

Support our Constitutional Rights

Picket for Same-Sex Marriage, 9 October 2006

Constitutional Court Gives Gays and Lesbians the Right to Marry

The Constitutional Court has ruled that the current legal definition of marriage is unconstitutional because it does not permit same-sex couples to enjoy the status, benefits and responsibilities of heterosexual couples. The Court ruled that unless Parliament enacts new marriage legislation that is compatible with the Constitution, the legal definition of marriage will automatically change on 1 December 2006 to include same-sex couples. This will happen through a change to the Marriage Act.

In this landmark judgment the Court stated:

"[Given] the centrality attributed to marriage and its consequences in our culture, to deny same-sex couples a choice in this respect is to negate their right to self-definition in a most profound way." (Sachs J, Constitutional Court, 1 December 2005)

Stand up for human rights! Join us for a mass demonstration when public hearings on the same-sex marriage issue are conducted at Woodstock Town Hall, Cape Town. Watch www.triangle.org.za

Q Isn't it the purpose of marriage to protect couples who can procreate?

A The Constitutional Court answered this objection to same-sex marriage by saying:
"[This view is] deeply demeaning to couples (whether married or not) who, for whatever reason, are incapable of procreating ... It is likewise demeaning to couples ... at an age when they no longer have the desire for sexual relations or the capacity to conceive. It is demeaning to adoptive parents to suggest that their family is any less a family and any less entitled to respect and concern than a family with procreated children. It is even demeaning of a couple who voluntarily decide not to have children or sexual relations with one another; this being a decision entirely within their protected sphere of freedom and privacy."

Q Will same-sex couples be recognised in other countries?

A If the law changes as recommended by the Constitutional Court, same-sex couples will be recognised in a growing number of countries around the world including Spain, Denmark, Belgium, Netherlands, Canada and Massachusetts in the US.

Q What about couples who do not want to get married but want to enter an agreement that will protect them?

A We support the concept of domestic partnership agreements that are open to all (heterosexual or same-sex couples). This should be enacted through a domestic partnership bill separate from the Marriage Act. The Civil Union Bill deals with domestic partnerships but there are many complex legal problems with this part of the bill and it should not be rushed through Parliament.

Timetable for the Civil Union Bill public hearings and vote

6 October: Deadline for submissions on Civil Union Bill.

9 October, 10am to 2pm: Public Hearings at Woodstock Town Hall, from 09h30 to 15h30.

10-11 October, 9am to 4pm: Submissions to Parliament – Parliament

16-17 October, 9am to 4pm: Stakeholder public hearings – Parliament

18-19 October, 9am to 4pm: Finalisation of the bill – Parliament

20 October, 9am to 4pm: Vote on the bill – Parliament

Triangle Project, Durban Gay and Lesbian Community Centre, TAC, Habonim, ALP, Lesbian and Gay Equality Project

Contact: Dawn, Vista or Glenn at Triangle Project: (021) 448 3812
For more info: info@triangle.org.za or www.triangle.org.za



Durban Gay and Lesbian Community Centre



Many people of different religions support same-sex marriage

"I support the right of gays and lesbians to marry because Islam teaches me that being a Muslim is also about showing compassion, tolerance and love, and fighting for the rights of marginalised people."

– Rukia Cornelius, Treatment Action Campaign

"For me Judaism is about compassion and dignity - for all people. I support the right of gay and lesbian people to marry."

– Gilad Isaacs, National Chairperson, Habonim Dror

"Rejecting gays and lesbians as the children of God must be nearly the ultimate blasphemy."

– Archbishop Emeritus Desmond Tutu

Department of Home Affairs New Bill Limits Gay and Lesbian Rights

Instead of allowing the law to automatically change, the Department of Home Affairs has tabled the Civil Union Bill to recognise same-sex unions as civil partnerships, not marriages. Human rights activists should oppose this law because it is unconstitutional for these reasons:

- * It creates a separate marriage law for same-sex couples to heterosexual ones. The history of apartheid shows that separate is not equal. The Constitutional Court judgment says:

"Same-sex unions continue in fact to be treated with the same degree of repudiation that the state until two decades ago reserved for interracial unions; the statutory format might be different, but the effect is the same."

- * Under the bill, civil marriage officers will be able to refuse to marry same-sex couples on the basis of conscience alone. In the Marriage Act, only a religious marriage officer may refuse to marry a couple if the marriage does not conform to the officer's religion.
- * It is doubtful that civil unions under this bill will be internationally recognised.

We support the legal definition of marriage being changed, in accordance with the Constitutional Court ruling.

Frequently asked questions about same-sex marriage

Q Is it true that both religious fundamentalist and human rights groups oppose the Civil Union Bill?

A Yes, but for different reasons. Religious fundamentalist groups are opposed to any type of same-sex marriage. Human rights groups support same-sex marriage but are concerned that the bill reduces the right to marriage of same-sex couples given by the Constitutional Court.

Q If the definition of marriage changes as envisaged by the Constitutional Court will this mean that churches opposed to same-sex marriage will be forced to marry same-sex couples?

A No. The Marriage Act says:

"Certain marriage officers may refuse to solemnize certain marriages.-Nothing in this Act contained

shall be construed so as to compel a marriage officer who is a minister of religion or a person holding a responsible position in a religious denomination or organization to solemnize a marriage which would not conform to the rites, formularies, tenets, doctrines or discipline of his religious denomination or organization."

We support this clause. We understand and respect that some religious institutions and people are opposed to same-sex marriage. The Constitutional Court judgment stated:

"The constitutional claims of same-sex couples can accordingly not be negated by invoking the rights of believers to have their religious freedom respected. The two sets of interests involved do not collide, they co-exist in a constitutional realm based on accommodation of diversity."

Q Will allowing gays and lesbians to marry undermine the institute of marriage?

A It will strengthen the institution. Constitutional Court Judge O'Regan stated:

"Permitting those who have been excluded from marrying to marry can only foster a society based on respect for human dignity and human difference. Nor will it undermine the special role of marriage as recognised by different religions.

Such marriages draw their strength and character from religious beliefs and practices. The fact that gay and lesbian couples are permitted to enter civil marriages should not undermine the strength or meaning of those beliefs."

Q We live in a democracy. If the majority of people oppose same-sex marriage why is it not illegal?

A We live in a constitutional democracy. This means the Constitution is the highest law in the land. It has been written to protect minorities from discrimination irrespective of the views of the majority. It is precisely because gays and lesbians are a minority that they need the protection of the Constitution. The Constitutional Court judgment made this point:

"[The] fact that the law today embodies conventional majoritarian views in no way mitigates its discriminatory impact. It is precisely those groups that cannot count on popular support and strong representation in the legislature that have a claim to vindicate their fundamental rights through application of the Bill of Rights.

...It is clear that the exclusion of same-sex couples from the status, entitlements and responsibilities accorded to heterosexual couples through marriage, constitutes a denial to them of their right to equal protection and benefit of the law."



"Government's responsibility, in a secular democracy, is not to interpret the Bible but the Constitution."

Mr. Eddie Makue, General Secretary of the South African Council of Churches