**UNREVISED HANSARD**

**NATIONAL COUNCIL OF PROVINCES**

**THURSDAY, 22 APRIL 2021**

***PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES***

The Council met at 10:00.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

# VIRTUAL SITTING RULES

(Announcement)

The CHAIRPERSON OF THE NCOP: Let me then take this opportunity to, please, remind the members that the Rules and processes apply. I would like to remind you of the following: that the virtual sitting constitutes the sitting of the National Council of Provinces; that the place of sitting is deemed to be Cape Town, where the Seat of the National Council of Provinces is; delegates in the virtual sitting enjoy the same powers and privileges that apply in the sitting of the National Council of Provinces; for purpose of the quorum, all

delegates who ae logged in the virtual platform are deemed to be present; delegates must always switch on their videos and ensure that the microphones on their gadgets must always remain muted; the interpretation facility is active as already been indicated and any delegate wishing to speak must use the hand function, by now hon members, are familiar with this function.

I am told that there will be no notices of motions or motions without notice. That being the case, we will then proceed to the Order Paper. Hon delegates, we will now proceed to the First Order. Consideration of upgrading of Land Tenure Rights Amendment Bill [B 6B – 2020] ... [Interjections.] ...

Ms C LABUSCHAGNE: ... Chair, on a point of order.

The CHAIRPERSON OF THE NCOP: Yes, hon Labuschagne. What is the point of order? ... Hon Labuschagne!

Ms H S BOSHOFF: I think she has been dropped, Chair.

The CHAIRPERSON OF THE NCOP: Yeah, but ... can you try and get her back to the system so that we can attend to the issue that

she is trying to raise. ... Labuschagne, is it Boshoff or Labuschagne?

Ms H S BOSHOFF: No, Chair, it is Labuschagne. I just heard when you were calling her name it seems as if she has been dropped.

The CHAIRPERSON OF THE NCOP: Okay. However, hon members, could we, please, proceed while the problem is being raised. I was saying that we shall now proceed with the First Order.

# CONSIDERATION OF UPGRADING OF LAND TENURE RIGHTS AMENDMENT BILL AND REPORT OF THE SELECT COMMITTEE ON LAND REFORM, ENVIRONMENT, MINERAL RESOURCES AND ENERGY THEREON

Ms T C MODISE: Thank you very much, hon Chairperson, hon Minister and Deputy Chairperson, hon members of the NCOP, provincial delegates, ladies and gentlemen, allow me to present the report of the Select Committee on Agriculture, Land Reform and Rural Development. Hon Chairperson, on 16 February, after the National Assembly referred the upgraded the Land Rights Tenure Amendment Act to the committee on

01 December 2020, the Bill [B1 2B – 2017] the Department of Agriculture, Land Reform and Rural Development came to brief

the committee. In that meeting where the select committee invited all the provincial legislatures. The Amendment Bill [B 6B – 2020] focused on two important implementing court decisions. The court ruling regarding the upgrading of the Land Tenure Act - in the first ruling - the court set aside section 2(1) of the act which was found unconstitutional as it excluded women from the property system. This amounted to gender discrimination in contravening section 9 of the Constitution. The Rahube vs Rahube took this matter to court and court agreed to.

Parliament was required to introduce constitutionally sound procedure for the determination of the rights of ownership and occupation of the land remedy. In the second ruling the court confirmed that section 25(a) of the Ultra Bill is invalid to extend that the application does not cover all in the Republic of South Africa, particularly in the homelands. The amendment of section 25 of the Ultra Bill partially addresses the court rulings. In the second court ruling there was no court deadline like in the first one. Parliament was given until 29 April 2021.

Hon Chairperson, after all these things, the public participation was held. On 17 February, the select committee

again sent all adverts for public comments on the Bill media platform where youth is the broader sector of our country. As you know in 1995, the Freedom Charter declared that “... the people shall govern ...” Indeed, parliamentary public participation is one of the mechanism that ensure that the voices of our people are heard in legislative and policy making. That is why all the provinces held their public hearing and make sure that all people in the province participate in this Amendment Bill.

It was a very difficult Bill and it was a Bill that was oppressing black women. Hon Chairperson, when I was saying that; the committee received comments from the provinces, we received comments from the Royal Bafokeng in the North West, Banking of SA association, social justice coalition corruption watch, Cosatu and others. They were commenting that this Act of 1991, the Bills were of the apartheid era and did not consider nor regard the view of the black African majority and they needed it to be amended. On 07 April, the select committee held its negotiating mandate where six provinces sent their six negotiating mandate and six provinces were supporting the Bill, one province was not supporting the Bill and two provinces did not send their mandate.

