

MARRIAGE LAWS AMENDMENT BILL, 2021

MEMORANDUM

BACKGROUND

Marriages in Zimbabwe are governed by two statutes, the Customary Marriages Act [*Chapter 5:07*] and the Marriage Act [*Chapter 5:11*]. Both statutes need to be amended in the light of the judgment of the Constitutional Court in the case of *Mudzuru & Another v Minister of Justice, Legal and Parliamentary Affairs & Others* (CCZ 12/2015), which declared that from the 20th January, 2016, persons under the age of 18 could not lawfully marry, whether under statute or customary law or in terms of any religion.

The Customary Marriages Act, as its name suggests, governs marriages contracted under customary law. All customary marriages must be solemnised (i.e. registered) under the Act in order to be recognised as legally valid marriages, though unsolemnised marriages are deemed to be valid in so far as the rights of children are concerned. The Act is an old one and has not been updated to take account of constitutional and social changes. For example, it does not specify a minimum age at which persons can marry, hence apparently permitting the marriage of girls without any restrictions, so long as they have reached puberty. The Act also requires adult women to obtain the consent of their customary-law guardians before they can marry, even though the Legal Age of Majority Act abolished the “perpetual minority of women” under customary law.

The Marriage Act regulates civil marriages, that is to say marriages contracted under Roman-Dutch law. It, too, needs to be updated to take account of constitutional changes, in particular the need for gender equality and the need to protect children from the abuses of early marriage. It prohibits boys under the age of 18 years from marrying, but allows girls who are over 16 to marry so long as they have the consent of their parents or guardians, and girls as young as 15 to marry with the consent of the Minister of Justice. These ages, incidentally, were fixed at a time when the age of majority was 21 years, not 18 as it is now.

This Bill will amend the Customary Marriages Act and the Marriage Act to achieve the following main objects:

- To prohibit the marriage of minors, i.e. boys and girls under the age of 18.
- To abolish the requirement that adult women must have the consent of their customary-law guardians before they can marry.
- To abolish the requirement that “Africans” who want to marry under the Marriage Act rather than the Customary Marriages Act must get a certificate from a magistrate stating that the bride’s customary-law guardian has consented to the marriage.

In more detail, the individual provisions of the Bill are as follows:

PART I
PRELIMINARY

Clause 1

This clause sets out the Bill's short title.

PART II
AMENDMENT OF CUSTOMARY MARRIAGES ACT [*Chapter 5:07*]

Clause 2

This clause will amend the definition of “customary marriage” in the Customary Marriages Act to make it clear that it applies to marriages contracted under customary law — i.e. that the term does not apply to civil marriages contracted under the Marriage Act.

Clause 3

This clause will replace sections 3 to 5 of the Customary Marriages Act with four new sections, as follows:

Section 3 will lay down the requirements for a valid customary-law marriage, which will be:

- Both bride and bridegroom must give their free and voluntary consent. The consent of the bride's customary-law guardian will no longer be required.
- Both bride and bridegroom must be adults, i.e. over the age of 18.
- The marriage must be solemnised in terms of the Act. If it is unsolemnised it will nevertheless be valid for certain purposes set out in the new section 16A (as to which, see clause 12).

Section 4 will allow customary marriages to be solemnised in the district where either bride or bridegroom, or their parents, ordinarily live. At present, under section 4 of the Act, marriages can only be solemnised in the district where the bride or her guardian lives.

Section 5 will set out who must be present when customary marriages are solemnised. In addition to the customary marriage officer who will solemnise the marriage, both bride and groom will have to be present, as well as a witness who can attest to the fact that the parties have contracted a customary-law marriage and to the marriage arrangements. The bride's guardian will not have to be present — though there will be nothing to prevent him attending — nor will the bride's chief, headperson or village head have to be present, as is currently required by section 4 of the Act.

Clause 4

Section 6(1) of the Customary Marriages Act obliges a customary marriage officer to question the bride's guardian and her chief, headperson or village head as to arrangements made for *roora* or *lobola*. Since those persons will not have to be present at the solemnisation of a marriage, and since *roora* or *lobola* will no longer be an essential requisite of a marriage, this clause will replace section 6(1) with a new provision empowering customary marriage officers to put questions relating to the parties' identity, ages and marital status.

