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GENERAL NOTICE

NOTICE 725 OF 2013

The Portfolio Committee on Justice and Constitutional Development invites stakeholders and interested persons to submit written submissions on the draft Criminal Law (Sexual offences and Related Matters) Amendment Act Amendment Bill.

The closing date for submissions is 26 July 2013. Submissions and enquiries must be directed to

Mr. V Ramaano, Portfolio Committee on Justice and Constitutional Development, 3rd Floor, 90 Plein Street, Cape Town, 8000 or emailed to vramaano@parliament.gov.za or faxed to 086 565 9219

Issued by Hon. LT Landers
Chairperson: PC on Justice and Constitutional Development

REPUBLIC OF SOUTH AFRICA

CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT AMENDMENT BILL

—————
(PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

_____ Word underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to enable the Minister of Justice and Constitutional Development to designate courts for purposes of dealing with sexual offences; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:—

Insertion of Part 1A in Chapter 7 of index to Act 32 of 2007

1. The index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the insertion after Part 1 of Chapter 7 of the following heading:

"PART 1A
SEXUAL OFFENCES COURTS

Designation of sexual offences courts

55A. Designation of sexual offences courts".

Insertion of Part 1A in Chapter 7 of Act 32 of 2007

2. The following section is hereby inserted in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, after section 55:

"Part 1A:
Sexual offences courts

Designation of sexual offences courts

55A. (1) Subject to subsection (2), the Minister may by notice in the Gazette designate any Division of the High Court or Magistrate's Court, as defined in section 1 of the Superior Courts Act, 2013, as a sexual offences court dedicated for the purposes of the trial of any person or other proceedings arising out of an alleged commission of a sexual offence in terms of the common law, any offence in terms of the Sexual Offences Act, 1957 (Act No. 23 of 1957), or any offence in terms of this Act.

(2) The Minister must exercise the power provided for in subsection

(1) in consultation with the National Director of Public Prosecutions, the Chief Justice, the head of the court in question as defined in section 1 of the Superior Courts Act, 2013, and, in the case of a Magistrate's Court, the Judge President who, in terms of section 8(4)(c) of the Superior Courts Act, 2013, is responsible for the coordination of judicial functions of the Magistrates' Courts falling within his or her area of jurisdiction.

(3) Subject to subsection (4), the area of jurisdiction of a court designated in terms of subsection (1), is the area of jurisdiction determined in terms of section 2 of the Magistrates' Courts Act, 1944, in respect of a Magistrate's Court or in terms of section 6(3) of the Superior Courts Act, 2013, in respect of a Division of the High Court.

(4) The Minister may, in consultation with the persons referred to in subsection (2), by notice in the *Gazette* increase or decrease the area of jurisdiction of any Magistrate's Court designated in terms of subsection (1).

(5) This section does not preclude any court referred to in subsection (1) from dealing with the matters referred to in that subsection if it has not been designated as a sexual offences court."

Substitution of section 67 of Act 32 of 2007

3. The following section is hereby substituted for section 67 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007:

"Regulations

67. The Minister[,] ~~may—~~

(a) after consultation with the cabinet members responsible for safety and security, correctional services, social development and health and the National Director of Public Prosecutions, **[may]** make regulations regarding—

[(a)] (i) any matter which is required or permitted by this Act to be prescribed by regulation;

[(b)] (ii) the inter-sectoral implementation of this Act; and

[(c)] (iii) any other matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act; and

(b) in consultation with the Chief Justice, make any regulations necessary to give effect to the designation of the courts referred to in section 55A(1), including the requirements for the efficient and effective functioning thereof."

Short title and commencement

4. This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 In 1993 the first Sexual Offences Court was introduced in South Africa as a pilot project at Wynberg as an innovative measure to improve the prosecution and adjudication of sexual offences. The pilot proved to be a huge success resulting in the rolling out of further Sexual Offences Courts around the country. Due to a number of reasons the Sexual Offences Courts which were established have since become Dedicated Sexual Offences Courts with mixed court rolls that give priority to sexual offences cases.
- 1.2 The demise of the Sexual Offences Courts was criticized from different corners in view of, amongst others, the high rate of sexual violence perpetrated. The amendments proposed deal with the re-introduction of Sexual Offences Courts as announced in the media by the Minister of Justice and Constitutional Development. There is a need to provide for a legislative framework that expressly authorises the establishment of these courts.

2. OBJECTS OF BILL

2.1 Clause 1

Clause 1 contains a consequential amendment to the Index of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) (hereafter referred to as the Sexual Offences Act) due to the insertion by clause 2 of section 55A.

2.2 Clause 2

- 2.2.1 Clause 2 of the Bill inserts a new section 55A in the Sexual Offences Act, after section 55. The proposed new section confers upon the Minister the power to designate any court as a court dedicated for the purposes of the trial of any person or other proceedings arising out of the alleged commission of sexual offences which he or she may only exercise in consultation with the prosecution and the judiciary.
- 2.2.2 The clause regulates the area of jurisdiction of a court designated and the power is given

to the Minister to increase or decrease the area of jurisdiction of a Magistrate's Court so designated.

- 2.2.3 It also provides that this provision may not be interpreted as precluding any court referred to in this provision from dealing with the matters referred to in the provision if it has not been so designated. This is inserted to make it clear that all our courts can continue to deal with these matters in the normal course if there is no need for a dedicated court and designation.

2.3 Clause 3

Clause 3 amends section 67 of the Sexual Offences Act to provide that the Minister may, in consultation with the Chief Justice, make any regulations necessary to give effect to the designation of the courts referred to in section 55A(1), including the requirements for the efficient and effective functioning thereof."

3. FINANCIAL IMPLICATIONS

The Bill will have substantial financial implications for the Departments involved in the criminal justice system. However, the Sexual Offences Courts will only be designated once the necessary funding has been acquired to put in place the specified infrastructure, sufficient court personnel has been appointed and trained and professional multi-disciplinary services for victims are available. Some of the courts which were previously established as Sexual Offences Courts have some infrastructure in place and basic capacity to deal with sexual offences.

4. PARLIAMENTARY PROCEDURE

- 4.1 The Portfolio Committee on Justice and Constitutional Development (the Portfolio Committee) is of the opinion that the Bill must be dealt with in accordance with the

procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 4.2 The Portfolio Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.
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