



Name of Country and Jurisdiction:

## South Africa

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to South Africa, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to South Africa for an authority to grant a divorce/dissolution?



### 1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	South Africa	<p>Marriage Act; Civil Union Act; Recognition of Customary Marriages Act.</p> <p>Couples marrying under the Civil Union Act may choose whether their union is registered as a marriage or a civil union. In either case, the legal consequences are identical to those of a marriage under the Marriage Act. Any reference to marriage in any law, including the common law, is deemed to include civil partnership in terms of the Civil Union Act.</p>	Yes

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Civil union / Civil partnership, registered	South Africa	Civil Union Act.  See above — “Marriage, registered.”	Yes
Marriage (customary)	Indigenous	<p>Recognition of Customary Marriages Act.</p> <p>This Act makes provision for the legal recognition of both monogamous and polygamous customary marriages, provided they are concluded according to “the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples.”</p> <p>A customary marriage concluded in accordance with this Act is currently the only means by which a polygamous marriage can be clothed with complete legal validity in South African law.</p>	

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Domestic partnership, not registered	South Africa	<p>Common law.</p> <p>Domestic partnership or cohabitation is not recognized as a legal relationship by South African statutory law. Generally speaking, unregistered domestic partnerships have only the “ordinary rules and remedies of the law” (such as the law of contract, estoppel, and unjustified enrichment) at their disposal. Therefore, domestic partnerships may receive recognition under certain circumstances.</p> <p>One or both unregistered domestic partners may, after the unregistered domestic partnership has ended through death or separation, apply to a court for a maintenance order, an intestate succession order, or a property division order. The court will consider all of the circumstances of the relationship to determine if a domestic partnership was created.</p>	Yes
Forthcoming changes	<p>In 2008, a “Domestic Partnerships Bill” was drafted that will recognize both registered and unregistered domestic partnerships for relationships where the parties do not want to enter into a civil union or marriage. This bill has not yet been voted on by the South African Parliament, and no vote is expected in the near future.</p>		

**Q**

**2. What are the requirements to be able to enter into the above relationships?**

**A**

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	No residency requirement for either party.
Civil union	



(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage (registered)	Both spouses normally must be at least 18 years old, but the Act does make provision for those under 18 to marry under certain circumstances. A person may not marry his or her direct ancestor/descendant, sibling, uncle/aunt, or niece/nephew; nor may he or she marry the ancestor or descendant of an ex-spouse.
Civil union	The Civil Union Act contains the same substantive requirements as the Marriage Act, except that the parties must be 18 or older.

**Q**

**3. If both marriage and civil unions exist:**

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

**A**

(a)	The Civil Union Act contains the same substantive requirements as the Marriage Act, except that the parties must be 18 or older.
(b)	A person cannot be married (or recognized as being in a civil union) under both the Marriage Act and the Civil Union Act.
(c)	Same-sex couples uniting under the Civil Union Act may choose whether their union is registered as a marriage or a civil union. In either case, the legal consequences are identical.

**Q**

**4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?**

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	A person may not contract a marriage or civil union if he or she is already married or civilly partnered under the Civil Union Act or the Marriage Act.  A person can be married only under one of the three laws (Marriage Act, Civil Union Act, and Recognition of Customary Marriages Act) at any one time.
Civil union	See above.

Q

**5. When a couple comes to South Africa, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?**

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>A marriage outside South Africa will be recognized as valid if it was concluded in terms of the formalities of the jurisdiction of that foreign country (<i>lex loci celebrationis</i>).</p> <p>The Civil Union Act does not explicitly recognize foreign same-sex marriages or civil unions. However, foreign same-sex marriages and civil unions have been recognized in South Africa under the common law. See <i>Steyn v. Steyn</i> 2010 (1) SA 1 (CC) at 17 para. 41 (S. Afr.) (“[T]he parties’ English civil partnership, having been lawfully executed in that country, should be accepted as a valid and binding civil partnership in the Republic in accordance with the <i>lex loci celebrationis</i> principle, provided only that it does not otherwise offend South African public policy.”).</p>
Civil union	See above.

Q

**6. How can each form of relationship be dissolved? What is the residency requirement or other link to South Africa for an authority to grant a divorce/dissolution?**

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Marriage can be dissolved only by the High Court or a regional civil magistrate’s court and only on the grounds of irretrievable breakdown of the marriage, in which the relationship between the parties has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship. (Divorce Act of 1979, Section 4(1)).</p> <p>A court has jurisdiction in a divorce action if one or both of the parties are: “(a) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or (b) ordinarily resident in the area of jurisdiction of the court on the said date and have ... been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date.” (Divorce Act of 1979, Section 2(1)).</p>
Civil union	If a same-sex couple marries or registers under the terms of the Civil Union Act, the same principles will apply to the dissolution of their union as if they had been married under the Marriage Act and subsequently sought divorce.

## ■ Sources:

### Statutes

- Marriage Act 25 of 1961, available at <http://www.gov.za/sites/www.gov.za/files/Act%2025%20of%201961.pdf>.
- Civil Union Act, 2006, available at [http://www.gov.za/sites/www.gov.za/files/a17-06\\_1.pdf](http://www.gov.za/sites/www.gov.za/files/a17-06_1.pdf).
- Divorce Act 70 of 1979, available at <http://www.justice.gov.za/legislation/acts/1979-070.pdf>.
- Children's Act 38 of 2005, available at <http://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf>.
- Recognition of Customary Marriages Act 120 of 1998, available at <http://www.justice.gov.za/legislation/acts/1998-120.pdf>.
- Domestic Partnerships Bill: Draft, available at <http://www.gov.za/documents/domestic-partnerships-bill-draft>.

### Court Opinion

- *Steyn v. Steyn* 2010 (1) SA 1 (CC) at 17 para. 41 (S. Afr.), available at <http://www.saflii.org/za/cases/ZAWCHC/2010/224.pdf>.

### Articles

- Claire Vogelpath, *What are the consequences of living together?* (Feb. 1, 2011), <http://www.polity.org.za/article/what-are-the-consequences-of-living-together-2011-02-01>.
- Bertus Preller, *Same Sex Partnerships*, <http://www.divorcelaws.co.za/same-sex.html>.