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REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

No. 1339.

19 June 1985

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 72 of 1985: Immorality and Prohibition of Mixed Marriages Amendment Act, 1985.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1339.

19 Junie 1985

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 72 van 1985: Wysigingswet op Ontug en Verbod op Gemengde Huwelike, 1985.

Act No. 72, 1985

IMMORALITY AND PROHIBITION OF MIXED MARRIAGES
AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the provisions of the Immorality Act, 1957, and the Criminal Procedure Act, 1977, in so far as they relate to unlawful carnal intercourse between white persons and coloured persons; to repeal the Prohibition of Mixed Marriages Act, 1949; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 12 June 1985.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 23 of 1957.

1. Section 1 of the Immorality Act, 1957, is hereby amended—
 - (a) by the deletion of the definition of “coloured person”; 5
 - and
 - (b) by the deletion of the definition of “white person”.

Repeal of
section 16 of
Act 23 of 1957.

2. Section 16 of the Immorality Act, 1957, is hereby repealed.

Amendment of
section 21 of
Act 23 of 1957,
as amended by
section 3 of
Act 68 of 1967.

3. Section 21 of the Immorality Act, 1957, is hereby amended 10
by the deletion of subsection (2).

Amendment of
section 22 of
Act 23 of 1957,
as amended by
section 4 of
Act 68 of 1967
and section 4 of
Act 57 of 1969.

4. Section 22 of the Immorality Act, 1957, is hereby amended—
 - (a) by the substitution for paragraph (a) of the following paragraph:

“(a) in the case of an offence referred to in section 2 or 15 20 (1) (a), to imprisonment for a period not exceeding three years with or without a fine not exceeding six hundred rand in addition to such imprisonment **[, or where it is proved that the person convicted kept a brothel and that unlawful carnal 20 intercourse took place in such brothel to his knowledge between a white female and a coloured male or between a coloured female and a white male, for a period not exceeding seven years with or without a fine not exceeding one thousand rand in addition 25 to such imprisonment];”;**
 - (b) by the substitution for paragraph (c) of the following paragraph:

“(c) in the case of an offence referred to in section 10, to imprisonment for a period not exceeding five 30 years **[, or, where it is proved that the person con-**

WYSIGINGSWET OP ONTUG EN VERBOD OP GEMENGDE
HUWELIKE, 1985

Wet No. 72, 1985

ALGEMENE VERDUIDELIKENDE NOTA:

- [** **]** Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die bepalings van die Ontugwet, 1957, en die Strafproseswet, 1977, vir sover dit op ontug tussen blankes en nie-blankes betrekking het; tot herroeping van die Wet op Verbod van Gemengde Huwelike, 1949; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 12 Junie 1985.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

1. Artikel 1 van die Ontugwet, 1957, word hierby gewysig—
 - (a) deur die omskrywing van "blanke" te skrap; en
 - (b) deur die omskrywing van "nie-blanke" te skrap.
2. Artikel 16 van die Ontugwet, 1957, word hierby herroep.
3. Artikel 21 van die Ontugwet, 1957, word hierby gewysig deur subartikel (2) te skrap.
4. Artikel 22 van die Ontugwet, 1957, word hierby gewysig—
 - (a) deur paragraaf (a) deur die volgende paragraaf te vervang:

"(a) in die geval van 'n in artikel 2 of 20 (1) (a) bedoelde misdryf, met gevangenisstraf vir 'n tydperk van hoogstens drie jaar met of sonder 'n boete van hoogstens seshonderd rand benewens bedoelde gevangenisstraf **[**, of waar bewys word dat die veroordeelde persoon 'n bordeel gehou het en dat ontug met sy medewete in die bordeel tussen 'n blanke vrouspersoon en 'n nie-blanke manspersoon of tussen 'n nie-blanke vrouspersoon en 'n blanke manspersoon plaasgevind het, vir 'n tydperk van hoogstens sewe jaar met of sonder 'n boete van hoogstens eenduisend rand benewens bedoelde gevangenisstraf**]**,";
 - (b) deur paragraaf (c) deur die volgende paragraaf te vervang:

"(c) in die geval van 'n in artikel 10 bedoelde misdryf, met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar **[**, of, waar bewys word dat die veroor-

Wysiging van
artikel 1 van
Wet 23 van 1957.

