INTERIM REPORT

SOUTH AFRICAN FAMILY COURT SYSTEMS

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SUMMARY

The objective behind conducting this research was firstly to ascertain the problems experienced by family law professionals (and litigants) in the South African family law system and, thereafter, to attempt to formulate practical and workable solutions for improving the current family law systems available. South Africa undoubtedly has some of the best legislation in the world relating to family disputes, including the Children's Act 38 of 2005, the Domestic Violence Act 116 of 1998 and the Maintenance Act 99 of 1998. Unfortunately, for those who become embroiled in the family law legal system, these remarkable pieces of legislation provide little comfort. It is on this basis that recommendations for improvements to the court and other procedures forming part of the family law system are to be considered, to ensure that parties to family disputes, particularly those involving children, have their matters dealt with efficiently and expeditiously.

KEY TERMS

Alternate dispute resolution
Children's Act 38 of 2005
Children's court
Children's rights
Court clerks and registrars
Court rules and procedures
Divorce mediation
Divorce process
Domestic violence court
Family court registrar
High court
Judges
Magistrates
Maintenance court
Mediation
Office of the family advocate
Regional court
Voice of the child

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

Family law practitioners are at the forefront of the family law system and are confronted on a daily basis with the failures within the system. Whilst practitioners complain amongst themselves, they seldom report these problems to the relevant body for fear of them or their clients being targeted by court and other officials.

It was, therefore, decided to conduct empirical research into the various family law systems on an anonymous basis to allow practitioners to express their views without fear of reprisals. Questionnaires were constructed, posing questions based on problems faced by practitioners, for the high courts, regional courts, children's courts, maintenance courts, domestic violence courts, the office of the Family Advocate and mediation generally.

The intention was to use the results obtained to conduct discussion sessions with practitioners to brainstorm possible solutions to the most commonly experienced problems and, thereafter, to present these solutions to the relevant departments for further discussion and, where possible, implementation of suggested solutions.

1.2 FAMILY SYSTEMS CURRENTLY IN PLACE

The various family law systems currently in place and which were investigated by way of the questionnaires are the following:

a) the high court;[1]
b) the regional court;[2]
c) the children's court;[3]

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1 See appendix A.
2 See appendix B.

d) the maintenance court;[4]

e) the domestic violence court;[5]

f) the office of the family advocate;[6] and

g) mediation.[7]

1.3 PROBLEM STATEMENT

1.3.1 Problems with the family law systems

In practice, the abovementioned systems are, in the current manner in which they are structured and utilised, in the view of most practitioners, dysfunctional. The problems experienced are further exacerbated by the adversarial nature of the legal system applicable in most of our courts, which inevitably leads to further acrimony between the parties and, in many cases, their legal representatives.

The legislature, the courts and various academic writers have suggested that families should preferably mediate instead of applying to the courts where issues arise out of divorce and/or separation. The opening paragraph in the judgment of Marumoagae AJ in C.D.N v M.D.N (093505/2023) [2023] ZAGPPHC 1885 (7 November 2023) reads as follows:

> "This matter is a classical example of unnecessary litigation that can easily be avoided in family disputes involving children through either negotiation driven by adequate, polite, collegial, and non-positional interaction between different legal representatives or child-centred mediation."

Sadly, owing to the costs involved in private mediation and an apparent lack of understanding of mediation by legal practitioners, it is presently underutilised.

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3 See appendix C.
4 See appendix D.
5 See appendix E.
6 See appendix F.
7 See appendix G.

There is a need for a compulsory nationwide accredited regulatory body to regulate and monitor the training and accreditation of mediators, particularly those who mediate with children.

1.3.3 The adversarial nature of our courts

Of great concern is the fact that our legal system is adversarial in nature, rather than inquisitorial, and, in most cases, by the time matters are resolved, the parties and any children involved have been exposed to high levels of animosity and manipulative "tactics" leaving the children confused and torn between "warring" parents. The Children's Act[8] calls for matters involving children to be approached in a manner which is conducive to conciliation and problem-solving, and it states that delays in any actions or decisions involving children are to be avoided.[9] Under the current court procedures and using the current mechanisms available to parties engaged in a family dispute, this aspiration is nothing more than a pipe dream. This is exacerbated by legal practitioners and litigants alike who adopt the "winner-takes-all" attitude and purposely abuse the system in order to gain some kind of perceived advantage. Clearly such tactics can never be in the interests of children affected by the proceedings and new procedures specific to family law matters need to be established in order to ensure that the relevant sections of the Children's Act can be properly implemented.

1.4 PURPOSE OF THE STUDY

Given the enormous impact that decisions relating to family structures have, particularly those regarding access to and care of children, more attention needs to be given to the proper functioning of the family law system. The purpose of the research was to establish how the system is failing and in what aspects. More particularly the following questions need to be addressed:

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8 38 of 2005.
9 S 6(4).

a) What are the most common issues faced by litigants and legal practitioners within the family law system?
b) Is there sufficient and adequate training for judicial officers and court staff?
c) What role should mediation take in family disputes?
d) What is causing delays in finalisation of family disputes?
e) What role, if any, should case management play?
f) What problems are common to each of the family law courts?

Practical and workable solutions need to be found for the implementation of procedures specific to family law matters. These would allow for a less adversarial and formalistic approach to family matters but will also provide certainty for litigants and practitioners alike.

In this report, input from practitioners involved in family law matters was obtained in an attempt to determine the failures in the current system and how the various pieces of applicable legislation can be effectively implemented.

The purpose of this study is, therefore, to attempt to establish workable recommendations for practical solutions.

1.5 METHODOLOGY

In order to achieve the purpose of this study as set out above,[10] research has been conducted amongst legal practitioners specialising in family law matters by way of questions posed in various questionnaires.[11] Participants were asked a series of questions relating to the various courts involved in family law matters, the office of the family advocate, and mediators. Based on the research conducted as set out above, discussion groups will be convened to discuss the results and find workable solutions to ensure proper access to justice.

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[10] Para 1.4 above.
[11] See appendices A to G.

CHAPTER 2: QUALITATIVE RESEARCH

2.1 INTRODUCTION

This chapter sets outs the methodology of a qualitative research study conducted on the functioning of the various courts and other role players in the South African family law system. In the next chapter[12] the results of the research are provided.

