

An exploration of *mata'a* maintenance in anticipation of the recognition of Muslim marriages in South Africa: (Re-)opening a veritable Pandora's box?

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1 INTRODUCTION

In Muslim personal law, the husband on pronouncing a divorce has a number of legal obligations towards his wife, including maintenance¹ and payment of outstanding dower.² While there is no dispute among Muslim scholars and jurists that a wife's right to maintenance (*nafaqa*)³ arises upon marriage as a natural consequence of it, there is no unanimity as to whether this right is extendable after the marriage ends. The position may also vary depending on the circumstances leading to the dissolution and the financial situation of the spouses. This is not surprising, as a basis for

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- 1 Maintenance in essence is the requirement to pay a contribution to the living expenses of someone else. However, unlike the case in Western law, spousal maintenance (alimony) stops upon remarriage and does not extend beyond death.
 - 2 Dower, an important ingredient of a Muslim marriage, is a sum of money or other property which becomes payable by the husband to the wife as an effect of marriage and which becomes the exclusive property of the bride. A dower may be prompt and deferred. See Moosa N 'A comparative study of the South African and Islamic law of succession and matrimonial property with special attention to the implications for the Muslim woman' (unpublished LL.M. thesis, University of the Western Cape (1991)) at 29–30. While the Islamic concept of alimony is closely related to various other forms of money that must be given to the wife, such as dower, the latter has nothing to do with maintenance. Dower is a consideration for the marriage contract and when the contract ends, (equitable) maintenance for divorced women ought to take effect.
 - 3 This is 'the legal term for the maintenance owed by a man to his dependants generally, and, in the case of his wife, is often held to cover such things as food, clothing and lodging . . .' (Hawting GR 'The role of Qur'an and *Hadith* in the legal controversy about the rights of a divorced woman during her "waiting period" (1989) *LII BSOAS* at 430. Maintenance is not, however, restricted to these three items and includes everything associated with her living and reasonable comfort.

conflicting views on particular rights issues can be found in the same *corpus* of Islamic (common) law or *Shari'a*.⁴

The discussions contained in the classical sources concerning maintenance are usually confined to the period terminating with the *idda* (waiting period)⁵ which is observed when the notice of the divorce (*talaq*) comes to the knowledge of the wife.⁶ Apart from a reference by the Hanafite school of law relating to the extended maintenance (*ujrah*) of the mother who has custody of the children, a glaring absence of any discussion of the issue in the classical sources serves to confirm that the scholars of the classical schools of law did not consider the question of maintenance of the divorcée beyond the period of *idda*. This has led to the question as to whether or not the Muslim woman's right to maintenance may be extended beyond the *idda* period of an irrevocable divorce⁷ – a question which has generated considerable debate in recent years especially in India, Bangladesh, Pakistan, Malaysia and Egypt. The debate has not resolved the question but has given rise to divergent opinions tending towards extension of maintenance beyond the *idda* period.

While the *Qur'anic* text on the face of it does not seem to make provision for the concept of *continued* maintenance of the divorcée (as clearly as it does, for example, for the maintenance of widows), several scholars, including the authors of this paper, contend that there is enough scope in the primary sources (*Qur'an* and *Sunna*)⁸ for it to be interpreted as such. Considering the paucity of legal verses⁹ in the *Qur'an*, it will be highlighted that it nevertheless contains several detailed provisions regarding the

4 Classical Islamic law or jurisprudence, 'common law' according to the four main schools of Islamic jurisprudence (Hanafite, Malikiite, Shafi'ite and Hanbalite).

5 This is a *Qur'anic* waiting period (following 'divorce') imposed on women (not men) whose marriage (whether valid or irregular) has been terminated by divorce (after consummation) or death of their husbands and during which husbands are obliged to support their wives. For women it constitutes a temporary prohibition to remarry until the expiry of this period. Its primary purpose is threefold: to provide time to effect reconciliation between spouses in revocable divorces; to determine whether or not the wife is pregnant in order to determine paternity of the child; and to mourn the dead husband in the case of the widow. In the case of a revocable (as opposed to irrevocable) divorce the woman remains the legal wife of the husband.

6 In South Asian Muslim law, the wife's right to maintenance for three months is not lost or reduced if she files a suit during the *idda* period. If she is not aware of the *talaq*, her entitlement is deemed to start when she comes to know of the divorce: Pearl D and Menski *W Muslim family law* 3ed (1998) at 203.

7 Very simply, an irrevocable (*ba'in*) divorce dissolves the marriage with immediate effect and leaves no room for the husband to change his mind: see Ahmad KN *The Muslim law of divorce* (1984) at 83. There are also 'degrees' of irrevocability in that some irrevocable divorces are of a major degree or more final (*kubra*) than others of a minor degree or lesser finality (*sughra*). The marital relationship is deemed to be over and indeed any intercourse will be regarded as adultery (*zina*), while children born as a result of such intercourse are illegitimate.

8 The received custom associated with the Prophet Muhammad (PBUH) was embodied after his death in a body of texts compiled as books called *Hadith*. The salutation Peace Be Upon Him to the Prophet Muhammad will, for the sake of convenience, be implied but not repeated every time his name is used in the text.

9 Some 80 of 6000 odd verses. The *Qur'an* is deemed not to be a legal book.

financial benefits and welfare of the divorcée in a vocabulary suggestive of justice and equity. Nonetheless, although the right to post-divorce maintenance may exist in theory, it remains largely elusive in practice and is indeed seldom implemented in South Africa. An exploration of the views that exist on this concept may assist lawyers and scholars in arriving at some consensus beneficial to women.

2 ISLAMIC LAW

Maintenance exists for married women as well as divorced and widowed women. The problem arises when *idda* (waiting period) is confused with 'divorce' and no distinction is drawn between *idda* maintenance and post-divorce maintenance (*mata'a*).¹⁰ *Idda* is in fact a continuation of the marriage in a revocable¹¹ 'divorce' – one of its main purposes being to reconcile spouses. At this juncture parties remain legally married to each other and therefore the question of *mata'a* does not come into the picture. The husband is still legally obliged to maintain his wife. It is only once the *idda* has been completed, and no reconciliation takes place, that the divorce ought to become effective and we can consider the question of post-divorce maintenance. This is especially pertinent in the case where a husband has arbitrarily or unreasonably divorced his wife.

