedure Act to introduce a "shield law" to protect confidential journalistic sources and information. The issuing of subpoenas in 2009 and 2010 calling for two e-TV journalists to divulge their sources and confidential information highlighted the controversy around conflicting rights and the manner in which section 205 is abused. The question at the core of this conflict appears to be whether the public interest in compelling a journalist to reveal confidential information or his or her sources outweighs the public interest in the free flow of information.

The Commission approved the inclusion of the investigation in the SALRC programme on 14 August 2010. A memorandum to request the Minister for JCD to approve the inclusion of the project in the SALRC programme was submitted to DOJCD on 25 October 2010.



# Chapter 4:



Reports Completed

## CHAPTER 4

### REPORTS COMPLETED

#### Project 25 – Statutory Law Revision

##### Background to the project on statutory law revision

The advent of democracy and the adoption of the Constitution of the Republic of South Africa of 1996 necessitated a review of the country's legal, policy and institutional framework to ensure alignment with the Constitution. In January 2003 Cabinet approved that the Minister of Justice and Constitutional Development coordinates and mandates the SALRC to review South African legislation for provisions that may result in discrimination as described in section 9 of the Constitution. Section 9 prohibits unfair discrimination based on race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

In 2004 the SALRC included a review of the entire statute book of South Africa as an investigation in its law reform programme. The purpose of the investigation is two-fold:

1. To align the South African statute book with the Constitution, especially the right to equality entrenched in section 9 of the Constitution.
2. To provide a statute book that is free from obsolete and redundant provisions.

The South African Law Reform Commission (SALRC) finalised its reports on Project 25: Statutory Law Revision in respect of legislation administered by the Departments of Communications; Home Affairs; Justice and Constitutional Development & Water and Sanitation. The reports set out the SALRC's final recommendations for law reform regarding statutes administered by the four Departments referred to.

##### Legislation administered by the Department of Communications

The SALRC identified 90 statutes that were administered by the then Department of Communications as at 2008. On 7 July 2014 President Zuma signed a proclamation (Proclamation 47 of 2014 published on 15 July 2014 in Government Gazette No 37839), amongst others, transferring, in terms of section 97 of the Constitution, the administration, powers and functions entrusted by the legislation, to Cabinet members. The Ministry of Communications was affected by this proclamation. Communications related legislation was divided between the Minister of Communications and the Minister of Telecommunications and Postal Services. The report takes cognizance of this revision. On 17 September 2017 the Commission considered the draft report and approved its submission to the Minister of Justice and Correctional Services for referral to the Minister of Communications and the Minister of Telecommunications and Postal Services, to consider implementation. The SALRC makes the following findings and recommendations in this report:

## 1. The following Acts be repealed:

### (a) Legislation administered by the Department of Communications

- i. There are four Radio Amendment Acts which remain in the statute book although the underlying statute which they were enacted to amend, namely the Radio Act 3 of 1952, was repealed by the Telecommunications Act 103 of 1996 which was in turn repealed by the Electronic Communications Act 36 of 2005. Thus the four Radio Amendment Acts are obsolete and the SALRC recommends that they be repealed in their entirety. They are:
  - The Radio Amendment Act 2 of 1978;
  - The Radio Amendment Act 80 of 1980;
  - The Radio Amendment Act 24 of 1990; and
  - The Radio Amendment Act 99 of 1991.
- ii. There are six Broadcasting Amendment Acts which remain in force although the underlying statute which they were enacted to amend, namely the Broadcasting Act 73 of 1976, was repealed by the Broadcasting Act 4 of 1999. Thus the six Broadcasting Amendment Acts are obsolete and the SALRC recommends that they be repealed in their entirety. They are:
  - Broadcasting Amendment Act 61 of 1982;
  - Broadcasting Amendment Act 59 of 1986;
  - Broadcasting Amendment Act 113 of 1990;
  - Broadcasting Amendment Act 73 of 1993;
  - Broadcasting Amendment Act 50 of 1996;
  - Broadcasting Amendment Act 24 of 1997.
- iii. Two Independent Broadcasting Authority Amendment Acts remain in force although the underlying statute which they were enacted to amend, namely the Independent Broadcasting Authority Act 153 of 1993, was repealed by the Electronic Communications Act 36 of 2005. Thus the two Independent Broadcasting Authority Amendment Acts are obsolete and the SALRC recommends that they be repealed in their entirety. They are-
  - Independent Broadcasting Authority Amendment Act 36 of 1995;
  - Independent Broadcasting Authority Amendment Act 4 of 1996.
- iv. The Independent Media Commission Act 149 of 1993 was enacted to make provision for a particular historical event, namely, the first democratic elections which took place in 1994. The Independent Communications Authority of South Africa now performs the functions that were performed by the Independent Media Commission in the 1994 elections. The SALRC therefore recommends that the Independent Media Commission Act of 1993 be repealed in its entirety as the Act has fulfilled the purpose for which it was enacted.

- (b) Legislation administered by the Department of Telecommunications and Postal Services (DTPS)
- i. The Telegraph Messages Protection Act 44 of 1963 has become effectively repealed by the promulgation of subsequent legislation. The SALRC recommends that Telegraph Messages Protection Act of 1963 be repealed after the DTPS has considered the re-introduction of a definition of “telegram” in the Postal Services Act 124 of 1998.
  - i. The Durban Corporation Telephone Employees’ Transfer Act 88 of 1969 was promulgated to regulate certain matters arising out of the taking over of the telephone undertaking of the City Council of Durban by the State. The SALRC has not found any cogent reason for its continued existence in light of legislation that has superseded it. To this end, the SALRC recommends repeal for the following reasons:
    - The Act contains references that have been removed by legislation since 1994 and language which is inconsistent with the Constitution, such as “the Durban Corporation Non-European Pension Fund”, and reference to the “Department of Social Welfare and Pensions”.
    - The Act appears to have survived purely as a result of being overlooked for repeal.
    - “Matters incidental thereto” (transfer of benefits, employees, etc.) have been catered for in subsequent legislation such as the Former States Posts and Telecommunications Reorganisation Act 5 of 1996 and the Department of Communications Rationalisation Act 10 of 1998.
  - ii. The SALRC recommends that the Post Office Re-adjustment Amendment Act of 1972 be repealed as the primary legislation which it amends has been repealed, namely, the Post Office Re-adjustment Act 67 of 1968.
  - iii. The Public Service and Post Office Service Amendment Act 97 of 1976 amends the Public Service Act 54 of 1957 and the Post Office Service Act 66 of 1974 which have both been repealed. The SALRC therefore recommends the repeal of the Public Service and Post Office Service Amendment Act of 1976.
  - iv. The Former States Broadcasting Reorganisation Act 91 of 1996 was enacted to make provision for the incorporation of the broadcasting services of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei into the SABC or Sentech, as the case may be. As the reincorporation process has been completed, this statute is obsolete and the SALRC recommends that it be repealed in its entirety.
  - v. The Department of Communications Rationalisation Act 10 of 1998 came into effect on 1 April 1998. The objective of this Act is to provide for the transfer of all officers and employees of the Department of Communications to the public sector. This Act

provides for transitional arrangements relating to staff and financial matters for the transfer. As the transfer envisaged has already occurred and the purpose of this Act has been fulfilled, there is no need to keep the Act in the statute book. The SALRC recommends that this Act be repealed.

- vi. The Telecommunications Amendment Acts of 1997, 2001 and 2004 amend the repealed Telecommunications Act 103 of 1996 which was in turn repealed by the Electronic Communications Act 36 of 2005. The SALRC recommends that these amendment Acts, i.e., the Telecommunications Amendment Act 12 of 1997, Telecommunications Amendment Act 64 of 2001 and Telecommunications Amendment Act 2 of 2004 be repealed as they amend a repealed Act.
- vii. The Electronic Communications Amendment Act 37 of 2007 be repealed because its provisions are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution.

## **2 The following Acts be amended:**

- (a) Legislation administered by the Department of Communications
  - i. Broadcasting Act 4 of 1999
    - The Broadcasting Act was substantially amended by the Electronic Communications Act 36 of 2005, (the ECA) such that it is, today, essentially an SABC Act. However there are some sections that still pertain to broadcasting generally although many of these have been virtually repealed by the provisions of the ECA. The SALRC recommends that these sections be deleted as it is anomalous to have two pieces of legislation dealing with broadcasting. All of the issues dealt with in sections 3 and 5 of the Broadcasting Act have been effectively superseded by the provisions of the ECA and it is anomalous to have two pieces of legislation governing the same issues, particularly when the ECA takes precedence over the provisions of the Broadcasting Act in terms of section 94 of the ECA.
    - In section 8(g) the words "subject to section 33 of the Act" must be deleted because they have been virtually repealed by the repeal of section 33 by section 97 of the ECA.
    - Section 8A "Conversion": the Broadcasting Act contains a number of subsections relating to the conversion of the SABC into a corporation which have become spent, that is, the purposes for which they were enacted have been completed and section 8A need no longer contain these sub-sections. Consequently the SALRC recommends that the following subsections of section 8A be deleted: subsections (4), (11), (12), (13) and (14).



- Section 10 “Public Service”: the Broadcasting Act contains a subsection (3) which deals with various matters to be effected before the conversion of the SABC. This subsection has become spent, that is, the purpose for which it was enacted has been completed and the Broadcasting Act need no longer contain this subsection. Accordingly the SALRC suggests that sub-section 10(3) be deleted.
  - Section 11 “Commercial Services”: the Broadcasting Act contains a subsection (2) which deals with various matters to be effected before the conversion of the SABC. This sub-section has become spent, that is, the purpose for which it was enacted has been completed and the Broadcasting Act need no longer contain this sub-section. Consequently the SALRC recommends that sub-section 11(2) be deleted.
- ii. The Media Development and Diversity Agency Act 14 of 2002 contains a reference in section 3(b)(vii) to the “Universal Service Agency”. That body was renamed in terms of section 80(1) of the Electronic Communications Act 36 of 2005 to the “Universal Service and Access Agency of South Africa”. Consequently the SALRC recommends that the new name be reflected in the Media Development and Diversity Agency Act of 2002 in order to keep it up to date with the legislative changes introduced by the ECA.
- (b) Legislation administered by the Department of Telecommunications and Postal Services
- i. Sections 107 and 108 of the Post and Telecommunication-related Matters Act of 1958 differentiate in favour of Telkom as against competitors and customers, and could not withstand a constitutional review under section 9(1) of the Constitution. They should therefore be deleted.
- ii. Sentech Act 63 of 1996
- The Sentech Act contains a definition of “broadcasting service licensee” although that term no longer appears anywhere in the Act. Consequently the Commission recommends that the definition be deleted.
  - The Sentech Act contains definitions of “broadcasting signal distribution”, “SABC” and “Sentech (Pty.) Ltd.”, which definitions are used only in those sections which have become spent, as the purposes for which they were enacted have been completed, and the Sentech Act needs no longer to refer to “broadcasting signal distribution”, “the SABC”, or to “Sentech (Pty.) Ltd.” should the spent sections be deleted as suggested below. Consequently, the SALRC recommends their deletion.

