South African
Law Reform Commission

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STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS RELEASE OF ISSUE PAPER 41 ON THE REVIEW OF ASPECTS OF MATRIMONIAL PROPERTY LAW FOR GENERAL INFORMATION AND COMMENT

The South African Law Reform Commission announces the availability for general information and comment of its Project 100E Issue Paper 41 regarding the review of aspects of matrimonial property law.

The Matrimonial Property Act 88 of 1984 (Matrimonial Property Act) was passed to address perceived shortcomings in the law governing matrimonial property at the time and has been in place for over 35 years. In August 2018, the Commission published Issue Paper 34 where the closing date for comments was set for 16 November 2018. As is evident from the few comments received, Issue Paper 34 did not elicit wide public interest.

As such it has been decided that a revised/supplementary Issue Paper be published replacing the Commission's initial Issue Paper 34. The revision is considered particularly necessary in the light of recent case law and law reform overtures since the issue paper was published, as well as statutory and common law changes.

The Matrimonial Property Act contains certain default provisions which purport to apply to all valid marriages unless the spouses enter into an antenuptial contract. However, the applicable rules often result in substantive gender inequality, leaving women (and their children) destitute at the end of the marriage. In addition, religious marriages not solemnised in terms of the Marriage Act 25 of 1961 are currently treated as being out of community of property without accrual.

A large number of South Africans also live together in intimate relationships without marrying. These relationships have never been fully legally recognised. This means that a large category of people cannot access the law and the courts when their relationships dissolve. They are denied fair access to assets accumulated during the relationship, maintenance and other benefits which people who are married are accorded by the law. The lack of a statutory remedy to claim a share of partnership property outside of valid marriages is a problem with significant gendered consequences, potentially leading to the social and economic vulnerability of women (and children) when intimate relationships end. Although the law has been developed by the courts to provide life partners with the possibility of entering into a universal partnership, disputes about the existence and the terms of universal partnerships in the context of cohabitation are common. As a result, there is a need for a statutory framework to bring clarity to the position of cohabitants.

In the context of marriage and divorce, if substantive gender equality is to be achieved, laws relating to matrimonial property have to, inter alia, seek to place spouses in an equal position, taking into account the impact of factors like the unequal division of domestic and family-care responsibilities between wives and husbands and differences in bargaining power between men and women.

At this stage, the issue paper does not contain proposals for law reform. The Commission seeks comments on any relevant issues in the paper. Comments will provide direction on the proposed scope and focus of the investigation. On the strength of these responses, a discussion paper will be prepared, setting out the Commission's provisional proposals. Responses to the discussion paper will then be collated and evaluated in order to prepare a report setting out the Commission's final recommendations.

The report (with draft legislation) once finalised, will be submitted to the Minister of Justice and Correctional Services. Respondents are requested to submit written comments and representations to the Commission by 30 November 2021 for the attention of Maureen Moloi at the following address:

The Secretary
South African Law Reform Commission
Private Bag X668
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Issue Paper 41 is available on the Internet at the following site: http://www.justice.gov.za/salrc/ipapers.htm

Issue Paper 41 can also be obtained free of charge from the SALRC on request. Kindly contact Mr Jacob Kabini at Jakabini@justice.gov.za or (012) 622 6346 in this regard.

Contact for enquiries in respect of media statement: Maureen Moloi
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ISSUED BY THE SECRETARY, S A LAW REFORM COMMISSION, CENTURION
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