2.1 'Divorce' maintenance while effectively still married

The waiting period called *idda* starts after 'divorce' has first been pronounced and comes to the knowledge of the spouse. This means that parties remain married to each other as the (revocable) divorce only becomes effective once the wife has completed three successive menstrual cycles¹² or, if she was pregnant, with the termination of the pregnancy, or the birth of the child¹³ or the end of the nursing period,¹⁴ with

10 Literally speaking the word *mata'a* means 'gratification' or 'gift'. It has been used in two distinct senses: one being a form of temporary marriage dating to pre-Islamic times (which does not concern us in this paper) while the other is a payment by a husband to his wife on unreasonably or arbitrarily divorcing her. *Mata'a* is used in this paper to refer to maintenance beyond the *idda*, or post-divorce, to highlight that there is much more to this concept than merely a parting gift to serve a social purpose.

11 A revocable (*raj'i*) *talaq* does not immediately dissolve the marriage in that it does not become effective until the end of the waiting period (*idda*): see Coulson N and Hinchcliffe D 'Women and law reform in contemporary Islam' in Beck L and Keddie N (eds) *Women in the Muslim world* (1978) at 43; Ahmad (fn 7 above) at 82. Since in a revocable divorce the woman remains the legal wife of the husband until she completes her waiting period, she may not remarry until the expiry of this period. However, because polygyny is allowed in Islam, her husband may remarry.

12 Q.2:228. *Qur'anic* references in this article normally refer to the translation by Yusuf Ali (1946) unless otherwise indicated. References are given in parentheses. The first figure is the number of the chapter or *sura*, the number following the separating colon indicates the verse or *ayat*.

13 Q.65:1,2,4 and Q.2:228.

14 A divorced wife may nurse/breastfeed (or, by analogy, presumably bottle-feed) her baby for up to two years or employ a wet nurse to do so. During this period the father must maintain and house both the child and mother (Q.2:233, Q.65:1 and 6).

maintenance (*nafaqa*) being limited to these periods.¹⁵ The waiting period of a widow is four months and ten days and her maintenance is thus limited to this period. The duty to maintain thus lasts until the expiration of the *idda*. The husband is obliged to provide maintenance during the *idda* as the divorce is theoretically still revocable.

2.2 (Extent of) *mata'a* maintenance when *de facto* divorced

The question whether maintenance should be extended beyond *idda* is subject to interpretation. Once the marriage is terminated, a husband's duty to maintain is said not to extend beyond the aforementioned periods for various reasons, which include the spouse being a legally independent personality, her access to male relatives for support, and inheriting from her father with no obligation to maintain any member of that family. However, these reasons are suspect. It is a social reality that women remain the victims of divorce rather than its perpetrators. This is largely attributed to ignorance on the part of women and men, and the fact that there is a gap between the theoretical rights granted to women in Islam and what happens in practice.

2.3 Primary sources of Islam

2.3.1 *Qur'an*

In principle, a woman is under no obligation to contribute to the maintenance of her family and therefore inherits less. In Islam the double share of inheritance to the male is deemed justifiable in the context of his role and added (financial) responsibility as guardian of the female.¹⁶ The classic *Qur'anic* verses highlighting biological differences and giving the edge to men, namely Q.2:228¹⁷ and Q.4:34,¹⁸ are very controversial and have been subject to many interpretations from classical to modern times by Islamists and modernists. In the area of the general rights of spouses, the *Qur'an* states that spouses have reciprocal rights and duties, but adds that men are but one degree superior to women (Q.2:228). This qualifying clause is used in the context of divorce and, read with Q.4:34 (which contains the rationale for it, namely that men are the maintainers of women with what they spend out of their wealth), explains the economic superiority of men over their wives. In this regard, the conservatives and modernists hold opposite views.¹⁹

15 The waiting period of a widow is four months and ten days and her maintenance is thus limited to this period (Q.2:234).

16 Q.4:7, Q.4:11 and Q.4:34.

17 'And women shall have rights similar to the rights against them/according to what is equitable/ but men have a degree (of advantage) over them . . . ' (Q.2:228).

18 'Men are the protectors and maintainers of women/because God has given the one more (strength) than the other/and because they support them from their means . . . ' (Q.4:34).

19 These views are detailed in a book by the first author entitled 'Unveiling the mind: A history of the historical evolution of the legal position of women in Islam' (2004).

According to the Islamist argument, since women are the guardians of the home, it follows that they have to be economically dependent on men. Gender activists, on the other hand, challenge the notion that wives have to be permanently economically dependent on their husbands. Given the changed family structure of modern Muslim families and the greater financial contribution of women in a family, it may be argued that, if the husband cannot afford to maintain his family, the wife should do so, in spite of the clear *Qur'anic* injunction to the contrary. Today, moreover, economic circumstances often necessitate that both partners work to maintain their families.

Whilst the general right of the spouse to the duty of support is explicitly recognised as a religious and a legal duty incumbent upon the husband, the *Qur'an* has, for example, not specified the quantum, nor has it fixed the period or limited it to the *idda*.²⁰ The *idda* period in the *Qur'an* is mentioned merely in the context of, amongst others, affording the parties an opportunity to reconcile. It has no interpretive value with regard to the period of maintenance. Emphasis is placed instead on 'equity', a 'means' test, 'reasonability', and 'liberality' between spouses amongst other things, as highlighted in these verses.

While there are clear *Qur'anic* verses which make provision for the maintenance of divorced women, this has been obscured by the fact that today much of the discussion on post-divorce maintenance focuses on whether or not this form of *mata'a* has been intended as a substantial/real compensation or merely a consolatory gift to a divorced wife and, if so, whether such compensation and/or consolation is compulsory or optional. This has been a matter of contention in classical jurisprudence and continues to be the case in contemporary jurisprudence. Many Muslim organisations have yet to form a final opinion on this concept, which is mentioned in the *Qur'an* – the book of guidance in which the basis of all solutions are to be found.

The *Qur'an* in Chapter Two, Verse 241 makes specific reference to the maintenance of divorced women. Yusuf Ali's translation of Q.2:241, which was used by judges in both cases discussed under **India and Bangladesh** below, reads as follows: 'For divorced women maintenance (should be provided) on a reasonable (scale) [*mata un bil ma'roof*].'²¹ This is a duty on the righteous.' This verse does not qualify the period but merely says 'for divorced women'. Muhammad Asad, in his well known translation of the *Qur'an*, comments on Q.2:241 as follows: 'The amount of alimony – payable unless and until they remarry – has been left unspecified since it must depend on the husband's financial circumstances and on the social conditions of the time.'²² While objections can be raised against his liberal allowance for payment of alimony to a wife for life or until remarriage, as this is not clear from Q.2:241 itself, he acknowledges

20 Verses typically dealing with provision for divorced women include Q.2:231, Q.2:233, Q.2:236–Q.2:237, Q.2:241–Q.2:242, Q.4:20, Q.4:54, Q.33:49 and Q.65:6–7.

