

Reaching Out Achieving Goals





INTERNATIONAL PEACE COLLEGE
SOUTH AFRICA

كلية السلام العالمي جنوب أفريقيا

Knowledge · Virtue · Civilization

Presents a Symposium

The Concourt Ruling on Muslim Marriages:

Implications and Challenges

Saturday
30th July 2022

13h30 to 17h00
OPEN FOR ALL

Speakers include:

Magistrate Mohamed Moolla
Shaykh Dr Muneer Abduroaf
Mr Ganief Hendricks MP
Advocate Ismail Mohamed
Advocate Fatima Essop
IPSA Honours Students



Refreshments to be Served

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AL JAMA-AH

Celebrates

15 YEARS

20TH APRIL

AL JAMA-AH 2024



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Aljama-ah party



South African National Assembly

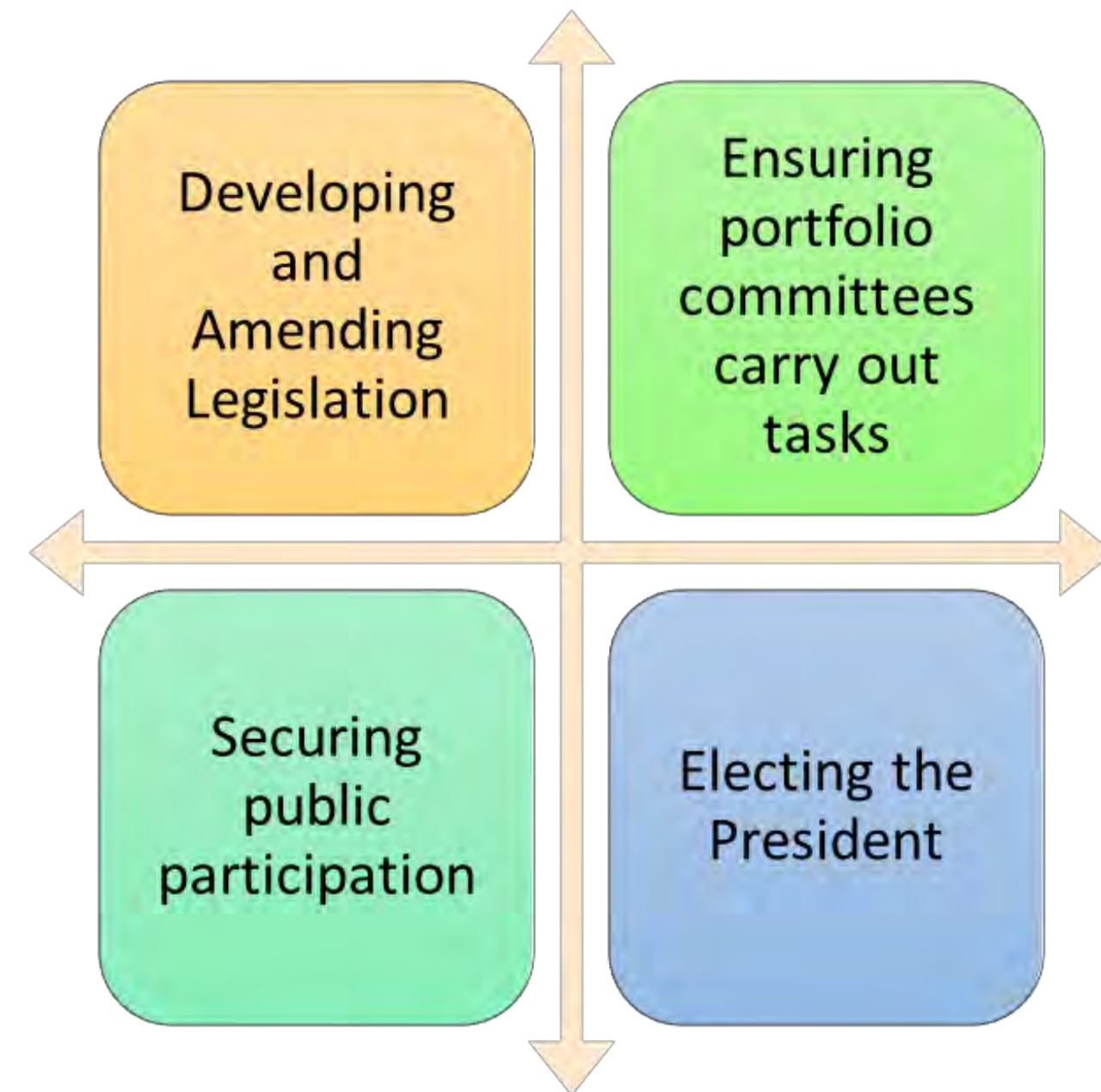
- National Assembly
- One of two houses of Parliament
- 4 Main Functions





