**1. Report of the Portfolio Committee on Justice and Correctional Services on the Judicial Matters Amendment Bill [B13 – 2019] (National Assembly – section 75), dated 11 March 2020**

The Portfolio Committee on Justice and Correctional Services, having considered the Judicial Matters Amendment Bill [B13 – 2019], referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports the Bill with amendments [B13A - 2019]. The Committee, furthermore, wishes to report as follows:

1. On 23 October 2018, in *Bukelwa Nolizwe Holomisa v Sango Patekile Holomisa and Another* [2018] ZACC 40 (the “*Holomisa* matter”), the Constitutional Court declared section 7(3) of the [Divorce Act, 1979 (Act No. 70 of 1979](http://www.saflii.org/za/legis/consol_act/da197990/)) to be constitutionally invalid to the extent that it excludes a spouse married out of community of property who has not entered into an ante-nuptial contract or an express declaration in terms of section 39(2) of the now repealed section 39 of the Transkei Marriage Act ,1978, (Act No. 21 of 1978), from its ambit. The Constitutional Court found section 7(3) of the Divorce Act, 1979, discriminates against women married under the Transkei Marriage Act, 1978, in that it excludes them from the benefits of a possible just transfer of assets on divorce and fails the test of rationality in terms of section 9(1) of the Constitution, 1996. In doing so, the Court considered the exceptional factors of this case, namely that the discrimination experienced by Mrs Holomisa and women in the former Transkei was indefensible and that Parliament had failed comprehensively to rationalise the marriage laws.
2. The Constitutional Court ordered that the declaration of invalidity be suspended for 24 months to allow Parliament to remedy the legislative defect. Therefore, the deadline for an amendment Bill to address the identified defects and also for the Bill to be assented to by the President was 22 October 2019, which is in the past. The Court, however, ordered that during the period of suspension, section 7(3) of the Divorce Act, 1979, is also to include marriages entered into under the Transkei Marriage Act, 1978, without ante-nuptial contracts and the read-in provision continues to apply until such time as the amending legislation is passed and assented to.
3. On 13 August 2018, in *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* [2018] ZACC 23, the Constitutional Court declared sections 12(4) and (6) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), to be constitutionally invalid. The Constitutional Court held that the provisions of both section 12(4) and 12(6) of the National Prosecuting Authority Act, 1998, undermine and compromise the independence of the office of the National Director of Public Prosecutions (NDPP). Section 12(4) empowers the President to extend the term of office of the National Director of Public Prosecutions (NDPP) or a Deputy National Director of Public Prosecutions (Deputy National Director) beyond the age of 65 years for a period of no longer than two years and section 12(6) of the National Prosecuting Authority Act, 1998, permits the President to suspend the NDPP or a Deputy National Director for an indefinite period and without pay.
4. The Constitutional Court ordered that the declaration of invalidity be suspended for a period of 18 months to allow Parliament to remedy the legislative defect. The deadline for the amendment Bill to address the identified defects and also for the Bill to be assented to by the President was 12 February 2020, which has passed. The Constitutional Court, however, provided a read-in provision to apply in the meantime until such time as the remedial legislation is passed and assented to.
5. On, 14 October 2019, the Judicial Matters Amendment Bill [B13 – 2019] was introduced and referred to the Committee for consideration and report, and the Committee was briefed on the contents of the Bill on 5 November 2019.
6. Briefly, the Bill proposes to amend section 7(3) of the Divorce Act, 1979, to give effect to the judgement of the Constitutional Court in the *Holomisa* matter. The Bill also proposes to amend sections 12(4) and (6) of the National Prosecuting Authority Act, 1998, by: removing the powers of the President to extend the term of office of the NDPP or a Deputy National Director; providing that the period of suspension of the NDPP or a Deputy National Director may not exceed twelve (12) months; and providing that these functionaries are entitled to their full salary during the period of suspension.
7. In response to the call for public comment, the Committee received a total of three (3) written submissions. The Committee held public hearings at Parliament on 25 February 2020, where the following interested parties made oral presentations: African Criminal Justice Reform (ACRJ); and Congress of South African Trade Unions (COSATU).
8. Both oral presentations largely addressed the need to review the National Prosecuting Authority Act, 1998, in particular with respect to the provisions relating to the appointment and removal of the NDPP. The Committee, however, is of the view that such amendments are of a substantive nature and, therefore, would require careful consideration.

**Report to be considered**