of a supplier to be paid directly out of the compensation to which a third party is entitled in terms of section 17(1). Based on the repeal of the previous sections authorising independent and direct action by a supplier against the then authorised insurer, the current wording of section 17(5) and relevant case law, a supplier does not have a right to claim directly and independently from the RAF. The mischief that section 17(5) intends to prevent is where a third party receives compensation (which includes his indebtedness to a supplier) and after receipt thereof pockets the money without paying the supplier. The only right that a supplier may have to sue the RAF will be where a supplier has complied with section 17(5) and the RAF fails, neglects or refuses to pay a supplier. Such an action is not based on section 17(5) but is based in delict – being a non-compliance with a statutory duty. A supplier is also not entitled to party and party costs in terms of section 17(2). Only a third party is entitled to these costs once the compensation accruing to a third party has been settled.

An interpretation which affords a supplier an independent, direct claim against the RAF leads to a multiplicity of claims and actions, anomalies and absurdity and burdens the RAF with additional expenditure which was never intended by the legislator. It may be argued that the interpretation of section 17(5) in this manner prejudices suppliers. The truth of the matter is that a supplier without a claim against the RAF is no worse off as its contractual claim against the injured third party remains intact. A direct, independent supplier's claim against the RAF cannot, either legally or ethically, be justified purely based on the argument that suppliers only contract with injured third parties in the reasonable expectation of recovering their costs from the RAF. In addition, although direct payment of independent supplier's claims by the RAF may from a policy point of view be perceived to be to the advantage of third parties, the consequence of a multiplicity of actions as well as the anomalies and absurdities which such an independent direct action creates, by far outweighs any perceived advantage. In law, an interpretation following the intention of the legislator, the wording of the Act, which does not create anomalies and absurdities and does not place an additional burden on the compensation system has to be preferred to a contrary interpretation – more so, where the RAF is faced with serious financial challenges. The long-term sustainability of the RAF and ultimately the interests of the third party claimant may be at stake.

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THE NEW UNOFFICIAL CUSTOMARY MARRIAGE: APPLICATION OF SECTION 7(6) OF THE RECOGNITION OF CUSTOMARY MARRIAGES ACT 120 OF 1998

1 Introduction

The Recognition of Customary Marriages Act 120 of 1998 regulates customary marriages in South Africa. A customary marriage, as defined by the Act, means a

marriage concluded in accordance with the customs and usages traditionally observed among the indigenous African people of South Africa, and which form part of the culture of those people (s 1). However, recognition is accompanied by a fundamental deviation from traditional customary law. The most prominent changes to traditional customary law are contained in section 6, which provides for the equal status of spouses and the application of the Matrimonial Property Act 88 of 1984 to customary marriages concluded after the promulgation of the Act (see Bakker "Die weg vorentoe: Unifikasie of pluralisme van die Suid-Afrikaanse huweliksreg?" 2004 *THRHR* 627 and the authorities cited there).

All marriages that were valid at customary law before the commencement of the Act on 15 November 2000, are recognised as valid marriages (s 2(1)). All customary marriages concluded after 15 November 2000 must comply with the requirements of the Act to be recognised as valid marriages (s 2(2)). The Act recognises polygynous marriages (a marriage between one man and more than one woman – s 2(3) and (4)).

All existing polygynous marriages that were entered into in terms of the customary law before 15 November 2000, are recognised as valid marriages for all purposes (s 2(1)). Where a man wishes to enter into a second or further customary marriage after 15 November 2000, section 7(6) requires that he "must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriage". What would the consequence of non-compliance with section 7(6) be? Is section 7(6) a requirement for a valid customary marriage? What is the nature of a second customary marriage entered into after the commencement of the Act without complying with section 7(6)? If section 7(6) was incorporated under, or at least referred to, under section 3, which states the requirements for a valid customary marriage, there would have been no doubt as to the answers to the above questions. However, the legislature included it under section 7 which deals with the patrimonial consequences of customary marriages. To answer the above questions I will firstly examine section 3 and the general purpose of the Act, and then analyse section 7(6).

