BY EMAIL

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

MEMBERS
SOUTH AFRICAN LAW SOCIETY

15 JULY 2021

Dear Colleagues

STATISTICAL DATA REQUIRED
SECTION 10(2) RECOGNITION OF CUSTOMARY LAW MARRIAGES ACT

1. The Commission for Gender Equality (hereinafter referred to as "the CGE") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as "the Constitution").

2. In terms of section 187 (1) of the Constitution, the Commission is specifically mandated to; promote respect for gender equality and the protection, development and attainment of gender equality; monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality; and assess the observance of gender equality.

3. The Commission for Gender Equality Act 39 of 1996, as amended, (hereinafter referred to as "the CGE Act"), further supplements the powers of the Commission to fulfil its constitutional mandate.

4. The CGE requests your assistance in compiling statistical data with regard to the number of matters in your practice which may rely on and/or are relevant to section 10(2) of the Recognition of Customary Law Marriages Act 120 of 1998 ("RCMA").

5. Section *10 of the RCMA provides:*

*"10 . **Change of marriage system**"*

(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,

196 1 (Act No. 25 of 1961). if neither of them is a spouse in a subsisting customary marriage with any other person.

(2) When a marriage is concluded as contemplated in subsection (1) the marriage is in community of property and of profit and loss unless such consequences are specifically excluded in an antenuptial contract which regulates the matrimonial property system of their marriage."

6. It has come to the attention of the CGE that there are a number of matters in our courts in which parties, married in community of property in terms of a valid customary marriage, are entering into subsequent nuptial agreements and second civil marriages in order to change their matrimonial property to one out of community of property, without court sanction, as prescribed in section 21 of the Matrimonial Property Act, and as applicable in terms of section 7(5) of the RCMA.

7. The CGE requests your assistance in compiling this essential data. In this regard, we ask that you please send a list of any applicable cases you may have in your practice by the 30th of July 2021, to our Dr Dennis Matotoka at dennis@cge.org.za , with court and case reference numbers (if applicable).

8. All information will be kept confidential and used strictly for statistical purposes only.

9. We anticipate your favourable response and thank you for your assistance.

Yours faithfully



……..

Jamela Robertson

Chief Executive Officer

Commission for Gender Equality