Herroeping van
artikel 16 van
Wet 23 van 1957.

Wysiging van
artikel 21 van
Wet 23 van 1957,
soos gewysig deur
artikel 3 van
Wet 68 van 1967.

Wysiging van
artikel 22 van
Wet 23 van 1957,
soos gewysig deur
artikel 4 van
Wet 68 van 1967 en
artikel 4 van
Wet 57 van 1969.

Act No. 72, 1985

IMMORALITY AND PROHIBITION OF MIXED MARRIAGES
AMENDMENT ACT, 1985

victed procured or attempted to procure any white female for the purpose of having unlawful carnal intercourse with a coloured male, or any coloured female for the purpose of having unlawful carnal intercourse with a white male, for a period not exceeding seven years];” and

(c) by the substitution for paragraph (e) of the following paragraph:

“(e) in the case of an offence referred to in section 12 (1) or 13 (1) **[or 16]**, to imprisonment for a period not exceeding seven years;”.

Amendment of
section 195 of
Act 51 of 1977.

5. Section 195 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for the words following upon paragraph (i) of the following words:

“and shall be competent but not compellable to give evidence for the prosecution in criminal proceedings where the accused is charged with any offence against the separate property of the wife or of the husband of the accused, or with any offence under **[section 16 of the said Immorality Act, 1957, or]**, in the case of the territory, section 1 or 2 of the said Immorality Proclamation, 1934.”.

Amendment of
section 261 of
Act 51 of 1977.

6. Section 261 of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the deletion, in subsection (1), of paragraphs (g) and (h);
- (b) by the deletion, in subsection (2), of paragraphs (d) and (e); and
- (c) by the deletion of subsection (3).

Repeal of
Act 55 of 1949.

7. (1) The Prohibition of Mixed Marriages Act, 1949, is hereby repealed.

(2) Any of the parties to a marriage which, but for the provisions of the Prohibition of Mixed Marriages Act, 1949, would have been a valid marriage in the Republic, may with the consent of the other party or, if the other party is deceased, without such consent, apply to the Director-General: Home Affairs for a written direction contemplated in subsection (4).

(3) The Director-General: Home Affairs may, for the purposes of the consideration of an application referred to in subsection (2), require the applicant to furnish the said Director-General with such information or documents as he may deem necessary.

(4) If the Director-General: Home Affairs, after consideration of an application referred to in subsection (2) and of information, if any, furnished to him in terms of subsection (3) or contained in any document so furnished, as well as of any other information, if any, already at his disposal, is satisfied that—

- (a) the marriage in question would, but for the provisions of the Prohibition of Mixed Marriages Act, 1949, have been a valid marriage in the Republic;
- (b) the said marriage has not on a ground other than the provisions of the Prohibition of Mixed Marriages Act, 1949, been dissolved or declared invalid by a competent court; and
- (c) neither of the parties to the said marriage has after the contraction thereof and during the life of the other party lawfully married another person,

he shall direct in writing that the marriage in question shall for all purposes be a valid marriage in the Republic, and the marriage in question shall thereupon be deemed to have been such a valid marriage with effect from the date upon which it was contracted.

Short title.

