

REPUBLIC OF SOUTH AFRICA

RECOGNITION OF CUSTOMARY MARRIAGES AMENDMENT BILL

*(As proposed by the Select Committee on Security and Justice
(National Council of Provinces))*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 12B—2019]

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

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Recognition of Customary Marriages Act, 1998, so as to further regulate the proprietary consequences of customary marriages entered into before the commencement of the said Act; and to provide for matters connected therewith.

Amendment of section 1 of Act 120 of 1998, as amended by section 19 of Act 42 of 2001 and section 10 of Act 31 of 2008

“traditional leader” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and is recognised in terms of the applicable legislation providing for such recognition.” 10

2. Section 7 of the principal Act is hereby amended—

“(1) (a) The proprietary consequences of a customary marriage in which a person is a spouse in more than one customary marriage, and which was entered into before the commencement of this Act, **[continue to be governed by customary law]** are that the spouses in such a marriage have joint and equal—

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| (i) ownership and other rights; and | 20 |
| (ii) rights of management and control,
over marital property. | |

(b) The rights contemplated in paragraph (a) must be exercised—

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| <p>(i) in respect of all house property, by the husband and wife of the house concerned, jointly and in the best interests of the family unit constituted by the house concerned; and</p> <p>(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.</p> | 25 |
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(c) Each spouse retains exclusive rights over his or her personal property.

(d) For purposes of this subsection, “marital property”, “house property”, “family property” and “personal property” have the meaning ascribed to them in customary law.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) A customary marriage **[entered into after the commencement of this Act]** in which a spouse is not a partner in any other existing customary marriage, is a marriage in community of property and of profit and loss between the spouses, unless such consequences are specifically excluded by the spouses in an antenuptial contract which regulates the matrimonial property system of their marriage.”.

Transitional provisions

3. (1) The provisions of section 2 of this Act do not invalidate—

(a) the winding up of a deceased estate that was finalised; or

(b) the transfer of marital property that was effected, before the commencement of this Act.

(2) The provisions of subsection (1) do not apply to the transfer of marital property where, at the time of such transfer, the person to whom the marital property was to be transferred, was aware that the marital property in question was subject to a legal challenge.

Short title

4. This Act is called the Recognition of Customary Marriages Amendment Act, 2020.