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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION  
CONCERNING ITS RELEASE OF ISSUE PAPER 31 ON FAMILY DISPUTE  
RESOLUTION: CARE OF AND CONTACT WITH CHILDREN**

The South African Law Reform Commission (SALRC) hereby releases Issue Paper 31 on Project 100D, for general information and comment. The project involves the development of an integrated approach to resolving family law disputes. The specific focus is on disputes relating to the care of and contact with children after the relationship breakdown of the parents. The chairperson of the investigation is Judge Deon Van Zyl and the project leader is Advocate Mahlape Sello, a SALRC Commissioner.

Although South Africa has a no-fault divorce law, divorce proceedings still occur – in increasing numbers – in the various courts. Such proceedings follow the mostly adversarial court procedures.

Until recently, there was widespread acceptance that the courts were best suited to decide questions of custodial rights and access to children, and to decide family disputes in general. In recent years this assumption has been questioned.

Long court battles often cause harm to children and their relationships with their parents. Cases that are especially problematic are those where there are claims of violence or abuse, cases that have care and contact or care and protection issues, and cases that involve voluminous files or recurring litigation. The position of children living in rural areas also needs to be

considered. South Africa's unstructured, dual and fragmented family court system can be confusing and burdensome to users. It is also expensive to run, and fails to satisfy many people.

The limitations associated with adversarial litigation are thus firmly acknowledged.. The need has been identified to assist families with procedural issues arising out of separation, divorce, and child welfare. Mediation seems to have become a preferred procedure as an effective dispute resolution mechanism

Issue Paper 31 examines cost-effective, accessible, efficient and integrated processes that would help to address family law disputes, both in and outside the court system, and from both a private and public family law perspective. Attention is drawn in this regard to case flow management, the optimal use of various dispute resolution processes (mediation, arbitration, facilitation), and the importance of parenting information and education.

In addition, appropriate structures to accommodate the above processes are discussed. The issue paper refers in this regard to the courts, their jurisdiction and capacity to deal with civil disputes, the problems encountered by the Office of the Family Advocate, and the position of traditional courts and informal community involvement.

Finally, policy issues that have been raised since the implementation of the Children's Act are also discussed in the issue paper. They are as follows:

- The importance of hearing the child's voice when resolving both private and public family law disputes;
- The development of a fair system for relocation of families, and the impact of such a system on cases that involve the abduction of children;
- Ideas on how adult dependent children should be dealt with;
- The position of unmarried fathers now that the Natural Fathers of Children Born Out of Wedlock Act has been replaced by sections in the Children's Act;
- The impact of domestic violence or sexual abuse on the resolution of family law disputes;
- Professional (expert) reports; and
- Child-headed households.

The ultimate object of this investigation is to ensure access to justice for the most vulnerable people in our society, namely children. A unified family judicial system is needed, one that is both more efficient at resolving family disputes and more likely to serve therapeutic justice. The

therapeutic justice process should empower families through skills development, and should assist families to resolve their own disputes. It should also provide access to appropriate services, and offer a variety of dispute resolution forums within a unified system, so that the family can resolve its problems without additional emotional trauma.

The challenge for the future does not seem to require a choice between alternative dispute resolution and litigation, but a plan to integrate these two approaches. Parties should have the freedom to tailor the procedure they follow to meet the needs of their particular dispute.

The purpose of Issue Paper 31 is to stimulate debate, seek proposals for reform, and serve as a basis for further deliberation.

Respondents are requested to submit their written comments, representations, or requests to the Commission by **30 June 2016** at the following address:

The Secretary  
South African Law Reform Commission  
Private Bag X668  
Pretoria 0001  
Tel (012) 622 6348 (Ananda Louw)  
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Issue paper 31 is available on the internet at the following site: <http://www.justice.gov.za/salrc/>.  
Print copies of the issue paper are obtainable free of charge from the SALRC on request (please contact Mr Jacob Kabini at 012 622 6327).

Contact for enquiries in respect of the media statement: Ms Ananda Louw, (012) 622 6348 or 079 878 0926.

**ISSUED BY THE SECRETARY, SA LAW REFORM COMMISSION, PRETORIA**

**DATE: 22 FEBRUARY 2016**