The Four Main Functions

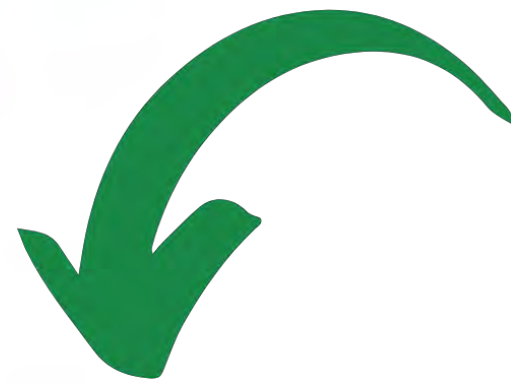
- Electing President
- Generation and Passing laws & legislation
- Ensuring members of executive (namely Ministers) carry out their work properly and efficiently.
- Providing a forum for representatives to debate issues on a public platform





Generating Bills

2 Pathways



- **Route One:** President and his Party
- President key player
- Instructions gathered from his Party
- The Party determines government policies
- These will inform and shape the Acts
- The Party produces something similar to a White Paper
- Circulates it for discussion/consultation



- **Route Two:** Any Party and Private Members Bill
- Al Jama-ah: used PMB pathway to construct and develop new Bills
- It adopted a consultative approach
- It opened the door for public participation in drafting the Bill
- It gave stakeholders the chance to get involved from the start
- It drafted the Bill and pushed it through different parliamentary structures



Constitutional Court Judgement

Implications & Challenges

The Marriage Act and Divorce Act

- Unconstitutional
- Must be amended within 24 months to recognize Muslim Marriages;
and
- To give more remedies to women who are divorced in terms of a Nikah



Women's Legal Centre

- The Women's Legal Centre must be acclaimed for getting the Nikah recognized.
- We know that they consulted with more than 40 Ulema bodies and others who have Muslim marital courts e.g.:
- The Muslim Judicial Council (MJC)
- Jamiatul Ulama South Africa
- When WLC was dissatisfied, they decided to go to the High Court, and it landed in the ConCourt





Legacy of IPSA Symposium

- IPSA post-graduate student, women, young people, and the Muslim community involved to get the legislation done **within 24 months.**
- They should get involved from the drafting stage and Al Jama-ah has created this enabling environment.



General Laws

AB Matrimonial Matters Bill (GLMMB)

◦ On the 8 July 2022 (10 days) after the judgement, Al Jama-ah registered the GLMMB.

Including

- Amendments to Divorce Act
- Amendments to **20** other Acts



Jumping The 'Legal Gun'

- While the Constitutional Court was deliberating, the Party submitted an Interim Registration of Muslim Marriages Bill.
- This was registered by the Speaker on 31 August 2021.



Legal Interventions The Bills and Acts

- The Interim Registration of Muslim Marriages Bill
- Maintenance Amendment Bill
- Amendments includes Divorce Act



The Interim Registration of Muslim Marriages Bill

- Waiting for a registration certification certificate.
- Expected to be sent to the Bills Department **before** the end of the year 2022.



Maintenance Amendment Bill

- The Party Seminar: on Nafaqah and maintenance with representation of all communities.
- There are Muslim men that do not Nafaqah their wives.
- Waiting periods at maintenance courts are up to 5 years for many women.

Al Jama-ah Party seeks amendments to seal loopholes in Maintenance Bill



The Al Jama-ah Party has introduced a private members bill, the Maintenance Amendment Bill 2021, in an effort to seal loopholes in the existing act. Picture: African News Agency(ANA)

Published Nov 30, 2021



Maintenance Officers

- Not properly trained in mediation;
- Not capacitated in resolving maintenance disputes speedily.



