



TEASA Submission on the Marriage Policy.

The Evangelical Alliance of South Africa, representing 4 million Christians within its membership, welcomes the Green Paper on Marriages in South Africa. Legislation that currently regulates South African marriages is spread out across religion, race, culture, and other beliefs. It is true that the South African marriage regime is greatly convoluted and can appear messy. The overall aim of the Green Paper to create a harmonized system is commendable and necessary for South Africa.

The Green Paper highlights a number of issues that TEASA agrees with as being necessary for the broader protection of marriages and society as a whole. These include the following, acknowledging that marriage is a time old tradition that must be protected for the sake of social cohesion; that the rate of divorce in south Africa is far too high and this is harmful to society as a whole; that current legislation falls short in protecting the rights of women and children across cultural and religious backgrounds and that pre-marriage counseling is necessary to ensure long lasting and fruitful marriages.

Therefore, TEASA gladly welcomes the following proposals:

- The increase in the age of legal marriage to be 18 and above. This is in line with South Africa's international obligations and such a policy must be made clear across all legislation.
- The recognition of all religious marriages in South Africa. For far too long the marriages of Hindus, Muslims, Jewish people, as well as other religions have not been granted legal recognition in South Africa. This is a travesty and direct violation of the constitution that must be rectified.

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- Recognition of certain excluded cultural marriages. South Africa is a country with a rich cultural spectrum. There are many ways in which people choose to celebrate their marriage cultures that remain outside of the protection of the law. Any legislation that seeks to be more inclusive is in line with creating a more even society.
- Recognizing a broader range of marriage officers across culture and religion. The inclusion of a wider range of marriage officers will go far in ensuring that more people are able have their marriages solemnized by someone of a similar cultural or religious background.

Having noted that the legislation aims to do well, there are also some problematic aspects of the green paper.

Marriage officers in solemnizing marriages

The right to freedom of religion and to practice one's religion is a sacred right held in the constitution under section 15 (1). Exercising this right extends to the fulfilment of personal and professional duties, sadly, the Green Paper refers to the protection of this right as legislated discrimination.

The marriage union is sacred, and its solemnization is a beautiful moment that parties to it remember for the rest of their lives. It is therefore crucial that such a moment be officiated over by someone who believes in the values that the partners espouse. The Green Paper proposes that in order to ensure that people of all beliefs and sexual orientations have access to a marriage officer the rights of conscientious objectors must be stripped away. This cannot be the case. The limiting of one's rights, especially a right as sacred as one's religion, must pass a subjective fairness test which the current proposals fail to do. There are other alternative solutions that would ensure that everyone seeking access to a marriage officer would have one. One such proposal would be that the State ensures that they are enough marriage officers available that would cater to the needs of our vast social spectrum. There is international practice that such a system can work and would ensure that all rights are protected, and those wishing to get married and needing a marriage offer, and those marriage officers who wish to remain true to their faith, are protected. As section 9 (1) of the constitution declares, everyone is equal under the law and has the right to protection and benefits of the law. This includes those with strong religious beliefs.

It must be noted that disagreeing with one's lifestyle expression and choices is not tantamount to hatred and discrimination. The pursuit of equal protection under the law does not mean that all members must conform to one set of ideologies and it is not the role of the State to enforce such. It is the role of the State to ensure equal access to services whilst balancing competing rights of all members of society, not just the minorities but the majority beliefs as well. In this case to protect the rights of sexual minorities, the law makers are at risk of infringing the rights of a Christian majority. The history of the Christian church must be divorced from the free will beliefs and expression of those beliefs by good and well-meaning citizens of South Africa. Legislation is meant to address general issues in society and not every individual wishes or idiosyncrasies. Legislation must make sense and bring order to society where there is chaos instead of adding controversy to society.

Green Paper Legislation Options

The Green Paper proposes three possible options to bring harmony and recognize marriages across cultural and religious beliefs.

Option 1- A Single Marriage Act

This option provides that all marriages would be recognized under one marriage act. This includes polygamy, polyandry, and all cultural and religious persuasions. While such a regime may seem noble in its attempt to do away with what may appear to be discriminatory policies it is a tall legislative task. The breadth of cultural and religious differences is very wide and there are too many differences to expect one legislation to address them. It is difficult to imagine how such a piece of legislation can come about without raising pressing Constitutional questions.

Option 2- Omnibus or Umbrella Marriage Act

This structure is also unlikely to work.

Option 3- Parallel Marriages Act.

This option proposes that the existing marriage legislation operates parallel to one another, and where there is a need, new legislation will be enacted. In a parallel system, no marriage act is above the other and neither receives more protection under the law than the other. It important here to note that just because someone feels discriminated against does not mean that they were in fact discriminated. It is not discrimination to have different laws, but it would be discrimination that those laws were applied in a manner that is inconsistence to the constitution. Allowing for parallel legislation appears to make more sense in line with the wide array of South African belief systems and marriage traditions.

The Green Paper also makes proposals on other areas of legislative amendment that need to be considered, in particular the legislative recognition of polyandry and polyamorous relationships.

Possible Psychological Impact of Polyandry Marriages in Children

We believe that the polyandry section of the Green Paper flies against the body of knowledge in Psychology that holds that the socialisation of children has a formative impact on identity formation in adulthood. The disruptive impact of polyandry on the traditional family structure is highly likely to influence the social identity of children and can result in vulnerability to various forms of psychopathology such as depression and anxiety. Social identity plays a vital role in a child's sense of belonging and contributes to the development of self-worth, pride, confidence and self-image. Marriage is understood as more than the union of two persons, it is a social institution that is culturally patterned and integrated into basic social institutions.

Marriage and the family are social institutions of vital importance. The institutions of marriage and family are important social institutions that provide security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. It is often in these healthy marriages that a child finds their sense of identity that allows them to grow into a positively contributing member of society.

In a study performed by Aneeza Pervez & Syeda Shahida Batool Department of Psychology Government College University Lahore, it was shown that the psychological effects of children living within marriages with multiple spouses showed more negative than positive results on the children within those marriages.

These negative effects showed the following:

“The participants described the immediate and long-term effect that polygamy had on their relations with their immediate family, step-family and romantic and social relations. The results of the study indicated that the experience of polygamous households were underlined with negative experiences such as disintegration of the family unit, a sense of deprivation and social, economic and educational constraints. These factors in turn affected the participants' relationships with their immediate and step families, and marital relationships. It was concluded that polygamy has an adverse impact of the interpersonal relations of individuals and lead to discord and maladjustment in their social and romantic

lives.” From this study it would appear that, while marital structures provide profound benefits for society, introducing polygynous marriages would be detrimental to the basis of society, as quoted below:

“The current research highlights the lasting effect that exposure to a polygamous marital structure has for the children. Having lived in a polygamous family can cause the individual to develop poor interpersonal relationships, which in turn can affect the functioning and success of the individual in various arenas of their life. The study reveals that polygamy has long-term impact on the relationships of the children in the society and may cause maladjustments in the marital and romantic lives of the individuals. The results suggest that an individual’s initial interaction within their family forms the basics of their social and emotional development over the course of their life. The results provide adequate support to illustrate the immense importance and involvement fathers have in the development of their children.”

We therefore submit that the new innovation of polyandry is an unwelcome and dangerous experimentation with the South African family structure at a time when it is already under severe pressure from a high degree of fatherlessness and domestic violence.