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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION: ISSUE PAPER 35 ON A SINGLE MARRIAGE STATUTE (PROJECT 144) PUBLISHED FOR GENERAL INFORMATION AND COMMENT**

The South African Law Reform Commission announces the availability for general information and comment of its project 144 Issue Paper 35 dealing with the question of the possible adoption of a single marriage statute.

As a result of our colonial and apartheid history, and in common with other many societies, South Africa has a pluralist system of marriage and family laws, which means that multiple legal or normative orders regulate marriages and families within the same state. Historically dominant is marriage in terms of the 1961 Marriage Act, which is derived from the principles of, Christian, Roman-Dutch and English law. It is essentially monogamous and heterosexual. These marriages can be conducted by state officials as purely secular marriages, but certain of the Act's provisions relating to the appointment of marriage officers together with longstanding practices by mainstream Christian and Jewish institutions mean that some Judaeo-Christian marriages are automatically also recognised as civil marriages.

Closely aligned with the Marriage Act is the Civil Union Act 17 of 2006, which largely mirrors the requirements and consequences of civil marriage, but which is open to both same-sex and opposite sex monogamous couples. Marriages in terms of the Marriage Act and the Civil Union Act are often referred to as 'civil marriage'. Customary marriages are the potentially polygynous marriages of indigenous African people. They have received limited legal recognition since colonial times, but never had the same status as marriages under the Marriage Act and were

termed 'unions' rather than marriages. Since November 2000 customary marriages have been fully valid and their consequences determined by the Recognition of Customary Marriages Act 120 of 1998. They are now governed by a mixture of statute, common law and norms of customary law.

Muslim, Hindu and other religious marriages could also potentially be conducted in terms of the Marriage Act, because the Act provides for the appointment of marriage officers 'for the purpose of solemnizing marriages according to Christian, Jewish or Mohammedan rites or the rites of any Indian religion'. However, unless these marriages also comply with the other requirements of the Marriage Act, including the marriage formula, presence of both parties and so forth, they would not be valid in terms of the Marriage Act. For this reason, members of religions other than mainstream Christian and Jewish institutions often enter into both civil and religious marriages. When they are not also married according to the Marriage or Civil Union Acts, the religious marriages have no legal validity.

The main aim of this investigation is to explore the questions whether and how provision should be made in South Africa for the adoption of single marriage statute. A single marriage statute can take two different forms – either a unified set of requirements (and possibly consequences) applying to all marriages, which we refer to as a single or unified marriage act, or alternatively 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. The latter could be thought of as an omnibus or umbrella marriage statute.

This issue paper is the first document published during the course of this investigation. It aims to announce the investigation, initiate and stimulate debate, seek proposals for reform, and will serve as a basis for further deliberation by the Commission. At this stage the paper does not contain proposals for law reform.

The Commission seeks comments on any issues contained in the issue paper, and on any related issues. Comments will provide direction on the proposed scope and focus of the investigation. On the strength of these responses a discussion paper will be prepared, setting out the Commission's provisional proposals. Responses to the discussion paper will then be collated and evaluated to prepare a report setting out the Commission's final recommendations.

The report (with draft legislation) will be submitted to the Minister of Justice and Correctional Services for submission to the Minister of Home Affairs.

Respondents are requested to submit written comment, representations or submissions to the Commission by **31 July 2019** for the attention of Pierre van Wyk to the following address:

The Secretary  
South African Law Reform Commission  
Private Bag X668  
Pretoria  
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Issue Paper 35 is available on the Internet at the following site:  
<http://www.justice.gov.za/salrc/ipapers.htm>

Issue Paper 35 can also be obtained free of charge from the SALRC on request. Kindly contact Mr Jacob Kabini at [Jakabini@justice.gov.za](mailto:Jakabini@justice.gov.za) or (012) 622 6346 in this regard.

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**ISSUED BY THE SECRETARY, S A LAW REFORM COMMISSION, CENTURION**

**DATE: 8 April 2019**