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## **INTERNAL EXTENDED LEGISLATIVE PROGRAMME OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AS AT 4 MAY 2006**

### **A: BILLS BEFORE PARLIAMENT**

#### **1. Judicial Conduct Tribunals Bill**

This Bill creates a Tribunal to deal with cases of incapacity, gross incompetence or gross misconduct on the part of judicial officers. It emanates from the Judicial Officers Amendment Bill, 2001 which, among others, was intended to provide for the creation of a complaints mechanism against judges. It was developed by the Portfolio Committee on Justice and Constitutional Development. It will contribute to the transformation of the judiciary and facilitate the promotion of a single judiciary. It is at an advanced stage of drafting and is being processed by the Department, in line with discussions that have taken place on it between various roleplayers.

#### **2. Judicial Service Commission Amendment Bill**

This Bill creates a procedure to deal with complaints against judges. It also emanates from the Judicial Officers Amendment Bill, 2001, and was developed by the Portfolio Committee on Justice and Constitutional Development. The Bill has a bearing on the transformation of the judiciary and also on the promotion of a single judiciary. It is at an advanced stage of drafting and is being processed by the Department, in line with discussions that have taken place on it between various roleplayers.

#### **3. Magistrates Amendment Bill**

This Bill creates a procedure to deal with complaints against magistrates. It also emanates from the Judicial Officers Amendment Bill, 2001, and was developed by the Portfolio Committee on Justice and Constitutional Development. The Bill has a bearing on the transformation of the judiciary and also on the promotion of a single judiciary. It is at an advanced stage of drafting and is being processed

by the Department, in line with discussions that have taken place on it between various roleplayers.

#### **4. Superior Courts Bill**

The Bill provides for the rationalisation of the structure and functioning of South Africa's Superior Courts, as contemplated in the Constitution. The Bill also regulates the management of the judicial functions of all courts, and deals with the responsibility of the Executive for the administration of all courts, among others. The Bill has a bearing on the transformation of the judiciary. It has been introduced in Parliament, public hearings have been held and the Committee has commenced its deliberations on the Bill.

#### **5. Criminal Law (Sexual Offences and Related Matters) Amendment Bill**

The Bill is intended to revise the Sexual Offences Act, 1957, in order to bring it in line with the new Constitutional dispensation. It is seen as a measure that will go a long way in the fight against violence against women. The Bill has been the subject of public hearings in the Portfolio Committee on Justice and Constitutional Development. The Committee has deliberated on the Bill and has suggested numerous changes, which have been referred to Cabinet for approval. This Bill has been combined with the Compulsory HIV Testing of Sexual Offenders Bill referred to below.

#### **6. Compulsory HIV Testing of Sexual Offenders Bill**

The Bill makes provision for the victim of a sexual offence to apply to court for an order that the alleged sexual offender be tested for HIV so that the victim can make informed decisions about his or her life. The Bill has been the subject of public hearings in the Portfolio Committee on Justice and Constitutional Development. The Committee has deliberated on the Bill and has suggested some changes, after further investigation. The investigation has been completed and the Bill has been incorporated in the Criminal Law (Sexual Offences and Related Matters) Amendment Bill referred to above.

#### **7. Child Justice Bill**

The Bill creates a separate criminal justice system for children in trouble with the law, thereby giving effect to section 28 of the Constitution, dealing with the rights

of children, among others, the right to be treated in a manner and kept in conditions that take account of the child's age. This Bill will also give effect to South Africa's international obligations as a party to the Convention on the Rights of the Child. The Committee has deliberated on the Bill, after public hearings, and has suggested numerous changes which are being dealt with.

**B: BILLS ALREADY APPROVED BY CABINET AND RECEIVING THE ATTENTION OF THE STATE LAW ADVISERS**

**1. Insolvency and Business Recovery Bill**

The Bill emanates from an investigation of the South African Law Reform Commission and envisages the entire revision of the law of insolvency in South Africa, as well as the statutory provisions dealing with the liquidation of companies, bringing them in line with international best practices. Although this Bill has been approved by Cabinet and is ready for certification by the State Law Advisers, it is being held in abeyance, pending the recommendations of the Ministerial Committee of Inquiry into the Liquidations Industry.

