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MEMORANDUM

[Confidential]

TO: Hon B Mbete, MP
The Speaker of the National Assembly

COPY: Ms B Tyawa
Acting Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Adv. Z Adhikarie – Chief Legal Adviser]
National Assembly Table
[Mr M Xaso – Secretary of the National Assembly]

DATE: 14 July 2017

SUBJECT: Pre 1994 legislation



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INTRODUCTION

1. The National Assembly Programming Committee (“NAPC”) requested our Office to assist in identifying Acts that were enacted before 1994 and that are still on the statute book. The purpose of the exercise is to identify legislation that is offensive or that contains discriminatory language, for repeal or amendment.

BACKGROUND

2. On 1 December 2016, our office reported to the NAPC that over a thousand pieces of legislation were identified. At that stage, our Office was in the process of verifying the list. We confirmed on 2 February 2017 that the list reflects at least 1850 Statutes or Acts.

3. Our office proposed that the Departments administering the different Acts be identified to provide inputs before a decision can be made on whether an Act should be amended or repealed. A blanket repeal of all the legislation identified would not be practical, as it would create gaps and uncertainty in the law.
4. We have identified most of the relevant Departments. Some Acts do not identify the responsible Minister or Ministry or refers to an obsolete Ministry. The South African Law Commission, which is engaged with a similar exercise, has advised that these Acts should be referred to the President to allocate the administration of such Act to a Department.

PROCEDURE TO DETERMINE REPEALS / AMENDMENTS

5. The list of pre 1994 legislation is ready to serve before the Rules Committee for further processing.
6. The list can be referred either to an ad hoc committee to liaise with every Department identified or to the respective portfolio committees. Referral to portfolio committees may be more effective as each portfolio committee has its own support staff to liaise with Departments. Furthermore, given the large number of Acts, amendments or repeals will also be easier to manage if done per portfolio.
7. Departments should be requested to review the Acts for which they are administratively responsible, focusing on any offensive content, impact and constitutional implications.
8. Once completed, Departments must table a report on the outcome of their reviews together with a proposed legislative programme dealing with amendments or repeals identified.

RECOMMENDATION

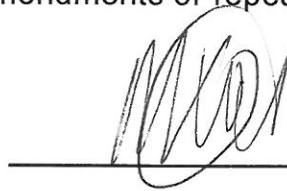
9. It is recommended that the list of pre 1994 legislation be tabled in the Rules Committee for referral to the various portfolio committees.
10. It is further recommended that the various portfolio committees through oversight measures request the relevant Departments to conduct reviews of the pre 1994 legislation for which they are responsible and—

10.1. identify offensive content, impact and constitutional implications; and

10.2. table a report on the outcome of their reviews together with a proposed legislative program dealing with amendments or repeals identified.



Adv. Z Adhikarie
Chief Legal Adviser



Mr. M Xaso
Secretary of the National Assembly