

## CHAPTER 5:07

### CUSTOMARY MARRIAGES ACT

*Ord. 5/1917; Acts 23/1950, 29/1951 (s. 2), 11/1962, 14/1962 (s. 2), 24/1962 (s. 2), 11/1971, 37/1975 (s. 45), 33/1985 (s. 16), 11/1987 (s. 7), 2/1990, 22/1992 (s. 10) 6/1997 (s. 7), 22/2001 (s. 4, 23/2004 (s. 282); R.G.N. 153/1963, S.I. 666/1983.*

#### ARRANGEMENT OF SECTIONS

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#### SCHEDULE

Form.

#### **AN ACT to provide for the solemnization of customary marriages; to regulate certain other incidents in connection with such marriages and to prevent the pledging of children.**

[Date of commencement: 1st January, 1951.]

#### **1 Short title**

This Act may be cited as the Customary Marriages Act [*Chapter 5:07*].

#### **2 Interpretation**

In this Act—

“customary marriage officer” means—

- (a) a magistrate; or
- (b) an official or chief appointed to be a customary officer in terms of section *eighteen*;

“customary marriage” means a marriage between Africans;

“Marriage Act” means the Marriage Act [*Chapter 5:11*] and includes, where appropriate, the Marriage Act [*Chapter 177 of 1963*];

“marriage consideration” means the consideration given or to be given by any person in respect of the marriage of an African woman, whether such marriage is contracted according to customary law or solemnized in terms of the Marriage Act or this Act;

“marriage register” means the marriage register referred to in section *eight*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“solemnization”, in relation to marriage, means solemnization in terms of this Act.

#### **3 Marriages not to be valid unless solemnized**

(1) Subject to this section, no marriage contracted according to customary law, including the case where a man takes to wife the widow or widows of a deceased relative, shall be regarded as a valid marriage unless—

- (a) such marriage is solemnized in terms of this Act; or

- (b) such marriage was registered under the Native Marriages Act [*Chapter 79 of 1939*] before the 1st January, 1951; or
- (c) such marriage was contracted before the 1st February, 1918; or
- (d) being a marriage contracted outside Zimbabwe, such marriage is recognized as a valid marriage in the country in which it was contracted.

(2) A marriage contracted according to customary law on or after the 1st February, 1918, and before the 1st January, 1951, which was not registered under the Native Marriages Act [*Chapter 79 of 1939*] shall, subject to subsection (2) of section *seven*, be regarded as a valid marriage.

(3) If the male party to a marriage referred to in subsection (2) fails to have such marriage solemnized in terms of this Act, he shall be guilty of an offence and liable to a fine not exceeding level one.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) A prosecution for a contravention of subsection (3) shall not be a bar to further prosecution or prosecutions thereunder if the accused does not thereafter have his marriage solemnized in terms of this Act.

(5) A marriage contracted according to customary law which is not a valid marriage in terms of this section shall, for the purposes of customary law and custom relating to the status, guardianship, custody and rights of succession of the children of such marriage, be regarded as a valid marriage.

#### **4 Who must be present at solemnization of marriage**

(1) A marriage to be solemnized in terms of this Act shall be solemnized by a customary marriage officer of the district in which the woman or her guardian resides.

(2) In addition to the customary marriage officer and the parties to the marriage, there shall be present at the solemnization of every marriage in terms of this Act the following other persons—

- (a) the guardian of the woman or a deputy appointed by such guardian:

Provided that, if the solemnization of the marriage has been authorized by a magistrate in terms of section *five* or if the customary marriage officer is satisfied that the guardian of the woman has consented to the solemnization of the marriage and has agreed to the form and amount of the marriage consideration, the presence of the guardian of the woman or his deputy shall not be necessary; and

- (b) a witness, who shall be the chief, headman or village-head of the guardian of the woman or such other person as the customary marriage officer may approve.

(3) The husband shall pay a fee of one dollar to the person who, in terms of paragraph (b) of subsection (2), is the witness at the solemnization of his marriage.

#### **5 Authorization of marriage by magistrate**

(1) If the guardian of a woman who wishes her marriage to be solemnized withholds or refuses to give his assent to the marriage, the parties to the proposed marriage may appeal to a magistrate for the province in which the woman resides, and such magistrate may—

- (a) authorize the solemnization of the marriage if, after due inquiry, he is satisfied that such consent is unreasonably or improperly withheld or refused; and
- (b) after consultation with the guardian of the woman, fix the marriage consideration.