2.2 BACKGROUND OF QUALITATIVE RESEARCH STUDY

The research study was informed by the expressed experiences of family law practitioners relating to the difficulties faced by them and litigants exposed to the family law system.

2.3 ETHICAL ISSUES

Participants completed the questionnaires anonymously.[13]

2.4 THE QUALITATIVE RESEARCH DESIGN

2.4.1 Category

This study involved legal practitioners and mediators.

2.4.2 Method of sampling

A voluntary and purposive sampling method was used in order to target legal practitioners and mediators specialising in family law related matters.

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[12] Ch 3.
[13] See Appendices A to G.

2.4.3 Sample size

Invitations were sent out by the Law Society of South Africa ("the LSSA") and various Provincial Family Law Forums ("the FLFs") via email and on various WhatsApp groups requesting legal practitioners to participate in this study. The Legal Practice Council ("the LPC") was requested to send an email to all its members requesting their participation, but this request was declined. Responses were received to the various questionnaires as follows:

- High court – 81 participants
- Regional court – 81 participants
- Children's court – 66 participants
- Maintenance court – 81 participants
- Domestic violence court – 95 participants
- Family Advocate – 111 participants
- Mediation – 140 participants

2.5 QUESTIONNAIRES

2.5.1 The role of the researcher

The role of the researcher was to construct the various questionnaires, analyse the data and draft this report. The researcher sent the questionnaire links to the LSSA, the FLFs, the LPC and various WhatsApp groups of legal practitioners and mediators. The analysed data will be circulated to legal representatives, who will be invited to convene discussion groups to discuss the findings and possible solutions to the problems experienced in the family law system. Thereafter, proposals will be submitted to the Department of Justice and other role players to invite further discussions and implementation of strategic solutions.

2.5.2 Method of data collection

Questionnaires were constructed by referring to the research questions.[14] Seven separate questionnaires were constructed for each of the categories making up the family law system.[15] The questionnaires included questions of a generalised nature and questions specific to each of the seven categories, namely the high court, the regional court, the children's court, the maintenance court, the domestic violence court, the office of the family advocate and mediators.

2.5.3 Physical setting

Participants completed the questionnaires online.

[14] As contained in ch 1, para 1.4 above.
[15] See Appendices A-G.

CHAPTER 3: RESEARCH RESULTS

3.1 INTRODUCTION

In this chapter the results of the empirical study conducted through questionnaires completed by legal practitioners and mediators specialising in the area of family law and divorce situations are provided.

The purpose of this research was to determine the main difficulties faced by legal practitioners and litigants in order to then facilitate discussions on ways to improve the family law system.[16] In the paragraphs that follow, each question has been included under various sub-headings followed immediately by the results of the data collected from participants.

3.2 HIGH COURT

3.2.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to court procedures, documents required to be completed in their jurisdiction of practice, causes of delays, case management and court processes. Participants were asked which high courts they practice from, which high court was there main area of practise and to specify any local division where relevant. The highest percentages were Gauteng at 43.3%, the Western Cape at 25.4%, KwaZulu-Natal at 13.4% and the Eastern Cape at 11.8%. The remaining provinces were 3% or below.

[16] See also ch 1, para 1.4 above.

3.2.2 Court procedures and processes

The following questions were asked in respect of court procedures. The results of the data obtained from the questionnaires follows immediately below each question:

a. *Is summons issued on the same day you attend court for issuing?*

- ✓ **66.2%** of participants responded positively.

b. *If no, how many days on average does it take?*

- ✓ Responses varied from one day to two weeks. A number of participants commented that it depends on whether or not the court online system is online/working. This currently applies only to Gauteng.

c. *Is it a requirement in your jurisdiction that the Family Advocate's report / endorsement may not be older than six months when setting a matter down on the unopposed / trial roll?*

- ✓ **42.2%** of participants were unsure.
- ✓ **29.7%** responded negatively.
- ✓ **28.1%** responded positively.

*****The results of the next three questions must be considered bearing in mind that only Gauteng presently has caselines and court online. Of the 81 participants, 71 responded to the following questions.**

d. *The case lines process is user friendly.*

- ✓ **42.3%** responded with “disagree” (22%) and “strongly disagree” (20.3%).

- ✓ **32.2%** were neutral.
- ✓ **25.5%** of participants responded with “strongly agree” (10.2%) and “agree” (15.3%).

e. *Case lines is making access to justice for unrepresented litigants extremely difficult.*

- ✓ **47.3%** of participants responded with “strongly agree” (33.3%) and “agree” (14%).
- ✓ **42.1%** were neutral.
- ✓ **10.5%** responded with “disagree” (7%) and “strongly disagree” (3.5%).

f. *I fully understand the case lines and court online procedures*

- ✓ **58.7%** responded with “disagree” (25.9%) and “strongly disagree” (32.8%).
- ✓ **17.2%** were neutral.
- ✓ **24.1%** of participants responded with “strongly agree” (10.3%) and “agree” (13.8%).

3.2.3 Documents required

The participants were asked to indicate which of the below documents were attached to court documents and other questions relating to documents necessary for court proceedings:

a. *In your jurisdiction, which of the below documents are required to be attached to the Summons and POC?*

i.	Family Advocate Annexure “A”	93.8%
ii.	Statistics form	83.1%
iii.	Marriage certificate (original)	15.4%

iv. Marriage certificate (copy) 52.3%
v. ANC 73.8%
vi. Financial disclosure form 6.2%

b. Do you attach a Rule 41A (mediation) Notice to the summons / plea?

- ✓ **75%** of participants responded that <u>they did</u> attach a Rule 41A notice to the summons or plea.

c. Do you attach a Rule 41A (mediation) Notice to Rule 43 papers?

- ✓ **57.8%** of participants responded that <u>they did not</u> attach a Rule 41A notice to Rule 43 papers.

d. Does the Registrar check for the Rule 41A Notice?

- ✓ **65.1%** of participants responded <u>negatively</u>.

e. Do you insist that clients complete a financial disclosure form?

- ✓ **60%** of participants responded <u>negatively</u>.

f. Should the financial disclosure form be mandatory at all high courts?

