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MEDIA STATEMENT BY SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING RELEASE OF DISCUSSION PAPER 156 – REPEAL OF THE TRANSKEIAN PENAL CODE, 1983 (ACT 9 OF 1983) – A SUB-PROJECT OF THE REVIEW OF COLONIAL AND APARTHEID LEGISLATION (PROJECT 149)

The South African Law Reform Commission (Commission) has released Discussion Paper 156 recommending the repeal of the Transkeian Penal Code, 1983 (Act 9 of 1983) for general information.

The SALRC was established by the South African Law Reform Commission Act 19 of 1973. It is an advisory body whose main aim is the renewal and improvement of South African law on a continuous basis.

The SALRC has, as part of its investigation aimed at weeding out unnecessary, obsolete and unconstitutional colonial and apartheid era legislation (Project 149: Review of Colonial and Apartheid Legislation) reviewed the Transkei Penal Code to establish whether it is still necessary, relevant, efficacious, consistent with the Constitution and whether its retention in the statute book is defensible, and if so, on what basis.

This preliminary study has revealed that:

- (a) With a few exceptions, the rules, offences and defences contained in the Code overlap with or have counterparts in the common law or heterogeneous statutory framework applicable to the rest of the Republic, resulting in legal dualism and legal uncertainty;
- (b) A handful of provisions of the Code have been:
 - (i) superseded by more recent legislation enacted by Parliament rendering these provisions redundant at best or at worst impliedly repealed; or
 - (ii) regulate matters that traditionally, and in terms of the Constitution, fall within the exclusive domain of local government, for example control of public nuisance; and that

In the light of these findings, the Commission has recommends that:

- (a) the Code **be wholly repealed and replaced with appropriate common-law and relevant statutes that are generally applicable in South Africa;**

- (b) the provisions of section 71(d) of the Code proscribing the obstruction of traditional leaders, stock inspector, local government officials in the performance of their duties be incorporated in the relevant national or provincial legislation or by-laws, if these are still deemed relevant and necessary; and that
- (c) various forms of nuisance and loitering regulated by the Code be transposed to the relevant by-laws of the municipalities where this legislation applies, if these are still deemed relevant.

With regard to offences in respect of which no provision is made in the existing legislative framework, that is, perjury by an interpreter; giving false information to a person authorised by law to receive it; breach of trust affecting the public by a person employed in public service; and discrimination, the question is whether the incorporation of these offences in the regulatory framework will add any value in the criminal justice system.

The Department of Justice and Constitutional Development has already initiated the legislative process to repeal the Code. The discussion paper is therefore published for general information.

The Secretary

South African Law Reform Commission

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Discussion Paper 156 is available on the SALRC's website at:

Printed copies of the discussion paper can be obtained free of charge from the SALRC on request. Kindly contact Mr Jacob Kabini at JaKabini@justice.gov.za or (012) 622-6346.

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ISSUED BY THE SECRETARY, SA LAW REFORM COMMISSION, CENTURION

DATE: 11 APRIL 2022