The Dissolution of Customary Marriages Where the Defendant Is Mentally Ill or in a State of Continuous Unconsciousness

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Abstract

Section 8(1) of the *Recognition of Customary Marriages Act* 120 of 1998 (the *RCMA*) provides for only one ground for a divorce in customary marriages, namely the irretrievable breakdown of a marriage. This ground is borrowed verbatim from the *Divorce Act* 70 of 1979 (the *DA*). However, the *DA* provides for further grounds for a divorce, namely, mental illness, as provided for in section 3(*b*) read with section 5(1), and continuous unconsciousness, as provided for in section 3(*b*) read with section 5(2); in addition, the defendant enjoys a measure of protection under these grounds. The glaring absence of mental illness and continuous unconsciousness as grounds for a customary marriage divorce in the *RCMA* raises some questions on how courts should approach a customary marriage divorce involving a mentally ill or unconscious defendant spouse. This absence also presents challenges for a plaintiff in a customary marriage divorce who may need a divorce on a ground other than the irretrievable breakdown of a marriage. This absence also borders on being unconstitutional insofar as it indirectly differentiates between those in civil marriages and those in customary marriages. This note critically discusses these issues.

Keywords

Mental illness; unconsciousness; divorce; customary marriage.

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1 Introduction

The *Recognition of Customary Marriages Act*[1] (the *RCMA*) provides for only one ground for the dissolution of a customary marriage, namely that a customary marriage may be dissolved by a court through a decree of divorce on the ground of the irretrievable breakdown of a marriage.[2] To this end the *RCMA* borrows verbatim from sections 3 and 4 of the *Divorce Act*[3] (the *DA*). However, the *DA* makes provision for two further grounds for a divorce in civil marriages, namely, mental illness[4] and continuous unconsciousness.[5] It is interesting to note that the *RCMA* does not make any provision for further grounds for a divorce in customary marriages. Clearly, the *RCMA* excludes mental illness and continuous unconsciousness as grounds for the dissolution of customary marriages. It is arguable that this exclusion renders mentally ill and unconscious spouses more vulnerable to some adverse consequences of a divorce, such as an order for the forfeiture of patrimonial benefits.[6] The defendant also does not benefit from the protection provided for mentally ill and unconscious defendants in section 5 of the *DA*, such as the appointment of a legal representative for the defendant at the plaintiff's account,[7] the provision of security by the plaintiff in respect of any patrimonial benefits that the defendant may be entitled to at the dissolution of the marriage.[8] This vulnerability also implies that a mentally ill or unconscious defendant who is married under customary law will be treated differently from his or her counterpart in civil law divorces, dual marriage divorces and civil union divorces as envisaged in the *Civil Union Act*.[9] In this context a dual marriage exists where two parties are married to each other in a civil marriage and a customary marriage, as envisaged in section 10 of the *RCMA*. The plaintiff could also experience challenges. There may be cases where the plaintiff seeks a dissolution of a customary marriage on a ground other than the irretrievable breakdown of a marriage. In some cases, the facts may fail to establish the irretrievable breakdown. A plaintiff in a customary marriage divorce has fewer options than his or her civil law counterpart.

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1 *Recognition of Customary Marriages Act* 120 of 1998 (the *RCMA*).

2 Section 8(1) of the *RCMA*.

3 *Divorce Act* 70 of 1979 (the *DA*).

4 Section 3(*b*) read with s 5(1) of the *DA*.

5 Section 3(*b*) read with s 5(2) of the *DA*.

6 Section 9(1) of the *DA*.

7 Section 5(3) of the *DA*.

8 Section 5(4) of the *DA*.

9 *Civil Union Act* 16 of 2006.

This note focusses on the dissolution of customary marriages where the defendant is either mentally ill or continuously unconscious. Under civil law, for instance, where a divorce is instituted on the ground of the defendant's mental illness or continuous unconsciousness, the *DA* provides some level of protection – some of which has been mentioned above. The absence of mental illness and continuous unconsciousness as grounds for a divorce under the *RCMA* means that the stricken defendant is treated like an ordinary defendant who cannot receive the special protection that is envisaged in the *DA*. For the purpose of drawing a comparison, this note opens with a detailed discussion of the grounds for the dissolution of civil marriages under the *DA*. This will provide an opportunity to focus more on mental illness and unconsciousness as grounds for a divorce under the *DA*. Thereafter, a discussion of the dissolution of customary marriages and the consequences thereof will follow. The question of the dissolution of customary marriages where the defendant is either mentally ill or unconscious will then be considered. The main consideration in this regard is how courts should deal with a dissolution in such circumstances. Should the irretrievable breakdown of a marriage be interpreted as affording the courts a discretion to invoke the protection which otherwise exists where a civil divorce is ordered on the ground of mental illness or unconsciousness? Or is the court confined to the letter of the legislation? In terms of existing law, the latter approach is legally correct – albeit with absurd results. The position under the *Draft Marriage Bill*[10] is also considered. Will the bill improve the situation in customary marriage divorces? This note will then make recommendations on how the courts should deal with customary marriage divorce matters where the defendant is mentally ill or unconscious and then conclude.

2 Grounds for a divorce under the *Divorce Act*

2.1 General

Prior to the *DA*, the common law divorce system was premised on the fault of the defendant.[11] This means that in every divorce matter, the court had to identify the guilty spouse and the innocent spouse.[12] Only the innocent spouse had *locus standi* and could succeed in obtaining a divorce.[13] Guilt was established if the defendant committed marital fault. In general, marital fault was committed if the defendant engaged in adultery or malicious desertion.[14] These are commonly referred to as the common law grounds

10 *Draft Marriage Bill* (GN 4202 in GG 49887 of 13 December 2023).
11 Sibisi 2024 *Obiter* 419.
12 Robinson, Human and Boshoff *Introduction to South African Family Law* 193.
13 Sibisi 2023 *JJS* 147.
14 Robinson "Grounds for Divorce" 7; Phajane *Substantial Misconduct* 18.

for a divorce.[15] Adultery included perverted forms of sexual intercourse.[16] Malicious desertion could be actual or constructive.[17] The guilty spouse could suffer adverse financial consequences such as the forfeiture of spousal maintenance and any patrimonial benefits of the marriage.[18] Bonthuys is critical of the common law rule that a guilty spouse could not prosecute for a divorce. She argued that because of this rule, the guilty spouse was forced to endure in a marriage that he or she no longer wanted at the pleasure of the innocent spouse.[19] This argument is hereby supported.