Clause 5

The new section 6A which this clause will insert in the Customary Marriages Act will state that if a customary marriage officer suspects that a party to a customary marriage is under age, he or she must not solemnise the marriage until satisfied that the party is an adult. The Minister will be empowered to prescribe particular documents or evidence as proof of a party's age for the purpose of section 6A (see clause 13).

Clause 6

This clause will replace section 7 of the Customary Marriages Act with a new section stating that before solemnising a marriage, a customary marriage officer must be satisfied that the parties consent to the marriage, that the marriage has been contracted according to customary law (including where applicable agreement on *roora* or *lobola*) and that there is no lawful impediment to the marriage. The new section will omit the need for the woman's guardian to consent to the marriage (because minors are no longer allowed to marry) and will also omit subsection (2) of the existing section 7 which relates to the solemnisation of marriages entered into before 1951 – presumably such marriages no longer need to be solemnised.

Clauses 7 and 13

The Customary Marriages Act has a Schedule setting out the form that customary marriage certificates must take. These clauses will repeal the Schedule and amend section 8 of the Act to provide instead for the form of certificates to be prescribed in regulations — which is the case under the Marriage Act.

Clause 8

Section 9 of the Customary Marriages Act states that anyone who wants to search a customary marriage officer's marriage register or to obtain a copy of a marriage certificate must pay a fee of \$1. This clause will amend the section to allow the amount of the fee to be prescribed in regulations.

Clause 9

This clause will replace section 11 of the Customary Marriages Act with a new section which will state that any contract or arrangement by which parents or guardians consent to the marriage of a minor girl (i.e. a girl under the age of 18) will have no legal validity; the clause will also invalidate the pledging of girls in marriage and any agreement or consent to marry which is induced by force or intimidation. A girl who is forced or induced to marry will have a right to damages against the persons who forced or induced her.

Clause 10

Section 12 of the Customary Marriages Act states that if "Africans" want to marry under the Marriage Act rather than the Customary Marriages Act, they must get a certificate from a magistrate stating that the bride's parents or guardian have consented to the marriage. This clause will repeal the section.

Clause 11

Section 16 of the Customary Marriages Act states that certain marriages, including marriages "contracted under customary law before the 1st April, 1918" may only be dissolved by an order

of court, i.e. a divorce order. Since there can no longer be any such marriages in existence, this clause will delete those words.

Clause 12

This clause will add a new section 16A to the Customary Marriages Act giving partial recognition to customary marriages which have not been solemnised under the Act, and protecting the rights of girl children who are married under illegal customary unions. The new section will regard such marriages and unions as valid in so far as they affect the status and rights of children, and will confer on spouses of such marriages and unions the right to maintenance and division of property if the parties separate, and rights of inheritance on their spouses' death. At present the Customary Marriages Act does not recognise unsolemnised marriages at all, except to the extent of protecting the rights of children.

Clause 13

This clause will insert two new sections into the Customary Marriages Act.

Section 19 will give the responsible Minister (currently the Minister of Justice, Legal and Parliamentary Affairs) the power to make regulations prescribing such matters as the form and custody of registers, documents or evidence required to prove a person's age, and fees chargeable under the Act.

Section 20 is a "savings" provision which will preserve the validity of marriages contracted before the 20th January, 2016 (the date of the Constitutional Court judgment). Child marriages contracted before that date will, however, be voidable for five years after the child attains the age of majority. The child herself will be entitled to repudiate the marriage (i.e. render it void), or her parents or guardians, or a social worker acting on her behalf, will be entitled to do so. A marriage that becomes void under the section will nevertheless be regarded as valid for the purposes of maintenance, succession and the legitimacy of children. The section will also preserve the validity of marriage certificates issued under earlier marriage laws.

Clause 14

This clause, as mentioned earlier in connection with clause 7, will repeal the Schedule to the Customary Marriages Act.

