



**MINISTER
INTERNATIONAL RELATIONS AND COOPERATION
REPUBLIC OF SOUTH AFRICA**

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Dear Mr President

Parliamentary approval of the Agreement amending the SADC Protocol on Gender and Development

A letter addressed to you by my colleague, Honourable Maite Nkoana-Mashabane the Minister for Women, Youth and People with Disabilities dated 23 May 2022, bears reference. In the said letter, Minister Nkoana-Mashabane is requesting the President's intervention in facilitating DIRCO's support for the Parliamentary approval process regarding the *Agreement Amending the SADC Protocol on Gender and Development* ("the Agreement"). The Agreement contains an obligation on States becoming party thereto to prohibit *in toto* marriages by persons under the age of 18. South African domestic legislation, in both the *Marriages Act, 1961* and the *Recognition of Customary Marriages Act, 1998*, provides for exemptions to allow persons under 18 to marry in certain circumstances. South Africa's domestic law is therefore at present not in line with the Agreement in this respect.

The Parliamentary Portfolio Committee on Women, Youth and Persons with Disabilities was advised by DIRCO on 2 December 2021 that it may consider postponing its approval of South Africa becoming party to the Agreement until such time that the aforementioned Acts have been amended to also prohibit *in toto* marriages by persons under 18.

Should the Agreement be approved by the Portfolio Committee and become binding on South Africa upon signature by the President, a conflict will arise between South Africa's obligation in terms of the Agreement to prohibit marriage by persons under the age of 18 and the South African domestic law, which allows for exceptions.

However, it is also noted that South Africa has already acceded to several United Nations and African instruments that prohibit marriages by persons under the age of 18, namely the *African Charter on the Rights and Welfare of the Child*, the *Maputo Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* and the *United Nations Convention on the Rights of the Child*. Consequently,

a conflict already exists between South Africa's domestic law and its international law obligations as provided for in these instruments.

However, these instruments do not form part of South Africa's domestic law and neither will the SADC Agreement, should it enter into force for South Africa. To form part of South African domestic law, they will have to be incorporated by means of legislation in terms of section 231(4) of the *Constitution of the Republic of South Africa, 1996*. Should the Committee approve the Agreement and South Africa becomes party thereto upon signature, there will not be a conflict in South Africa's domestic law since implementation thereof will only be effected upon domestication of the latter.

In view of the aforesaid, my Department can support the processing of the Agreement in the National Assembly and the signing thereof.

However, the conflict that already exists between South Africa's domestic legislation and the aforementioned African and United Nations instruments, and which will also apply with respect to the Agreement when it becomes binding on South Africa, should be addressed expeditiously by the relevant Department by amending South African legislation to also prohibit *in toto* marriages by persons under 18.

Yours respectfully,



Dr GNM Pandor, MP

Minister of International Relations and Cooperation

Date: 13-7-2022

His Excellency Mr MC Ramaphosa
President of the Republic of South Africa
Union Buildings
Pretoria