



Comment on

South African Law Reform Commission

Project 144

Single Marriage Statute

Issue Paper 35



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Messrs Matibe, Domingo and van Wyk

Thank you for the opportunity to submit accompanying comment on Project 144.

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1. The South African Pagan Rights Alliance.

1.1. The South African Pagan Rights Alliance (herein 'SAPRA' and 'the Alliance') was formed in 2004 as a community-based voluntary association. Over the last 16 years, successive executive members have voluntarily offered their service to this Alliance, its members and citizens who identify as Pagans in South Africa.

SAPRA has **(a)** challenged media bias against Pagan and other minority religions, **(b)** lobbied Chapter 9 institutions and other governmental agencies and departments to address instances of bias and prejudice directed at minority faiths and other vulnerable groups, **(c)** engaged in advocacy against religious discrimination, witchcraft accusations and witch-hunts in South Africa, and (since 2018) **(d)** provided basic paralegal advice and referral, both publicly and privately, on matters concerning discrimination.

SAPRA does not charge any fee for its service to individuals or communities. This Alliance is entirely funded by its formal membership. No member of SAPRA's Board of Directors or Executive Committee derives any financial compensation for their service to this Alliance.

In 2019 the Alliance was registered with the Companies and Intellectual Property Commission, as a Non-Profit Company (NPC) in terms of the Companies Act (71 of 2008). The Alliance is tax compliant.

1.2. In February 2007 this Alliance requested the South African Law Reform Commission to review and repeal the Witchcraft Suppression Act – SALRC Project 135.

This Alliance has argued that Act 3 should be repealed on the grounds that it is inconsistent with ss 9 (Right to Equality), 10 (Right to Dignity), 15 (Freedom of religion, belief and opinion), 30 (Right to Freedom of Culture) and 31 (Right to establish and maintain religious communities), of the Constitution.

After eight (8) years of deliberation between the South African Law Reform Commission, Pagans and Traditional Healers, the Commission found (in 2015/16) that certain provisions of Act 3 are indeed inconsistent with the Constitution. Twelve (12) years after initiating this review, the Commission has however failed to either finalise the review, or repeal the Act.

This Alliance objects to the failure of the Commission to finalise the review of Project 135.

1.3. SAPRA was designated as a 'religious organisation' in terms of the Civil Union Act [17 of 2006] in 2008.

* The Alliance was the first Pagan organisation to be so designated.

This Alliance has nominated several members as 'religious marriage officers' since 2008, and currently administers the following (7) duly designated Pagan religious marriage officers.

Mrs Lizette Symeone van Aarde CU/169

Province: Greyton - Western Cape

Appointed as SAPRA's 'religious marriage officer' Registrar as of 28 May 2019

Mrs Fiona Bowden (nee Briggs) CU/118

Province: Ethikwini - Kwazulu-Natal

Mr Rodney Crisford CU/48

Province: Knysna - Western Cape

Mrs Colleen Mollentze CU/44

Province: Welkom - Free State

Mrs Sharon Parkinson CU/39

Province: Nelspruit – Mpumalanga

Mr Rian Pelati (nee Pretorius) CU/105

Province: Sundra – Mpumalanga

Mr Jan Henk Swanepoel CU/139

United Kingdom - South African High Commissioner [pending approval by DHA and UK SAHC]

SAPRA's religious marriage officers have solemnised civil union marriages in terms of the Civil Union Act, between both heterosexual and same-sex couples.

2. Introduction to Paganism in South Africa.

2.1 Not unlike South Africa's legal system, South African Paganism is a hybrid of several clearly identified pre- and post-Christian religious belief systems (religions), philosophies, and religio-magical practices.

These religious and philosophical belief systems include:

(a) reconstructed pre-Christian belief systems, including Classical Greek and Roman religions, Druidry, Heathenism (including Asatru, Vanatru, Odinism), Kemeticism, and Shamanism, and

(b) post-Christian belief systems, including Western and Eastern Magical Traditions, Wicca, Traditional and Folkloric Witchcraft, and neo-Shamanism.