- Section 2 “Transfer of shareholding in Sentech (Pty.) Ltd. to State”: as the actions contemplated in this section have long since been completed, it is recommended that this section be deleted as having become spent.
  - Section 3 “Transfer of assets and liabilities of the SABC relating to signal distribution to Sentech (Pty.) Ltd. or to Sentech Limited”: as the actions contemplated in this section have long since been completed, it is recommended that this section be deleted as having become spent.
  - Section 4 “Conversion of Sentech (Pty.) Ltd.”: as the actions contemplated in this section have long since been completed, it is recommended that this section be deleted as having become spent.
- iii. Section 45(1)(a) of the Postal Services Act 124 of 1998 should be deleted as it deals with deposits which are dealt with in the South African Postbank Limited Act 9 of 2010.
- iv. Electronic Communications and Transactions Act 25 of 2002 (ECTA)
- The ECTA defines the “Internet” as an ‘interconnected system of networks that connects computers around the world using TCP/IP and includes future versions thereof’. The SALRC submits that this definition has been superseded as courts have made a ruling on the nature of the Internet. The SALRC proposes change in the definition of the Internet as it could be updated and be made simpler.
  - Section 5(1) of the ECTA has become spent as it deals with the development of the three-year national e-strategy within two years of the ECTA being promulgated. Section 5(1) should be amended to provide anew of the Minister to develop a national e-strategy which deals with the policy issues not covered by the Electronic Communications Act of 2005.
- v. Sections 34(16) and 43(11) of the Electronic Communications Act 36 of 2005 should be amended as they raise constitutional concerns in relation to section 9.

### Legislation administered by the Department of Home Affairs (DHA)

The SALRC identified 56 statutes that are administered by the DHA. On 10 December 2017 the Commission considered the draft report and approved its submission to the Minister of Justice and Correctional Services for referral to the Minister of Home Affairs to consider implementation. The SALRC makes the following findings and recommendations in this report:

1. The following statutes listed in the Home Affairs and Related Matters Amendment and Repeal Bill be repealed because they are redundant:

- (a) The Prohibition of Mixed Marriages Amendment Act 21 of 1968 is obsolete as it amends an Act which no longer exists, namely the Prohibition of Mixed Marriages Act 55 of 1949. The Prohibition of Mixed Marriages Amendment Act of 1968 should therefore be repealed.
- (b) Elections and Identification Amendment Act 92 of 1989 amends the Electoral Act of 1979. The Electoral Act of 1979 was repealed by the Electoral Act 202 of 1993 which in turn was repealed by the Electoral Act 73 of 1998. The provisions of the Elections and Identification Amendment Act of 1989 have become obsolete. It is therefore recommended that the Elections and Identification Amendment Act 92 1989 be repealed.
- (c) The Population Registration Act Repeal Act 114 of 1991 has become redundant. Its purpose was to repeal the Population Registration Act 30 of 1950 which provided for the compilation and maintenance of the population register which is now provided for in the Identification Act 68 of 1997. It is recommended that the Population Act Repeal Act of 1991 be removed from the statute book as it is redundant.
- (d) The purpose of the Aliens Control Amendment Act 3 of 1993 was to amend the Aliens Control Act 96 of 1991 (the principal Act) such as to provide for revised penalties and immigration arrangements. The Aliens Control Amendment Act of 1993 is redundant as the principal Act was repealed in its entirety by section 54(1) of the Immigration Act 13 of 2002. The SALRC recommends that the Aliens Control Amendment Act 3 of 1993 be repealed.
- (e) The purpose of the Abolition of Restriction on Free Political Activity Act 206 of 1993 (Abolition of Restriction on Free Political Activity Act) is to repeal or amend certain laws so as to abolish certain restrictions on political parties and other organizations and on certain publications, objects, films and public entertainments; to that end to empower the State President to repeal or amend certain laws in force in the Republic or in any area of the Republic, including the self-governing territories; and to provide for matters connected therewith. It is not clear from the provisions of the Abolition of Restriction on Free Political Activity Act as to who administers it. However, it appears that most of its provisions amended pieces of legislation that have now been repealed. Section 6(1) of Abolition of Restrictions on Free Political Activity Act, which is the only surviving section, empowers the State President to repeal, amend supplement or substitute any law that is applicable in the Republic. It must however be noted that section 6(2) limits the operation of section 6(1), as it provides that the power conferred upon the State president lapses on the dissolution of the Transitional Executive Council (TEC) established in terms of the Transitional Executive Council Act 151 of 1993 (TEC Act). Section 29 of the TEC Act provides for the duration of the TEC Act, as well as the TEC which has long taken place. The Abolition of Restrictions on Free Political Activity

Act has become redundant. It is recommended that it be removed from the statute book.

2. Specified provisions in the following Acts be repealed on the basis of obsolescence:
  - (a) Section 39(4) of the Marriage Act 25 of 1961 (the Marriage Act) provides that any provision of a repealed law which applies only in respect of “non-white persons or a particular class of non-white persons” shall continue to apply to them. Section 39(4) of the Marriage Act constitutes blatant inequality before the law and unfair discrimination on the specified ground of race. The section is also redundant, as the civil marriages of all population groups are governed by the same rules of the Marriage Act as the Act applies throughout the Republic. Section 39(4) of the Marriage Act should accordingly be repealed.
  - (b) Marriage Amendment Act 11 of 1964 (Marriage Amendment Act of 1964)
    - i. Section 1(1) of the Marriage Amendment Act of 1964 which amended section 12 of the Marriage Act, is obsolete as section 12 of the Marriage Act was subsequently substituted by section 5 of the Marriage Amendment Act 51 of 1970. Section 1(1) Marriage Amendment Act of 1964 should therefore be repealed.
    - ii. Section 2 of the Marriage Amendment Act of 1964 which amended section 15 of the Marriage Act, is obsolete as section 15 of the Marriage Act was subsequently repealed by section 6 of the Marriage Amendment Act 51 of 1970. Section 2 of the Marriage Amendment Act of 1964 should therefore be repealed.
  - (c) Marriage Amendment Act 19 of 1968 (Marriage Amendment Act of 1968)
    - i. Section 1 of the Marriage Amendment Act of 1968 which amended section 16 of the Marriage Act, is obsolete as section 16 of the Marriage Act was subsequently repealed by section 6 of the Marriage Amendment Act 51 of 1970. Section 1 of the Marriage Amendment Act of 1968 should therefore be repealed.
    - ii. Section 2 of the Marriage Amendment Act of 1968, which amended section 19 of the Marriage Act, is obsolete as section 19 of the Marriage Act was subsequently repealed by section 6 of the Marriage Amendment Act 51 of 1970. Section 2 of the Marriage Amendment Act of 1968 should therefore be repealed.
    - iii. Section 3 of the Marriage Amendment Act of 1968, which substituted section 22 of the Marriage Act, is obsolete as section 22 of the Marriage Act was subsequently substituted by section 1 of the Marriage Amendment Act 26 of 1972. Section 3 of the Marriage Amendment Act of 1968 should therefore be repealed.

- (d) Marriage Amendment Act 51 of 1970 ( the Marriage Amendment Act of 1970)
- i. Section 2 of the Marriage Amendment Act of 1970 which amended section 2(2) of the Marriage Act, is obsolete as section 2(2) of the Marriage Act was subsequently substituted by section 1(2) of the Population Registration Act Repeal Act 114 of 1991. Section 2 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - ii. Section 3 of the Marriage Amendment Act of 1970, which amended section 3(2)(c) of the Marriage Act, is obsolete as section 3(2)(c) of the Marriage Act was subsequently deleted by section 1(2) of the Population Registration Act Repeal Act 114 of 1991. Section 3 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - iii. Section 4 of the Marriage Amendment Act of 1970, is obsolete as its substitution of section 5(1) of the Marriage Act was subsequently substituted by section 1 of the Application of Certain Laws to Namibia Abolition Act 112 of 1990 and its addition of section 5(3) of the Marriage Act was subsequently undone by the complete repeal of section 5(3) of the Marriage Act by section 1 of the Application of Certain Laws to Namibia Abolition Act. Section 4 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - iv. Section 7 of the Marriage Amendment Act of 1970, which substituted section 22 of the Marriage Act, is obsolete as section 22 of the Marriage Act was subsequently substituted by section 1 of the Marriage Amendment Act 26 of 1972. Section 7 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - v. Section 9 of the Marriage Amendment Act of 1970, which amended section 26 of the Marriage Act, is obsolete as section 26 of the Marriage Act was subsequently substituted by section 2 of the Marriage Amendment Act 45 of 1981. Section 9 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - vi. Section 12 of the Marriage Amendment Act of 1970, which inserted section 38A into the Marriage Act, is obsolete as section 38A of the Marriage Act was subsequently repealed by section 2 of the Marriages, Births and Deaths Amendment Act 41 of 1986. Section 12 of the Marriage Amendment Act of 1970 should therefore be repealed.
  - vii. Section 13 of the Marriage Amendment Act of 1970, which inserted section 39A into the Marriage Act, is obsolete as section 39A of the Marriage Act was subsequently repealed by section 1 of the Application of Certain Laws to Namibia Abolition Act 112 of 1990. Section 13 of the Marriage Amendment Act of 1970 should therefore be repealed.

- (e) Section 2 of the Marriage Amendment Act 12 of 1973 relates to certain provisions which used to apply specifically to the civil marriages of Blacks. The section is redundant, as our law no longer distinguishes between the civil marriages of Blacks and the civil marriages of other population groups. The SALRC recommends that section 2 of the Marriage Amendment Act of 1973 should be repealed.
3. Specified provisions in the following Acts be amended:
- (a) Sections 1, 3(1) and (2), 10(2), 12(a), 24(2), 25(1) and (4), 26(1), 29(2), 30(1) and 37 of the Marriage Act 25 of 1961.
  - (b) Sections 5(1), (2), (4) and (6), 10(2) and 12 of the Civil Union Act 17 of 2006.
  - (c) Section 1 of the Referendums Act 108 of 1983.
  - (d) Section 2(2) of the Public Holidays Act 36 of 1994

**Legislation administered by the Department of Justice and Constitutional Development:  
(3) The review of the Criminal Procedure Act, 51 of 1977**

The SALRC reviewed the Criminal Procedure Act, 51 of 1977, as part (3) of the review of the legislation administered by the Department. The report deals with the following aspects:

Chapters 1 to 11 of the Act, which include sections 6 to 74, form the terms of reference of Part 1 of the analysis in the report. Part 1 includes the following topics, namely, the powers of the prosecuting authority (chapter 1); searches and seizures (chapter 2); procedures for accessing the bodily features of an accused as evidence (chapter 3); methods of securing the attendance of the accused in court (chapter 4); arrest (chapter 5); summons procedures (chapter 6); written notice to appear in court (chapter 7); admission of quilt fines (chapter 8); bail procedures (chapter 9); release on warning (chapter 10); and assistance to the accused (chapter 11).

