

NO. 5

**26 Rabiuth Thaani 1432 – 1 April 2011
MMB – THE KUFR SO-CALLED 'MUSLIM'
MARRIAGES BILL: KEEPING YOU INFORMED**

THE MINISTER'S COMMENTS AND THE ULAMA'S RESPONSE

In response to a Brother's letter objecting to MMB, the Ministry of Justice & Constitutional Development presented some comments. Responding to the comments, the Mujlisul Ulama of S.A., wrote:

23 February 2011
Mr. T. N. Matibe
Ministry of Justice & Constitutional Development
Private Bag X81
Pretoria 001
Dear Mr. Matibe,
MUSLIM MARRIAGES BILL

Mr. Fuaad Moosa has furnished us with a copy of his letter to you and your response. We deem it appropriate to comment on your response.

Your statement: "The aim of this Bill is to give legal certainty by legislating for the recognition of Muslim marriages, much in the same way as customary marriages have been recognized in terms of the Recognition of Customary Marriages Act, 1998."

OUR COMMENTS AND SUGGESTIONS

(1) Even if this is the aim of the Bill, pursuing the aim in the name of our religion, but in conflict with the tenets of the religion is unacceptable and unconstitutional.

(2) If the aim is recognition of Muslim marriages, why can't this aim be achieved without antagonizing the Muslim community, without transmogrifying the Shariah and without displaying a preference for the interpretation of a particular group in the Muslim community?

(3) If the aim is recognition of Muslim marriages, why can this not be achieved by a simple amendment of the current Marriages Act? What is the insurmountable obstacle to prevent the inclusion of a simple amendment to the effect: "All Muslim marriages are recognized as valid." What objection is there for such a simple amendment which will save the State and the Muslim community from the current imbroglio?

(4) What prevents Muslims who desire legal recognition from taking the route which the other South Africans adopt for gaining legal recognition? Is there any law which debar Muslims from the acquisition of legal recognition in terms of the Marriages Act? As far as the Shariah is concerned there is nothing to debar Muslims from registering their

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marriages for legal recognition. MMB if legislated will be a law. The current Marriages Act is a law. When the current Marriages Act serves the very same purpose which MMB purports to offer, then why enact MMB? Why not inform Muslims who wish for recognition to gain such recognition in terms of the current dispensation?

(5) The analogy with the Customary Marriages Act is erroneous for the following reasons:

- The Customary Marriages Act has not or is not imposed on the African population against their will. On the contrary, the Muslim community is vehemently opposing MMB.
- The Customary Marriages Act does not purport to be a religious document whereas MMB is being thrust on to the Muslim community in the name of the Shariah or Islam.
- And, even aspects of the Customary Marriages Act are unconstitutional and have been expunged by the Constitutional Court. In this regard Justice Moseneke of the Constitutional Court confirming the High Court's order, said:

“The order of constitutional invalidity made by the High Court in relation to certain legislation (sections 7(1) and (2) of the Recognition Act, section 20 of the KwaZulu Act; and sections 20 and 22 of the Natal Code should be confirmed.Courts are required not only to apply customary law but also to develop it. Section 39 (2) of the Constitution makes plain that when a court embarks on the adaptation of customary law it must promote the spirit, purport and objects of the Bill of Rights.

The adaptation of customary law serves a number of important constitutional purposes. Firstly, this process would ensure that customary law, like statutory law or common law, is brought into harmony with our supreme law and its values, and brought in line with international human rights standards. Secondly, the adaptation would salvage and free customary law from its stunted and deprived past. And lastly, it would fulfil and reaffirm the historically plural character of our legal system, which now sits under the umbrella of one controlling law – the Constitution.

This kind of judicial interference with the Shariah which we believe to be immutable is intolerable to the Muslim community. So, what is the rational reasoning for initiating a move which will bring the Muslim community in confrontation with the government? When currently there is no such problem without MMB, why introduce this insidious bill? Your comment: “Any suggestion you may have regarding how the Bill could be improved upon, to bring it in line with Islamic principles, would be most welcome and will be seriously considered when the Department refines the Bill.”

OUR COMMENT AND SUGGESTION

There is no hope for improving the bill to bring it in line with Islamic principles. The Constitution and Islamic principles are two opposing concepts. What is repugnant and unacceptable to Islam is acceptable to the Constitution, and vice versa. The very first act to execute for bringing the Bill in line with Islamic principles is to expurgate Section 3 (the Equality of husband and wife provision). Besides this fundamental conflict between the Constitution and Islamic principles, the Bill is simply cluttered with conflicts with the

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Shariah. There is therefore no hope of refining the Bill to conform with Islamic principles.

Furthermore, the Bill in entirety excludes what may be the majority of the Muslim community of South Africa, namely the Muslims of Western Cape who are adherents of the Shaafi' School of Thought. Its members while in majority in the Western Cape, are found in large groups throughout the country.

The only solution is to scrap the Bill and advise Muslims who desire recognition, to register their marriages in the same way as others are doing and to adopt a matrimonial property regime with 100% Islamic consequences. There are countless thousands of Muslims who are not at all interested in secular recognition. Recognition by our Creator is more than adequate for us.

We trust that the Honourable Minister will not allow himself to be misled by UUCSA who DOES NOT represent the Muslim community of South Africa nor does the MJC (Muslim Judicial Council) represent the entire Muslim community of Western Cape.

IT IS THE INCUMBENT OBLIGATION OF EVERY MUSLIM TO DEFEND THE SHARIAH OF ISLAM. MMB IS A WHOLESAL DESTRUCTION OF THE SHARIAH. OBJECT TO MMB. WRITE A LETTER OF OBJECTION TO THE MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT. E-MAIL OR FAX OR POST YOUR LETTER OF OBJECTION TO:

Mr. T. N. Matibe,
Ministry of Justice & Constitutional Development,
Private Bag X81,
Pretoria 0001.
Fax 086 648 7766;
e-mail: TMatibe@justice.gov.za

Please forward a copy of your protest letter to us for our records. It will assist us in making our report to the High Court which has ordered The Majlis to educate the Muslim community regarding the Bill, to obtain their comment and report back.
JAZAAKALLAAH!

Our contact details:
P. O. Box 3393, Port Elizabeth 6056
Fax 041-451-3566
e-mail: muftis@themajlis.net