**UNREVISED HANSARD**

**NATIONAL COUNCIL OF PROVINCES**

# WEDNESDAY, 02 DECEMBER 2020

***PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES***

The Council met at 10:01.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

The Chairperson announced that the virtual sitting constituted a Sitting of the National Council of Provinces.

# NOTICES OF MOTION

Mr A B CLOETE: Chairperson, I herby give notice that on the next sitting day of the Council I shall move on behalf of the F F Plus:

That the Council –

1. notes that residents of Bloemfontein in Mangaung were left without water in the past four days after the Mangaung Metro Municipality is currently under section 139 intervention. It is not able to once again pay the outstanding debt to the water board, Blue Water;
2. recalls that this is not an isolated incident since the residents of Machabeng Local Municipality recently also experienced water shortages in four days owing to debt owed to Sedibeng, and water to residents of Govan Mbeki Local Municipality was also throttled owing to debt to Rand Water.
3. further notes that I will move that this House urgently debate the future of the relationship between water boards and municipalities.

*Xitsonga:*

Ms B MATHEVULA: Mutshamaxitulu,

*English:*

I hereby give notice that on the next sitting day of the Council I shall move on behalf of the EFF:

That the Council debates the water shortage in Giyani, Limpopo, where over 50 villages are without clean and running water despite government’s spending of

R2,3 billion on a bulk water supply project that started in 2013 which is incomplete and is yet to yield results.

# MOTIONS WITHOUT NOTICE

**WATER CRISIS WORSENS AT UGU DISTRICT MUNICIPALITY**

(Draft Resolution)

Mr T J BRAUTESETH: Chairperson, I move without notice:

That the Council –

1. notes with great concern the worsening water crisis throughout the entire Ugu District Municipality, which has plagued over 200 000

residents across four municipalities, the majority of which are poor, elderly and vulnerable;

1. further notes that economic activities in the district including industry, agriculture, and tourism, have been severely affected leading to over 30 000 direct or indirect job losses over the last three years;
2. furthermore, notes that health services at St Andrews, Murchison and Port Shepstone Regional hospitals have been severely curtailed leading to delays in surgeries, inadequate hygiene facilities and even a lack of water for patients to drink;
3. also notes that recently released Tsalach Report exposed massive corruption relating to water and sanitation contracts. Indeed, the municipal manager Naidoo has been suspended due to his alleged corrupt involvement and personally benefitting from tender awarding;
4. notes that the district municipality has presided over the complete collapse of the billing system, which has reduced the revenue stream to a mere trickle;
5. further notes that numerous incidents of sabotage to vital water infrastructure. Despite cases being opened with the SA Police Service there has been no progress on investigations and zero arrests;
6. calls on the Minister of Police to immediately deploy a team of experienced investigators and crime intelligence officers to assist in the prevention, arrest and conviction of those involved in the municipal infrastructure sabotage;
7. further calls on the Minister of Co-operative Governance and Traditional Affairs, Cogta, to immediately place water management system in Ray Nkodeni Municipality under the control of the uMngeni Water Board; and
8. calls on the Minister of Cogta to immediately place the Ugu District Municipality under section 139(5)(a) administration to resolve the financial situation and restore functional water services.

Motion agreed to in accordance with section 65 of the Constitution.

# HEARTLESS KILLERS PREYS ON MS NOMZAMO SIDUKWANA

(Draft Resolution)

Mr M NHANHA: Chairperson, I move without notice:

That the Council –

1. condemns in the strongest possible terms, the callous killing of Ms Nomzamo Sidukwana and her five children aged between six months and 10 years in Kwaaiman village outside Mqanduli in the Eastern Cape;
2. notes that these barbaric murders occurred whilst our country is observing 16 Days of Activism Against Gender Based Violence;
3. commends the SA Police Service for apprehending the suspect, who is believed to have been trying to flee the country;
4. calls on the National Prosecuting Authority, NPA, to leave no stone unturned in preparing a watertight case against the accused, and
5. sends condolences to Nomzamo’s mother Mrs Nolungile Sidukwana, family and friends during this difficult time.

Motion agreed to in accordance with section 65 of the Constitution.

# CRIMINAL ACTIVITY SPIKE IN VERULAM

(Draft Resolution)

*IsiZulu:*

Nk S A LUTHULI: Ngenza isiphakamiso esingenaso isaziso ukuthi uMkhandlu -

1. uqaphela ukwanda kwezenzo zobugebengu edolobheni lase-Verulam lapho kwenzeka khona isigameko ezicishe zibenhlanu ngosuku emini kabha;
2. uphinde uqaphele ukuthi iningi lalamacala agcina engabikwanga emaphoyiseni ngenxa yokuba abantu bamanqikanqika ukuvula amacala;
3. ubhekisise ukuthi kusobala ukuthi abezomtheho bakuleli dolobha bayahluleka nokulwisana nobugebengu okukhombisa ngokusobala ukuthi abantu bakithi abaphephile emiphakathini;
4. uphinde ubhekisise uhluleka kwabomthetho ukwenza umsebenzi laphaya edolobheni lase-Verulam kuyinto engamukelekile; futhi
5. uthi kuNgqongqoshe Wezamaphoyisa umnumzane uBheki Cele akalisukumele phezulu lolu daba, alubhekisise. Ngiphakamisa kanje.

# ILLEGAL ELECTRICITY CONNECTION KILLS CHILDREN

(Draft Resolution)

Ms L C BEBEE: Thank you very much, Chairperson. I hereby move on behalf of the ANC:

That the Council-

* 1. notes that three children have died due to illegal electricity connection in Jika Joe informal settlement, Pietermaritzburg;
  2. further notes that the tragic incident took place whilst the country was commencing with the 16 Days of Activism against women and children; and
  3. calls upon the Co-operative Governance and Traditional Affairs, Cogta, in KwaZulu-Natal to leave no stone unturned in finding those responsible for the tragedy.

Motion agreed to in accordance with section 65 of the Constitution.