Chapters 12 to 22 dealing with sections 75 to 178 of the Act are dealt with in Part 2 of the report and includes the following topics, namely, summary trials; mental illness; the charge; jurisdiction; the plea, including a plea of "guilty" or "not guilty"; pleas in magistrates' courts on charges judiciable in a superior court and regional court; preparatory examinations; and conduct of proceedings.

Chapters 23 to 33 dealing with sections 199 to 345 of the Act are discussed in Part 3 of the report and includes the following topics, namely, witnesses; evidence; conversion of trial into enquiry; competent verdicts; previous convictions; sentencing; compensation and restitution; reviews and appeals; appeals from proceedings in superior courts; mercy and pardon; and general provisions.

The proposed recommendations for amendments in the report in essence relate to references that are in conflict with the equality clause because they use male pronouns exclusively (e.g. "he", "his" and "him" without "she", "her" and "her", respectively) and the amendment of references to Acts, bodies, organisations, etcetera that have been superseded by new legislation.

## Legislation administered by the Department of Water and Sanitation

The SALRC reviewed the 11 statutes administered by the Department of Water and Sanitation (DWS) and found no provisions which infringe the equality provisions of the Constitution in the legislation reviewed. Three statutes administered by the DWS were identified for possible amendment. The proposed amendments are of a technical nature and concern out-dated references to the DWS; and other out-dated references to bodies, organisations and institutions in the following Acts: the Water Research Act, 1971; the Water Services Act, 1997; and the National Water Act, 1998. It was recommended that these obsolete expressions be amended to reflect the 2014 configuration of the former Department of Water Affairs to include the sanitation function; and that the other out-dated references to bodies, organisations and institutions be amended to reflect the current position. Out-dated references to the DWS were also identified in six Acts administered by other government departments. It was recommended that these obsolete expressions be amended to reflect the 2014 configuration of the former Department of Water Affairs to include the sanitation function. Amendment of the following Acts were recommended in the latter regard: Foodstuffs, Cosmetics and Disinfectants Act, 1972 (administered by the Department of Health); Over Vaal Resources Limited Act, 1993 (administered by the Department of Public Enterprises); Genetically Modified Organisms Act, 1997 (administered by the Department of Agriculture, Forestry & Fisheries); National Environmental Management Act, 1998 (administered by the Department of Environmental Affairs); Nuclear Energy Act, 1999 and National Radioactive Waste Disposal Institute Act, 2008 (both administered by the Department of Energy). All recommendations are contained in a draft Bill entitled the 'Water Related Matters Amendment Bill' which is attached to the report.

The report was approved by the SALRC at its meeting held on 17 September 2016 and was submitted to the Minister of Justice and Correctional Services on 2 December 2016.

### Project 126 – Review of the Law of Evidence

The Commission approved the final report on the review of the law of evidence at its meeting on 10 December 2016. The Commission's recommendations are:

#### A. The Electronic Communications Transactions Act (ECT Act)

1. The SALRC recommends a review of the ECT Act. Many of the provisions of the ECT Act have never been implemented or have become obsolete. By and large, there is consensus that the ECT Act should be reviewed regularly as a matter of priority.
2. The definitions in the ECT Act should be amended. The ECT Act's definition of a data message includes 'voice, where the voice is used in an automated transaction'. The SALRC proposes deleting this from the definition of a data message. The SALRC proposes the expansion of the definition of a data message to embrace future technologies that are not 'electronic'. The SALRC proposes the expansion of the definition of a data message to include 'digital, magnetic,



optical and electromagnetic or similar means' by which data messages can be generated, sent, received or stored'.

3. Section 14 of the ECT Act is clear regarding what is deemed to be an 'original'.
4. The SALRC recommends that the scope of the ECT Act remain unaltered.
5. The SALRC recommends that the regulation of electronic signatures in the ECT Act should be amended in line with the European Union Regulation and the adoption of a three-tier approach.
6. The SALRC recommends that the ECT Act should be amended to provide for standards for the accreditation of foreign signatures.
7. The Commission recommends that the ECT Act be amended to link the national electronic identification scheme to access to public services; to introduce other electronic trust services related to electronic delivery service, electronic seals, electronic time stamps, and website authentication.
8. The Commission recommends the establishment of an appropriate forum comprised of multiple stakeholders to conduct the review of the ECT Act.
9. The Commission recommends that the forum should conduct regular reviews of the ECT Act.

## **B. Electronic Evidence**

1. The Commission recommends law reform, through the introduction of a single statute to regulate electronic evidence.
2. The Commission supports the view that hearsay evidence made by a person in an electronic document should be treated in the same way as hearsay evidence in a paper-based document on the principle of technological neutrality. On the interaction of the ECT Act with the CPEA, the CPA and the LEAA, the Commission supports a less fragmented approach to the admissibility of documentary evidence and therefore proposes reform: through amending and supplementing existing provisions.
3. The Commission supports the maintenance of a distinction between automated data messages and data messages 'made by a person' and proposes statutory reform to guide the production and proof of both types of evidence in court.
4. The Commission supports the development of a handbook or a Guide on obtaining and producing electronic evidence that will provide clarity, to practitioners and judicial officers, on the legal position and advice on technical aspects of producing electronic evidence in court to avoid unnecessary confusion.



5. The Commission does not recommend the adoption of a presumption of regularity in relation to mechanical devices in the law of evidence. The Commission recommends that the question of presumptions receive the attention of a standing committee/working group to be established
6. The Commission recommends the adoption of a limited presumption (placing an evidential burden on the other party who did not object on notice) in civil proceedings.
7. The Commission recommends the review and amendment of the Rules of Court and other related laws to clear conflicts and inadequacies and to align the law of evidence to the effective use of electronic evidence in courts.

### **Referral of the reports to the respective Ministers**

The Commission approved the Report on Statutory Law Revision: Legislation administered by the Department of Communications on 17 September 2016 for publication and referral thereof to the relevant Minister. The report was submitted to the Minister of Justice and Correctional Services for referral to the Minister of Telecommunications and Postal Services and the Minister of Communications on 24 March 2017.

The Commission approved the Report on Statutory Law Revision: Legislation administered by the Department of Home Affairs on 10 December 2016 for publication and referral thereof to the relevant Minister. The report was submitted to the Minister of Justice and Correctional Services for referral to the Minister of Home Affairs 28 March 2017.

The Minister of Justice and Correctional Services approved the report on the review of Legislation administered by the Department of Water and Sanitation on 26 January 2017, and referred it to the Minister of Water and Sanitation, and the Ministers of the following other government departments on 6 March 2017: Health; Public Enterprises; Agriculture, Forestry & Fisheries; Environmental Affairs; and Energy.

The Commission approved the Report on Statutory Law Revision: Legislation administered by the Department of Justice and Constitutional Development (3) The review of the Criminal Procedure Act on 28 May 2016. The report was submitted to the Minister on 1 November 2016.



# Chapter 5:

Public Relations

## **CHAPTER 5**

### **PUBLIC RELATIONS**

#### **Public consultation**

The SALRC relies extensively on the cooperation of institutions and persons who have an interest in its investigations. The input of these external stakeholders contributes enormously to the efficient functioning of the SALRC. To ensure the best possible involvement of interested parties, SALRC policy requires that we inform members of the South African public of new investigations that we initiate, and of issue papers and discussion papers that are published for general information and comment. SALRC issue papers and discussion papers are released by way of media statements to ensure good coverage. However, the SALRC also directly sends issue papers and discussion papers to institutions that have an interest in specific investigations. Responses to these documents form an indispensable link in the process of law reform, and play an important role in the eventual recommendations made by the Commission in its reports.

Interaction with foreign law reform bodies and institutions

#### **Association of Law Reform Agencies of Eastern and Southern Africa**

South Africa, through the SALRC, is a member of the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA). ALRAESA was established at a seminar on Best Practices in Law Reform held in Dar-es-Salaam, Tanzania, in October 2000. South Africa is currently the treasurer of ALRAESA. The Secretary of the SALRC, with the assistance of the Assistant Secretary, manages the bank accounts of ALRAESA, which are held in South Africa.

On 25-27 October 2016, the Assistant Secretary attended the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA) Annual General Meeting and Executive Committee Meeting, which were held in Swakopmund, Namibia. The purpose was to present the association's financial statements to the EXCO Meeting. Exco welcomed the report on the association's finances.

The EXCO suggested that its next meeting be held in Mauritius in June 2017.

#### **Visit by a delegation from Viet Nam**

A delegation from Viet Nam undertook a comparative study tour to South Africa in September 2016 and as part of their visit the delegation met with the SA Law Reform Commission officials on 15 September 2016.

The Vietnamese delegation consisted of the following officials:

- HE. Le Tien Chau, Vice Minister of Justice - Head of the delegation;
- HE. Ha Hung Cuong, former Minister of Justice;
- Ms. Duong Thien Huong, Deputy Director General of the International Cooperation Department, Ministry of Justice;

- A Leader of the National Legal Aid Agency, Ministry of Justice;
- Mr. Bui Duc Hien, Deputy Head of Division, Office of the Ministry of Justice;
- Ms. Nguyen Minh Hang, Deputy Head of Division, International Cooperation Department, Ministry of Justice;
- Ms. Nguyen Thi Bich Van, Lawyer of Ha Noi Bar Association;
- A representative from a Notary Office;
- Ambassador Hoang Le.

The delegation was received by the Chairperson of the SA Law Reform Commission, Judge Jody Kollapen; Mr Nelson Matibe, the Secretary of the SA Law Reform Commission; Mr Masibulele Chris Mfunzana, the Assistant Secretary of the SA Law Reform Commission and all researchers of the SA Law Reform Commission. They were briefed about the legislative mandate of the South African Law Reform Commission, as well as its research work processes and procedures.

### **Internships at South African Law Reform Commission**

The SALRC hosted 3 legal interns, namely, Ms Zwivhuya Makuya; Mr Fhulufhelo Mufandilani and Ms Mosima Patricia Phala. The contract period for the internships was limited to 12 months, beginning from 1 March 2016 and ending on 28 February 2017.

Ms Zwivhuya Makuya was born in Thohoyandou (Limpopo). She obtained a Bachelor's Degree in Law from the University of Venda in 2015. She also obtained a Money Laundering Control Certificate from the University of Johannesburg in 2016. Her future plans included working in a compliance management environment as a compliance officer.

Mr Mufandilani Fhulufhelo was born in Vuwani (Limpopo). He obtained his Bachelor's Degree in Law from the University of Venda in 2015. During his study years he was involved in the facilitation of the National Schools Moot Court Competition, which was aimed at assisting pupils of different schools in and around the precinct of Thohoyandou to excel in legal research, legal drafting and presentation skills. He also participated in other community programmes, one of which was the Street Law programme, in which he was teaching basic human rights to prison inmates who were incarcerated in the Makhado and Matatshe Correctional facilities. Since joining the SALRC, Mr Mufandilani had fallen in love with law reform.

