

Women Legal Trust Centre v President of the Republic and others (2014) Case number 22481/2014 Western Cape High Court

The CGE is admitted as amicus curiae in this matter where the Women's Legal Centre ("**WLC**") seeks to compel the National Executive and Parliament to enact legislation to recognise and regulate Muslim marriages in South Africa. More than twenty years into democracy, Muslim marriages are still afforded only partial recognition in our law: Until very recently, these marriages were considered to be contrary to public policy and of no legal effect. Despite judicial interventions and piecemeal legislation, our law still bears the mark of this historical discrimination against the Muslim community. For more than 15 years, various attempts have been made by different organs of state to prepare draft legislation to fill this gap. Each attempt has stalled and has ultimately been abandoned. These attempts have been punctuated by long and unexplained periods of inaction. In the absence of legislation, the courts have made some progress in securing legal protection for Muslim marriages. However, the scope for judicial intervention is confined to the facts of each case and the limits of the courts' remedial powers. As a result, the courts have repeatedly highlighted the need for Parliament to intervene. The effects of the state's failure to finalise and enact legislation on Muslim marriages are felt most acutely by women. As the WLC repeatedly points out, it is women in Muslim marriages who are most vulnerable and whose rights remain largely unprotected. The Commission for Gender Equality ("**the Commission**") shares the WLC's concern for the serious prejudice suffered by Muslim women as a result of the state's inaction. In these submissions, the Commission contends that the state's duty to protect the rights of these women is and ought to be the primary focus of this case. While the Commission agrees that legislation is sorely needed, it does not agree with the precise form of the relief that the WLC seeks. The following arguments will be made on behalf of the Commission:

- The state has a constitutional duty to protect the rights of women in Muslim marriages and that it has breached this duty by failing to enact appropriate legislation.
- The WLC's primary relief should be modified to ensure adequate protection for the rights of women while respecting the separation of powers. In this regard, the Commission submits that:
 - This Court is competent to require the National Executive to prepare and initiate legislation, and to require Parliament to consider it, but it is not constitutionally competent to order Parliament to enact specific legislation.
 - The focus of the order should be on protecting women in Muslim marriages through appropriate regulation.
 - Furthermore, the order should be accompanied by detailed timelines and continued court supervision to ensure that this remedy will be effective.
 - While the legislative process is underway (which may take up to 3 years), it is necessary to provide interim protection to Muslim women. This interim remedy should involve:
 - Declaring the Divorce Act 70 of 1979 to be applicable to Muslim marriages in the interim period; and
 - Ordering the Department of Justice (together with the Department of Home Affairs) to prepare standard operating procedures for the Masters Office on how to deal with the dissolution of deceased estates where it is alleged that the deceased was involved in a Muslim marriage.

This matter is still pending before the Western Cape High Court