**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

# QUESTION NO: 1509

**DATE OF PUBLICATION: 15 NOVEMBER 2019**

## INTERNAL QUESTION PAPER: 27 OF 2019

**Ms M S Khawula (EFF) to ask the Minister in The Presidency for Women, Youth and Persons with Disabilities:**

In light of the escalating violence against lesbians, gays, bisexual, transgender and intersex people, has she considered advocating in Cabinet for amending the (a) existing legislation and (b) Criminal Law Amendment Act, Act 38 of 2007, to include harsher minimum sentences for corrective rape and/or hate crimes in general?         NW2832E

**Reply:**

 (a)

There is adequate legislative framework that provides protection of the human rights and dignity of lesbian, gay, bisexual, transgender, intersex and queer, or commonly referred to as the LGBTIQ, sector. Their rights are human rights too as entrenched in Chapter 2 of the Constitution, in particular s9 (3) on the issue of non-discrimination on the basis of sexual orientation.

South Africa became the first country in the world to outlaw discrimination based on sexual orientation. We are also the fifth country in the world and the first country in Africa to legalise same-sex marriages.

Furthermore, in 2003 South Africa enacted the Alteration of Sex Descriptors and Sex Status 49 of 2003, which allows citizens to change their descriptors on their identification documents. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 governs the judicial interpretation of the Equality Clause. In 2005 the promulgation of the Judicial Matters Amendment Act of 2005 changed the legal status of intersex people in South Africa. The amendment saw the Promotion of Equality Act and Prevention of Unfair Discrimination Act 4 of 2000 amended at section 1 by the insertion the definition of “intersex” and the definition of ‘sex’ to include intersex.

This demonstrates that our biggest challenges lie beyond legislation. Discriminatory societal beliefs influence attitudes, perspectives about lesbians, gays, bisexual, and transgender as well as intersex people, and attribute those to culture. For example, in some communities, Intersex infants are seen as ‘bad omens’, some perceive the infants as punishment from God and a curse on the family tree. The on-going dialogues conducted by the department seeks to address these stereotypes.

(b)

Our immediate task is to work collectively in closing the gap between legislation and implementation, through intervention mechanisms to protect the rights of the LGBTIQ+ sector.

The Department of Women, Youth and Persons with Disabilities is also a member of the National Task Team on gender and sexual orientation-based violence established by the Department of Justice and Constitutional Development in 2011.

The National task Team, which is constituted by government departments, chapter nine institutions and civil society organisations that specialise in issues related to LGBTI persons is currently developing a National Intervention Strategy for the LGBTIQ+ sector.

Members of the Criminal Justice System are equal partners in this dialogue. The courts have been playing an important role in enforcing the law to protect citizens against hate crimes, and in handing down harsher minimum sentences for corrective rape. Our mandate is that of advocacy, and we will continue to play an advocacy role in this regard.