# NUMBER OF MUNICIPALITIES UNDER ADMINISTRATION INCREASES

(Draft Resolution)

Ms C VISSER: I have got a motion without notice, Chair. On behalf of the Democratic Alliance I hereby move a motion without notice:

That this Council –

1. notes that in every increasing number of municipalities are under administration in terms of section 139(1b) of the Constitution for the second time since 2018;
2. further notes that since the first intervention in Butterworth in 1998, several others followed over the years regressing into a disaster and little evidence could be found of improved financial conduct with any of these municipalities;
3. further notes that the various intervention fail to yield clean audit reduce Eskom debt or improve service delivery which backs the question as to why the provincial government saw it to continue ... down this ineffective trajectory... [Inaudible.] ... without considering the regional government’s created an environment metering unaccountability without consequences and within environment allowed fraud and corruption administration to develop;
4. also notes that the constitutional preventative measures of section 139(1b) and (c) were misused to settle political score instead of governing towards respectfully upholding the

Constitution and the laws in compliance with the mandate; and

1. lastly, takes note that ... [Inaudible.] ... cause will have direct consequences for the economy and the communities entitled to basic services.

Motion objected to.

# PUPILS NOT REGISTERED FOR NEXT YEAR IN GAUTENG

(Draft Resolution)

Ms M N GILLION: Chairperson, I rise on behalf of the African National Congress and move:

That this Council-

1. notes that more than 40 000 pupils have allegedly still not been able to register for next year in Gauteng;
2. also notes that this could cause anxiety and create chaos in our communities; and
3. calls upon the member of executive council, MEC, Panyaza Lesufi, to attend to this matter urgently, working together with the Department of Basic Education and ensure speedy resolutions to avoid a crisis.

Motion agreed to in accordance with section 65 of the Constitution.

# AREAS DECLARED AS DROUGHT DISASTER

(Draft Resolution)

Mr W A S AUCAMP: Hon Chairperson, on a point of order, my hand has been raised since the beginning for a motion without notice and I have not been recognised. This is hon Aucamp. Thank you, hon Chairperson. On behalf of the Democratic alliance I hereby move a motion without notice:

That this Council-

1. notes that during the deliberation of the provincial mandate for the Division of Revenue Bill several provinces ask for more money to be made available in order to assist the agricultural sector that are suffering under the effects of the crippling drought;
2. further notes that Treasury in its answers to the provinces said that more money can be made available to provinces should a state of disaster with regards to the drought be declared either nationally or provincially;
3. also notes that during February this year, the country was declared as a drought disaster area and that the disaster declaration was not renewed and therefore are not in place anymore;
4. further notes that many parts of our country have since February this year still not received yearly average rainfall and are still

experiencing devastating effects of this prolong drought and that there are areas that receive average rainfall, but due to the devastating effect of this drought still do not have enough grazing available for the animals;

1. lastly, notes that should certain provinces or areas within provinces be declared as drought disaster areas, provinces will have more access to funding in order to assist agricultural sector in those areas in the provinces that are still suffering due to this drought; and
2. requests the Minister of Cogta, the President and all the relevant provincial premiers to investigate the possibility of declaring certain areas as drought disaster areas as a matter of urgency.

Motion objected to.

# ONSIDERATION OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL AND REPORT OF SELECT COMMITTEE ON

**COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, WATER AND SANITATION AND HUMAN SETTLEMENTS THEREON**

Mr T S C DODOVU: Hon Chairperson of the NCOP, hon Masondo, hon members in this plenary session, as we glide towards a full cycle of our programme, to our recess, amid the resurgence of the Covid-19 pandemic, we acknowledge with great enthusiasm our collective efforts to examine and propose the passing of the two legislations applicable in the local government sphere that we are considering today.

The first one, the local government Municipal Structures Amendment Bill is vital and central to the government’s efforts to bring about a new paradigm shift in our service delivery and development value chain.

This Bill is a necessary intervention to improve and enhance local governance resilience and sustainability in the delivery of services, to complement the work of a developmental state. The envisaged amendments to the Structures Act indeed resonates with the challenge

towards the smooth implementation of the district development model.

If these are successfully and correctly implemented, they will collectively improve integrated planning for Co- operative governance towards a new integrated district- based service delivery approach, aimed at fast-tracking service delivery, ensuring that all our municipalities are adequately supported and resourced to carry out their mandates.

The current development ethos indeed further requires a structural review of local government legislation and regulatory framework, to sharpen the ability of the state through the third sphere of government to maximise a fundamental shift towards accelerated service delivery.

Once passed into law, this Municipal Structures Bill will ensure the following:

Firstly, it will provide for a minimum of 10 councillors per municipality; it will provide for the prohibition of a councillor who is found guilty of the breach of the code of conduct for councillors for a period of two

years; it will provide additional functions for the Speaker, in order to improve maintenance of order and adherence to the code of conduct of councillors.

In addition, the new amendments will provide for a Whip of a council; clarify a formula for the composition of an executive committee, remove all references to district management areas; and remove all references to the plenary executive system as a type of municipality.

Other than that, the new legislation will clarify the date of assumption of office by a councillor; allow for an extension on the declaration of results of an election; and requires the municipal manager to inform the MEC for Local Government in the province, in addition to the Independent Electoral Commission, IEC, of vacancies in the wards.

It is vital to support this legislation because it will provide for the MEC of Local Government in the province to call and set the date for by-elections; and allow the MEC to designate a person to call and chair a meeting of a municipal council when a Speaker, an acting Speaker or

municipal manger refuses to call a meeting. This is a widespread problem that needs attention.

The proposed amendments also provide for the establishment of municipal public accounts committees in order to strengthen oversight and accountability, especially with regard to financial and performance management.

Lastly, the proposed amendments to the Municipal Structures Act will provide for a resolution of a situation where the excessive seats may arise from the seat allocation in local municipalities; amend the timeframe for the municipal manager to inform the Chief Electoral Officer of vacancies when they arise; empower the MEC for Local Government in the province to inform the Chief Electoral Officer of the IEC of vacancies, if the municipal manager fails to do so.