PART III

AMENDMENT OF MARRIAGE ACT [*Chapter 5:11*]

This Part will amend the Marriage Act which, as pointed out earlier, governs marriages contracted according to Roman-Dutch law.

Clause 15

This clause will amend the definition of "minister of religion" in section 2 of the Marriage Act, to make it clear that the term covers not only priests but also people who hold responsible positions in religious organisations.

Clause 16

Section 3 of the Marriage Act declares magistrates to be marriage officers for the “districts” in which they hold office. Magistrates are now appointed for provinces and regional divisions, rather than districts, so this clause will amend the section accordingly.

Clause 17

Under section 4 of the Marriage Act the Minister of Justice, Legal and Parliamentary Affairs can appoint ministers of religion (i.e. priests) and office-bearers in religious organisations to be marriage officers. This clause will allow the Minister, in addition, to appoint members of the Civil Service, e.g. consular and diplomatic officers, as well as officials of local authorities to be marriage officers. The clause will also give members of the public a right to inspect the register of marriage officers.

Clause 18

Section 7 of the Marriage Act gives the Minister power to revoke the designation of a marriage officer for good cause. This clause will replace it with a new section stating that civil servants and local authority officials who have been appointed marriage officers by virtue of their offices will remain marriage officers only so long as they hold those offices. The clause will also require the Minister, before revoking a person’s designation as a marriage officer, to give the person a reasonable opportunity to make representations as to why his or her designation should not be revoked.

Clause 19

Sections 20 to 23 of the Marriage Act deal with the marriage of minors. The sections permit minors to marry so long as they have the consent of their legal guardians or, if they cannot get such consent, the consent of a judge of the High Court. Boys under the age of 18 and girls under the age of 16 may not, however, marry without the written permission of the Minister.

The Constitutional Court has declared these provisions to be unconstitutional in that they discriminate on the ground of sex (girls over 16 can marry with their guardians’ consent, boys cannot) and on the ground that they do not adequately protect young people against the abuses of child marriage. Accordingly, this clause will repeal the sections and replace them with three new ones.

The new section 20 will prohibit the marriage of minors, i.e. boys and girls under the age of 18.

The new section 21 will provide that if a minor enters into a marriage, whether through ignorance, mistake or otherwise, the marriage will be regarded as valid for the purposes of the rights of the children of the marriage, and the right of the minor to maintenance, division of property and succession.

The new section 22 will state that if a marriage officer suspects that a party to a marriage is below the age of 18, he or she must refuse to proceed with the marriage ceremony unless satisfactory proof is given that the party is in fact over 18. The Minister will be empowered to prescribe particular documents or evidence as proof of a party’s age for the purpose of section 22 (see clause 20).

Clause 20

This clause will amend section 20 of the Marriage Act to give the Minister power to make regulations prescribing the proof needed to establish the age of a party to an intended marriage.

Clause 21

This clause will insert a new section 36A into the Marriage Act that will preserve the validity of marriages contracted before the 20th January, 2016 (the date of the Constitutional Court judgment). Child marriages contracted before that date will be voidable for five years after the child attains the age of majority. The child herself will be entitled to repudiate the marriage (i.e. render it void), or her parents or guardians, or a social worker acting on her behalf, will be entitled to do so. A marriage that becomes void under the section will nevertheless be regarded as valid for the purposes of maintenance, succession and the legitimacy of children.

PART IV

AMENDMENT OF CRIMINAL LAW CODE

Clause 22

This clause will replace section 94 of the Criminal Law (Codification and Reform) Act with a new section which will penalise not only pledging of girls and women but also inducing them to marry through force or intimidation.

Fourth draft: 30th April, 2017
Third draft: 17th February, 2016
Second draft: 24th February, 2015
First draft: 2nd February, 2015

BILL

To amend the Customary Marriages Act [*Chapter 5:07*], the Marriage Act [*Chapter 5:11*] and the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Marriage Laws Amendment Act, 2021.

