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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS INVESTIGATION INTO ISLAMIC MARRIAGES AND RELATED
MATTERS (PROJECT 59)**

The South African Law Reform Commission has approved a Report containing recommendations and a proposed draft Bill on the recognition of Islamic marriages. The Report has been submitted to the Minister for Justice and Constitutional Development on 22 July 2003 for consideration and promotion in Parliament.

Historically, and until the landmark 1999 Supreme Court of Appeal decision in *Amod v Multilateral Motor Vehicle Accidents Fund*, a marriage contracted according to Islamic law was regarded by South African courts as null and void and as being contrary to public policy, with the result that the marriage and its consequences were not legally recognised in any form. The decision in *Amod*, however, recognised a monogamous Islamic marriage for the purposes of support only, and did not deal with other crucial issues such as polygyny and the status of respective spouses, maintenance obligations, proprietary consequences of Islamic marriages, termination, etc. More recently, in its decision in *Daniels v Campbell NO and Others* of June 2003, the Cape of Good Hope Provincial Division of the High Court found that parts of the Intestate Succession Act and the Maintenance of Surviving Spouses Act are unconstitutional in that those Acts, in their definitions of "spouse" and "survivor" respectively, do not specifically provide for a husband or wife married in accordance with Muslim rites. However, legislation giving full recognition to such marriages is absent, with the result that gross inequities and hardships arising from the non-recognition of Islamic marriages still prevail.

The Law Reform Commission published a Discussion Paper in December 2001, preceded by an Issue Paper published in July 2000. The Discussion Paper contained a proposed draft Bill which would give recognition to Islamic marriages, and a process of consultation with the Muslim community was conducted on a national scale. The draft Bill now contained in the Report to the Minister, which takes account of divergent views within the Muslim community, marks the Law Reform Commission's completion of its investigation.

The Bill contained and explained in the Report draws a clear distinction between an Islamic marriage and a civil marriage. It is only Islamic marriages that would fall within

the ambit of the Bill, with provision being made for Muslims who are married by way of a civil marriage, to exercise an option to have the provisions of the Bill apply to them. Provision is also made for the regulation of proprietary consequences, changes to matrimonial property systems (with due regard to existing and vested rights) and the regulation of polygynous marriages. In terms of the draft Bill all *existing* Islamic marriages would be recognised as valid marriages, for all purposes, upon commencement of the proposed legislation. Parties in an existing marriage are, however, given the option of opting out of the provisions of the Bill, should they so desire. With regard to *future* marriages concluded after the proposed legislation has come into operation, parties would be allowed to elect at the time of the conclusion of the marriage whether the provisions of the Bill should apply to them. The draft Bill covers both monogamous and polygynous Islamic marriages which, if applicable, may exist alongside a civil marriage (ie a marriage registered under the Marriage Act).

It is further recommended that, because the judges of secular courts are by and large non-Muslims, a judge be appointed from the ranks of existing Muslim judges or from Muslim legal practitioners to preside in legal disputes on an *ad hoc* basis, and that, on appeal, the views of two accredited Muslim institutions may be solicited for purposes of commenting on questions of law. The courts may also be assisted by assessors who are experts in Islamic law in the adjudication of all disputes relating to Islamic law. The appointment of assessors means that the court presiding over a dispute involving Islamic law would have the necessary expertise to resolve such disputes effectively.

The Commission's proposed draft Bill in addition addresses the registration of Islamic marriages, the dissolution of such marriages through the pronouncement of a *Talaq* (which, in terms of the proposals, must be confirmed by a court), custody of and access to minor children and maintenance.

In the Commission's view the adoption of its proposed draft Bill by Parliament will go a long way in creating legal certainty with regard to Muslim marriages, will give effect to Muslim values and will afford better protection to women in those marriages in accordance with Islamic and constitutional tenets.

The report will be made available on the Internet at the following site:
<http://www.law.wits.ac.za/salc/salc.html>

**ISSUED BY THE SECRETARY: SOUTH AFRICAN LAW REFORM COMMISSION,
PRETORIA**

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ENQUIRIES IN RESPECT OF MEDIA STATEMENT:

MR H POTGIETER (012) 322-6440

E-mail: clive@salawcom.org.za

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