Equally important, the amendments will qualify the supplementation of party lists for local municipalities; provide for the resolution of multiple seats, which will arise where a candidate qualifies for elections to more

than one seat; clarify the supplementation of party lists for district municipalities and provide for the transitional arrangements in respect of municipalities’ plenary executive system.

The public participation processes in all provinces have been followed on the Municipal Structure Amendment Bill in conformity with the systems, procedures and timelines, including extension, where necessary, to enable receipt of all negotiating mandates from the nine provinces.

As such, all provinces submitted details of their respective public participation processes to this Bill. This includes the submission of lists of the individual, number of public hearings, names of organisations as well as stakeholders consulted across our provinces.

The national Department of Co-operative Governance was instrumental in all the briefing arrangement across provinces, including the responses to negotiate mandates and amendments to the Bill. This Bill was duly adopted by the select committee to the extent of confirmation of final mandates.

Therefore, this Bill is in terms of section 76 of the Constitution, classified as a 76 Bill, as it affects provincial interests.

Finally, on behalf of the select committee, I move for the adoption and approval of the Municipal Structures Amendment Bill by the NCOP and it eventual passage into law. Thank you very much.

Debate concluded.

Question put: That the Bill be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu- Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Bill accordingly adopted in accordance with section 65 of the Constitution.

# CONSIDERATION OF CUSTOMARY INITIATION BILL AND REPORT OF SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND

**TRADITIONAL AFFAIRS, WATER AND SANITATION AND HUMAN SETTLEMENTS THEREON**

Mr T S C DODOVU: Hon House Chair and fellow Members of Parliament, the customary initiation in South Africa is an important cultural practice spooning many, many centuries. It is differently practiced by many communities as a secret and respected practice.

Therefore, this Bill, the Customary Initiation Bill heralds a new epoch in terms of this practice and marks the beginning of regulating it in terms of the Constitution and all the applicable laws of the Republic. To many communities this practice is an integral part of their lives because it marks the transformation of young initiates to adulthood and prepares them to be responsible in their societies.

Hon Chair and hon members, we all know the devastations and effects of customary initiation in many parts of our country. This has not only resulted in the laws of lives of many young boys and girls, but also deprived us to of future leaders. As the society, we cannot sit back and

surrender, fold our arms and keep quite when all this is happening.

Accordingly, the Customary Initiation Bill is a necessary intervention. It is a product of a responsible government towards its people to avoid loss of life and serious injuries caused by illegal initiation and other related causes.

We note that in some cases the customary practice of initiation has been subject to abuse. Even some initiation schools operate for personal financial gain only with little or no concern for the wellbeing of initiates.

Hon Chair, it is the right of each initiate to health and education, good quality health care and counselling. They also have the right to adequate supervision by an adult or caregiver they trust. It is also important to have approved traditional surgeons and health care practitioners to perform initiation practices with clean, hygienic equipment and in environments that are acceptable.

Therefore, hon Chairperson, the Customary Initiation Bill seeks to provide for the effective regulation of customary initiation practices and for the establishment of a National Initiation Oversight Committee and the provincial initiating co-ordination committees and their related functions.

This Bill seeks to provide for the responsibilities, roles and functions of the various role-players involved in initiation practices and their governance aspects. In addition to this, the Customary Initiation Bill provides for the effective regulation of initiation schools for the regulations of powers of the Minister of Co-operative Governance and Traditional Affairs and the premiers of different provinces, to ensure that this is successful.

In respect of this Bill, there are foreseeable financial implications and this entail traveling costs for members of the established committees during the initiation season as well as costs associated with awareness campaigns necessary at national and provincial levels.

Therefore, in this context hon Chair, the public participation processes in all provinces have been followed on the Customary Initiation Bill, in order to conform with the systems, the procedures and the timelines, including the extensions where it was necessary in order to enable the receipt of all negotiating mandates from different provinces.

Hon Chair, as fast provinces submitted all details of their respective public participation processes on the Bill. This includes the submission of lists of the individuals, the number of public hearings held in provinces, names of organisations and institutions which were consulted and all the relevant stakeholders.

The Department of Co-operative Governance and Traditional Affairs played a central and pivotal role in all the briefings that ensued across the provinces. This include the speedy responses to negotiating mandates by the provinces and the amendments to the Customary Initiation Bill. This Bill was therefore adopted by the Select Committee on Co-operative Governance and Traditional Affairs, Water and Sanitation and Human Settlements, to

the extent of confirmation of final mandates from different provinces.

Therefore, this Bill, hon Chair, is in terms of section

76 of the Constitution and accordingly classified as a section 76 Bill, as it affects provincial interests as well.

Having said that on behalf of the Select Committee on Co- operative Governance and Traditional Affairs, Water and Sanitation and Human Settlements, I am on the move that this report be adopted and approved on the Customary Initiation Bill by the plenary of the NCOP and its eventual passage into law. I thank you. [Applause.]

Debate concluded.

Question put: That the Bill be adopted.

In favour: Eastern Cape, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Against: Free State.

Bill accordingly adopted in accordance with section 65 of the Constitution.

# CONSIDERATION OF TRADITIONAL COURTS BILL [B 1D – 2017] AND REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE THEREON

Ms S SHAIKH: Thank you, hon Chairperson and good morning, hon members. The Traditional Courts Bill was referred to the Select Committee on Security and Justice on

31 October 2019, after being revived in the Council on

17 October. The committee has agreed to the Bill, with amendments.

Traditional courts exist and it is constitutionally essential that they be transformed to align them with the new constitutional dispensation. Chapter 12 of the Constitution recognises the institution, status and role of traditional leadership according to customary law, subject to the Constitution, and schedule 6 of the Constitution recognises the existence of traditional courts.