21 See also Q.2:236.

22 Asad M *The Message of the Quran* (translation) (1980) at 54.

that the amount of maintenance has been left unspecified. In a similar vein, the method of payment has also been left unspecified. It seems that the *Qur'an* has left this matter to be decided either by the parties or some other authority. Another Indian scholar, Shah Waliullah Dehlavi, observes the following in his translation of the same verse: 'It is the obligation of those who ward off evil to give the divorced women just and fair provision for life, ie their maintenance and accommodation, Allah explains thus, His decrees, so that you may understand.'²³

Ibn Manthur, the classical Arabic lexicographer, interestingly observes the following concerning the etymological and linguistic usage of the term: 'It has no time limit, for Allah has not fixed any time limit for the same. He has only enjoined the payment of maintenance.'²⁴

Some scholars argue that a teleological and purposive reading of the verses concerning maintenance, along with the reformative spirit of the family law provisions of the *Qur'an*, does not preclude post divorce maintenance of the spouse in any way. It is for this specific reason that the amount has been left unspecified. There is in fact no fixed scale or limit with regard to the amount or the period. This is particularly so where no fault can be assigned to the wife.

Read in conjunction with the verses preceding (Q.2:240) and following (Q.2:242) it, Q.2:241 is more logical. Verse 240 makes provision for widows (a year's maintenance and residence) and then mentions those who voluntarily vacate the residence. Verse 242 continues the theme and reads as follows: 'Thus doth God make clear His signs . . .' Despite the fact that the *Qur'an* contains very few legal injunctions, here are two clear verses providing for widows and divorcées. However, it is not uncommon for these verses to be read in isolation from each other; and most of the discussion around post-divorce maintenance has been reduced to whether or not *mata'a* is optional or compulsory, and a gift or compensation.

2.3.2 Sunna

Sunna (Prophetic tradition) also supports the understanding of the maintenance concept to mean that a woman should have a substantial amount of money to enable her to support herself.

2.4 Schools of Islamic law (*shari'a*)

As far as an irrevocable divorce is concerned, the different schools of Islamic law have divergent opinions as to what maintenance the wife is entitled to. While the Hanafite school provides maintenance to the wife in all instances, the other three schools do so only if she is pregnant.²⁵ Differences within the schools of law also play a role in perpetuating this

23 Sha Waliullah nd 'Quran Majid, Mutarjim Bazubani' *Qaumi Hijra Islamabad*

24 Died 711AD/1311AH. Manthur Ibn (1994) 242.

25 Mincez J *The House of obedience: Women in Arab society* (1989) at 65; Pearl D *A Textbook of Muslim personal law* 2 ed (1987) at 69.

divergence. There is also a reference to the maintenance of the mother who has custody of children,²⁶ which is discussed at length in an authoritative classical *fiqh* compendium, the *Durr ul Mukhtar*, a Hanafite work widely relied upon by scholars of the Indian sub-continent. According to this authority, the wife would be entitled to a stipend or maintenance from the father if she has custody of the children. This would include an entitlement to what has been described in the *Qur'an* as *sunna*, or housing, and would include medical and clothing expenses. It is stated that this payment (*ujrah*) should continue for as long as the children continue to reside with the mother. The quantum would be agreed upon by the parties and may fluctuate.²⁷ There is no concept of case precedent in Islamic law and each case must be decided on its own facts and merit. Should this not be the case with maintenance matters?

3 SOME EXAMPLES OF INTERNATIONAL JUDGEMENTS ON MATA' A

The question as to whether husbands should pay maintenance to the divorced wife for life or until her remarriage has been dealt with extensively by courts in India, Bangladesh, Pakistan and Malaysia.

3.1 India and Bangladesh

3.1.1 India

Muslims have categorically rejected government interference with their personal law in a non-Muslim country like India, where such law is exempt from constitutional scrutiny. The issue of post-divorce maintenance in India is one example. Trying to improve maintenance for Muslim women beyond the *idda* period proved volatile in India. Under the Criminal Procedure Code of 1898 all neglected wives, including Muslim women, enjoyed rights of maintenance. What often happened when a Muslim woman sought relief from the courts to secure such maintenance was that the husband would divorce her and in this way free himself of any responsibility for maintenance beyond the *idda* period. To rectify this, the Criminal Procedure Code of 1973 (Cr.P.C.) – despite opposition by Muslim orthodoxy – amended the relevant provision to include divorced women, thus entitling divorcees to claim maintenance until death or remarriage.

26 The *Qur'an* is not clear as to which parent gets custody of the children in the event of a divorce. However, it accepts the father's perpetual right of guardianship and this has led jurists to assume that, after a limited period of time (custody) with their mothers, children of divorced or widowed women pass into the care of the father or nearest male agnate relative in the event of the father's death. Engineer AA *The Rights of Women in Islam* (1992) at 149.

27 See also Zuhayly W 'Fiqh al Islam wa Adillatuhu' (1989) *Damascus: Dar al Fikr* vol 7 at 803.

In terms of section 125 of the Cr.P.C., a husband has to bear all expenses incurred by his divorced wife until she remarries or dies.²⁸ Section 127(3)(b),²⁹ which was inserted later, could effectively cancel an order made under section 125. However, it was only as an aftermath to the controversial Shah Bano³⁰ case that matters came to a head and the judiciary was considered to have exceeded its interpretative role by adopting an 'anti-Shari'a' stance.

In a nutshell, seventy-year-old Shah Bano Begum, pleading special circumstances (inability to maintain herself), demanded and succeeded in claiming maintenance from her former husband (an advocate by profession) in excess of the traditional three-month period allowed by Islamic law. The Supreme Court in this case held that she was entitled to have recourse to section 125 of the Cr.P.C. and that Muslim personal law would not be applicable in this matter.