- ✓ **73.8%** of participants responded <u>positively</u>.

g. Should a more detailed parenting questionnaire be mandatory? (i.e. as opposed to the annexure "A" form currently used)

- ✓ **67.7%** of participants responded <u>positively</u>.

h. *When a matter becomes settled and a parenting plan is concluded, whether by mediation or through legal representatives or the parties directly, does the Court require a certificate of compliance with the child participation provisions in the Children's Act (section 10) and Regulations 8(3)(b) and 8(4)?*

- ✓ **81.3%** of participants responded negatively.

i. *If yes, who completes the certificate?*

- ✓ Participants who responded to this question included the following as persons who complete the certificate: psychologists, social workers, attorneys, mediator, the parties and the family advocate.

3.2.4 Causes of delays

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *Family advocate takes too long to do enquiries or file reports.*

- ✓ **84.4%** of participants responded with “strongly agree” (59.4%) and “agree” (25%).
- ✓ **7.8%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

b. *Attorneys or litigants not complying with or abusing the rules.*

- ✓ **73.4%** of participants responded with “strongly agree” (45.3%) and “agree” (28.1%).
- ✓ **18.8%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

c. *High conflict litigants.*

- ✓ **80.7%** of participants responded with “strongly agree” (58.1%) and “agree” (22.6%).
- ✓ **16.1%** were neutral.
- ✓ The remainder responded with “disagree”.

d. *Files or documents getting “lost” at court.*

- ✓ The responses to this question were inconclusive with 25% responding “strongly agree”, 17.2% “agree”, 20.3% “neutral” and 18.8% for both “disagree” and “strongly disagree”.

e. *The filing system at court is a disaster.*

- ✓ **29%** of participants responded with “strongly agree”.
- ✓ All other categories received **17.7%**.

f. *Failure by parties to disclose or properly disclose*

- ✓ A resounding majority of **81.2%** of participants responded with “strongly agree” (53.1%) and “agree” (28.1%).
- ✓ **10.9%** were neutral.
- ✓ The remainder responded with “disagree”.

g. *Delays in obtaining dates from Registrar.*

- ✓ **68.3%** of participants responded with “strongly agree” (39.7%) and “agree” (28.6%).
- ✓ **11.1%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

h. Difficulties in getting matters trial ready.

- ✓ **78.1%** of participants responded with “strongly agree” (40.6%) and “agree” (37.5%).
- ✓ **14.1%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

i. High conflict opposing attorneys.

- ✓ Alarmingly, **82.8%** of participants responded with “strongly agree” (60.9%) and “agree” (21.9%).
- ✓ **12.5%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

j. Judges do not insist on compliance with Rules or directives.

- ✓ **46%** of participants responded with “disagree” (25.4%) and “strongly disagree” (20.6%).
- ✓ **36.5%** of participants responded with “strongly agree” (14.3%) and “agree” (22.2%).
- ✓ **17.5%** were neutral.

k. Difficulties getting matters into case flow.

- ✓ **54.7%** of participants responded with “strongly agree” (25%) and “agree” (29.7%).
- ✓ **31.1%** responded with “neutral”.
- ✓ The remaining participants responded with "disagree” and “strongly disagree”.

3.2.5 Case management

Participants were asked to indicate the following in respect of case management:

a. *Should there be a dedicated court for family related matters, including unopposed divorce, Rule 43, care and contact disputes, relocation, urgents, etc.?*

   - ✓ **72.3%** of participants responded positively.
   - ✓ **23.1%** responded that there is already a dedicated family court in their jurisdiction. This can be attributed to the implementation of the family court in the Gauteng division.

b. *Should all family matters immediately be referred to case management?*

   - ✓ **57.8%** of participants responded positively and **42.2%** negatively.

c. *In your view, would it be helpful to have a dedicated registrar who handles only family related matters, including divorce, Rule 43, care and contact disputes, urgents, etc.?*

   - ✓ **87.7%** of participants responded positively.

d. *Should judges be required to undergo specific training if they are required to handle family matters?*

   - ✓ **89.2%** of participants responded positively.

3.2.6 Court staff

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *I know the names and contact details (phone number and email) of the Registrar of each department at the general office*

- ✓ **57.1%** responded with “disagree” (12.7%) and “strongly disagree” (44.4%).
- ✓ **27%** of participants responded with “strongly agree” (15.9%) and “agree” (11.1%).
- ✓ **15.9%** were neutral.

b. *The general office staff are friendly and helpful*

- ✓ **28.6%** were neutral.
- ✓ **36.5%** of participants responded with “strongly agree” (14.3%) and “agree” (22.2%).
- ✓ **34.9%** responded with “disagree” (14.3%) and “strongly disagree” (20.6%).
- ✓ This would indicate quite a variation across the courts.

3.2.7 Comments

Participants where given the opportunity to provide any further comments at the end of the questionnaire.

- ✓ Several participants commented that they do not use or have caselines in their province.

- ✓ One participant expressed that “court online is useless and not designed for litigation online” and that caselines was a better system. This sentiment was shared by several other participants who found court online extremely frustrating and difficult to navigate.

- ✓ Several other participants also expressed frustration with court online being offline more than online or that it does not work, which frustrates deadlines.

- ✓ Some participants called for additional training for caselines and court online, plus clear and understandable directions therefor.

- ✓ Another concern was that practice and procedures (practice directives) change all the time, that it is difficult to keep up with the changes and that this causes delays for clients. One participant expressed that the practice directives are unnecessarily difficult and onerous and that this has resulted in the backlog.

- ✓ Some comments were received that judges do not have sufficient knowledge of family law matters and that more judges are required. One participant expressed concern that despite directives, the administration staff have their own “rules and regulations”.

3.3 REGIONAL COURT

3.3.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to court procedures, documents required to be completed in their jurisdiction of practice, causes of delays, case management and court processes.
Participants were asked to indicate which Regional courts they practice from. The responses were a mix of Regional courts across South Africa. One participant responded with “None. I no longer even bother”.

