

uuuuu

17 November 2006

WRITTEN SUBMISSION

NATIONAL COUNCIL OF PROVINCES

HEARINGS ON THE
CIVIL UNION BILL 2006

SUBMISSION PRESENTED BY

DOCTORS FOR LIFE INTERNATIONAL
(First Amicus Curiae in Constitutional Court case 60/04)

Doctors for Life International
PO Box 6613
Zimbali
KZN, 4418

John Smyth, QC
PO Box 200
Umdloti
KZN, 4350

Tel: ~~032 481 5550~~
Fax: ~~032 481 5554~~

Tel/Fax: ~~031 568 2521~~
Cell: ~~083 653 8804~~



Doctors for Life International submit that the definition of a “civil union” in section 1 should be changed to omit the words “either a marriage” and that throughout the remainder of the Bill the appropriate changes should be made in accordance with this change in definition.

A copy of the Bill as passed by the National Assembly with the appropriate changes in red ink is attached herewith.

DFL, in common with the very high proportion of South Africans who made nearly 6000 written representations and nearly 700 oral submissions to the Home Affairs Portfolio Committee of the National Assembly, believe that a sexual union between persons of the same sex cannot ever be referred to as ‘marriage.’

There are mountains of socio-psychological evidence to prove that traditional heterosexual marriage has sufficient advantages over homosexual unions to warrant special protection by the law and deserves privileged status in society.

Such misuse of the word ‘marriage’ is contrary to the holy scriptures of Christians and Moslems and is an affront to those who regard their marriage vows as sacred and ordained of God.

DFL asks the NCOP to make these changes and not allow itself to be used as a 'rubber-stamp' of the National Assembly which would offend against the Constitutional Court judgement handed down on August 17 2006 in the case of DFL vs Speaker of National Assembly, Chairperson of NCOP and others.

17 November 2006

Amendments Proposed by
Doctors for Life International

in RED INK

BILL



To provide for the solemnisation of civil unions, by way of either a marriage or a civil partnership; the legal consequences of civil unions; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that everyone is equal before the law and has the right to equal protection and benefit of the law;

AND WHEREAS section 9(3) of the Constitution provides that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;

AND WHEREAS section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected;

AND WHEREAS section 15(1) of the Constitution provides that everyone has the right to freedom of conscience, religion, thought, belief and opinion;

AND WHEREAS the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;

AND NOTING that the family law dispensation as it existed after the commencement of the Constitution did not provide for same-sex couples to enjoy the status and the benefits coupled with the responsibilities that marriage accords to opposite-sex couples,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - “civil union” means the voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of ~~either a marriage or a civil partnership~~, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others; 5
 - “civil union partner” means ~~a spouse in a marriage or a partner in a civil partnership, as the case may be~~, concluded in terms of this Act; 10
 - “Customary Marriages Act” means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
 - “Identification Act” means the Identification Act, 1997 (Act No. 68 of 1997);
 - “Marriage Act” means the Marriage Act, 1961 (Act No. 25 of 1961);

Civil union

"~~marriage~~ officer" means—

- (a) a marriage officer ex officio or so designated by virtue of section 2 of the Marriage Act; or
- (b) any minister of religion, or any person holding a responsible position in any religious denomination or organisation, designated as ~~marriage~~ officers under section 5 of this Act:

5

CW
= Civil union (S)

"Minister" means the Cabinet member responsible for the administration of Home Affairs;

"prescribed" means prescribed by this Act or by regulation made under this Act; and

10

"this Act" includes the regulations.

Objectives of Act

2. The objectives of this Act are—

- (a) to regulate the solemnisation and registration of civil unions, by way of either a marriage or a civil partnership; and
- (b) to provide for the legal consequences of the solemnisation and registration of

15

5. (1) Any religious denomination or organisation may apply in writing to the Minister to be designated as a religious organisation that may solemnise ~~marriages~~ in terms of this Act.

(2) The Minister may designate such a religious denomination or organisation as a religious institution that may solemnise ~~marriages~~ under this Act, and must, from time to time, publish particulars of all religious institutions so designated in the *Gazette*.

30

(3) The Minister may, on request of any designated religious institution referred to in subsection (2), revoke the designation under that subsection and must publish such revocation in the *Gazette*.

