



FREE STATE LEGISLATURE

PORTFOLIO COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, OFFICE OF THE PREMIER AND LEGISLATURE

Negotiating Mandate

TO: Chairperson of the Select Committee on SECURITY AND JUSTICE

NAME OF BILL: Recognition of Customary Marriages Amendment Bill

NUMBER OF BILL: [B12- 2019]

DATE OF DELIBERATION: 27 October 2020

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature, as designated by the Free State Legislature votes in favour of the Bill with the following amendments:

RECOMMENDATIONS

The Committee recommends that the Department of Justice and Constitutional Development take note of the verbal comments as highlighted in clause 7 of this report and to further consider the following emphasis from the Committee:

While the Constitutional invalidity has been addressed by the Bill on a technical level, the Bill fails to ensure that wives in polygamous marriages will henceforth be able to exercise the rights afforded to them only in theory and not in practice. The Bill provides for the terms “marital property”, “house property”, “family property” and “personal property” but fails to define these terms. The Bill provides that these terms has the same meaning ascribed to them in customary law. This creates a loophole because customary law is not codified. The committee therefore recommends that clause one be amended to include the definitions of these words and the following are therefore suggested as definitions:

Clause	Concern/ comment	Recommended definitions
Clause 1	Interpretation and insertion of the "Family property" under definitions	"Family property" be defined to mean property belonging to a family as customarily understood in a particular indigenous cultural group constituted by spouses in a customary marriage for the sole ownership, management, control and exercise of other rights by the family concerned, to an extent recognized and permitted by customary practice of the indigenous cultural group of that family.
Clause 1	Interpretation and insertion of the "House property" under definitions .	"House property" be defined to mean property belonging to a house as customarily understood in a particular indigenous cultural group constituted by spouses in a customary marriage for the sole ownership, management, control and exercise of other rights by the house concerned, to an extent recognized and permitted by customary practice of the indigenous cultural group of that family.
Clause 1	Interpretation and insertion of the "Marital property" under definitions.	"Marital property" to mean property as customarily understood in a particular indigenous cultural group to be belonging to spouses in a customary marriage for the sole ownership, management, control and exercise of other rights by the house concerned, to an extent recognized and permitted by customary practice of the indigenous cultural group of that family.
Clause 1	Interpretation and insertion of the "Personal property" under definitions	"Personal property" to mean property as customarily understood in a particular indigenous cultural group to be constituting personal effects belonging to a spouse in a customary marriage for the sole ownership, management, control and exercise of other rights by the spouse concerned, as recognized and permitted in customary practice of the indigenous cultural group of that spouse.

NEGOTIATING POSITION OF THE COMMITTEE

The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature hereby supports the principle and details of the Recognition of Customary Marriages Amendment Bill with amendments [B12- 2019].


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 CHAIRPERSON OF PORTFOLIO COMMITTEE ON
 FREE STATE LEGISLATURE
 27 October 2020