The common law high premium on the fault principle meant that divorce could not be based on fault neutral grounds such as the mental illness or physical illness of the defendant. If a spouse desired a divorce from an ill spouse, he or she had to find a way to establish marital fault on the defendant.[20] But in 1935 the *Divorce Laws Amendment Act*[21] introduced incurable mental illness as a ground for a divorce.[22] This *Act* also added the imprisonment of the defendant spouse after being declared a habitual criminal as a ground for a divorce.[23] However, Zaal[24] points out the difficulty of succeeding in a case for divorce relying on incurable mental illness due to a series of conditions that the plaintiff had to prove. The conditions were that the defendant must be certified insane, compulsorily detained in a state mental institution for a period of at least seven years, and three psychiatrists were required to give evidence that the defendant's mental illness was incurable.[25] Zaal[26] points out that these conditions limited the use of incurable mental illness as a ground for a divorce.

During the 20th century there was a worldwide reform of divorce laws.[27] The common factor was a move away from a fault-based divorce system to a no-fault divorce system. To borrow from Robinson and Hahlo:[28] "Fault was replaced with failure and matrimonial offence by marriage breakdown." The *DA* was enacted in South Africa in 1979, and it came into operation on 1

15 Denson 2021 *Obiter* 369.
16 Hahlo *South African Law of Husband and Wife* 330.
17 Hahlo *South African Law of Husband and Wife* 330.
18 Robinson, Human and Boshoff *Introduction to South African Family Law* 193.
19 Bonthuys 2015 *SAJHR* 392.
20 Zaal 1985 *CILSA* 238 points out that, to obtain a divorce, the plaintiff had to term the ill defendant's conduct as fault.
21 *Divorce Laws Amendment Act* 32 of 1935.
22 Section 1(1)(*a*) of the *Divorce Laws Amendment Act* 32 of 1935.
23 Section 1(1)(*b*) of the *Divorce Laws Amendment Act* 32 of 1935.
24 Zaal 1985 *CILSA* 238.
25 Zaal 1985 *CILSA* 238.
26 Zaal 1985 *CILSA* 238.
27 Aden 1972 *Acta Juridica* 40, who point out reforms in Scandinavian countries in the 1920s, German reforms in the 1930s and the English *Divorce Reform Act* in 1969.
28 Robinson "Grounds for Divorce" 7; Hahlo *South African Law of Husband and Wife* 330.

July 1979.[29] Although the *DA* is accredited for ushering in the no-fault divorce system in South Africa, as seen above, the move away from fault occurred a few decades prior to the promulgation of the *DA* when the *Divorce Laws Amendment Act* was passed.

The *DA* introduced three grounds for a divorce in South Africa, namely the irretrievable breakdown of a marriage, mental illness and continuous unconsciousness.[30] It is important to add that other authors are of the view that there are two grounds for a divorce. These authors treat mental illness and continuous unconsciousness as one ground.[31] In this note these special grounds for a divorce are treated as distinct grounds with distinct requirements. Below is a discussion of each of these grounds.

2.2 The irretrievable breakdown of a marriage

The move away from the fault-based divorce system resulted in the introduction of the acceptance of the irretrievable breakdown of a marriage as a ground for a divorce in the *DA*. Even before this enactment there were calls by some scholars that the irretrievable breakdown of a marriage should be recognised as the only ground for a divorce.[32] Zaal[33] points out that the irretrievable breakdown of a marriage is broad enough to facilitate a divorce from any mentally incapacitated patient. He further points out that "breakdown" refers to the illness of a marriage and not that of the defendant.[34] However, as shown above, the legislature did introduce other grounds for a divorce, and regardless, scholars continue to call for a single ground for a divorce.[35] Similar calls were made before the passing of the *RCMA* and it does appear that these were eventually heeded as the irretrievable breakdown of a marriage is the only ground for a divorce in the *RCMA*.[36]

Section 4(1) of the *DA* provides that a court may decree a divorce on the ground of the irretrievable breakdown of a marriage if the marriage relationship between the parties has reached such a stage of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between the parties. Despite the use of the word "may" in this provision, in *Schwartz v Schwartz*[37] the Appellate Division (as it then was) held that courts do not have a general discretion to decree a divorce under this provision. According to the Appellate Division, the use of the word "may"

29 See s 19 of the *DA* titled "Short title and commencement".
30 Section 3 of the *DA*.
31 For example, see Hahlo *South African Law of Husband and Wife* 330-332.
32 Aden 1972 *Acta Juridica* 39.
33 Zaal 1983 *SALJ* 115.
34 Zaal 1983 *SALJ* 115.
35 Robinson and Baird "Dissolution of a Marriage" 141.
36 SALC *Harmonisation of the Common Law and the Indigenous Law* 126-129.
37 *Schwartz v Schwartz* 1984 4 SA 467 (A) 473I-474A.

confers upon a court power which it did not otherwise have. Once a party has proved that the marriage has broken down irretrievably, it becomes the duty of the court to decree a divorce. The correctness of *Schwartz v Schwartz* in this respect was confirmed by the same court in *Levy v Levy*.[38]

Notwithstanding the above, it must be pointed out that there is an exception in section 5A of the *DA,* where the court has discretion to refuse a divorce. Section 5A has application only in cases of religious dual-marriages; that is, in cases where the two people are married to each other in terms of both civil law and religious rites. Accordingly, the court has discretion to refuse a divorce with respect to the civil marriage if, despite the dissolution of the civil marriage, either one of the spouses will not be free to remarry as a result of a religious impediment. In this situation the court may refuse a divorce or make any other order it deems just unless it is satisfied that the party within whose power it is to have the impediment removed has taken all necessary steps to have the religious impediment removed.[39]

It is worth stating that the *DA* does not provide any definitions to be assigned to the concepts "irretrievable breakdown of a marriage" and "a normal marriage relationship". According to Hahlo,[40] the reason for the breakdown is immaterial. What matters is that the marriage has broken down irretrievably. Robinson[41] points out that any conduct of the defendant, or that of the plaintiff, that renders the continuation of married life dangerous or intolerable would qualify under the phrase "irretrievable breakdown of the marriage". Examples of conduct that may lead to the irretrievable breakdown of a marriage include malicious desertion, adultery, the refusal of marital privileges, physical cruelty, drug and alcohol abuse, objective factors beyond the control of the parties, temporary situations or falling out of love.[42] Anything that leads to the irretrievable breakdown of a marriage would qualify.

