EMBARGO: FOR IMMEDIATE RELEASE

PRESS STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS RELEASE OF DISCUSSION PAPER 167 ON THE REVIEW OF SOUTH AFRICA'S BAIL DISPENSATION

The South African Law Reform Commission (Commission), in collaboration with the Department of Justice, has reviewed South Africa's bail regime as part of the review of the criminal justice system in general and the overhaul of the Criminal Procedure Act 51 of 1977 (the CPA). To this end, it has published a discussion paper containing its preliminary findings and proposals for law reform in this regard.

While South Africa's law on bail (Chapter 9 of the CPA), has been extensively revamped, particularly after the advent of constitutional democracy in 1994, to align it with constitutional injunctions and to address the scourge of violent crime and other shortcomings in the system, the assessment conducted by the Commission has unearthed areas, deficiencies or gaps in the statutory framework that require urgent attention. These are:

1. Improving participatory rights of victims of crime (and by extension complainants and witnesses) in the criminal justice system in general and bail proceedings;
2. postponement of bail proceedings, refusal to grant bail and delays in the finalisation of criminal matters and resultant lengthy pre-trial detention and overcrowding in correctional facilities;
3. affordability of bail;
4. fixed residential address as a prerequisite for bail;
5. strengthening police powers to grant bail;
6. regulating bail pending appeal;
7. granting bail to foreign nationals.

To address these gaps, the Commission has made the following recommendations in the discussion paper to which it requires comments and input from members of the public and interested parties:

(a) The inclusion in the CPA or law enacted to substitute it, of a chapter containing enforceable and justiciable provisions (rights) expressly stipulating how the victims of crime generally should be treated by organs of state operating in the criminal justice system and providing remedies for infractions of these injunctions. In relation to bail, the Commission has proposed that the victim must be informed of bail proceedings and outcome thereof; and that his or her views, particularly about his or her need for protection, must be solicited and considered. Importantly, the Commission has recommended that these rights must be vindicated in court if grievances by the victim about the protection, promotion and enforcement of his or her rights have not been resolved satisfactorily by the organ of state concerned.

(b) The analytical framework regulating postponements of bail applications and delay in sections 56(6)(b) and 342A of the CPA respectively be strengthened. For example, in respect of section 56(6)(d) the Commission recommended the inclusion of a requirement that the postponements of bail proceedings contemplated therein must not, considered cumulatively, be unreasonable or exceed reasonable time; and that where the court has found a delay to be unreasonable, it must consider whether it would not be in the interests of justice to release the accused on bail. In addition, the Commission has recommended that custody time limits (the maximum amount of time an accused may be held in custody during the pretrial stage and from the time the charge is laid to the completion of the trial should be 120 or 90 days, depending on the nature and gravity of the offence. Beyond this time limit, the incarceration, postponement or delay of the finalisation of the accused trial must be considered presumptively unreasonable and the accused must be released on bail unless the court orders otherwise.

(c) Serious consideration be given to;

- the incorporation of property bail – pledging movable or immovable property the values of which is commensurate with bail amount set by the court as security for bail. The Commission has further included in the discussion paper detailed provisions regulating how property bail should be implemented by the court should such an approach find favour with government and Parliament. To this end, the Commission has recommended, inter alia, that it should be the responsibility of the court to assess eligibility for and sufficiency of property for bail; that it should be an offence to deliberately and intentionally provide false information on the basis of which the court makes a determination of sufficiency of the bail and approves the release of the accused.

- Scrapping pre-trial detention for certain offences, for example, an offence for which punishment prescribed by the legislature is a fine (fine-only offence); or an offence for which more than two years' imprisonment may not be imposed; or a statutory offence for which a fine is prescribed as an alternative to imprisonment.
- Indigency be recognised as a basis for the variation of bail decisions and release of an accused on own recognizance.

(d) That section 50 of the CPA which stipulates procedure after arrest be amended by placing a duty on police officers to verify the address of the accused within 24 hours after arrest to obviate what has been described as 'the alarming rate of postponements of bail proceedings to verify the address of the accused before bail is granted.' Secondly, for the sake of legal certainty, the Commission has recommended that the requirement of fixed address be expressly incorporated into the law. Thirdly, that to ensure that an accused who does not have a fixed address is traceable and contactable while out on bail, the court should impose, inter alia, electronic monitoring condition – that the accused should wear a device that will detect and monitor his or her movements while out on bail.

(e) That police powers regarding bail be completely overhauled to-

- Give the power to grant bail only to a police officer of or above the rank of sergeant;
- Impose conditions that the accused must comply with while out on bail;
- Record his or her decision concerning bail;
- Render a bail decision reviewable by a senior police officer; and
- Require a police officer releasing an accused on bail to take all reasonable steps to inform the victim of the offence or complainant of the decision to release the accused, conditions imposed, and date of appearance of the accused in court.

(f) With the exception of an accused in a schedule 6 or 7 offence, which are regulated by section 58 of the CPA, in all cases where the accused has been convicted and/or sentenced and is appealing against same, he or she must prove to the court that it would be in the interests of justice to release him on bail.

(g) In respect of foreign nationals, the principles regarding bail currently in force seem adequate. More so, because section 60(4)(b) of the CPA expressly provides that the court could deny bail if it is probable that the accused will abscond.

The discussion paper is obtainable at the Commission's offices and is available for download on this link: https://www.justice.gov.za/salrc/dpapers.htm

The Commission encourages interested parties wishing to make inputs on the discussion paper to send their inputs by 31 March 2025 via email to CPAreform@justice.gov.za and fmdumbe@justice.gov.za

Alternatively, written submissions can be delivered by hand to the Commission's offices or sent via post to:

South African Law Reform Commission
Spooral Park Building
2007 Lenchen Avenue South
Centurion
0157

The Secretary
South African Law Reform Commission
Private Bag X668
Pretoria
0001

Inquiries can be directed to Mr Fanyana Mdumbe on (012) 622 6353 or fmdumbe@justice.gov.za