



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

6<sup>th</sup> DEMOCRATIC  
PARLIAMENT



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Report to NAPC on Constitutional Court judgements that require an action

Date: 2020.02.27

# New Case:

## Justice and Correctional Services

- **Court case:** Centre for Child Law and Others v Media 24 Limited and Others [2019] ZACC 46 (4 December 2019)
- **Legal Issue:** The case deals with the prohibition on exposing the identities of children involved in crime, either as accused, witness or victim. The court also considered whether a child can waive the right to have his / her identity protected once they reach adulthood.

Legislation involved	End of period provided by the Court	Actions taken to date
Criminal Procedure Act, 1977 (Act No. 51 of 1977) - Section 154(3)	3 December 2022 A read in provision was provided by the Court and will continue after the above date unless amended – <b>no gap in the law after 3 December 2022</b>	The Department has confirmed in writing that a Bill dealing with this matter has been finalised. The Bill will be submitted to Cabinet in March 2020 and it is expected that it will be introduced during April 2020.  <b>STAGE OF BILL:</b> Not yet introduced.

Cases where a failure to correct the defect by the date provided, results in a gap in the law

# Justice and Correctional Services

- **Court case:** Phaahla v Minister of Justice and Correctional Services and Another (Tlhakanye Intervening) [2019] ZACC 18 (3 May 2019)
- **Legal Issue:** The Act brought a new parole system into being in 2004. The wording of the Act caused an unfair situation for persons who committed a crime before the Act came into operation, but was sentenced after it came into operation: They had to serve a longer period before being eligible for parole than a person sentenced before the Act came into operation.

Legislation involved	End of period provided by the Court	Actions taken to date
Correctional Services Act, 1998 (Act No. 111 of 1998), Section 136(1)	2 May 2021  A read in provision was provided by the Court, but is only in effect up to 2 May 2021.	An enquiry was sent to the Department of Correctional Services to ascertain the steps the Department intends to take. <b>The matter was discussed with the Chairperson of the Committee and with the sub-committee that specifically deals with Correctional Services – the Minister will be requested to brief the sub-committee on the progress made to date.</b> <b>STAGE OF BILL:</b> Not yet introduced.

# Justice and Correctional Services

- **Court case:** Bukelwa Nolizwe Holomisa v Sango Patekile Holomisa and Another [2018] ZACC 40 (23 October 2018)
- **Legal Issue:** The matter relates the discriminatory oddity that women married out of community of property under the Transkei Marriage Act do not enjoy the protection, on divorce, of section 7(3) of the Divorce Act.

Legislation involved	End of period provided by the Court	Actions taken to date
Divorce Act, 1979 (Act No. 70 of 1979) - section 7(3)	22 October 2020  The declaration is suspended for 24 months to allow Parliament to remedy this defect. A read-in is provided during the period of suspension.	Judicial Matters Amendment Bill [B13-2019] introduced on 2019.10.14 (proposed S75)  <b>STAGE OF BILL:</b> The Bill is before the Portfolio Committee.

# Agriculture, Land Reform and Rural Development

- **Court case:** Rahube v Rahube and others CCT 319/17 [2018] ZACC 42 (30 October 2018)
- **Legal Issue:** The Constitutional Court declared this section constitutionally invalid insofar as it automatically converted holders of any deed of grant / right of leasehold into holders of rights of ownership, in violation of women's rights in terms of section 9(1) of the Constitution.

Legislation involved	End of period provided by the Court	Actions taken to date
Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991) - section 2(1)	29 April 2020  The declaration of invalidity was suspended for a period of 18 months	On 11 February the Department briefed the Committee on this matter: Cabinet has approved the Bill and the Department was in discussions with the State Attorney to approach the Court to ask for an extension of the date. The JR159 notice was announced in the ATC of 2020.02.25.  <b>STAGE OF BILL:</b> Not yet introduced.

# Justice and Correctional Services

**Court case:** My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17 (21 June 2018)

**Legal Issue:** The Court found that the State is under an obligation to give practical and meaningful expression to the right of access to information and the right to vote. It confirmed the order of constitutional invalidity as PAIA neither applies to political parties nor to independent candidates nor to all records on private funding.

Legislation involved	End of period provided by the Court	Actions taken to date
Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)	20 December 2019  Parliament must correct the defective legislation within 18 months to provide for the recordal, preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates.	Bill 20-2019 has been sent to the President for assent.  <b>STAGE OF BILL:</b> Waiting for assent



# Co-Operative Governance & Traditional Affairs

**Court case:** South African Municipal Workers' Union v Minister of Co-Operative Governance & Traditional Affairs and Others [2017] ZACC 7 (9 March 2017)

**Legal Issue:** When before Parliament, the Amendment Bill was incorrectly classified as a section 75 Bill. The Constitutional Court accordingly found the Amendment Act invalid. The declaration of invalidity was suspended for a period of 24 months to allow the Legislature an opportunity to correct the defect.