Courts have also accepted the responsibility of developing jurisprudence relating to the irretrievable breakdown of a marriage. In *Schwartz v Schwartz*[43] the court formulated the test for the irretrievable breakdown of a marriage by stating that it is important to have regard to the history of the marriage relationship and the attitudes of the parties towards the marriage. In *Naidoo v Naidoo*[44] the Transvaal Provincial Division (as it then was)

38 *Levy v Levy* 1991 3 SA 614 (A) 622H-625E.

39 See *Amar v Amar* 1999 3 SA 604 (W), where the court ordered a recalcitrant husband to pay spousal maintenance to the wife until such time that he cooperated in obtaining a divorce with respect to the Jewish marriage.

40 Hahlo *South African Law of Husband and Wife* 334.

41 Robinson "Grounds for Divorce" 10.

42 Robinson "Grounds for Divorce" 10.

43 *Schwartz v Schwartz* 1984 4 SA 467 (A) 475G.

44 *Naidoo v Naidoo* 1981 1 SA 366 (T).

further developed the test by stating that it comprised both a subjective and an objective leg. The subjective leg of the test was aimed at determining if the marriage relationship between the parties had broken down.[45] To this end, the attitudes of both parties toward the marriage were considered.[46] This is in line with the accepted view that marriages hardly ever break down as a result of the conduct of only one of the parties to the marriage.[47] The objective leg of the test was aimed at determining if the breakdown was irretrievable. The objective leg entailed looking at the history of the marriage relationship. The history of the marriage relationship might include a variety of occurrences such as physical and emotional abuse, adultery, desertion, irreconcilable differences et cetera.[48]

Finally, the court will dissolve a marriage that has disintegrated to the extent that there is no reasonable prospect of the restoration of a normal marriage relationship.[49] The wording in section 4(1) makes it clear that courts must adopt a subjective criterion in determining if the marriage relationship is no longer normal. A normal marriage relationship is associated with *consortium omnis vitae* (*consortium*).[50] *Consortium* is "the totality of a number of rights, duties and advantages".[51] It includes love, affection, companionship, support, trust and confidence, respect, mutual services, sexual intercourse et cetera.[52]

It is not only about what is objectively considered to be a normal marriage relationship, but what is normal between the parties to the marriage.[53] While most married couples live with each other, others may not consider living together necessary, and this may be normal between the parties. Most married couples may consider coitus and procreation to be important aspects of a marriage relationship, while other married couple may not place any premium on these aspects. The emphasis is on what is normal between the parties.

2.3 Mental illness

As noted above, mental illness as a ground for a divorce in South Africa has its origins in the *Divorce Laws Amendment Act*. In terms of section 1(1)*(a)* of this *Act*, incurable mental illness of no less than seven years was a ground for a divorce. Before this enactment there existed uncertainty on whether mental illness was ever a ground for a divorce under the common

45 *Naidoo v Naidoo* 1981 1 SA 366 (T) 367C.
46 See *Swart v Swart* 1980 4 SA 364 (O).
47 *W v W* 2011 1 SA 545 (GNP) para 26.
48 For a general discussion, see Heaton and Kruger *South African Family Law* 120.
49 Section 4(1) of the *DA.*
50 Robinson "Grounds for Divorce" 11.
51 Robinson "Grounds for Divorce" 11.
52 Robinson "Grounds for Divorce" 11.
53 *Coetzee v Coetzee* 1991 4 SA 702 (C).

law. Presumably the *Act* lifted this uncertainty by making mental illness a ground for a divorce, albeit a statutory ground.

The *DA* retained mental illness as a ground for a divorce. Section 5(1) of the *DA* elaborates on section 3*(b).* A court may decree a divorce on the ground of mental illness provided that the requirements set in section 5(1) are present. Accordingly, the court must be satisfied that, in terms of the *Mental Health Care Act*,[54] the defendant falls into any of these categories: (a) is admitted as a mentally ill patient in terms of a reception order,[55] (b) is being detained as a state patient in a state institution or other institution as determined by the Minister of Justice and Correctional Services[56] or (c) is being detained as a mentally ill prisoner at an institution within the Republic.[57] The court must be satisfied that the defendant has never been unconditionally discharged for a period of at least two years immediately before the institution of the divorce proceedings. In addition, the court must hear the evidence of at least two psychiatrists, of whom one must be appointed by the court, to the effect that the defendant is mental ill and there are no reasonable prospects that he or she will be cured of the mental illness.[58] These are strict requirements that must be satisfied in order to succeed with a divorce on accounts of the defendant's mental illness.[59]

A reading of section 5(1) does show some similarities with its predecessor in section 1(1)*(a)* of the *Divorce Laws Amendment Act*. However, there is a notable shift. Section 1(1)*(a)* required incurable mental illness, whereas section 5(1) simply requires that there must be no reasonable prospects of recovery. The facts that the *Divorce Laws Amendment Act* required an incurable mental illness does mean that if there was some prospect of the defendant's being cured, this ground was not satisfied. There is a slight relaxation in section 5(1); what is required is that there should be no reasonable prospect of a recovery at the relevant time. The fact that the prospects may change for the better in the future is irrelevant. However, as will be seen below, should the defendant recover before the proceedings are finalised, section 5(1) no longer has application and the divorce matter will have to proceed in terms of the irretrievable breakdown of a marriage. It should also be noted that section 5(1) also relaxes the requirements in that the mental illness must have lasted for two years immediately prior to

54 *Mental Health Care Act* 17 of 2002. It should be noted that the *DA* still refers to the *Mental Health Act* 18 of 1973; however, this Act was repealed by the *Mental Health Care Act*.
55 Section 5(1)(*a*)(*i*) of the *DA*.
56 Section 5(1)(*a*)(*ii*) of the *DA*.
57 Section 5(1)(*a*)(*iii*) of the *DA*.
58 Section 5(1)(*b*) of the *DA*.
59 Robinson "Grounds for Divorce" 20.

the institution of divorce proceedings. As seen above, the wait had previously been seven years.

Section 5(1) may be criticised for its continued insistence on only the evidence of psychiatrists. It may be argued that the legislature relies only on western medicine. It is trite that South Africa has become a pluralist society in various respects, including medicine and psychiatry. The mental illness may emanate from an indigenous source, in which case the cure may lie in indigenous methods. It may well be the case that western medicine and psychiatry hold the view that a particular mental illness is incurable, and hence that there are no reasonable prospects of the defendant's being cured, whereas indigenous medicine and psychiatry may hold the opposite view. Equally true, the root of the mental illness may be spiritual, in which case the solution will lie in religion rather than in western medicine and psychiatry.

