



Commission for Gender Equality
A society free from gender oppression and inequality

SUBMISSION TO: PORTFOLIO COMMITTEE OF JUSTICE AND CORRECTIONAL SERVICES

28 MARCH 2019



Commission for Gender Equality
A society free from gender oppression and inequality

1. Introduction

The Commission for Gender Equality ('the Commission') is an independent statutory body created under Chapter 9 of the Constitution of the Republic of South Africa Act, 1996 ('the Constitution'). The Commission is mandated to promote and protect gender equality in government, civil society and the private sector. To this end, the Commission for Gender Equality Act 39 of 1996, as amended, ('the CGE Act') gives the Commission the power to monitor and evaluate policies and practices of organs of state at any level; statutory bodies and functionaries; public bodies and authorities and private businesses, enterprises and institutions to promote gender equality and make any recommendations that the Commission deems necessary.

The Commission also has the powers to evaluate any act of Parliament, make recommendations to Parliament or any legislature with regards to any law affecting gender equality or the status of women, and may recommend to Parliament the adoption of new legislation which will promote gender equality and the status of women.

2. The Commission's concern with the Recognition of Customary Marriages Act 120 of 1998 (Section 4(2))

The Commission notes that section 4(2) of the Recognition of Customary Marriages Act 120 of 1998 (RCMA) provides for the registration of customary marriages.



Commission for Gender Equality
A society free from gender oppression and inequality

Section 4(2) of the RCMA reads that:

“Either party may apply to the registration officer in the prescribed form for the registration of the customary marriage and must furnish the registering officer with the prescribed information and any additional information which the registering officer may require in order to satisfy himself or herself as to the existence of the marriage. “

The Commission notes that there are practical challenges in enforcing section 4(2) of the RCMA as the Department of Home Affairs refuses to register customary marriages without both parties to the marriage being present before a registering officer. The refusal to register customary marriages is also evident from the registration application forms which provide space for the particulars and declarations of both spouses. The commission is cognisant of section 4(9) of the RCMA that provides that the failure to register the marriage does not render it invalid, however the Commission espouses that registration of customary marriages is *de facto* proof of the marriage and it is difficult for women to prove that a marriage exists if it is not registered. It also has far reaching implications in terms of registration of immovable property into both parties' names in the event of an unregistered customary marriage, and poses problems when divorce proceedings commence and one party denies the existence of a customary marriage, despite complying with all requirements as stipulated in the RCMA. It holds a financial burden for the person wanting the divorce in that a declaratory order must be obtained, indicating the existence of such marriage. Failure will result in the party not being able to claim their rightful share in the estate. Most of the times this burden falls on women.



Commission for Gender Equality
A society free from gender oppression and inequality

The CGE recommends the insertion of section 4(2)(a) to read as follows:

“The registration officer shall register the customary marriage after being satisfied that the marriage exists, and such registration shall not be subject to the presence of both parties before the registering officer”.

It is submitted that the inclusion of the above paragraph would strengthen the role of registration officer tasked with registering customary marriages and essentially gives effect to section 4(2) of the RCMA.

3. CONCLUSION

The CGE recognises the need to amend section 4(2) of the RCMA to address current wave of non-registered customary marriages in South Africa which prejudices most women whose customary marriages are unregistered and not having sufficient proof of the existence of the marriage.

The CGE avails itself for engagement with the Portfolio Committee, to share its further insights on section 4(2) of the RCMA.