Currently, traditional courts are still governed by sections 11 and 20 of the Black Administration Act 38 of 1927; however, in this Bill these sections of the Black Administration Act are repealed.

The objectives of the Bill, as contained in clause 2, is to create a uniform legislative framework regulating the roles and functions of traditional courts in the resolution of certain disputes, and in accordance with constitutional imperatives and values. The Bill is intended to improve access to justice services by enhancing the effectiveness, efficiency and integrity of traditional courts for the purposes of resolving disputes with the view to promoting social cohesion, coexistence, peace and harmony.

The Bill affirms the role of traditional courts in terms of customary law, and facilitates full and meaningful participation, without discriminating against any member of a community, in a traditional court in order to create an enabling environment which promotes the rights enshrined in Chapter 2 of the Constitution.

Traditional courts are accessible to anyone who wants to use them. However, this should be understood in the context of section 30 and section 31 of the Constitution. Section 30 provides that everybody has the right to use their language and participate in the cultural life of their choice. Section 31 affords persons the right to belong to a cultural, religious or linguistic community to enjoy their culture, practise religion and the use of their language, and to form, join and maintain cultural, religious or linguistic associations in other organs of civil society.

These rights must be exercised in a manner that is not inconsistent with the Bill of Rights, and these sections already give persons a choice in practising their culture and does not impose a duty on them.

Clause 3 of the Bill sets out the guiding principles which must be borne in mind when implementing the Bill so as to embrace the values enshrined in the Constitution.

In terms of clause 2(b), when dealing with disputes the courts must be mindful of the existence of systemic,

unfair discrimination and inequalities or attitudes which are in conflict with the Constitution or which have the susceptibility of excluding meaningful participation in traditional court proceedings by any person or groups of persons, particularly in respect of gender, gender identity, sexual orientation, age, disability, religion, language, marital status and race brought about by colonialism, apartheid and patriarchy.

Furthermore, clause 3(2)(e) states that a founding value on which customary law is premised, is that its application is accessible to those who voluntarily subject themselves to that set of laws and customs. This provision therefore emphasises the voluntary nature of the traditional court system.

Clause 4 deals with the institution of proceedings in traditional courts. Proceedings may not be instituted if the dispute in question is being dealt with at another level within the traditional justice system or if the matter is pending or has been finalised by a court in the judicial system or is being investigated by the SA Police Service. This clause, read with schedule 2, sets out the

types of disputes which traditional courts are competent to deal with, which are less serious disputes that disturb harmonious relationships within communities.

With regard to gender representivity and vulnerable groups, the Bill includes provisions that seek to promote the right to equality within traditional courts.

Traditional courts must be made up of women and men pursuant to promoting the right to equality, as contemplated in section 9 of the Constitution.

Traditional courts are required to promote and protect the representation and participation of women as parties and members of the court, and the Minister and Commission for Gender Equality, CGE, are required to put measures in place to promote gender equality in these courts and to report annually on these to Parliament.

Further safeguards are contained in the Bill for the protection and assistance of vulnerable groups. The Bill requires, for instance that all court proceedings must be open to all members of the community at a place which is accessible to members of the community. Proceedings must be conducted in the presence of both parties and both

parties must be able to participate fully in the proceedings without discrimination on any of the prohibited grounds referred to in section 9(3) — the right to equality — in the Constitution.

Failure to comply with these important procedural aspects can result in the matter being taken on review to the High Court. Provincial registrars are required to assist unhappy litigants to take their matters on review.

Parties in proceedings before a traditional court are furthermore allowed to be assisted by any person of their choice in whom they have confidence, although legal representation is not allowed.

Furthermore, if the parties are aggrieved by the decision or order of a traditional court, they may, after exhausting all the traditional court system appeal procedures, refer that decision or order to the magistrate’s court to hear the matter and take a decision.

Clause 5 deals with the composition of and participation in traditional courts, and clause 7 deals with the procedure in traditional courts.

Clause 6 sets out the nature of traditional courts and emphasises that traditional courts are courts of law; the specific purpose of which is to promote the equitable and fair resolution of disputes in a manner that is underpinned by the value system applicable in customary law, and custom and function in terms of the Constitution. There main emphasis is on preventing conflict, maintaining harmony and resolving disputes in a manner that promotes restorative justice, social cohesion and reconciliation.

Clause 8 sets out orders that the traditional court may make. The type of orders provided for in this clause is restorative in nature, for instance compensation and redress, which are aimed at restoring relations between parties and promoting harmony.

Clause 9 provides for the enforcement of orders made by traditional courts; however, if an order of a traditional

court is not complied with, the party in whose favour it is made may escalate the matter to the clerk of the traditional court who must try to resolve the matter or refer the matter to a justice of the peace appointed by the Minister for that purpose in terms of the Justices of the Peace and Commissioners of Oaths Act.

Clause 10 provides for the appointment or designation of provincial traditional court registrars and sets out their role and responsibilities.

Clause 11 allows for the review of procedural shortcomings in the High Court, as I’ve already indicated.

Clause 12 deals with the referral of matters from traditional courts to magistrate’s courts if parties are aggrieved by a decision or order of a traditional court.

Clauses 13 and 14 deal with the record of proceedings of traditional courts and the transfer of disputes from traditional courts to magistrate’s courts, and vice versa.

Clause 15 deals with the limitation of liability of members of traditional courts for anything done in good faith, while clause 16 deals with the code of good conduct and the enforcement thereof.

Clause 17 empowers the Cabinet member responsible for the administration of justice to make regulations and various matters required under the Bill, including regulations on the training of traditional leaders and members of traditional courts, and the involvement of paralegals.

Clause 18 deals with transitional provisions. Among others, this clause repeals all existing former homeland legislation regulating traditional courts, and clause 19 contains a short title and commencement.

Schedule 1 deals with the discriminatory behaviour which is prohibited on various grounds, and schedule 2 deals with matters which a traditional court may hear and clearly specifies these matters.

