

COMMENTS TO THE DEPARTMENT OF HOME AFFAIRS ON THE MARRIAGE AMENDMENT BILL, 2009

Introduction

This submission is made by the Recognition of Muslim Marriages Forum ('Forum') and is endorsed by several individuals and organisations listed at the end of this submission. The Forum was established in June 2008. It is facilitated by the Commission for Gender Equality ('CGE') and consists of numerous secular and Muslim organisations, academic scholars and individuals who are fighting for the recognition of Muslim marriages in a way that will protect Muslim women.

Clause 4 of the Marriage Amendment Bill

The Forum wishes to make a submission on clause 4 of the Marriage Amendment Bill, which seeks to amend section 3 of the Marriage Act 25 of 1961.

Section 3 currently entitles Muslim and Christian individuals who perform Muslim and Christian marriages respectively, to register as designated marriage officers for the purpose of solemnising civil marriages.

Clause 4 purports to amend section 3 by enabling any religious denomination or organization to apply to be designated as a religious organization that will be able to solemnize marriages under the Marriage Amendment Bill.

The proposed amendment will therefore effectively broaden the ambit of marriage officers to include marriage solemnizers of other religious faiths. We are of the opinion that the amendment pays respect to the diversity of our country. We therefore welcome the proposed amendment to section 3.

At the same time, the Forum is of the view that the amendment will not afford recognition to- and regulation of Muslim marriages. Although Muslims have been entitled to register as designated marriage officers, they have failed to do so due to historical and religious reasons. Historically, Muslims have been reluctant to register as marriage officers because it was an initiative of the apartheid state. Muslims may also be disinclined to register as marriage officers because that would not enable them to perform lawful polygynous Muslim marriages. As a result, the Muslim marriages that they perform are not legal. Thus, the proposed amendment to the Marriage Act will not have an impact on the Muslim communities and will not assist in the recognition and regulation of Muslim marriages.

Recognition and regulation of Muslim marriages is important for two reasons:

- a) African customary marriages and same-sex marriages have been afforded legal recognition. It is therefore arguably unconstitutional to not also recognise Muslim marriages; and
- b) Non recognition of Muslim marriages is severely prejudicing Muslim men, women and children. In particular, Muslim women are disproportionately affected because:
 - I. They are unable to access civil benefits;
 - II. They are unable to legally enforce benefits under Muslim family law; and
 - III. There is no law to protect them against discriminatory interpretations of Muslim family law that violate the South African Constitution.

Although the judiciary has been recognising aspects of a Muslim marriage on a casuistic basis, the doctrine of stare decisis does not always allow the decisions to apply throughout the country unless the Constitutional Court or Supreme Court of Appeal have pronounced on the issue. Notwithstanding the judicial pronouncements that have already been made in favour of Muslim women, each time a Muslim woman wishes to assert a claim that is available to her under Muslim family law or is being denied to her as a result of the non recognition of her marriage, she must approach the courts for judicial relief. This process is time consuming and costly. Therefore, indigent Muslim women are denied access to justice in most instances.

Muslims have been struggling for the recognition of their marriages for several decades. Yet, 15 years after the achievement of democracy, Muslims are still waiting for their marriages to be recognised. The Forum is of the view that Muslim marriages must be recognised as a matter of urgency and that its regulation should be affected through the enactment of a gender sensitive Muslim Marriages Bill ('MMB'). The MMB is currently with the Minister of Justice and Constitutional Development.

Conclusion

The Forum thanks the Department of Home Affairs for the opportunity to tender this submission. We wish the Department well in its future endeavours.

**Submitted by the Recognition of Muslim Marriages Forum
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Members of the Forum include:

Commission for Gender Equality
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This submission is endorsed by:

The following organisations:

- National Association of Democratic Lawyers (Nadel)
- Engender

And the following individual stakeholders of the Muslim community:

- Janey Halim
- Faieza Omar
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