



THE WORLD FOR ALL FOUNDATION

Ubunye House, 1st Floor, 70 Rosmead Avenue, Kenilworth, 7708
Cape Town, South Africa



+27828253527



worldforallfoundation@gmail.com



<https://worldforall.org/>



10 December 2020

**The President of South Africa
Mr. Cyril Ramaphosa
Union Buildings
PRETORIA**

Your Excellency,

We are writing to you in connection with serious and urgent matter regarding the non-recognition and non-regulation of religious and customary marriages in general, and Muslim marriages in particular.

As you are aware during the Apartheid years Customary Marriages including Muslim marriages were invalidated by the Apartheid regime. To correct this injustice government enacted the Recognition of Customary Marriages Act (RCMA). However, 26 years later in a democratic South Africa the legacy of non-recognition and non-regulation of the South African Muslim community's marriages endures.

In this Sixteen Days of Activism Against Gender Based Violence (GBV) we make this submission to you and appeal to you to intervene on behalf of the women who suffer abuse as a result of the legal vacuum that exist because of the non-recognition of religious and customary marriages in general and Muslim marriages in particular.

Your sincerely

Ms Rosieda Shabodien
Programme Manager
World for All Foundation

cc: **Dr Aaron Motsoaledi : Minister of Home Affairs**
Mr Ronald Lamola : Minister of Justice and Correctional Services
Ms Maite Nkoana-Mashabane : Minister of Women, Youth & Persons with Disabilities
Ms Lindiwe Zulu : Minister of Social Development

Contact: Rosieda Shabodien – worldforallfoundation@gmail.com
Mobile: 0828253527



THE WORLD FOR ALL FOUNDATION

SUBMISSION TO GOVERNMENT AND PARLIAMENT

The Recognition and Regulation of Religious and Customary Marriages and their Attendant Processes to Ensure Conformity with the Values Principles and Intents of the Bill of Rights and Constitution – with Special Emphasis on Muslim Marriages.

President Cyril Ramaphosa in his letter (November 2020)¹ addressing the Sixteen Days of Activism Against Gender Based Violence (GBV), whilst acknowledging the extremes of GBV as physical violence and femicide, makes the fundamental connection between such GBV and its ultimate precursors:

“It is up to us all, as individuals and communities, to bring about the change we surely need. It is about driving fundamental change in societal attitudes that allow sexism, chauvinism and patriarchy to thrive.”

With this, the President not only identifies the ultimate precursors to GBV – sexism, chauvinism and patriarchy – but also commits, and invites, to all efforts to drive ‘fundamental change in societal attitudes.’ It is to this that the World for All Foundation (WFA) responds in highlighting the precursors embedded in the non-recognition and non-regulation of religious and customary marriages in general, and Muslim marriages in particular.

1. Why is the State Opposing the Desai Ruling?

This submission would have been superfluous had the State not chosen to ignore, let alone appeal the Supreme Court of Appeal (SCA) judgement², and the judgment by the Western Cape High Court (Judge Desai, et al) directing the State to enact the

¹ <https://www.gov.za/speeches/dialogue-mark-16-days-activism-26-nov-2020-0000>

necessary legislation and regulations required to eliminate or minimise the abuse and violation of rights inherent in the legal vacuum in which Muslim marriages by and large occur. We prefer to think that the State is not oblivious to the manifestation of abuse in this legal vacuum in which the South African **values of equality, dignity, non-discrimination, gender rights and protection from abuse** – emotional, legal, physical and psychological – are routinely and inherently violated. And we also want to believe that the State is not oblivious to the hardship of a legal vacuum since the State have previously found it necessary to pass legislation on Customary Marriages.

WE URGE THE STATE TO RESTATE ITS COMMITMENT TO THESE FUNDAMENTAL VALUES AS THEY PERTAIN TO WOMEN IN CUSTOMARY AND RELIGIOUS MARRIAGES.

2. Will the State Provide Comprehensive Legislation and Regulations?

We prefer to think that the State may have some **over-arching legislative framework that may constitute a big bang solution to all customary and religious marriages** as well as the management of the processes which flow there from like equality before the law from the point of marriage through the dissolution, from inheritance to matters of custody, from the rights and protection of women before, during and after the marriage, and from the equitable management of property and other assets in the course of the marriage.

WE WOULD URGE THAT THE STATE CLARIFY ITS INTENTION AS TO WHETHER SUCH LEGISLATION AND REGULATIONS ARE IMMINENT.

3. Can the State Align Marriage Provisions with the Values of The Bill of Rights?

We further note that the President in his letter advises that ‘legislative and policy measures are not sufficient’, and while agreeing with him, we would, in turn, advise respectfully that they remain necessary. It is inconceivable that almost every space

touched by apartheid's injustice is being purged – from the political, social and increasingly economic spaces – but this cardinal space from which we expect a new nation to emerge with new values, **this intimate space remains unregulated and therefore, largely unpatrolled and uninfused by the values**, principles and intents of the Bill of Rights and Constitution.

WE URGE THE STATE THAT THIS ANOMALY – 26 YEARS LATER – MUST BE CORRECTED AND THAT SUCH INTENTION BE PUBLICLY STATED TO BRING POLICY, LEGISLATION AND REGULATION INTO BEING IN LINE WITH OUR FOUNDING VALUES.

4. Diversity of Ritual, Unity of Values?

In the spirit of our preamble that we 'are united in our diversity', we agree that it remains laudable that we advance and manifest our cultural, customary and religious diversity. In the case of customary and religious marriages, we agree on the idea of **'Diversity of Ritual, Unity of Values and Principles'**.

