**SUMMARY OF WRITTEN SUBMISSIONS AND RESPONSES: JUDICIAL MATTERS AMENDMENT BILL [B13B - 2019]**

**Introduction**

The Select Committee on Security and Justice invited stakeholders and interested persons to make written submissions on the Judicial Matters AmendmentBill [B13B - 2019]. Eight written submissions have been received.

* Table provides a clause by clause summary of the submissions and general comments.

**List of commentators:**

1. Africa Criminal Justice Reform (ACJR)

2. COSATU

3. Dr R Naidoo

4. Commission for Gender Equality (CGE)

5. Father’s Rights Movement

6. K Buthelezi

7. MN Sodumo

8. MK Aphane

**TABLE SUBMISSIONS/RECOMMENDATIONS BY CLAUSE**

| **Clause/ theme** | **Name** | **Submission / Recommendation** | **DOJCD Response** |
| --- | --- | --- | --- |
| Clause 1 | COSATU | The proposed amendment is welcomed and supported as it is aimed at protecting the rights of women married out of community property under the Transkei Marriage Act and any other similar former homeland legislation. |  Noted. |
| Clause 1 | Dr R Naidoo | A question is raised whether- (*a*) reference to “any law applicable in a former homeland” applies to customary law,(*b*) this is a complementary Act to the Recognition of Customary Marriages Act in respect of marriages that took place prior to the commencement of the Constitution of the RSA 1996, and (*c*) whether Schedule 6, Items 2 and 3(1)(a) of the Constitution is read into this amendment. | (*a*) The phrase refers to any law the effect of which is to exclude the benefits accruing to a spouse under section 7 of the Divorce Act(Act 70 of 1979);(*b*) Yes, it can be argued that this Bill complements the Recognition of Customary Marriages Act in so far as proprietary consequences in a customary marriage are concerned in that there must be a just and equitable redistribution of assets between the parties in the event of divorce, and(c) Schedule 6, Items 2 was put in a Statute Book to address the administrative continuation of existing laws at the time, subject to their amendment or repeal. This Schedule is not read into the Divorce Act because it does not have relevance on the issue. |
| Clause 1 | CGE | The amendment is welcomed since it brings the Act in line with the decision of the Constitutional Court in the Holomisa case, and also ensures that women married out of community of property under the Transkei Marriage Act are able to enjoy equal protection and benefit of the law through just and equitable redistribution of property on divorce. | Noted. |
| Clause 2 | Africa Criminal Justice Reform(ACJR) | *(a)* This amendment deviates from the order of the Constitutional Court which states that the period of suspension of a National Director of Public Prosecutions (NDPP) or a Deputy National Director of Public Prosecutions (Deputy National Director) by the President may not exceed a period of six months. The position of NDPP or DPP is one of the most important positions in any country. It is of utmost importance that all processes (appointment and disciplinary) involving such incumbents should be facilitated and processed as soon as possible to ensure that the office of the NDPP or DPP is not compromised.(b) The authority of the President in terms of the Constitution and the National Prosecuting Authority Act, 1998 (Act 31 of 1998)(the NPA Act) to appoint the NDPP and the Deputy National Directors poses significant risks for the NPA’s independence as the President and the Minister of Justice may appoint the entire top echelon of the NPA without any input from other key stakeholders, such as Parliament, professional bodies or the public in general. The appointment of the NDPP should not be the sole prerogative of the President and the appointment process should betransparent. There are no provisions guiding the President on the interpretation of a fit and proper incumbent. The NPA is therefore not completely sheltered from political interference because of inadequate legislative measures in the appointment of the NDPP*.**(c)* The provisions of the NPA Act that grant the President the power to remove the NDPP for misconduct, on account of ill health or incapacity to carry our his or her duties, and on account that he or she is no longer a fit and proper person, pending a resolution passed by Parliament to endorse or dismiss the decision of the President creates the risk that the President, with the concurrence of a Parliament dominated by the ruling party, will seek to remove an NDPP who is not willing to co-operate with the President’s demands.(*d*) The provisions in the Constitution and the NPA Act that state that the Minister of Justice must exercise final responsibility over the prosecuting authority and that the NDPP must determine prosecution policy with the concurrence of the Minister of Justice which could imply a great deal of ministerial control of the prosecuting authority and a restriction of its independence.(e) (i) The NPA’s accountability to and Parliament’s role should be limited to reviewing performance and influencing policy and policy directives.  (ii) The NPA should not be accountable to Parliament in relation to its decisions in individual cases.(f) The Committee should initiate a comprehensive programme of the reform of the NPA that would look at all aspects of the legal frameworks, policies, and operations with a view to rebuild public trust in the institution. | *(a)* The amendment does not necessarily mean that the period of suspension of an NDPP or a Deputy National Director must be 12 months, the period may be shorter than 12 months, especially in relation to investigations that are not complex. The twelve month period is proposed for pragmatic purposes. In **Helen Suzman Foundation v President of the Republic of South Africa and Others 2015 (2) SA 1 (CC) (27 November 2014)**, which involved the suspension of the National Head of the Directorate for Priority Crime Investigation, the Constitutional Court held that the employer has a duty to “expedite the inquiry to avoid lengthy suspensions on pay”. This principle also finds application in the suspension of an NDPP or a Deputy National Director.*(b)* Noted. A change of this nature will require revision of policy, whereby different policy options will need to be considered and debated as part of policy discourse. It is not appropriate to consider amendments of this nature at this point due to the urgency to finalise the Bill. The Bill aims to give effect to a decision of the Constitutional Court, which should be enacted as soon as possible. Adding other amendments to the Bill will require extensive consultation with stakeholders and the public, which will delay the Bill even further. *(c) Noted.* See response in (b) above.*(d)* See response in (b) above.*(e)* (i) Noted. See response in (b) above.*(ii)* Noted.(f) Noted. This matter is however not within the ambit of the Bill, but will receive consideration in due course. |
|  | COSATU | COSATU proposes that a clause formalising the process that was followed in the appointment of the current NPDD which entails a call for applications, the appointment of a Judicial Services Commission type panel of non-partisan experts to interview the candidates, the hosting of such interviews in an open and transparent manner should be inserted in the Bill.  | A change of this nature will require revision of policy, whereby different policy options may need to be considered. It is not appropriate to consider amendments of this nature at this point because of the urgency of the Bill. The Bill aims to give effect to a decision of the Constitutional Court, which should be enacted as soon as possible. Adding other amendments to the Bill will require extensive consultation with stakeholders and the public, which will delay the Bill even further.  |
|  | Dr R Naidoo | (a) The order that was made by the Constitutional Court and suspended for 18 months is now in force and Parliament has missed the deadline. Against this background, a question is raised why the Bill is still proposing a longer suspension period of twelve months.*(b)* The amendment in clause 2 (*c*) is in line with the Constitutional Court’s judgment, however, a concern is raised that the NDPP or a DPP would still be entitled to receive a full salary even in circumstances where it is clear that they have committed an unlawful act. While disciplinary processes need to be followed, there must also be a provision that senior officials should be dismissed immediately for very serious misconduct. Alternatively, there must be an additional subsection clarifying circumstances when there should be no pay. | (a) If the comment relates to the period of suspension proposed in the Bill, then the comment is similar to that made by the ACJR above, and the response above applies here as well. Also, the period of twelve months relates to the suspension period of an incumbent and not in any way tied to the coming into operation of the Bill.(*b*) Security of tenure is one of the key methods to protect the independence of an office, including that of the NDPP and DPP, in order to ensure stability. It is a labour law usage that a person who may interfere with an investigation is suspended when investigations are carried out. It is not possible to summarily dismiss a person in these circumstances as due process must be followed.  |