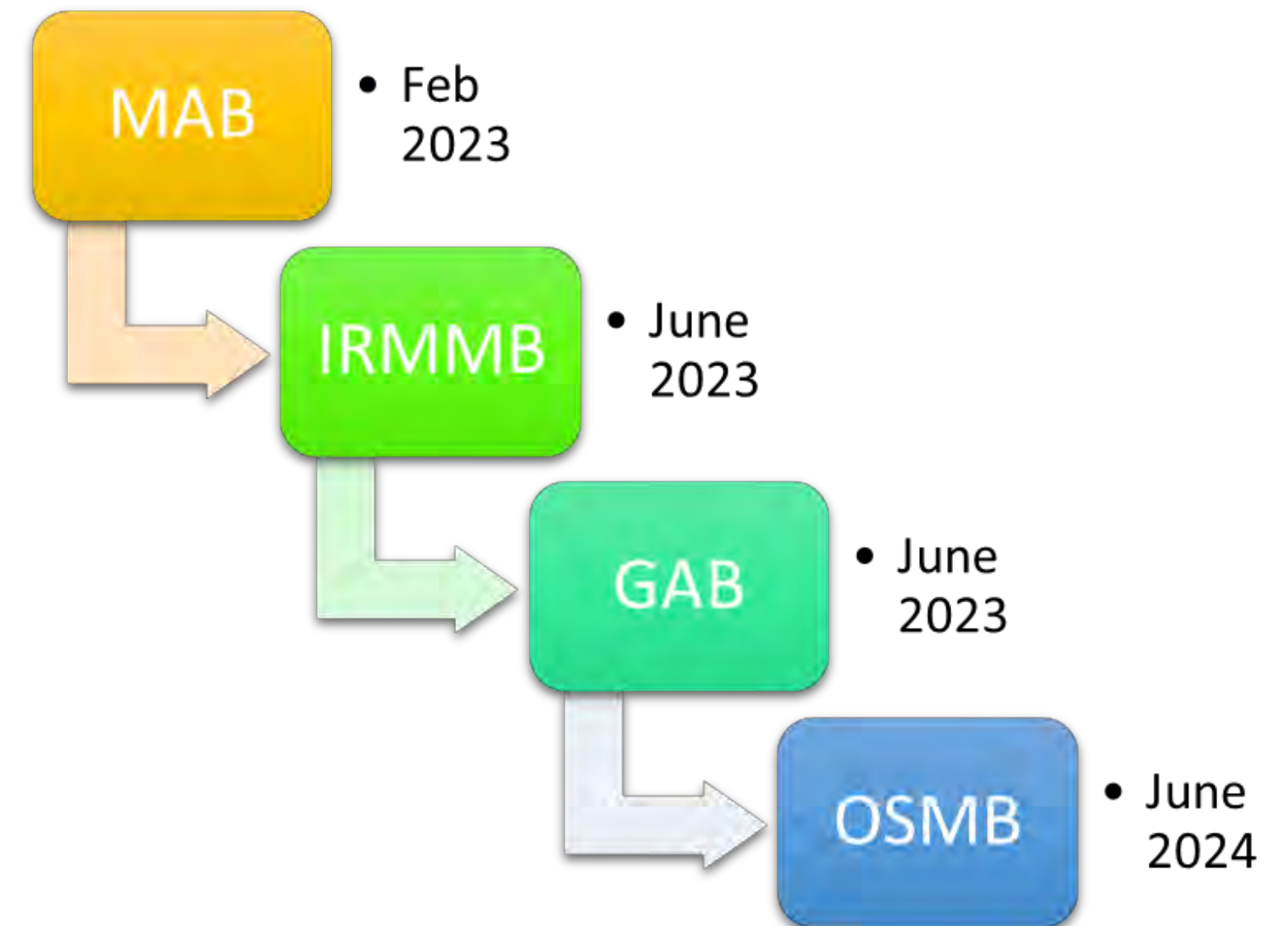
Maintenance Amendment Bill Registered with the Speaker

- **Al Jama-ah registered** the amendments on 16 November 2021
- The Maintenance Amendment Bill is ready to be sent to the Bills Office of Parliament providing for:
 - **Complainants** (mostly women) to receive the same travel and subsistence allowance like respondents (mostly men) when they have to appear in the Maintenance Court.
 - **Provision** for an alternative dispute resolution structure to speed up determinations which take up to five years because of court processes.
 - **Proposed amendment** for interim relief for the child in the first month when complaint is registered will not be pursued as the parliamentary advisor has responded that the present Act provides for that.