3.3.2 Court procedures and processes

The following questions were asked in respect of court procedures and processes. The results of the data obtained from the questionnaires follows immediately below each question:

a. *Is summons issued on the same day you attend court for issuing?*

- ✓ **52.1%** of participants responded positively.

b. *If no, how many days on average does it take?*

- ✓ Responses varied from one day to **two months**. A number of participants commented that it depends on the Registrar present on the day.

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

c. *Each regional court makes its own procedures.*

- ✓ **58.9%** responded with “strongly agree” (35.6%) and “agree” (23.3%).
- ✓ **26%** were neutral.
- ✓ The remaining participants responded with “disagree” and “strongly disagree”.

d. *The court procedures are in written format.*

- ✓ **30.1%** were neutral.
- ✓ **35.6%** of participants responded with “strongly agree” (15.1%) and “agree” (20.5%).

- ✓ **34.2%** responded with “disagree” (21.9%) and “strongly disagree” (12.3%).
- ✓ This would indicate quite a variation across the courts.

e. *The procedures are changed without notification to legal practitioners or members of the public.*

- ✓ **37.1%** were neutral.
- ✓ **39.7%** of participants responded with “strongly agree” (30.1%) and “agree” (9.6%).
- ✓ **23.3%** responded with “disagree” (12.3%) and “strongly disagree” (11%).

f. *The procedures are easy to follow.*

- ✓ **37%** were neutral.
- ✓ **27.4%** of participants responded with “strongly agree” (5.5%) and “agree” (21.9%).
- ✓ **35.6%** responded with “disagree” (16.4%) and “strongly disagree” (19.2%).

g. *All Regional courts should have the same procedures.*

- ✓ **83.5%** of participants responded with “strongly agree” (75.2%) and “agree” (8.3%).
- ✓ The remaining responses were “neutral”, “disagree” and “strongly disagree”.

h. *The filing system at regional court is excellent.*

- ✓ **38.4%** of participants responded with “strongly agree” (13.7%) and “agree” (24.7%).

- ✓ **31.5%** responded with “disagree” (8.2%) and “strongly disagree” (23.3%).
- ✓ **30.1%** were neutral.

i. *Standardised procedures should be available online and at each regional court for unrepresented litigants.*

- ✓ **87.7%** of participants responded with “strongly agree” (72.6%) and “agree” (15.1%).
- ✓ The remaining responses were “neutral” and “disagree”.

3.3.3 Documents required

a. *In your jurisdiction, which of the below documents are required to be attached to the Summons and POC?*

i.	Family Advocate Annexure “A”	91.7%
ii.	Statistics form	90.3%
iii.	Marriage certificate (original)	44.4%
iv.	Marriage certificate (copy)	51.4%
v.	ANC	80.6%
vi.	Financial disclosure form	9.7%

b. *Do you insist that clients complete a financial disclosure form?*

- ✓ **64.4%** of participants responded negatively.

c. *Should the financial disclosure form be mandatory at all regional courts?*

- ✓ **57.5%** of participants responded positively.

d. *Should a more detailed parenting questionnaire be mandatory? (i.e. as opposed to the annexure "A" form currently used).*

- ✓ **65.8%** of participants responded positively.

e. *When a matter becomes settled and a parenting plan is concluded, whether by mediation or through legal representatives or the parties directly, does the Court require a certificate of compliance with the child participation provisions in the Children's Act (section 10) and Regulations 8(3)(b) and 8(4)?*

- ✓ **81.9%** of participants responded negatively.

f. *If yes, who completes the certificate?*

- ✓ Participants who responded to this question included the following as persons who complete the certificate: psychologists, social workers, attorneys, mediator, the parties and the family advocate. One participant commented: "Not applicable as no one really cares much save for a minority of admin staff. There is a marked apathy in the regional court especially involving women and children".

g. *Is it a requirement in your jurisdiction that the Family Advocate's report/endorsement may not be older than six months when setting a matter down on the unopposed / trial roll?*

- ✓ **39.7%** of participants responded positively.
- ✓ **32.9%** of participants were not sure.
- ✓ **27.4%** of participants responded negatively.

3.3.4 Causes of delays

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *Family advocate takes too long to do enquiries or file reports.*

- ✓ **71.2%** of participants responded with “strongly agree” (47.9%) and “agree” (23.3%).
- ✓ **12.3%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

b. *Attorneys or litigants not complying with or abusing the rules.*

- ✓ **61.7%** of participants responded with “strongly agree” (32.9%) and “agree” (28.8%).
- ✓ **19.2%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

c. *High conflict parties.*

- ✓ **68.5%** of participants responded with “strongly agree” (42.5%) and “agree” (26%).
- ✓ **17.8%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

d. *Files or documents getting “lost” at court.*

- ✓ The responses to this question were inconclusive with 20.5% responding “strongly agree”, 13.7% “agree”, 27.4% “neutral” and 19.2% for both “disagree” and “strongly disagree”.

e. *Failure by parties to disclose or properly disclose.*

- ✓ **68.4%** of participants responded with “strongly agree” (47.9%) and “agree” (20.5%).
- ✓ **23.3%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

f. *Delays in obtaining dates from Registrar.*

- ✓ **49.3%** of participants responded with “strongly agree” (34.2%) and “agree” (15.1%).
- ✓ **20.5%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

g. *Difficulties in getting matters trial ready.*

- ✓ **58.9%** of participants responded with “strongly agree” (45.2%) and “agree” (13.7%).
- ✓ **23.3%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

h. *High conflict opposing attorneys.*

- ✓ **67.1%** of participants responded with “strongly agree” (43.8%) and “agree” (23.3%).
- ✓ **20.5%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

i. Postponements by Magistrates.

- ✓ The responses to this question were inconclusive with 22.5% responding “strongly agree”, 20.8% “agree”, 22.2% “neutral”, 18.1% for “disagree” and 16.7% “strongly disagree”.

j. Matters get crowded out.

- ✓ **40.3%** of participants responded with “strongly agree” (29.2%) and “agree” (11.1%).
- ✓ **34.7%** responded with “neutral”.
- ✓ The remaining participants responded with "disagree” and “strongly disagree”.

3.3.5 Magistrates and court staff

a. Does the Regional court where you practice have a dedicated Magistrate for divorce and Rule 58 matters?