PART II

AMENDMENT OF CUSTOMARY MARRIAGES ACT [*Chapter 5:07*]

2 Amendment of section 2 of Cap. 5:07

Section 2 (“Interpretation”) of the Customary Marriages Act [*Chapter 5:07*] (hereinafter in this Part called “the principal Act”) is amended in the definition of “customary marriage” by the insertion after “Africans” of “contracted according to customary law”.

3 New sections substituted for sections 3, 4 and 5 of Cap. 5:07

Section 3 (“Marriages not to be valid unless solemnized”), section 4 (“Who must be present at solemnization of marriage”) and section 5 (“Authorization of marriage by magistrate”) of the principal Act are repealed and the following sections are substituted—

3 Requirements for validity of customary marriage

“Subject to this Act, no marriage contracted in Zimbabwe according to customary law shall be regarded as a valid marriage unless—

- (a) both parties to the marriage have freely and voluntarily consented to the marriage; and
- (b) both parties to the marriage are of or over the age of eighteen years when the marriage is contracted; and
- (c) the marriage is solemnised in terms of this Act.

4 Where customary marriages may be solemnised

A customary marriage shall be solemnised in terms of this Act by a customary marriage officer of the district in which—

- (a) either party to the marriage ordinarily resides; or
- (b) a parent of either party to the marriage ordinarily resides.

5 Persons to be present at solemnisation of customary marriage

In addition to the customary marriage officer, there shall be present at the solemnisation of a customary marriage in terms of this Act—

- (a) both parties to the marriage; and
- (b) a witness who can verify the fact that the parties have contracted a marriage according to customary law and the terms and conditions of such marriage including, where applicable, any marriage consideration paid or payable.”.

4 Amendment of section 6 of Cap. 5:07

Section 6 (“Customary marriage officer may put relevant questions”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—

“(1) A customary marriage officer may put to—

- (a) either or both of the parties to the marriage which is to be solemnised; and
- (b) any relative of the parties who may be present at the solemnisation; and
- (c) the witness referred to in section 5(b);

any question relative to the identity, age or conjugal status of the parties to the marriage and to the existence of impediments to the marriage.”;

- (b) in subsection (3) by the deletion of “or the guardian of the woman or his deputy”.

5 New section inserted in Cap. 5:07

The principal Act is amended by the insertion after section 6 of the following section—

6A Proof of age of parties to customary marriage

“(1) If before solemnising a customary marriage the customary marriage officer has reason to suspect that a party to the marriage is under the age of eighteen years, the customary marriage officer shall refuse to solemnise the marriage unless he or she has been furnished with proof, to his or her satisfaction, that the party is of or over the age of eighteen years.

(2) Where, in regulations made under section 19, a particular document or other evidence is prescribed as constituting proof of a party’s age, a customary marriage officer shall require production of that document or evidence as proof for the purpose of subsection (1).”.

6 New section substituted for section 7 of Cap. 5:07

Section 7 (“Solemnisation of marriage”) of the principal Act is repealed and the following is substituted—

7 Solemnisation of marriage

“If the customary marriage officer is satisfied that—

- (a) the intended husband and wife freely consent to the marriage; and
- (b) the proposed marriage has been contracted according to customary law including, where applicable, agreement on marriage consideration; and
- (c) no lawful impediment exists to the proposed marriage;

the customary marriage officer shall solemnise the marriage by declaring the parties to be man and wife, and the marriage shall be a valid marriage contracted according to customary law.”.

7 Amendment of section 8 of Cap. 5:07

Section 8 (“Marriage register”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “form or to the effect of the specimen set forth in the Schedule” and the substitution of “prescribed form”;
- (b) in subsection (2) by the deletion of “in manner or to the effect of the specimen set forth in the Schedule”;
- (c) in subsection (3) by the insertion after “customary marriage officer” of “or other person”.

8 Amendment of section 9 of Cap. 5:07

Section 9 (“Search of marriage register”) of the principal Act is amended by the deletion of “a fee of one dollar” and the substitution of “the prescribed fee”.