Ms Mosima Patricia Phala hails from Mokopane (Limpopo). She attended Abiot Kolobe Primary School in Leyden. In 2002 she was chosen to participate in a Science and Technology programme for young women, which was held in Durban. She matriculated from Nkube Senior Secondary in 2008. Ms Phala obtained her Bachelor's Degree in Law from the University of Limpopo in 2014. Before joining the SALRC, she served as a candidate attorney for a short while at TMN Kgomo & Associates in Tshwane. In 2015, Ms Phala attended the School for Legal Practice in Polokwane where she completed training on conveyancing.

After joining the SALRC, the three interns were exposed to all the work processes of the SALRC,

administrative and professional. In addition to the internal day-to-day work of conducting legal research, interns were also exposed to legal drafting through the attendance of legal drafting sessions with specialist state law advisers at the Legislative Development Chief Directorate of the Department of Justice and Constitutional Development. Moreover, interns had attended Juta and Sabinet practical legal research trainings. Also, they were exposed to the Socio Economic Impact Assessment System (SEIAS), which must be conducted before any legislation is supported by government.

### **Ismail Mahomed Law Reform Essay Competition**

The Ismail Mahomed Law Reform Essay Competition is a joint venture between the South African Law Reform Commission and Juta & Co. The competition was established in honour of the late Chief Justice and former Chairperson of the South African Law Reform Commission. The aim of this competition – generally an annual event at the SALRC – is to encourage critical legal writing by students, while generating new innovative ideas for the reform of the law. The initiative also seeks to encourage legal scholarship and public dialogue on the link between law reform, human rights and the rule of law. All LLB and LLM students registered at any South African university are eligible to enter the competition.

The 2015 cycle of the Ismail Mahomed Law Reform Essay Competition began in March 2015 and closed on 31 January 2016. This cycle marked the twelfth year of this competition's active seasons. As at 31 January 2016, a total of 45 essays were received as entries to the Competition. An impressive total of 34 essays were for the LLB category whereas only 11 essays were for the LLM category of the competition. The essays were submitted by students registered at the following universities: Nelson Mandela Metropolitan University, North-West University, Rhodes University, University of Cape Town, University of KwaZulu-Natal, University of Limpopo, University of Pretoria, University of South Africa, University of Stellenbosch, University of the Western Cape, Witwatersrand University and University of Johannesburg.

The adjudication panel was appointed in February 2016 to evaluate the essays and identify the winners and runners-up of the 2015 competition. The panel consisted of professors Enyinna Nwauche (Faculty of Law, Rhodes University); Aifheli Enos Tshivhase (Faculty of Law, Nelson Mandela Metropolitan University) and Dr Nombulelo Lubisi (Deputy Dean, Faculty of Law, University of Fort Hare). However, Dr Lubisi later pulled out from being an assessor and reasons were provided to the coordinator of the competition.

In view of the number and quality of the content of essays received, the panel unanimously agreed that the Ismail Mahomed Law Reform Essay Competition Prize should be awarded in both the LLB and LLM category for the 2015 cycle. Based on the overall scores awarded to the essays, the panel also decided that the prizes for the 2015 competition should be awarded to the following students:

**LLB CATEGORY**

- Ms Aadelah Shaik Yakoob from the University of Pretoria (joint winner) for her essay titled "Ambiguity surrounding the powers of the public protector –a threat to the rule of law."
- Ms Stefanie Busch from the University of Cape Town (joint winner) for her essay titled "Promoting Access to Affordable Generics."
- Kessler Perumalsamy from the University of the Western Cape (runner up) for her essay titled "Dignity in death: A constitutional analysis of assisted suicide in South Africa."

**LLM CATEGORY**

- Ms Alecia Pienaar from the University of Cape Town (winner) for her essay titled "The tangibility of corporate social responsibility in relation to transparent environmental management in the absence of judicial enforcement: a case note on the decision of the supreme court of appeal in Arcelormittal South Africa v Vaal Environmental Justice Alliance."
- Mr Sibusiso Mbutho from the University of KwaZulu-Natal (runner up) for his essay titled "The judicial test for defensible affirmative action measures: A critique of the rationality standard of judicial review."

The award ceremony for the 2015 Ismail Mahomed Law Reform Essay Competition was held at the Forever Hotel on 09 September 2016. The keynote speaker was the former Public Protector of South Africa, Advocate Thuli Madonsela.

The 2016 cycle of the Ismail Mahomed Law Reform Essay Competition began in February 2016 and closed on 31 January 2017. This cycle marked the thirteenth year of this competition's active seasons. As at 31 January 2017, a total of 24 essays were received as entries to the Competition. An impressive total of 20 essays were for the LLB category whereas only 4 essays were for the LLM category of the competition. The essays were submitted by students registered at the following universities: University of Cape Town, University of KwaZulu-Natal, University of Pretoria, University of South Africa, University of Stellenbosch, University of the Western Cape, Witwatersrand University and University of the Free State (Varsity College).

The adjudication panel was appointed in February 2017 to evaluate the essays and identify the winners and runners-up of the 2016 competition. The panel consisted of Professor Nomthandazo Ntlama (Faculty of Law, University of KwaZulu-Natal); Dr Ademola Jegede (Faculty of Law, University of Venda); Dr Leah Ndimurwimo (Faculty of Law, Nelson Mandela Metropolitan University) and Ms Rolien Roos (Faculty of Law, North-West University).

In view of the number and quality of the content of essays received, the panel unanimously agreed that the Ismail Mahomed Law Reform Essay Competition Prize should be awarded in both the LLB and LLM category for the 2016 cycle. Based on the overall scores awarded to the essays, the panel also decided that the prizes for the 2016 competition should be awarded to the following students:

**LLB CATEGORY**

- Ms Alexandra Rees from the University of Witwatersrand (winner) for her essay titled "Justice diverted: Is the extent of prosecutorial discretion afforded by the Child Justice Act conducive to meeting a constitutional 'best interests' imperative?."
- Ms Justine Banda from the University of South Africa (runner up) for her essay titled "Consensual adult prostitution: An assessment on the criminalization of the buying and selling of sexual services in South Africa."

**LLM CATEGORY**

- Ms Nondumiso Phenyane from the University of Cape Town (winner) for her essay titled "Issues in crime and justice: Organized Non-State Violence in Africa (State responses to organized protest action in South African universities: A perspective approach to protest action."
- Mr Mmiselo Freedom Qumba from the University of Pretoria (runner up) for his essay titled "Protection of foreign investors in the Protection of Investment Act 22 of 2015."

The award ceremony for the 2016 Ismail Mahomed Law Reform Essay Competition will be held at Leriba Hotel & Spa on 15 September 2017. The keynote speaker will be the Honourable Judge President Dunstan Mlambo, Gauteng Division of the High Court.

**Electronic and printed media and liaison**

The SALRC maintains good relations with the electronic and print media sectors. 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.

The Secretary deals with enquiries about the work of the SALRC on virtually a daily basis. These enquiries come from media representatives, other state departments, professionals, universities, NGOs, and members of the public. In addition to dealing with routine enquiries on a regular basis, researchers and advisory committee members participate in various programmes and discussions relating to their research projects. These take the form of, among others, interviews at 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. The participants include 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 that are initiated by organisations other than the SALRC, both nationally and abroad. They are invited by other government departments, NGOs and other institutions to attend seminars or conferences and to participate in workshops relating to investigations on the SALRC 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 helps to avoid duplication of research initiatives.

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:

<b>Project 25</b>	General inquiries from Adv Nadene Badenhost	25 July 2016
Legislation administered by the Department of Home Affairs (DHA)  Ms Maureen Mloi	Joshua Generation Church relating to Discussion Paper 133	12 July 2016
Mr Irvin Lawrence (Project leader)	General inquiries from the public relating to Discussion Paper 133.	Throughout the reporting period
<b>Project 90</b>  Customary Law  Ms Maureen Mloi	The project enjoys continuous external and media attention and the researcher received several general enquiries regarding customary marriages and customary law of succession. Enquiries by members of the legal profession and the public on the current legal position regarding traditional courts and the way forward with the Traditional Courts Bill were attended to by the researcher.	Throughout the reporting period

<b>Project 94</b> Alternative Dispute Resolution (ADR)  Ms Ananda Louw	Attended a conference, "Court Annexed Mediation: Successes, Challenges and Possibilities" at Wits University.	20 and 21 July 2016
	Met with Mr Lourens Grove, UP Law Clinic, to discuss both ADR and Care and contact issues	30 August 2016
	Attended a conference at UNISA hosted by the Institute for Dispute Resolution in Africa entitled "The Harmony Model for Dispute Resolution in Africa: Together Towards a Culture of Harmony"	17 November 2016
	Responded to general enquiries regarding the investigation	Throughout the reporting period
<b>Project 100 D</b>  Care of and contact with children  Ms Ananda Louw	Attended a National Child Care and Protection Forum Meeting hosted by the Department of Social Development Forum.	8-9 June 2016
	She participated in three, hour-long UNISA Radio talk shows on the issues discussed in Project 100D at the UNISA Radio station in Sunnyside: Chapter 2: Policy issues; Chapter 3: Procedural issues; and Chapter 4: structure.	23 May 2016 13 June 2016 3 October 2016
	She attended the SAAM conference, "Building an Ethical Mediation Profession" in Randburg.	27 and 28 July 2016
	Attended the FAMAC mediation conference in Cape Town.	14 and 15 September 2016
	Attended the Miller Du Toit Conference in Cape Town and made a presentation entitled "Twenty years Reshaping Family Law and Issue Paper 31."	17 and 18 March 2016
	Met with Department of Social Development to discuss the submissions received on the Issue Paper and in order to update the DSD on progress made in the investigation.	28 September 2016
	Met with Adv Pieter du Rand, Director, Court Services, DOJCD.	5 October 2016
	Initiated, arranged and attended a meeting with Madam Justice Elizabeth Baartman, Mr Jeremy Chaskalson and other stakeholders at Judge Baartman's Chambers in Cape Town to discuss the viability of Justice Centres (PFLCs).	12 January 2017

	Hosted a meeting with Mr Patrick Hundermark, the Chief Legal Executive of LASA, together with other representatives, to discuss the Board's involvement in mediation in South Africa.	28 March 2017
	Provided the Office of the Deputy Minister with information and informal advice regarding family arbitration at their request.	25 October 2016
	Meeting with officials from the Department of Health on primary health care and family relationship centres.	6 April 2017
	Disseminated information and documents in respect of the investigation among interested parties, especially when they contacted the Commission for that purpose.	Throughout the reporting period
Project 100 Family law and the law of persons  Review of aspects of matrimonial property law  Ms Anna-Marie Havenga	General and specific enquiries and correspondence from members of the public on the content of the investigation, and on the relevance of the investigation to problems related to matrimonial property issues on divorce.	Throughout the reporting period
Project 107 Sexual Offences:	General and specific enquiries from internal and external stakeholders.	Throughout the reporting period
Criminal Law (Sexual Offences and Related Matters Amendment Act) 32 of 2007	Assisted the DOJCD with information on the Portfolio Committee on Justice and Constitutional Development's reasons for drafting section 18 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act.	13 June 2016
Ms Dellene Clark	Provided information to the Branch Legislative Development on the rationale behind amendments to section 18 of the Criminal Procedure Act in the Criminal Procedure Act in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	14 October 2016