**2. International Arbitration Bill**

The Bill, which emanates from a report of the South African Law Reform Commission, is intended to –

- (i) introduce the UNCITRAL Model Law for International Arbitrations into South Africa;
- (ii) repeal the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977, and to give improved effect to the New York Convention which is part of the Bill; and
- (iii) make the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States part of our domestic law and to ratify this Convention.

The Bill has been approved by Cabinet and is ready for certification by the State Law Advisers. There is, however, some uncertainty relating to Cabinet's decision on the introduction of the Bill into Parliament. This uncertainty is to be taken to Cabinet for clarity. However, because there are so many other competing

legislative priorities, the Bill may be kept in abeyance until such time as the more urgent Bills have been finalised.

**C: BILLS IDENTIFIED FOR PROMOTION DURING THE 2006 SESSION OF PARLIAMENT**

**1. Constitution Fourteenth Amendment Bill**

This Bill is to be dealt with in conjunction with the Superior Courts Bill mentioned above. It regulates the responsibility in respect of the judicial and administrative functions of all courts; it provides for the conversion of the various High Courts into a single High Court of South Africa; it provides that the Constitutional Court is the highest court in all matters and it also regulates the jurisdiction of the Constitutional Court and the Supreme Court of Appeal; it provides for the appointment of two Deputy Presidents to the Supreme Court of Appeal and restricts courts from hearing matters dealing with the suspension of or making orders suspending the commencement of an Act of Parliament or a provincial act; it provides for the appointment of Judges President and Deputy Judges President, as well as for the appointment of an Acting Deputy Chief Justice, an Acting Deputy President of the Supreme Court of Appeal and Acting Deputy Judges President. It has been approved by Cabinet and is being prepared for introduction into Parliament.

**2. Customary Law of Succession Amendment Bill**

The Bill is intended to give effect to the South African Law Reform Commission's legislative recommendations in order to bring the Customary Law of Succession into line with the Constitution, thereby eliminating unfair discrimination in that area of the law. Existing legislation in this regard has already been declared to be unconstitutional by the Constitutional Court. This Bill is intended to confirm the Constitutional Court's order, which will contribute to gender equality, allowing more women and children to share directly in the proceeds of deceased estates. (The report of the Law Reform Commission has been submitted to Cabinet. Comments of the DG Cluster (Social Affairs) are awaited). The Department is, in the mean time, preparing a Bill for submission to Cabinet.

### **3. Traditional Courts Bill**

This Bill emanates from an investigation by the South African Law Reform Commission and is intended to rationalise the operation and functioning of traditional courts, currently referred to as Chief's Courts. This will facilitate the repeal of sections 12 and 20 of the Black Administration Act, 1927, which currently regulate the judicial powers of traditional leaders. A Bill has been prepared and will be submitted to Cabinet at the first available opportunity. The proposed legislation is intended to serve as an interim measure pending the enactment of more comprehensive legislation at a later stage.

### **4. State Liability Amendment Bill**

Because there have been instances where court orders have not been complied with by the State, the Bill is intended to ensure that the State (Government Departments) do comply with court orders made against them, particularly court orders sounding in money.

### **5. Magistrates Courts Amendment Bill**

The Bill is intended to prohibit the disposal of immovable property of indigent persons in certain circumstances, eg sales in execution in respect of low cost housing (RDP Houses). This Bill is intended to prevent a recurrence of recent cases which were heard in the Constitutional Court where houses of certain individuals were sold in execution well below their market value in respect of insignificant debts. A Bill is in the process of being finalised with a view to discussing it at Ministerial level.

### **6. Legal Practice Bill**

The Bill is intended to rationalise the legislation regulating the legal profession. The legal profession is still regulated by different outdated statutes which are in operation in various parts of the national territory. Rationalisation in this regard is vital and will also assist in the transformation of the legal profession and contribute towards access to the profession and to justice generally. A Bill has been prepared, based on the two reports emanating from the Ministerial Task Team appointed by the previous Minister for Justice and Constitutional Development (Dr P Maduna).

## **7. Magistrates (Appointments) Amendment Bill**

The Bill is intended to regulate anew the appointment procedure to be followed in respect of magistrates in order to bring it more in line with the appointment of judges, thereby facilitating the concept of a single judiciary. It also brings about amendments to the Magistrates Commission in order to bring it in line with the Judicial Service Commission, again in accordance with the vision of a single judiciary. Drafting of the Bill has commenced and it will be submitted to the Ministry as soon as circumstances permit.

