

The South African Law Reform Commission (SALRC)

[Your Full Name]

[Your Address]

[Your Contact Details]

[Date]

The Secretary

South African Law Reform Commission

[Address of the SALRC]

Dear Secretary,

**Subject: Request for Investigation into Discrimination Against Fathers in Children's Courts and the Need for Legal Reform**

I, [Your Full Name], hereby request that the South African Law Reform Commission (SALRC) conduct an investigation into the discrimination against fathers in children's court proceedings and the need for legal reform to ensure gender equality and the best interests of the child.

**1. Background and Motivation**

The children's courts in South Africa have consistently applied the maternal preference rule, which unfairly favours mothers in custody and parental rights cases. This practice is contrary to the equality provision in the Constitution and undermines the best interests of the child. The Children's Act explicitly discriminates against fathers by imposing additional requirements, such as the payment of damages, the need to approach a court to access their equal rights, and the imposition of evaluations by the family advocate, which are not applicable to mothers.

This state-sanctioned discrimination has persisted despite the absence of such discrimination against women in formal education and the workplace, where affirmative action measures are in place to integrate them. The consequences of this discrimination are evident in the challenges faced by children born after the constitution, who now languish as adults in a country plagued by high youth unemployment, excessive levels of violence and crime, gender-based violence, and failing education and state institutions.

## **2. Alignment with SALRC Selection Criteria**

The investigation into the discrimination against fathers in children's courts aligns with the SALRC's selection criteria, as it is a predominantly legal issue that requires law reform to address the inconsistencies and unconstitutionality of the current practices. The potential benefits to society are significant, as addressing this discrimination would promote gender equality, ensure the best interests of the child, and contribute to the development of a more just and equitable legal system. The investigation would also advance the SALRC's mandate of promoting the development, improvement, modernization, and reform of the law in South Africa.

## **3. Proposed Scope and Methodology:**

The investigation should examine the legal framework governing parental rights and responsibilities, including the Children's Act, and identify the provisions that discriminate against fathers. The investigation should also analyse the practices and decisions of children's courts, the role of the High Court as the upper guardian, and the impact of the maternal preference rule on the rights of fathers and the well-being of children. The methodology could include legal research, public consultations, expert input from family law specialists and child psychologists, and a comparative analysis of international best practices in parental rights and gender equality.

## **4. Potential Impact and Outcomes:**

The investigation could lead to recommendations for amendments to the Children's Act and other relevant legislation to eliminate the discriminatory provisions and ensure

equal treatment of fathers in parental rights matters. It could also result in guidelines for children's courts and the High Court to prioritise the best interests of the child and avoid the application of the maternal preference rule. The reforms resulting from the investigation would contribute to the realisation of gender equality, promote the active involvement of both parents in their children's lives, and create a legal system that truly upholds the rights and well-being of children.

#### **5. Supporting Documents:**

[List and attach any relevant documents, such as research papers, case law, international conventions, or other evidence that supports your request for an investigation and highlights the need for legal reform in this area.]

I believe that an investigation by the SALRC into the discrimination against fathers in children's courts is both necessary and timely. I am committed to assisting the SALRC in any way possible, and I am willing to provide further information or input as required.

Thank you for considering this request.

Sincerely,

[Your Signature]

[Your Full Name]