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**MEDIA STATEMENT BY SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING
RELEASE OF ISSUE PAPER 43 – REVIEW OF COLONIAL AND APARTHEID ERA
LEGISLATION ADMINISTERED BY THE DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT (PROJECT 149)**

South Africa's statute book still contains a considerable amount of colonial and apartheid era laws. The Department of Justice and Constitutional Development (DOJ&CD) has inherited, and is responsible for the implementation of, more than 100 of these. The necessity and efficacy of these laws has been questioned by law and policy-makers, ordinary South Africans and the courts, including the Constitutional Court. Some have already given rise to litigation and found to be odds with the Constitution, for instance, section 18(2)(b) of the Riotous Assemblies Act 17 of 1956.

Commissioned by the DOJ&CD, the South African Law Reform Commission has launched a review of these vestiges of our past, to determine whether they are constitutionally compliant, particularly with expressive rights. Laws found wanting in this regard will be recommended for amendment or repeal. This law reform project also provides opportunity to consider whether these pre-democratic era laws still serve a useful purpose. If they do not, they will be recommended for repeal.

The *preliminary analysis carried out by the Commission* suggests that a *handful* of these pre-democratic era laws are at variance with the Constitution; incompatible with social, economic and constitutional developments; deficient in some or other way; or have become spent, obsolete or redundant. These laws include:

- the so-called "Sunday observance laws", including the Prohibition of Exhibition of Films on Sundays and Public Holidays Act 16 of 1977, which restrict economic, public entertainment and other activities on Sundays and thus compel sabbatical observance of Christian Sabbath;
- the Commissions Act 8 of 1947 which, for one, is silent on the exercise of power to appoint a commission of inquiry by a Premier of a province; and secondly, seems to prohibit predictions of outcomes of commissions of inquiry;
- the Riotous Assemblies Act 17 of 1956, which still contains language deeply rooted in racist apartheid past, contains offences that are superfluous and section 18(2)(b) of which was declared unconstitutional by the Constitutional Court in a matter between the *EFF and the Minister of Justice*;
- the Prohibition of Disguises Act 16 of 1969 in relation to which we are asking whether there are aspects of the use of masks in public that require legislative reforms;
- sections 25, 185 and 205 of the Criminal Procedure Act 51 of 1977, which give enormous powers to the police, Director of Public Prosecutions, and compel journalists to divulge their sources;
- Section 44 of the General Law Further Amendment Act 93 of 1962, which prescribes additional penalty for defacement of property, inter alia, by making a graffiti; and

- the Indemnity Acts 61 of 1961 and 13 of 1977, which were intended to shield perpetrators of gross human rights violations relating to the Sharpeville massacre and 16 June 1976 uprisings from civil and criminal liability appear to have been virtually repealed or displaced by the Promotion of National Unity and Reconciliation Act 34 of 1995, which granted amnesty to persons who made full disclosure of human rights violations between March 1960 and October 1990.

There is thus potential for reform of this legislative framework. In accordance with its policy to consult widely and to involve the public in law reform process, the Commission has published an issue paper for general information and is inviting comments from interested parties on whether these laws are still necessary, how gaps and deficiencies contained therein should be remedied, and whether there are laws that have been inadvertently omitted in the issue paper that should be reviewed as part of, or in the course of, this inquiry.

The closing date for comments is 15 January 2024.

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ISSUED BY THE SECRETARY OF THE SOUTH AFRICAN LAW REFORM COMMISSION

DATE: 20 OCTOBER 2023

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