2 Requirements for a valid customary marriage

Section 3 of the Act contains the requirements for a valid customary marriage concluded after 15 November 2000. The requirements are: the prospective spouses must both be above the age of 18 years; they must both consent to the marriage; the marriage must be "negotiated and entered into or celebrated in accordance with customary law" (s 3(1)); and the parties may not be within the prohibited degrees of relationship by blood or affinity as determined by customary law (s 3(6)). The remainder of the section contains the requirements for a valid marriage when a minor party enters into a customary marriage under the Act (s 3(3)–(5)) and prohibits a spouse in a customary marriage from contracting a marriage under the Marriage Act 25 of 1961 (which in itself can be problematic; see Bonthuys and Sibanda "Till death us do part: *Thembisile v Thembisile*" 2003 *SALJ* 784; Bakker "Bestaanbaarheid van bigamie as misdryf in 'n kultureel heterogene samelewing" 2006 *THRHR* 71), except where a conversion from a customary marriage to a civil marriage in terms of section 10(1) takes place. (For a discussion of the requirements for a valid customary marriage see Dlamini "The ultimate recognition of the customary marriage in South Africa" 1999 *Obiter* 14; Mqeke "The 'rainbow jurisprudence' and the institution of marriage with emphasis on the Recognition of Customary Marriages Act 120 of 1998" 1999

Obiter 52; Akinnusi "The consequences of customary marriages in South Africa: Would the Recognition of Customary Marriages Act, 1998 make any difference?" 2000 *J for Juridical Science* 143; Pieterse "Killing it softly: customary law in the new constitutional order" 2000 *De Jure* 35; Bronstein "Confronting custom in the Customary Marriages Act 120 of 1998" 2000 *SAJHR* 561; Maithufi "The Recognition of Customary Marriages Act of 1998: A commentary" 2000 *THRHR* 509; Oomen "Traditional woman-to-woman marriages, and the Recognition of Customary Marriages Act" 2000 *THRHR* 274; Van Schalkwyk "Kommentaar op die Wet op Erkenning van Gebruiklike Huwelike 120 van 1998" 2000 *THRHR* 480; De Koker "Proving the existence of an African customary marriage" 2001 *TSAR* 257; Horn and Janse van Rensburg "Practical implications of the recognition of customary marriages" 2002 *Journal for Juridical Science* 54; Jansen "The recognition of Customary Marriages Act: many women still left out in the cold" 2002 *Journal for Juridical Science* 115; Maithufi and Bekker "The recognition of the Customary Marriages Act of 1998 and its impact on family law in South Africa" 2002 *CILSA* 182; Maithufi and Moloi "The current legal status of customary marriages in South Africa" 2002 *TSAR* 599; Van Schalkwyk "Law reform and the recognition of human rights within South African family law with specific reference to the Recognition of Customary Marriages Act 120 of 1998 and Islamic marriages" 2003 *De Jure* 289; Pienaar "African customary wives in South Africa: is there spousal equality after the commencement of the Recognition of Customary Marriages Act?" 2003 *Stell LR* 256; Bakker *Huweliksplurализme in Suid-Afrika* (LLD thesis UP 2004).)

In terms of section 4(1) "[t]he spouses of a customary marriage have a duty to ensure that their marriage is registered". However, failure to register does not affect the validity of the marriage (s 4(9) – registration is, however, a requirement for a valid civil marriage – see s 29A of the Marriage Act 25 of 1961). Section 7(6) provides that a husband in a customary marriage entering into a further customary marriage has to apply for approval of a written contract which contains the future matrimonial property system of his marriages. However, there is no sanction for non-compliance. No reference to section 7(6) is made under section 3, which contains the requirements for a valid customary marriage under the Act. Registration is not a requirement for a valid customary marriage and was therefore not included under section 3. If this analogy is followed, it can be construed that section 7(6) is not a requirement for a valid customary marriage. If the legislature intended otherwise, section 7(6) would have been included under section 3. However, the language employed by the legislature is peremptory in nature and non-compliance with section 7(6) will lead to the invalidity of the second marriage, unless there is a clear indication to the contrary (Steyn *Die uitleg van wette* (1981) 195; Du Plessis *Re-interpretation of statutes* (2002) 251). Section 7(6) could, therefore, be a requirement for a valid customary marriage.

3 Purpose of the Act

The preamble to the Act states that the Act was promulgated in order

> "[t]o make provision for the recognition of customary marriages; to specify the requirements for a valid customary marriage; to regulate the registration of customary marriages; to provide for the equal status and capacity of spouses in customary marriages; to regulate the proprietary consequences of customary marriages and the capacity of spouses of such marriages; to regulate the dissolution of customary marriages; to provide for the making of regulations; to repeal certain provisions of certain laws; and to provide for matters connected therewith".

