



## URGENT

### TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS CIVIL UNION BILL ON SAME SEX MARRIAGES

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### MEMORANDUM REGARDING PLURAL MARRIAGE (MARRIAGE OF ONE MAN TO MORE THAN ONE WIFE AND COHABITATION REGARDING SAME) FOR INCLUSION IN THE BILL

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- 1 We have only recently become aware of the hearings of the above committee and would therefore like to humbly request that our submission be considered notwithstanding that the date for submissions is past.
- 2 We belong to a group of people who subscribe to the bible as an authoritative text and who, by virtue of the bible verses in Galatians chapter 3 verses 26 to 29, believe that we trace our customs and traditions and divine guidance back to the biblical root of Abraham.

(Galatians 3:26 to 29 states: "<sup>26</sup> For ye are all the children of the Almighty {God} by faith in the anointing of Yahooshua {Christ Jesus}. <sup>27</sup> For as many of you as have been baptized into the anointing {Christ} have put on the anointing {Christ}. <sup>28</sup> There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in the anointing of Yahooshua {Christ Jesus}. <sup>29</sup> And if ye be anointed {Christ's}, then are ye Abraham's seed, and heirs according to the promise." (KJV) Elsewhere we read that Abraham had 2 wives.

We can offer books containing hundreds of scripture verses which evidence that it is biblical for a man to enter into marriage with several women should this be questioned.

3 Based on this authority we hold that it is customary for people who believe as we believe to live in families comprising a number of wives (women) living with a man.

4 There are other groups who recognize marriage with more than one wife, specifically The Church of Jesus Christ of the Latter Day Saints (Mormons), the Muslim Religion and many indigenous African People and other people groups around the world where such marriage is held in high esteem.

5 We are two couples who respectively live together as man and wife without the benefit of legal marriage. In one case we have the intention of other wives joining us and in the other case there is a second wife who is resident at another address. Both couples expect to take further wives whether in cohabitation or living at separate addresses.

6 In this application we are seeking to have this cohabitation and other arrangements recognized as valid marriages in a manner that will apply to our existing and further wives and also to other family units as we are aware of others who desire the same arrangement.

We see *"The Recognition of Customary Marriages Act, 1998"*, Act number 120 of 1998, as being a suitable vehicle for our marriages apart from the fact that this Act is discriminatory and therefore denies us this privilege. The Act is also interpreted by the Department of Home Affairs and the State Law Advisor as applying only to *"blacks"* (their word not ours).

7 We therefore respectfully submit that the limitation of The Recognition of Customary Marriages Act, 1998, Act number 120 of 1998 to *"Indigenous African people"* violates our Constitutional Rights as set out below and unnecessarily restricts the application of the Act to a specific population group.

8 Insofar as current legislation does not provide for marriages of one *"non indigenous"* man to more than one woman (wife) to be legally recognized we hold that we are discriminated against in a manner that violates our Constitutional Rights as we are classified by the Department of Home Affairs as *"non indigenous"* even though we are second generation of South Africans..

8.1 Specifically we note that section 15(3) of the Constitution provides as follows:

*'15(3) (a) This section does not prevent legislation recognising-*  
*(i) marriages concluded under any tradition, or a system of religious, personal or family law; or*  
*(ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion'*

8.2 The Founding Provisions of the Constitution refer to:

*"Non-racialism and non-sexism"*

8.3 The Citizenship clause of the Founding Provisions of the Constitution refers to:

*"(2) All citizens are equally entitled to the rights, privileges and benefits of citizenship; and equally subject to the duties and responsibilities of citizenship."*

8.4 The Equality Clause in the Bill of Rights in Chapter 2 of the Constitution states:

*"9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*

*"(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*

*"(3) 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.*

*"(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination."*

8.5 It is clear that the Constitution enshrines our right to practice the form of marriage that accords with our religious tradition as set out above.



- 8.6 It is clear that the Constitution also makes it unlawful for The Recognition of Customary Marriages Act, 1998 to be restricted to one population group on racial or ethnic grounds.
- 8.7 It is also clear that the Constitution mandates that the discriminatory clauses in The Recognition of Customary Marriages Act, 1998 should be amended or withdrawn.

9 The Recognition of Customary Marriages Act, 1998, Act number 120 of 1998 provides for the form of marriage which we envisage and is fully suited to our requirements for a legally recognized marriage with the exception that it is restricted in clause 1(ii) to "*indigenous African peoples*" which definition has been defined by the Department of Home Affairs and the State Law Advisor as applying only to "*black*" people (word used by State Law Advisor in correspondence with the first applicant).