In terms of financial implications, the department subjected the Bill to a costing exercise and undertook to

use existing resources as far as possible in the implementation of this Bill. The main financial implications for the state would be in the form of personnel, goods and services relating to the provincial registrars and their support staff, as well as training. The department envisages that the provincial registrars will be officials at the level of director.

In terms of the committee process, the Department of Justice and Constitutional Development briefed the committee on 9 October 2019. Provincial legislatures conducted their public participation process between November 2019 and February 2020. The committee received eight negotiating mandates in favour of the Bill, with one province not supporting the Bill.

On 21 October 2020, the committee met to consider the negotiating mandates, the responses of the Department of Justice and Constitutional Development to the negotiating mandates and matters raised by the parliamentary legal advisor.

Some of the pertinent points raised in discussion, included that the Bill does not seek to establish traditional courts nor change customary law but rather align the functioning of traditional courts with the Constitution.

Many provinces raised the concern that legal representation was not allowed in traditional courts. However, the traditional court system is not punitive but is based on restorative justice, and the need for legal representation is unsuited for dispute resolution in the context of the traditional justice system.

Now, although the opt-out clause was removed from the Bill by the portfolio committee, it is clear in sections

30 and 31 of the Bill of Rights in the Constitution that involvement in cultural life is a voluntary exercise. However, in clause 3, related to the guiding principles, clause 4 — institution of proceedings in traditional courts — as well as clause 6 — the nature of courts — the Bill still provides for persons to execute their right not to participate.

With regard to women and vulnerable groups, regulations that will be developed after the Bill is finalised would contain mechanisms to ensure the promotion and participation of women and vulnerable groups. In addition, training offered would sensitise officials of the court as well as presiding officers to the protection of rights for vulnerable groups. The involvement of paralegal interns in the functioning of the court would also be an inbuilt safeguard even if it is not statutorily imposed.

In addition, in broader terms, the provisions of the Bill read together, namely clause 7, clause 10, subclause 2(b), clause 11, clause 12(1) and clause 17(1) ... [Inaudible.] ... present a form of protection and mechanisms to address issues that could be faced by vulnerable groups.

In addition, the CGE is well placed to monitor gender representivity and gender equity in the traditional courts as this is part of their mandate.

The committee adopted the series of amendments on

3 November 2020. The committee amended six clauses in the Bill as follows. Clause 1, in relation to the definition of a traditional court, we removed reference to the Traditional Leadership and Governance Framework Act and substituted applicable legislation providing for such recognition so as to accommodate the Traditional and

Khoi-San Leadership Act. This amendment was also effected in clause 6 to ensure consistency within the Bill.

In clause 6 — nature of traditional courts — another amendment in terms of the level of a principle traditional leader’s support was added to the levels of traditional courts in subclause 3.

During the course of the committee’s deliberations, we noted an error in clause 11 of the Bill and an amendment was made to ensure that the Bill was aligned correctly.

With regard to clause 16 — code of conduct and the enforcement thereof — to ensure that the Minister acted after consultation with the relevant Cabinet Minister, an amendment was made.

Also in respect of clause 16(5)(a), the clause was amended so that, if there were any transgressions to the code of conduct by persons who have a role in terms of customary law for the effective functioning of traditional courts, the relevant provincial MEC would be better placed in the House of Traditional Leaders to deal with transgressions.

Clause 18 was amended to stipulate clearly the repeals of sections 12 and 20 of the Black Administration Act.

Finally, in clause 19, the short title of the Act is amended to reflect that the year of the Bill was 2020 instead of 2019.

The select committee met on 18 November to consider the final mandates. Seven provinces were in favour ... in support of the Bill and two were not. The committee was of the view that the Bill will go a long way in ensuring the regulation and uniformity of operations of traditional courts. In addition, gender representivity and gender equity was sufficiently addressed in the various clauses of the Bill and the CGE reporting to

Parliament was a progressive step in ensuring that Parliament strengthens its oversight over the functioning of traditional courts.

The committee was further assured by the department that the drafting of regulations would occur speedily as the regulations will give meaning and effect to provisions of the Bill, and further ensure the effective functioning of these courts.

The committee encourages the department to ensure that training occurs in all provinces on the implementation of the Bill to all those who may utilise the traditional court system.

The Select Committee on Security and Justice, having considered the Traditional Courts Bill [B 1B — 2017] referred to it on 31 October and classified by the Joint Tagging Mechanism, JTM, as a section 76 Bill, submits an amended Bill, namely the Traditional Courts Bill [B 1D – 2017] for the Council’s consideration.

Debate concluded.

*Declaration(s) of Vote:*

Ms C LABUSCHAGNE: Hon Chairperson, our objections to this Bill are simple. It is rooted in the patriarchal system of traditional tribunals which the ANC seeks to protect. The traditional court system should be a voluntary system aimed at enabling dispute resolution among those South Africans who choose to live according to these traditions, customs and practices.

In the National Assembly, the ANC refused to include an opt-out provision, and surely under such circumstances this Bill cannot pass constitutional muster.

Furthermore, the Bill also makes no provision for legal representation if a person before such a traditional court so chooses, especially in criminal matters.

Thirdly, this Bill elevates the status of traditional courts to that of courts, rather than it being tribunals as it was originally envisaged.

Any province that supports equal rights for women and children and any province that champions our

constitutional principles and the rule of law cannot reasonably support this Bill. The Western Cape, therefore, will vote against it.

Ms N DUBE-NCUBE (KwaZulu-Natal MEC for Finance): Hon



Chairperson, we do wish to make a presentation on the Bill. The one matter that we would like to raise is that we are very concerned about the Bill, in that we live in a constitutional democracy where we do believe that we should be synchronising our country in terms of ensuring

that all our people are enjoined in one Constitution.

It is our belief that many of our people in all the areas, particularly, as you would’ve seen, a number of areas that sometimes would’ve been rural areas you’d find that they are now semiurban areas, and you already have conflicts whereby there are now assertions that those people need to be subjected to ... which Bill. Do they

need to be subjected to the Traditional Courts Bill or do

they need to be subjected to the other laws of the country?