Voting on the Acts & Amendments to Acts

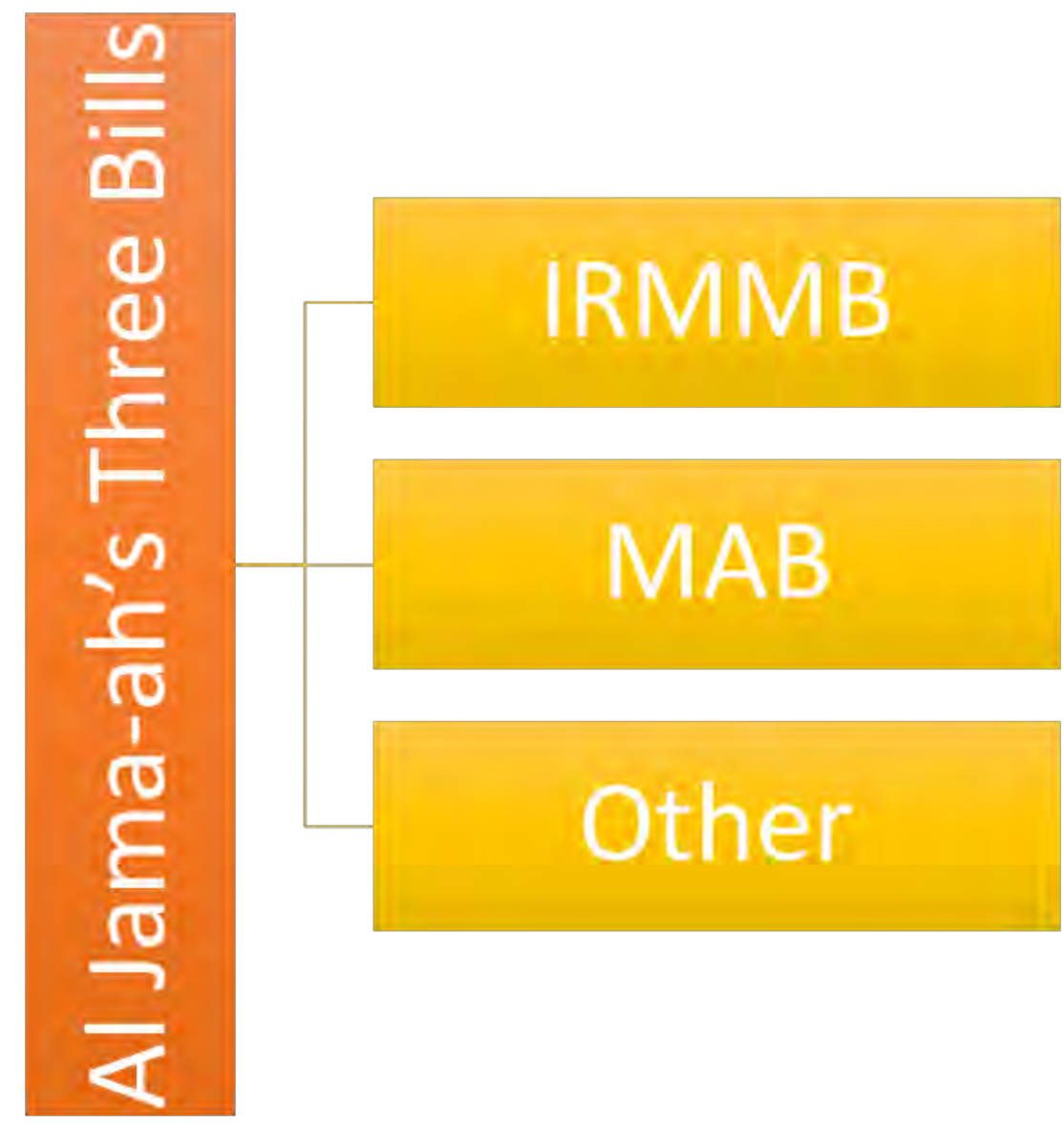
- Expected February 2023
- Voting for Interim Registration of Muslim Marriages Bill is expected June 2023.
- General Amendments Bills (which includes Divorce Act) is expected to be voted on before 24 month deadline of the Constitutional Court > **27 June 2024.**
- The One Statute Marriage Act is expected to be passed in 2028.