2.4 Continuous unconsciousness

In terms of section 5(2), a court may decree a divorce if the defendant is in a state of continuous unconsciousness as a result of a physical disorder. This is a novel ground that did not exist prior to the *DA*. In order to decree a divorce on this ground, the court must be satisfied of two things, namely (a) the unconsciousness must have lasted for a continuous period of at least six months immediately prior to the institution of divorce proceedings[60] and (b) the court must hear the evidence of at least two medical practitioners, of whom one must be a neurologist or a neurosurgeon appointed by the court, to the effect that there are no reasonable prospects that the defendant will regain consciousness.[61] These are strict requirements that must be satisfied.[62]

Should the defendant gain consciousness before the divorce proceedings are finalised, the matter may not proceed in terms of section 5(2). In *Krige v Smit*[63] the proceedings were initiated whilst the defendant was unconscious in hospital because of a brain haemorrhage.[64] However, the defendant regained consciousness before the matter was finalised. As a result, the divorce continued based on the ground of the irretrievable breakdown of a marriage and not on the ground of continuous unconsciousness.[65]

60 Section 5(2)(*a*) of the *DA*.
61 Section 5(2)(*b*) of the *DA*.
62 Robinson "Grounds for Divorce" 20.
63 *Krige v Smit* 1981 4 SA 409 (K).
64 *Krige v Smit* 1981 4 SA 409 (K) 411E.
65 *Krige v Smit* 1981 4 SA 409 (K) 416C.

2.5 Preliminary procedures

Based on a reading of section 5 and case law, it becomes apparent that there are some preliminary processes to be followed if the divorce is based on the defendant's mental illness or unconsciousness.

The plaintiff must approach the court for the appointment of a medical practitioner to establish *prima facie* that the defendant is either mentally ill or unconscious, and the appointment of a legal representative of the defendant as required by section 5 generally. In *Dickinson v Dickinson*[66] the plaintiff brought these as one application with various prayers.[67] As noted above, the plaintiff may be ordered to pay the costs of the legal representation.[68] However, the *DA* is not clear on the topic of who must bear the cost of the court-appointed medical practitioner; based on the decision in *Dickinson v Dickinson*,[69] the plaintiff may also be responsible for the costs of a court-appointed medical practitioner.

The plaintiff must approach the court after the prescribed minimum periods. In the case of mental illness, the plaintiff must approach the court after two years of the defendant's being in an institution.[70] In the case of an unconscious defendant, the plaintiff must approach the court after six months of the defendant's being unconscious.[71] Further, in the case of mental illness, the court-appointed medical practitioner must be a psychiatrist,[72] and in the case of consciousness, it must be a neurologist or a neurosurgeon.[73] These are in line with section 5 generally.

The evidence of the medical practitioner is crucial because it establishes the procedure that will be followed in the proceedings. In *Dickinson v Dickinson*[74] the court held that if the mental illness were established, then the divorce process should be served on the legal representative. However, if the mental illness had not been established, the divorce process should be served on the defendant, in which case the divorce could not proceed on the ground of mental illness in terms of section 5(1). The same is the case with respect to continuous unconsciousness. Should the divorce proceed in terms of section 5, a second medical practitioner should give evidence accordingly.

66 *Dickinson v Dickinson* 1981 3 SA 856 (W).
67 *Dickinson v Dickinson* 1981 3 SA 856 (W) 858E.
68 Section 5(3) of the *DA*.
69 *Dickinson v Dickinson* 1981 3 SA 856 (W) 860A-B.
70 Section 5(1)(*a*) of the *DA.*
71 Section 5(2)(*a*) of the *DA.*
72 Section 5(1)(*b*) of the *DA.*
73 Section 5(2)(*b*) of the *DA.*
74 *Dickinson v Dickinson* 1981 3 SA 856 (W) 860H-I.

2.6 Protection of the defendant in divorce proceedings

The *DA* provides some protection to the mentally ill or unconscious defendant by affording the court a discretion in a few respects. It may appoint a legal practitioner to represent the defendant and order the plaintiff to pay for such legal representation.[75] In *Dickinson v Dickinson*,[76] the first reported case dealing with mental illness as a ground for a divorce, the court stated that the functions of this legal representative were the same as the functions of a *curator ad litem*. The court may also make an order regarding the furnishing of security in respect of any patrimonial benefit to which the defendant may be entitled.[77] Further, a court ordering a divorce on the ground of mental illness and continuous unconsciousness may not order forfeiture of patrimonial benefits against the defendant.[78] Although this is not express in the *DA*, it is doubtful that the court may make a cost order against the defendant. In any event, the court is not always bound to make a costs order in favour of the successful party in divorce proceedings.[79] In making the cost order, the court is enjoined to consider the means of the parties and their conduct insofar as may be relevant. The court is enjoined to make a just order and it may apportion the costs between the parties.[80]

2.7 Some issues regarding mental illness and continuous unconsciousness

At first glance, mental illness and continuous unconsciousness as grounds for a divorce provoke an arguably non-legal argument that relates to Christian marriage vows. It is widely accepted, albeit not without argument, that a civil marriage is a Christian marriage. Essentially, the relevant part of the Christian marriage vow provides: "for better and for worse, for richer and for poorer, in sickness and in health".[81] From a Christian perspective, which is that of the majority of the South African populace,[82] the fact that our law allows a divorce in circumstances of ill-health clearly goes against the marriage vows. Nonetheless, this argument may not stand in law. In fact, the *Marriage Act*[83] provides different vows from those that conclude a secular civil marriage in court or in a Department of Home Affairs office. Section 30 of the *Marriage Act* allows religious officers to use the marriage vows that they usually use. The *Marriage Act* simply requires the parties to

75 Section 5(3) of the *DA*.
76 *Dickinson v Dickinson* 1981 3 SA 856 (W) 859D-F.
77 Section 5(4) of the *DA*.
78 Setion 9(2) of the *DA*.
79 Bekker 2022 *TSAR* 458. In general, the costs order follows the results. This means that a cost order will be awarded to the successful party. But the court may depart from this rule where there are good grounds or special circumstances for doing so.
80 Section 10 of the *DA*.
81 Bacchiocchi 2000 *Endtime Issues* 6.
82 Stats SA 2025 https://www.statssa.gov.za/?p=18173.
83 *Marriage Act* 25 of 1961.

declare that there are no legal impediments that prevent them from marrying each other, that there are witnesses present to witness the marriage and a declaration by the marriage officer that the parties have been lawfully married.[84]

There are also scholarly arguments against mental illness and continuous unconsciousness as grounds for a divorce. The most common of these arguments questions the need for separate grounds for a divorce other than the irretrievable breakdown of a marriage relationship. During the early stages of the *DA*, Midgely suggested that mental illness should instead be considered in deciding whether a marriage has irretrievably broken down.[85] Zaal[86] argues that section 5 of the *DA* is averse to the stability of relationships and family health insofar as it allows a divorce solely based on mental illness or continuous unconsciousness.