### **D: BILLS IDENTIFIED FOR SUBMISSION TO CABINET AND PARLIAMENT WITH A VIEW TO THE FINALISATION THEREOF AS SOON AS POSSIBLE**

#### **1. Legal Aid Amendment Bill**

The most urgent of the amendments to the Legal Aid Act, 1969, are those which are intended to limit the court's discretion in ordering the Legal Aid Board to provide legal aid to persons. There have been instances where legal aid has been provided to recipients as a result of court orders who would not normally qualify for legal aid. There are also other amendments to the Legal Aid Act proposed by the Legal Aid Board in order to streamline the functioning of the Board. A task team, consisting of representatives of the Department and the Board, is in the process of being constituted. This task team is expected to submit draft legislation for consideration by all role-players for comments.

#### **2. Criminal Procedure Amendment Bill**

The Bill is intended to give effect to the legislative recommendations of the South African Law Reform Commission relating to the right to silence in criminal proceedings. The enactment of this legislation will have a positive effect on the expeditious disposal of criminal cases. A Bill and Cabinet Memorandum are being prepared.

#### **3. Extradition Bill (including a chapter on the surrender of persons to International Tribunals)**

This Bill emanates from an inter-departmental committee, the mandate of which was to revise and modernise the current Extradition Act, 1962, enhancing South Africa's ability to fulfil its international obligations. A Bill, which also contains a

chapter dealing with the surrender of persons to International Tribunals, eg the Rwanda Tribunal, has been prepared which is to be submitted to the Ministry.

**9. Legal Graduates' Community Service Bill**

The Bill is intended to make it compulsory for all law graduates to do a period of community service before they are entitled to practise law in the Republic. The Department is to undertake an investigation in this regard. A submission is being prepared to facilitate a discussion on the way forward at Ministerial level.

**10. South African Human Rights Commission Amendment Bill**

The Bill is intended to bring the principal Act in line with the Constitution and to further regulate the position of support staff for, and other matters relating to, the Commission. A Bill has been prepared and is in the process of being submitted to the SA Human Rights Commission for comments. Additional provisions were inserted in the Bill at the request of the Minister and were discussed at a workshop between roleplayers held on 20 June 2005. Various additional matters still have to be investigated.

**11. Commission on Gender Equality Amendment Bill**

The Bill is intended to bring the principal Act in line with the Constitution and to further regulate the position of support staff for, and other matters relating to, the Commission. A Bill is in the process of being prepared but various additional matters still have to be investigated.

**12. Criminal Law Amendment Act Amendment Bill**

This Bill is intended to address issues in relation to the application of the Criminal Law Amendment Act, 1997, dealing with the imposition of obligatory (minimum) sentences. The Department is undertaking an investigation in this regard and is consulting with roleplayers.

**13. South African Justice Training College Bill**

The Bill makes provision for the restructuring of Justice College. It is receiving the attention of the Department.

profession. The amendments are aimed at accelerating representivity within that profession, as well as at enhancing accountability and professionalism by—

- (i) revising the procedure for the appointment of sheriffs;
- (ii) appointing more than one sheriff in particular areas;
- (iii) tightening aspects pertaining to professional conduct of sheriffs, including disciplinary matters; and

**16. Application of Customary Law Bill**

(Customary Law)

**18. Criminal Procedure Third Amendment Bill**

The Bill emanates from an investigation of the South African Law Reform Commission and makes provision for the postponement of criminal cases by way of audio-visual linkages where accused persons are in custody in prison. The Bill

will impact positively on court time, save costs and reduce the risk of escapes and smuggling of contraband into prisons. The Department is in the process of preparing a Bill for submission to the Ministry. This will be done after certain aspects have been cleared with roleplayers, a process that has already begun.

**19. Prohibition of Hate Speech Bill**

The Bill will give effect to South Africa's international obligations as a party to the Convention against all Forms of Racial Discrimination. A Bill has been prepared and the previous Minister approved that it be sent out to relevant roleplayers for comments. Comments have been received. A submission is being prepared to facilitate a discussion at Ministerial level on the way forward.

