**2. Report of the Portfolio Committee on Justice and Correctional Services on the Recognition of Customary Marriages Amendment Bill [B12 - 2019] (National Assembly – section 76), dated 11 March 2020**

The Portfolio Committee on Justice and Correctional Services, having considered the Recognition of Customary Marriages Amendment Bill [B12 – 2019], referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 76 Bill, reports the Bill without amendments. The Committee, furthermore, wishes to report as follows:

* 1. In the matter of *Ramuhovhi and Others v President of the Republic of South Africa and Others* [2017] ZACC 41, the Constitutional Court, confirming the decision of the Limpopo Local Division, Thohoyandou (High Court), found section 7(1) of the Recognition of Customary Marriages Act, 1998, (Act No. 120 of 1998), to be inconsistent with the Constitution and invalid in that it limits the right to human dignity and discriminates unfairly on the basis of (a) gender and (b) race, ethnic or social origin against women in polygamous customary marriages entered into before the Recognition of Customary Marriages Act, 1998, commenced.
  2. The Constitutional Court suspended the declaration of constitutional invalidity for 24 months to afford Parliament an opportunity to enact remedial legislation, that is before 30 November 2019. The suspension of the declaration of the invalidity was accompanied by an order for interim relief that would continue to apply should Parliament fail to correct the defect by the time set. In terms of the order, the following regime would apply to polygamous customary marriages concluded before the Act commenced:

“(a) Wives and husbands will have joint and equal ownership and other rights to, and joint and equal rights of management and control over, marital property, and these rights shall be exercised as follows:

(i) in respect of all house property, by the husband and the wife of the house concerned, jointly and in the best interests of the family unit constituted by the house concerned; and

(ii) in respect of all family property, by the husband and all the wives, jointly and in the best interests of the whole family constituted by the various houses.

(b) Each spouse retains exclusive rights to her or his personal property.”

(at paragraph 71(5)).

* 1. On 2 September 2019, the Recognition of Customary Marriages Amendment Bill, 2019, was introduced and referred to the Committee for consideration and report. The Committee was briefed by the Department of Justice and Constitutional Development on the contents of the Bill on 5 November 2019.
  2. In response to a call for public comment, the Committee received a total of five (5) written submissions from:
* Commission for Gender Equality (CGE).
* Congress of South African Trade Unions (COSATU).
* Helen Suzman Foundation (HSF).
* National House of Traditional Leaders (NHTL).
* Women’s Legal Centre (WLC).
  1. The Committee held public hearings at Parliament on 15 February 2020, where the following interested parties made oral presentations:
* Commission for Gender Equality (CGE).
* COSATU.
* Women’s Legal Centre (WLC).
  1. During the Committee’s deliberations, a concern was raised to the effect that the Bill fails to define the forms of property ownership at customary law, such as marital property, house property, family property and personal property. The Women’s Legal Centre and Helen Suzman Foundation also suggested that the forms of property ownership at customary law be defined in the Bill. The Committee, however, is of the view that the insertion of definitions of these terms in the Bill would require in-depth research, as well as extensive consultation with the relevant stakeholders, to avoid unintended consequences to the detriment of women in customary marriages, and whom the Bill aims to protect.
  2. The Committee notes that the South African Law Reform Commission, in conjunction with the Department of Home Affairs, is reviewing the South African marriage regime. The Committee agrees that this process is better placed to investigate the definitions of forms of property ownership at customary law and, therefore, requests that the Ministry bring the matter to the attention of the Commission.

**Report to be considered**