

THE QUESTION OF MUSLIM MARRIAGES AND 'SEPARATE MUSLIM COURT'

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Al Jama-ah Political Party is spearheading a move for a separate Muslim Court to deal with Muslim marriages. There will be a parliamentary hearing on the 'Superior Courts Bill' tomorrow 3 August. Al Jama-ah has made its submission on the issue of separate Muslim courts to the Portfolio Committee on Justice and constitutional development. The full submission is available from Al Jama-ah, e-mail info@aljama.co.za

On the request of Al Jama-ah, the Mujlisul Ulama of S.A. has provided the following comments:

A separate Muslim court will be acceptable in terms of the Shariah only if:

- (1) It is totally independent of the judiciary of the country.
- (2) Neither the supreme court of appeal nor the constitutional court should have jurisdiction or control over the Muslim court.
- (3) There has to be a different court or a different Qaadi for the Math-habs. A Hanafi judge will adjudicate for Hanafis, and a Shaafi judge for Shaafis.
- (4) The selection of Qaadis will be made by the Ulama of the Math-habs. This is of vital importance because MJC appointments will never be acceptable to us.
- (5) The panel of Hanafi Ulama who will appoint the Qaadi for Hanafis must be appointed by the consensus of Ulama from all Hanafi Ulama bodies, not by only one or two bodies such as UUCSA and NNB Jamiat of Fordsburg. These two bodies are in cahoots and strong supporters of Kufr MMB.
- (6) The president of the country may not veto the Qaadhi appointed by the Ulama.
- (7) The Qaadhi will not be a member of any state organization, committee or commission.
- (8) The Qaadhi shall not be an employee of the state. His salary will not be paid by the state, It will be the obligation of the Muslim community to arrange his salary.
- (9) The state's obligation will be to enforce the decrees of the Qaadhi.
- (10) The Qaadhi's appointment shall not follow the methodology which is adopted for the appointment of secular judges.

The above are the minimum demands of the Shariah for the acceptability of a Muslim court.

We believe that these demands may prove too much for the government. Therefore, we suggest that the best, shortest and simplest route is Arbitration.