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MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION ON THE RELEASE OF THE DISCUSSION PAPER ON THE REVIEW OF THE CHILD CARE ACT (PROJECT 110)

The South African Law Commission has approved the release of the Discussion Paper on the Review of the Child Care Act for public comment. The Discussion Paper contains the Commission's **preliminary** recommendations and findings following a comprehensive review of more than 24 statutes, including the Child Care Act, 1983, international law, the common law and religious and customary law affecting children. The Discussion Paper follows on the Issue Paper released in 1998 and is informed by an extensive consultation process involving the Portfolio Committee on Social Development, government departments, civil society and a child participation process.

Summary of points raised in the Discussion Paper

The Discussion Paper is a substantial document of 1274 pages. Given the broad scope of the investigation, the Discussion Paper covers a wide range of issues:

1. It considers the difficult issue of when childhood begins and when it ends. It further addresses the question of the best interests of the child, children's rights and responsibilities, and the principles underpinning the new children's statute.
2. It considers aspects such as legitimacy of children, artificial insemination and surrogate motherhood.
3. It deals with the diversity of family forms in South Africa, the shift from parental power to parental responsibility, the acquisition of parental responsibility by persons other than biological parents and the termination of parental responsibility.
4. It recognises prevention and early intervention services as vitally important components of a future children's statute.
5. Formal measures for the protection of children from abuse and neglect are the central focus of the Discussion Paper. The Discussion Paper considers legal provisions and interventions which are designed to deal with situations in which specific children are

being harmed, or are at immediate risk of harm, through abuse or neglect. Exploitation and abandonment, being forms of abuse and neglect respectively, are included within the ambit of these protective measures. The Discussion Paper further addresses issues such as the protection of the health rights of children, the protection of children as consumers, children in need of special protection, and the protection of children affected by the divorce or separation of their parents.

6. It examines the issues of legislative support for early childhood development services and temporary care of children by persons other than their parents or ordinary caregivers.
7. It deals with the following forms of substitute care: foster care, adoption, and residential care. More specifically, it addresses aspects such as professional foster care, cluster foster care, parental rights and responsibilities for foster parents, the foster care grant, who may be adopted, who may adopt, subsidised adoptions, the rights of children to care and protection in residential care facilities, minimum standards and quality assurance in residential care, and funding of residential care.
8. It considers the issues of religious laws and customary laws affecting children. It further addresses international issues affecting children. These include, inter alia, inter-country adoptions, trafficking of children across borders, child abductions and refugee children.
9. It proposes a new court structure with extensive powers, and addresses the issues of grants and social security for children, and a monitoring system to ensure the effective implementation of the new children's statute.

The Discussion Paper specifically addresses the care of sexually exploited children. In this regard, the recommendations made in respect of child prostitution, child pornography and child trafficking focus on the child as a victim and as in need of care. These are closely linked to the Discussion Paper on Sexual Offences, which focusses on the criminal law aspects, also released for public comment today. Both these Discussion Papers therefore aim to address holistically and in an integrative manner child sexual abuse, albeit from different perspectives.

Among the more contentious preliminary recommendations made in the Discussion Paper on the Review of the Child Care Act are the recommendations that the age of majority be lowered

to 18; that more than one (even more than two) persons be allowed to acquire and manage parental rights and responsibilities, or components thereof, in respect of the same child at the same time; that mothers and married fathers be accorded such parental rights and responsibilities automatically, while some unmarried fathers and other persons will have to apply to court to acquire such rights and responsibilities; that local government be empowered and compelled to provide primary prevention and early intervention services for children and their families; that the common law defence of the right of reasonable parental chastisement to a charge of assault be repealed in order to protect children from serious breaches of physical integrity, which in effect will make some forms of parental chastisement a criminal offence; that all children over the age of 12 years may consent to HIV testing, with proper pre- and post-test counselling; that confidential access to contraceptives should be provided to all sexually-active persons, regardless of age; and that safety at places of entertainment should be regulated.

The Discussion Paper does not contain a draft Bill. The preliminary recommendations in the Discussion Paper, however, contain clear legislative proposals for inclusion in such a comprehensive children's Bill. The preparation of the comprehensive draft children's Bill is receiving attention. The Commission will conduct a consultation process with the Discussion Paper as basis during February and March 2002. An inter-sectoral workshop is planned for each province during this period and those interested in attending are invited to register with the Commission. At the conclusion of this consultation process, the Commission will prepare a report which will contain its **final** recommendations and a refined children's statute. This report will be submitted no later than June 2002 to the Minister for Social Development who may then implement the Commission's recommendations by introducing the draft children's statute in Parliament.

An Executive Summary of the Discussion Paper is available free of charge on request from the offices of the Law Commission (telephone 012 - 322 6440 or fax 012 - 320 0936). The Executive Summary is also available on the Internet: <http://www.law.wits.ac.za/salc/salc.html> Given the length of the Discussion Paper, it will not be made available on the Internet. Those wishing to access the complete text will be provided with a WinZip file on request.

The closing date for comment is 28 February 2002. Comments and submissions are invited and can be addressed to:

The Secretary (attention Mr GO Hollamby / Ms Louisa Stuurman)

S A Law Commission
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PRETORIA
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A formal media briefing where copies of the Discussion Papers will be officially handed to the Ministers for Justice and Constitutional Development and Social Development will be held in January 2002.

For more information on this media statement, please contact Mr Willie Henegan, Mr Gordon Hollamby or Ms Louisa Stuurman at telephone 012 - 322 6440.

Issued By: THE SECRETARY OF THE SOUTH AFRICAN LAW COMMISSION

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