Al Jama-ah's Three Bills with Parliament Bills Committee

In 2023, Al Jama-ah will have THREE Marital Bills dealt with by the Bills Committee of Parliament.





THE WAY FORWARD

Honouring Iconic Figures and their
Proposals



Shaykh Dr Abdul Karriem Toffar

Lone Voice

- Former Islamic Unity Convention Chairperson
- Former Dean of the Faculty at the International Peace College South Africa.
- PhD in Islamic Studies (Muslim Personal Law) University of KwaZulu Natal





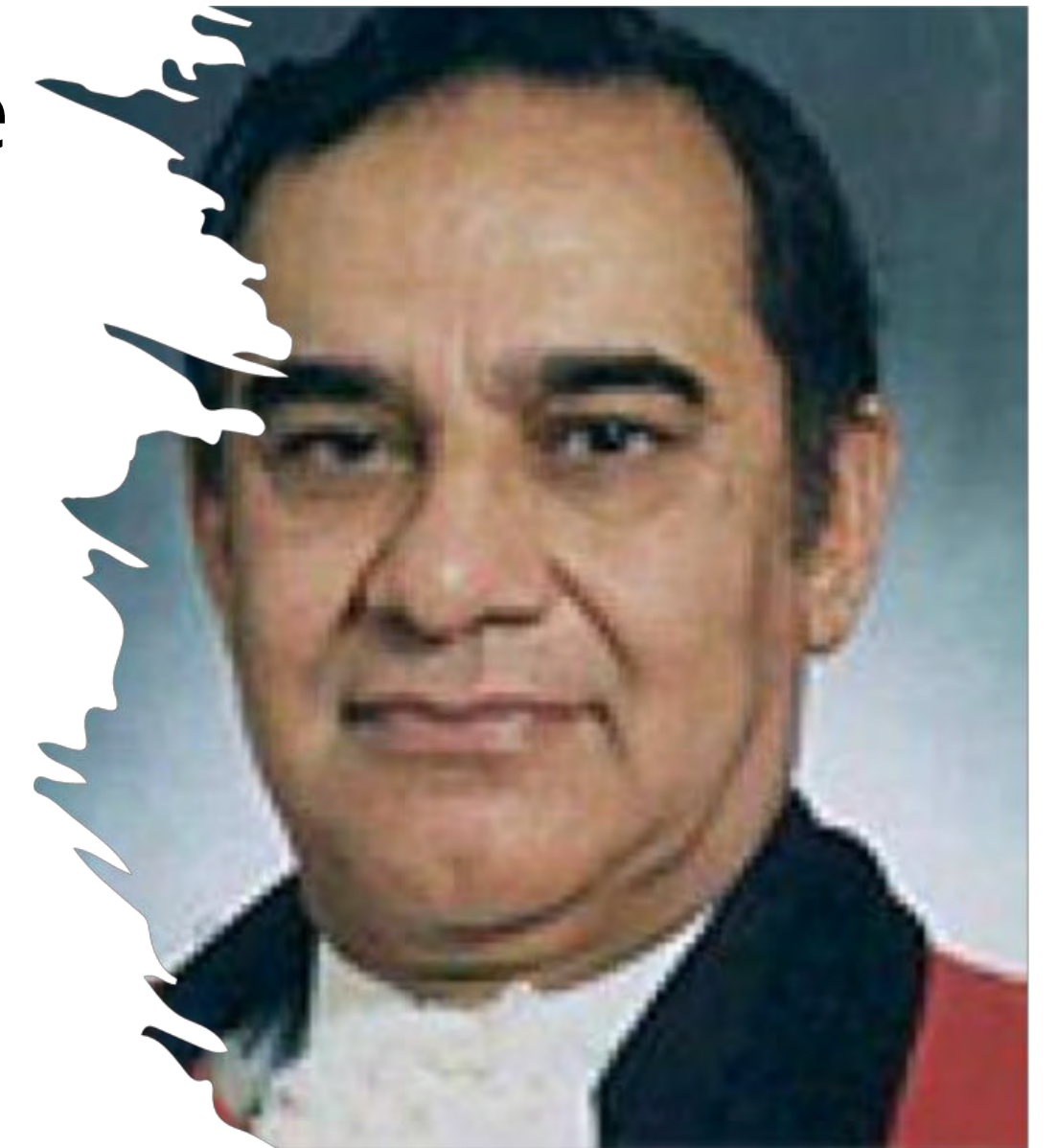
Toffar's Three Pronged Approach

- Argued for the Community to have its own administrative structures.