(2) If no guardian of a woman who wishes her marriage to be solemnized can be found, a magistrate for the province in which the woman resides may, after due inquiry, authorize the solemnization of her marriage.

#### **6 Customary marriage officer may put relevant questions**

(1) A customary marriage officer may put to either of the parties to a proposed marriage, to the guardian of the woman or his deputy, and to the person who, in terms of paragraph (b) of subsection (2) of section *four*, is to be the witness at the proposed marriage any question relevant to the identity or conjugal status of the parties to the proposed marriage and to the determination of the marriage consideration and to the existence of impediments to the marriage.

(2) Any person who refuses to answer, or wilfully gives a false answer to, any question put to him in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(3) If any person impersonates either of the parties to a marriage or the guardian of the woman or his deputy, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[Subsection amended by section 4 of Act 22 of 2001.]

#### **7 Solemnization of marriage**

(1) If the customary marriage officer is satisfied—

- (a) save where a magistrate has fixed the marriage consideration in terms of section *five*, that the guardian of the woman and the intended husband have agreed on the marriage consideration and the form thereof; and
- (b) that the intended husband and wife freely and voluntarily consent to the marriage; and

(c) that the guardian of the woman consents to the marriage or that a magistrate has authorized the solemnization of the marriage in terms of section *five*; and

(d) that no lawful impediment exists to the proposed marriage;

he shall solemnize the marriage by declaring the parties to be man and wife and such marriage shall be a valid marriage contracted according to customary law.

(2) If a customary marriage officer declines to solemnize a marriage referred to in subsection (2) of section *three* because he is not satisfied in terms of subsection (1), he shall declare such marriage void.

## **8 Marriage register**

(1) Immediately after the solemnization of a marriage, an entry thereof shall be made in ink in a marriage register to be kept for that purpose by the customary marriage officer in the form or to the effect of the specimen set forth in the Schedule, and every such entry shall be signed by the customary marriage officer.

(2) Before the parties depart, there shall then and there be made on a separate piece of paper a duplicate original register of the entry referred to in subsection (1) in which the same matter shall be entered and signed by the customary marriage officer in manner or to the effect of the specimen set forth in the Schedule, and the customary marriage officer shall deliver such duplicate original register to the woman.

(3) Every extract from a marriage register which purports to be certified as a true copy therefrom by the customary marriage officer who for the time being has the custody of the marriage register and every duplicate original register shall respectively be good evidence of the facts therein recorded in and before all courts and in criminal and civil proceedings therein and shall be admissible upon its mere production by any person.

## **9 Search of marriage register**

Any person may at all reasonable times during office hours search the marriage register in the presence of the person for the time being having the custody thereof and may, upon payment of a fee of one dollar, have a true copy of any entry therein certified under the hand of the customary marriage officer for the time being having the custody of such marriage register:

Provided that no fee shall be payable by either party to a marriage for a true copy of an entry relating to his marriage.

## **10 Offences in relation to marriage register**

(1) If any person unlawfully—

(a) erases or obliterates any entry in a marriage register or duplicate original register; or

(b) destroys a marriage register;

he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) If any person—

(a) unlawfully and wilfully forges or alters or falsely makes an entry in a marriage register or duplicate original register or any certified copy from a marriage register; or

(b) knowingly and wilfully delivers, offers, alters or puts off any such forged, false or altered copy;

he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

## **11 Pledging of girls and women in marriage prohibited**

(1) Any agreement in which a person, whether for consideration or otherwise, pledges or promises a girl or woman in marriage to a man shall be of no effect.

(2) ....

[Subsection repealed by section 282 of Act 23 of 2004]

## **12 Certificates as to consent and marriage consideration in marriages under Marriage Act**

(1) Whenever Africans desire their marriage to be solemnized in terms of the Marriage Act, such Africans shall appear before a magistrate for the purpose of obtaining a certificate stating that there is no bar to such marriage by reason of lack of consent of the parents or guardian of the woman.

(2) No magistrate shall issue a certificate referred to in subsection (1) until he has satisfied himself by means of such inquiry as he may think fit that there is no bar to the marriage in terms of subsection (1).