	Provided information to the DDG Legislative Development on section 227 of the Criminal Procedure Act in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 in response to her enquiry on rape shield law.	18 October 2016
	Assisted the organization Green Hearts with regards to an email query on the offence of grooming.	28 October 2016
Adult Prostitution Ms Dellene Clark	The researcher has at the request of SANAC and with the approval of the Minister of Justice and Constitutional Development been serving on the SANAC Legal and Human Rights Technical Task Team since June 2012.	Ongoing throughout period
	Replied to an enquiry from the DA parliamentary researcher in respect of the background and status of Project 107.	7 April 2016
	Provided information/data for the SANAC NSP on HIV/AIDS, TB & STI indicators to the DOJCD for the period 2012/2013, 2013/2014 and 2014/2015.	20 May 2016
	Compiled responses to urgent media queries from local and international news agencies for the communication officers in DOJCD.	8 June 2016 and 14 June 2016
	Responded to media enquiries on the report by the Cape Argus.	13 July 2016
	Provided information to the organization Embrace Dignity in response to an urgent enquiry around adult prostitution and terminology.	21 July 2016
	Briefing of the Multi-Party Women's Caucus on Decriminalisation of Sex Work on behalf of the Commission and the DOJCD.	17 August 2016
	Attended the SANAC Government sector discussions on the new SANAC NSP 2017 – 2022.	21 -22 September 2016
	Identified by SANAC as an expert and requested to assist with the development of the new NSP as part of a Human Rights and Access to Justice Technical Working Group and attended the National Multi-Stakeholder Consultation on the Zero draft of the National Strategic Plan 2017-2022.	29 -30 September 2016
	Attended a strategic planning and writing session to strengthen the Human Rights, Stigma and Discrimination content of the SANAC NSP 2017 – 2022.	12 October 2016

Briefing of the Deputy President's office on Project 107.	19 October 2016
Provided the legal administrator of the Cause for Justice: Management Committee with information on the broad mandate of the investigation on sexual offences and adult prostitution.	28 October 2016
Attended the Equality Now and Embrace Dignity meeting on sex trafficking and prostitution in Africa and presented on the law reform process around sexual offences and adult prostitution.	31 October - 2 November 2016
Multi-Party Women's Caucus briefing on the legislative position on prostitution in African countries.	2 November 2017
Provided a student journalist from WITS journalism department information regarding the scope of the adult prostitution investigation and referred her to the departmental spokesperson for further enquiries.	11 November 2016
Channelled an enquiry regarding publication of the Report by a journalist from Al Jazeera to the Departmental Spokesperson and the Ministry of Justice.	8 December 2016
Participated in the Government Task Team Meeting to discuss Draft SANAC NSP 2017-2022.	13 February 2017
Attended the SANAC national multi-stakeholder consultation on the Draft National Strategic Plan 2017-2022.	21 February 2017
Presented on the existing legal framework pertaining to prostitution in South Africa at the Workshop for the South African Multi-Party Women's Caucus and other members of parliament convened by Equality Now and Embrace Dignity.	23 – 25 February 2017
Assisted the DPP's office with information regarding the current position on prostitution in preparation for an inter-departmental meeting.	8 March 2017
Submitted specific comment to the SANAC task team on the draft NSP.	9 March 2017
Attended the SANAC Plenary meeting as a GTT member.	17 March 2017
Corresponded with Ms Moodley of DOJCD in respect of Ms Navi Pillay's request for a copy of the Prostitution Bill.	16 March 2017
Attended a Wits Centre for Diversity Studies seminar on decriminalising sex work.	20 April 2016

	Ms Clark has continued to liaise with a cross-spectrum of stakeholders	Throughout the reporting period.
Pornography and Children Ms Dellene Clark	Ms Clark serves on a joint initiative by Child Welfare South Africa and ECPAT International on the Technical Working Group steering a five year project on combatting sexual exploitation of children. Meeting and Launch of the 4 Our Children Coalition.	22 April 2016
	Participation in the South African Coalition 4 Our Children National Children's Consultative Conference for children.	28 September 2016
	Attendance of the 4 Our Children Project Stakeholder's Forum meeting.	12 December 2016
	Presentation at the UNICEF National Conference on Child Online Protection in Windhoek.	18 -19 May 2016
	Attendance of SALRC consultative meeting on family dispute resolution.	5 - 6 April 2016
	SABC Education African EduWeek SaveTNet Cyber Safety Panel.	30 June 2016
	Attendance of the launch of the South African Kids Online Global Study by the Centre for Justice and Crime Prevention.	21 September 2016
	Attendance of the launch of the UNISA and Films and Publications Board initiative towards formally training staff implementing the Films and Publications Act.	6 October 2016
	Attendance of Interpol Computer Facilitated Crimes Against Children Training.	7 - 9 November 2016
	Corresponded with the NPA SOCA unit in respect of preparing of charges for possession of child pornography with a purpose of identifying best practice or to identify loopholes.	9 November 2016
	Corresponded with a sexual health educator for the purposes of providing current definitions on pornography for the editing of the learner manual "Sexy Smarts" aimed at empowering children with information on their sexual rights.	10 November 2016
	Corresponded with a school sexual health educator and provided her with the latest Optimus study relating to sexual abuse and children.	9 January 2017

	Attended the launch of research on digital parenting and online child safety by CJCP and Facebook and presentations from the Council of Europe.	29 November 2016
	Interviewed by Rahima Essop, a student of Columbia University in the USA doing post graduate studies on revenge pornography who had identified Ms Clark as an expert to interview.	19 December 2016
	Attended the Media Monitoring Africa workshop on hate crimes and social media.	20 January 2017
	Attended the Film and Publication Board's Johannesburg Distributor's Engagement Session.	13 March 2017
	Corresponded with Ms Madlala-Routledge, the Executive Director of Embrace Dignity who was attending a side panel on pornography at CSW61 in New York with regards to the linkages between prostitution and pornography and the dangers of separating child and adult prostitution and child and adult pornography.	20 March 2017
	Presentation on Responsible Digital Citizenship focusing on the dangers of taking and distributing explicit self-images (child pornography) made by Ms Clark to Sutherland High School	22 March 2017
Project 122 Assisted decision-making  Ms Anna-Marie Havenga	General enquiries and correspondence from members of the public on the current legal position regarding assisted decision-making for persons with Alzheimer's Disease and other mental disabilities and the SALRC's envisaged proposals for law reform.	Throughout the reporting period
Project 124: Protection of Personal information  Ms Ananda Louw	Provided Mr Sarel Robbertse, DOJCD, with comment and alternative draft amendment proposals on the proposed amendments of the PPI Act in terms of the Cyber Security Bill.	10-31 August 2016
Project 125 Prescription periods  Ms Theresa Häderli	Responded to general enquiries regarding the investigation and questions pertaining to the application of the law of prescription.	Throughout the reporting period

Project 126 Review of the Law Of Evidence	General and specific enquiries from members of the public on the content of the investigation, and on the relevance of the investigation to problems related to the admissibility of electronic evidence.	Throughout the reporting period
Project 135 The Review of the Witchcraft Suppression Act 3 of 1957  Ms Jennifer Joni	General enquiries regarding the discussion paper on the Review of the Witchcraft Suppression Act 3 of 1957.	Throughout the first quarter of the reporting period
Project 137 The expungement of certain criminal records  Mr Willie van Vuuren	General inquiries regarding the expungement of criminal records. This included discussions with the officials of the Department of Correctional Services, the Department of Justice and officials of NICRO	Throughout the reporting period
Project 138 The practice of ukuthwala  Ms Maite Modiba	General enquiries regarding the practice of ukuthwala	Throughout the reporting period

### Internet

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





# Chapter 6:



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 it with its activities in some respect. It is impossible, within the scope of this report, to mention all such contributors. However, the Commission expresses its sincere gratitude to all concerned. Without your goodwill and assistance, the Commission would not have been able to execute its mandate properly.

The Commission also wishes to express its appreciation to the various project leaders and advisory committee members, both within and outside the Commission, for providing advice and direction. Thank you for your input in evaluating the research and for the guidance you have given the SALRC researchers in compiling documents and reports. The willingness of individuals and organisations to serve on advisory committees of the Commission is valued.

The Commission would also like to thank the researchers in the Secretariat for their dedication and for the consistently high level of professionalism and excellent research standards which they have maintained. 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.

Finally, the administrative staff members are thanked for their contributions, which are indispensable for the success of the law reform process.



# Annexures:

## ANNEXURES

- ANNEXURE A : ISSUE PAPERS PUBLISHED BY THE COMMISSION
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- ANNEXURE C : INVESTIGATIONS INCLUDED IN THE COMMISSION'S PROGRAMME SINCE ITS ESTABLISHMENT
- ANNEXURE D : MEMBERS OF THE COMMISSION AND TERMS OF APPOINTMENT
- ANNEXURE E : CURRENT ADVISORY COMMITTEES AND MEMBERS
- ANNEXURE F : CURRENT PROGRAMME OF THE COMMISSION
- ANNEXURE G : PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES

**ANNEXURE A****ISSUE PAPERS PUBLISHED BY THE COMMISSION**

Serial number of issue paper	Project number	Title of investigation	ISBN number 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 17651 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 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 7 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

Serial number of issue paper	Project number	Title of investigation	ISBN number Publication date
15	59	Islamic marriages and related matters	0 621 30089 6 May 2000
16	119	Uniform national legislation on the fencing of national roads	0 621 30188 4 July 2000
17	118	Domestic partnerships	0 621 31574 5 September 2001
18	122	Incapable adults	0 621 31797 7 November 2001
19	107	Sexual offences: Adult prostitution	0 621 33159 7 July 2002
20	123	Protected disclosures	0 621 33555 X November 2002
21	121	Consolidated legislation pertaining to international cooperation in civil matters	0 621 33553 3 November 2002
22	130	Stalking	0 621 34410 9 August 2003
23	125	Prescription periods	0 621 34444 3 August 2003
24	124	Privacy and data protection	0 621 34530 X August 2003
25	131	Trafficking in persons	0 621 350168 January 2004
26	126	Review of the law of evidence	0 978 0 621 37676 0 March 2008
27	126	Electronic evidence in civil and criminal proceedings: Admissibility and related issues	978 0 621 389226 5 March 2010
28	100	Review of the Maintenance Act 99 of 1998	978 0 621 43034 9 September 2014
29	135	The review of the Witchcraft Suppression Act 3 of 1957	978 0 621 43033 2 September 2014
30	107	Sexual Offences (Pornography and Children)	978-0-621-43964-9 August 2015
31	100	Family Dispute Resolution: Care of and contact with children	978-0-621-44230-4 February 2016

**ANNEXURE B****DISCUSSION PAPERS PUBLISHED BY THE COMMISSION**

Since March 1983, serial numbers have been assigned to all discussion papers (previously referred to as working papers), with the numbers running consecutively. Only discussion papers published since March 1983 are listed below.

Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
1	37	Preference on insolvency	18 March 1983
2	22	Law of succession: Intestate succession	17 February 1984
3	9	Law of trusts	24 February 1984
4	41	Investigation into the possibility of making provision for a divorced woman to share in the pension benefits of her former husband	October 1984
5	49	Offences committed under the influence of liquor or drugs	10 August 1984
6	43	Investigation into the advancement of the age of majority	15 February 1985
7	38	Investigation into the legal position of illegitimate children	22 February 1985
8	33	Review of the law of prize	12 April 1985
9	25	Statute law: Investigation into the law relating to theft and house-breaking	Not published
10	51	Marriages and customary unions of black persons	13 September 1985
11	6	Review of the law of evidence	25 April 1986
12	57	Anton Piller type of orders	Not published
13	22	Review of the law of succession: The introduction of a legitimate portion or the granting of a right to maintenance to a surviving spouse	8 August 1986
14	22	Review of the law of succession: Formalities of a will	17 October 1986
15	24	Investigation into the courts' powers of review of administrative acts	2 January 1987
16	62	The protection of a purchaser of securities	27 April 1987



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

Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
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
48	62	The protection of a purchaser of shares	0 621 15848 8 October 1993

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

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

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

Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
96	73	Simplification of criminal procedure: A more inquisitorial approach to criminal procedure – police questioning, defence disclosure, the role of judicial officers and judicial management of trials	0 621 30683 5 April 2001
97	82	Sentencing: A compensation scheme for victims of crime	0 621 30687 8 April 2001
98	114	Publication of divorce proceedings: Section 12 of the Divorce Act 70 of 1979	0 621 30715 7 May 2001
99	108	Computer-related crime: Preliminary proposals for reform in respect of unauthorised access to computers, unauthorised modification of computer data and software applications and related procedural aspects	0 621 30718 1 May 2001
100	73	Simplification of criminal procedure: Out-of-court settlements in criminal cases	0 621 31591 5 October 2001
101	59	Islamic marriages and related matters	0 621 31794 2 December 2001
102	107	Sexual offences: Process and procedure	0 621 31809 4 December 2001
103	110	Review of the Child Care Act	0 621 31810 8 December 2001
104	118	Domestic partnerships	0 621 34421 4 August 2003
105	122	Assisted decision-making: Adults with impaired decision-making capacity	0 621 35014 1 January 2004
106	121	Consolidated legislation pertaining to international co-operation in civil matters	0 621 35115 6 June 2004
107	123	Protected disclosures	0 621 35116 4 June 2004
108	130	Stalking	0 621 35379 5 September 2004
109	124	Privacy and data protection	0 621 36326 X October 2005
110	134	Administration of estates	0 621 36328 6 October 2005
111	131	Trafficking in persons	0 621 36526 2 March 2006

Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
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	978 0 621 37675 3 March 2008
114	25	Statutory Law Revision: Legislation administered by the Department of Transport	978 0 621 37829 0 June 2008
115	25	Statutory Law Revision: Legislation administered by the Department of Housing	978 0 621 38319 5 November 2008
1/2009	107	Sexual Offences: Adult Prostitution	978 0 621 38498 7 May 2009
116	25	Statutory Law Revision: Legislation administered by the Department of Energy	978 0 621 39655 3 August 2010
117	25	Statutory Law Revision: Legislation administered by the Department of Labour	978 0 621 39656 0 August 2010
118	25	Statutory Law Revision: Legislation administered by the Department of Rural Development and Land Reform	978 0 621 39657 7 August 2010
119	25	Statutory Law Revision: Legislation administered by National Treasury – Legislation other than tax legislation	978 0 621 39738 3 October 2010
120	25	Statutory Law Revision: Legislation administered by the Department of Cooperative Governance and Traditional Affairs	978 0 621 39827 7 December 2010
121	25	Statutory Law Revision: Legislation administered by the Department of Public Works	978 0 621 39916 5 February 2011
122	25	Statutory Law Revision: Review of legislation administered by the Department of Communications	978 0 621 40070 0 May 2011
123	25	Discussion Paper 123 – Statutory Law Revision: Review of legislation administered by the Department of Defence and Military Veterans	978 0 621 40071 7 May 2011
124	25	Discussion Paper 124 – Statutory Law Revision: Review of legislation administered by the Department of Mineral Resources and ancillary legislation administered by other departments	978 0 621 40076 2 May 2011

Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
125	25	Discussion Paper 125 – Statutory Law Revision: Review of legislation administered by the Department of Basic Education	978 0 621 40077 9 May 2011
126	125	Discussion Paper 126 – Prescription Periods	978 0 621 40078 6 July 2011
127	25	Discussion Paper 127 – Statutory Law Revision: Review of legislation administered by the Department of Tourism	978 0 621 40469 2 October 2011
128	25	Discussion Paper 128 – Statutory Law Revision: Review of legislation administered by the Department of International Relations and Cooperation	978 0 621 40470 8 October 2011
129	25	Discussion Paper 129 – Statutory Law Revision: Review of legislation administered by the Department of Justice and Constitutional Development [Legislation on the legal professions, courts and institutions, civil procedure and evidence, substantive criminal law, substantive civil law, wills, estates and insolvency, constitutional and political legislation]	978 0 621 40490 6 October 2011
130	25	Discussion Paper 130 – Statutory Law Revision: Review of legislation administered by the Department of Justice and Constitutional Development [Legislation on family law and marriage]	978 0 621 40491 3 December 2011
131	126	The review of the law of evidence	978 0 621 42894 0 December 2014
132	138	The Practice of Ukuthwala	978 0 621 42949 7 1 September 2014
133	25	Statutory Law Revision: Review of legislation administered by the Department of Home Affairs	978 0 621 43280 0 20 January 2015
134	25	Statutory Law Revision: Review of legislation administered by the Department of Justice and Constitutional Development – (3) Review of the Criminal Procedure Act, 51 of 1977	978-0-621-43584-9 15 April 2015



Serial number of discussion paper	Project number	Title of investigation	ISBN Publication date
135	137	The review of the expungement of certain criminal records	978-0-621-43685-3 30 May 2015
136	25	Statutory Law Revision: Review of legislation administered by the Department of Environmental Affairs	978-0-621-43806-2 19 October 2015
137	25	Statutory Law Revision: Review of legislation administered by the Department of Science and Technology	978-0-621-43816-1 22 July 2015
138	138	The practice of Ukuthwala	978 0 621 44138 3 30 October 2015
139	135	The Review of the Witchcraft Suppression Act 3 of 1957	978 0 621 44208 3 19 January 2016
140	25	Statutory Law Revision: Review of legislation administered by the Department of Arts and Culture	978-0-621-44248-9 27 January 2016
141	25	Statutory Law Revision: Review of legislation administered by the Department of Water and Sanitation	978-0-621-44249-6 28 January 2016
142	25	Statutory Law Revision: Review of legislation administered by the Department of Public Service and Administration (DPSA)	978-0-621-44742-9 August 2016
143	25	Statutory Law Revision: Review of legislation administered by the Department of Social Development	978-0-621-44967-9 17 September 2016
144	25	Statutory Law Revision: Review of legislation administered by the Department of Trade and Industry	978-0-621-45003-3 31 October 2016

**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.

Project number	Title	Year of report	Reference number of published report	Result
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, since repealed, 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 necessities 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.

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

Project number	Title	Year of report	Reference number of published report	Result
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, obsolescence and constitutionality of legislation			See Chapter 3
	Legislation administered by the Department of Transport	2009	ISBN 0 621 40020 5	Transport Laws Repeal Act 10 of 2010 enacted.
	Legislation administered by the Department of Energy	2011	To be published	Under consideration by the Department of Energy
	Legislation administered by the Department of Human Settlements	2011	To be published	Under consideration by the Department of Human Settlements
	Legislation administered by the Department of Labour	2011	To be published	Under consideration by the Department of Labour

Project number	Title	Year of report	Reference number of published report	Result
	Legislation administered by the Department of Mineral Resources	2011	To be published	Under consideration by the Department of Mineral Resources
	Legislation administered by the Department of Public Works	2011	To be published	Under consideration by the Department of Public Works
	Legislation administered by the Department of Rural Development and Land Reform	2011	To be published	Under consideration by the Department of Public Works
	Legislation administered by National Treasury	2011	To be published	Under consideration by the National Treasury
	Legislation administered by the Department of Defence	2014	To be published	Defence Laws Repeal and Amendment Act 17 of 2015 enacted.
	Legislation administered by International Relations and Cooperation	2014	To be published	Under consideration by the Department of International Relations and Cooperation
	Legislation administered by the Department of Tourism	2015	To be published	See Chapter 3
	Legislation administered by the Department of Communications	2016	To be published	See Chapter 3
	Legislation administered by the Department of Home Affairs	2016	To be published	See Chapter 3

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

Project number	Title	Year of report	Reference number of published report	Result
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 SALRC – 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	Enactment of the following: 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.



Project number	Title	Year of report	Reference number of published report	Result
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.
47	Unreasonable stipulations in contracts and the rectification of contracts	1998	RP 133/1998 ISBN 0 621 28678 8	Under consideration by 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 Second Amendment 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.

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

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 printed	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.

Project number	Title	Year of report	Reference number of published report	Result
66	Reform of the South African law of bail			
	Report	1992	Not published	Referred back for consideration
	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 Department of Justice and Constitutional Development – report submitted to the Department in December 2000.
	Fourth interim report: Sentence agreements	2001	RP 120/2001 ISBN 0 621 31452 8	Criminal Procedure Second Amendment Act 62 of 2001 enacted.

Project number	Title	Year of report	Reference number of published report	Result
	Fifth interim report: A more inquisitorial approach to criminal procedure	2002	RP 219/2002 ISBN 0 621 33510 X	Report under consideration by 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 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 – now regulated by the Children's Act 38 of 2005.

Project number	Title	Year of report	Reference number of published report	Result
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, since repealed and re-enacted in the Children's Act 38 of 2005.
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 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	Report published 4 April 2011.	Recommendations not implemented. See Chapter 4
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.
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.

Project number	Title	Year of report	Reference number of published report	Result
	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 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 Second 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 Department of Justice and Constitutional Development – report submitted to the Department in September 1998.

