

NATIONAL COUNCIL

AMENDMENT

MOVED
BY

Honourable Ngunaihe

(Signature: )

30 July 2024

On the **Marriage Bill** [B.5-2024]



In Clause 12:

By deletion of clause 12(h) and the deletion of clause 12(3) and re-numbering to read as follows:

1. (1) Intending spouses must jointly and in person notify the Registrar-General of their intention to marry, at least 90 days before the intended date of their marriage, through a registrar in the region where either of the intending spouses normally reside or where the marriage is intended to be solemnised.
- (2) The notification made by intending spouses in terms of subsection (1) must be made in the prescribed form and manner and be accompanied by or indicate –
 - (a) prescribed documents to prove the identity of the intending spouses;
 - (b) original consents required under section 9 or 10 due to the age of one or both intending spouses;
 - (c) proof of divorce, other marital severance or death of either intending spouse's previous spouse or spouses, if any;

- (d) a sworn declaration by each intending spouse that he or she is not currently a spouse in a marriage or a foreign marriage, and that there is no other known legal impediment to the marriage;
- (e) the date of the intended marriage;
- (f) the intended place of the marriage;
- (g) the name of the marriage officer who is expected to solemnise the marriage;
- (h) **[information as to whether either intending spouse is a party to a subsisting customary marriage and, if so, the full names, surnames, identity numbers and other prescribed information of the customary spouse or spouses;]**
- (h) The matrimonial property regime which the intending spouses choose to apply to their matrimonial property, and a certified copy of any antenuptial contract which has been registered by the intending spouses in terms of the Deeds Registries Act (Act No. 47 of 1937) or any other law;
- (i) proof of payment of the prescribed fee; and
- (j) if applicable, the additional documentation required under section 13.
- [(3) if either intending spouse is a party to a subsisting customary marriage, the matrimonial property regime chosen by the spouses may not be in community of property.]**



- (3) A registrar who received a document of information under this section must transmit that document or information to the Registrar-General as soon as practicable by following the prescribed procedures for transmitting of specific types of documents or information.
- (4) A registrar, with the concurrence of the Registrar-General, may exempt a person from the requirement to submit official documents required under paragraph (2)(a) or (c) if in his or her view that submission would create undue hardship on the person.





30 July 2024

Motivation:

The purpose of the Bill is to regulate the solemnization of marriages, and to provide for the validation and recognition of certain marriages. As per the motivation speech of the Minister, the Bill applies to civil marriages only, therefore subsisting customary law marriages are to be dealt with exclusively in the law which will deal with the registration of customary law.

Article 66 of the Namibian Constitution provides for the validity of customary law to the extent to which such customary law does not conflict with the Constitution or any other statutory law. Article 66(2) further provides that any such customary law may be repealed or modified by Act of parliament.

The right to equality as to marriage, during marriage and at its dissolution as guaranteed by Article 14(1), and the right to equality as guaranteed by Article 10 and the potential conflicts that any customary marriage may pose can be dealt with in a separate Bill in accordance with Article 66(2).

NATIONAL COUNCIL

AMENDMENT

MOVED
BY

Honourable Karondo

(Signature: )

30 July 2024

On the **Marriage Bill [B.5-2024]**



In Clause 1:

By the deletion of the definition of customary marriage to read as follows:

["customary marriage" means a marriage –

**(a) concluded or recognized in terms of any customary law of
Namibia; or**

**(b) concluded or recognized in terms of the customary law of a country
other than Namibia,**

but excludes –

**(i) a marriage or marital union between persons of the same sex
wherever concluded; or**

**(ii) a marriage or marital union concluded in a country other than
Namibia which is not capable of being concluded in Namibia;]**

30 July 2024

Motivation:

The purpose of the Bill is to regulate the solemnization of marriages, and to provide for the validation and recognition of certain marriages. As per the motivation speech of the Minister, the Bill applies to civil marriages only, therefore subsisting customary law marriages are to be dealt with exclusively in the law which will deal with the registration of customary law.

