



**MINISTRY JUSTICE CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

MEDIA STATEMENT

**Statement
For Immediate Release
10 June 2020**

Addressing patriarchy given more impetus

The Minister of Justice and Correctional Services, Ronald Lamola, has welcomed the progressive steps taken by the National Assembly of the 6th Parliament to pass two amendment bills to remedy laws which have both had deeply layered patriarchal effects on our society. The amendment bills, namely, Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill and Recognition of Customary Marriages Bill are a series of various legislative amendments and bills which will be placed before Parliament for consideration. As our constitutional democracy evolves, it must expeditiously address toxic masculinity which still exists and simmers at the core of our society.

Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill:

Section 18 of the Criminal Procedure Act, 1997 (Act 51 of 1977) provides that after a period of 20 years, the prosecution of certain crimes is no longer possible due to the lapse of time. These exclusions included certain common law sexual offences, such as sexual assault. The new amendment bill provides that all sexual offences may be prosecuted regardless of the lapse of time.

Many survivors suffer in silence and either never disclose the offences at all - with the perpetrator escaping all consequence - or they only disclose over varying periods of time.

According to a Statistics South Africa Victims of Crime Report, extracted from the Governance, Public Safety and Justice Survey (GPSJS), for the 2018/19 financial year, the report revealed that the percentage of victims of sexual offences who reported at least one incident is 88%. This had increased from 73% in 2017/18.

The Ministry of Justice and Correctional Services believes that amendments such as these will encourage survivors of sexual offences to report these matters, even if the incidents took place many years ago, so that perpetrators of sexual offences are not met with impunity. It means that these crimes can be prosecuted irrespective of when the crime took place.

We are also cognizant of the fact that our criminal justice system still has to undergo more substantive reforms in order to systemically address any secondary victimization experienced by survivors in the criminal justice system.

It must be noted further that the amendment bill also ensures that crimes which relate to the common law offence of bribery and the offence of corruption in terms of the Corruption Act, 1992 (Act 94 of 1992) and offences related to the acquisition of a private interest, being an accessory to corruption, or aiding and abetting corruption in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) are also no longer subject to a time limitation in order to institute a prosecution.

These amendments are in no doubt significant developments in the fight against corruption.

Recognition of Customary Marriages Bill:

In the judgment on the matter of *Ramuhovhi and Others vs the President and Others*, (2018 (2) SA 1 (CC), delivered on 30 November 2017), the Constitutional Court found section 7(1) of Recognition of Customary Marriages Act, 1998 (the “RCMA”) to be inconsistent with the Constitution and invalid in that it discriminates unfairly against women in polygamous customary marriages entered into before the commencement of the RCMA (so-called “pre-Act marriages”) on the basis of gender and race, ethnic or social origin.

Section 7(1) of the RCMA provides that the proprietary consequences of customary marriages entered into before the commencement of the RCMA continue to be governed by customary law, in terms of which wives have no right of ownership and control over marital property, which right is reserved solely for the husband.

The amendment bill now provides that the proprietary consequences of a customary marriage in which a person is a spouse in more than one customary marriage, which was entered into before the commencement of the Act, are that the spouses in such a marriage have joint and equal ownership and other rights, as well as equal rights of management and control over marital property.

In *Gumede (born Shange) v President of the Republic of South Africa and Others* (2009 (3) SA 152 (CC) delivered on 8 December 2008), the Constitutional Court declared section 7(1) of the RCMA to be constitutionally invalid insofar as it relates to de facto monogamous customary marriages.

With the amendment, all monogamous customary marriages, whether they were entered into before or after the commencement of the RCMA are in community of property unless the spouses specifically determine otherwise by means of an antenuptial contract.

Through this amendment our constitutional democracy effectively brought to fruition the aspirations of the Women's Charter. In 1954 the Federation of South African Women declared that:

“We recognise that women are treated as minors by these marriages and property laws because of ancient and revered traditions and customs which had their origin in the antiquity of the people and no doubt served purposes of great value in bygone times.”

The amendment bills will now be sent to the National Council of Provinces for consideration. On the passing of the bills by the National Assembly, Minister Lamola said:

“Our constitutional democracy places emphasis on equality. This must permeate all aspects of our society. As the Women's Charter declares, the level of civilisation which any society has reached can be measured by the degree of freedom that its members enjoy.”

As a free and democratic society, we must forge ahead with great speed to ensure that in all facets of society, the status of women is attuned to the expectations of our constitutional democracy.”

Ends

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