South African Pagans may identify as either **(c)** polytheists (believe in and worship many Gods and Goddesses), **(d)** pantheists (believe that the material~spiritual world is God/Goddess), or **(e)** animists (believe that every part of the material world is imbued with its own spiritual agency).

South African Pagans who identify as adherents of post-Christian Pagan belief systems **(f)** engage in one or other form of magical practice, and do not differentiate the practice of magic (including witchcraft) as something distinct from their religious belief systems.

2.2. Pagans are and have been a visible and public religious minority in South Africa since 2005. Although there is currently no officially definitive census of the number of Pagans in this country, this Alliance estimates the current number of self-identified Pagans in South Africa to number less than ten thousand (10 000) individuals.

3. South African Pagan religious and civil marriage regimes.

3.1. Pagans have indirectly inherited a number of different religious marriage customs, from a wide variety of pre- and post-Christian cultural and religious sources. These are not of direct relevance to the legal solemnisation of civil union marriages in terms of the Civil Union Act.

3.2. Although different South African Pagan religions, and individuals, have chosen to retain various historical religious marriage customs and associated religious ceremonies, South African Pagans collectively have not chosen to adopt a single religious marriage custom, nor to advocate for the establishment of a separate Pagan marriage regime requiring its own legislative regulation, yet, owing in part to the diverse nature of existing Pagan religious belief systems.

3.3. Prior to the passage of the Civil Union Act, Pagans seeking to be married have been obliged to follow a dual process: **(i)** conduct private religious ceremonies to fulfil their chosen Pagan religious marriage traditions and customs, and **(ii)** legally formalise their betrothals through civil marriages conducted by officials of the Department of Home Affairs.

3.4. South African Pagans welcomed the passage of the Civil Union Act, because it provided to Pagans a right to **(i)** appoint their own Pagan religious marriage officers, **(ii)** to include their chosen Pagan religious marriage traditions in lawful marriage ceremonies conducted by legally designated Pagan religious marriage officers, and **(iii)** removed the additional requirement to legally formalise their unions through civil marriages conducted by officials of the Department of Home Affairs.

4. Designation of Pagan organisations and Pagan religious marriage officers in terms of the Civil Union Act.

4.1. There are currently three (3) national Pagan organisations designated in terms of the Civil Union Act –

- (i)** The South African Pagan Rights Alliance,
- (ii)** The South African Pagan Council, and
- (iii)** The Correlian Nativist Tradition South Africa.

4.2. There are currently twenty (20) duly designated Pagan religious marriage officers in South Africa, distributed as follows -

- (i)** The South African Pagan Rights Alliance 7,
- (ii)** The South African Pagan Council 9,
- (iii)** The Correlian Nativist Tradition South Africa 4.

4.3. In 2018, designated organisations submitted comment in support of the amendment of section 6 of Act 17 of 2006.

4.4. This Alliance will argue that (a) organisations and (b) religious marriage officers already designated in terms of the Civil Union Act, have a reasonable right of expectation to continue to:
(i) nominate members of their organisations as religious marriage officers, and
(ii) solemnise marriages and civil unions in accordance with their preferred religious customs.

5. Problems encountered by Pagan religious marriage officers with officials of the Department of Home Affairs.

5.1. SAPRA is concerned that an examination of whether or not existing marriage regimes should be consolidated in one form or another, into a single marriage regime, may omit to examine existing problems encountered by Pagan religious marriage officers in registering civil union marriages under the Civil Union Act.

5.2. Since the Alliance's designation, its religious marriage officers have encountered the following repeated incidents when attempting to register Civil Union marriages with various offices of the Department of Home Affairs (hereafter 'DHA'):

5.2.1. DHA officials erroneously believe that only same-sex couples may be married under the Civil Union Act.

5.2.2. DHA officials refuse to register heterosexual couples married under the Civil Union Act, or insist that such marriages be registered on Marriage Act documentation.

5.2.3. Married heterosexual couples visiting DHA offices in order to apply for a new Identity Document when wishing to change their surname to that of their spouse, are told by DHA officials that a change of surname cannot be performed, and that a new Identity Document (or passport) cannot be issued, because the couple was married under the wrong Act.