- ✓ **27.4%** of participants responded positively.
- ✓ **27.4%** of participants responded that they are not sure.
- ✓ **47.9%** of participants responded negatively.

b. Does the regional court where you practice have a dedicated Registrar for divorce and Rule 58 matters?

- ✓ **11%** of participants responded that they are not sure.
- ✓ **43.8%** of participants responded positively.
- ✓ **45.2%** of participants responded negatively.

c. Should Regional court magistrates be required to undergo specific training if they are required to handle family matters?

- ✓ **95.9%** of participants responded positively.

d. Court staff are helpful and friendly.

- ✓ **41.1%** of participants responded with “strongly agree” (16.4%) and “agree” (24.7%).
- ✓ **30.2%** responded with “disagree” (11%) and “strongly disagree” (19.2%).
- ✓ **28.8%** were neutral.

3.3.6 Comments

Participants where given the opportunity to provide any further comments at the end of the questionnaire. The responses are inserted verbatim below with some minor edits for spelling and grammar.

- ✓ There are not enough court staff doing what they are actually supposed to be doing. And only one person is allocated a specific task. If that person is absent, then the whole process is delayed and everyone has to come back to court again at a huge cost for the person themselves or to instruct an attorney to return

- ✓ Due to Magistrates these days "feeling" that they have an uncapped "discretion" in all matters, they simply do as they wish. Magistrates hate it if they are informed that they may only act in terms of the Rules of Court and that they indeed do not have an unfettered discretion. It is much simpler and quicker to do divorces in the High Court. Judges are much less petty than Magistrates. Judges actually want to facilitate the expeditious handling of disputes, minimise costs and act in the interest of justice. Magistrates choose the opposite.

- ✓ Regional court magistrate needs continues & compulsory training

- ✓ Court Annexed Mediation must be compulsory

- ✓ There are two persons acting as registrar. One of them are the most friendly, hardworking and efficient registrar. The other one advises and assists unrepresented public members in the drafting of summons, but have no clue of the legal implications/working of the different marriage regimes, division of joint estate, pension fund, etc. This is a big concern. She also has one lawyer in Bloemfontein to whom she refers members of the public who is seeking legal representation. I have no proof but would not be surprised if this registrar gets a kickback for her referrals. In one of my cases a Rule 58 order was granted in the regional court Bloemfontein and the Respondent, who resides in Bethlehem, failed to comply and pay maintenance. When I wanted to issue a warrant of execution, the registrar refused to issue it and said it should be issued by the Bethlehem regional court! Completely incorrect. A week later I approached the other registrar and she correctly issued it.

- ✓ Magistrates admit that they don't know about civil procedure

- ✓ Regional court magistrates have been terrible in many jurisdictions; in Roodepoort one can guarantee being crowded out as 1 mag is available for divorce, all civil etc. Most magistrate's simply not able to understand what they are supposed to be doing in divorce matters. I will no longer waste my clients time and money in this forum. One cannot even expect to be heard on any day we appear. Disastrous.

- ✓ Postponed matter due mistakes or doings of the court should be postponed to a specific date rather than instructing Attorneys to enrol the matters afresh.

- ✓ The original marriage certificate is required when summons is issued, but is usually filed separately prior to the matter being allocate a date in case it is lost

- ✓ In my view, the Regional Court must be the ONLY Court that attends to Divorce Matters (the High Court must only attend to divorce matter if proper grounds can be presented why only the High Court may attend to the issues in the specific divorce). The Regional Court is simple, easy and accessible to the public without having to incur any legal costs (except the sheriff). In my experience, Regional Court is a lot faster with the allocation of court dates as well. Yes, it is easier to appoint an attorney to assist you as the client in a divorce matter, but the clients must be allowed the opportunity to

proceed on their own if they want to. AND PLEASE, the ELECTRONIC filing of documents must NEVER BE IMPLEMENTED in these courts (Regional Court or any Magistrate Courts). It will completely destroy the accessibly of the 'Lower' Courts for the public.

- ✓ There should be dedicated Family Advocates at all Regional Courts to assist the Magistrates with queries. Matters are postponed because there is no family advocate on duty.

- ✓ Each Magistrate follows his / her own procedures - sometimes totally illogical and senseless.

- ✓ Many practitioners would be happy to send Candidate LP's to assist with filing on occasion as this is a very good learning experience for them. The regional court should have a written practice directive that is available online in a similar fashion as the High Court.

- ✓ The regional court is exceptionally corrupted with regards to many of the admin staff. Family law matters result in profoundly unjust consequences especially for women and children. The admin staff and especially the newer and younger registrars, in my view, collude very clearly with the public and attorneys to ensure they receive the outcome they specifically want, totally unconcerned with the fairness or outcome thereof. The magistrates are overburdened in this division and moreover lack experience, procedural and substantive knowledge, and most importantly common human empathy, compassion and overall passion and enjoyment for service professions. There is an urgent need to experienced and dedicated family law (and in general, civil law) magistrates in this division.

- ✓ Personal not properly trained. They insisted on a South African Marriage certificate even though the parties were married in NZ and the NZ marriage certificate was attached to the summons. Had to issue summons in High Court. Magistrate not properly trained. Parties reached a settlement after issuing of summons. Requested settlement to be made an order of court. Magistrate at first refused to incorporate Settlement into the divorce order as "parties did not ask for the settlement to be incorporated into the divorce order". In terms of High Court Directive, FDForm has to

be filed within 10 days after Defendant filed his/her plea. No such rule / directive in Regional Court. Same situation in respect of Rule 43 versus Rule 58

- ✓ Boksburg regional court is excellent. The magistrate and registrar are highly Professional and efficient. I cannot err them. However, Benoni regional court the registrar is not as efficient, it would appear they favour attorneys they know or people they know. Not as friendly to the public and there is no dedicated family magistrate, the criminal magistrates fit in divorces when they can. A dedicated and experienced family magistrate should be appointed. The backlog in Benoni is shocking due to the high volume.

3.4 CHILDREN'S COURT

3.4.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to court procedures and processes, documents required to be submitted in their jurisdiction of practice, Magistrates and court staff and causes of delays. Participants were asked to indicate which children's courts they practice in. The results show that participants are practicing across South Africa.

