

**SOUTH AFRICAN LAW REFORM COMMISSION: CALL FOR SUBMISSIONS –
REPEAL OF COLONIAL AND APARTHEID LEGISLATION (PROJECT 149)**

The South African Law Reform Commission (SALRC) in collaboration with the Department of Justice and Constitutional Development is embarking on an investigation to identify and repeal and/or amend legislation enacted prior to 1994 or provisions therein which, on the face of it appears to be neutral and not in contravention with the values and ethos contained in the Constitution, but which was designed to foster the policies of apartheid. The Commission has instituted an advisory committee for this project comprising of Adv Ishmael Semanya SC, Adv Anthea Platt SC and Shannon Prof Hooctor.

The scope of this investigation is therefore quite wide and the inquiry will focus solely on legislation falling under the justice portfolio.

Legislation that is administered by other departments identified through the process of consultation will be forwarded to Parliament's Legal Services Unit which has been mandated by the National Assembly Programming Committee to initiate a similar process.

A number of measures and interventions were, over the years, initiated to remove apartheid laws from the statute book. The purpose of the Justice Laws Rationalisation Act, 1996, was to remove colonial and apartheid era legislation. A rigorous and robust constitutional review by the Constitutional Court also resulted in the declaration of a myriad of statutory provisions found by the Court to be inimical to the values and ethos contained in the Constitution.

Numerous other projects were also initiated or supported by government, such as the statutory law revision project conducted by the SALRC which focused on legislative compliance with section 9 of the Constitution and the removal of archaic terminology and reference to repealed legislation.

However, some pieces of legislation which are not overtly unconstitutional, unjust or anti-democratic, but that nonetheless still formed part of a suite of legislative enactments designed to foster the policies of apartheid, have survived. A few examples of these statutes include the Transkei Penal Code (Act 9 of 1983), the KwaZulu Act on the Code of Zulu Law (Act 16 of 1985) and the Riotous Assemblies Act (Act 17 of 1956).

The continued existence of these laws in our statute book still evokes painful memories. Government must, in a systematic manner, respond by reviewing and repealing these statutes.

At the same time, great care should be taken to ensure that the abrogation of these statutes does not leave or create a *lacuna* in the law.

As a preliminary step in the process of ridding our statute book of these pieces of legislation, aptly described by Justice Albie Sachs in *Moseneke v The Master* as ‘antithetical to a society envisaged in the Constitution’, the Commission invites individuals, organisations, professional bodies and interested parties to make **written submissions** to it in respect of these statutes, by **not later than 3 June 2021**.

Written representations and queries can be addressed as set out below:

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