



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

## Media Statement

**For Immediate Release: 30 January 2020**

**To: Editors, Producers and Reporters**

**Gender Commission is pleased the court held that parts of the apartheid era Matrimonial Property Act 88 of 1984 were unconstitutional and invalid.**

The Commission for Gender Equality (CGE) is pleased that Durban's High court held that parts of the Matrimonial Property Act 88 of 1984 were unconstitutional and invalid. The CGE was concerned about the default position of a marriage out of community of property which offends against the equality provisions of the Constitution and in particular how section 22(6) of the Black Administration Act (BAA) impacts black women as it automatically registered marriages by black couples before 1988 as being out of community of property.

Although in 1988 the Marriage and Matrimonial Property Law Amendment Act repealed section 22(6), this did not end the disadvantage suffered by black women who entered marriage before the date.

Ms Sithole and CGE grounded the application on the fact that Section 22(6) of the BAA denied many black women the protection that is afforded by a marriage in community of property. It exacerbated their vulnerability and rendered them entirely dependent on the goodwill of their husbands. This even though women largely contributed to the joint household and the raising of children.

It was further submitted that the provisions of section 21(1) and section 21(2)(a) of the Matrimonial Property Act are unconstitutional and invalid to the extent that it maintains the default position as established by section 22(6) of the BAA. The effect is



that couples who were married subject of section 22(6) of BAA will remain married out of community of property unless they opt to change the property regime to in community of property. With uneven power dynamics and a society that is deeply patriarchal, it is likely that men would not consent to the option to marry in community of property, especially where women were dependent on them as stated above.

The CGE finds it important and is pleased the court held that

1. the provision of section 21(2)(a) of the matrimonial property act 88 of 1984 be declared unconstitutional and invalid to the extent that they remain and perpetuate the discrimination created by section 22(6) of the BAA 38 of 1988, are automatically out of community of property.
2. All marriages of black persons concluded out of community of property under section 22(6) of BAA before 1988 is declared to be marriages in community of property.
3. A spouse in a marriage which is now declared to be a marriage in community of property may apply to the high court for an order that the marriage shall be out of community of property.
4. Chapter 3 of the Matrimonial property act will apply in respect of all marriages that have been converted to marriages in community of property unless the affected couple has opted out by approaching the high court.

As empowered by Section 187 Constitution of the Republic of South Africa and the CGE Act 39 Of 1996, as amended, the Commission for Gender Equality shall monitor any gender-related issues including the application of the Matrimonial Property Act which may offend against the equality provisions of the Constitution.

ENDS,

Issued by: Commission for Gender Equality (CGE)

Date: 30 January 2020

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The Commission for Gender Equality is established in terms of Section 181 of the Constitution of the Republic of South Africa in order to promote respect for gender equality and the protection, development and attainment of gender equality.



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