

DEPARTMENT'S RESPONSE TO COMMENTS ON REFORM OF CUSTOMARY
LAW OF SUCCESSION AND REGULATION OF RELATED MATTERS BILL, 2008

[B 10—2008]

Clause 1(Women Legal Centre)

(i) Preamble

The Women Legal Centre proposes that the preamble contain the following words:
“Customary law has been tainted by its codification, recordal and application during colonial and apartheid times and the historic exclusion of women in its development. Customary law is subject to other rights enshrined in the Constitution“. The Bill deals with succession and not necessarily the development of customary law and for this reason are of the opinion that addition of the words proposed will be superfluous.

(i) (Definition of descendant)

The Bill defines a descendant as” in relation to a deceased person, includes a person who, in terms of customary law, was a dependant of the deceased *immediately* before the death of the deceased. The Women Legal Centre proposes that the word *immediately* be omitted from the definition. The Department is of the view that the word serves an important role to determine at what stage a person was in fact a dependant. Also use of the word includes indicates that the definition is not exhaustive, other persons may also be descendant, the facts of a particular case will determine whether a person is a descendant or not. The definition is not limiting as it includes a category of dependants.

(ii) The parliament researchers propose that Minister be defined in the Bill. The Department is of the view that it is not necessary to define the Minister as the reference to the Cabinet member responsible for the administration of justice is used only in two places in the Bill. While it may appear as if the word Minister is used in the Bill, this is not the case due to the fact that the word Minister is used in reference to the Intestate Succession Act, 1987. The word is defined in that Act. Definitions are normally used

to expand, limit or avoid repetition in its meaning

Clause 5(6) :(Parliament Research Unit)

(ii) Do the Magistrates have necessary familiarity with the variety of family structures

The officials of the Masters Office are of the view that magistrates are already dealing with objections in the course of their daily duties.

(iii) What will be the potential impact on an already overloaded Masters Office of the referrals?

The office of the Chief Master acknowledges that the envisaged legislation will bring about added responsibilities to their functions. To this end, every magistrate's court has been designated as a service point.

Clause 6 :(distinction between properties held by a traditional leader)

The Women Legal Centre opposes the exclusion of the property held by a traditional leader from the operation of the Intestate Succession Act. The exclusion of the property held by a traditional leader in official capacity is necessary since property such as a leopard skin worn by traditional leaders should be worn by the person who is identified as a successor of the traditional leader.

Clause 7:

The women Legal Centre submits that clause 7 protects only the customary law partner and not the civil marriage spouse where and proposes that no time limit should be attached to the protection of a woman in either type customary or civil marriage. This clause emanates from the provisions of section 22(7) of the Black Administration Act, 1927. The Repeal of the Black Administration Act and the

Amendment of Certain Laws Act, 2005, contains a saving that protects any right acquired in terms of the Black Administration Act, 1927. Including the clause in this Bill will amount to duplication. The clause may be omitted from the Bill.

Repeal of laws:

A question was raised by Parliament researchers whether the following legislation has been repealed:

(a) KwaZulu-Natal Code on the Code of Zulu Law, 1985(Act 16 of 1985):

(b) Proclamation 151 of 1987(sections 79-82): The Kwazulu Code has been repealed by section 53(1) of the Traditional Leadership Act, 2005 (Act 5 of 2005).

(c) Regulation for the Administration and Distribution of the Estates of Deceased Persons-

-R34 of 1966:

-R200 of 1987: These are regulations under section 23(10) of the Black Administration Act, 1927. The regulations will be repealed automatically when the repeal of section 23(10) of the Black Administration Act, 1927, takes effect.

Awareness creation about the envisaged legislation:

Parliament Researchers raised the question how public awareness on the envisaged legislation will be achieved. The Bill has been included in the communication strategy of the Branch: Public Education and Communication (PEC) of the Department. In order to populate the Bill, a radio interview has already been conducted regarding the Bill on Kaya FM. Education by PEC will ensure that awareness takes place throughout the country.