35

(4) The Minister and any officer in the public service authorised thereto by him or her may designate, upon receiving a written request from any minister of religion or any person holding a responsible position in any designated religious institution to be, as long as he or she is such a minister or occupies such position, a ~~marriage~~ officer for the purpose of solemnising ~~marriages~~ in accordance with this Act, and according to the rites

40

Formula for solemnisation of ~~marriage~~^{CU} civil partnership

11. (1) A ~~marriage~~^{CU} officer must inquire from the parties appearing before him or her whether their civil union should be known as a marriage or a civil partnership and must thereupon proceed by solemnising the civil union in accordance with the provisions of this section. 5

(2) In solemnising any civil union, the ~~marriage~~^{CU} officer must put the following questions to each of the parties separately, and each of the parties must reply thereto in the affirmative:

"Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed ~~marriage~~^{CU}/civil partnership with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful ~~spouse~~^{CU}/civil partner?", and thereupon the parties must give each other the right hand and the ~~marriage~~^{CU} officer concerned must declare the ~~marriage~~^{CU} or civil partnership, ~~as the case may be~~, solemnised in the following words:

"I declare that A.B. and C.D. here present have been lawfully joined in a ~~marriage~~^{CU}/civil partnership."

(3) If the provisions of this section relating to the questions to be put to each of the parties separately or to the declaration whereby the ~~marriage~~^{CU} or civil partnership shall be declared to be solemnised, or to the requirement that the parties must give each other the right hand, have not been strictly complied with owing to— 20

- (a) an error, omission or oversight committed in good faith by the ~~marriage~~^{CU} officer;
- (b) an error, omission or oversight committed in good faith by the parties; or
- (c) the physical disability of one or both of the parties,

and such civil union has in every other respect been solemnised in accordance with the provisions of this Act, that civil union shall, provided there was no other lawful impediment thereto, be valid and binding. 25

Registration of civil union

12. (1) The prospective civil union partners must individually and in writing declare their willingness to enter into the civil union with one another by signing the prescribed document in the presence of two witnesses. 30

(2) The ~~marriage~~^{CU} officer and the two witnesses must sign the prescribed document to certify that the declaration made in terms of section 11(2) was made in their presence.

(3) The ~~marriage~~^{CU} officer must issue the partners to the civil union with a registration certificate stating that they have, under this Act, entered into a ~~marriage~~^{CU} or a civil partnership, depending on the decision made by the parties in terms of section 11(1). 35

(4) The certificate contemplated in subsection (3) is *prima facie* proof that a valid civil union exists between the partners referred to in the certificate.

(5) Each marriage officer must keep a record of all civil unions conducted by him or her. 40

(6) The ~~marriage~~^{CU} officer must transmit the civil union register and records concerned to the official in the public service with the delegated responsibility for the population register in the area in question.

(7) Upon receipt of the said register the official referred to in subsection (6) must cause the particulars of the civil union concerned to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act. 45

Legal consequences of civil union

13. (1) The legal consequences of a marriage contemplated in the Marriage Act apply, with such changes as may be required by the context, to a civil union.

(2) With the exception of the Marriage Act and the Customary Marriages Act, any reference to— 50

- (a) marriage in any other law, including the common law, includes, with such changes as may be required by the context, a civil union; and
- (b) husband, wife or spouse in any other law, including the common law, includes a civil union partner. 55

Offences and penalties

14. (1) Any ~~marriage~~^C officer who purports to solemnise a civil union which he or she is not authorised under this Act to solemnise or which to his or her knowledge is legally prohibited, and any person not being a ~~marriage~~ officer who purports to solemnise a civil union, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding 12 months. 5

(2) Any ~~marriage~~ officer who demands or receives any fee, gift or reward for or by reason of anything done by him or her as ~~marriage~~ officer in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months. 10

(3) Any ~~marriage~~ officer who knowingly solemnises a civil union in contravention of the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months.

(4) Any person who, for the purposes of this Act, makes any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury. 15

Regulations

15. (1) The Minister may make regulations relating to—

- (a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act; 20
- (b) the fees payable for any certificate issued or any other act performed in terms of this Act; and
- (c) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered. 25

(2) Such regulations may prescribe penalties for a contravention thereof, of—

- (a) a fine not exceeding the amount that, in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), may be imposed as an alternative to imprisonment for a period of six months; or 30
- (b) in lieu of payment of a fine referred to in paragraph (a), imprisonment for a period not exceeding six months.

(3) Any regulation made under the Marriage Act shall, in the absence of a regulation made under subsection (1), apply to the extent that it is practicable and necessary, in order to promote or facilitate the application of this Act: Provided that this subsection shall lapse after a period of one year from the date of the commencement of this Act. 35

Short title and commencement

16. This Act is called the Civil Union Act, 2006, and comes into operation on 30 November 2006 or an earlier date fixed by the President by proclamation in the *Gazette*.