

MR MARY

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SUBMISSION ON THE CIVIL UNION BILL

By ChristianView Network

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Submission to: The Chairman
The Parliamentary Portfolio Committee on Home Affairs

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Summary

The proposed Civil Union Bill would have drastic negative impacts on South African society, by reducing respect for the Sanctity and Uniqueness of Marriage by creating a set of marriage-like alternatives. Such social impacts have already been demonstrated overseas. The Bill should be rejected in totality.

The Civil Union Bill is unlikely to be accepted by the Constitutional Court. It is highly unpopular with the South African public and it appears that Home Affairs itself is uncomfortable with the Bill. The Bill combines two issues, which should really be dealt with separately: Same-sex civil partnerships and domestic partnership legislation that can be for same or opposite sexes. There is no rush to deal the latter issue now and it should be separated from the same-sex debate.

The alternative of a Constitutional Amendment to define Marriage as being between a man and a woman should be supported. A number of parliamentarians have already expressed support for such an amendment. Parliamentarians should be allowed a free vote on both the Civil Union Bill and the Constitutional Amendment.

There have been serious procedural problems with the Bill. The Bill is a consequence of judicial activism and constitutional court should never have considered the issue in the first place. The public consultation has not fulfilled the requirements for public participation required by the Constitution. Therefore, Home Affairs is urged to ask the Constitutional Court for an extension of time to consider the issues more carefully.

Memorandum on the objects of the Bill refers to consultation with the South African Law Reform Commission Report. The Bill is discontinuous with this process and therefore this is misleading. Contrary to the view expressed in the memorandum, the Bill is relevant to the House of Traditional Leaders and needs to be considered by this group.

The name of the Bill is misleading, since the meaning of Civil Partnership is different to the normal meaning, and it also provides for Domestic Partnerships, which is an entirely different issue. This misleading name may cause some to support it, not being aware of its true contents.

The preamble is based on the faulty logic of the 1 December 2005 Constitutional Court ruling. The Bill misleadingly refers to itself as enhancing 'dignity', while its provisions are for morally degrading relationships, which fall short of the pure dignity of true marriage. The Bill allows the use of the word 'marriage' for civil union in the exchange of vows; refers to solemnising officials as 'marriage officers' and uses the word 'marriage' interchangeably with 'civil partnership'. This appears to be an attempt to be ambiguous on the issue, in the hope of appeasing pro-marriage supporters and the Constitutional Court. It is morally not acceptable to misuse the word 'marriage' in this way.

The Bill does provide for Conscientious objection, but in a manner that it inadequate. If the Bill is not scrapped in its entirety, then the conscientious objection section needs to be strengthened also to protect all people who may have objection to the implementation of the bill and not just marriage officers.

The provisions for 'unregistered domestic partnerships' appear to create rights for people who live in sin at times at the expense of the rights of customary spouses. This is problematic from both a substantive perspective and also in undermining the dignity of customary marriages.

The Act contains a provision against making false statements known to be false. It is argued that all 'same-sex civil unions' referred to in vows as marriages in terms of this Bill will be false statements known to be false.

We request permission to make an oral submission to the Home Affairs Portfolio Committee. We request permission to make an oral submission to the Parliamentary portfolio committee on Home Affairs.

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Glossary and abbreviations

Fourie case	Minister of Home Affairs v Fourie (Doctors for Life International and Others, Amici Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs 2006(1) SA 524 (CC).
SALRC	South African Law Reform Commission

Introduction

This submission responds to the proposed Civil Union Bill, a radical piece of legislation, which creates three new categories of state recognised sexual relationships: civil partnerships, similar to marriage, for same-sex couples; registered domestic partnerships for same or opposite sex couples and unregistered domestic partnerships.

We oppose the Civil Union Bill in its entirety.

This submission examines issues related to the proposed Civil Union Bill. It responds to the Memorandum on the objects of the Bill and comments on specific sections of the Bill.

Who are ChristianView Network?

ChristianView Network is a public advocacy group comprising members in different parts of South Africa and in a diversity of denominations, political parties and racial groups, promoting Biblical Christian values in society, including government, business, education and the media. Most of the work is done by volunteers including those who pray, lobby, write and publish materials on topical issues. It was founded in the year 2000 and has commented on a wide variety of issues, with a main focus on issues of the sanctity of life, sexual purity and religious freedom.