- Desired the registration of all nikahs and talaqs throughout the country.
- Proposed the idea of a Commission of Inquiry and set up the committees – a proposal that was turned down by late Minister Abdullah Omar.



Judge Ismail Mahomed (d.2000)

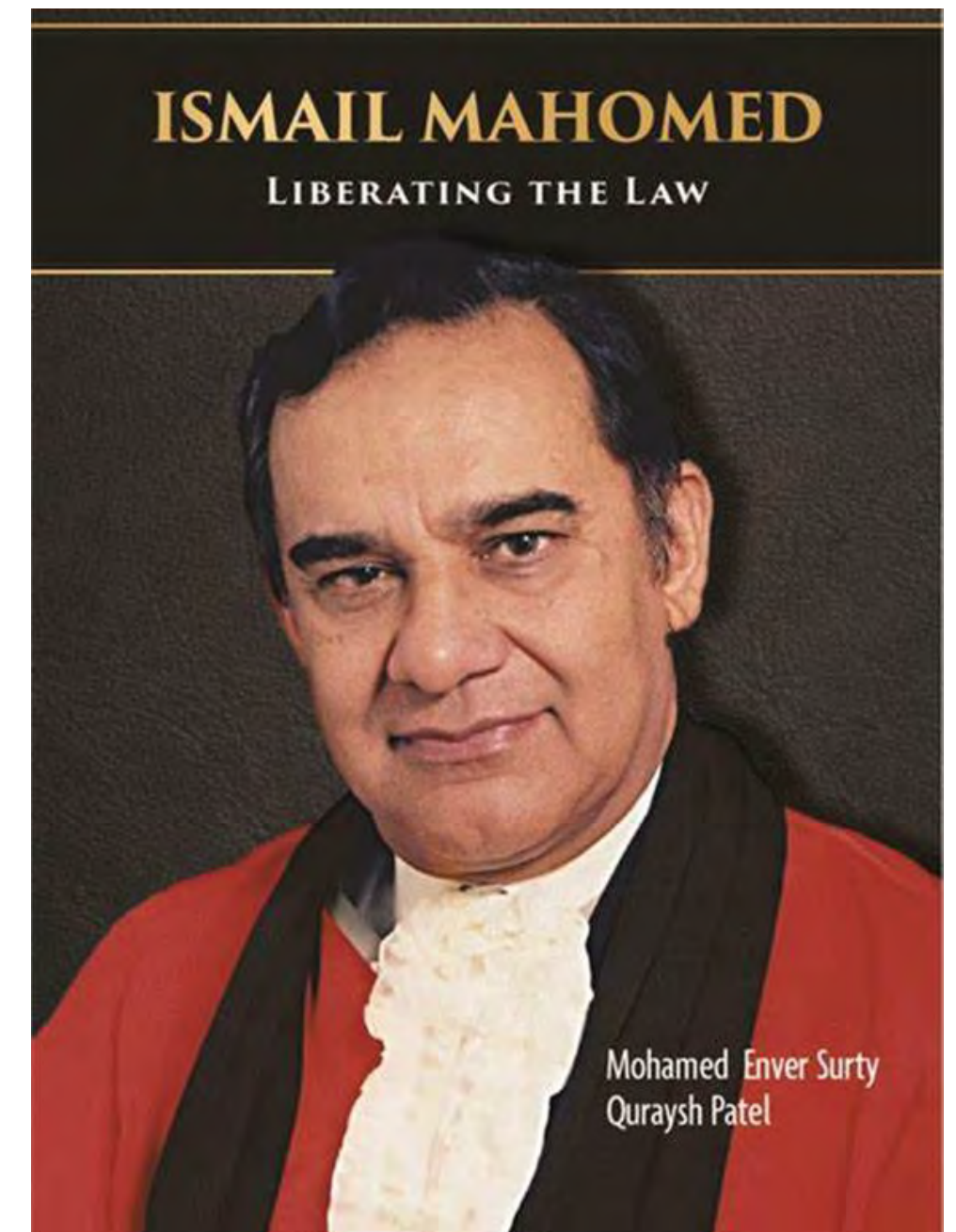
- Country's first non-white judge of the Supreme Court of South Africa.
- Appointed to the Appeal Court.
- Judge of the Constitutional Court in 1995.
- 1996 he was made the Chief Justice of South Africa by President Nelson Mandela
- Chair of SA Law Reform Commission tasked with submitting an MPL Report.