This would mean:

- Choose the diversity of civil, custom or religions by which to fulfil the ritual of marriage, but unite around the values of equality, dignity, non-discrimination, consent and gender rights as required by the Bill of Rights and the Constitution;
- Choose from a diversity of marriage officers and sites, but unite around the imperative to have such marriage officers and marriages legally registered with Home Affairs;
- Choose from a diversity of counselling services to mediate a marriage or its dissolution, but unite around the duty of civil authorities to ensure legal equality, police protection for the vulnerable, economic justice and equity for spouses and children, and dignity for women; and
- Choose to utilise the provision of polygamy but unite around both the guarantee of fundamental conditions – Islamic and State – of transparency of intent, equity of economics, equality of treatment, consent by all and dignity for all.

WE URGE THE STATE TO UNDERTAKE THAT THESE SAFEGUARDS OF OUR BILL OF RIGHTS AND CONSTITUTION BE BUILT INTO ANY POLICY, LEGISLATION AND REGULATION AND ARE MADE BOTH MANDATORY AND ENFORCEABLE.

5. Can We Balance the Needs of Foreign Nationals with the Integrity of Marriages?

We are also aware that South Africa remains a destination of choice for a variety of foreign nationals who escape economic, environmental and security hardships and conflicts and seek a better life. Some enter into genuine relationships with South Africans whilst others seek a convenient path to citizenship. **Work permits and other permissions, often exploit the unpatrolled and unregulated spaces in the field of personal law** - which may include practices of polygamous and other marriages – are often shortcuts to benefits.

WE URGE THE STATE TO CLOSE THE REGULATORY VACUUM THROUGH A SENSITIVE BALANCE BETWEEN FACILITATING THE GENUINE RELATIONSHIP AND CLOSING THE LOOPHOLES THAT RESULT IN ABUSE AND NEGLECT.

6. Can We Balance the Community and Civil Jurisdictions?

Each customary or religious community has a judicial, clerical, customary or law-making council, authority or body which can stipulate the policies or edicts of their community. They can, therefore, facilitate the fair-weather aspects of their rituals (such as entering a marriage or prescribing the rules of inheritance). However, they have **no enforcement mechanism for the downside when abuse, dissolution or violation of rules occur.**

WE URGE THAT THE STATE MUST RETAIN THE CIVIL INITIATIVE IN SUCH CASES WHERE MALE RELIGIOUS PREROGATIVES SUPERCEDE WOMEN'S RIGHTS SO THAT WOMEN, THROUGH CIVIL LAWS AND CIVIL AUTHORITY HAS THE PROTECTION AGAINST ABUSE, THE RECOURSE TO DISSOLUTION OF AN

ABUSIVE RELATIONSHIP AND EQUITABLE ACCESS TO THE MATERIAL RESOURCES OF A RELATIONSHIP.

7. Is A Comprehensive Legal Framework Not Better than Judicial Precedence?

The Muslim community has been witness to legal and judicial precedence writing bit by bit and case by case the legal dispensation for Muslim women affecting, among others, issues related to marriage and its dissolution, the practice of polygamy and its abuse, and matters relating to inheritance. (The Women's Legal Centre, Hassam, Esau, Daniels and others). However, this **fragmented time-consuming, imperfect and ultimately incoherent process of judicial precedence is not in line with the values** of the Bill of Rights and Constitution which does not offer a 'progressive realisation' of safety, dignity, equality and freedom from abuse.

WE URGE THE STATE TO EMBRACE THE INTENT OF THE CAPE HIGH COURT DIRECTIVE (DESAI et al) AND THE LEGAL INTERVENTION BY THE WOMEN'S LEGAL CENTRE (SCA) BY WITHDRAWING ITS APPEAL AND YIELD TO THE IDEA OF A FULL, URGENT AND COMPREHENSIVE POLICY, LAW AND SET OF REGULATIONS TO ELIMINATE THIS ABUSE.

8. Is This Not in The Mandate of Home Affairs?

We submit further that the Department of Home Affairs has the mandate to ensure all of the matters outlined above to ensure that **the best values of our Bill of Rights impact positively on our citizens, and fairly on non-citizens.**

WE URGE THE STATE TO DIRECT THE DEPARTMENT OF HOME AFFAIRS TO EXPEDITE THE MEASURES THAT WOULD FULFIL THIS MANDATE AS IT PERTAINS TO THE ISSUE OF CUSTOMARY AND RELIGIOUS MARRIAGES.

9. Can the President's Promise Be Kept?

This is critically urgent. The situation is dire. While the overwhelming majority of adherents to customary, religious, cultural or Muslim traditions and rituals are law-abiding, respectful citizens and not victims of abuse, we often make laws and regulations to protect a minority who are abused.

The President in his letter acknowledges both the urgency and the need to protect this minority of victims who suffer at the hands of a minority of perpetrators by ensuring that witting or unwitting enablers are not paralysed or get drawn into abuse because they unconsciously share a paradigm of patriarchy.

The President says in in his letter:

“By the time the campaign concludes on International Human Rights Day, let us be all the closer to achieving a society in which the rights of women and girls are upheld and protected.”

WE URGE THE GOVERNMENT AND PARLIAMENT TO ACT IN THIS SPIRIT OF URGENCY, TO ENSURE THERE IS INDEED DIVERSITY OF RITUAL, BUT UNITY OF VALUES, PRINCIPLES AND INTENTS IN ENSURING THAT NO LEGAL VACUUM EXISTS AND WHERE THE VALUES OF THE BILL OF RIGHTS AND CONSTITUTION ARE DEEMED NOT APPLICABLE.