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**COMMISSION ON GENDER EQUALITY**

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SUBMISSION TO THE SOUTH AFRICAN PARLIAMNTARY  
NATIONAL COUNCIL OF PROVINCES

**SELECT COMMITTEE ON SOCIAL  
SERVICES**

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**CIVIL UNION BILL**

[B26B-2006]  
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## INTERNATIONAL AND CONSTITUTIONAL PERSPECTIVE

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The *Vienna Declaration and Programme of Action*, as adopted by the World Conference on Human Rights on 25 June 1993, emphasizes the responsibilities of all States to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. It also expressed deep concern by various forms of discrimination and violence, to which women continue to be exposed all over the world. The Vienna Declaration supports a rights-based approach to the protection and promotion of human rights.

The Vienna Declaration emphasizes that "all human rights are universal, indivisible and interdependent and interrelated."

In terms of the *African (Banjul) Charter on Human and Peoples' Rights* to which SA is also a signatory, the adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations is further reaffirmed.

The State is furthermore obliged by various international and regional instruments that it has ratified to take steps toward the promotion and protection of human rights. This places positive as well as negative obligations on state bodies, *inter alia* to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights.

Government has clearly shown commitment towards the principle of equality, which is evident in the preamble of the Constitution<sup>3</sup> "...adopt this Constitution as the supreme law ... to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights... and every citizen is equally protected by the law.."

**The Constitutional Court did however propose that Parliament consider the following when remedying the defect:**

1. To ensure that same sex couples are not subjected to marginalisation or exclusion by the law, either directly, or indirectly.
2. To be sensitive to the need to avoid a remedy that would provide for prima facie equal protection, in a manner that would be calculated to reproduce new forms of marginalisation.
3. The objective of the Civil Union Bill<sup>9</sup>, is aimed at remedying the defect identified by Concerns

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## CONCLUSION

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Separation of Powers is an essential key to ensure and uphold Constitutional democracy in our country. It is therefore essential for Parliament to legislate, rather than leaving it in the domain of the Court. It is quite evident from the Fourie<sup>10</sup> Judgement that the Courts were recommending that the Marriages Act<sup>11</sup> be amended, in the absence of an alternative remedy to amend the defects of the common law definition of Marriage. When providing for the legal recognition of same sex marriages/ unions, it should be done in a manner which would promote equality, dignity, and equal protection and enjoyment for all.

The Civil Union Bill in its current form fails to fulfil the Constitutional imperatives as outlined by the Constitutional Court in the Fourie<sup>12</sup> Judgement. The formulation of this Bill is based on the negative stereotyping of same sex relations. Excluding same sex relations from the provisions of the Marriages Act is offensive, as it perpetuates the negative stereotyping of same sex relations. This 'separate but equal' approach, fails to afford protection to individuals and groups, which are directly or indirectly subjected to marginalisation, or exclusion by the law, and therefore fails to guarantee and promote equality, dignity and equal protection and enjoyment for all. When remedying a defect or omission in the law, we must be sensitive, and avoid a remedy that would provide for prima facie equal protection, in a manner that would be calculated to reproduce new forms of marginalisation.

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<sup>10</sup> Minister of Home Affairs v Fourie 2006(1) SA 524

<sup>11</sup> Act No.25 of 1961

<sup>12</sup> Minister of Home Affairs v Fourie 2006(1) SA 524