Judge's Report Recommendations

The only way forward is for Muslim marital disputes to be determined by a bench of Qadis





Al Jama-ah's Proposals

- It proposes **public participation** to start drafting the Bill;
- It proposes an **alternative dispute resolution** structure at this public participation process;
- It recommends that this structure should **provide for** a Bench of Qadis;
- It recommends that nikahs, talaqs, and fasahs be **lodged** with SA's Department of Home Affairs.

South Africa signed a Convention to put in place such structures in order to enhance Freedom of Religion



Final Remarks

- **Challenges** of the Constitutional Court judgement:
- One either chooses the former route of getting the governing party (ANC Muslim MPs) to give effect to the judgment; or
- One opts to get involved at the drafting stage: making amendments to the Marriage Act and Maintenance Act as well as amendments to the Divorce Act and Others;
- The Two Acts that were championed by the Party impacted upon the Divorce and Other Acts;
- Though the Party proposed amendments, it wishes the Parliament to drive this process.



Thinking Ahead

- Intends to see to the setting up of a Commission of Inquiry
- Encourages Parliament and related stakeholders to draft legislation
- Supports the idea that the public get involved in the drafting process
- Works towards the formation of Alternate Dispute Resolution Structures in accordance with religio-cultural needs of communities.



Raising Questions

- Which would have been a better option: The President's Route or the Party's Route?
- Was Al Jama-ah's approach a reasonable approach?
- Would it have been better had the Party not used the PMB pathway?
- Why have there been objections to these routes?
- What other routes outside Parliament were there?



For More Information Contact

- Individuals and interest groups can contact the Al Jama-ah Senior Researcher (**info@aljama.co.za**) to assist with the Private Members Bill: Divorce Act.
- Intern opportunities from IPSA's post-graduates are available

Advocate	Advocate	Advocate	Advocate	Advocate
<ul style="list-style-type: none">•Advocate Adhikarie•Chief Parliamentary Legal Advisor• CBS: Legal Services•021 403 8398	<ul style="list-style-type: none">•Advocate Charmaine van Der Merwe•Senior Parliamentary Legal Adviser•CBS: Legal Services•021 403 8398 (Supervisor)	<ul style="list-style-type: none">•Advocate Noluthando Mpikashe• Parliamentary Legal Advisor•CBS: Legal Services•021 403 8398 (Interim Registration of Muslim Marriages Bill)	<ul style="list-style-type: none">•Advocate Michael Prince•Parliamentary Legal Advisor•CBS: Legal Services•021 403 8398 (Maintenance Amendment Bill)	<ul style="list-style-type: none">•Advocate Noluthando Mpikashe•Parliamentary Legal Advisor•CBS: Legal Services•021 403 8398 (Divorce Act)



- Member of Parliament: Ganief Hendricks
- Advocates: Fairouz Nagia and Anton van Loggerenberg
- Lawyers: Yusuf Khan Dalwai and Faghmiyah Darries
- Secretarial: Gafsa Samodien and Faried Achmat
- Moulanas: Galil BRINKHUIS, Thapelo Amad and Hoosen Khan
- Ustads: Ashgar Khan
- Social Worker: Fatima Hendricks and Team
- Academic: Professor M. Haron
- Librarians: Faizel Khan AND Yasien Mohamed
- IPSA For Invitation

THANK YOU