3.4.2 Court procedures and processes

The following questions were asked in respect of court procedures. The results of the data obtained from the questionnaires follows immediately below each question:

a. *On average, how quickly are matters finalised?*

✓ Within three months	6.6%
✓ Between three and six months	13.1%
✓ **Between six months and one year**	**42.6%**
✓ Over a year	37.7%

b. *Does the court only deal with certain matters on certain days, i.e. Monday - only deals with new applications; Tuesday - limited to first return dates; etc.?*

- ✓ Yes 17.1%
- ✓ No 46.8%
- ✓ Varies across court 35.5%

c. *Does the court set dates for service and filing of affidavits?*

- ✓ Yes 33.9%
- ✓ No 45.2%
- ✓ Varies across court 21%

d. *Participants were asked to indicate what the consequences are for non-compliance. Responses included:*

- ✓ No consequences (majority of responses)
- ✓ Adjournment, postponement or struck from roll
- ✓ Default orders
- ✓ Strong reprimand, warning or final demand
- ✓ Magistrates are lenient and allow another opportunity for compliance
- ✓ Potential costs order

e. *Does the court conduct formal pre-trial consequences?*

- ✓ Yes 9.7%
- ✓ **No** **72.6%**
- ✓ Varies across court 17.7%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

f. *Each children's court makes its own procedures.*

- ✓ **72.6%** responded with "strongly agree" (45.2%) and "agree" (27.4%).
- ✓ **19.4%** were neutral.
- ✓ The remaining participants responded with "disagree" and "strongly disagree".

g. *The court procedures are in written format.*

- ✓ **12.9%** were neutral.
- ✓ **16.1%** of participants responded with "strongly agree" (4.8%) and "agree" (11.3%).
- ✓ **34.2%** responded with "disagree" (25.8%) and "strongly disagree" (45.2%).

h. *The procedures are changed without notification to legal practitioners or members of the public.*

- ✓ **24.6%** responded with "disagree" (11.5%) and "strongly disagree" (13.1%).
- ✓ **26.2%** were neutral.
- ✓ **49.1%** of participants responded with "strongly agree" (31.1%) and "agree" (18%).

i. *The procedures are easy to follow.*

- ✓ **26.2%** of participants responded with "strongly agree" (9.8%) and "agree" (16.4%).

- ✓ **36.1%** responded with “disagree” (16.4%) and “strongly disagree” (19.7%).
- ✓ **37.7%** were neutral.

j. I know exactly what the procedure is at each court.

- ✓ **17.8%** of participants responded with “strongly agree” (9.7%) and “agree” (8.1%).
- ✓ **30.6%** were neutral.
- ✓ **51.6%** responded with “disagree” (16.1%) and “strongly disagree” (35.5%).

k. All children’s courts should have the same procedures.

- ✓ **83.5%** of participants responded with “strongly agree” (75.2%) and “agree” (8.3%).
- ✓ The remaining responses were “neutral”, “disagree” and “strongly disagree”.

l. The filing system at children’s court is excellent.

- ✓ **33.9%** of participants responded with “strongly agree” (11.3%) and “agree” (22.6%).
- ✓ **32.3%** responded with “disagree” (6.5%) and “strongly disagree” (25.8%).
- ✓ **33.8%** were neutral.
- ✓ These results indicate that the filing systems at the courts have varying degrees of success or failure.

m. Standardised procedures should be available online and at each children’s court for unrepresented litigants.

- ✓ **87.1%** of participants responded with “strongly agree” (71%) and “agree” (16.1%).
- ✓ The remaining responses were “neutral” and “strongly disagree”.

n. *Court starts at 08h30 sharp every day.*

- ✓ **83.9%** responded with “disagree” (24.2%) and “strongly disagree” (59.7%).
- ✓ **11.3%** of participants responded with “strongly agree” (8.1%) and “agree” (3.2%).
- ✓ **4.8%** were neutral.

3.4.3 Magistrates and court staff

a. *Does the magistrate's court have a dedicated magistrate for children's court matters?*

✓ Yes	67.7%
✓ No	11.3%
✓ Varies across court	21%

b. *Should magistrates be required to undergo specific training if they are required to handle child related matters?*

✓ **Yes**	**100%**

c. *Ad hoc magistrates should be appointed from senior specialist practitioners to assist with hearings to ensure proper access to justice and speedy resolution of matters*

✓ **Yes**	**82.3%**
✓ No	12.9%

- ✓ Not sure 4.8%

d. *Are unrepresented parties properly assisted by court staff to prepare for hearings?*

- ✓ Yes 16.1%
- ✓ **No** **66.1%**
- ✓ Varies across court 17.7%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

e. *Court staff are helpful and friendly.*

- ✓ **24.2%** were neutral.
- ✓ **35.5%** of participants responded with “strongly agree” (16.1%) and “agree” (19.4%).
- ✓ **40.3%** responded with “disagree” (17.7%) and “strongly disagree” (22.6%).

f. *Admin staff are available electronically or telephonically.*

- ✓ **11.3%** of participants responded with “strongly agree” (3.2%) and “agree” (8.1%).
- ✓ **14.5%** were neutral.
- ✓ **74.2%** responded with “disagree” (22.6%) and “strongly disagree” (51.6%).

g. *Magistrates <u>do not</u> treat parties with dignity and respect.*

- ✓ **24.6%** were neutral.

- ✓ **24.6%** of participants responded with “strongly agree” (16.4%) and “agree” (8.2%).
- ✓ **50.9%** responded with “disagree” (23%) and “strongly disagree” (27.9%).

h. Admin staff are knowledgeable.

- ✓ **22.6%** were neutral.
- ✓ **22.5%** of participants responded with “strongly agree” (4.8%) and “agree” (17.7%).
- ✓ **54.8%** responded with “disagree” (24.2%) and “strongly disagree” (30.6%).

i. Magistrates are experienced in child related matters.

- ✓ **30.6%** were neutral.
- ✓ **33.9%** responded with “disagree” (12.9%) and “strongly disagree” (21%).
- ✓ **35.4%** of participants responded with “strongly agree” (17.7%) and “agree” (17.7%).

j. Admin staff <u>do not</u> treat parties with dignity and respect

- ✓ **37.1%** were neutral.
- ✓ **35.5%** responded with “disagree” (14.5%) and “strongly disagree” (21%).
- ✓ **27.4%** of participants responded with “strongly agree” (14.5%) and “agree” (12.9%).