What further complicated matters were the unambiguous statements of the five Hindu judges constituting the Court about the interpretation of the *Qur'an* and, particularly, with regard to a need for a uniform civil code for all Indians, which were not well received by many Muslims. The court interpreted the *Qur'an* (Q.2:241) as in fact supporting section 125. One of the judges, moreover, spoke negatively of the Prophet Muhammad's treatment of women. Muslim leaders, especially *ulama*,³¹ took great offence to the extent that the case became a major political controversy, so much so that Shah Bano herself, under pressure from the Muslim community, refused to take the money. As a consequence of the reaction of Muslims, the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act (MWA) (1986)³² which effectively places Muslim women outside the purview of the Cr.P.C. (and therefore state protection),³³ thus depriving Muslim divorcees of their right to maintenance

28 Ali F and Ahmad F *Divorce in Mohammedan law: The law of 'triple divorce'* (1983) at 76. S 125 stipulates that a wife cannot claim maintenance from her husband when they are living separately by mutual consent. Wani MA *Maintenance rights of Muslim women. Principles, precedents & trends* (1987) at 92-93 is of the opinion that this provision should be repealed as 'there is no reason to suspend their other rights and obligations' and, further, that the provision under the 1973 Code that only wives that are unable to maintain themselves are eligible to claim maintenance is problematic. For example, being a penniless wife does not preclude physical capability to generate income; but this, in turn, is dependent on availability of work, skills etc.

29 Provisions were inserted in s 127(3)(b) of the Code whereby, on representation made by Muslims, any conflicts with Muslim Personal Law (MPL) were expected to be avoided. The effect is that MPL determines the period of maintenance for a divorced Muslim woman. Cf Pearl (fn 25) at 71.

30 *Mohammad Ahmad Khan v Shah Bano Begum and others* AIR 1985 SC 945.

31 Singular, *alim*; learned male religious scholars (theologians).

32 Act 10-C of 1986. See Pearl (fn 25) at 74.

33 While MPL has statutory recognition in India, Islamic criminal and civil law are no longer applicable to Muslims and have been replaced by Indian secular codes. However, isolating MPL provisions from other statutes is not surprising since in India MPL is exempt from constitutional scrutiny (Moosa NA *An analysis of the human rights and gender consequences of the new South African Constitution and Bill of Rights with regard to the recognition and implementation of Muslim personal law* (unpublished LLD thesis, University of the Western Cape, 1996) at 210-11. Subjecting a recognised system of MPL in

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beyond the *idda* period. The MWA makes provision for a once-off payment (as opposed to a recurring payment until remarriage or death, as provided for in the Cr.P.C.) because *ulama* argued that this is what the word *mata'a* means in terms of Q.2:241. In addition to this once-off *Qur'anic* provision, the husband, at the time of divorce, should pay the dower (if he has not already done so) and pay three months' maintenance. Given that article 14 of the Indian Constitution guarantees its people equal protection of its laws, it may be argued that these provisions are unconstitutional in creating an arbitrary division among destitute women.

Two subsequent landmark judgments by two leading high courts of India (Calcutta and Bombay) have, very interestingly, interpreted section 3(1)(A) of the MWA (requiring that 'a reasonable and fair provision and maintenance to be made and paid to [the divorced wife] within the *idda* period by her former husband') to benefit Muslim divorcées *beyond* the *idda*, as intended by section 125 of the Cr.P.C. Rather than paying the monthly maintenance that the Cr.P.C. provides for, the husband is required to pay a lump sum within the *idda* period so as to benefit the divorcée beyond the *idda*. There are, however, academics who have liberally construed section 3(1)(a) as actually affirming (rather than reversing) the Shah Bano case.³⁴ Prof Menski³⁵ is one such academic who is of the opinion that the 1986 Act has done exactly what its name suggests, that is, to protect and strengthen the rights of divorced Muslim women who are unable to maintain themselves after the *idda* period, and claim maintenance from their former husbands. He does, however, concede that while this might in principle be the case, reality often dictates otherwise and therefore '[i]t remains a fact . . . that many women can expect precious little support from a former husband'.³⁶

Engineer³⁷ is of the opinion that despite two subsequent³⁸ landmark high court judgements following the trend of Shah Bano, it has not evoked the protest of Muslim leaders as was the case with the Shah Bano judgement. He attributes the latter protest to the political situation then prevailing in India.

It may also be noted that, while a positive criminal law provision relating to women's rights is rejected as conflicting with Islamic law principles, other secular criminal law stipulations concerning theft, etcetera, which are also clearly contrary to their Islamic law counterparts, are accepted and applied.

South Africa to the provisions of the Bill of Rights in the final Constitution (Act 108 of 1996) bars the enactment of legislation similar to the Muslim Women Act (1986).

34 Carroll L 'Divorced Muslim women in India: Shah Bano, the Muslim women act, and the significance of the Bangladesh decision' in Carroll L and Kapoor H (eds) *Talaq-i-Tafwid: The Muslim woman's contractual access to divorce: An information kit* (1996) at 200–203.

35 See Pearl and Menski (fn 6) at 209–222.

36 *Supra* at 222.

37 See Carroll (fn 34).

38 The second judgment was given in the Bombay High Court on 11 July 2000.

3.1.2 Bangladesh

Similar to the Shah Bano decision by the Indian Supreme Court was a 1995 Bangladeshi High Court case where judges applied their mind to the question as to whether the wife was entitled to claim maintenance beyond the *idda* period. In *Mohammad Hefzur Rahman v Shamsun Nahar Begum*³⁹ the court decided on the basis of Q.2:241 that a Muslim husband is obliged to maintain his divorced wife on a reasonable scale beyond the period of *idda* until she dies or remarries.

This case is an excellent practical example of modern-day *ijtihad* (independent reasoning). The judges concluded that the civil court had jurisdiction to follow *Qur'anic* law⁴⁰ regardless of any subsequent law. They agreed with Yusuf Ali's translation of the expression '*mata un bil maroof*' as 'maintenance should be provided on a reasonable scale'. The judges were furthermore of the opinion that the Arabic word '*maroof*' may mean 'recognised' instead of 'reasonable'. They reasoned that this meaning should be considered with regard to the quantum and not the time period of maintenance, given that the *Qur'an* elsewhere directs a divorced woman to undergo an *idda* period (Q.2:228), whereas here the *Qur'an* directs a man to give maintenance after divorcing his wife. The *Qur'an* therefore distinguishes between *idda* and maintenance, dealing with them in distinct and separate verses. The judges also referred to *Qur'anic* verses where the '*Qur'an* itself prescribes its rule of study' and that this should be encouraged rather than discouraged by Muslims.

