

Press Release

After a 10-year law reform process, this week the recognition of Muslim marriages will be heard by the Cape High Court.

The Women's Legal Centre's case that will give Muslim marriages legal status is to be heard on Tuesday 13th September 2016 at the Cape High Court. This comes from the ongoing violation of the human rights of women in Muslim marriages which has been the subject of a ten-year law reform process.

Today, Tuesday 13 September 2016, the Western Cape High Court will hear arguments from the state, the Women's Legal Centre (WLC) and interested parties on whether the failure to recognise Muslim marriages discriminates against women.

The ongoing violation of the human rights of women in Muslim marriages has been the subject of a ten-year law reform process, which has apparently ground to a halt. The WLC are taking the South African Government to court for failing to pass legislation that will give recognition to Muslim marriages.

Hoodah Abrahams-Fayker, an attorney at the Women's Legal Centre (WLC) explains, "When civil or customary marriages break down, the law steps in to ensure fairness between the spouses and to protect the rights of the children. This is not the case in respect of Muslim marriages or other religious marriages".

The WLC has brought this case in the public interest because the lack of recognition of such marriages affects women and children in particular. "Once customary marriages were given full legal recognition, the historical basis for not recognising polygynous marriages fell away. The courts have already found the lack of inclusion of Muslim marriages to be discriminatory in respect of inheritance and spousal dependant's claims, but legislation is needed to recognise them for all purposes."

The President, Minister of Justice and Correctional Services, Minister of Home Affairs, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces have filed papers opposing the relief sought by the WLC.

A number of parties have been admitted as friends of the court such as the United Ulama Council of South Africa, The Law Society of South Africa, South African Lawyers for Change, Muslim Assembly, the Islamic Unity Convention and the Commission on Gender Equality.

Two parties have also intervened as Respondents, namely Lajnatun Il Muslima and the United Ulama Council of South Africa.

The court will be called upon to come to the aid of the many Muslim women who leave their marriages impoverished, without a home and with no legal recourse. "We are also often approached by women who cannot get a divorce because it is dependent upon the husband to agree when the wife seeks a divorce. Even where the religious bodies intervene, they have no power to compel a husband to adhere or to enforce an agreement reached."

“Of concern to the WLC is the many Muslim divorces that take place without the oversight of the court and the advice of the Family Advocate regarding what is in the best interests of the children”. In the case of civil and customary divorces there is judicial oversight, but this is not the case with Muslim divorces.

The WLC is relying on a range of constitutional rights which it argues have been violated, including the right to equality, and urging the court to order the state respondents to pass legislation that cures the unconstitutional position, alternatively include Muslim marriages in the existing legislation that regulates civil and customary marriages.

“The women who bear the brunt of non-recognition should not have to wait any longer” said Fayker, “their human rights must be protected by the court.”

Ends

About the Women’s Legal Centre

The WLC is a non-profit, independently funded law centre, started by a group of lawyers in Cape Town in 1999, with a vision to achieve equality for women in South Africa. The centre has identified five strategic focus areas. These are: violence against women; fair access to resources in relationships; access to land/housing; access to fair labour practices; and access to health care (particularly reproductive health care).

The WLC has been at the forefront of legal reform in relation to women’s equality in South Africa since the Constitution came into effect, having won several precedent setting cases in the past.

In order to empower women through knowledge of their rights, the Centre also offers free legal advice to women. Women are assisted or referred to the relevant body, NGO or court for assistance.

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