

NOTICE 416 OF 2009**DEPARTMENT OF HOME AFFAIRS
RECOGNITION OF CUSTOMARY MARRIAGES ACT, 1998
(ACT NO. 120 OF 1998)****PUBLICATION OF THE DRAFT RECOGNITION OF CUSTOMARY MARRIAGES
AMENDMENT BILL, 2009 FOR COMMENTS**

The Department of Home Affairs ("DHA") invites public comments on the draft Recognition of Customary Marriages Amendment Bill of 2009.

Written submissions should reach the DHA **on or before 29 May 2009**. Submissions should be addressed to the Chief Director: Legal Services and may be forwarded to the DHA in any of the following ways:

- (a) delivered by hand to the DHA, c/o Maggs and Petroleum Streets, Waltloo, Pretoria;
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to (012) 810-7044 / 0865 144 267; or
- (d) e-mailed to Tsietsi.Sebelemetja@dha.gov.za or Agnes.Molefe@dha.gov.za

Any enquiries should be directed to **Adv Tsietsi Sebelemetja** at (012) 810-8031 or **Mrs Agnes Molefe** at (012) 810 7142.

RECOGNITION OF CUSTOMARY MARRIAGES AMENDMENT BILL, 2009

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Recognition of Customary Marriages Act, 1998, so as to insert and amend certain definitions; to revise procedures relating to registration of customary marriages; to align the provisions of the Act with other legislation; to provide for the repeal of certain sections; to repeal provisions of certain laws; to effect certain technical corrections and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 120 of 1998

1. The following section is hereby substituted for section 1 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), hereinafter referred to as “the principal Act”:

“Definitions

1. In this Act, unless the context otherwise indicates—

“Civil Union Act” means the Civil Union Act, 2006 (Act No. 17 of 2006);

- [(i)] **“court”** means a High Court of South Africa, or a family court established under any law, and for purposes of section 8, a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), or a Magistrate's Court established in terms of the Magistrates' Court Act, 1944 (Act No. 32 of 1944); [(iv)]
- [(ii)] **“customary law”** means the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the cultures of those peoples; [(ii)]
- [(iii)] **“customary marriage”** means a marriage concluded in accordance with customary law; [(i)]
“Director-General” means the Director-General of Home Affairs;
- [(iv)] **“lobolo”** means the property in cash or in kind, whether known as *lobolo, bogadi, bohali, xuma, lumalo, thaka, ikhazi, magadi, emabhaka* or by any other name, which a prospective husband or the head of his family undertakes to give to the head of the prospective wife's family in consideration of a customary marriage; [(v)]
“Marriage Act” means the Marriage Act, 1961 (Act No. 25 of 1961);
- [(v)] **“Minister”** means the Minister of Home Affairs; [(vi)]
- [(vi)] **“prescribed”** means prescribed by regulation made under section 11; [(ix)]
- [(vii)] **“registering officer”** means any person appointed as registering officer **[for purposes of this Act by the Minister or an officer acting under the Minister's authorization]** in terms of section 3A of the Act; [(viii)]
- [(viii)] **“this Act”** includes the regulations; [(iii)] and
- [(ix)] **“traditional leader”** means any person who in terms of customary law or any other law holds a position in a traditional ruling hierarchy. [(viii)].

Amendment of section 3 of Act 120 of 1998

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Save as provided in section 10(1), no spouse in a customary marriage shall be competent to enter into a marriage under the **[Marriage Act, 1961 (Act No. 25 of 1961)]** Civil Union Act or Marriage Act during the subsistence of such customary marriage.”.

Insertion of section 3A in Act 120 of 1998

3. The following section is hereby inserted in the principal Act after section 3:

“Appointment of registering officers

3A. (1) The Minister or an officer authorised in writing thereto by the Minister, may appoint any person as a registering officer for the purposes of this Act.

(2) The appointment contemplated in subsection (1) must be made in a written instrument, which must indicate the date of its effect and any limitations that the Minister may determine.”.

Amendment of section 4 of Act 120 of 1998

4. Section 4 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) **[Either spouse may]** Both spouses must together apply to the registering officer in the prescribed form for the registration of **[his or her]** their 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.”;

(b) the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) **[The]** A registering officer must, subject to the provisions of subsection (4)(a), issue to the spouses a certificate of registration, bearing the prescribed particulars.”;

(c) the deletion of subsection (5);

(d) the substitution for subsection (6) of the following subsection:

“(6) If a registering officer is not satisfied that a valid customary marriage was entered into by the spouses, he or she must refuse to register the marriage and record his or her reasons for such refusal on the appropriate space on the prescribed application form for registration.”; and

(e) the insertion of the following subsections after subsection (6):

“(6A) A registering officer must, when he or she refuses to register a customary marriage as contemplated in subsection (6)—

(a) inform the spouses of the refusal and furnish them with written reasons for such refusal; and

(b) where the registering officer is not an official of the Department, without delay forward the prescribed application form to the nearest regional or district office of the Department.

(6B) No registering officer may register a customary marriage of which one spouse is deceased.”.