The Act was promulgated primarily to afford recognition to customary marriages and at the same time improve the position of women and children within these marriages (see SALC Project 90 *The harmonisation of the common law and indigenous law* Report on customary marriages (August 1998) para 1.1.3; Bronstein "Confronting custom in the new South African state: an analysis of the Recognition of Customary Marriages Act 120 of 1998" 2000 *SAJHR* 561; Jansen 2002 *Journal for Juridical Science* 116).

4 Section 7(6)

4 1 Purpose

Section 7(6) is intended to protect the interest of the first customary wife or the existing wives when a man marries an additional wife (Van Schalkwyk 2000 *THRHR* 491; Maithufi and Moloi 2002 *TSAR* 609). Maithufi and Moloi are of the opinion that section 7(6) hampers men from concluding a second marriage and consequently discouraging polygyny, due to the complicated procedure, time constraints and financial implications imposed by the section (2002 *TSAR* 609; Maithufi 2000 *THRHR* 516; Horn and Janse van Rensburg 2002 *Journal for Juridical Science* 63).

4 2 Application

In terms of section 7(6)

> "[a] husband in a customary marriage who wishes to enter into a further customary marriage with another woman after the commencement of this Act must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriages".

One contract will regulate the future matrimonial property system of all the marriages (Cronjé and Heaton *South African family law* (2004) 204; Van Schalkwyk 2003 *De Jure* 305; Maithufi and Moloi 2002 *TSAR* 609). All persons who have an interest in the contract and particularly the existing spouse(s) and the prospective spouse must be joined in the proceedings (s 7(8)). Section 7(6) states that the contract will "regulate the future matrimonial property system of his marriages". It is evident from this section that all the marriages will be regulated by one matrimonial property system (Van Schalkwyk 2000 *THRHR* 491; Jansen 2002 *Journal for Juridical Science* 122; Cronjé and Heaton 204).

Where the existing marriage is in community of property or subject to the accrual system, the court must terminate the existing matrimonial property system and effect a division of the matrimonial property (s 7(7)(a)(i)). The contract will only regulate the future matrimonial property (s 7(6)).

The matrimonial property system is terminated and not the marriage. The court will therefore lack the authority it has in divorce cases (Van Schalkwyk 2000 *THRHR* 491). The first wife would, for example, not be entitled to a forfeiture order. The court is given the discretion to provide for an equitable distribution of the matrimonial property (s 7(7)(a)(ii)). However, no guidelines are provided for the court to consider when granting an equitable distribution of the matrimonial property. The only requirement is that the court must "take into account all the relevant circumstances of the family groups which would be affected if the application was granted" (s 7(7)(a)(iii)). This affords the court a wide discretion to make any order it deems equitable (Van Schalkwyk 2000 *THRHR* 492). Therefore, the court may disregard the proposed matrimonial

property system when making an order for the equitable distribution of the marriage property. This sub-section was most likely inserted to provide for the situation where the current matrimonial property system is regulated by customary law and not the Matrimonial Property Act (Van Schalkwyk 2000 *THRHR* 492). This would account for the reference to the interests of the family groups in section 7(7)(iii). If this assumption is correct, the court's discretionary power in terms of section 7(7)(ii) will only apply to customary marriages concluded before 15 November 2000 with a matrimonial property system governed by customary law. However, if a literal interpretation is followed the court will have a wide discretion in terms of marriages in community of property, marriages with the accrual system and marriages regulated by customary "matrimonial property" law.

The legislature formulated the section in such a way as to achieve the best possible protection for all the parties involved (Pienaar 2003 *Stell LR* 265). When considering the application the court has to ensure an equitable distribution of the property (s 7(7)(a)(ii)), and take into account all the relevant circumstances of the family groups affected by the application (s 7(7)(a)(iii)). The Act does not state whether the demands of the wives should be taken into account. However, the court may refuse the application if the interests of one of the parties are not sufficiently protected (s 7(7)(b)(iii)). Therefore, the court will have to consider the interests of the present and prospective wives. The purpose of the Act is not only to afford recognition to customary marriages, but also to protect women in customary marriages. The interest of the wive(s) and prospective wife should be the main concern of the court in determining whether sufficient protection is provided by the proposed contract. This is emphasised by the wording of section 7(8):

> "All persons having a sufficient interest in the matter, and *in particular the applicant's existing spouse or spouses and his prospective spouse*, must be joined in the proceedings instituted in terms of subsection (6)" (my emphasis).