The other issue that we are concerned about is the issue of the costs related to this Bill. You are all witnesses to the fact that, as we sit in KwaZulu-Natal, we are sitting with the dispute that arose as a result of the payment of Izinduna**,** whereby that Bill was not costed.



Arising as a result of that ... with a Bill of more than a billion which, even to date, has not been clarified ... which was supposed to be back pay for Izinduna in

KwaZulu-Natal.

This Bill talks about justices of the peace, talks about the clerks, talks about the personnel staff and other support staff that are supposed to be dealing with this Bill. As we talk, we have been told by the Minister of Finance that we need to cut on the costs of staff; we need to ensure that all the departments have frozen the

employment of staff, and our budgets have been cut.

Now, you’ve got to appoint the presiding officers and all

these ... at the level of directorate, and all these other staff members that are supposed to be paid. As we sit, we have not even been able to pay the staff from the traditional council. For instance, the staff of Amakhosi,

the administrators that administer the traditional council, as well as the security, the cleaning staff and all other staff that administer our traditional council offices, are not ... paid as we talk. Yet, we are now talking about ... [Inaudible.] ... other staff members that have to be paid.

In this regard, we do not believe that this Bill ... our minds have been applied properly in terms of this Bill having been costed and this Bill having been practical in terms of us realising what we are talking about.

Also, we cannot say that people have got a choice of going to courts. We know that our people cannot afford to go to the High Court when they are not satisfied. We are asking ourselves, why should you create two systems where people, when they are not satisfied, must go to another court? Those are all the issues that we are not satisfied with. Thank you.

Question put: That the Bill be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, Limpopo, Mpumalanga, Northern Cape, North West.

AGAINST: KwaZulu-Natal, Western Cape.

Bill accordingly adopted in accordance with section 65 of the Constitution.

# CONSIDERATION OF RECOGNITION OF CUSTOMARY MARRIAGES AMENDMENT BILL [B 12B - 2019] (NATIONAL ASSEMBLY – SEC

**76) AND REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE THEREON**

Ms S SHAIKH: Thank you, Chairperson, The Recognition of Customary Marriages Amendment Bill, was referred to Select Committee on Security and Justice on 09 June [Inaudible.] The committee has agreed to the Bill with amendments. The recognition of Customary Marriages Amendment Bill aims to amend the Recognition of Customary Marriages Act, 1998 by further regulating the proprietary consequences of customary marriages entered into before the commencement of the Recognition of Customary Marriages Act, RCMA in order to bring the provisions of

the Act in line with the judgments of the Constitutional Court which the court found to be constitutionally invalid because they discriminate unfairly against certain women in customary marriages.

The Constitutional Court, in *Ramuhovhi and Others versus the President* held that section 7(1) of the RCMA inconsistent with the Constitution because it discriminates unfairly against women in polygamous customary marriages which were entered into before the commencement of the Act on the basis of gender, race and ethnic or social origin.

Currently, section 7(1) of the RCMA provides that the proprietary consequences of a customary marriage entered into before the commencement of the Act continues to be governed by customary law. This, in effect means that such wives have no right of ownership and control of marital property and that the right of ownership and control of marital property is the sole preserve of the husband. This was found to be the case particularly in Venda Customary Law.

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. However, 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.

Clause 2 of the Bill amends section 7(2) of the RCMA in line with the judgment in *Gumede versus President of the Republic of South Africa*, in which section 7(2) was declared constitutionally invalid because the section made only customary marriages entered into after the commencement of the RCMA where a spouse is not a partner to any other existing customary marriage to be a marriage in community of property.

The effect of this amendment is that all customary marriages whether entered into after or before the commencement of the RCMA will be marriages in community of property and of profit and loss unless the spouses

decide to exclude that by means of an ante nuptial contract.

In terms of the procedure, the Department of Justice and Constitutional Development briefed the Committee on 23 June 2020. Provincial Legislatures conducted the public participation process between September and November 2020.

Due to the COVID-19 pandemic and national restrictions on public gatherings, provinces were afforded additional time to conduct public participation.

Chair, the Committee received all nine negotiating mandates, eight provinces were in favour of the Bill. On

10 November 2020, the Select Committee considered the negotiating mandates and the responses by the Department of Justice and Constitutional Development to the mandates. 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 Committee, however, agreed with the Department’s explanation 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, so as to avoid unintended consequences to the detriment of women in customary marriages, and whom the Bill aims to protect.

The Committee noted that the South African Law Reform Commission, with the Department of Home Affairs, is reviewing the South African Marriage Regime and 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 for investigation.

Further, the committee recommended that many of the general comments received from provinces in relation to marriages should also be referred to the Department of Home Affairs for their consideration and action.

The Committee further encouraged the Department of Justice and Constitutional Development to heed the calls

made by Provinces for extensive public education on the Bill to ensure that all persons understand the amendments made to the Recognition of Customary Marriages Act.

The Select Committee met on 18 November 2020 and adopted the A-List of proposed amendments. Amendments: Amendments were made to two clauses in the Bill. Clause one was amended to revise the definition of “traditional leader” so as to align it with the definition as contained in the Traditional and Khoi-San Leadership Act, No. 3 of 2019 once that Act has commenced. Clause four was amended as well to reflect that the Bill is now a 2020 Bill as opposed to a 2019 Bill.

The Select Committee met on 25 November 2020 to consider the Final Mandates. At this meeting the committee had received only eight final mandates, seven in favour of the Bill with one province not in favour of the Bill. The Committee did not receive a final mandate from the North West Province at the time of the meeting. However, the final mandate from the North West, in favour of the Bill, was received after the decision of the committee. The committee report was duly adopted on the 26 November 2020

as the committee was satisfied with the proposed amendments and with the content of the Bill.

The Committee is of the view that the Bill will go a long way in ensuring gender equity and for the equitable distribution of assets for women in customary marriages.