Amendment of section 5 of Act 120 of 1998

5. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the age of a person who allegedly is a minor is uncertain or is in dispute, and that person’s age is relevant for purposes of this Act, the registering officer may in the prescribed manner submit the matter to—

(a) a magistrate’s court established in terms of the Magistrate’s Court Act, 1944 (Act No. 32 of 1944), which must determine the person’s age and issue the prescribed certificate in regard thereto, which constitutes proof of the person’s age; or

(b) a medical doctor who is in the service of the State, who must assess or examine the said person and complete the relevant part of the prescribed form.”.

Amendment of section 7 of Act 120 of 1998

6. Section 7 of the principal Act is hereby amended by—

- (a) the deletion of subsection (1); and
- (b) the substitution for subsection (2) of the following subsection:

“(2) A customary marriage **[entered into after the commencement of this Act]** in which a spouse is not a partner in any existing customary marriage, is a marriage in community of property and of profit and loss between the spouses, unless such consequences are specifically excluded by the spouses in an antenuptial contract which regulates the matrimonial property system of their marriage.”.

Amendment of section 8 of Act 120 of 1998

7. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A customary marriage may be dissolved by—
(a) a court by a decree of divorce on the ground of the irretrievable breakdown of the marriage; or
(b) death of one of the spouses.”.

Amendment of section 9 of Act 120 of 1998

8. The following section is hereby substituted for section 9 of the principal Act:

“9. Age of majority

Despite the rules of customary law, the age of majority of any person is determined in accordance with the **[Age of Majority Act, 1972 (Act No. 57 of 1972)]** Children’s Act, 2005 (Act No. 38 of 2005).”.

Amendment of section 10 of Act 120 of 1998

9. Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (4) of the following subsections:

“(1) A man and a woman between whom a customary marriage subsists are competent to contract a marriage with each other under the

[Marriage Act, 1961 (Act No. 25 of 1961),] Civil Union Act or Marriage Act if neither of them is a spouse in a subsisting customary marriage with any other person.

(4) Despite subsection (1), no spouse of a marriage entered into under the **[Marriage Act, 1961 (Act No. 25 of 1961)]** Civil Union Act or Marriage Act, is, during the subsistence of such marriage, competent to enter into any other marriage.”.

Insertion of sections 10A, 10B, 10C and 10D in Act 120 of 1998

10.. The following sections are inserted after section 10 of the principal Act:

“Custody of records of customary marriages

10A. The Director-General is the custodian of all—

- (a) documents relating to the registration of customary marriages required to be furnished under this Act or any other law; and
- (b) records regarding the registration of any customary marriage preserved, prior to the commencement of this Act, in terms of Acts repealed by this Act.

Reproduction of documents

10B. The Director-General may reproduce any document or record referred to in section 10A on microfilm, in accordance with the code of practice of the South African Bureau of Standards for the processing, testing and storage of silver gelatine microfilm for archive purposes.

Verification, supplementation and rectification of particulars

10C. (1) The Director-General may—

- (a) require the person who has furnished any particulars in terms of this Act to furnish the Director-General with proof of the correctness of such particulars; and

(b) investigate or cause to be investigated any matter in respect of which particulars are to be included in the population register.

(2) The Director-General may, if any particulars in respect of any document submitted or preserved in terms of this Act or included in the population register are not correctly reflected, supplement and correct such particulars after consultation with the person concerned.

(3) Any person who is in possession of a certificate or other document purporting to be issued in terms of this Act, which does not correctly reflect the particulars in any document referred to in subsection (2) or in the population register, or the guardian of such person shall, if the person or his or her guardian has been requested to do so, hand over or send by registered post such certificate or document to the Director-General within 30 days from the date of such request.

Offences and penalties

10D. (1) Any registering officer who purports to register a marriage which he or she is not authorised under this Act to register, and any person not being a registering officer who purports to register a customary marriage, shall be guilty of an offence.

(2) Any registering officer who knowingly registers a customary marriage in contravention of the provisions of this Act shall be guilty of an offence.

(3) Any person who, for the purposes of this Act, makes any false representation or false statement knowing it to be false, shall be guilty of ~~an offence~~ and liable, upon conviction, to the penalties prescribed by law for perjury.”.

Amendment of section 11 of Act 120 of 1998

11. Section 11 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The **[Minister of Justice, in consultation with the]** Minister[,] may make regulations—”.

(b) the substitution for subparagraph (v) of paragraph (a) of subsection (1) of the following subparagraph:

“(v) the **[custody,]** certification, implementation, **[rectification, reproduction]** and disposal of any document relating to the registration of customary marriages or of any document prescribed in terms of the regulations;”;

(c) the deletion of subsection (2).

Repeal of laws

12. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

Transitional provisions

13. The provisions of this Act shall not affect—

- (a) anything done or omitted in terms of the principal Act before the date of commencement of this Act; and
- (b) anything done under the provisions of the principal Act prior to the commencement of this Act, which can be done under the principal Act as amended by this Act.

Short title and commencement

14. This Act is called the Recognition of Customary Marriages Amendment Act, 2009, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule
REPEAL OF LAWS

<i>No. and year of Law</i>	<i>Short title</i>	<i>Extent of Repeal</i>
Act No. 16 of 1985	KwaZulu Act on the Code of Zulu Law, 1985	Section 20
Proclamation No. R151 of 1987	Natal Code of Zulu Law, 1987	Sections 20 and 22