

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUPPLEMENTARY SUBMISSION TO THE
CONSTITUTIONAL COMMITTEE**

THE EQUALITY CLAUSE

The ACDP wishes to supplement its submission on the "equality clause" especially as far as the so called "sexual orientation" provision is concerned.

Freedom of Association implies the right not to associate and, as such, private individuals and organisations should have the right to not associate with certain other individuals and organisations. Should the current clause remain, it would mean that a church and a religious school respectively, may be taken to court if it refuses to violate its religious and/or moral principles by employing respectively pastors or church staff and teachers who engage in sexual behaviour that would be contrary to the belief systems of such churches or schools. Surely it cannot be said that any "rights" are violated when such an individual is not employed. Rights will however be very severely violated and negated if the individual could force his or her behaviour based "rights" onto an organisation who find such behaviour irreconcilable with their religious norms and principles. This is akin to allowing an alcoholic to enforce his right to be employed by a religious organisation that has teetotaling as a basic tenet and principle. It is submitted that good enough reasons have simply not been advanced to promote behaviour-based rights to the same level as true status-based rights such as race or birth.

The further truth of the matter is that the homosexual community is using the atmosphere of liberation - especially black liberation - to promote their cause. In the process they are effectively negating the essential content of just about every established notion of status that requires protection. The homosexual community has got every constitutional protection afforded to heterosexuals, left-handed persons, the physically disabled and the mentally disabled. None of these groups have "special" clauses in the constitution to protect them and so should homosexuals be treated equal with all of these groups and minorities.

Of further concern in the "sexual orientation" debate is the aspect of the negation of freedom of speech. Under the "sexual orientation" provision, homosexuals will be able to effectively silence churches and like organisations who denounce their behaviour on religious-ethical grounds. Again this would mean a negation of the essential content of the right to freedom of speech as well as the right to freedom of religion.

It simply is unconscionable to enable any individual and/or group, to abuse the constitution and the provisions of a Bill of Human Rights that are meant for protection through special privileges to actually violate the established foundations of morality and ethics of other individuals or organisations - in this instance religious organisations or individuals.

Taking away special privileges or special enhanced protections, such as with the "sexual orientation" clause - in this instance not including the "sexual orientation" provision constitutionally - still leaves the homosexuals completely protected with all the other provisions of the equality clause. Effectively taking away, however, the rights of religious freedom and freedom of speech or association through the inroads that the "sexual orientation" clause will no doubt have, creates a position of inequality akin to what the black population had (i.e. race) under the apartheid dispensation. A chapter in our history worthy of not being repeated.

Similarly, Freedom of Conscience, belief or opinion will be reduced to meaninglessness every time a homosexual couple demand that their "right" of "sexual orientation" entitles them to be joined together by religious ministers in "marriage". Suddenly, this right will be reduced to nothingness despite provisions being made for principles of law seemingly aimed at protecting religion or belief. A right to freedom of religion is worthless if that right is exclusive of the corollary enabling those adhering to a particular religious belief system of spreading such beliefs and sharing it with others of different faiths who are interested. The right is worthless without giving the right to engage in the practicalities of such a right or conversely to refrain from engaging in activities that are precluded by the particular belief system.

The minister who may be forced to engage in an act of "marrying" a homosexual couple, is effectively being forced to renege on his or her faith - this can not be what the global community had in mind when it formed the convention known as a Bill of Rights as a contract aimed at protecting those worthy of protection and not at falling away the protection afforded to all - that is inequality and not equality neither can it be the goal of the Houses when they sit as a Constitution - writing machinery.

For this exact same reason, the ACDP is against the inclusion of the "gender" provision in the equality clause. We feel that discrimination on the basis of maleness or femaleness is efficiently prohibited by the term "sex" which is also included.

During the Beijing Conference it was noted on the gender issue that women (and, it follows logically) men should not be bound by or restricted to their biological beginnings, meaning the physical parts that makes men different from women.

For the ACDP this term should therefore either be clearly defined to mean the existence of woman and man as the two sexes of human beings or dropped.

This was not done at the Beijing Conference where documentation was handed out that suggested that male and female are the two sexes in their opposite extremes and that in-between were the mixtures of bisexual, transsexual and homosexual.

If this is the definition given to the term gender, the ACDP will oppose its inclusion as strenuously as the "sexual orientation" provision and for exactly the same reasons.

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