The CHAIRPERSON OF THE NCOP: If I could ask you, hon Modise, to steady your movements, otherwise, the camera is capturing you moving in one direction and so on. So, please, proceed.

Ms T C MODISE: Okay, thank you. The six provinces were supporting the Bill, in one province they did not support the Bill and two provinces did not send their mandate whereas the other one requested the Chairperson of the NCOP to give them extension to make sure that they cover the vast province to reach everybody. The one province which was briefed did not hold its public hearings. Hon Chairperson, on 13 April the committee held its meeting on the final mandate. The committee received a mandate from the provinces; one did not submit whereas seven provinces supported the Bill, in one province they did not support the Bill. As the select committee we do not take for granted the impact importance of the land in helping to improve the economic condition of many vulnerable women of our country in recognising the importance that the land play in an economy.

In the 2019 state of the nation address, Sona, His Excellency, hon President Ramaphosa, said and I quote “ ... faster economic growth require accelerating land reform in rural and urban area and a clear property rights regime ...” Hon

Chairperson, in my conclusion the Select Committee on Land Reform, Environment, Mineral Resources and Energy having deliberated and considering the subject of upgrading of the Land Tenure Amendment Bill, [B 6B – 2020] (National Assembly - section 76) referred to it as classified by JTMS section 76 Bill. The committee agreed on it whereas one province did not, the committee noted that because this province they opted to remain in Egypt where women were nothing and were oppressed.

Again, the committee noted that it was not an easy for the province to change.

Ms C LABUSCHAGNE: Chairperson, on a point of order.

The CHAIRPERSON OF THE NCOP: Yes, the point of order, hon Labuschagne.

Ms C LABUSCHAGNE: I think the chairperson is reading something in the report that the committee never agreed upon. The part that says that is a province where women are oppressed, that was not discussed and it is not a true reflection of what was going on in the committee. I strongly oppose against something of a personal opinion that the chairperson is putting to the report. Thank you.

The CHAIRPERSON OF THE NCOP: Hon Labuschagne, that is not a point of order. May I ask hon Modise to conclude.

Ms T C MODISE: Thank you very much, hon Chairperson. We noted that if they want to remain in Egypt it’s fine for them, where women are nothing and were oppressed. Thank you very much, hon Chairperson. The Bill was agreed by the committee. Thank you very much.

Debate concluded.

Question put: That the Bill be adopted.

The CHAIRPERSON OF THE NCOP: It has been brought to my attention that the Minister and the Deputy minister have joined us. So, we take this opportunity to welcome them both to this sitting of the NCOP.

*Declarations of vote:*

Ms C LABUSCHAGNE: Hon Chairperson, the Western Cape cannot support the amendment Bill as it may fall short of section 154(2) of the Constitution due to a lack of public consultation for which it was referred to in the first place. Secondly, the amendments Bill which only addresses sections of

the Act. The Act should have been repealed and an entirely new Bill be introduced. This Bill in its current state sustain apartheid legislation that discriminates against South Africans that stay in tribal and communal areas by preventing them from owning property like the rest of South Africans.

This is a disgrace and every province that supports this Bill as it stands today should hang their heads in shame for sustaining separation laws that translates in Afrikaans to apartheid.

Thirdly, this Bill does not provide for the ordinary South Africans who will not be able to afford more fees to apply to court for appropriate relieve as only a few determined elite people will be able to stand up for themselves.

Lastly, it was clear in the select committee proceedings during negotiations that the majority of the provinces were not happy with the Bill as it stands, but delegates were quickly railed by the ANC to toe the line and the chairperson allowed that. This caused great confusion and chaos as provincial delegates first supported the amendments, but quickly changed the vote after the so-called five minutes caucus with the Secretary to Parliament who was called in to

caucus with their provinces. Therefore, the Western Cape cannot support the Bill.

Ms D G MAHLANGU: Hon Chairperson of the House, Ministers, Deputy Ministers, hon members, provincial delegates and fellow South Africans, good morning. We are happy as the ANC that the Department of Agriculture, Land Reform and Rural Development has responded positively to the order of the Constitutional Court in response to the two cases that have been mentioned here today, by my colleague, the chairperson.