It has been stated that mental illness and continuous unconsciousness as grounds for a divorce were included to distinguish them from the granting of a divorce on the ground of the irretrievable breakdown of a marriage.[87] However, this does not appear to be the case because since the decision in *Dickinson v Dickinson* the plaintiff is not compelled to divorce a mentally ill defendant using the mental illness as a ground for a divorce, for instance. Instead, the plaintiff has a choice whether to rely on the mental illness or the irretrievable breakdown of a marriage. This choice is contrary to the initial thoughts of some scholars, that a divorce against a mentally ill spouse or a continually unconscious spouse could not be instituted in terms of section 4 of the *DA*, that is, the irretrievable breakdown of a marriage.[88] Other scholars expressed the opinion that where the defendant is either mentally ill or continually unconscious, section 5 should take precedence over section 4.[89] Barnard[90] invokes an argument regarding statutory interpretation, namely that "special provisions exclude the operation of general provisions." In other words, in cases of mental illness or continuous unconsciousness section 5 excludes section 4. Alas, this is not the case.[91]

Perhaps the greatest criticism against these special grounds for a divorce lies in the limitations in their implementation. As has been stated above, if a plaintiff wishes to divorce a mentally ill spouse, he or she must show that the defendant is mentally ill and has been confined to an institution for at least two years. This requirement has been criticised for encouraging

84 Section 30 of the *Marriage Act* 25 of 1961.
85 Midgley 1982 *SALJ* 22.
86 Zaal 1983 *SALJ* 121-123.
87 Schafer 1984 *THRHR* 301.
88 Midgley 1982 *SALJ* 22.
89 Schafer 1984 *THRHR* 304.
90 Barnard 1983 *Acta Juridica* 41.
91 Barnard 1983 *Acta Juridica* 41-42.

people to obtain reception orders confining their mentally ill spouses at institutions in the Republic. The requirement of a compulsory reception order at an institution in the Republic is also problematic as it undermines voluntary treatment and treatment from outside the Republic.[92] Zaal[93] argues that this requirement does not appreciate modern medicine's reliance on voluntary treatment and in-community care for mental illness.

Section 5 does not cover all categories of mentally ill or continually unconscious defendants. A divorce against a mentally ill defendant who has been confined to an institution for less than two years would not qualify under section 5 of the *DA*. A divorce will also not succeed in terms of section 5 if the defendant has been mentally ill for two years or more, but not in an institution. Similarly, continuous unconsciousness of less than six months will not qualify in terms of section 5. The same will be the case with unconsciousness that has lasted a longer period, albeit with interruptions of less than six-month intervals.

Divorce proceedings under section 5 are too expensive. The plaintiff has to shoulder various costs, namely the costs of legal practitioners for approaching the court a few times and the costs of the various medical practitioners for their services. Over and above that, the plaintiff must shoulder the costs of the defendant's legal practitioners. These exorbitant costs may deter cash-strapped litigants from pursuing a divorce under section 5. Even those who may initiate the process under section 5 may run out of finances and then abandon the section 5 process. Indeed, this is what happened in *Dickinson v Dickinson*.

Another strong criticism against section 5(1) and (2) in an African context has been highlighted above. These provisions rely only on Western medicine and innovation. They ignore the fact that the source of the mental illness may be the observance of tradition and culture and thus the cure may lie in traditional medicine and methods. As pointed out above, it may be the case that a certain illness, be it mental or physical, is incurable in terms of Western medicine, whereas it may be cured by traditional methods. More could be said about the interaction between Western medicine and traditional medicine – a most recent example is the race for the treatment of Covid-19 symptoms during the peak of the epidemic. Traditional healers played a meaningful role in the fight against Covid-19.[94] However, a detailed discussed on these factors is beyond the scope of this article.

92 Midgley 1982 *SALJ* 22.
93 Zaal 1985 *CILSA* 238.
94 Bhuda and Marumo 2020 *Gender & Behaviour* 16710.

3 The ground for a divorce in customary marriages

3.1 General

In general, the starting point is to determine if a divorce existed under customary law. This is not as straightforward as it may seem, as this also entails an understanding of the nature of customary law in South Africa. Customary law is often divided into living customary law and formal customary law. Living customary law refers to those cultural customs and practices that are actually observed by indigenous people as a way of living on a daily basis.[95] These customs and practices are unwritten and they are passed down from generation to generation through observance, storytelling and narration.[96] Formal customary law refers to that part of customary law that has been written down in statutes, codes, case law, textbooks and academic journals.[97] The difficulty in the relationship between living customary law and formal customary law is that formal customary law may not necessarily represent the lived experiences accurately – thus leading to a disjuncture between the written law and the law that is actually observed.[98] A general discussion on the interaction between living customary law and formal customary law is beyond the scope of this paper.

