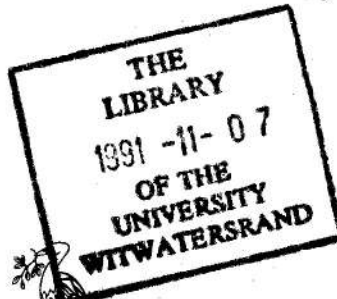


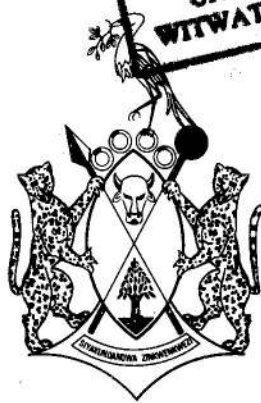
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 68 OF 1991

IT IS HEREBY NOTIFIED THAT THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATE
HAS ASSENTED TO THE FOLLOWING DECREE WHICH IS HEREBY
PUBLISHED FOR GENERAL INFORMATION:-

CUSTOMARY LAW AMENDMENT DECREE, 1991

DECREE No. 23 OF 1991

COUNCIL OF STATE — REPUBLIC OF CISKEI

OCUSTOMARY LAW AMENDMENT DECREE, 1991

DECREE

To recognize customary marriages as valid marriages, to regulate certain consequences of customary marriages, to make provision for the registration of customary marriages and for the registration of the dissolution of customary marriages, to regulate the contractual capacity of certain women, to provide for a claim for the death of a breadwinner of a customary marriage, to amend or repeal certain laws and to provide for incidental matters.

(English text signed by the Deputy Chairman of the Council of State. Assented to on 14 October 1991.)

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Definitions. - In this decree, unless the context indicates otherwise —

“Ciskei” means the Republic of Ciskei;

“common law” includes any applicable statute law;

“common law marriages” means a marriage under common law;

“common law” means the customs and usages constituting the traditional law of the respective tribes of Ciskei;

“customary marriage” means a marriage in accordance with customary law and includes a customary union entered into before the commencement of this decree;

“customary union” means a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927);

“magistrate” includes an additional magistrate and an assistant magistrate;

“marriage goods” means the property, whether known as ikhazi, lobola or bogadi, required in accordance with customary law to be transferred from one family group to another in respect of a customary marriage;

“Minister” means the minister of State for Justice;

“regulation” means a regulation made and in force under this decree;

“Treasury” means the Minister of State for Finance and Economic Development or any officer of his department acting under his authority.

2. Recognition of customary marriage. - (1) A customary marriage, whether entered into before or after the commencement of this decree, shall be recognized as a form of marriage which in law has a status equal to that of a common law marriage.

(2) The partners thereto shall have the status of spouses of a marriage, and any child who is born of that marriage or who in terms of customary law is deemed to be a child of that marriage shall have the status of a legitimate child.

(3) Any statutory rule of law relating to marriage privilege or the competency or compellability of witnesses shall apply to a spouse of that marriage.

(4) Subject to the provisions of this decree, the coming into existence of a customary marriage, its legal consequences and its termination shall be governed by customary law.

3. Registration of customary marriage or dissolution thereof. - (1) Every customary marriage and the dissolution of every customary marriage in accordance with customary law shall be registered in accordance with the regulations.

(2) The failure to register a customary marriage in accordance with the regulations contemplated in subsection (1) shall not affect the validity of that customary marriage for a period of five years after the commencement of the decree or such longer period determined by the Minister by notice in the *Gazette*.

4. Proof of existence of customary marriage. - (1) For the purposes of proof of the existence at any time of a customary marriage entered into before or after the commencement of this decree a magistrate may on the application of any interested person inquire into the existence of the customary marriage and —

CUSTOMARY LAW AMENDMENT DECREE, 1991

- (a) if he is satisfied that the marriage does in fact exist —
 - (i) he shall register the marriage, if further satisfied that the marriage has not been registered previously; and
 - (ii) he shall issue a marriage certificate in respect of the marriage in accordance with the regulations; or
- (b) If he is satisfied that the customary marriage existed at any particular time but does not exist at the time of the inquiry, he shall issue a certificate to that effect in accordance with the regulations.

