

(7)

081022 pc private



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL ASSEMBLY TABLE DIVISION  
PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2601 Fax: 27 (21) 403 3880

**MEMORANDUM**  
(For Action)

---

**TO:** P Lebeko, Clerk of Papers  
**FROM:** Victor Ngaleka/ Dr Nazeem Ismail  
**DATE:** 15 October 2007  
**Cc:** The Speaker

---

**SUBJECT:** Private Member's Legislative Proposal Regarding Expunction of Criminal Records from Apartheid Laws

---

Please ensure that the legislative proposal submitted by Mr James Selfe, MP, which deals with the expunction of criminal records from apartheid laws is tabled and referred for consideration and report to the Committee on Private Members' Legislative Proposals and Special Petitions to be dealt with in terms of Rule 235 of the Assembly Rules.

*Private Member's Bill Regarding Expunction of Criminal  
Records from Apartheid Laws*

Private Member's Bill Submitted by James Selfe, MP

Submitted in terms of Section 73 (2)

Read with Section 76 (1) of the Constitution

---

*MEMORANDUM*

---

Notice is hereby given of the introduction of a Private Member's Bill in terms of Section 73 (2) read with Section 76 (1) of the Constitution. In terms of rule 234 (read with rule 230 (1)), a member must submit to the Speaker a memorandum which:

- (a) sets out particulars of the proposed legislation;
- (b) explains the objects of the proposed legislation; and
- (c) states whether the proposed legislation will have financial implications for the State and, if so, whether those implications may be a determining factor when the proposed legislation is considered.

The Honourable Speaker is requested to deal with this Bill in terms of Section 235 of the National Assembly Rules.

## A. PARTICULARS OF PROPOSED LEGISLATION

### BILL

To enable persons convicted of offences under apartheid law to expunge their criminal convictions from the register and to provide for matters related thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:

#### 1. Definitions

"Apartheid law" means any law, act, ordinance, regulations, decree or by-law enacted prior to 27 April 1994 by South Africa or the former Transkei, Bophuthatswana, Venda or Ciskei that created an offence which would not have been an offence in an open and democratic society based on human dignity, equity and freedom.

"Minister" means the Minister of Justice and Constitutional Development.

#### 2. Expunction of Criminal Records

- (1) Any person who was convicted in terms of any apartheid law may apply in the prescribed way to have his or her criminal record arising from this conviction expunged from the register of criminal convictions.
- (2) Any person whose application in terms of sub-section (1) is rejected may appeal to the Criminal Records Board, established in terms of section 3, to review this decision.
- (3) The Criminal Records Board may direct that a criminal record be expunged from the register of criminal convictions.

#### 3. Establishment and Functions of the Criminal Records Board

- (1) The Minister must appoint the Criminal Records Board.
- (2) The Criminal Records Board consists of:
  - (a) a judge, appointed after consultation with the Chief Justice, who shall act as chairperson;

- (b) a Director or Deputy Director of Public Prosecutions appointed after consultation with the National Director of Public Prosecutions;
  - (c) a member of the South African Police Service, of or above the rank of director, appointed after consultation with the National Commissioner of the South African Police Service;
  - (d) a member of the South African Human Rights Commission appointed after consultation with the Chairperson of the Human Rights Commission; and
  - (e) three persons not in the full-time employ of the State and not members of Parliament, appointed as representatives of the public, after consultation with the Portfolio Committee of Justice and Constitutional Development.
- (3) The Criminal Records Board must hear appeals against decisions not to expunge the criminal convictions of any person who was convicted in terms of any apartheid law, and may, after considering the matter, direct that a criminal record be expunged from the register of criminal convictions.
- (4) The Criminal Records Board must:
- (a) develop its own procedures consistent with natural justice; and
  - (b) be adequately resourced to fulfil its functions.

#### 4. General Provisions

- (1) A member of the Criminal Records Board who is not in the full-time service of the State may receive such allowances as may be determined by the Minister in consultation with the Minister of Finance.
- (2) The Minister must publish regulations in the Government Gazette prescribing the procedures to be followed in applying for a criminal record to be expunged in terms of this Act.
- (3) This Act will lapse five years after it is promulgated unless Parliament resolves to extend it.



5. Short Title

This Act shall be known as the Expunction of Criminal Records from Apartheid Laws Act, and shall come into operation by promulgation in the Government Gazette.

B THE OBJECTS OF THE PROPOSED LEGISLATION

This Bill recognises the fact that many people received criminal convictions under the apartheid regime for offences that are no longer regarded as criminal and should never have been offences. The fact that these people possess criminal records prevents many of them from obtaining visas for travel purposes and from obtaining many kinds of employment where a clean criminal record is a requirement.

Part of the reconciliation process must necessarily include allowing those people sentenced for specific apartheid crimes to have their records expunged administratively, without having to go through the cumbersome and demeaning process of applying for a Presidential Pardon. Such a process must be available to all citizens and must be transparent and accountable.

C FINANCIAL IMPLICATIONS

The legislation will incur some financial costs with regard to researching, designing and implementing the amendments to relevant legislation as well as to set up procedures for members of the public to apply to have their criminal records reviewed for the purpose of being expunged.

Name of Member: James Selfe, MP

Signature:

*James Selfe*

Date:

*10 October 2007.*