The court may permit further amendments to the contract or grant the order subject to any condition it deems fit (s 7(7)(b)). The application may be refused if the court finds that one of the parties involved would not be sufficiently safeguarded by the proposed contract (s 7(7)(b)(iii)). From the above it is clear that the legislature entrusted the courts with the duty to protect the interests of women in polygynous customary marriages.

If the court grants the application, the registrar or clerk of the court must send the order and a certified copy of the contract to each registrar of deeds in the area in which the court is situated (s 7(9)).

4 3 Determining the matrimonial property system

Can the applicant choose any matrimonial property system when entering into a contract in terms of section 7(6)?

4 3 1 Community of property

Van Schalkwyk is of the opinion that the future marriages can be in community of property (2000 *THRHR* 491). The court will have to exclude the existing property of the man and his first wife as this might be in conflict with section 7(7)(b)(iii). In terms of section s 7(7)(b)(iii) the application may be refused by the court if the contract does not adequately protect the interest of one of the parties. Upon termination of the marriage the property will be divided in equal shares between the husband and his wives (*idem* 492).

According to Cronjé and Heaton it is impossible to apply the concept of community of property to polygynous marriages (204). In terms of community of property each spouse is entitled to a half share of the joint estate. They argue that it can not be stated that the husband gets one half share and the other is divided among the wives. A separate joint estate for each spouse can also not be formed. How would the husband's share be divided between the various joint estates? They further contend that the Act does not provide for the approach suggested by Van Schalkwyk (205). His argument implies that each time one of the marriages is terminated, the estate will have to be divided between all the spouses.

Van Schalkwyk's approach corresponds with the purpose of the Act and that of section 7(6). Community of property might serve the interest of the wives better than the exclusion of property in certain instances. The court may make "any equitable order it deems just" in the case of dissolution of a polygynous customary marriage (s 8(4)(b)). Therefore, it will be able to divide the property into equal shares between all the spouses should this be an equitable distribution in a specific case. It is not necessary to divide the estate each time one of the marriages is terminated. The court may order payment of the share to which the divorced spouse is entitled.

4 3 2 Out of community of property with accrual

Van Schalkwyk argues that the future contract can provide for a marriage out of community of property with accrual for all three parties (2000 *THRHR* 492), although the value of the estates of the respective spouses from date of marriage is applicable and the husband and first wife cannot provide new values (Van Schalkwyk "Vonnisbespreking: *Ex parte Burger* 1995 1 SA 140 (D)" 1995 *De Jure* 443, 2000 *THRHR* 492). Therefore, the accrual must be divided between all the spouses upon termination of one of the marriages. According to Cronjé and Heaton 205 the Act does not provide for this approach. They further contend that section 3(1) of the Matrimonial Property Act 88 of 1984 only provides for an accrual claim "for an amount equal to half of the difference between the accrual of the respective estates of the spouses". The accrual system can therefore not be applied to polygynous marriages (for a practical example illustrating their argument see Cronjé and Heaton 205). It is impossible to calculate an accrual where more than two estates are involved, and this option is therefore excluded as a possible marriage system in terms of section 7(6).

4 3 3 Out of community of property without accrual

According to Cronjé, Heaton and Pienaar section 7(6) only provides for a future matrimonial property system out of community of property without accrual (see Cronjé and Heaton 205; Pienaar 2003 *Stell LR* 265). The consequence of this approach is that a polygynous customary marriage contracted after the commencement of the Act is automatically out of community of property and without accrual or profit and loss.

Van Schalkwyk argues that this interpretation is not sound. If section 7(6) only provided for marriages out of community of property, then section 7(4) would have been limited to marriages out of community of property (s 7(4) provides for parties in a customary marriage entered into before the commencement of the Act to change their matrimonial property system; see Van Schalkwyk 2003 *De Jure* 307).