The ANC’s land reform policy has three pillars, that is, land redistribution, restitution and security of tenure. The department has in the past briefed this select committee on the progress and further plans to ensure that land tenure security is strengthened in our country. We have taken note of the concerns that have been raised by members of the public and as the ANC we are happy that the department will in this financial year introduce communal land tenure legislation that will deal broadly with matters of tenure security in the communal or former homeland areas.

Given the initiative undertaken by the department, we are content with the conclusion of the application of sections 19

and 20 of the 1991 Act as the court had only confined itself to section 3 of the same Act.

Chairperson, we support the proposed amendments that the executive must be able to receive, adjudicate and resolve any dispute related to an application for conversion of land rights into full ownership.

In conclusion, in order to appreciate the progress that has been made in terms of our land reform programme, it is important that we read the Upgrading of the Land Tenure Rights Amendment Bill in conjunction with other relevant pieces of legislations. We will concern ourselves much with the DA as it is within their blue blood to reject transformative legislation that seeks to redress the historical injustices.

The call by the EFF that the department should review the land reform legislation did not assist with the process and we hope that they will wake up and realise the complexities of apartheid era law. Thank you very much, House Chairperson and the House.

Ms L C BEBEE: Hon Chairperson of the House, Ministers, Deputy Ministers present, hon members of the NCOP, provincial delegates, ladies and gentlemen, greetings. Discrimination of

women remains one of the triple challenges of race, class and gender that the ANC is working towards its eradication. In the month of freedom, we are reminded of the sterling job that women in South Africa play in helping to realise the goal of the Freedom Charter that people shall govern. During apartheid black people were not recognised as citizens of South Africa by government and could therefore not be able to own any land or property. The apartheid government not only made laws that are radically discriminatory, but they furthermore enacted pieces of legislations that perpetuated the oppression of women on the basis of their gender and that effectively reinforcing a very patriarchal political and socioeconomic.

After 1991, the Upgrading of Land Tenure Rights Act is one such piece of legislation vested on an oppressive system `of colonialism apartheid that was passed in 1991 and sought to provide for the upgrading of conversion into ownership of the tribes. Women were excluded in terms of this 1991 legislation from owning any land or property - which was very bad, Chairperson.

The Upgrading of Land Tenure Rights Bill was necessitated by two Constitutional Court cases, firstly, the Rahube vs Rahume and secondly the Herbert NO and Others

vs Senqu Municipality and Others. In the Rahube case, section

2 of the Upgrading of Land Tenure Rights Act was found to be unconstitutional in so far as it discriminated against the rights of women to independently own property and did not afford interested persons an opportunity to object to the conversation. In the Senqu matter it was found that section 25(a) of the Upgrading of Land Tenure Rights Act excluded the application of section 3. The same Act in the former Transkei, Bophuthatswana, Venda and Ciskei was stated to be unconstitutional.

The ANC supports the Bill as it will ensure women access and ownership of land and property. This will have a positive effect in terms of ensuring that justices of the past are corrected and further boost the skewed land property ownership by women. I thank you, Chairperson.

Mr T B MATIBE: Chairperson, Minister, Deputy Minister and provincial delegates, greetings. There are no doubts that the ANC has made progressive strides in ensuring that the legacy of apartheid is fully eradicated. This Parliament has since passed legislations that positively seek to empower women in our country. However, the face of poverty in South Africa still remain black, African and its gender is female.

Therefore, I stand on behalf of Limpopo to declare that the ANC supports the Upgrading of Land Tenure Rights Amendment Bill. This piece of legislation will ensure that it not only respond to the order issued by the highest court in the land, but it contributes towards the transformation of ownership patterns of land and property in this country.

The Upgrading of Land Tenure Rights Amendment Bill proposes amendments that are consistent with what we would like to achieve as the ANC as far as the empowerment of women is concerned. The amendments of the Bill will not automatically convert into ownership in terms of section 2, the deed of grant or permission to occupy without making it publicly known.

The Department of Agriculture, Land Reform and Rural Development will invite the public to object to an application for a conversion of deeds of grants or permission to occupy, PTO, by any interested person and the Bill make provisions for mediation and dispute resolution. There can be no doubt that the impact of this proposed legislation can only be positive and this is not the only piece under the department as there are other pieces of legislations and policies that are aimed at enhancing women ownership of land and property.