**GENERAL**

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| **Clause 1** | **Name**  | **Submission/Recommendation** | **DOJCD Response** |
|  | Father’s Rights Movement | Lawyers advertising themselves as “Family Law Experts” are using divorcing parties to enrich themselves. The traditional adversarial approaches used by the court for civil litigation does not work for family law. | Although this submission does not fall within the scope of the Bill, the adversarial system is part of South African law used to determine the burden of proof. |
|  | K Buthelezi | The Divorce Act should be repealed and removed from the Statute Book in order to eliminate challenges of the division of assets and custody of children. | It is not possible to force parties to stay married to one another against their will, this can have devastating consequences such as aggravating violence. Those exercising their right to divorce should be provided with a mechanism of sharing their assets in that event. |
|  | MN Sodumo | Parliament should review the laws relating to the division of the assets in the event of divorce because women and children are left disadvantaged by the equal sharing of the assets when the husband had not contributed much to the acquiring such assets.  | Noted. The parties to a marriage have a right to choose their marital regime, whether in community of property or out of community of property with an antenuptial contract in order to protect their assets. |
|  | MK Aphane | The commentator proposes that there be legislation that regulates cheating in a marriage.  | Although this comment does not fall within the scope of the Bill, introducing such law will amount to regulating people’s private lives. Also this is a difficult topic since some customary law cultures permit a person to have more than one spouse, so it will be difficult to determine when a relationship is identified as cheating. |