Project number	Title	Year of report	Reference number of published report	Result
89	Declaration and detention of persons as State patients in terms of the Criminal Procedure Act, 1977, and the release of such persons in terms of the Mental Health Act, 1973, including the onus of proof regarding the mental condition of an accused or convicted person	1995	RP 100/1996 ISBN 0 621 17494 7	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 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	Traditional Courts Bill [Bill 15 – 2008] introduced into Parliament on 2 April 2008, reintroduced into Parliament on 7 July 2009.
	Customary law of succession	2004	ISBN 0 621 38482 6	Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 enacted. The Act commenced on 20 September 2010.
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



Project number	Title	Year of report	Reference number of published report	Result
92	The re-evaluation of the offence created by section 1 of Act 1 of 1988.	-	-	Struck off
93	Speculative and contingency fees.	1996	RP 37/1997 ISBN 0 621 17648 6	Contingency Fees Act 66 of 1997 enacted
94	Arbitration			
	International arbitration	1998	RP 30/1999 ISBN 0 621 28861 6	See Chapter 3.
	Domestic arbitration	2001	ISBN 0 621 31453 6	See Chapter 3.
	Alternative Dispute Resolution	-	-	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 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

Project number	Title	Year of report	Reference number of published report	Result
100	Family law and the law of persons			
	Access to minor children by interested persons	1996	RP 107/1996 ISBN 0 621 17515 3	Recommendations incorporated in the Children's Act 38 of 2005.
	Domestic violence	-	See Annexure G	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.
	Care of and contact with minor children	-	-	See Chapter 3
	Review of aspects of matrimonial property law	-	-	See Chapter 3
	Hindu marriages	-	-	See Chapter 3
	Review of the law of maintenance	-	-	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 Department of Justice and Constitutional Development – report submitted to the Department in June 2001.
102	The civil jurisdiction of courts	-	-	Struck off
103	Capping of claims against the Multilateral Motor Vehicle Accidents Fund	-	-	Struck off
104	Money laundering and related matters	1996	RP 31/1997 ISBN 0 621 17621 4	Financial Intelligence Centre Act 38 of 2001 enacted.

Project number	Title	Year of report	Reference number of published report	Result
105	Review of security legislation			
	Monitoring and Interception Prohibition Act 127 of 1992	1999	RP 203/1999 ISBN 0 621 29897 2	Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 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 enacted.
107	Sexual offences	2002	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
	Pornography and children	-	-	See Chapter 3
108	Computer-related crimes	-	-	Struck off
109	Review of the Marriage Act	2001	RP 117/2001 ISBN 0 621 31454 4	The Department of Home Affairs published Government Gazette Notice 13 of 2008 on 14 January 2008 to invite comment on the draft Marriage Amendment Bill of 2008. The Department of Home Affairs published Government Gazette Notice 149 of 2009 on 13 February 2009 to invite public comment on the draft Marriage Amendment Bill of 2009.

Project number	Title	Year of report	Reference number of published report	Result
110	Review of the Child Care Act	2002	RP 17/2003 ISBN 0 621 33584 3	Children's Act 38 of 2005 and Children's Amendment Act 41 of 2007 enacted.
111	Jurisdiction of magistrates' courts in constitutional matters	1998	RP 80/2000 ISBN 0 621 30062 4	Recommendations not implemented.
112	Sharing of pension benefits	1999	RP 82/2000 ISBN 0 621 30060 8	Report under consideration by Department of Justice and Constitutional Development – report submitted to the Department in June 1999.
113	Use of electronic equipment in court proceedings	-	-	Struck off – continued as part of Project 126
	Postponement of criminal cases via audio-visual link	2003	RP 211/2003 ISBN 0 621 34990 9	Criminal Procedure Amendment Act 65 of 2008 enacted.
114	Publication of divorce proceedings	2002	RP 217/2002 ISBN 0 621 33572 6	Report under consideration by 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

Project number	Title	Year of report	Reference number of published report	Result
118	Domestic partnerships	2006	ISBN 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	2006	ISBN 0 621 38480 2	Report under consideration by Department of Justice and Constitutional Development – report submitted to the Department in August 2008.
122	Assisted decision-making	-	-	See Chapter 3
123	Protected disclosures	2007	ISBN 0 621 38278 5	Report under consideration by Department of Justice and Constitutional Development – report submitted to the Department in November 2008.
124	Privacy and data protection	2009	ISBN 0 621 38922 7	Protection of Personal Information Act 4 of 2013 passed.
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.

Project number	Title	Year of report	Reference number of published report	Result
129	Review of aspects of matrimonial property law	-	-	Struck off – see Project 100.
130	Stalking	2006	ISBN 978 0 621 38320 1	Protection from Harassment Act 17 of 2011 enacted.
131	Trafficking in persons	2008	ISBN 0 621 38926 5	Prevention and Combating of Trafficking in Persons Act 7 of 2013 passed.
132	Abolition of the oath	-	-	Struck off
133	A specific civil action in respect of consequential damages arising from hoaxes	-	-	Struck off
134	Administration of estates			
	Interim report	2008	ISBN 0 621 38277 8	Interim report under consideration by Department of Justice and Constitutional Development – interim report submitted to the Department in November 2008.
135	Review of witchcraft legislation	-	-	See Chapter 3
136	Multi-disciplinary legal practices	-	-	See Chapter 3
137	Expungement of certain criminal records	-	-	See Chapter 3
138	The practice of ukuthwala	-	-	See Chapter 3
139	Review of the Interpretation Act	-	-	See Chapter 3
140	The Right to Knowledge of One's Own Biological Origins	-	-	See Chapter 3
141	Medico-Legal Claims	-	-	See Chapter 3
142	Legal Fees	-	-	See Chapter 3
143	Maternity and Paternity Benefits for Self-Employed Workers	-	-	See Chapter 3

**ANNEXURE D**  
**MEMBERS OF THE COMMISSION AND TERMS OF APPOINTMENT**

Title/Name	Term of office
<b>Chairpersons</b>	
Judge D H Botha, Judge of Appeal	28/09/1973 to 28/12/1975
Chief Justice P J Rabie	27/02/1976 to 31/05/1982
Judge G Viljoen, Judge of Appeal	30/09/1982 to 30/11/1988
Judge H J O van Heerden, Judge of Appeal	01/12/1988 to 31/12/1995
Chief Justice I Mahomed	01/01/1996 to 17/06/2000
Judge Y Mokgoro, Judge of the Constitutional Court	03/11/2000 to 31/12/2006 01/01/2007 to 31/12/2011
Judge MML Maya, Judge of the Supreme Court of Appeal	19/07/2013 to 31/03/2016
Judge JN Kollapen, Judge of the High Court	01/04/2016 to date
<b>Vice-Chairpersons</b>	
Judge President N James	28/09/1973 to 13/07/1977
Judge G Viljoen, Judge of Appeal	22/09/1977 to 27/09/1982
Judge H J O van Heerden, Judge of Appeal	30/09/1982 to 30/11/1988
Judge P J J Olivier, Judge of Appeal	01/12/1988 to 31/12/1998
Judge Y Mokgoro, Judge of the Constitutional Court	01/01/1999 to 02/11/2000
Judge M L Mailula, Judge of the High Court	01/01/2002 to 31/12/2006
Judge W L Seriti, Judge of the High Court	01/01/2007 to 31/12/2011
<b>Full-time members</b>	
Mr G G Smit	01/01/1982 to 31/12/1995
Judge P J J Olivier	01/02/1986 to 31/03/1995
Prof R T Nhlapo	01/01/1996 to 30/09/2000
Prof I P Maitlhuhi	26/03/2001 to 31/12/2006
Ms T Madonsela	01/01/2007 to 14/10/2009
<b>Members</b>	
Mr D J du P Geldenhuys	28/09/1973 to 31/10/1975
Mr C P Joubert SC	28/09/1973 to 20/08/1974
Mr J E Knoll	28/09/1973 to 31/12/1995
Mr D D van Niekerk SC	28/09/1973 to 31/01/1979
Prof A D J van Rensburg	28/09/1973 to 30/08/1982
Mr H J O van Heerden SC	30/09/1974 to 11/08/1976
Mr J C Ferreira SC	22/09/1975 to 31/10/1979
Mr M Bliss QC	07/10/1976 to 24/02/1977

Mr F H Grosskopf SC	01/07/1977 to 21/11/1980
Mr G G Smit	01/02/1979 to 01/01/1982
Mr P A J Kotzé	01/11/1979 to 30/10/1988
Mr P M Nienaber SC	14/06/1981 to 27/07/1982
Mr P J J Olivier SC	30/09/1982 to 01/12/1988
Prof J T Delpont	30/09/1982 to 27/05/1987
Prof D J Joubert	21/12/1987 to 31/12/1995
Dr W G M van Zyl	01/11/1988 to 31/10/1991
Mr R P McLaren SC	24/07/1989 to 31/10/1990
Prof C R M Dlamini SC	08/05/1991 to 31/12/1995
Mr J A Venter	12/03/1992 to 31/12/1995
Judge Y Mokgoro	01/01/1996 to 31/12/1998
Mr J J Gauntlett SC	01/01/1996 to 31/12/2006
Mr P Mojapelo	01/01/1996 to 31/12/2001
Ms Z Seedat	01/01/1996 to 31/12/2006
Judge M L Mailula	01/01/1999 to 31/12/2001
Prof C E Hoexter	27/10/1999 to 31/12/2004
Judge C T Howie	03/11/2000 to 31/12/2006
Judge W L Seriti	01/01/2002 to 31/12/2006
Prof C Albertyn	01/01/2007 to 31/12/2011
Judge D Davis	01/01/2007 to 31/12/2011
Mr T Ngcukaitobi	01/01/2007 to 31/12/2011
Mr D Ntsebeza SC	01/01/2007 to 31/12/2011
Prof P J Schwikkard	01/01/2007 to 31/12/2011 12/08/2013 to 01/2014
Ms M Sello	01/01/2007 to 31/12/2011 12/08/2013 to date
Prof V Jaichand	12/08/2013 to date
Mr IBW Lawrence	12/08/2013 to date
Ms NT Siwendu	12/08/2013 to date
Prof AW Oguttu	02/01/2015 to date
Prof M Carnelley	02/01/2015 to date



**ANNEXURE E**  
**CURRENT ADVISORY COMMITTEES AND MEMBERS**

<b>Project</b>	<b>Members</b>	<b>Organisation</b>
Project 25 Legislation administered by the Department of Agriculture, Forestry and Fisheries	Ms D Collier	University of Cape Town
	Prof ML Mbaob	North-West University
	Ms M Moselakgomo	Agricultural Research Council
Project 25 Legislation administered by the Department of Basic Education	Prof V Jaichand (Project leader)	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 BP Wanda	University of Fort Hare
Project 25 Legislation administered by the Department of Communications	Prof AW Oguttu (Project leader)	SALRC
	Dr T Cohen	Neotel Regulatory Affairs
	Ms J Limpitlaw	Communications expert and lawyer
	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 Co-operative Governance and Traditional Affairs	Mr I Lawrence (Project leader)	SALRC
	Prof M Beukes	University of South Africa
	Mr J Brickhill	Legal Resources Centre
	Ms A du Plessis	North-West University
	Mr T Madlingozi	University of Pretoria
	Prof N Olivier	University of Pretoria
	Dr DM Pretorius	Bowman Gilfillan Inc Attorneys
	Ms R Roos	North-West University
	Mr M Tenza	Walter Sisulu University
	Prof H van As	Nelson Mandela Metropolitan University