The most prudent option would be to assume that section 7(6) only provides for a future matrimonial property system out of community of property without accrual (Cronjé and Heaton 205; Pienaar 2003 *Stell LR* 265). There are substantial practical difficulties in following Van Schalkwyk's approach. However, I am not without reservation in following the approach of the other writers. If the legislature intended to exclude all other property systems, why should the Act provide for a contract to regulate the future matrimonial property system? Why not simply state that the future matrimonial property system will be out of community of property? Section 7(4) of the Act would have excluded polygynous marriages, which are expressly included in this section. As indicated above, excluding community of property is contrary to the purpose of the Act. The legislature should amend section 7(6) to clarify the discrepancies.

4 4 Non-compliance

It is not certain what the consequences would be if a man entered into a second marriage without complying with section 7(6).

Maithufi and Moloi argue that the second marriage should be valid and that such a marriage should be regarded as out of community of property and profit and loss (2002 *TSAR* 609). They contend that the purpose of section 7(6) is to avoid unnecessary future litigation concerning property brought into the marriage and property acquired during the marriage (*ibid*). They further contend that an invalid marriage, where the wife regarded herself as married, is a very harsh consequence, especially in the case where the wife was also considered married by the community ("The need for the protection of rights of partners to invalid matrimonial relationships: A revisit of the 'discarded spouse' debate" 2005 *De Jure* 152).

Cronjé and Heaton 204 contend that the husband's capacity to enter into a second marriage depends on the approval of the matrimonial property contract by the court. Hence, the second marriage will be invalid if section 7(6) has not been complied with. They argue that approval by the court would be unnecessary and a waste of time and money if non-compliance with section 7(6) does not lead to invalidity of the second marriage. Therefore, the interests of wives and their family groups would be unprotected, which is contrary to the purpose of the Act. However, if their approach is followed, compliance with section 7(6) would indeed be unnecessary as the only matrimonial property system allowed by their approach is a marriage out of community of property without accrual.

Section 2(4) states that "if a person is a spouse in more than one customary marriage, all such marriages entered into after the commencement of this Act, *which comply with the provisions of this Act*, are for all purposes recognised as marriages" (my emphasis). Bronstein refers to section 2(4) and argues that the second customary marriage will be void if the husband did not comply with section 7(6) (2000 *SAJHR* 562). She acknowledges that such an interpretation will be to the detriment of the subsequent wives, but if the subsequent marriages were regarded as valid the Act will not protect the current parties to the first marriage (2000 *SAJHR* 563).

Since the wording of section 7(6) contains the word "must", it can be presumed that the section is peremptory in nature, unless there is a clear indication that it should be directory (*Standard Bank v Estate van Rhyn* 1925 AD 266 275; *Messenger of the Magistrate's Court, Durban v Pillay* 1952 3 SA 678 (A); *Maharaj v Rampersad* 1964 4 SA 638 (A); *Minister of Environmental Affairs*

and Tourism v Peper Bay Fishing (Pty) Ltd, Minister of Environmental Affairs and Tourism v Smith [2003] 4 All SA 1 (SCA); Steyn 196). This section does not contain any sanction should it be disregarded. The argument could therefore be advanced that the second marriage should be void if contracted contrary to section 7(6). However, language alone is not sufficient to determine whether a provision is peremptory or directory (*Sutter v Scheepers* 1932 AD 165; *Standard Bank v Estate van Rhyn*; *S v Khoza* 1973 4 SA 511 (T) 513E–F; Steyn 195; Du Plessis 251). The purpose and purport of a provision often guides the courts in deciding whether a provision is peremptory or directory (*Standard Bank v Estate van Rhyn*; Steyn 196; Du Plessis 252). The purpose of the Act is to advance the interests of women in customary marriages (see para 3 *supra*). If the second marriage is void due to a non-compliance with section 7(6), the first wife's interests would be protected. However, the invalidity of the second marriage is a harsh sanction against the second wife who had no control over the actions of her prospective spouse (Maithufi and Moloi 2005 *De Jure* 152). The second wife might even be unaware of the fact that her spouse is already a partner in an existing customary marriage. The husband should be punished for non-compliance and not his new wife. Consequently, invalidity of the second marriage would be contrary to the purpose of the Act and that of section 7(6). The interests of all the wives are not protected if non-compliance leads to the invalidity of the second marriage. Du Plessis 252) states that

> "[i]nsistence on strict compliance with the terms of a provision may, for instance, cause inconvenience or result in improprieties (such as injustices, injuries to third persons or even fraud). If, in these circumstances, non-compliance or defective compliance with a provision will result in lesser inconvenience or impropriety than insistence on strict compliance, then non-compliant action will be valid in the absence of any explicit statement rendering such action invalid".

