



ILITHA LABANTU

PEOPLE WHO CARE ABOUT PEOPLE

**SUBMISSIONS BY ILITHA LABANTU GREEN PAPER ON MARRIAGES IN
SOUTH AFRICA ON GREEN PAPER ON MARRIAGES IN SOUTH AFRICA**

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ATTENTION: CHIEF DIRECTOR: POLICY AND STRATEGIC MANAGEMENT

Mr Sihle Mthiyane @Marriagegreenpaper@dha.gov.za

Submitted by: Ella Mangisa

Email: ella@ilithalabantu.org

Research and Preparation by: Nontobeko Nkosi

Legal Advisor: Policy & Advocacy Department

Email: nontobeko@ilithalabantu.org

With input from: Sikhulule Monakali

Email: sikhulule@ilithalabantu.org

Introduction

Ilitha Labantu is a social justice community organisation based in Gugulethu township, Cape Town. It is a psycho-social service and educational organization with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it.

We meet the needs of communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, we provide easily accessible services to gender-based violence (GBV) survivors and the broader community.

The institution of marriage and the wellbeing of the family are at the centre of the work that Ilitha Labantu does. We strive to see women in both townships and rural areas empowered and free to be themselves and live in an environment that is healthy and conducive for them to thrive. The scope of our work is centred around families and the well-being thereof.

The green paper on marriages in South Africa sits well in our scope of work. Statistic South Africa released results which stated that there was an estimate of over 1,5 million incidences of household crime that occurred in South Africa in 2017/18. Many issues spark these crimes, but at the centre of it are women being abused right at a domestic set-up.

Reflections on the green paper

The need for equality

Ilitha Labantu welcomes the efforts taken by the Department of Home Affairs to remedy the legislative defects that the current legislation on marriage have. The people of South Africa have a vast number of rights entrenched in the Constitution that have not been fully accessible to them, which in turn creates a miscarriage of justice. South Africa is well known for its diversity, but the implementation wheel is very slow, which is also due to the vast diversity the country has, including but not limited to cultural and religious rights that are afforded to every single citizen of the country.

In *President of the Republic of South Africa v Hugo* 1997 (4) SALR 1 (CC) 41, Justice O'Regan said that although the long term goal of our constitutional order [the South African Constitution] is equal treatment, insisting upon equality in established inequality may well result in the entrenchment of that inequality. As it stands, the various legislation that governs marriage could be described as 'being clothed in the attributes of the dominant culture, religion or ethnicity (Fredman).

Recommendations

For the people of South Africa to be able to fully embrace their diversity, restrictive legislation needs to be amended to be in line with the values and principles of the Constitution. Public education on diversity and cultural and religious rights and all limitations placed in terms of these rights. As we have seen the main aspect that forms the basis of many of the issues that are faced is the fact that many individuals have no idea what exactly their rights are and how those rights have an effect on them and their communities as a whole. South Africa has always been a country that looks to inclusive growth as a whole and although we stand to enforce individual rights, we are based on a system that focuses on a system of communal growth.

Amendments on the RCMA

1. We support the call for the amendment of the Recognition of Customary Marriages Act (RCMA) to cater for all polygamous marriages irrespective of race, cultural and religious persuasions. Currently, the RCMA does not cater for other religious and cultural backgrounds except for those of black African men.
2. The comments from traditional leaders as published in the green paper suggests that a first wife should not give consent to their husbands taking on additional wives. Ilitha Labantu calls for the requirement for first wives to give consent to their husbands to add another wife to remain in the provision. We believe that striking it out of the legislation will perpetuate abuse and take away a woman's right to choose to be in a monogamous marriage or not, and further on whether they agree to add on other wives in their union.

Gender Neutral legislation

3. The green paper proposes that South Africa do away with categorising marriages along lines of race, sexual orientation, religion, and culture. That means South Africa will still adopt a dual system of either monogamous or polygamous marriages. Ilitha Labantu proposes that the gender-neutral legislation proposal needs a more elaborate discussion before any further formal submissions may be made on it. We are proposing this for the following reasons;

3.1. There is a lot that would need to be elaborated on this provision, there is no universal way of entering into marriage, especially in the South African context because of our diverse society. The forms taken by marital relationships vary widely across cultures and social systems. At face value, this proposal seems to suggest that the single marriage legislation has the potential to create more problems than solve the issues that currently exist. Each culture and religion has its way of entering into marriage.

3.2. Upon research and engagements, we found that there is a lack of information on what women think and want regarding the question of polyandry. As an organisation that takes women's interest to heart, we suggest that such a proposal get a longer community engagement. Would polyandry be a culturally endorsed, preferred, and normative mode of marriage according to women?

3.2.1. The female perspective on polyandrous marriages is lacking. Do we ask whether polyandry is a culturally endorsed, preferred, and normative mode of marriage? We cannot boldly confirm or respond in the negative or positive looking at the South African context, there is currently a small number of societies that practice this marital form in the world, not that the quantity matters, however, this prohibits statistical analyses of its antecedents so that we may be able to have systems in place to protect women who choose to be in such a union.

3.2.2. Further, in a report by Statistics South Africa titled '*Crimes against women in South Africa, an analysis of the phenomenon of GBV and femicide*' the results show that most of the reported femicide cases are committed by their intimate partners or ex-partners, 21% of married women are abused by their partners. Women often suffer from economical vulnerability as they have a higher unemployment rate. Over 4 in 10 women between ages 15-34 are unemployed and are either uneducated or have not been able to pursue further training. This makes them vulnerable and exposed to any form of abuse, especially abuse in the domestic setup.

As Ilitha Labantu, an organisation that strives to protect and support women who suffer from domestic violence, our submission is that as it stands, there is no form of protection for women who have only just 1 partner. It is therefore our submission that we need to see better systems in place that protect women in their intimate relationships, we need to see a system with a bit of hope for women with regards to their health and safety in the home.

3.2.3. Much of the voices that have been there on this issue are based on moralistic or ethnocentric grounds, which in essence are very patriarchal and unfairly discriminates based on gender – considering that polygamy is a well-accepted practice in South Africa. As it stands, polyandry is seemingly becoming patriarchy's worse nightmare.

3.2.4. Further, it cannot be argued that we need to halt having such a provision until the community unlearns some of society's behaviours, this is because it will never be convenient because too many families teach inequality and subordination, not principles of justice to women.

3.2.5. We are moving into a world that is sensitive to other people's issues and also open-minded, being conservative is outdated and soon would harm society. We need to learn to be more inclusive and strive for justice in all

forms. We must be able to accept the complexities of the issues, people have the right to choose, we should not lock them out of choice because of societal norms.

Conclusion

In conclusion, we would like to thank the Department of Home Affairs for the opportunity to provide the public with the opportunity to submit our input. We are available for oral submissions should it be necessary.

Marriage is a contract, for those who get into it need to agree with their terms, terms which need to be embraced and protected by the laws that govern it. This will allow for people who are from constitutional democracy to exercise their constitutional rights. We should further express that as Ilitha Labantu we say for all women in the country that there ought to be nothing about us without us.