(3) A marriage between Africans which is solemnized in terms of the Marriage Act shall be invalid unless there was produced to the minister of religion or other marriage officer the certificate required in terms of subsection (1).

(4) On application by the parties to a marriage between Africans which is or is to be solemnized in terms of the Marriage Act, a magistrate for the province in which the husband or intended husband resides shall furnish to the parties a certificate stating—

(a) the marriage consideration paid and its value; and

- (b) the marriage consideration remaining to be paid and its value; and
- (c) the terms of payment agreed upon;

and such certificate shall be evidence of the facts therein recorded in and before all courts and in criminal and civil proceedings therein and shall be admissible upon its production by any person.

**13 ...**

[Section repealed by section 7 of Act No. 6 of 1997.]

**14 Evidence for prosecution by husband or wife of accused**

Notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Act [Chapter 9:07], no marriage contracted according to customary law, either inside or outside Zimbabwe, which was not registered in terms of the Native Marriages Act [Chapter 79 of 1939] or solemnized in terms of this Act or the Marriage Act shall render either party thereto incompetent to give evidence against the other party.

**15 .....**

[Subsection repealed by section 282 of Act 23 of 2004]

**15A Legality of marriages between persons within certain degrees of affinity or consanguinity**

(1) For the avoidance of doubt it is declared that, on and after the date of commencement of the Criminal Law Code—

- (a) no persons who are related to each other in any degree of relationship specified in subsection (2) of section 75 of the Criminal Law Code shall be capable of contracting a valid marriage, unless, in the case of persons who are related to each other as first or second cousins, they satisfy the customary marriage officer that they belong to a community referred to in subsection (3) of section 75 of the Criminal Law Code;
- (b) persons who are related to each other by affinity shall be capable of contracting a valid marriage if the affinity relationship between them is not one described in paragraph (b) or (j) of subsection (2) of section 75 of the Criminal Law Code.

(2) Subsection (2) of section 24 of the Marriage Act [Chapter 5:11] shall apply to persons who marry or purport to marry in contravention of paragraph (i) of subsection (2) of section 75 of the Criminal Law Code.

(3) For the avoidance of doubt it is declared that a marriage between persons who are related to each other as first or second cousins shall not be void or voidable if such marriage was contracted before the date of commencement of the Criminal Law Code.

[Section inserted by section 282 of Act 23 of 2004.]

**16 Dissolution of marriage**

No marriage solemnized in terms of this Act or the Marriage Act or registered under the Native Marriages Act [Chapter 79 of 1939] or contracted under customary law before the 1st April, 1918, shall be dissolved except by order of a court of competent jurisdiction in terms of the Matrimonial Causes Act [Chapter 5:13].

**17 Validation of certain marriages**

Any marriage solemnized in terms of the Marriage Act [Chapter 177 of 1963] before the 1st April, 1930, between Africans is hereby declared to be a legal and valid marriage.

**18 Appointment of customary marriage officers**

The Minister may appoint any person employed by the State or a local authority or any chief to be a customary marriage officer for the purposes of this Act.

**19 Existing marriage registers**

Every extract from a marriage register which was kept under the Native Marriages Act [Chapter 79 of 1939] which purports to be certified as a true copy thereof by a customary marriage officer who for the time being has the custody of such marriage register shall be *prima facie* evidence of the facts therein recorded in and before all courts and in criminal and civil proceedings therein and shall be admissible upon its mere production by any person.

**SCHEDULE (Section 8)**

**FORM**

CUSTOMARY MARRIAGES ACT [CHAPTER 5:07]

CERTIFICATE OF CUSTOMARY MARRIAGE

No.....

This is to certify that I have this day solemnized a marriage between—

Name of Husband .....

National Registration No. ....

Village .....

Chief .....

and

Name of Wife .....

National Registration No. ....

Name of Wife's Guardian .....

National Registration No. ....

The said Wife being the\* .. wife and having freely consented to the marriage.

Consideration paid .....

Value .....

Consideration remaining to be paid .....

Value .....

Terms of payment agreed upon .....

.....

In the presence of .....

Given under my hand at .....

this ..... day of ..... 19.....

.....

*Customary Marriage Officer*

\*Here state whether first, second or subsequent wife