In conclusion, women in South Africa remain vulnerable and suffered all sought of physical and emotional abuse and this, in redressing this persistent challenge, the House will continue to pass legislations that will transform our society and ensure that the achievement of gender equality in our democratic nation. Therefore, Limpopo supports the Bill. Thank you very much.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape.

AGAINST: Western Cape.

Bill accordingly adopted in accordance with section 65 of the Constitution.

# CONSIDERATION OF CORRECTIONAL SERVICES AMENDMENT BILL [B 32 - 2020] (NATIONAL ASSEMBLY – SEC 75) AND REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE THEREON

Ms S SHAIKH: Hon Chairperson and hon members, good morning. The Correctional Services Amendment Bill [B32-2020] was referred to the Select Committee on Security and Justice on 9 March 2021. The Committee has agreed to the Bill without

proposed amendments. The Bill was developed to give effect to the Constitutional Court Judgment known as the Phaahla Judgement. The Constitutional Court in its judgment dated 03 May 2019 in *Oupa Chipane Phaahla vs Minister of Justice* and *Correctional Services & Another* found certain sections of the principal Act to be unconstitutional and ordered the amendment of those sections by Parliament within a period of 24 months from the date of the order, that is before 3 May 2021.04.23

The Constitutional Court varied and confirmed an order of invalidity of the High Court of sections 136(1) and 73(6)(b)(iv) of the principal Act in that these sections were declared inconsistent with sections 9(1) and (3) as well as 35(3)(n) of the Constitution of the Republic of South Africa. Mr Phaahla, an inmate serving a sentence of life imprisonment was convicted on 25 September 2004 for offences committed earlier but was sentenced only on 5 October 2004.

This meant that in line with section 136(1) read with 73(6)(b)(iv) of the principal Act he was required to serve 25 years before he could become eligible to be considered for parole placement. If he had been sentenced before the coming into operation of Chapter 7 of the principal Act on 1 October

2004, he would have had to serve only 20 years before being eligible for consideration for parole placement.

He challenged section 136(1) of the principal Act in the High Court on the grounds that the use of the date of sentence rather than the date of commission of offence violated his right to a fair trial as contemplated in section 35(3)(n) of the Constitution. He also contended that section 136(1) breaches his right to equal protection of the law and the right not to be unfairly discriminated against in terms of section 9 of the Constitution.

The Constitutional court held that the impugned provisions breach the constitutional rights to equal treatment by the law and not to be discriminated against unfairly. The Court also found that the impugned provisions amounted to retro-active application of the law, which violated the principle of legality. Section 136(1) of the principal Act is a transitional provision, and the Constitutional Court ordered that this section shall read as follows pending the amendment thereto by Parliament within the period ordered:

Any person serving a sentence of incarceration for an offence committed before the commencement of Chapters 4, 6

and 7 of the Correctional Services Act is subject to the provisions of the Correctional Services Act, 8 of 1959, relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those chapters.

The Correctional Services Amendment Bill has therefore been developed to give effect to a Constitutional Court Judgment and also amend the definition of Minister by proposing to amend the following sections of the Correctional Services Act, 1998, Act No 111 of 1998, meaning the principal Act; Section 1: Definition of Minister; Section 73(6)(a) and 73(6)(b)(iv): Minimum detention period of sentenced offenders before becoming entitled to be considered for placement on parole for offences committed after 1 October 2004; Section 136(1) and 136(3)(a): Transitional provisions regarding placement on parole of sentenced offenders for offences committed before 1 October 2004.

Hon Chair, the committee received a briefing on the bill by the Department of Correctional Services on 10 March 2021 and thereafter the Bill was published in national newspapers from

29 March 2021 with a deadline of 16 April 2021. The Bill was also published on Parliament’s social media platforms and website from 10 March 2021. However, the committee received no public comments on the Bill and on 19 April 2021 proceeded to consider the Correctional Services Amendment Bill [B 32 - 2020] (National Assembly – Section 75).

The Bill was unanimously supported by the committee without amendments. The Select Committee on Security and Justice, having considered the Correctional Services Amendment Bill [B

32 - 2020] (National Assembly – Section 75), referred to it and classified by the Joint Tagging Mechanism, JTM as a section 75 Bill, submits the Bill without proposing amendments, for the Council’s consideration. I thank you very much.