9 New section substituted for section 11 of Cap. 5:07

Section 11 (“Pledging of girls and women in marriage prohibited”) of the principal Act is repealed and the following is substituted—

11 Invalidity of certain arrangements regarding marriage

“(1) Where—

- (a) a parent or guardian of a girl under the age of eighteen years consents to or sanctions the girl's marriage to a male person, whatever his age; or
- (b) any person pledges or promises a female person, whatever her age, in marriage to a male person, whatever his age; or
- (c) any person, by force or intimidation, induces a girl under the age of eighteen years to agree to marry a male person, whatever his age;

the consent, sanction, pledge, promise or inducement, and any agreement arising from it, shall be void.

(2) Any pledge, promise, force or intimidation referred to in paragraph (b) or (c) of subsection (1) shall constitute an *injuria* against the female person or girl in respect of whom it was made or at whom it was directed.

(3) Subsection (2) shall not be construed as relieving a person who enters into an agreement referred to in subsection (1) from criminal liability in terms of section 94 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].”.

10 Repeal of section 12 of Cap. 5:07

Section 12 (“Certificates as to consent and marriage consideration in marriages under Marriage Act”) of the principal Act is repealed.

11 Amendment of section 16 of Cap. 5:07

Section 16 (“Dissolution of marriage”) of the principal Act is amended by the deletion of “or contracted under customary law before the 1st April, 1918.”.

12 New section inserted in Cap. 5:07

The principal Act is amended by the insertion after section 16 of the following section—

16A Child marriages and unsolemnised customary marriages valid for certain purposes

“(1) In this section—

“child marriage” means a marital union or arrangement, purportedly contracted according to customary law, in which either or both the parties were under the age of eighteen years at the time it was contracted;

“unsolemnised marriage” means a marital union or arrangement, purportedly contracted according to customary law, which has not been solemnised in terms of this Act.

(2) Notwithstanding the invalidity of a child marriage or an unsolemnised marriage—

- (a) the status, guardianship, custody, maintenance and rights of succession of the children of the marriage;
- (b) the rights of the female party to the marriage to maintenance, division of property, succession, and damages for loss of support;

shall be determined as if the marriage were a valid customary marriage.”.

13 New sections substituted for section 19 of Cap. 5:07

Section 19 (“Existing marriage registers”) of the principal Act is repealed and the following sections are substituted—

19 Regulations

“(1) The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide for—

- (a) the documents or other evidence required to prove the age of a party to an intended customary marriage;
- (b) the form of marriage registers and other documents referred to in this Act;
- (c) the care and custody of marriage registers upon the death, retirement or vacation of office of marriage officers;
- (d) fees and charges for things done under this Act.

20 Continuing validity of certain marriages and marriage registers under previous laws

(1) In this section—

“fixed date” means the date of commencement of the Marriage Laws Amendment Act, 2021;

“judgment date” means the 20th January, 2016.

(2) A customary marriage which was contracted before the fixed date and which—

- (a) was recognised as a valid marriage in terms of this Act immediately before the fixed date shall, subject to subsection (3), continue to be regarded as a valid marriage;
- (b) was not recognised as a valid marriage in terms of this Act immediately before the fixed date, shall be regarded as a valid marriage only for the purposes specified in section 16A.

(3) A customary marriage which was solemnised in terms of this Act before the judgment date shall continue to be a valid marriage even if, at the time it was solemnised, either or both of the parties were under the age of eighteen years:

Provided that, if such a party is under the age of eighteen years on the fixed date, the marriage shall be voidable, in accordance with subsection (4), on and after that date and for a period of five years after the party attains that age.

(4) A customary marriage referred to in subsection (3) shall become void—

- (a) if, at any time during the period referred to in the proviso to subsection (3), a party who is under the age of eighteen years on the fixed date unequivocally repudiates the marriage by written or verbal declaration or by any conduct;
- (b) if, while a party is under the age of eighteen years—
 - (i) his or her parent or guardian unequivocally repudiates the marriage by written or verbal declaration or by any conduct;

- (ii) a children’s court, on the application of a person who is registered as a social worker in terms of the Social Workers Act [*Chapter 27:21*], acting in the party’s interests, declares that the marriage should be dissolved.