Therefore, the correct question is whether a divorce exists under living customary law. The same question becomes redundant with respect to formal customary law as the *RCMA* answers this question in the affirmative. Because the *RCMA* provides for a divorce, whether living customary law recognise a divorce is of only academic importance. Himonga and Nhlapo[99] discuss the ongoing debate on whether a customary marriage may be permanently terminated during the lifetime of both the spouses. However, what is certain is that in terms of living customary law, the death of a husband does not necessarily terminate a marriage. The reason for this is that a customary marriage is also a union between a wife and the husband's family. Even if a husband passes away, the marriage remains.[100] Instead, a male family member or relative may be assigned to "look after" the widow through *ukungena* (to enter or levirate) custom.[101] Through this custom, the assigned male family member or relative simply enters the house of the deceased. If it is the wife that died first, the husband could marry a seed raiser in the person of the sister of the deceased wife. However, he has to deliver new *ilobolo* for this seed raiser.[102] The seed raiser will continue to

95 Himonga and Diallo 2017 *PELJ* 7-8.
96 Himonga and Diallo 2017 *PELJ* 8.
97 Sibisi 2019 *Obiter* 341.
98 Bekker and Maithufi 1992 *JJS* 48-52.
99 Himonga and Nhlapo *et al African Customary Law* 148.
100 Himonga and Nhlapo *et al African Customary Law* 148.
101 Rautenbach *Introduction to Legal Pluralism* 106.
102 Rautenbach *Introduction to Legal Pluralism* 106.

live in the house of the deceased wife. Hence, this custom is also referred to as *ukuvusa* (sororate).[103]

Himonga[104] points to the existence of the private dissolution of marriages facilitated by the families of the parties. The terms, conditions and consequences of the dissolution are determined by the families in accordance with customary law.[105] Himonga[106] stresses that a private divorce does not guarantee the protection of the interests of vulnerable women and children, such as their rights to matrimonial property, maintenance and affiliation. Himonga's views could not be more correct in some cases. The outcome of a private divorce hinges on which family is more powerful. Often the powerful family will dominate the weaker family. Each family would further its own interest in the negotiations.

Before the amendment to the *Black Administration Act*[107] (the *BAA*), formal law trumped living customary law, and thus a divorce under customary law was possible. Spouses could become divorced with relative ease.[108] All that the plaintiff needed was a reason rather than a ground for a divorce. Himonga and Nhlapo[109] point out that a ground "means a circumstance which, once proven, must give rise to the granting of the divorce". The parties were not held to official customary law grounds for a divorce; they only needed a justification or reason for the divorce. Obviously, the choice of justification depended on whether they sought the return of *ilobolo* or not, in which case fault had to be established.[110] The common justifications included adultery, witchcraft, infertility, desertion,[111] physical abuse and serious accusations of witchcraft.[112] Where desertion was given as a reason for the dissolution sought, the husband was required to first *phuthuma* (fetch) his wife; he could proceed with the dissolution only if the wife or family refused his attempt.[113]

However, the position was different in Natal, where section 76 of the *Natal Code of Zulu Law*[114] did provide for the grounds of a divorce. The grounds were adultery, continued refusal to render conjugal rights, wilful desertion, continued gross misconduct, undergoing a term of imprisonment of not less than five years, and where continuous living together was insupportable or

103 Rautenbach *Introduction to Legal Pluralism* 106.
104 Himonga "Dissolution of a Customary Marriage by Divorce" 237.
105 Himonga "Dissolution of a Customary Marriage by Divorce" 237.
106 Himonga "Dissolution of a Customary Marriage by Divorce" 237.
107 *Black Administration Act* 38 of 1927 (the *BAA*).
108 Bekker 1976 *CILSA* 346.
109 Himonga and Nhlapo *et al African Customary Law* 149.
110 Himonga and Nhlapo *et al African Customary Law* 150.
111 Himonga and Nhlapo *et al African Customary Law* 150-151.
112 Rautenbach *Introduction to Legal Pluralism* 102.
113 Himonga "Dissolution of a Customary Marriage by Divorce" 233.
114 *Natal Code of Zulu Law* Proclamation R195 of 1967.

dangerous.[115] The wife could raise further grounds, namely gross cruelty or ill-treatment or serious allegations or accusation of witchcraft.[116]

3.2 Divorce under the RCMA

The *RCMA* provides not only for the recognition of customary marriages but also for a divorce in customary marriages. The provisions of this *Act* regarding divorce supersede the divorce jurisprudence that applied to customary marriages prior to the *BAA* – discussed above. As pointed out above, section 8(1) of the *RCMA* provides for only one ground for a divorce in a customary marriage – the irretrievable breakdown of the marriage. Only a state court may order a divorce in customary marriages regardless of whether the marriage in question was registered or not.[117]

By introducing a ground for a divorce, the *RCMA* moves away from merely having to establish a "reason" or "justification" for a divorce in terms of the official customary law. Section 8(2) states that "a court may grant a decree of divorce on the ground of the irretrievable breakdown of a marriage if it is satisfied that the marriage relationship between the parties has reached such a stage of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them". Section 8(2) is clearly borrowed from section 4(1) of the *DA* verbatim.

Save for what is contained in section 8(2) of the *RCMA* (quoted above) and section 4(1) of the *DA*, neither the *RCMA* nor the *DA* defines the irretrievable breakdown of a marriage. In the context of the *DA* it was accepted that the legislature delegated that duty to the courts, and over the years the courts have shed some light on what constitutes an irretrievable breakdown of a marriage. The courts have also set the test to determine whether a marriage has broken down irretrievably. These have been set out in the discussions above.

With the above said, do the same standards set by the courts in the context of the *DA* (civil marriages) extend to the *RCMA* in the context of customary marriage divorces? The answer to this question lies in the reading of the *RCMA*. While section 8(4)(*a*) does usher in certain provisions of the *DA* in customary marriage divorces, namely sections 7, 8, 9 and 10, section 4(1) is not one of them. This may explain the separate existence of section 8(2) in the *RCMA*, yet this section provides something similar to section 4(1) of the *DA*. Perhaps the legislature intended to allow the development of jurisprudence regarding the irretrievable breakdown of a marriage in the context of customary marriage divorces. Otherwise the legislature could have simply extended section 4(1) of the *DA* to customary marriages in the

115 Bekker 1976 *CILSA* 347-348.
116 Bekker 1976 *CILSA* 348.
117 Button, Moore and Himonga 2016 *JSAS* 304.

same way as it did with sections 7, 8, 9 and 10 of the *DA*, as indicated above.

The need to develop separate jurisprudence regarding the irretrievable breakdown of a marriage relationship in customary marriage divorces is stronger than one would expect. In a civil marriage the marital relationship is between the spouses *inter se*. However, in a customary marriage the relationship is not only between the spouses, but it is also between their respective families.[118] It is the responsibility of the families to deal with any breakdowns in the relationships between the parties; in other words, the family operates as a safety net.[119] Nevertheless, there could easily be a case where the relationship between each spouse and the family of the other has broken down irretrievably. Should that be considered in determining if the customary marriage relationship between the spouses has irretrievably broken down? Equally true, the spouses may be at odds with each other but not with their respective families. May one, therefore, argue that the breakdown is not irretrievable? Should it be a requirement under customary law divorces that both the relationship between spouses and the relationship between a spouse and the family of the other be irretrievably broken down?

