



Ministry of Justice and Correctional Services: Republic South Africa

For Immediate Release:

Date 04 September 2019

Media Statement: Death Penalty

During a press conference on 4 September 2019 Minister Lamola was asked whether cabinet would consider a discussion on referendum on calls for the reinstatement of the death penalty. In response he said if the matter were brought to cabinet, cabinet would probably have to discuss it. He said so, advisedly because cabinet does discuss current affairs confronting the country. Therefore if this be one of them it is conceivable that cabinet would discuss these sentiments.

The Ministry has noted that this response could have been read in a different light. It is important for our citizens to note that the Bill of Rights, provides for a tapestry of human rights which everyone in South Africa is entitled to enjoy under protection of law. The Constitution is an embodiment of the values of our new society, which strives to eradicate of the injustices of the past, to protect us from our own whims and to advance the rule of law and to guarantee equality before the law.

In Section 11, the Constitution states that "Everyone has the right to life". The Court, in the case of *S v Makwanyane*, found the right to life guaranteed by the Interim Constitution, 1993, prohibited the death penalty. The Court has subsequently ruled that capital punishment is also forbidden by the current RSA Constitution Act, 1996.

The rejection of the death penalty by the founders of our Constitution is not limited to the fact that it was used in the past to conduct judicial killings against freedom fighters and opponents of the apartheid system. It was also based on well documented research that the death penalty has not served as a deterrent in any society around the world.

The call for the reinstatement of the death penalty is flawed in many ways. First, the idea that the death penalty acts as a deterrent to violent crime is not true.

Evidence documented in various sources indicate this. In the US for example, the murder rate in non-death penalty States are consistently lower than the rate in States with the death penalty.

This resonates with evidence where violent crimes in other non-death penalty countries were reduced after the abolition of the death penalty. All of Europe abolished the death penalty not because their crime rates were low at the time of doing so, but in recognition of the fact that state sanctioned violence was part of the processes that brutalized society and gave rise to the culture of violence.

The same holds true for South Africa. We come from a difficult past and the brutal events of the last few days tend to cloud the progress we have made. But let's look at our murder rates. In 1994/1995 the murder rate was 67 per 100 000. By 2014/2015 this had dropped to 33 per 100000.

This is a 51 percent drop in 20 years. It's still too high, but clearly the evidence shows that the death penalty was not a determining factor in reducing murder rates. In fact the murder rate declined significantly after the death penalty was abolished.

Also, the death penalty was ruled unconstitutional in the S v Makwanyane judgement. The judgment was sound in terms of the various constitutional provisions. The judgment also correctly summed up the issue from a policing perspective. This is summed up in the words of Chief Justice Chaskalson - **"The Greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is clearly lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness"**. This is true globally.

Accordingly, we need to ensure that we improve the entire value chain of the criminal justice system from investigation, arrest, through effective prosecution to incarceration, rehabilitation and reintegration back into society. As things stand only an estimated 10 percent of those who commit murder are caught and convicted. From a criminal justice system perspective, that latter statistics needs to change. I dare say, a quick fix populist approach is likely to make the situation worse over the long term.

Importantly, there are serious constitutional issues to consider. We cannot subject our Bill of Rights to a referendum. The basis of the constitutional order we are building is premised on the need to protect all those who may not necessarily be protected adequately through a democratic process where sheer numbers will determine the extent of that protection. Today, we will subject the prohibition of the death penalty to a referendum.

Tomorrow it will be to re-criminalize abortion and then later it will be to take away the protection accorded to the LGBTIQ community. This is the effective dismantling of constitutional supremacy and the vision of building a new society.

Section 74(1) of the Constitution provides that the founding provisions in section 1 of the Constitution may only be amended by a Bill passed by the National Assembly with a supporting vote of at least 75% of its members and a supporting vote of at least 6 provinces in the NCOP. Accordingly, any decision of the return or otherwise of the death penalty cannot be legally done via a referendum. It can only be determined in the manner contemplated in section 74 of the Constitution. Otherwise, a referendum would be an unconstitutional and wasted effort.

Lastly the reinstatement of the death penalty will not deal with Femicide and other forms of violence against women and children. There is a prevailing ideological set - that of male supremacy and entitlement that gives rise to and sustains violence against women. We need to drain this ideological swamp.

We need to invest in programmes that reconfigure the manner in which males and females are socialized in South Africa. We need to invest in social context training for all front-line workers that deal with violence against women. This includes police personnel who tend to disregard complaints and charges of abuse and sexual assault that tend to lead to murder of women in intimate relations. Intimate partner violence numbers far exceeds cases where the perpetrators are strangers to women.

All government agencies in the Justice and Crime Prevention and Security Cluster to ensure that they do not subject survivors of sexual offences to any form of secondary victimisation. We need to invest in shelters so that women have access to refuge. Our social workers and other professionals in these spaces must have the training and resources to assist women and their families who are subjected to abuse and violence.

There is therefore no easy fix. We need to invest in the prevention of gender based violence as well improve the response by the criminal justice system.

As the Ministry we will readily communicate this intention to the public and not be tempted by rather populist calls for the return of the death penalty.

Ends

Issued by the Ministry of Justice and Correctional Services

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