(5) Notwithstanding that a marriage has become void in terms of subsections (3) and (4), it shall be regarded as having been valid for the purposes specified in section 16A.

(6) An extract from a marriage register which was kept under the Native Marriages Act [*Chapter 79 of 1939*] and which purports to be certified as a true copy by the officer who for the time being has custody of the register shall be *prima facie* proof of the facts recorded in the extract and shall be admissible in any court or tribunal upon its production by any person.

(7) Until the form of the marriage register is prescribed for the purposes of section 8, marriage registers and entries therein and extracts therefrom may be kept or made, as the case may be, in the form that was prescribed in the Schedule to this Act before the fixed date.”.

14 Repeal of Schedule to Cap. 5:07

The Schedule to the principal Act is repealed.

PART III

AMENDMENT OF MARRIAGE ACT [*Chapter 5:11*]

15 Amendment of section 2 of Cap. 5:11

Section 2 (“Interpretation”) of the Marriage Act [*Chapter 5:11*] (hereinafter in this Part called “the principal Act”) is amended by the repeal of the definition of “minister of religion” and the substitution of—

““minister of religion” means a minister of religion or other person designated as a marriage officer in terms of section 4(1)(c);”.

16 Amendment of section 3 of Cap. 5:11

Section 3 (“Magistrate to be marriage officer for district”) of the principal Act is amended by the deletion of “district” and the substitution of “province or regional division, as the case may be,”.

17 Amendment of section 4 of Cap. 5:11

Section 4 (“Designation of ministers of religion and other persons as marriage officers”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of the following subsections—

“(1) The Minister may designate—

- (a) any member of the Civil Service, whether serving inside or outside Zimbabwe; and
- (b) any officer of a local authority; and
- (c) any minister of religion of, or person holding a responsible position in, any religious denomination or organisation;

to be a marriage officer for the purposes of this Act.

(1a) Appointments under subsection (1) may be made by name or by reference to the holders of the offices or posts concerned.”;

(b) by the insertion after subsection (2) of the following subsection—

“(3) The Registrar shall permit members of the public, on payment of the prescribed fee, to inspect the register of marriage officers during ordinary business hours at his or her offices.”.

18 New section substituted for section 7 of Cap. 5:11

Section 7 (“Revocation of designation as marriage officer”) of the principal Act is repealed and the following is substituted—

7 Cessation of designation as marriage officer

“(1) A member of the Civil Service or officer of a local authority who has been designated as a marriage officer in terms of section 4(1)(a) or (b) shall cease to be a marriage officer—

- (a) where he or she was appointed by name, upon ceasing to occupy the office or post he or she occupied when he or she was so designated;
- (b) where he or she became a marriage officer by virtue of occupying an office or post, upon ceasing to occupy that office or post.

(2) A minister of religion who has been designated as a marriage officer in terms of section 4(1)(b) shall cease to be a marriage officer upon ceasing to be a minister of religion of, or person holding a responsible position in, the religious denomination or organisation to which he or she belonged at the time of such designation.

(3) Where a minister of religion ceases to be a minister of religion of, or person holding a responsible position in, the religious denomination or organisation to which he or she belonged at the time of such designation, he or she shall immediately inform the Registrar of that fact.

(4) Subject to subsection (5), the Minister may, by written notice to the person concerned, revoke the designation of any person as a marriage officer on the ground of misconduct or for any other good cause.

(5) Before revoking a person’s designation as a marriage officer, the Minister shall inform the person, in writing, of his or her intention to do so and shall afford the person a reasonable opportunity to make representations in the matter.

(6) The Registrar shall make an appropriate entry in the register of marriage officers kept in terms of section 4(2) whenever it comes to his or her notice that a person has ceased to be a marriage officer in terms of this section.”.

19 New sections substituted for sections 20, 21, 22 and 23 of Cap. 5:11

The principal Act is amended by the repeal of section 20 (“Marriage of minors”), section 21 (Marriage of minors without consent voidable but not void”), section 22 (“Prohibition of marriage of persons under certain ages”) and section 23 (“Proof of age of parties to proposed marriage”) and the substitution of the following sections—

20 Marriage of minors prohibited

“(1) No boy or girl under the age of eighteen years shall be capable of contracting a valid marriage.

