



Dialogue Online

"The elders sit under the big tree and talk until they agree... talking until you agree (or agree to disagree) is the essential (essence) of the traditional African concept of democracy..."
Julius Nyerere



South Africa's Civil Union Amendment Bill: A Step in the Right Direction

By Mbuyiseli Lwazi Somya

On 1st July 2020, South Africa's second House of Parliament, the National Council of Provinces during a virtual sitting adopted an amendment of the Civil Union Act and was sent to Head of State President Cyril Ramaphosa for assent.

The adoption of this amendment was the culmination of a thorough legislative process embarked upon by the Parliament of South Africa, which included a comprehensive public consultation process, with expert submissions presented to the legislative body. This paper merely seeks to contextualise the latest victory of the LBGTIQA+ community in South Africa, and briefly explain the implications of the amendment bill.

In May 2018, the Hon. Diedre Carter of the Congress of the People (COPE) introduced before Parliament a private members bill for the amendment of the Civil Union Act of 2006. The private member bill sought to repeal Section 6 of the Civil Union Act 17 of 2006.

Section 6 states the following, *"A marriage officer, other than a marriage officer referred to in section 5. may in writing inform the Minister that he or she objects on the ground of conscience, religion and belief to solemnising a civil union between persons of the same sex. Hereupon that marriage officer shall not be compelled to solemnise such civil union".*¹

In practice, this allowed civil servants to have the ability to refuse to officiate and solemnise the civil union of same-sex couples. Section 6 of the Civil Union Act of 2006 presented a legislative stumbling block to the realisation of South Africa's Bill of Rights as enshrined in South Africa's Constitution.

Chapter 2, Section 9 (3) of South Africa's Constitution states that, *"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth".*²

The refusal to solemnise the civil union of couples due to religious beliefs and moral convictions by state officials stood in contradiction with the constitutional aspirations of the people of South Africa. Whether directly or indirectly, Section 6 of the Civil Union Act 17 of 2006 created provisions where public servants may discriminate on individuals based on gender, sex, or sexual orientation. The amendment removes the state's ability to discriminate based on gender, sex or sexual orientation, especially those that are delegated the task to solemnise civil unions on behalf of the state.

State Involvement in the Private Sphere of their Citizens.

The repeal stood to correct a long-standing injustice of having the state as a barrier for same-sex couples to express their commitment and love for one another as equal as heteronormative couples. The state standing as a major obstacle for equality for same-sex couples may be traced back to the colonial period, but for the purposes of this exposition, our point of departure would be the introduction of the Immorality Act of 1927 - which served to criminalise acts seen as indecent and was an attempt of entrenching conservative right-wing values by the Apartheid regime on South African society.

As the Apartheid project continued, the regime introduced the Immorality Amendment Act No 57 of 1969, this law was more explicit in its approach against same-sex couples, as section 20 A stated that, *"A male*

¹ Civil Union Act 17 of 2006: Section 6. <https://www.golegal.co.za/wp-content/uploads/2018/12/Civil-Union-Act-17-of-2006.pdf>

² Constitution of the Republic of South Africa, 1996. Chapter 2: The Bill of Rights
<https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

person who commits with another male person at party and act which calculated to stimulated sexual passion or to give sexual gratification shall be guilty of an offense".³

This approach to same-sex couples was indicative of the state's approach to policing the private sphere of its citizenry and presented a repressive response to non-heteronormative couples. The intrusion of the state into the private sphere of the lives of citizens formed an intrinsic part of the Apartheid regime's ambitions to socially engineer a segregated society.

These laws presented an existential crisis for the existence of black queer individuals, as the intersectionality of the state's repressive legislative framework placed the greater burden of oppression on one's identity.

The realities of the intersectionality of the state's repressive machinery were captured by Anti-Apartheid Activist Simon Nkoli argued that, *"when you're on trial against the state, you are a witness for the defence. I thought the state might know I was a gay person and would try to use my homosexuality to attempt to discredit me or to discredit my co-accused"*⁴.

In Nkoli's analysis, one can see how the state had weaponised one's race and sexual orientation as intersectional sites of oppression in order to sustain the Apartheid regime.

The anti-apartheid struggle was not only for the liberation of black people, but it was for the liberation for all to live to the best of their human potential. Therefore, South Africa's democratic constitution reflects these aspirations of a united, free, and prosperous nation.

While the amendment of the Civil Union Act presents a major victory for the LGBTIQ+ community in South Africa, major stumbling blocks for the full realisation of the aspirations of South Africa's constitution remain. This includes the change of social attitudes towards the LGBTIQ+, addressing gender-based violence, and comprehensively dealing with social inequality. These will require far more than just legislation, as they will require political will power and a nation united in addressing its intrinsic social challenges.

³ Republic of South Africa Immorality Act No 57 of 1969 https://www.gov.za/sites/default/files/gcis_document/201505/act-57-1969.pdf

⁴ Simon Nkoli, 1989. "Sharpeville to Stonewall: Linking Liberation Struggles" *Resist Newsletter*. <https://digitalrepository.trincoll.edu/cgi/viewcontent.cgi?article=1217&context=resistnewsletter>

The Dialogue Online, is an online extension of SALO's national, regional and international consensus-building dialogues (typically workshops, seminars and small meetings) on Peace and Security, Development, SA Foreign Policy, Gender (including LGBTI rights), Natural Resource Governance, Human Rights and the rights of migrant communities through *weekly written articles and/or commentary*. It is a channel through which critical issues raised during dialogue events are synthesised and shared with wider audiences. By taking the dialogue 'online', the conversation is enabled to continue beyond the limits of space and time and to a wider audience.

Since SALO's central focus is peace and security, *Dialogue Online* articles focus primarily on this theme, but drawing attention to the nexuses with development, natural resource governance, human rights and gender, mediation, environment and climate change. Preference is towards articles that speak to international development and peace building policy and practice, raise awareness about conflict situations and the gender dimensions thereof and provoke fresh thinking and policy debate. Contributions are drawn from SALO's pool of experts, peace building and development practitioners, activists, academics, former and current diplomats and workshop participants.

Please note that the articles represent views of respective contributors and do not necessarily reflect SALO's view or position.

Interested contributors are welcome to email articles of 750 to 1000 words in length to info@salo.org.za for consideration.

Please follow us on twitter [@salo_info](https://twitter.com/salo_info) and [#DialogueOnline SALO](https://twitter.com/DialogueOnline) for comments.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

info@salo.org.za

www.salo.org.za

SALO would like to thank (in alphabetical order)

Canada Fund for Local Initiatives, Department for International Development (DFID); The Embassy of the Kingdom of the Netherlands in South Africa; Norwegian People's Aid (NPA); The Olof Palme International Centre; The Open Society Initiative for Southern Africa (OSISA), The Royal Norwegian Embassy;

among others, for their ongoing support of our Policy Dialogue Series.