- 9.1 The long title of The Recognition of Customary Marriage Act provides as follows:

*"To make provision for the recognition of customary marriages; to specify the requirements for a valid customary marriage; to regulate the registration of customary marriages; to provide for the equal status and capacity of spouses in customary marriages; to regulate the proprietary consequences of customary marriages and the capacity of spouses of such marriages; to regulate the dissolution of customary marriages; ..."*

We desire these privileges for our unions.

- 9.2 Clause 1(ii) of The Recognition of Customary Marriages Act, 1998 reads:

*"(ii) "customary law" means the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of these peoples; (ii)"*

The restriction of this Act to "*indigenous African peoples*" is restrictive and discriminates against people classified as other than "*indigenous African*" people including the applicants.

- 9.3 Clause 1(iv) of The Recognition of Customary Marriages Act, 1998 reads:

*"lobolo" means the property in cash or in kind, whether known as lobolo, bogadi, bohali, xuma, lumalo, thaka, ikhazi, magadi, emabheka or any other name, which a prospective husband or the head of his*

*family undertakes to give to the head of the prospective wife's family in consideration of a customary marriage; (v)"*

This concept is entirely consistent with the biblical authority on which we base the customary form of marriage which we are seeking to have legalized in this application.

For example, we have cited Abraham as the historical figure reported in the bible in terms of which we claim our tradition and custom of more than one wife and, when Abraham took a wife for his son Isaac, he sent presents to the family of the prospective wife as set out in the book of the bible known as "Genesis" in chapter four and specifically in verses 50 to 53:

*<sup>50</sup> Then Laban and Bethuel answered and said, The thing proceedeth from Yah the eternally self existing {the LORD}: we cannot speak unto thee bad or good. <sup>51</sup> Behold, Rebekah is before thee, take her, and go, and let her be thy master's son's wife, as Yah the eternally self existing {the LORD} hath spoken. <sup>52</sup> And it came to pass, that, when Abraham's servant heard their words, he worshipped Yah the eternally self existing {the LORD}, bowing himself to the earth. <sup>53</sup> And the servant brought forth jewels of silver, and jewels of gold, and raiment, and gave them to Rebekah: he gave also to her brother and to her mother precious things. (KJV)*

- 10 This is an application **TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS CIVIL UNION BILL ON SAME SEX MARRIAGES** to:
  - 10.1 Recognize cohabitation of one man with more than one woman as marriage and or to accord legal rights in such unions in the same manner in which it is proposed to recognize other forms of cohabitation between a man and one woman, a man with another man and a woman with another woman.
  - 10.2 Modify clause 1(ii) extending the applicability of The Recognition of Customary Marriages Act number 120 of 1998 to include "any group of South African People" together with "**Indigenous African People**" or to some other way extend the Act to include all South African people.
  - 10.3 We specifically propose a small change to this act such that the phrase "**any group of South Africans, especially**" should be added to clause 1(ii) of The Recognition of Customary Marriages Act, 1998 after the phrase "... *traditionally observed among*" such that the amended clause reads:

*"(ii) "customary law" means the customs and usages traditionally observed among any group of South Africans, especially the indigenous African peoples of South Africa and which form part of the culture of these peoples; (ii)"*

10.4 It is further proposed that clause (ix) of The Customary Marriages Act be amended to add the phrase "*or tradition*" after the phrase "... *or any other law*" such that the amended clause reads:

*"(ix) "traditional leader" means any person who in terms of customary law or any other law or tradition holds a position in a traditional ruling hierarchy. (viii)"*

10.5 Alternatively we request that **THE PORTFOLIO COMMITTEE ON HOME AFFAIRS CIVIL UNION BILL ON SAME SEX MARRIAGES** issue a directive permitting the Applicants to enter into marriage with more than one wife in terms of The Recognition of Customary Marriages Act, 1998, Act number 120 of 1998

and / or

take such other measures as **THE PORTFOLIO COMMITTEE ON HOME AFFAIRS CIVIL UNION BILL ON SAME SEX MARRIAGES** deems fit in order to permit the applicants to enter into legally recognized marriages comprising one man and several women.

10.6 We stress that barring the reference to "*indigenous African people*" in clause 1(ii) (page 9.2) of The Recognition of Customary Marriages Act, 1998, number 120 of 1998 the needs of the applicants for legal marriage would be met by this Act.

11 The applicants desire to enter into this form of marriage and this application is therefore directly relevant to us and we have an adequate interest in the matter.

12 This is something that we desire to have implemented urgently in order that we can change our present situation from one of cohabitation and informal agreement to one of formal marriage.

13 We also desire to be able to enter into formal marriage involving more than one woman whether we are cohabiting or living at separate addresses.



We thank you for your patience in considering this application and pray that you will kindly incorporate such relief as is necessary to meet our needs in the legislation that you are preparing.

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