



The Lesbian and Gay **EQUALITY Project**



**Recognise
Same-Sex
Marriages**

What are the issues?

The current common law definition of marriage excludes lesbian and gay people. Marriage is defined as the voluntary union between a man and a woman to the exclusion of all others. This legal definition expressly prohibits lesbian and gay people from getting married according to South African law. This prohibition is invalid and unconstitutional and therefore not reasonable and justifiable in an open and democratic society based on freedom, dignity and equality.

Section 9 of the Constitution which deals with the Equality Clause, talks about the right not to be discriminated against on many grounds, amongst others, sexual orientation. The fact that sexual orientation is a listed ground in the Equality Clause means the law recognises that lesbian and gay people are worthy of respect and protection from discrimination, both at the hands of the state and private individuals.

Discrimination against lesbian and gay people violates the principles of equality of rights and respect for human dignity, and is an obstacle to their participation on equal terms with other people in all aspects of life.

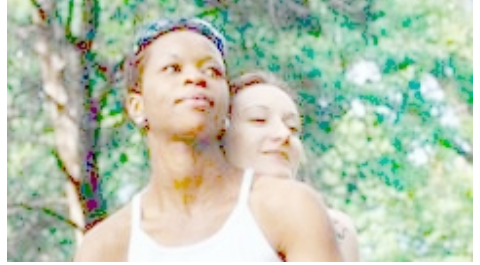
Lesbian and gay people have the right to equal protection and benefit of the law. The state has a duty to protect them against any form of discrimination, whether it comes directly or indirectly.

Marriage is regarded by many people to be an “outdated institution” which perpetuates and entrenches inequalities in relationships. This institution of marriage is solely and exclusively reserved for heterosexual couples. Lesbian and gay people want the right to choose whether to get married or not. This freedom to choose lies at the heart of the values entrenched in the Constitution, the right to equality, dignity and privacy.

The benefits of marriage:

AUTONOMY

Full recognition of lesbian and gay marriages will affirm our right to freedom of association and choice, and will ensure that the law respects our constitutional rights to dignity, liberty, privacy and association.



EQUALITY

Many lesbian and gay people want to get married for various reasons including love, companionship, hope, intimacy and security. This right is the equal right of all South Africans. Recognition of lesbian and gay marriages will promote the right to equality and non-discrimination.



SECURITY

Marriage often means material security and legal rights - automatic rights to social benefits at work and inheritances. The security that marriage offers is often a crucial element for the well-being and support of families.



POVERTY

Marriage allows families and communities to recognise the relationships of their members. This is especially important for poor people, as the state can not afford to provide many crucial services to everyone. Because of this, many poor families depend on extended family and community support for their survival.

DEFINITIONS:

Discrimination: discrimination happens when an individual or a group of people is treated unequally. This unequal treatment may take place because of a characteristic that people believe is common to people who are identified by a group such as race, gender, culture or **sexual orientation** (own emphasis added).

Sexual Orientation: this term indicates the sex of persons towards whom a person is erotically and emotionally attracted. Some people believe sexual orientation is synonymous with homosexuality, but the term is more comprehensive and encompasses heterosexuality, homosexuality and bisexuality.

Homosexuality: refers to the erotic and emotional attraction between people of the same sex

Gay: a gay man is a man whose sexual and gender identity is such that he is attracted to other men.

Lesbian: a lesbian is a woman whose sexual and gender identity is such that she is attracted to other women.

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