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16 October 2006

**TO :** Ms. Baleka Mbete-Kgositsile – Speaker of Parliament  
Mr. Patrick Chauke – Chairperson of the Portfolio Committee on Home Affairs,  
National Assembly  
Mrs. Nosiviwe Mapisa-Nqakula – Minister of Home Affairs

**PER FAX**

Dear Madams and Sir

### **COMPLAINT ABOUT PUBLIC HEARINGS ON THE CIVIL UNIONS BILL**

This is to register our formal complaint to your offices regarding the public hearings on the Civil Unions Bill held during the months of September and October 2006 which were hosted by the Portfolio Committee of Parliament on Home Affairs. We, as the Lesbian and Gay Equality Project, also request your written response and corrective action in response to this complaint.

These public hearings have lead one commentator to warn that “we would do well to be suspicious of the farce of consultation on the same-sex marriage Bill that suggests that a vulnerable ‘minority’ is safe to victimize, and that government consultation processes are appropriate stages for hate speech” (Pumla Dineo Gqola, “Welcome to the slippery slope”, *Mail & Guardian*, September 29 to October 5 2006). Our concern should not be misunderstood. We understand the need for and indeed support informed public participation in any legislative drafting process. Public participation must, however, be understood in the context of a constitutional framework that is underpinned by the founding values of “[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms”. According to the Constitution, the exercise of public power is – at minimum – subject to the principles of rationality and legality.

Applied to the public hearings in respect of the Bill, these principles demand a consultation process aimed at finding an appropriate legislative mechanism for implementing the orders in the *Fourie* and *Equality Project* cases. In our view, however, the hearings have largely failed to address the fundamental issue at stake – how to give full and meaningful effect to the Constitutional Court decision – but have instead provided a space for the propagation of hate speech.

We are concerned that the Portfolio Committee on Home Affairs not only facilitated but indeed permitted presenter after presenter to infringe the prohibition of hate speech, as contemplated by section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (“the Equality Act”). Section 10(1) provides as follows:

“Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to—

- (a) be hurtful;
- (b) be harmful or to incite harm; or
- (c) promote or propagate hatred.”

The prohibited grounds, as set out in section 1(1)(xxii), include sexual orientation.

Instead of promoting human rights, the Committee has ensured that the rights of lesbian and gay people have been violated. We believe that this conduct is at variance with the mandate and obligation of parliament pertaining to public participation and the promotion of respect for the constitution and Constitutional Court decisions. We fear that this conduct may negatively affect the outcome of the legislative process on the Civil Unions Bill in a manner which may undermine the decision of the Constitutional Court on same-sex marriages.

The Lesbian and Gay Equality Project is a non-profit organisation that is committed to the defence and advancement of the rights of lesbian, gay, bisexual, transgender and intersex people. We therefore respectfully submit this complaint and request corrective action. We trust that you find the above in order.

**Yours sincerely**

**Jonathan Berger**  
**Board Chairperson**  
**Lesbian and Gay Equality Project**