The husband successfully appealed against the decision of the high court. On 3 December 1998 a full bench of the appellate division of the Supreme Court of Bangladesh, after considering the views of jurists and *ulama* on interpretations of the primary sources of Islam relating to the dispute, overturned this progressive judgment in favour of a traditional view. Typically, a divided reaction to the ruling followed.⁴¹

While a study of this country does not fall within the ambit of this article, it must be stressed that courts in Pakistan have, subject to satisfying certain criteria relating to social need and scope for the regulation in the two main primary sources, creatively exercised *ijtihad* (independent reasoning) from as early as 1964 in interpreting the primary sources and in differing from the views of early scholars.

3.1.3 Further examples of countries where women enjoy *mata'a*

While Indian Muslim women are left to depend on their male relations or the community for maintenance after *idda*, or turn to prostitution or suicide for relief, in many Muslim countries like Egypt, Morocco and Tunisia women enjoy an equitable right to maintenance after divorce, and

39 47 (1995) Dhaka Law Reports 54. See also Carroll (fn 34) at 196.

40 Reference was made by the judges to Q.2:240-242, Q.3:7 and Q.2:12 all in support of a literal and liberal understanding of the matter.

41 Islam T 'Rights-Bangladesh: activists demand just family laws for women' (1998) at www.saxakali.com.

in some countries (for example, Egypt, Jordan and Malaysia) a further compensation (*mata'a*) is given. This does not mean that legal bias against women in the areas of civil and criminal law regarding personal law does not exist in these countries. Even secular Turkey, where the majority of citizens are Muslim, is guilty of such bias. It is also not uncommon for a country to change its predominant school of Islamic law in favour of another so as to ensure more just rulings in the cases of divorce and maintenance – for example, Egypt and India. Nor is it uncommon for constitutional and human rights violations to occur in various Muslim and non-Muslim countries in spite of constitutional guarantees of equality and the ratification of United Nations human rights instruments. For example, most Muslim countries have placed reservations on Article 16 of CEDAW,⁴² which provides for equality between the sexes in all matters relating to marriage and its dissolution, in so far as it conflicts with Islamic law principles in this regard.

4 SOUTH AFRICA

In South Africa, as elsewhere, most Muslim women are not employed outside the home and are therefore destitute upon the expiration of the waiting period which follows an Islamic divorce. A case study will highlight that recourse to secular courts has only provided partial relief and is therefore not the whole solution. At the end of November 2001 the South African Law Commission (SALC) (Project 59) released a Draft Discussion Paper on Islamic marriage and related matters for public circulation and final comment in which maintenance was considered. The discussion paper was in pursuance of the trend for reforms in Islamic maintenance law initiated by certain Muslim countries. The approach was that the law should be reformed before it can be expected that the secular courts or religious tribunals can apply it to the benefit of women. The provisions in the SALC paper attempted to achieve this.

4.1 General

South African Muslims are heterogeneous, comprising cosmopolitan groups from various cultural, ethnic, language and social backgrounds, who have arrived in South Africa from as early as 1658. Islam is a minority religion in South Africa. Muslims in general are *Sunni* and are approximately equally divided between the Hanafite and Shafi'ite schools. While Muslims estimate their numbers in excess of a million, the census of 1996 indicated that there were only just over a half a million Muslims (553 585) out of a total population of 40.5 million.⁴³ In terms of this census, Muslims constitute an estimated 1.4% of the total population compared to nearly 80% Christians. Despite their small numbers, Muslims have come a long

42 The Convention on the Elimination of All Forms of Discrimination Against Women. South Africa ratified CEDAW in 1995 without any reservations.

43 Because more than 9% of the total population refused to or did not state their religion in the census, the above figures must be regarded as estimates.

way since their first arrival in South Africa. They are largely urbanised, highly visible, vociferous and professionally, economically and politically active in the public life of contemporary South Africa.

While there is no formal priesthood in Islam,⁴⁴ in South Africa there are various institutive bodies of experts on Islamic law, namely *Ulama* (religious) bodies. These bodies represent a variety of religious backgrounds and orientations, including ordinary people with no formal legal or theological qualifications.

4.2 South African maintenance law and its potential

The following section will outline the current South African legal position regarding the maintenance of a divorced woman. The discussion of two pertinent cases will assist our attempt to test whether South African law may accommodate the form of maintenance for the divorced Muslim woman as described above. Thereafter views of certain *Ulama* (persons learned in Islamic Law) who deal with Islamic divorces will be described.

In general, a common law duty to support another person will arise only where parties are related by blood or by reason of a lawful marriage. In addition, parties may enter into agreements creating such a duty. As explained in *Boberg*, the common law duty of support arises when:

- (a) the person claiming support [is] unable to support himself or herself;
- (b) the person from whom support is claimed [is] able to support the claimant; and
- (c) the relationship between the parties [is such that it creates] a legal duty of support between them.⁴⁵

It should be noted that this duty of support can apply to both the husband and the wife. The notion of support extends beyond household necessities and may include medical and dental expenses, accommodation, food, clothing and the cost of legal proceedings instituted against or by the wife. The scale on which household necessities are measured depends on the 'social position, lifestyle and financial resources of the spouses . . . the scope of the duty is determined by the couples' standard of living and standing in the community'.⁴⁶ The duty of support exists during marriage and may continue after divorce under certain circumstances.

In general, a spouse can only claim current maintenance. Arrear maintenance may only be claimed where the spouse was not able to support himself or herself, where a court orders such maintenance to be paid or where the spouses have an agreement pertaining thereto.⁴⁷ Though Muslim

44 Islam allows each knowledgeable and conscientious Muslim to be an authority on Muslim law.

45 Van Heerden B *et al Boberg's law of persons and the family* (1999) at 233–235.

46 Van Heerden *et al* (fn 45) at 236.

47 Van Heerden *et al* (fn 45) at 238.

marriages are not recognised in South Africa, contractual obligations relating to them should be enforceable.⁴⁸

South African law provides that on entering a marriage parties may agree to their matrimonial property regime. The choice of marital property regime is relevant to this paper because it introduces a division of the spouses' estates which Islamic law does not provide for. Thus, under South African law, a spouse may receive a portion of the other spouse's estate as well as maintenance.

Spouses are deemed to marry in community of property unless they agree to marry out of community of property, with or without the accrual system applying. The effect of the choice of marital property regime is not limited to which spouse may be sued by a third party. On divorce the property regime will determine how the spouses' assets are divided and whether any further steps should be taken to create a more equitable result.