Of relevance to this Bill is that the organisation was formed at the initiative of an ex-homosexual who wanted to oppose the inclusion of 'sexual orientation' in the Equality Act. He felt that homosexual rights legislation encourages homosexual practice, which is an unhealthy lifestyle.

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ChristianView Network is part of the 'Defend Marriage' coalition of organisations, which is working towards the Constitutional Marriage Amendment. More information on Defend Marriage at www.defendmarriage.co.za Blog: <http://defendmarriage.blogspot.com/> Document Archive: <http://tinyurl.com/q3fk7>

We oppose any state recognition or benefits of any sexual relationship other than marriage.

Issues related to the proposed 'Civil Unions Bill'

The alternative of a Constitutional Amendment

We express concern that parliament is not currently giving sufficiently serious consideration to the alternative of a Constitutional Amendment. We wrote to parliament calling for a Constitutional Amendment on 13 December 2005. On 14 June 2006 we wrote again to all parliamentarians asking their opinion on a proposed amendment to section 39 of the Constitution: "*The Constitution shall be interpreted to mean that a marriage is a voluntary union of a man and a woman.*"

Parliamentarians from six different political parties supported the proposal (See Appendix A: Parliamentarians comments on the proposed Constitutional Amendment, page 20). Numerous organisations are also supporting this proposed constitutional amendment.

The Court decision redefining marriage, handed down on 1 December 2005, has been condemned by church leaders, traditional leaders and other sections of civil society, Elsewhere in Africa. Uganda has led the way in passing a constitutional amendment against 'same-sex marriage', while Nigeria has passed legislation to this effect. Should the South African parliament give in to the Constitutional Court, the South African legislature and executive will lose the respect of their own voters and elsewhere in Africa.

The Constitutional Court has sadly decided that 'same-sex marriage' is required by the Constitution - a ruling that gives no room for compromise. More than three quarters of South Africans believe sexual relations between two people of the same gender are always wrong, with disapproval highest amongst black South Africans (HSRC poll, 2004). Nobody, when the Constitution was passed in 1996, suggested that the equality clause (section 9) meant that marriage between a man and a woman only was discriminatory (not even the homosexual lobby). Most people understood the inclusion of 'sexual orientation' in the Bill of Rights to mean that homosexuals would not be denied basic rights like the right to vote (not given special privileges). The intent of the Constitution and the new dispensation was to give real rights and opportunities for social upliftment to those who had previously been denied them. Homosexuals were never an impoverished or politically disempowered group.

But now certain homosexual activists are trying to twist the Constitution to try to gain special privileges and social recognition for their sexually deviant behaviour. Only an insignificant minority believe relations between two people of the same sex can be called marriage. Sadly, this insignificant minority includes the unelected judges on the Constitutional Court.

The only option remaining is for the democratically elected legislature to take up its role as representative of the people and amend the Constitution. We therefore stongly urge the South African parliament to follow the Ugandan example in passing a Constitutional Amendment to uphold respect for marriage.

Some people are claiming it is too hard to change the Constitution. This is not true. The government has a two-thirds majority, which they can use to change the Constitution any time they want to. They have already done so twelve times since 1996 for comparatively minor issues such as: Floor crossing (National Parliament and Municipal Councillors); Provincial boundaries and municipalities crossing provincial boundaries; Integration of MK and Apla; Extending the cut off date for granting amnesty; Changing names and powers of some government commissions and the terms of municipal councils; Allowing change in procedure for setting the times for elections; Changing the titles of judicial office bearers; powers of municipalities to borrow money and regulations for the appointment of deputy ministers.

In fact, the Constitution has been changed on average more than once a year since it was promulgated (not counting numerous changes between the 1996 Constitution and the earlier Interim Constitution). In contrast, marriage has stayed between a man and a woman since creation. If the judges say there is a conflict between marriage and the Constitution, then, which should change? Marriage is sacred. The Constitution is not.