3.4.4 Causes of delays

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *One of the parties is uncooperative.*

- ✓ **75.8%** of participants responded with “strongly agree” (43.5%) and “agree” (32.3%).
- ✓ **22.6%** were neutral.
- ✓ The remainder responded with “disagree”.

b. *Attorneys or litigants not complying with or abusing court procedures.*

- ✓ **61.3%** of participants responded with “strongly agree” (35.5%) and “agree” (25.8%).
- ✓ **30.6%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

c. *Files or documents getting “lost” at court.*

- ✓ The responses to this question were inconclusive with 19.4% responding “strongly agree”, 11.3% “agree”, 24.2% “neutral”, 30.6% “disagree” and 14,5% “strongly disagree”.

d. *There are insufficient clerks.*

- ✓ **43.5%** of participants responded with “strongly agree” (25.8%) and “agree” (17.7%).
- ✓ **29%** were neutral.

- ✓ The remainder responded with “disagree” and “strongly disagree”.

e. *Hearings get crowded out.*

- ✓ **51.6%** of participants responded with “strongly agree” (33.9%) and “agree” (17.7%).
- ✓ **21%** were neutral.
- ✓ **27.4%** responded with “disagree” (17.7%) and “strongly disagree” (9.7%).

f. Delays due to matters being referred to family advocate.

- ✓ **67.8%** of participants responded with “strongly agree” (46.8%) and “agree” (21%).
- ✓ **16.1%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

g. No magistrate available.

- ✓ **25.8%** of participants responded with “strongly agree” (14.5%) and “agree” (11.3%).
- ✓ **24.2%** were neutral.
- ✓ **50%** responded with “disagree” (27.4%) and “strongly disagree” (22.6%).

h. Postponements by magistrates.

- ✓ **42%** of participants responded with “strongly agree” (19.4%) and “agree” (22.6%).
- ✓ **29%** were neutral.
- ✓ **29%** responded with “disagree” (16.1%) and “strongly disagree” (12.9%).

i. No court room available.

- ✓ **14.6%** of participants responded with “strongly agree” (6.5%) and “agree” (8.1%).
- ✓ **29%** were neutral.
- ✓ **56.5%** responded with “disagree” (19.4%) and “strongly disagree” (37.1%).

3.4.5 Documents required

a. Is a copy of the application attached to the subpoena served on the Respondent?

✓ Yes	29%
✓ No	50%
✓ Varies across court	21%

b. When a matter becomes settled and a parenting plan is concluded, whether by mediation or through legal representatives or the parties directly, does the Court require a certificate of compliance with the child participation provisions in the Children's Act (section 10) and Regulations 8(3)(b) and 8(4)?

✓ Yes	19.4%
✓ **No**	**80.6%**

c. If yes, who completes the certificate?

- ✓ Participants who responded to this question included the following as persons who complete the certificate: psychologists, social workers, attorneys, mediator, the parties, the person who assisted the parties in concluding the plan and the family advocate.

3.4.6 Comments

Participants were asked to provide any additional comments. The comments received have been included verbatim below, save for correction of some grammatical and spelling errors.

- ✓ The magistrate was reading from a handbook and asked the respondent to get the applicant to court. Complaints procedure must be in place. Senior and chief magistrate don't help with complaints. Magistrates are independent and do what they want. No consequences.

- ✓ There are too few court appointed social workers. The few that are around are inundated with a huge workload that is not fair and they cannot apply themselves to each matter properly . It prejudices the party. FA office is a joke. The office is excellent, but again workload so huge, the delay in matters prejudices the parties and more importantly the CHILDREN.

- ✓ Clerks particularly at Wynberg Court are obnoxious and treat you like you are bothering them.

- ✓ In the event that there is a complaint against the Social Worker, the court has to recuse her if there are grounds for recusal. I have 2 cases where the social worker removed her reports after being submitted to court. If not for loadshedding, I would have never picked it up and thought that the documents in the file correspond with my bundle and we are court ready. Also in rural areas, Legal Aid practitioners have difficulty to consult with children when appointed due to the fact that just certain Legal Aid practitioners represent children in children's court, not all the legal aid practitioners that are at the said office.

- ✓ Uniform children's court procedures would be extremely helpful.

- ✓ Middelburg Children's Court is an excellent example of how a Children's Court SHOULD operate. Matters proceed as and when they should. The Children's Court has

a designated Magistrate, Clerk and a lovely child-friendly Court Room. The Magistrate schedules matters around her diary - i.e, one would get a date at 09h00 or 11h00. One does not have to stand around and waste time. There is certainty for both litigant and attorney.

- ✓ Some Magistrates don't understand the Jurisdiction of the Children's Court nor fully read the papers. Matter are referred to Rule 58 despite a Rule 58 having occurred already etc. Several don't seem to care about their jobs. Clerks can sometimes be rude however many are lovely at least. Social workers are quite useless though, often bullied by one party or don't know how to assist the parties.

- ✓ The prosecutors are unhelpful and rude.

- ✓ Children's Court is not a friendly environment to practice in or for public to approach it for assistance. The admin staff is inefficient, arrogant and incompetent. There is such a turnover of magistrate's presiding in this court. You appear at court and never know who the magistrate is, if there is one available. The outcome of your case is very unpredictable.

- ✓ Children's court procedures are inquisitorial. It's appropriate they remain that way. We have many excellent magistrates and some excellent registrars, excluding Kempton park. Generally we have good service.

- ✓ Roodepoort is a good example of a Children's Court, as is Krugersdorp but Randburg is appalling in all aspects. From the commissioner to the clerks to the facilities to the admin. It is the most child unfriendly court in Johannesburg.