(See also *Sutter v Scheepers*; *Pio v Franklin* 1949 3 SA 442 (C) 451; *Jefferies v Komgha Divisional Council* 1958 1 SA 233 (A) 238H–239A; *Jajbhay v Rent Control Board* 1960 3 SA 189 (T) 194C–E; *S v Swart* 1969 3 SA 138 (T) 139G–140A; *Swart v Smuts* 1971 1 SA 819 (A) 831F–G*; Kuhne and Nagel (Pty) Ltd v Elias* 1979 1 SA 131 (T) 134–135; Steyn 195.)

The second marriage should, therefore, be valid even where the requirements of section 7(6) are disregarded. Non-compliance with section 7(6) will not affect the first wife negatively where she was married out of community of property with the exclusion of the accrual system. Where the first wife was married out of community of property, the property system will continue after her spouse marries his second wife. The only contract that can be drafted is an agreement to continue with the marriage out of community of property. Therefore, non-compliance will have no effect on the first wife if the first customary marriage is out of community of property.

Non-compliance with section 7(6) could affect the first wife negatively where she was married in community of property or out of community of property subject to the accrual system. However, this construction will not lead to any injustice against the first wife due to the application of section 8(4)(b):

> "[The court] must, in the case of a husband who is a spouse in more than one customary marriage, take into consideration all relevant factors including any contract, agreement or order made in terms of section 7(4), (5), (6) or (7) and must make any equitable order that it deems fit."

(It is unclear why the Act refers to section 7(5) as this section is only applicable to monogamous customary marriages.)

Section 8 empowers the court to divide the matrimonial property in any way it deems just, after considering any existing agreement, including the section 7(6) contract. This provides the court with a wide discretion to make any order it deems equitable. If the husband did not comply with section 7(6), the court may still protect his first wife's interest when dividing the matrimonial property.

5 Conclusion

The Act provides for a complicated, expensive and time consuming procedure where a man intends concluding a polygynous customary marriage. It might even be true that the procedure will prevent men from entering into polygynous marriages. However, it is more likely that the provisions of the Act will simply be ignored (Mqeke 1999 *Obiter* 66; Bronstein 2000 *SAJHR* 562). To insist on strict compliance with the provisions of section 7(6) will have a negative impact on women in customary marriages, but will not force men to comply with section 7(6).

If section 7(6) is construed to be peremptory in nature, non-compliance will lead to the invalidity of the second marriage. Consequently, if the man does not comply with section 7(6) but all other requirements are adhered to, the second wife will be married in the eyes of the community even though the marriage will not be officially recognised by the state. A new unofficial customary marriage will then be created and the dilemma of the discarded spouse will be re-introduced.

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RAAKPUNTE TUSSEN DIE SUID-AFRIKAANSE EN DUITSE GRONDWETLIKE BESKERMING VAN MENSWAARDIGHEID – ENKELE RIGLYNE VIR DIE ONTPLOOIING VAN ONS REG

Die grondwetlike beskerming van menswaardigheid ("Würde des Menschen") in die Duitse reg het verskeie raakpunte met die Suid-Afrikaanse reg. Hierdie bespreking neem die raakpunte oorsigtelik onder die loep ten einde die belang daarvan vir die toekomstige ontwikkeling van ons reg in hierdie verband te peil.

1 Albei regstelsels verleen uitdruklike erkenning en beskerming aan menswaardigheid. Artikel 1(1) van die Duitse Grundgesetz lui soos volg: "Die Würde des Menschen ist unantasbar. Sie zu achten und zu schützen, ist Verpflichtung aller staatlichen Gewalt." ("Die waarde van die mens is onaantasbaar. Alle staatlike organe is verplig om dit te ag en te beskerm.") En in Suid-Afrika verklaar die Handves van Regte (Grondwet 1996 a 10) onder die hoof "menswaardigheid" ("human dignity") dat elke mens ingebore waardigheid ("inherent dignity") het en die reg dat daardie waardigheid gerespekteer en beskerm moet word.

2 In beide lande was die allerbelangrikheid van die grondwetlike beskerming van menswaardigheid 'n direkte reaksie op die minagting van die waarde van die