Changing the South African Constitution doesn't need a referendum or a petition or the passing of big majorities in each province as it does in some other countries. It just needs a two-thirds majority and that the government already has. If the government can change the Constitution for the above issues, why can't the government change it also to protect the definition of marriage as one man and one woman? One ruling party MP commenting on the 'Same-Sex Marriage' ruling said, 'If the source of the problem is the Constitution, then the Constitution must be fixed.'

On 6 September 2006, a private members bill proposing such a Constitutional Amendment was tabled by Steve Swart, MP.

Therefore we believe that the Parliament Portfolio Committee on Home Affairs needs to give serious consideration to this proposal.

Civil Unions Bill unlikely to pass Constitutional Court

While we very strongly disagree with the false assumptions and twisted logic used by Albie Sachs in his judgement in the Fourie case on 1 December 2005, it is very difficult to understand how anyone who accepts such twisted logic could also accept the proposed Civil Unions Bill.

Firstly, in paragraphs 150 to 152 of his judgement (Sachs, 2005), Sachs argues that a 'separate but equal' solution would undermine the dignity of homosexual couples and would therefore be unacceptable. The Civil Unions Bill is precisely such a 'separate but equal' proposal. The homosexual activist lobby are also using this argument (Vos, 2006).

Secondly, if one follows the false assumptions and twisted logic followed by the court in this judgement, then it can be argued that Civil Unions, as provided for in the Civil Unions Bill, are discriminatory because they exclude opposite sex couples, who may wish to enter into such a Civil Union instead of normal marriage.

Therefore, the Constitutional Court is unlikely to accept this Civil Unions Bill. Any modifications to it, made to try to appease the pro-marriage community, are likely to further offend the Constitutional Court. Even apart from moral objections, the proposed Bill therefore appears to be something of a waste of time for Parliament and for all those participating in the consultation process.

The most useful outcome that could therefore come out of the consultation process would be for the Bill to be scrapped in its entirety and for the alternative of a Constitutional Amendment to be passed by parliament.

Reasons why South Africans feel uncomfortable with this Bill

The provincial public hearings have demonstrated that the Civil Union Bill is extremely unpopular in South Africa.

Many South Africans feel deeply uncomfortable with recognition of same-sex relationships as marriage, because:

1. it is against God's law and order and increases the risk of his judgement,
2. it is bad for children, who need both a mother and a father in a stable home,
3. it is opposed to African culture and tradition,
4. it is opposed to the views of the overwhelming majority of South Africans,
5. it undermines respect for true marriage,
6. it undermines sexual morality, in a context of AIDS,
7. it is a foolish attempt to call something 'marriage' which isn't real marriage,
8. it would be a bad law that will undermine respect for good law and the state,
9. it will endanger religious freedom of those who refuse to recognise such 'marriages',
10. it will encourage activist judges to interfere more in the legislative domain,
11. it will lead to more extreme proposals to promote various sexual deviances.

Home Affairs itself appears uncomfortable with the Bill

On 18 May 06, the Department of Home Affairs replied to our letter dated 13 December 05 that also went to all parliamentarians. They state *'the Department has never advocated for same-sex marriages. The Department has in fact appealed to the Constitutional Court against the judgement handed down by the Supreme Court of Appeal... The Department is unfortunately not in a position to over-rule the decision by the Constitutional Court'*.

We argue that, while Home Affairs cannot over-rule the decision of the Constitutional Court, neither do they need to cooperate in giving effect to it. Rather the Department of Home Affairs should support a Constitutional Amendment to protect the traditional definition of marriage.

The need for a free vote in parliament

The proposed Civil Unions Bill involves deeply held moral convictions and conscience beliefs about marriage and sexuality. The Bill is probably the most controversial to enter parliament since the 1996 legalisation of abortion. Some churches would likely take disciplinary action against any politician who was a member of their church who supported the legislation. This is not an issue where political parties have any kind of mandate from the voting public to support. In fact even many of those supporting the Bill appear to be doing so very reluctantly to comply with the Constitutional Court ruling rather than any personal belief.

It would therefore be reasonable to ask that each party to be allowed a conscience vote on the issue. Some parties have already agreed to this.