21 Marriage of minors valid for certain purposes

(1) In this section—

“child marriage” means a marital union or arrangement, purportedly contracted or solemnised in accordance with this Act, in which either or both the parties were under the age of eighteen years at the time it was contracted or solemnised.

(2) Notwithstanding the invalidity of a child marriage—

- (a) the status, guardianship, custody, maintenance and rights of succession of the children of the marriage;
- (b) the rights of the female party to the marriage to maintenance, division of property, succession and damages for loss of support;

shall be determined as if the marriage were a valid marriage.

22 Proof of age of parties to proposed marriage

(1) If before solemnising a marriage the marriage officer suspects that a party to the proposed marriage is under the age of eighteen years, the marriage officer shall refuse to solemnise the marriage unless he or she has been furnished with proof, to his or her satisfaction, that the party is of or over the age of eighteen years.

(2) Where, in regulations made under section 36, a particular document or other evidence is prescribed as constituting proof of a party’s age, a marriage officer shall require production of that document or evidence as proof for the purpose of subsection (1).

20 Amendment of section 36 of Cap. 5:11

Section 36 (“Regulations”) of the principal Act is amended in subsection (2) by the insertion after paragraph (c) of the following paragraph—

“(c1) the documents or other evidence required to prove the age of a party to an intended marriage;”.

21 New section inserted in Cap. 5:11

The principal Act is amended by the insertion after section 36 of the following section—

36A Transitional provisions: existing child marriages

“(1) In this section—

“fixed date” means the date of commencement of the Marriage Laws Amendment Act, 2017;

“judgment date” means the 20th January, 2016.

(2) A marriage which was solemnised in terms of this Act before the judgment date shall continue to be a valid marriage even if, at the time it was solemnised, either or both of the parties were under the age of eighteen years:

Provided that, if such a party is under the age of eighteen years on the fixed date, the marriage shall be voidable, in accordance with subsection (3), on and after that date and for a period of five years after the party attains that age.

- (3) A marriage referred to in subsection (2) shall become void—
- (a) if, at any time during the period referred to in the proviso to subsection (2), a party who is under the age of eighteen years on the fixed date unequivocally repudiates the marriage by written or verbal declaration or by any conduct;
 - (b) if, while a party is under the age of eighteen years—
 - (i) his or her parent or guardian unequivocally repudiates the marriage by written or verbal declaration or by any conduct;
 - (ii) a children’s court, on the application of a person who is registered as a social worker in terms of the Social Workers Act [*Chapter 27:21*], acting in the party’s interests, declares that the marriage should be dissolved.

(4) Notwithstanding that a marriage has become void in terms of subsections (2) and (3), it shall be regarded as having been valid for the purposes specified in section 21.”

PART IV

AMENDMENT OF CRIMINAL LAW CODE

22 New section substituted for section 94 of Cap. 9:23

Section 94 (“Pledging of female persons”) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] is repealed and the following is substituted—

94 Pledging of girls and compelling female persons to marry

- “(1) If a lawful custodian or relative of a girl under the age of eighteen years—
- (a) hands her over, or agrees to hand her over, to another person as compensation for any person’s death, or as compensation for any debt or obligation; or
 - (b) enters into an arrangement whereby she is pledged or promised in marriage to any male person, whatever his age;

the lawful custodian or relative shall be guilty of pledging a girl and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) If any person, by force or intimidation, compels or attempts to compel a girl or woman, whatever her age, to enter into a marriage against her will, whether in pursuance of an arrangement referred to in subsection (1) or otherwise, the person shall be guilty of compelling a female person to marry and liable to a fine not exceeding level eighteen or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) Any party to an arrangement or marriage or purported marriage referred to in subsection (1) or (2), other than the girl or woman against whom the crime is committed, may be charged as an accomplice to pledging a girl or compelling a female person to marry, as the case may be.”

