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ACT NO. 15 OF 2022

Harmonization of the Rights of Customary Widows with the Legal Capacity of Married Persons Act, 2022

An Act to make provision for the enhancement of the economic status of customary widows to enable them to exercise their economic and property rights in line with the provisions of the Legal Capacity of Married Persons Act, 2006¹; and incidental matters.

Enacted by the Parliament of Lesotho.

Short title and commencement

1. This Act may be cited as the Harmonization of the Rights of Harmonization of the Rights of Customary Widows with the Legal Capacity of married Persons Act, 2022 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

“Customary widow” means a woman married by customary rites to a deceased husband.

Repeal of the minority status of customary widows

3. (1) The restrictions on the rights of a customary widow due to her husband’s marital power are removed.

(2) The customary widow shall have ownership and control of the property of the joint estate upon the death of the husband.

(3) A customary widow shall have the right to do the following:

(a) administer the joint estate;

(b) dispose of the assets of the joint estate;

- (c) enter contracts; and
- (d) guardianship of minor children.

(4) A customary widow shall take into consideration the rights and welfare of the minor children of the joint estate.

(5) Where a surviving spouse in the exercise of control and ownership over the property of the joint estate, abuses such powers, the family may intervene to protect the interest of minor children of the joint estate.

(6) Where a surviving spouse has minor children and remarries, the property of the joint estate from the previous marriage shall not form part of the community of property of the subsequent marriage.

4. This Act supersedes all provisions of customary law on the legal status and rights of customary widows where the customary is contrary to the provisions of this Act.

NOTE

1. Act No. 9 of 2006

GOVERNMENT NOTICE NO. 52 OF 2022

The Parliament of Lesotho

Statement of Objects and Reasons of the Harmonization of the Rights of Customary Widows with Legal Capacity of Married Persons Act, 2022

(Circulated by the Authority of the Minister responsible for gender, youth, sports and recreation Honourable Likeleli Tampane)

Currently customary law gives only widowers ownership and control over the property of the joint estate upon the death of their spouses while there are legal limitations on the widows' powers to administer the property of the joint estate upon the death of their husbands.

These limitations relegate widows to a position akin to minors in relation to their husbands and limits their independence, ownership to property, access to credit and inheritance. In 2006 the Parliament of the Kingdom of Lesotho enacted the Legal Capacity of Married Persons Act to achieve equality in the rights of spouses including spouses married by customary rites.

This Bill seeks to remove all legal restrictions imposed on customary widows regarding the full exercise of their economic and property rights as provided for by the Legal Capacity of Married Persons Act, 2006. The Bill proposes that a widow, in her own right, be able to administer her property without the consent or in consultation with the first male born child or the deceased's brothers or any other male subjects in the family. It will also allow a widow to inherit all the estate unallocated property upon death of her husband and allow her to dispose the same, but in line with the best interest of minor children of the estate.