Increasing the likelihood of messy legal conflict

The various proposals for recognition of various forms of relationship other than marriage are likely to entangle people in unstable relationships, in legal arrangements that may lead to much litigation. Either people are making a serious commitment to each other for life or they are not. If they are serious and an opposite sex couple, they should get married. If not, they should avoid entangling themselves in a legal contract, which may be redundant the following year when it may break up.

Furthermore, breaking up of immoral relationships will become much harder to do. Such relationships are often unhealthy and need to be broken up. On conversion to true Christianity, people living in immoral relationships are normally compelled to break up such relationships by both scripture and church discipline. (An exception would be where both parties convert and they live separately for a time and then get married.) If this Bill is passed, however the new convert may face financial claims from their former partner. Breaking up such relationships can be hard enough emotionally already.

Upgrading of opposite sex 'domestic partnership' relationships

Should the Civil Union Bill or any other law be passed that provides for Registered Domestic Partnerships of opposite sex couples, the Christian Church would encourage people in such unions to either get married or separate. This would especially be the case on conversion to Christianity from another faith or from unbelief. Therefore the question would be opened as to what the legal arrangements would be for 'upgrading' of opposite sex registered partners to the status of marriage. It would be helpful to have a provision, which enables the 'domestic partnership' to automatically fall away when the couple marries.

The need to split the Bill into two separate proposals

The Bill deals with two very different proposals: Firstly, civil partnerships, a copy of marriage, between same-sex couples and secondly domestic partnerships, a stripped down version of marriage. The first is a response to the 1st December 2005 Constitutional Court judgement, for which there is pressure to respond by 1st December 2006. The second is a proposal copied from the South African Law Reform Commission report on domestic partnerships.

There is good reason to split the Bill into two separate proposals.

Firstly, there is no urgency for the passing of legislation to respond to the domestic partnerships issue.

Secondly, it is itself highly controversial morally, since the mild level of security it offers is likely to encourage a greater number of people to live together in sin outside of marriage instead of getting married.

Thirdly, domestic partnerships may have possibly equal or greater social impact to the proposed Civil Union Bill. The reason is that, while the moral objection to same-sex relationships may be greater, a considerably greater number of people are likely to make use of the opportunity of registering domestic partnerships.

Fourthly, given the high media attention focused on the issue of same-sex partnerships, whether marriage or civil partnerships, the proposal for Domestic Partnerships legislation has gone largely unnoticed. Had it been introduced separately, it would itself have generated very high media attention.

Ideally, the domestic partnerships section should be scrapped altogether.

Social impacts

The Bill, if passed is likely over the long term to have very severe social impacts on family stability. This has already been demonstrated in Scandinavia and the low countries of Europe, which have the longest history of such legislation. In these countries, the legislation has had a measurable impact in decreasing the number of people getting married; increasing the number divorcing and increasing the number of people having children outside of marriage.

These are social impacts, which we do not want in South Africa. Apart from their impact on families, these social impacts would create additional costs for government. These would include additional women and children on welfare because their fathers and husbands were not at home in a stable family to support them.

Procedural objections

There are numerous procedural objections to the way in which the process has been handled on the Civil Union Bill.

The first and foremost issue is that the Constitutional Court has overstepped its powers in venturing to attempt to redefine marriage to include same-sex partners. The purpose of the Constitutional Court's practice of judicial review is to act as a check and a balance to parliament to stop the passing of rash new laws, inconsistent with the agreed values of the society. Nevertheless, in redefining marriage, the judges acted the role of activists, seeking to bypass the legislature, to force their will on the population. The overwhelming majority of South Africans do not consent to this proposed Bill. Now parliament is being expected to 'rubber stamp' the decision of the court and thus give it some form of legitimacy and consent of the elected representatives. Parliament should refuse to play such a role and instead pass a Constitutional Amendment, which will hopefully discourage further such judicial activism. Even if it were not for the issue of the separation of powers, it is still a physical impossibility to redefine marriage. Marriage is and always will be a relationship between people of the opposite sex. The court simply indicated its foolishness by attempting to redefine it. (See Appendix B: Is judicial activism endangering democracy?, p21).

Secondly, parliament was given only one year to rewrite the law by the Constitutional Court on the basis that much work had already been done by the South African Law