The Committee is mindful that the Department of Home Affairs is embarking on a process to develop a new

marriage policy that is inclusive and will embrace equality, human dignity and non-discrimination, and recognize cultural and religious beliefs of various

communities in the country. As part of this process, the committee is sure that the Department of Home Affairs, will attend to the concerns in relation to marriages generally, as raised by provinces in their negotiating mandates.

The Select Committee on Security and Justice, having considered the Recognition of Customary Marriages Amendment Bill [B 12 – 2019] referred to it and classified by the Joint Tagging Mechanism, JTM, as a section 76 Bill, submits an amended Bill, namely the

Recognition of Customary Marriages Amendment Bill [B 12B

– 2020] for the Council’s consideration. Thank you very much, Chairperson.

*Declarations of vote:*

Ms C LABUSCHAGNE: Chairperson, the Western Cape Province holds the view that while the constitutional invalidity is addressed on a technical level. The Bill fails to ensure that wives in polygamous marriages will be able to exercise the rights afforded to them in practice. The Bill fails to define marital property, house property and family property, therefore creating a loophole through which traditional leaders and husbands in polygamous marriages may determine property that rightfully should fall within these categories. To be designated to fall within the sole control of a husband and so called personal property.

The Department of Justice and Constitutional Development and the ANC did not want to accept propose definitions of these terms during public and committee hearings in both Houses, on the basis that it might lead to unintended consequences, examples of which could not be applied.

We are of the view that to support of this Bill will mean to fail women living according customary practices and who are still subjected to patriarchy and the refusal of their basic rights. The Western Cape, therefore cannot support this Bill. Thank you.

Debate concluded.

Declaration of vote made on behalf of the Western Cape.

Question put: That the Bill be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu- Natal, Limpopo, Mpumalanga, Northern Cape, North West.

AGAINST: Western Cape.

Bill accordingly adopted in accordance with section 65 of the Constitution

# CONSIDERATION OF REPORT OF SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS – LESAWELL PETITION HEARING HELD ON

**23 SEPTEMBER 2020 AND 30 SEPTEMBER 2020 AS ADOPTED ON**

**18 NOVEMBER 2020**

Ms Z V NCITHA: Chairperson, good morning to the leadership of the NCOP, my colleagues and those who are listening at home. We present to you the Lesawell petition which we received on

30 October, and which was referred to the committee by the Chairperson of NCOP for consideration and report.

The petitioner, Mr Michael Landsman, had filed a petition in his capacity as director of Lesawell, a local NGO, on behalf of the residents of Winburg and Makeleketla township of the Free State against the Masilonyana Local Municipality.

The petitioner seeks the intervention of the committee for the following: the evaluation of jobs for the entire municipality especially managerial positions and the mayorship; dams to be cleaned out and adequately maintained; the landfill site to operate without illegal dumping; pre- paid electricity meters to be installed to enable the community to buy pre-paid electricity directly from Eskom; the provision, in terms of administration, of the minutes of all meetings with the municipal manager to the petitioner;

the sport ground to be fixed and maintained; the road infrastructure to be maintained; the town hall to be fenced off; the initiation of forensic audits on all grants received by the municipality from 2014 until 2019; and the initiation of a forensic audit into insurance claims made by the municipality.

The committee held two meetings – one on

23 September 2020 and another on 30 September 2020. The committee made the following observations and key findings in relation to the various submissions made on the subject matter of the petition.

The petition indicates that, since 2016 the municipality had not submitted its annual financial statements to the Auditor-General of SA. As a result of its poor financial management, the municipality was placed under administration by the provincial government in 2018.

The committee noted that the requested financial recovery plan of the municipality, the close-out report, the preliminary forensic report and a number of court cases

about wrongful payments of monies meant for Eskom had still to be finalised.

The municipality had appealed before the Standing Committee on Public Accounts on 17 September 2019, where most of these were discussed. There were still capacity challenges in the municipality. It noted that, although it had not submitted its annual financial statements yet, it received its local government equitable share.

The SA Local Government Association, Salga, with the Department of Co-operative Governance and Traditional Affairs, and executive committee had set up a committee to assist the municipality regarding the intervention. Its capacity to collect revenue had been impacted by the struggle to recruit people into strategic positions which, in turn, impeded the ability of the municipality to deliver on its mandate. Salga together with the Department of Co-operative Governance and Traditional Affairs, was assisting the municipality as it was not fully compliant with the Spatial Planning and Land Management Act.

The SA Local Government Association had done capacity building training on the Municipal Accounts Committee and was helping the municipality to fulfil the section 57 appointments to vacant leadership positions and to strengthen oversight.

The SA Local Government Association submitted that the municipality is currently categorised by National Treasury as experiencing technical insolvency. This means that ratios of liabilities are higher when compared to current assets and it owes Eskom an amount of more than R80 million by the end of June 2020. It further owed a number of creditors including the SA Revenue Service, Sars, the Auditor-General of SA, etc.

The committee noted that collection levels are too low, and that the valuation roll is missing key customers.

The committee also noted that Eskom was not honouring the 1994 agreements which states that, where Eskom supplies electricity in the municipal space, it had to pay servitude fees and royalties to the municipally.

The committee made the following recommendations: The Masolonyane local municipality to furnish the close-out report indicating they are no longer under section 139.

In noting the dire financial administration constraint experienced by the Masolonyane local municipality requested the following: The Masolonyane municipality to provide the House with a forensic preliminary report relating to the financial status of the municipality; the Masolonyana municipality to provide the House with a detailed financial recovery plan and to provide the House with a detailed plan on filling strategic positions that would enable effective management and increase the oversight role; and the Masolonyana municipality to provide the House with an update on the engagement with Eskom with a view to settling the debt owed to Eskom.

Lastly, the committee referred the matters in the petition to the Select Committee on Public Accounts for further investigation into its financial position. I submit the report.

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu- Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance with section 65 of the Constitution.