5.3. SAPRA and its religious marriage officers have consequently had to field several threats of litigation from aggrieved couples who are incorrectly informed by DHA officials that their marriages were solemnised and registered under the wrong Act.

5.4. This Alliance has frequently had to intervene directly at local DHA offices in order to attempt to persuade DHA officials of their administrative errors, to demonstrate their error in law, or refer cases of repeated non-compliance by DHA officials to DHA's Marriage Office for resolution.

5.5. The unnecessary delays in registering validly concluded civil union marriages directly due to DHA incompetence, delictually prejudices both married couples, and religious marriage officers who solemnise their marriages.

6. Recommendations by the South African Pagan Rights Alliance on Project 144.

6.1. Evolving jurisprudence and case law on the preferred application of living customary law, rather than sole reliance on legislated aspects of customary law which does not always accurately reflect customary law as it is practiced, demonstrates the importance of preserving different and diverse 'living' legal systems, as equals, rather than replacing them with, or sublimating them into one uniform legal system.

6.2. This Alliance therefore favours an "*omnibus marriage statute*", as described, "*a single act which contains different chapters which reflect the current diverse set of legal requirements for and consequences of civil marriages, civil unions, customary marriages, Muslim and possibly other religious marriages.*" [SALRC Issue Paper 35, Project 144]

6.3. Such an "omnibus" would (1) permit for future addition, including a Pagan marriage regime based on evolving 'living' custom, (2) allow for an overview analysis of the requirements and consequences of different marriage systems, and (3) preserve the unique characteristics of each individual system as separate but equal marriage regimes.

6.4. This Alliance supports the legal recognition of unmarried partnerships, and the inclusion of a separate statute governing the requirements and consequences of unmarried partnerships in an '*omnibus marriage statute*'. Unmarried partners, whether same-sex or heterosexual, who choose not to avail themselves of marriage in terms of any existing marriage regime, are obligated to conclude costly Universal Partnership Agreements in order to derive legal certainty and security over their cohabitation. Cohabiting partners should not have to suffer prejudicial consequence for exercising their right to choose.

6.5. Existing case law, whilst not recognising 'common law marriage', has never-the-less provided some protection to couples in unmarried partnerships:

6.5.1. *Langemaat v Minister of Safety and Security and Others* 1998 (3) SA 312 (T) - the right to qualify for spousal medical aid and immigration benefits.

6.5.2. Satchwell v President of the Republic of South Africa and Another 2002 (6) SA 1 (CC) - entitlement to the same pension benefits as the surviving spouse of a deceased judge.

6.5.3. Du Plessis v Road Accident Fund 2004 (1) SA 359 (SCA) - the right to institute the common law dependant's action for loss of support in the case of the demise of a breadwinner.

6.5.4. Du Toit and Another v Minister for Welfare and Population Development and Others 2003 (2) SA 198 (CC) - the possibility of joint adoption and guardianship of children.

6.5.5. Gory v Kolver NO and Others 2007 (4) SA 97 (CC) - the right to inherit on intestacy.

6.6. Existing legislation already places cohabitation and marriage on an equal footing in certain circumstances:

6.6.1. Cohabitation is recognised under the Domestic Violence Act.

6.6.2. The Medical Schemes Act 131 of 1998 defines a dependant to include a 'partner'.

6.6.3. The Income Tax Act and the Estate Duty Act treats cohabitants as spouses for the purposes of tax legislation. The word 'spouse' is defined to include a permanent same-sex or heterosexual relationship.

6.6.4. Either partner in a cohabitation relationship may name the other as a beneficiary in a life-insurance policy.

6.6.5. A domestic partner may receive pension fund benefits as a nominee.

6.6.6. A surviving domestic partner may claim compensation if their partner dies as a result of injuries received during the course of work, in terms of the Compensation for Occupational Diseases Act.

7. Summary

7.1. This Alliance supports an “*omnibus marriage statute*”, containing different chapters reflecting different existing marriage regimes, their legal requirements and consequences.

7.2. This Alliance supports the legal recognition of unmarried partnerships, and the inclusion of a separate statute governing the requirements and consequences of ‘unmarried cohabiting partnerships’ in an ‘*omnibus marriage statute*’.



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