

Recognition of Muslim Marriages Long Overdue – says WLC

Centre takes Government to court to develop law that will give Muslim marriages legal status

During his [January 8th Statement](#) earlier this year President Jacob Zuma said “we can boldly state that laws which discriminate on the basis of race, gender and other prohibited grounds have been removed”. While this is true in many cases, unfortunately this is not true for many Muslim women as Muslim marriages in South Africa do not have legal status – unlike unions entered into under civil or African customary law.

“Without law recognising Muslim marriages, women are not afforded legal protection and have no legal redress to assert their rights”, says Hoodah Abrahams-Fayker, an attorney at the Women’s Legal Centre (WLC).

The WLC are taking the South African Government to court for failing to pass legislation that will give recognition to Muslim marriages despite a process having been on the cards since 1996 when the law reform process began. “Law reform initiatives have stalled and women have been left to bear the brunt of the State’s failure to recognise Muslim marriages,” says Abrahams-Fayker.

In addition, although a draft Bill was completed in 2003 by the South African Law Reform Commission and was published for public comment in 2011, there has since been no clear indication of when the legislation will be passed. “In the absence of legal recognition of their marriages Muslim women are often left with no access to property, money, or resources in the event of divorce,” explains Abrahams-Fayker.

The WLC has overseen a number of cases in which Muslim women have been left destitute upon divorce and with no legal recourse. Some of these are documented in an application that explains why a Muslim Marriage Act is desperately needed. Amongst these is the case of Mrs N who was married to her husband under Islamic law for twenty years. During their marriage, her husband did not allow her to

work outside of the home and abused her economically; he also abused her physically and emotionally and engaged in extramarital affairs. Drained by the suffering she was enduring, she eventually requested a divorce through the Muslim Judicial Council. But this could not be granted as her husband refused consent. After three years of failing to obtain a divorce, Mrs. N's husband finally granted her a divorce; but even so, the issues of child custody, division of the assets, and maintenance were not addressed.

"Without the legal recognition and regulation of Muslim marriages, it is impossible to defend against situations that are similar, or even identical, to this one. Legislation is imperative in order to either give wives equal authority to terminate the marriage so as to create bargaining power on their behalf; or require husbands to register each divorce with the court so that, at a minimum, wives have notice of their husbands' intent to divorce," says Abrahams-Fayker.

She further adds that "we were very disappointed when the registration of Imams as marriage officers was portrayed as recognising Muslim marriages. We would like women to be aware that this is not the case."

While the case was due to be heard in the Western Cape High Court this month it has been postponed until December this year to give the President of the Republic of South Africa, the Minister of Justice and Constitutional Development, the Minister of Home Affairs, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces a chance to prepare their response.

It has attracted significant interest from civil society and community organisations such as, the Centre for Child Law, the Commission for Gender Equality, Jamiatul Ulama Kwazulu-Natal, Lajnatun Nisaa-IL Muslimaat, Majlisul Ulama South Africa, United Ulama Council of South Africa, the Islamic Unity Convention, Muslim Lawyers Association, Muslim Youth Movement and Muslim Assembly.

"The failure to provide substantially equal remedies to spouses in Muslim marriages as those available to spouses married in civil and customary law violates Section 9 of the Constitution which states that everyone is equal before the law," says Abrahams-Fayker. She concludes that Government's failure to enact an equitable marital property regime, and to enact adequate access to divorce, is tantamount to disregard for Muslim women – denying them the same recognition and protection as women married under civil law and African customary law, or men married under Islamic law.

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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.