



BASHEER PARUK  
MEDIATORS &  
ATTORNEYS

OUR REF	tbc
YOUR REF	TBC
DATE	7 <sup>th</sup> DECEMBER 2023

TO:

THE MUSLIM UMMAH

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Good day;

**RE: Review of Aspects of Matrimonial Property Law**

**RE: DISCUSSION PAPER 160**

1. The above matter refers.
2. Kindly note, The SA Law Reform Commission has published the “*Discussion paper 160*” (“the discussion”) which specifically deals with the review of aspects of matrimonial property law.
3. On the 4<sup>th</sup> December 2023, our offices were invited to a zoom discussion with the commission itself, which discussed the contents of the discussion. Whilst we aired our objection to the proposed review, we were shocked to find that majority of the participants voted in favour of it. This is mostly due to the unfortunate reality, which is that, many of us do not take the time out to lodge our objections, and have adopted the intoxicating view that our objection will be in vain or won’t make any difference.

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4. Our overall opinion on the aforesaid discussion paper 160, is that, the discussion is contradictory in itself, and further violates the general public's contractual rights, as well as Muslims religious rights, for the following reasons.

**INCLUSION OF AN ACCRUAL SYSTEM (UNISLAMIC)**

5. Clause 11.2 OF THE DISCUSSION PAPER 160

***“Accept that a religious marriage contract is akin to an antenuptial contract and import accrual as the default unless explicitly excluded, while still maintaining the formalities of the nikah.”***

6. Clause 2.33.4

***“Religious marriage contracts are considered to include accrual unless it is explicitly excluded.”***

7. The above clauses are in stark contrast with the Islamic faith. In this regard, the only regime which is harmonious to Islam is the **out-of-community of property regime EXCLUDING ACCRUAL**. Any other regime enforced upon a Muslim without an Islamic alternative, is unacceptable.

**SIMPLIFIED FOR THE PUBLIC:**

8. Essentially, any and ALL Islamic marriages will be deemed to include the Accrual system if the aforesaid proposals made in the Discussion Paper 160, are enacted.
9. What this means is that:
  - Muhammad and Maryam get married.
  - Maryam had R100-00 on the day they got married.
  - Muhammad had R50-00 on the day they got married.
  - At the date of divorce, Maryam has R5000-00
  - Muhammad has R50-00 at the date of divorce.

- Maryam's wealth increased by R4900-00 (R5000 – R100), whereas Muhammad's wealth remained as is, as he did not seek employment, and remained at home instead.
  - According to the accrual, Muhammad will be entitled to R2450-00 (R4900 / 2) of Maryam's Estate upon divorce or death.
  - Hence, the initial assets brought into the marriage will remain the private property of each party. However, the GROWTH in the estate of each party will be equally shared.
10. Hence, for all people looking to get married, whether rich or poor, whether black, white or Indian, they will **NEED** to register an Antenuptial contract ("ANC") EXCLUDING the Accrual system to keep it in line with the Islamic position (Out-of-community of property).
11. The average cost of an ANC with registration ranges between R4000-00 – R5000-00.
12. THE ABOVE WILL BECOME A REALITY IF THE PROPOSALS ARE NOT OBJECTED TO.

### **DEVIATION FROM AN ANTENUPTIAL CONTRACT (UNLAWFUL)**

13. Chapter 4: Deviations from the default matrimonial property system

***"The current rules aim to protect third parties, but contains insufficient mechanisms to ensure that spouses are protected against unfair antenuptial contract – both at the time when they are concluded and when they are enforced. The Commission therefore includes two sets of recommendations: first, ensuring that parties who enter into antenuptial contract have adequate information to understand the consequences of their contracts and second, recommendations which enable courts to deviate from the chosen property regime to ensure equity when the relationship is dissolved."***

14. Provision 21 reads:

***"Irrespective of the matrimonial property regime which an antenuptial contract introduces, a court may refuse to enforce such an agreement or a term in such an agreement at divorce or separation if its enforcement would cause serious injustice or undue hardship. In deciding whether serious injustice or undue hardship will result from enforcement of the antenuptial contract, a court should consider a list of factors."***

15. While in our view, the above clause is totally unislamic, the clause is further in conflict with the principles of contract law. Essentially what this means is that EVEN IF one registers the ANC which excludes the accrual system, then too, upon divorce or death, the court can still decide whether the court wants to have it governed in another way.

16. This will simply be at the court's discretion, to do as they please.

**PUBLIC APPEAL:**

17. Please do not delay in filing your objection.

18. If the proposals are enacted, this will have a grave effect on the Muslim Ummah of South Africa.

19. The laws of Allah Ta'ala will be broken, and people will get caught up in the idea that if something is legal, it is Halal.

**HOW TO OBJECT:**

20. Lodge the following objection:

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**TO: The South African Law Reform Commission**

**RE: Review of Aspects of Matrimonial Property Law (Discussion Paper 160)**

***Good day***

***I have perused the Discussion Paper 160, and note its unlawfulness.***

***The proposed reforms will be in direct conflict with the Islamic Faith.***

***The Islamic position is that an accrual system is totally impermissible.***

***Furthermore, the courts' ability to deviate from the chosen system further limits any opportunity to ensure that the Islamic position is ensured.***

***Any legislation enacted will be vehemently objected to by the Muslim community, and will be pursued up until the highest platform possible.***

*The default position for religious marriages must necessarily remain as out-of-community of property EXCLUDING the accrual, and further, the court must not have the arbitrary power to deviate from the chosen marital system, as this will be a violation of the laws of contract.*

*Kind Regards*

*[Name]  
[ID NO]"*

21. Kindly forward your objections to: [gmoloi@justice.gov.za](mailto:gmoloi@justice.gov.za), [reform@justice.gov](mailto:reform@justice.gov), [geraldinemoloi@gmail.com](mailto:geraldinemoloi@gmail.com)

**22. NOTE: THE DEADLINE FOR OBJECTIONS IS THE 31<sup>ST</sup> JANUARY 2024. PLEASE DO NOT DELAY, AND LODGE IT IMMEDIATELY IF NEEDS BE.**

23. **إِنْ تَنْصُرُوا اللَّهَ يَنْصُرْكُمْ**

*If you help [the cause of] Allah, ALLAH will help you.*

Yours Faithfully



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**PER: Mr B. Paruk**

**(Director)**