**20. Muslim Marriages Bill**

The Bill emanates from an investigation of the South African Law Reform Commission and is intended to recognise Muslim Marriages and regulate the patrimonial consequences thereof. The Department has started its evaluation of the Commission's report and is liaising with roleplayers.

**E: JOINT BILLS BEFORE PARLIAMENT WITH ANOTHER DEPARTMENT AS LEAD DEPARTMENT**

**F: PRIVATE MEMBERS' BILLS**

**1. Public Funding of Represented Political Parties Amendment Bill**

This Bill intends regulating the disclosure of certain monies received by political parties.

**2. Magistrates Courts Amendment Bill**

The object of the Bill is to give effect to the decision of the Constitutional Court in *Jaftha v Schoeman and Others, CCT74/03* by remedying the defect in section 66(1)(a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and affording individuals judicial protection against the unconstitutional sale in execution of their immovable property. (See paragraph C5 above)

**G: EXTENDED LIST OF BILLS TO BE SUBMITTED TO PARLIAMENT WHEN THEY ARE READY FOR INTRODUCTION WITH A VIEW TO THE FINALISATION THEREOF WHEN CIRCUMSTANCES PERMIT**

**1. Prevention of Organised Crime Amendment Bill**

The contents of this Bill must be discussed with Mr Willie Hofmeyr, Head of the Asset Forfeiture Unit.

**2. Special Investigating Units and Special Tribunals Amendment Bill**

This Bill will contain numerous amendments to the principal Act requested by the Head of the Special Investigating Unit in order to streamline the application of the Act. The Deputy Minister has requested that a working document be prepared, containing all proposed amendments and motivation. Once this has been done a meeting between the Deputy Minister and representatives of the Unit will be arranged to discuss the issues. A working document is being prepared.

**3. Promotion of Access to Information Amendment Bill**

This Bill must still be drafted and will deal, among others, with the establishment of an Office of Information Commissioner. The Department is investigating this issue.

**4. Criminal Procedure Fourth Amendment Bill**

This Bill emanates from a report of the South African Law Reform Commission and deals with the application of the Bill of Rights on the Criminal Procedure Act, 1977, eg reverse onus provisions, presumptions, etc. The report of the Law Reform Commission and the Bill are in the process of being evaluated by the Department.

**5. Criminal Procedure Fifth Amendment Bill**

This Bill is intended to deal with the expungement of criminal records in the case of certain less serious offences. The matter is being investigated by the Department.

**6. Admiralty Jurisdiction Regulation Amendment Bill**

This Bill is intended to address some practical problems being experienced with the application of the Act and its regulations.

has been sent to teleplay and the Commission

**10. Publication of Divorce Proceedings Bill**

This Bill emanates from a report of the South African Law Reform Commission and deals with the publication of divorce proceedings. A draft Bill and Cabinet Memorandum have been prepared and are in the process of being submitted to the Ministry.

**11. Apportionment of Damages Amendment Bill**

This Bill emanates from a report of the South African Law Reform Commission report of the Law Reform Commission and the Bill are being evaluated by the Department of Justice. It will be dealt with when circumstances permit and will be prepared in the form of a Bill by the South African Law Reform Commission and the Department of Justice.

**13. Control of Unreasonable or Oppressive Stipulations in Contracts Bill**

This Bill emanates from a report of the South African Law Reform Commission and is intended to address abuses in the case of unreasonable or oppressive contracts. The report of the Law Reform Commission and the Bill need to be evaluated by the Department and dealt with when circumstances permit. The question has been raised whether this Bill should not be dealt with by the Department of Trade and Industry.

**14. Domestic Arbitration Bill**

This Bill emanates from a report of the South African Law Reform Commission and deals with the revision of our laws on domestic arbitration. The report of the Law Reform Commission and the Bill need to be evaluated by the Department and will be dealt with when circumstances permit.

**15. Public Interest and Class Actions Bill**

This Bill emanates from a report of the South African Law Reform Commission and is intended to regulate public interest and class actions. A Bill and Cabinet Memorandum have been finalised and were submitted to the Ministry for discussion purposes.

**16. Rules Board for Courts of Law Amendment Bill**

This Bill, which must still be drafted, will probably be incorporated in the Superior Courts Bill referred to above.