*Declaration(s) of Vote:*

*Setswana*:

Rre K MOTSAMAI: Lekoko la mokgatlho wa EFF le dumalana le molao o mošwa o o lebaganeng le go fetola molao wa bagolegwa. Re dumalana le molao ona go tlosa tsotlhe tse di neng di fitlhilwe mo molaong. Re dumela gore dipaakanyo tseno di lebagane sentle le katlholo ya ga Phaahla, e e rotloeleditseng molaotheo gore o sikasikiwe. Dintlha tse di neng di se maleba

mo katlholong ya Phaahla di supile bokoa jo leng teng mo lenaneong la go itshwarela bagolegwa. Go lebeletswe ba ba atlhotsweng pele ga molao o mošwa ono o tsena tirisong.

*English*:

The Act should stipulate that inmates who were sentenced after the commencement of Act, which was on 1 October 2000, after serving a period of five years in jail. This introduced a new parole regime from October 2004 because before that, inmates would qualify for the parole after serving twenty years of imprisonment. This anomaly then means that, if one was convicted before 1 October 2004, but sentenced after the day, that person would be required to serve 25 years before qualifying for parole, as it happened to Phaahla.

Those amendments now make it clear that inmates must serve 25 years before they can be considered for parole, if the offence was committed after the stroke six and seven of the Correctional Service Act on 1 October. We support the Bill.

Also, we are aware the Act may still be sustainable for more illegal challenge in the future, because there are still many gaps in the parole system. For an example, the Bill does not deal with the process of how inmates who qualify for parole are identified for the different categories of the offence.

We suspect that this failure to be provided for a fairly reasonable process for the new parole regime, will lead to the further abuse of the rights of the inmates, not being the beginning of the thought of processes for the prisoners’ reform. This must be entirely a very clear process for the granting of parolees to all those who qualify, while ensuring that there are effective rehabilitation services.

We do not need to make those amendments on a piece meal basis, now that there are reforms needed in the correctional services space. Apart from those valid concerns, we are in support of the Bill. I thank you Chair,

Ms Z V NCITHA: Hon Chairperson, good morning to everyone. The ANC rises to support the Bill 32 of 2020 and the report of the select committee. In 2015, the United Nations General Assembly adopted a revised United Nations standard minimum rules for the treatment of prisoners, and approved that there should be known as Nelson Mandela rules, in order to honour the legacy of former President Nelson Mandela, who spent 20 years in prison, in a course of struggle and liberation.

As we deliberate on this Bill, we reflect on President

Mandela’s words wherein he said, I quote, “it is said that no

one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” Chairperson, under the Correctional Services Act of 1959, anyone sentenced to life imprisonment was eligible to apply to for a parole, after serving a minimum of 20 years in terms of the Act of 1998.

However, someone serving a life sentence is eligible for a parole only once they have served a minimum of 25 years.

Section 136(1) of the 1999 Act, governed the transition from the parole eligibility requirements under the section 159 Act to those under the 1999 Act. Section 139(1) provides that inmates sentenced before 1 October, 2004, are subject to 1959 Act, and must serve a minimum of 20 years. But inmates sentenced after 1 October 2004, are subject to the 1999 Act, and must therefore serve a minimum of 25 years.

In the matter of Phaahla versus the Minister of Justice, Correctional Services and others, Tsakanyane Intervention, the applicant, Mr Phaahla, is an inmates serving a sentence of life imprisonment. He was convicted on 25 September 2004, for a crime committed earlier, but was sentenced only on 5 October 2004. This means that he is required to serve 25 years before he may apply for a parole.

Had Mr Phaahla been sentenced a few days earlier, he would have had to serve only 20 years before being eligible for parole. Mr Phaahla challenged section 136(1) in the in the High Court on the grounds that the use of the date of sentence rather than the date ...[Interjections.] ... Oh. thank you very much, Chair. The Constitutional Court ruled in favour of Mr Phaahla. We wanted to highlight that because it is the reason why we had to table the Bill before the House so that we correct such. The ANC supports the Bill. Thank you, Chair.

The CHAIRPERSON OF THE NCOP: Is there any other party that would like to make the declaration? None. We would therefore proceed to voting on the question. I would allow 1 minute for the delegates who are outside the House to join the session. There is now 30 seconds left; 15 seconds left. Thank you very much. Please note that these delegates, including special delegates has 1 vote.

The question is that the Bill be agreed to.

Question put.

[Take in from Minutes.]

Bill agreed to in terms of section 75 of the Constitution

The Council rose at 10:53