8. This Act shall be called the Immorality and Prohibition of Mixed Marriages Amendment Act, 1985.

WYSIGINGSWET OP ONTUG EN VERBOD OP GEMENGDE
HUWELIKE, 1985

Wet No. 72, 1985

deelde persoon 'n blanke vrouspersoon verkry het of probeer verkry het vir die doel om met 'n nie-blanke manspersoon ontug te pleeg, of 'n nie-blanke vrouspersoon verkry het of probeer verkry het om met 'n blanke manspersoon ontug te pleeg, vir 'n tydperk van hoogstens sewe jaar];"; en

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(c) deur paragraaf (e) deur die volgende paragraaf te vervang:

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"(e) in die geval van 'n in artikel 12 (1) of 13 (1) [of 16] bedoelde misdryf, met gevangenisstraf vir 'n tydperk van hoogstens sewe jaar;"

5. Artikel 195 van die Strafproseswet, 1977, word hierby gewysig deur in subartikel (1) die woorde wat volg op paragraaf (i) deur die volgende woorde te vervang:

Wysiging van
artikel 195 van
Wet 51 van 1977.

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"en is bevoeg maar nie verpligbaar nie om vir die vervolging getuieis in strafregtelike verrigtinge af te lê waar die beskuldigde aangekla word van 'n misdryf teen die afsonderlike eiendom van die eggenote of van die eggenoot van die beskuldigde, of van 'n misdryf ingevolge [artikel 16 van bedoelde Ontugwet, 1957, of], in die geval van die gebied, artikel 1 of 2 van bedoelde Proklamasie van 1934 Betreffende Immoraliteit."

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6. Artikel 261 van die Strafproseswet, 1977, word hierby gewysig—

Wysiging van
artikel 261 van
Wet 51 van 1977.

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(a) deur in subartikel (1) paragrafe (g) en (h) te skrap;
(b) deur in subartikel (2) paragrafe (d) en (e) te skrap; en
(c) deur subartikel (3) te skrap.

7. (1) Die Wet op Verbod van Gemengde Huwelike, 1949, word hierby herroep.

Herroeping van
Wet 55 van 1949.

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(2) Enige van die partye by 'n huwelik wat, as dit nie vir die bepalinge van die Wet op Verbod van Gemengde Huwelike, 1949, was nie, in die Republiek 'n geldige huwelik sou gewees het; kan met die instemming van die ander party of, indien die ander party oorlede is, sonder sodanige instemming, by die Direkteur-generaal: Binnelandse Sake aansoek doen om 'n skriftelike lasgewing beoog in subartikel (4).

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(3) Die Direkteur-generaal: Binnelandse Sake kan vir die doeleindes van die oorweging van 'n aansoek bedoel in subartikel (2) die betrokke aansoeker gelas om aan genoemde Direkteur-generaal die inligting of stukke te verstrek wat hy nodig ag.

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(4) Indien die Direkteur-generaal: Binnelandse Sake na oorweging van 'n aansoek bedoel in subartikel (2) en van inligting, as daar is, ingevolge subartikel (3) aan hom verstrek of vervat in 'n stuk aldus verstrek, asook van enige ander inligting, as daar 45 is, wat reeds tot sy beskikking is, daarvan oortuig is dat—

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(a) die betrokke huwelik in die Republiek 'n geldige huwelik sou gewees het as dit nie vir die bepalinge van die Wet op Verbod van Gemengde Huwelike, 1949, was nie;

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(b) genoemde huwelik nie op 'n ander grond as die bepalinge van die Wet op Verbod van Gemengde Huwelike, 1949, deur 'n bevoegde hof ontbind of nietig verklaar is nie; en

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(c) geen van die partye by genoemde huwelik na die sluiting daarvan en tydens die lewe van die ander party met iemand anders wettig getrou het nie.

moet hy skriftelik gelas dat die betrokke huwelik vir alle doeleindes in die Republiek 'n geldige huwelik is, en daarop word die betrokke huwelik geag so 'n geldige huwelik te gewees het 60 met ingang van die datum waarop dit gesluit is.

8. Hierdie Wet heet die Wysigingswet op Ontug en Verbod op Gemengde Huwelike, 1985. Kort titel.

