

Submission to the Department of Home Affairs Regarding the Marriage Amendment Bill, 2009

Prepared by Shura Yabafazi ('Consultation of Women')

Introduction

Shura Yabafazi is a community based collective of women who engage on issues relevant to women and Muslim family laws.

We wish to comment specifically on clauses 4 and 27 of the Marriage Amendment Bill.

Clause 4

Clause 4 is being offered as a substitution for section 3 of the Marriage Act 25 of 1961. It purports to enable any religious denomination or organization to apply to be designated as a religious organization to solemnize marriages under the Marriage Amendment Bill.

Currently, section 3 of the Marriage Act enables only Christian and Muslim individuals who perform marriages to be designated as Marriage Officers for the purpose of solemnizing marriages under the Marriage Act. Therefore, the effect of the proposed amendment will be to broaden the ambit of religious groups who are permitted to register Marriage Officers for the purpose of solemnizing lawful marriages under the Marriage Act.

The amendment is likely prompted by the need to recognize religious diversity among South Africans and as a move toward religious inclusivity. Shura Yabafazi commends the Minister of Home Affairs ('Minister') for aspiring to achieve this fundamental aim of our collective 'rainbow nation'.

Simultaneously, we recommend that the Minister be fully cognisant of the intended and unintended consequences of the proposed amendment to Section 3. We ask that in making the amendment, the Minister must make apparent to the public what the intended outcomes of such recognition are. We also ask the Minister to reflect seriously on what the unintended consequences of the amendment may be.

Some questions that may prompt this reflection are:

- Does the proposed amendment imply State recognition of religious marriages?
- Does the proposed amendment imply the application of State law and the full ambit of South African law to religious marriages?

- Does the proposed amendment imply State recognition of the religious laws under which religious marriages are solemnized?

Shura Yabafazi asks these questions and hopes that the Minister will respond to them, in order to draw attention to what the unintended outcomes of the proposed amendment may be. We ask these questions in the interests of women who may find their Constitutional guarantees to gender equality and their aspirations for an egalitarian expression of their faith eroded by the application of laws that do not prioritise gender equality.

Although the Marriage Act enables Muslims who perform marriage ceremonies to be designated as Marriage Officers, a large number of Muslims who do officiate at Muslim marriages have not applied for State recognition as Marriage Officers. Part of the reluctance to register as Marriage Officers relates to the historical resistance of the Muslim community to the Apartheid State. While this situation no longer applies, a further aspect of the resistance relates to religiously motivated reservations regarding the proposed link between State authority and the legitimacy of Muslim marriages.

As a result, though the State has recognised Muslim Marriage Officers, it has never recognised Muslim marriages. Consequently, Muslim leaders continue to implement a system of Muslim family law that is unregulated by the State and that has led to severe hardships for Muslim women. Muslim women who enter into marriages today find that they enter a minefield of violations of their rights as citizens and as Muslims.

As citizens, the failure of the South African State to recognize their marriages leaves Muslim women without State protection. Therefore, Muslim women have little hope of turning to State structures for the realization of their marital rights or gender equality. Practically, it means that any attempt to access marital rights must either go through a court challenge or through a Muslim judicial body. The former option precludes many indigent Muslim women from accessing judicial relief. The latter option is self appointed and has no accountability either to the State or to the community within which it functions.

As Muslims, the majority of women find that in the absence of a State forum through which to protect their rights, they have no other option except to turn to one of the many Muslim judicial bodies that function within their communities. Through the processes that the Muslim judicial bodies use and the laws that they apply, Muslim family law is administered in a way that is highly prejudicial to the realization of equality and justice for Muslim women. When the Muslim judicial bodies process women's requests for religious divorce, they engage in unnecessarily prolonged divorce processes that frequently keep women waiting for years to be divorced. And when the Muslim judicial bodies do grant a religious divorce, they limit the right of divorce to men and to themselves as judicial bodies. Furthermore, they fail to distribute marital assets to divorced wives and they sanctify secret second and subsequent marriages.

Shura Yabafazi is concerned that women of other faiths should not fall into the same trap that Muslim women have fallen into. We are concerned that women of other faiths should not be placed at the mercy of religious officers who apply marriage

laws that are not consistent with women's right to equality and women's aspirations for egalitarian expressions of their faith.

We therefore urge the Minister in the strongest terms to:

- clarify the implications of the recognition of religious denominations and religious organizations for women;
- provide guarantees that the proposed amendment will not legitimize the application of religious marriage laws that are prejudicial to women's right to equality and that prejudice the realization of egalitarian expressions of faith; and
- ensure that the proposed amendment is thoroughly consulted upon within religious communities and particularly with women in those communities.

Clause 27

Clause 27 is being offered as a substitution for section 34 of the Marriage Act 25 of 1961.

We submit that the words "or the exercise of church" in section 34(a) allows the superiority that was historically attached to Christianity to be maintained. In the spirit of respecting religious diversity, we request that those words be removed.

Conclusion

We would like to thank the Department of Home Affairs for the opportunity to make a submission regarding its proposed amendments to the Marriage Act 25 of 1961. We wish the Department success in its endeavours to recognise the diversity of South Africa's religious community.

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