For example, on marriage in community of property the spouses' estates are merged. When they divorce the estate is divided evenly between them. Where spouses are married out of community of property their estates remain separate throughout the marriage. If the accrual system applies, the court, on divorce, will compare the increase in each of their estates or consider by how much the estate has depreciated during the marriage. The spouse whose estate has increased the least will receive half the difference of the growth between the two estates.⁴⁹

Section 7 of the Divorce Act 70 of 1979 provides specific relief to a divorced spouse, complementing the common law and, by regulating a spouse's duty of support beyond marriage, superseding the common law duty of support.⁵⁰ Section 7(2) provides a means of calculating an appropriate amount of maintenance to be paid, which may run until the death or remarriage of the beneficiary spouse. Furthermore, section 7(3) provides that where spouses are married out of community of property, and where a spouse has contributed to the 'increase of the estate of the other party',⁵¹ a court may divide the assets of one spouse and transfer them to the other spouse on an equitable basis. Pension interests form part of the spouse's assets which may thus be divided and distributed.⁵²

Our courts have generally adopted two approaches to post-divorce maintenance. One approach acknowledges a woman's need for support after divorce. Some feel that this extends the husband's obligation to maintain his ex-wife to the extent that he is unduly burdened. From this

48 *Ryland v Edros* 1997 (2) SA 690 (C) where, in terms of such a contract, arrear maintenance was granted to the plaintiff. However, due to provisions of the Prescription Act this was limited to maintenance due to the wife during the preceding three years only.

49 Hutchison D (ed) *Wille's principles of South African law* (1991) at 165.

50 *Rubenstein v Rubenstein* 1992 (2) SA 709 (T) as discussed in Lupton ML 'Variation of a spouse's maintenance' (1992) 109 *South African Law Journal* at 593–594.

51 S 7(4).

52 S 7(7)(a).

standpoint divorced women are often stigmatised as 'alimony drones'.⁵³ At the other end of the spectrum there is a distinct move toward severing links between divorced spouses as quickly and neatly as possible (also referred to as the 'clean-break' principle). This approach recognises changes to the modern family structure and acknowledges that in most families both husband and wife are required to be breadwinners. This view favours the growing independence of women but does not effectively provide for women who have carried the burden of running a home, taking care of children and supporting their husbands. After divorce such women are left with virtually no recognition of their contribution to the marriage and increase of the husband's estate. The lack of financial compensation takes on a harsher meaning when we consider the resulting decline in the living standards of divorced women and the fact that they usually have custody of children born of the marriage.⁵⁴

Divorce in South African law is no longer based on the fault of a party. The effect has been to embed the 'clean-break' principle when dealing with the division of assets and the maintenance of spouses on divorce. Post-divorce maintenance or alimony is not encouraged by this approach. This may be attributed to the punitive effect that alimony may seem to have, especially in a legal system which has rejected fault-based divorce.

There is, however, a middle path which may provide relief. De Jonge explains:

The objective of post divorce spousal support should be to adjust the economic advantages and disadvantages arising from the marriage equitably, in so far as the adjustment is not made by the parties' matrimonial property system or a redistribution order in terms of section 7(3) of the Divorce Act.⁵⁵

Thus, she proposes that in circumstances where women have been supported by their husbands during the marriage, where they have cared for children, assisted the husband and perhaps sacrificed their careers, they should be granted post-divorce maintenance whereas (for example) younger women without children who have careers should not receive it. This approach is based on the principle that individuals should be responsible for themselves.⁵⁶

The various common law approaches suggest that, without legislation, it may be difficult to ask the courts to grant Muslim women post-divorce maintenance, even if it is religiously sanctioned. This is partly because the courts are unwilling to enter the realm of doctrinal entanglement; but, in addition, it seems patently unjust to impose responsibility for alimony on Muslim husbands but not on those of other faiths.

Legislation which gives effect to the Muslim man's obligation to maintain his wife after divorce might face similar difficulties. Obvious challenges would relate, *inter alia*, to the right to dignity and the right not to

53 De Jonge M 'New trends regarding the maintenance of spouses upon divorce' (1999) *Tydskrif vir die Suid-Afrikaanse Reg* at 80.

54 See De Jonge (fn 53) 75-87.

55 De Jonge (fn 53) 84.

56 De Jonge (fn 53) 85.

be discriminated against on the basis of religion and gender. Nevertheless, there is room for the Islamic concept of post-divorce maintenance, as described in this article, to be incorporated into South African law. On the one hand, it would be relatively simple to assist those who are most vulnerable, such as women who have been married for a long time, who may have reared children, run households, who have not been employed and have directly or indirectly assisted their husbands.

However, the common law duty of support which automatically arises on marriage does not include spouses married in terms of Islamic law and by Islamic rites. This is because Muslim marriages are not recognised in South Africa.⁵⁷ The primary reason for non-recognition is that the potentially polygynous nature of Muslim marriages is *contra bonos mores*.⁵⁸ On the other hand, a blanket provision for maintenance is likely to fail constitutional review and would not be the equitable or contextually appropriate solution which we are arguing for. Instead, decisions should be made on the facts and merits of each case. The following argument for post-divorce maintenance of South African Muslim women will only consider the divorcée in the disadvantaged circumstances mentioned above.

Two cases are relevant to this discussion. While the court in neither case recognised Muslim marriages as valid, each showed how the common law may assist spouses married by Islamic rites. It should also be noted that the court tried not to make sweeping judgements but to keep the issues as narrow as possible.

In *Ryland v Edros*,⁵⁹ in brief, the Cape High Court awarded Mrs Edros her claim for maintenance for three months (*nafaqah*: that is, for the period of *iddah* only but not thereafter) and a consolatory gift (*mata'a*) for unjustified repudiation. The court in this matter also acknowledged a factually monogamous Muslim marriage and recognised the resulting contractual agreement which imposed reciprocal rights and duties on the spouses.⁶⁰ The court did not, however, decide that 'the Muslim marriage generated a legal duty to support a wife'.⁶¹

It is submitted that this is the correct approach to have taken in that spouses' duty of support stems from the lawful (recognised) marriage and not from bilateral agreements. Antenuptial or marriage contracts deal with the proprietary and personal consequences of a marriage. The duty of support is not an automatic consequence of an antenuptial contract. If the duty is to be founded in such a contract it should be explicitly, and not tacitly, incorporated in that contract.

57 *Ismail v Ismail* 1983 (1) SA 1006 (A) and *Seedat's Executors v The Master (Natal)* 1917 AD 302.