(2) A marriage certificate issued under subsection (1)(a)(ii) or a certificate contemplated in subsection (1)(b) and issued thereunder shall for all purposes be *prima facie* proof of the facts stated therein.

(3) If, during an inquiry in terms of subsection (1) it is proved that marriage goods have been accepted at any time either wholly or in part, it shall be presumed, until the contrary is proved, that a customary marriage exists or existed.

5. Wife of customary marriage competent to acquire property. - (1) Notwithstanding the customary law, the wife of a customary marriage shall be competent to acquire and possess property in her own name, to dispose of property so acquired and to enforce or defend her rights in respect thereof in a court of law without the assistance of her husband.

(2) Property acquired by a wife as contemplated in subsection (1) shall vest in her as if she were not subject to customary law and her husband shall not be entitled to deal with such property in any manner without her consent.

6. Action for unlawful death of breadwinner. - (1) A spouse of a customary marriage shall be entitled to recover damages from any person who unlawfully causes the death of the other spouse.

(2) Damages recoverable by a spouse as contemplated in subsection (1) shall not be limited by the fact that more than one surviving spouse may be entitled to claim damages in respect of the death of the husband.

7. Regulations. - (1) Subject to the provisions of subsection (3) the Minister may make regulations —

- (a) providing for the registration of customary marriages and for the registration of the annulment or dissolution of customary marriages;
- (b) prescribing the requirements to be complied with and the information to be furnished before any customary marriage or the annulment or dissolution thereof may be registered;
- (c) prescribing the person who may cause a customary marriage or the annulment or dissolution thereof to be registered;
- (d) prescribing when and the manner in which a customary marriage or the annulment or dissolution thereof may be registered;
- (e) providing for the appointment, where necessary, of official witnesses to officiate at ceremonies in connection with the contracting, annulment or dissolution of customary marriages;
- (f) providing for the issue of a certificate of the registration of a customary marriage or the dissolution thereof and prescribing the form of any such certificate and the fees to be paid therefor;
- (g) prescribing the form of the certificate contemplated in section 4(1)(b) and the fees payable in respect of the issue of any such certificate;
- (h) generally as to any other matter which he considers it necessary or expedient to provide for or to prescribe in order to bring about an effective system of registration of customary marriages and for the better carrying out of the provisions of this decree.

(2) Different regulations may under subsection (1) be made in respect of different tribes or different customs.

(3) The Minister shall not make any regulations prescribing fees except with the concurrence of the Treasury.

CUSTOMARY LAW AMENDMENT DECREE, 1991

8. Saving. - No provision of this decree shall have the effect of bringing within the ambit of the crime of bigamy any act that fell outside the ambit of that crime immediately prior to the commencement of this decree.

9. Repeal of laws. - The laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column of the Schedule.

10. Short title. - The decree shall be called the Customary Law Amendment Decree, 1991 and shall come into operation on a date to be fixed by the Chairman of the Council of State by proclamation in the *Gazette*.

SCHEDULE

(section 9)

<i>No. and Year of Law</i>	<i>Short Title</i>	<i>Extent of repeal</i>
Act 38 of 1927	Black Administration Act, 1927	Section 22bis repealed
Act 76 of 1963	Black Laws Amendment Act, 1963	Section 31 repealed

OKUQULATHIWEYO			CONTENTS		
<i>ISaziso sika-</i>	<i>Inani</i>	<i>Inani le</i>	<i>Govt.</i>	<i>Page</i>	<i>Gazette</i>
<i>Rhulumente No.</i>	<i>leKhasi</i>	<i>Gazethi</i>	<i>Notice No.</i>	<i>No.</i>	<i>No.</i>
68		122	68		122
DEPARTMENT OF THE COUNCIL OF STATE			DEPARTMENT OF THE COUNCIL OF STATE		
CUSTOMARY LAW AMENDMENT DECREE, 1991			CUSTOMARY LAW AMENDMENT DECREE, 1991		
(DECREE No. 23 OF 1991)			(DECREE No. 23 OF 1991)		

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