



SUBMISSION ON

THE DRAFT MARRIAGE BILL 2022

31 AUGUST 2023

ATTENTION: ADV MOSES.MALAKATE & MS AGNES MOLEFE Comments must be sent to Moses.Malakate@dha.gov.za , Agnes.Molefe@dha.gov.za

Submitted by: Ella Mangisa

Email: ella@ilithalabantu.org

Research and Preparation by: Natsai Chakapfava

Email: natsai@ilithalabantu.org

With input from: Simnikiwe Maboe

Email: simnikiwe@ilithalabantu.org

Ilitha Labantu hereby welcomes the opportunity to comment on the The Prevention and Combating of Hate Crimes and Hate Speech Amendment Bill. **The organization is also available for Oral Presentation**

Introduction

Ilitha Labantu, established in 1989, is a social justice community organisation based in Gugulethu township, Cape Town with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it. Its services include psycho-social services, legal and policy advocacy services, educational and outreach services as well as community nutrition and development services. This is accomplished through individual and family counselling, providing emergency accommodation for women and their children, skills training, empowerment and capacity building workshops. The scope of its work is centred around meeting the needs of communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, Ilitha Labantu provides easily accessible services to Gender-Based Violence and Femicide survivors, victim families and the broader community.

The institution of marriage and the wellbeing of the family are at the centre of the work that Ilitha Labantu does. We strive to see women in both townships and rural areas empowered and free to be themselves and live in an environment that is healthy and conducive for them to thrive. The scope of our work is centred around families and the well-being thereof. In 2021, we also submitted our comments on the green paper on marriages in South Africa as we work in communities where we see many women being abused especially within the domestic set-up.

Ilitha Labantu welcomes the efforts taken by the Department of Home Affairs to remedy the legislative defects that the current legislation on marriage has. The people of South Africa indeed have a vast number of rights entrenched in the Constitution that have not been fully accessible to them, which in turn creates a miscarriage of justice. South Africa is well known for its diversity, among others, cultural and religious differences. The Constitution guarantees equal enjoyment and protection of this rights to all its people. To fully enjoy these rights and embrace the diversity in South Africa, legislation needs to be amended to be in line with the values and principles of the Constitution.

Our Submission is as Follows:

SECTION	COMMENTS
CHAPTER 1 – Definitions, Objects and Application of Act	<p>While the recognition under three separate Acts, the Marriage Act, the Civil Union Act and the Recognition of Customary Marriages Act and that the bill is not retrospective, is welcomed, we note with great concern that the Bill may actually be a vehicle of destruction on the cornerstone of the institution of marriage for most religious and cultural groups in South Africa. The institution of marriage is now being redefined to attack the very diverse groups the Constitution protect. Same sex unions have been provided for in the Civil Union Act. Customary law and several Religions celebrate the institution of marriage as that between a man and a woman. This is no way implying that same sex unions should be discriminated against so as to not enjoy their legal rights enjoyed by custom and religious marriages and also protected accordingly.</p> <p>Customary law and religious observers and celebrants should have the right to have a separate Marriage Act as per the guarantee of the Constitution, and not be yoked with a law that brings all marriages irrespective of sexual orientation, religious or cultural beliefs under a single law. This seems to be a conspiracy in that the proponents for same sex created the civil union act which has run parallel to the Marriage Act and the Recognition of Customary Marriage. These proponents identified that it was difficult to directly amend the Marriage Act and in our view, a three staged approach was taken. Stage 1, promulgate the Civil Union Act, Stage 2, let the Civil Union Act run for a few years to attain status and momentum of the existing Marriage Act and Recognition of Customary Marriages Act and finally Stage 3, which is the current Bill, which then</p>

	<p>satisfies the intent by the proponents of the Civil Union Act to amend the Marriage Act. This at face value does seem to make the markings of a malicious plan to attack on rights of the Religious and Customary observers and take away their Constitutional Rights for freedom of religion and customs, this plan done strategically and clandestinely as can be deduced in the Single Marriage Law.</p> <p>The diversity of South Africa also reflects of a world is changing hence adaptability to accept the complexities of the issues and allow people have the right to choose and not lock them out because of societal norms. In turn, that sensitivity should also be extended to Religious and Cultural Groups if we are striving for justice for all.</p>
<p>CHAPTER 2 – Recognition of Marriage, Age Determination and Consent</p>	<p>We highly welcome that the draft bill also sets the minimum legal age for marriage at 18 years and that anybody who allows somebody under the age of 18 to be married, be it the marriage officer or parent or guardian, will be guilty of an offence. The current law allowing for minors to enter into customary and civil marriages with consent from their parent or guardian or from the minister of home affairs was a serious flaw and has contributed to the abuse and violence against many women and girls who have been used to alleviate poverty in their families under the guise of marriage. The statistics in South Africa on minor children being married off are shocking. In 2021, 207 minors (156 girls and 14 boys) were given consent to enter into marriages, the majority of which were customary. A further breakdown indicated that 37 minors(5 boys and 32girls) entered into civil marriages.</p>

<p>CHAPTER 3 – Requirements of Valid Monogamous and Polygamous Marriage</p>	<p>We welcome that the Bill seeks to ensure that all marriages are concluded in accordance with the principles of set out in the Constitution for the protection of all citizens. We note again the age of majority which will be the benchmark for entering and consenting to marriage. For those wishing to enter polygamous marriages, we welcome the powers given to the first wife and other wives to give consent to their husbands to add another wife as this will empower women to choose to be in a polygamous marriage or not.</p>
<p>CHAPTER 4 – Designation of Marriage Officers</p>	<p>We welcome the provisions set hereunder which are fair considering that there is need to ensure that fraudulent marriages will be a thing of the past.</p>
<p>CHAPTER 5 – Solemnisation and Registration of Marriage</p>	<p>As previously alluded to, heterosexual marriage is under attack with this single Marriage Bill. This Bill does not rationalize the different marriage laws of South Africa but has just been the conniving to accommodate same sex unions and those seeking to advance their own pararel structures (polyamorous) as an indirect amendment of the existing Marriage Act and the Recognition of the Customary Marriages Act, in other words, the Bill should be aptly named “the indirect amendment of the Marriage Act of 1961 and Recognition of the Customary Marriages Act of 1998.”</p> <p>We also note with great concern that there is no exemption clause for religious marriage officers in that they would be compelled to solemnize same sex against their religious beliefs and face harmful consequences if refusing to do so. It is a well known fact that same sex activists have in the past sued Religious people especially, Christian individuals, Churches, Wedding Chapels and Christian Businesses, forcing them to comply with their ideology with an even bigger floodgate being opened against Christian Businesses and Churches.</p>

CHAPTER 6 PROPRIETARY CONSEQUENCES DISSOLUTION MARRIAGE	– AND OF	Since marriage is a contract, those who get into it need to agree on the terms that govern their property regimes. We note these provisions will allow people to exercise their constitutional rights in a constitutional democracy such as South Africa.
--	----------	---

Conclusion

We thank the Department of Home Affairs for the opportunity to submit our input.