58 Freedman W 'Islamic Marriages, the duty of support and the application of the Bill of Rights' (1998) *Tydskrif vir die Suid-Afrikaanse Reg* at 534.

59 *Ryland v Edros* 1997 (2) SA 690 (C).

60 Mahomed A (in 48 above) at 37.

61 Rautenbach C and Du Plessis W 'The extension of the dependant's action for loss of support and the recognition of Muslim marriages: The saga continues' (2000) *Tydskrif vir die Suid-Afrikaanse Reg* at 304.

Under both Islamic and South African law the duty to support another depends on issues including reasonableness, need and the ability to provide maintenance. These are difficult, though not impossible, to capture in a contract. Therefore, though explicit inclusion of a duty to support as an essential term to a contract is possible, it would be fraught with many possible interpretative difficulties. Furthermore, given their reluctance to enter into doctrinal issues, courts would be reluctant to turn to Islamic law as a guide when seeking to remedy a breach of such contract or simply giving effect thereto. This may be altered by the inclusion of Muslim assessors to sit with judges in relevant cases, as proposed by the South African Law Commission.

The second case is that of *Amod*.⁶² In this matter the Supreme Court of Appeal did not consider the lawfulness of Muslim marriages. The question before the court was whether Mrs Amod's deceased husband, to whom she was married by Islamic rites, had a duty to support her during the existence of their marriage. The Supreme Court of Appeal found that the Islamic marriage resulted in the legal duty of Mr Amod to support his wife and that their relationship 'deserved recognition and protection at common law'. According to Rautenbach, 'it can therefore be said that the obligation to maintain is based not only on the contractual nature of the marriage but also on its religious foundation'.⁶³

The *Amod* case could be used to expand the recognition of the duty of support which Islamic marriage imposes on a husband. Thus, a wife married by Islamic rites should not be limited to claiming loss of support from third parties. It should be possible to focus the recognition of this duty to enforce a Muslim husband's duty to support his wife. With regard to post-divorce maintenance, this may be easier to justify at common law when a wife has devoted herself to assisting her husband or in the common household. Thus, the third approach to post-divorce maintenance (outlined above) and *Amod*'s recognition of a Muslim husband's duty to maintain his wife, open the door to a right to post-divorce maintenance on the part of Muslim women.

Naturally, at common law, this leaves open the question as to how such alimony should be calculated. For example, should the common law alone be utilised, should the SALC's recommended reforms come into effect and, what voice will Muslim assessors on the bench give to Islamic law?

4.3 Views of *Ulama* in the Cape

The purpose of conducting interviews with *Ulama* was to relate the theoretical debates discussed in this article to the opinions of persons who deal with Muslim divorces on a daily basis. Each of the religious functionaries

62 *Amod (born Peer) and Another v Multilateral Motor Vehicle Accident Fund* 1998 (4) SA 753 (CC) and, most significantly [1999] 4 All SA 421 (A).

63 *Amod* at par 25 in Rautenbach (fn 62 above) at 309.

interviewed⁶⁴ dealt with Islamic marriages, with reliance on the civil legal system only as a means of obtaining and enforcing maintenance orders against the former husband. This occurred because the divorce arrangements of these *Ulama*, even though they are in terms of Islamic law, have no binding authority due to the non-recognition of Muslim marriages in South Africa.

We will describe the opinions of each of the interviewees in turn. The narrow issues discussed were: when does the payment of maintenance to the wife begin – after the first revocable *talaq* or only after the three-month period for reconciliation has expired? And: what were the interviewees' opinion of and experience with the giving of a parting gift to the divorced wife?

Both Imam Yusuf and Imam Karan insisted that the *idda* period begins as soon as the revocable *talaq* has been given. Neither indicated openness to the idea that the *idda* period should only begin on confirmation of the revocable *talaq*.

Imam Yusuf acknowledged that parties could agree to alimony for the wife and that a parting gift could be made to the wife. He stressed that in both cases the husband was placed under no obligation by the *Shari'a* to do so. Furthermore, Imam Yusuf expressed sadness that, though both these issues are laudable and, in today's socio-economic climate, should be encouraged, they hardly ever occur. He commented that, as men usually do not pay their wives maintenance even during *idda*, it would be difficult, especially in an acrimonious divorce, to suggest further support from the husband.

Imam Karan considered the *mata'a* as a consolatory gift which is part of the *Sunnah*. He went on to explain that it has never been part of the norms of Cape Muslim society and that, when a marriage breaks down, the acrimony between the spouses would make it difficult to introduce this concept. The Muslim Judicial Council's Department of Social Welfare, under Imam Karan, decided earlier this year to introduce the concept of the consolatory gift during divorce proceedings. The purpose, however, was to introduce a possible means of repairing the spouses' relationship, especially where they need to maintain contact due to their children.

Imam Karan thought that the concept of post-divorce maintenance would be considered novel in Cape Town and linked it to the *Shah Bano* case. The Imam was, however, not forthcoming on this question and simply acknowledged that it introduced a new angle from which to discuss the issue of maintenance.

Moulana Ahmed Mukadam succinctly explained that the concept of post-divorce maintenance *per se* was not usual in Islamic law. Nevertheless, prevailing socio-economic conditions and their effect on the family

64 The persons interviewed were Imam Yusuf of Al-Jaamiaah Masjid (Claremont), Imam Y Karan: Head of the Department of Social Welfare of the Muslim Judicial Council, and Moulana Ahmed Mukadam: Deputy Rector (Administrative) of the Islamic College of South Africa (ICOSA).

structure could justify a move towards support of the divorced wife. He was unsure whether the *Shari'a* clearly indicated that this could be done but recognised that it was open to interpretation and could be sanctioned. According to Moulana Mukadam, there are sufficient restitutive values in Islam to assist in interpreting the *Qur'an* to provide relief to the divorced wife. He acknowledged that one of the practical impediments to this would be the bitterness which accompanies divorce and may block out the parties' appreciation of positive values.

Once again, the issue of enforceability is relevant. The consolatory gift on parting is not compulsory. Therefore, in order to escape giving this gift on the legal technicality that it is not compulsory in the *Shari'a* (*fard*), most husbands sacrifice their spiritual duty to leave their wife in kindness and goodness. Moulana Mukadam also expressed the view that in the case of a revocable *talaq* the period of *idda*, and so maintenance, begins only when the *talaq* is confirmed; to begin *idda* on the delivery of a revocable *talaq* would simply be trickery in the eyes of God.