Himonga[120] is of the view that the irretrievable breakdown of a customary marriage should be understood within its own context and not through the common law. She points out that the use of the standards that apply to civil marriages when assessing whether a customary marriage has irretrievably broken down may not accurately reflect on the relationships that a customary marriage creates.[121] Further, the common law and customary law dispute resolution methods are different. Generally, the common law westernised system is adversarial, and dispute resolution is about winning or losing. This can have a devastating impact on vulnerable parties if they happen to be excluded. Himonga[122] points out that the adversarial legal system limits the possibility of the development of harmonious post-divorce relations between the parties. However, in the resolution of family disputes the common law recognises the need to mediate family matters with a view to striking a balance between the interests of both parties. Nonetheless, the western system is inherently flawed in that it may exclude some family members from the dispute resolution. This stems from the narrow definition

118 Himonga "Dissolution of a Customary Marriage by Divorce" 239; Kruuse and Mwambene 2023 *AHRLJ* 355.

119 See Manthwa and Kodisang 2024 *IJARS* 53 on the role of the family in the mediation of disputes.

120 Himonga "Dissolution of a Customary Marriage by Divorce" 239.

121 Himonga "Dissolution of a Customary Marriage by Divorce" 239.

122 Himonga "Dissolution of a Customary Marriage by Divorce" 239.

of a family in western systems.[123] On the other hand, dispute relations under customary law are about finding consensus among the parties.[124]

While most of the above questions are asked for argument's sake, some of them could best be answered with reference to decided case law on customary marriage divorces. Chief among these questions is whether the irretrievable breakdown of a marriage has a different meaning in customary marriage divorces. Unfortunately, there is no known decided case that has dealt with the meaning of irretrievable breakdown in customary marriage divorces. Perhaps the absence of case law dealing with the irretrievable breakdown of a marriage in the context of customary marriages may be explained by the fact that divorce cases usually come before courts in the form of court applications for a declarator that a valid customary marriage existed between the parties. The question of divorce becomes relevant only once the court has found that a valid customary marriage existed between the parties. In *Matshaya v Mapatha* the court partially illustrated the position as follows:[125]

> In a divorce action the marriage, customary marriage, or civil union must be proved to the satisfaction of the court even if the marriage or civil union is admitted on the pleadings. Failure to do so will result in the divorce action being denied, such proof is normally adduced by the production of an authenticated copy of the marriage certificate or the certificate of registration of the customary marriage or civil union. A copy of the handwritten document handed up did not purport to be such a certificate.

Even if the court does find that a valid customary marriage existed, this finding has not so far led to any development of customary law jurisprudence on divorce, because both parties are usually agreed that the marriage relationship between them has irretrievably broken down. Therefore, it suffices to say that an opportunity to develop a truly customary jurisprudence or to provide some clarity regarding some of the questions raised above is yet to present itself. Such an opportunity may arise if one of the parties were to argue that the breakdown in the marriage relationship is not irretrievable.

Besides the irretrievable breakdown of a marriage, the *RCMA* does not provide any further ground for a divorce. This, as pointed out above, is what gave rise to this article. Below, the *Draft Marriage Bill* is discussed with a view to determining if, once passed into law, the Bill will fill the gap identified.

123 Manthwa and Kodisang 2024 *IJARS* 53.
124 Mamashela 2021 *Fundamina* 3.
125 *Matshaya v Mapatha* (50451/21) [2023] ZAGPPHC 308 (9 May 2023) para 5.

4 The *Draft Marriage Bill*

In 2019 the South African Law Reform Commission (the SALRC) released issue paper 35, project 144, on a single marriage statute for South Africa.[126] This was followed by the release of discussion paper 152 in January 2021.[127] In this discussion paper the SALRC proposed a Bill for a single marriage statute for South Africa.[128] This led to the Department of Home Affairs issuing its own Bill, that was adopted by parliament and published for public comments. The latest draft version of the Bill was published on 13 December 2023.[129]

In essence the Bill recognises existing civil marriages, customary marriages and civil unions.[130] It sets out the requirements for both monogamous and polygamous marriages.[131] It also sets out the designation of marriage officers. A novel feature is the designation of traditional leaders as marriage officers.[132] This is commendable because traditional leaders play a significant role in the conclusion of customary marriages,[133] yet their role had scarcely received meaningful recognition and support. This will ensure that marriages are registered immediately after they are concluded and will also ensure that only legitimate marriages are registered. In the process this will prevent the registration of any bogus customary marriages. These usually surface once one of the parties has died.

For the purposes of this note, the Bill deals with the dissolution of marriages. Section 16 provides that a marriage may be dissolved by the death of one or both spouses,[134] or by a decree of divorce as contemplated in the *DA*.[135] This means that once the Bill is passed into law, the *RCMA* will be repealed[136] and all dissolution of marriages by divorce will be dealt with under the *DA.*[137] The absence of mental illness and continuous unconsciousness as grounds for the dissolution of customary marriages in the *RCMA* will be addressed. However, this does not mean that the new law will address all the problems in the *RCMA* identified in this article. All the existing problems with section 5 of the *DA* will be transplanted into customary law, but in the current political climate there is no telling when

126 SALRC *Single Marriage Statute: Issue Paper 35* (2019).
127 SALRC *Single Marriage Statute: Discussion Paper 152*.
128 SALRC *Single Marriage Statute: Discussion Paper 152* 23.
129 GN 4202 in GG 49887 of 13 December 2023 (*Draft Marriage Bill*) (the Bill).
130 Chapter 2 of the Bill.
131 Chapter 3 of the Bill.
132 Section 8(3)(*c*)(*d*) of the Bill.
133 SALC *Harmonisation of Common Law and Indigenous Law* 68.
134 Section 16(*a*) of the Bill.
135 Section 16(*b*) of the Bill.
136 Schedule 2 of the Bill.
137 Section 16(*b*) of the Bill.

the Bill may be passed into law. It will take a few years. In the meantime, the applicable law is as stated in the *RCMA*, together with its imperfections.