# CONSIDERATION OF REPORT OF JOINT STANDING COMMITTEE ON INTELLIGENCE - ACTIVITIES OF THE COMMITTEE AFTER FIVE MONTHS OF ESTABLISHMENT, AS STIPULATED IN THE INTELLIGENCE SERVICES OVERSIGHT ACT, ACT NO. 40 OF 1994, DATED 27 OCTOBER 2020

Ms Z V NCITHA: Hon Chair, as you have indicated that we will be presenting the Report of Joint Standing Committee on Intelligence on the activities of the committee after five months of establishment, as stipulated in the Intelligence Services Oversight Act, Act No 40 of 1994, dated 27 October 2020. Chairperson, the Joint Standing Committee on Intelligence was established in terms of the

Intelligence Act, as I have indicated, to perform the oversight functions set out in the Act.

During the Sixth Parliament, the committee was constituted on 30 October 2019, after the process of undergoing vetting to top secret security clearance which is a statutory requirement. Having been nominated by their respective political parties, the Ministers of Joint Standing Committee on Intelligence, JSCI, are appointed by the President, in consultation with the Speaker of the National Assembly and the Chairperson of the NCOP.

In terms of section 2(4) of the Act, the President, in consultation with the Speaker of the National Assembly and the Chairperson of the NCOP, is empowered to appoint a member, excluding those appointed to the committee in terms of section 2(3) as the Chairperson of the committee. Concerning the purpose of the report, the Constitution of the Republic of South Africa of 1996 recognises that Parliament has an important role to play, in overseeing government departments and its public activities.

The Act ensures that JSCI performs the oversight functions as set out in section 3, in relations to the intelligence and counter intelligence functions of the services, which includes administration, financial management and expenditure of services. The purpose of



this emanated from section 6(1) of the Act, which states that the committee shall, within the five months of its appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the committee during the proceedings of the year, together with the findings made in it, and the recommendations it deem appropriate and provide the copy thereof to the Parliament and the Minister responsible

for each service.

For the appointment of the JSCI, it is pertinent to note that the legal processes of finalising the appointment of the committee, were delayed for various reasons.

Consequently, the committee was appointed in terms of the

Act on 30 October 2019, as I have indicated. The first meeting of the committee took place on 13 November 2019, following the swearing-in of members. The members of the committee must take an oath of affirmation of secrecy,

before commencing their functions as prescribed by the Act.

For the composition of the committee, the committee consists of Members of Parliament appointed on the basis



of proportional representation determined according to the formulation set out in the Act. The Chairperson is appointed separately in terms of section 2(4) of the Act. Accordingly, the following seats were allocated to

various political parties following the 2019 elections, ANC, 8 seats, DA, 3 seats and EFF, 1 seat.

The members of the committee are as follows: Chairperson, Mr Maake, the ANC member; M C Bebee, the NCOP member; Ms M C Dikgale, National Assembly, ANC; Ms B A Dlakude, ANC; Ms M L Harmans, ANC; Mr G Magwanishe, National Assembly,

ANC; Ms J M Mofokeng, National Assembly, ANC, Mr M K Mmoiemang, NCOP, ANC; Ms Z Ncitha, NCOP, ANC; Dr M M Gondwe, NA, DA; Ms D Kohler-Barnard, NA, DA; Ms C Labuschagne, NCOP, DA and Dr M Q Ndlozi, National Assembly, EFF. Those are the members of the committee.

Concerning the orientation of the members, the Act provides for the establishment of JSCI for performing oversight functions relating to the functions of the intelligence services and report thereon to Parliament. After the committee had been established following the awarding of top secret security clearance certificates, members had to undergo intensive training or orientation in the field of intelligence, as I have indicated.

Section 5 Clearance Act stipulates that the committee shall conduct its functions in a manner consistent with the protection of national security. Furthermore, no person shall disclose any intelligence, information or document the publication of which is restricted by the law, and which is obtained by that person in the performance of his or her functions in terms of this Act. In order to adhere to the Act, intensive induction and training is provided to members.

For the Sixth Parliament, orientation for the members took place from 18 to 22 November 2019.It enabled members to understand the nature of the environment coupled with the complexities of the Fourth Industrial Revolution and

its implications to intelligence and national security; how to handle secrecy; and responding to public enquires on sensitive issues and related matters. The orientation prepared the committee to function optimally, and to ensure the safety and security of information.

More importantly, the newly established committee was briefed on the functions and roles of the services and their entities. Additionally, the committee received an overview of pertinent issues within the Intelligence Services namely, the State Security Agency, SSA, the SA Police, SAP: Crime Intelligence, and Defence Intelligence of the SA National Defence Force, SANDF. The Office of the Inspector-General of Intelligence, OIGI, also inducted members in order for them to understand the functions of the Inspector-General of Intelligence as stipulated in Section 7(7) of the Act.

On 19 November 2019, the committee interacted with the SSA. It was welcomed by the Acting Director-General, DG, of State Security and senior management. The presentation touched on the current status, challenges and recommendations on improving the Agency. The Acting DG

clarified the illegality of the establishment of the SSA, which came into existence in 2009 after Proclamation 59 of 2009 ... [Interjections.] ... by former President Jacob Zuma where several entities were amalgamated.

Those included the National Intelligence Agency, NIA, that functioned as domestic intelligence with the mandate of gathering intelligence and counter-intelligence, the SA Secret Services, SASS, which gathered intelligence

outside the borders. This was the major problem Chairperson, which the committee had to deal with. We are still in consultation with the ministry to deal with the

matter. Thank you very much, Chair. I therefore submit the report.

Debate concluded.

Question put: That the Report be adopted.

[Take in from Minutes.]

Report accordingly adopted in accordance with section 65 of the Constitution.

The CHAIRPERSON OF THE NCOP: Hon delegates, let me take this opportunity to thank the special delegates by availing themselves and to thank everyone who participated in this important sitting of the NCOP. Hon members, that concludes the business of the day.

The Council adjourned at 11:42.