Legislation involved	End of period provided by the Court	Actions taken to date
Local Government: Municipal Systems Amendment Act, 2011 (Act No. 7 of 2011)	8 March 2019	<p>A Bill prepared by the Executive has been introduced on 6 February 2019. The Department approached the Court for an extension of the period provided, which application was refused.</p> <p><b>STAGE OF BILL:</b> Introduced on 6 February 2019 – the Bill was revived on 29 October 2019 and is before the Portfolio Committee</p>



# Cases where a measure is already provided

## - No gap in the law (1)

*Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others [2018] ZACC 30 (18 September 2018)*

1.

**Affected legislation:** Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), ss 4(b) and 5(b) read with Part III of Schedule 2

**End of period provided by the court:** 17 September 2020

**Interim measure:** A read in provision is provided in the interim and will continue to apply should the defect not be corrected by the above date.

**Stage of Bill:** The Department sent a Bill to the various Departments affected by the judgment and requested comments – closing date for comments was 31 January 2020. The Department aims to introduce the Bill in April 2020.

2.

**Affected legislation:** Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), s22A(9)(a)(i)

**End of period provided by the court:** 17 September 2020

**Interim measure:** A read in provision is provided in the interim and will continue to apply should the defect not be corrected by the above date.

**Stage of Bill:** The Department has indicated that they support the Bill developed by the Department of Justice that will regulate cannabis.

# Cases where a measure is already provided

## - No gap in the law (2)

*Corruption Watch NPC and others v President of RSA and others (CCT 333/17 and CCT 13/18) (13 August 2018)*

**Affected legislation:** National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) - Section 12(6)

**End of period provided by the court:** 12 February 2020

**Interim measure:** A read in provision is provided in the interim and will continue to apply should the defect not be corrected by the above date.

**Stage of Bill:** Judicial Matters Amendment Bill [B13-2019] introduced on 2019.10.14 (proposed S75). This Bill is currently before the Portfolio Committee.

*Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others 2018 ZACC 16 (14 June 2018)*

**Affected legislation:** Criminal Procedure Act, 1977 (Act No. 51 of 1977), section 18

**End of period provided by the court:** 13 June 2020

**Interim measure:** A read in provision is provided for section 18(f) in the interim and will continue to apply should this deadline not be achieved.

**Stage of Bill:** Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill, 2019 introduced on 2019.11.27. This Bill is currently before the Portfolio Committee.

# Cases where a measure is already provided

## - No gap in the law (3)

*Ramuhovhi and Others v President of the Republic of South Africa and Others [2017] ZACC 41 (30 November 2017)*

**Affected legislation:** Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), section 7(1)

**End of period provided by the court:** 29 November 2019

**Interim measure:** A remedy was provided by the Court, which remedy will continue to apply should the defect not be corrected by the above date.

**Stage of Bill:** A Bill was introduced on 2 September 2019. The Court refused the request for an extension of the deadline on 2019.11.26 as there was no prejudice – a read in provision was provided. This Bill is currently before the Portfolio Committee.

*Graham Robert Herbert NO and others v Senqu Municipality and others CCT 308/18 [2019] ZACC 31 (22 August 2019)*

**Affected legislation:** Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991), section 25A; Land Affairs General Amendment Act 61 of 1998 – section 1.

**End of period provided by the court:** None. Order effective immediately.

**Interim measure:** As from date of judgment, section 25A of the Upgrading of Land Tenure Rights Act shall be read as if it makes no reference to section 3.

**Stage of Bill:** Not yet introduced.

# Time provided passed without creating a gap in the law (1)

*Lawyers for Human Rights v Minister of Home Affairs and Others [2017] ZACC 22 (29 June 2017)*

**Affected legislation:** Immigration Act, 2002 (Act No. 13 of 2002), Section 34(1)(b) and (d)

**End of period provided by the court:** 28 June 2019

**Interim measure:** A remedy was provided by the Court, which remedy continues to apply should the defect not have been corrected by the above date.

**Stage of Bill:** The relevant Portfolio Committee was processing a Committee Bill, however the Portfolio Committee of the 6<sup>th</sup> Parliament took a decision that the Department would address this judgment in the overall review of the legislation that the Department is currently busy with.

*Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others [2016] ZACC 22)*

**Affected legislation:** The Restitution of Land Rights Amendment Act, 2014 (Act No. 15 of 2014)

**End of period provided by the court:** Iro claims only: 26 September 2018

**Interim measure:** None needed – the period granted was to develop a claims process. The Constitutional Court provided guidance to the Land Claims commission on processing the affected claims.

**Stage of Bill:** The Bill was before the NA for second reading. It lapsed in the Fifth Parliament.

## Time provided passed without creating a gap in the law (2)

*McBride v Minister of Police and Another [2016] ZACC 30 (6 September 2016)*

**Affected legislation:** Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), Sections 6(3)(a) and 6(6)

**End of period provided by the court:** 5 September 2018

**Interim measure:** A read in was provided and continues to apply should the defect not have been corrected by the above date.

**Stage of Bill:** The NCOP has passed the Bill on 2019.11.26. It has been sent for assent.