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17 November 2006

WRITTEN SUBMISSION

NATIONAL COUNCIL OF PROVINCES

HEARINGS ON THE CIVIL UNION BILL 2006

SUBMISSION PRESENTED BY

DOCTORS FOR LIFE INTERNATIONAL

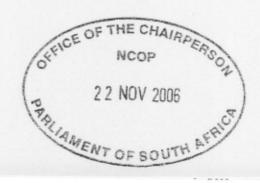
(First Amicus Curiae in Constitutional Court case 60/04)

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<u>Doctors for Life International</u> 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.

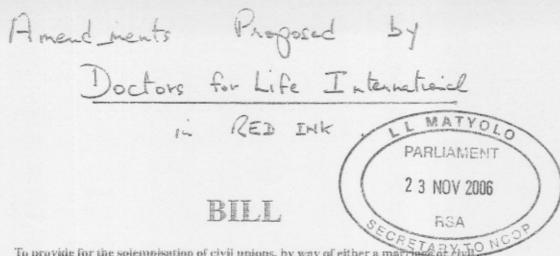
DFL, in common with the very high proportion of South Africans who made nearly 6000 written representations and nearly 700 oral submissions to the Home Affairs Portfolio Committee of the National Assembly, believe that a sexual union between persons of the same sex cannot ever be referred to as 'marriage.'

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 <u>DFL vs Speaker of National Assembly, Chairperson of NCOP and others.</u>

17 November 2006



To provide for the solemnisation of civil unions, by way of either a marriage of Yivil 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, preguancy, 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;
 - "civil union partner" means a spouse in a marriage or a partner in a civil partnership, as the oase may be, concluded in terms of this Act;
 - "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);

nurrouse of solemnising marriages, in accordance with this Act, and according to the rites 40

Formula for selemnisation of apprint as civil partnership

11. Wh marriage officer must inquire from the parties appearing before him order 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 (1) In solemnising any civil union, the marriage 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/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/civil partner?", and thereupon the parties must give each other the right hand and the manage officer concerned must declare the marriage 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 15 marringe/civil partnership.". (2) 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 marriags 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 (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 25 provisions of this Act, that civil union shall, provided there was no other lawful impediment thereto, be valid and binding. Registration of civil union (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 30 document in the presence of two witnesses. (2) The marriage 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 officer must issue the partners to the civil union with a registration certificate stating that they have, under this Act, entered into a marriage or a civil 35 partnership, depending on the decision made by the parties in terms of section 11(1). (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 40 (6) The massings 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 45 register in accordance with the provisions of section 8(e) of the Identification Act. Legal consequences of civil union 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 50 reference to-(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 55

a civil union partner.

Offences and penalties

14. (1) Any marriage 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.

(2) Any matriage 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 imprison many for a pariod not averaging six marriage.

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imprisonment for a period not exceeding six months.

(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 15 conviction to the penalties prescribed by law for perjury.

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;
 - (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 25 this Act may be effectively administered.
- (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
 - (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 35 shall lapse after a period of one year from the date of the commencement of this Act.

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.