Though the interviewees' opinions varied, they all agreed that Muslim men find it very difficult to respect their obligations to their divorced wives. Simply maintaining the woman for three months is beyond most men. Thus, at least for Imams Karan and Yusuf, debate about when the *idda* should begin is subsumed by the reality of unenforceable obligations. Each of the interviewees mentioned the lack of conscience displayed during divorce proceedings.

5 CONCLUSION

Islam imposes a duty on men to maintain their wives regardless of their, or their spouses', financial position. Thus, wives have a right to maintenance which is not limited by any obligations on the woman to contribute to the maintenance of the family. Unfortunately, this ideal position is not necessarily reflected in practice. In the final analysis, and notwithstanding Q.4:34 and Q.2:228 and their half share of inheritance, women today can, and in fact often do, provide for themselves. However, in view of the fact that it is women who bear children and shoulder most of the responsibility for rearing them, they should not have the added burden of simultaneously providing for a family as well.

The right of a Muslim woman to maintenance during the marriage is generally enforceable in a court of law. This is possible even in a secular country such as India. The *Rylands* case in South Africa has opened the door to the enforcement of rights and duties included in the Muslim marriage contract. Should the wife justifiably fail to comply with her marital duties she will not lose her right to maintenance. The four schools of Islamic law have laid down elaborate rules to decide the validity of claims of wives in such cases, including illness of and abandonment by the husband.

Wives can also contractually secure for themselves more elaborate maintenance at the inception of the marriage. While it would be ideal that women should consider including such conditions in their marriage contracts as a way of alleviating the types of problems discussed above,

however, it is often difficult or distasteful to discuss divorce issues at the commencement of marriage.

Opposing views of Muslim *ulama* and intellectuals on the question of post-divorce maintenance come as no surprise. It reflects the different norms of Islamic law which vary within and among countries and different schools of law, and is indicative of the interpretative plurality which is evident in most aspects of Islamic law. While often posing problems such as these as issues concerning the *Qur'an* and its proper interpretation, it really boils down to the extent to which it is found that Western influence on the secular and religious aspects of life should be tolerated.

As is the case in India, the fathers and brothers of local South African Muslim women are encouraged to take care of their divorced daughters and sisters in accordance with Prophetic tradition.⁶⁵ This is one of the reasons why women get a lesser share of inheritance. While there is no doubt that Prophet Muhammad's intention was noble, modern reality is that women often do not even get this lesser inheritance. This article recommends that we should rather follow the example set in Egypt and certain other countries with regard to maintenance and women's enjoyment of *mata'a*. The *Qur'an* also supports this view by not setting numerical limitations on the husband's duty to support and further stating that parties should depart in kindness. One of the aims of this article is to highlight the fact that there is much more to the *Qur'anic* concept of *mata'a* than meets the eye.

A Muslim marriage is dissolved on death or divorce. On dissolution, a widow is far better off than a divorcée, as the former is entitled to a share of inheritance and is provided with a year's maintenance.⁶⁶ The *Qur'an* undoubtedly also makes provision for the divorced wife by way of a *mata'a*. God, in His infinite wisdom, makes these types of mechanisms available, so much so that any unpaid portion of a dower, for example, becomes payable on divorce. However, dower and maintenance must be distinguished.

It is clear from all the *Qur'anic* verses on maintenance that the attitude of the *Qur'an* toward divorced women is one of compassion and concern. A divorced Muslim woman is not asking for more than is given to her by divine decree. *Mata'a* is not a Western concept, nor is it a fabrication of feminism and therefore un-Islamic. It ought to be given its due *Qur'anic* weight, just as divorced women are the legitimate beneficiaries thereof. If a man can lawfully gift large sums of money to a wife, what is there to preclude a man of means, who has unreasonably divorced his wife, from making post-divorce maintenance available to her as a dutiful wife and mother of his children who is now more in need of support?

In today's context, where life expectancy is longer, many divorced women choose to remain unmarried or not to remarry quickly. Viewed in

65 Ad-Da'wah 'The place of women in Islamic society' (1998) *Ad-Da'wah* 5 at 7.

66 There is scope for an investigation to ascertain whether a year's maintenance may actually be interpreted to mean 'a yearly amount'.

this context, *Qur'anic* restrictions relating to time may be seen as context-specific and not intended to bear harshly on widows and divorcées. The effect of this would be to retain and respect the values of restitutive justice and goodness which are inherent in Islam.

As was the case with the history of the recognition of Muslim marriages in South Africa, the issue of maintenance for Muslim women has to extend further than political considerations. The Project Committee responsible for the SALC Discussion Paper has set out to ensure that women are not discriminated against in the formulation of legislation in recognition of Muslim marriages and related matters such as maintenance and divorce.

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Addendum

Whilst Muslims still await formal recognition of their marriages and related matters, recent developments include the Constitutional Court judgment in *Daniels v Campbell* 2004 (7) BCLR 735 (CC) at par 40, deciding that parties to a Muslim marriage are also spouses in terms of the Intestate Succession Act 81 of 1987 or survivors in terms of the Maintenance of Surviving Spouses Act 27 of 1990. There continues to be a change in the approach and attitude of courts and a definite shift in what is meant by *boni mores* which is consistent with a new constitutional ethos of tolerance, pluralism and religious freedom.

As far as legislative developments are concerned, the latest report on Muslim marriages containing the background to the investigation by the South African Law Reform Commission (SALRC) (conducted by including a Project Committee including the first author), the Discussion and Issue Papers, extensive comments received from interested parties and the final draft Bill are available at <http://www.law.wits.ac.za/salc/salc.html>.

The final Draft Bill on the Recognition of Muslim Marriages (2003) makes provision for, *inter alia*, the recognition of Muslim marriages in South Africa; the requirements for a valid Muslim marriage; registration; the status and capacity of spouses in Muslim marriages; and the proprietary consequences and termination of Muslim marriages. Intestate succession

did not form part of the Project Committee's mandate. The general viewpoint is that the final draft Bill will alleviate the hardships that existed as a result of non-recognition of Muslim marriages. Muslims can, however, choose not to be bound by these provisions. It is envisaged that the extensive maintenance provisions, as provided for in section 12, will assist in alleviating some of the practical problems and hardships experienced by Muslim women. Whilst deemed contentious and although practical reality dictates otherwise, there is no reciprocal duty on the wife to support her husband.