5 The dissolution of customary marriages involving a mentally ill or unconscious defendant

As noted above, the *Draft Marriage Bill* will address the absence of mental illness and continuous unconsciousness as grounds for the dissolution of customary marriages. However, until such time that the Bill is passed into law, the provisions of the *RCMA* are the order of the day. Owing to the absence of provisions in the *RCMA* dealing with divorce in cases of mental illness and continuous unconsciousness, the correct question is how a court should deal with a customary marriage divorce matter involving a mentally ill or unconscious defendant. The absence of provisions dealing with mental illness and continuous unconsciousness in the *RCMA* has serious implications. For instance, the defendant's right to be legally represented in the divorce proceedings is unclear. It is also unclear who would be responsible for the costs of defending the defendant. Equally true, the court would not be prohibited from ordering the forfeiture of patrimonial benefits, as is the case when its orders a divorce under section 5 of the *DA*.

A simple answer to the dilemma above is that the courts should deal with the matter as they find it. If the divorce is pleaded on the irretrievable breakdown of the marriage, that being the only ground for the dissolution of a customary marriage, the court should deal with it as it finds it. But there may well be cases where the marriage between the plaintiff and the mentally ill or unconscious defendant has not broken down irretrievably. There could be reasons other than an irretrievable breakdown for seeking a divorce. The facts could also be such that they would not establish the irretrievable breakdown of a marriage, in which case the plaintiff may need to rely on the mental illness or unconsciousness to prosecute a divorce. Unfortunately, a litigant in a customary marriage may not rely on these grounds.

It is clear from the above that there is a differentiation between mentally ill and unconscious defendants who are married under customary law and the same class of defendants who are married under civil law. The latter category can access the protection in section 5 of the *DA*. One may also add that there is also a differentiation between defendants who are married only under customary law and those who are in dual marriages. It is submitted that the latter category can access the protection mentioned above if their divorce is based on section 5 of the *DA*. In the absence of any justification for the differentiation, this may amount to unfair discrimination on several listed grounds including race, marital status, culture and

disability.[138] There is also a differentiation between plaintiffs under customary law and plaintiffs under civil law. The latter have access to all the grounds for divorce, and the former have access only to the irretrievable breakdown of a marriage.

Perhaps the legislature could have avoided the unfair discrimination by simply extending the application of section 5 of the *DA* to divorces under the *RCMA* in the same way as it did with respect to sections 7, 8, 9 and 10 of the *DA*. Unfortunately, as pointed out above, while the legislature did extend a few provisions of the *DA* to divorces under the *RCMA*, section 5 is not among these provisions. The extension of section 9 of the *DA* to the *RMCA* does not provide any protection for the mentally ill or unconscious defendant. While section 9(2) of the *DA* does prohibit the granting of a forfeiture order against a mentally ill or unconscious defendant, this provision applies only if the ground for a divorce is mental illness or unconsciousness in terms of section 5 of the *DA*. In the absence of the application of section 5, section 9(2) is meaningless in customary marriage divorces.

Back to the question posed above. How should a court hearing a customary marriage divorce matter involving a mentally ill or unconscious defendant decide the matter? It is debatable if the court may exercise its inherent jurisdiction and order legal representation for the defendant at the plaintiff's expense – something similar to section 5. The inherent jurisdiction of the court is not without limits. Van Heerden and Coetzee[139] point out that the inherent jurisdiction does not confer upon a court the power to hear status matters in the absence of enabling legislation. In terms of section 173 of the *Constitution*, the superior courts have inherent powers "to protect and regulate their own process, and to develop the common law, taking into account the interest of justice". In the light of the above, the court's powers when hearing a customary marriage divorce are significantly curtailed.

Therefore, in the light of existing law, when a court deals with a customary marriage divorce where the defendant is mentally ill or unconscious, it does not have any power regarding the legal representation of the defendant, medical practitioners and the costs thereof. In the absence of such powers, the court may not refuse to order the forfeiture of patrimonial benefits unless the mental illness or unconsciousness is the ground upon which the divorce and the forfeiture is sought. This is because it is almost impossible to argue that the defendant will be unduly benefitted in the absence of some blameworthiness or the short duration of the marriage. The defendant

138 Section 9(3) of the *Constitution of the Republic of South Africa*, 1996.
139 Van Heerden and Coetzee 2019 *PELJ* 36.

cannot be blamed for the mental illness or unconsciousness, unless it is self-inflicted to frustrate the plaintiff.

Clearly the above situation is in the nature of a disjuncture between customary law and civil law. It also shows an anomaly within customary law in that those who are in dual customary marriages are treated differently from those who are in customary marriages only. Since the superior courts' inherent jurisdiction also does not provide any solution to this problem, legislative intervention is the only solution. This legislative intervention should first provide clarity on the grounds for a customary marriage divorce where the defendant is either mentally ill or unconscious and the protection available to the defendant. Such intervention should also address the concerns raised above with respect to section 5(1) and (2) of the *DA*. The legislative intervention could take one of two forms: an amendment of the *RCMA* or expedition of the *Draft Marriage Bill*.

6 Conclusion

Mental illness and continuous unconsciousness do present challenges in customary marriages divorces as these are not grounds for a divorce in terms of the *RCMA*. This in turn has serious implications for the protection of mentally ill or unconscious defendants who are involved in customary marriage divorces while their civil law counterparts and those in dual customary marriages are protected to a certain extent. The said defendants are entitled to legal representation at the expense of the defendant and there is nothing to suggest that a forfeiture order may not be made against them.

Section 5(1) and (2) of the *DA* has some serious shortcomings insofar as it does not protect certain categories of defendants, e.g. those who are not in mental institutions pursuant to a reception order, among others. These provisions are also problematic insofar as they ignore African medicine and methods.

Pending the passing of the *Marriage Bill* into law, the legislature should amend the *RCMA* and provide clarity on what should happen in a divorce involving a mentally ill or unconscious defendant in customary marriage divorces. The legislature should also address the issues that are raised in the paragraph immediately above and in the main text. Until then, mentally ill defendants and unconscious defendants in customary marriage divorces remain more vulnerable to the adverse consequences of a divorce, which amounts to unfair discrimination.

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List of Abbreviations

AHRLJ	African Human Rights Law Journal
BAA	Black Administration Act 38 of 1927
CILSA	Comparative and International Journal of Southern Africa
DA	Divorce Act 70 of 1979
IJARS	International Journal of African Renaissance Studies
JJS	Journal for Juridical Sciences
JSAS	Journal of Southern African Studies
PELJ	Potchefstroom Electronic Law Journal
RCMA	Recognition of Customary Marriages Act 120 of 1998
SAJHR	South African Journal on Human Rights
SALC	South African Law Commission
SALJ	South African Law Journal
SALRC	South African Law Reform Commission
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir die Suid-Afrikaanse Reg