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MUSLIM MARRIAGES OFFICIATED IN TERMS OF THE MARRIAGES ACT 25 OF 1961.

Muslim women have been denied spousal benefits such as the right to inherit intestate and to claim maintenance in terms of the Maintenance of Surviving Spouses Act 27 of 1990 due to their traditional religious marriages not being recognised in terms of South African law.

Previously, Muslim couples had to have their traditional marriages converted to civil marriages by way of a separate civil ceremony in order for it to be officially recognised and protected as valid marriages.

There was no justification for excluding the widows of Muslim marriages, monogamous or polygamous, from the provisions of the Intestate Succession Act 81 of 1987 nor the Maintenance of Surviving Spouses Act 27 of 1990. The Continued exclusion of the widows of polygamous Muslim marriages from the benefits of the above Acts were unfairly discriminatory against them and were in conflict with the provisions of the Constitution of the Republic of South Africa, 1996.

It was discussed in *Hassam v Jacobs* as well as in *Daniels v Campbell* that both the Intestate Succession Act as well as the Maintenance of Surviving Spouses Act should be amended to make provision for the term “spouse” to include a “husband or wife married in accordance with Muslim rites in a de facto monogamous union”. The Constitutional Court further confirmed that women who are party to a polygamous marriage concluded in terms of Muslim rites are deemed to be spouses for the purpose of inheriting Intestate or claiming maintenance.



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As a result of the above judgments, over a hundred Imams (Muslim Clerks) were officially appointed as marriage officers in terms of the Marriage Act 25 of 1961 on 30 April 2014. They have completed a three day course covering the principles of the Marriage Act and after passing the examination they were then officiated in terms of the Marriage Act. These marriage officers have been able to officiate Muslim marriages in terms of the Marriage Act and register all marriages they officiate. Muslim marriages officiated in terms of the Marriage Act are now in line with the requirements of Saria (Muslim Law) and are also recorded on the National Population Register, thereby receiving legal status and recognition.

As a further result of the above Constitutional Court decisions, the words 'surviving spouse' as used in the Maintenance of Surviving Spouses Act as well as the Intestate Succession Act now include a surviving partner to a polygamous Muslim marriage provided the marriage is conducted by an Imam officially appointed in terms of the Marriage Act.



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