<b>Project</b>	<b>Members</b>	<b>Organisation</b>
Project 25 Legislation administered by the Department of Environ- mental Affairs	Prof L Feris	University of Pretoria
	Prof L Kotze	North-West University
	Ms KO Lefenya	North-West University
	Mr T Murombo	University of the Witwatersrand
	Mr A Paterson	University of Cape Town
	Prof W Scholtz	North-West University
Project 25 Legislation administered by the Department of Health	Prof V Jaichand (Project leader)	SALRC
	Dr P Andanda	University of the Witwatersrand
	Adv A Hassim	Section 27
	Ms M Mushariwa	University of the Witwatersrand
	Ms K Pillay	University of the Witwatersrand
	Dr J Singh	University of KwaZulu-Natal
	Prof M Slabbert	University of South Africa
Project 25 Legislation administered by the Department of Higher Education and Training	Prof V Jaichand (Project leader)	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 BP Wanda	University of Fort Hare
Project 25 Legislation administered by the Department of Home Affairs	Mr I Lawrence (Project leader)	SALRC
	Ms A Bhamjee	University of the Witwatersrand
	Prof T Boezaart	University of Pretoria
	Prof M Carnelley	University of KwaZulu-Natal
	Prof J Heaton	University of South Africa
	Ms MAB Majoko	University of KwaZulu-Natal
	Adv N Morei	North-West University
	Prof T Mosikatsana	University of the Witwatersrand
	Mr J Pokroy	Pokroys Attorneys
	Mr C Watters	Watters Attorneys

Project	Members	Organisation
Project 25 Legislation administered by the Department of Justice and Constitutional Development	Mr I Lawrence (Project leader)	SALRC
	Mr R Badal	Raj Badal and Associates Attorneys
	Mr G Bradfield	University of Cape Town
	Ms K Lehmann	University of Cape Town
	Ms B Majiki	Majiki and Vuba Attorneys
	Adv M Malete	Pelo-Tshwaana Consultancy CC
	Prof L Meintjes van der Walt	University of Fort Hare
	Mr MM Mongake	North-West University
	Mr T Mutangi	University of Pretoria
	Ms C Ncube	University of Cape Town
	Dr I Nonjongo	University of Cape Town
	Prof M Paleker	University of Cape Town
	Ms K Phelps	University of Cape Town
	Prof M Reddi	University of KwaZulu-Natal
	Dr A Skelton	University of Pretoria
	Dr C Theophilopoulos	University of the Witwatersrand
Judge RH Zulman	Retired Judge of the Supreme Court of Appeal	
Project 25 Tax legislation administered by National Treasury	Prof V Jaichand (Project leader)	SALRC
	Prof R Franzen	University of South Africa
	Ms T Gutuza	University of Cape Town
	Mr C Louw	University of Pretoria
	Dr MO Mhango	University of the Witwatersrand
	Ms E Muller	University of Pretoria
	Prof L Olivier	University of Johannesburg
	Prof L van Schalkwyk	University of Stellenbosch
Project 25 Legislation administered by the Department of Rural De- velopment and Land Reform	Prof J Bekker	University of Pretoria
	Prof W du Plessis	North-West University
	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	Members	Organisation
Project 25 Legislation administered by the Department of Trade and Industry	Ms T Siwendu (Project leader)	SALRC
	Prof F Cassim	University of the Witwatersrand
	Prof P Delpont	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	North-West University
	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
	Prof E Snyman-Van De-venter	University of the Free State
	Prof JC Sonnekus	University of Johannesburg
Ms A Stern	Formerly of the University of the Witwatersrand	
Project 94 Arbitration	Adv M Sello (Project leader)	SALRC
International Arbitration	Prof D Butler	Emeritus Professor, University of Stellenbosch
Domestic Arbitration	Prof D Butler Judge J Hlophe Judge CM Sardiwalla Adv N Singh SC	Emeritus Professor, US Judge President Cape High Court Acting Judge, Land Claims Court Kwa-Zulu Natal Bar
ADR	Prof D Butler Adv P Pretorius SC Adv Rajesh Choudree	Emeritus Professor, US Johannesburg Bar Society of Advocates KZN
Project 100 Family law and the law of persons  Care of and contact with minor children	Judge D van Zyl (Chairperson)	Former Judge of the Western Cape High Court

Project	Members	Organisation
	Adv M Sello (Project leader)	SALRC
	Prof E Bonthuys	University of the Witwatersrand
	Adv F Bosman	Advocate of the High Court Former Chief Family Advocate
	Prof IP Maitthufi	University of Pretoria
	Prof T Mosikatsana	University of the Witwatersrand
	Prof J Mowatt	Rhodes University
Project 100 Review of aspects of matrimonial property law	Judge D van Zyl (Chairperson)	Retired Judge of the Western Cape High Court
	Adv M Sello (Project leader)	SALRC
	Prof E Bonthuys	University of the Witwatersrand
	Adv F Bosman	Advocate of the High Court Former Chief Family Advocate
Project 100 Review of the Maintenance Act	Prof M de Jong (Project Leader)	UNISA
	Mr I Lawrence	SALRC
	Ms S Erasmus	NPA- KZN
	Ms L Mbatha	National Movement for Rural Women
	Mr D Thulare	Magistrate, Tembisa Court
Project 107 Sexual offences  Pornography and children	Prof AW Oguttu (Project Leader)	SALRC
	Mr I Chetty	KINSA (South Africa)
	Mr D Cull	Internet Service Providers Association
	Adv R Meintjes (SC)	DDPP, National Prosecuting Authority
	Ms J van Niekerk	Childline; President International Society for the Prevention of Child Abuse and Neglect
	Brigadier A Pienaar	FCS South African Police Service
	<b>Ad hoc members:</b>	
	Mr S Risiba	CEO Film and Publications Board
	Ms P Linders	Department of Telecommunications & Postal Services
	Mr S Robbertse	State Law Adviser, DoJCD

Project	Members	Organisation
	Mr K Rutsha	Department of Communications
Project 126 Review of the law of evidence	Judge J Kollapen	Judge of the North Gauteng High Court
	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
	Prof T Pistorius	University of South Africa
Project 127 Review of administration orders	Prof V Jaichand (Project leader)	SALRC
	Prof André Boraïne	Dean of the Faculty of Law, University of Pretoria
	Mr Hein Viana	Acting Senior Magistrate, Soweto Section Head: Civil and Family
Project 135 Review of the Witchcraft Suppression Act	Prof Marita Carnelley (Project Leader)	SALRC
	Dr Theodore Petrus	University of Fort Hare
	Prof David Biltchitz	University of Johannesburg
	Dr Sibisiso Masondo	University of KwaZulu Natal
	Ms Likhapha Mbatha	National Movement for Rural Women
	Prof Pitika Ntuli	Retired professor
Project 138 The practice of <b>ukuthwala</b>	Prof NT Nhlapo (Project leader)	<b>Emeritus</b> Professor of the University of Cape Town
	Prof Marita Carnelley	SALRC
	Prof R Mqake	Retired Dean of the Faculty of Law, Rhodes University
	Prof T Meyiwa	Durban University of Technology
	Prof P Sithole	Public Service Commission

**ANNEXURE F**  
**CURRENT PROGRAMME OF THE COMMISSION**

Project number	Title
25	The establishment of a permanently simplified, coherent and generally accessible statute book <ul style="list-style-type: none"> <li>• Statutory law revision: Redundancy, obsolescence and constitutionality of legislation</li> </ul>
94	<ul style="list-style-type: none"> <li>• Alternative Dispute Resolution</li> <li>• Mediation</li> </ul>
100	Family law and the law of persons <ul style="list-style-type: none"> <li>• Care of and contact with minor children</li> <li>• Review of aspects of matrimonial property law</li> <li>• Review of the law of maintenance</li> <li>• Hindu marriages</li> </ul>
107	Sexual offences <ul style="list-style-type: none"> <li>• Sexual offences: Adult prostitution</li> <li>• Pornography and children</li> </ul>
122	Assisted decision-making
125	Prescription periods
126	Review of the law of evidence <ul style="list-style-type: none"> <li>• Hearsay and relevance</li> <li>• Electronic evidence</li> <li>• Cyber crime</li> </ul>
127	Review of administration orders
134	Administration of estates
135	Review of witchcraft legislation
136	Multi-disciplinary legal practices
137	Expungement of certain criminal records
138	The practice of ukuthwala
139	Review of the Interpretation Act 33 of 1957
140	The Right to Knowledge of One's Own Biological Origins
141	Medico-Legal Claims
142	Legal Fees
143	Maternity and Paternity Benefits for Self-Employed Workers

**ANNEXURE G****PAPERS PUBLISHED BY THE COMMISSION IN ITS RESEARCH SERIES**

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



Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
5	Profs F J Bosman, J De Smidt, H W van Soest & P van Warmelo	Observations on decided cases concerning antenuptial contracts written by Cornelius Neostadius	ISBN 0 621 09855 8
6	Profs R Feenstra, P van Warmelo & D T Zeffertt	Some cases heard in the Hooge Raad reported by Willem Pauw	ISBN 0 621 09715 2
7	Mr P J J Viljoen	South African Noter-up to the Institute of Justinian	ISBN 0 621 09743 8
8	Prof P van Warmelo and Adv C J Visser	Aantekeninge van Johannes Voet oor die Inleidinge van Hugo de Groot (text and translation)	Vol 1 ISBN 0 621 10641 0  Vol 2 ISBN 0 621 10642 9
9	Prof L J du Plessis	Translation of Vinnius' Tractatus de Pactis	ISBN 0 621 10277 6
10	Prof W J Hosten (ed and transl), Mrs C van Soelen and Mr P Ellis	Treatise on the quasicontract called promutuum and on the condictio indebiti by Robert-Joseph Pothier	ISBN 0 621 10722 0
11	Prof R Whitaker	Quaestiones juris privati by Cornelius van Bijkershoek	Vol 1 ISBN 0 621 10657 7  Vol 2 ISBN 0 621 10675 5
12	Profs J T Delpont and C R M Dlamini	Two lectures on law reform	ISBN 0 621 10670 4
13	Mr H C Smuts (ed)	Report on the Fourth International Congress with the theme Law and Computers, which was held in Rome from 16 to 21 May 1988	ISBN 0 621 12639 X
14	Mr P J J Viljoen	South African Noter-up to the Corpus Juris Civilis of Justinian including the Institutes of Gaius	ISBN 0 621 13088 5
15	Margaret Hewett (transl)	Censura Forensis Part I Book V by Simon van Leeuwen	ISBN 0 7970 2231 7

Serial Number	Author, editor, compiler, etc	Title or subject	Reference number
16	SALRC	Domestic Violence	Accessible on SA Law Reform Commission website
17	SALRC / GTZ	Empirical study of the sentencing practices in South Africa	ISBN 0 621 30091 8
18	SALRC / GTZ	Sentencing: An empirical, quantitative study on the progress and finalisation, including by conviction, of criminal matters reported to the police	ISBN 0 621 31582 6
19	SALRC / GTZ	Simplification of criminal procedure: Settlements out of court – a comparative study of European criminal justice systems	ISBN 0 621 29881 6











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