- ✓ No issues with the Children's Courts at this time. Only suggestion would be the Social Workers need to attend to their investigations a bit quicker. We can't have matters postponed on numerous occasions (3 to 4 times) because of the reports not being finalized yet. Also, I do recommend that the Proceedings of the Social Worker investigations be uniform - for example step 1: go the mother's house step 2: go to father's house step 3: have a mediation session at office etc. If there was one uniform process for each matter and each social worker must follow it, it might be easier to keep track of the proceedings/investigations as the legal practitioners and as the

parents. It would also be great if the social workers can check in with the parties/attorneys at least once in every 2 or 3 weeks to confirm that status of the proceedings to date on the matter.

- ✓ Clerks of the Court have shockingly little knowledge of the Children's Act. They also assume powers for themselves that they do not have, like excusing parties from Court appearances.

- ✓ Matters are finalized within the turnaround time in the Kariega Children's Court. Very few matters are not finalized within 90 days.

- ✓ All children should be represented by attorneys.

- ✓ Magistrates need to be trained to do Children's court matters, they are appointed with no experience whatsoever and make the most outrageous court orders.

- ✓ There is a major crisis situation in the children’s court at present with regard to Form 36 emergency removals, which process is highly abused by social workers and court personnel.

- ✓ Social Workers has become hired guns in Children's Court.

- ✓ It is impossible to contact the court/ admin personal telephonically or per email.

- ✓ The East Rand children's courts are known for being the worst in Gauteng. The magistrates are not willing to make decisions. We advise clients to rather go to the JHB high court, as the family division is fast and organised. We have had two matters that took over two years to finalise, due to social workers not pitching, being incompetent and unprofessional. Sometimes you have 3 different magistrates on one matter. It is a circus, and some fathers eventually give up seeing their children due to the constant delays and then unfair decisions made by inexperienced magistrates. Magistrates are rude to legal practitioners, and it is a power play, experienced magistrates are required that can make decisions based on experience and knowledge.

- ✓ There must uniformity across all children court. At some court involving children, magistrates do not order that the legal aid practitioner be appointed to represent minor child. My understanding is that in every matter involving a minor child a legal aid must be appointed. In most cases only both parents are represented by attorneys.

3.5 MAINTENANCE COURT

3.5.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to court procedures and processes, documents required to be submitted in their jurisdiction of practice, Magistrates and court staff and causes of delays. Participants were asked to indicate which maintenance courts they practice from. The responses were a mix of magistrate's courts across South Africa.

3.5.2 Court procedures and processes

The following questions were asked in respect of court procedures. The results of the data obtained from the questionnaires follows immediately below each question:

a. *On average, how quickly are matters finalised?*

✓ Within three months	1.4%
✓ Between three and six months	16.4%
✓ Between six months and one year	35.6%
✓ **Over a year**	**46.6%**

b. *Does the court only deal with certain matters on certain days, i.e. Monday - only deals with new applications; Tuesday - limited to first return dates; etc.?*

✓ Yes	31.1%

- ✓ No 37.8%
- ✓ Varies across court 31.1%

c. *Does the court set dates for exchange of documents / trial bundles?*

- ✓ Yes 60.8%
- ✓ No 23%
- ✓ Varies across court 16.2%

d. *Participants were asked to indicate what the consequences are for non-compliance. Responses included:*

- ✓ No consequences (majority of responses), respondents allowed endless postponements and still do not provide documents, but applicants expected to keep providing theirs.
- ✓ Adjournment or postponement
- ✓ Default orders
- ✓ Reprimand, indulgence or parties given another chance
- ✓ Depends on magistrate or maintenance officer

e. *Does the court conduct formal pre-trial consequences?*

- ✓ Yes 17.6%
- ✓ **No** **67.6%**
- ✓ Varies across court 14.9%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

f. Each maintenance court makes its own procedures.

- ✓ **60.8%** responded with “strongly agree” (41.9%) and “agree” (18.9%).
- ✓ **24.3%** were neutral.
- ✓ The remaining participants responded with “disagree” and “strongly disagree”.

g. The court procedures are in written format.

- ✓ **19%** of participants responded with “strongly agree” (12.2%) and “agree” (6.8%).
- ✓ **21.6%** were neutral.
- ✓ **59.4%** responded with “disagree” (18.9%) and “strongly disagree” (40.5%).

h. The procedures are changed without notification to legal practitioners or members of the public.

- ✓ **17.6%** were neutral.
- ✓ **25.7%** responded with “disagree” (10.8%) and “strongly disagree” (14.9%).
- ✓ **56.8%** of participants responded with “strongly agree” (39.2%) and “agree” (17.6%).

i. The procedures are easy to follow.

- ✓ **16.2%** of participants responded with “strongly agree” (8.1%) and “agree” (8.1%).
- ✓ **37.8%** were neutral.
- ✓ **45.9%** responded with “disagree” (18.9%) and “strongly disagree” (27%).

j. I know exactly what the procedure is.

- ✓ **35.1%** of participants responded with “strongly agree” (18.9%) and “agree” (16.2%).
- ✓ **35.1%** responded with “disagree” (13.5%) and “strongly disagree” (21.6%).
- ✓ **29.7%** were neutral.

k. There is uniformity of procedures at all maintenance courts.

- ✓ **8.1%** of participants responded with “strongly agree” (5.4%) and “agree” (2.7%).
- ✓ **12.2%** were neutral.
- ✓ **79.8%** responded with “disagree” (23%) and “strongly disagree” (56.8%).

l. The filing system at maintenance court is shocking.

- ✓ **63%** of participants responded with “strongly agree” (45.2%) and “agree” (17.8%).
- ✓ **20.5%** were neutral.
- ✓ **16.4%** responded with “disagree” (9.6%) and “strongly disagree” (6.8%).

m. Standardised procedures should be available online and at each maintenance court for unrepresented litigants.

- ✓ **89.1%** of participants responded with “strongly agree” (78.1%) and “agree” (11%).
- ✓ The remaining responses were “neutral”.

n. *Court starts at 08h30 sharp every day.*

- ✓ **80.9%** responded with “disagree” (11%) and “strongly disagree” (69.9%).
- ✓ **11%** were neutral.
- ✓ The remaining responses were “agree” and “strongly agree”.

3.5.3 Magistrates and court staff

a. *Does the magistrate's court have a dedicated magistrate for maintenance matters?*

✓ Yes	58.3%
✓ No	26.4%
✓ Varies across court	15.3%

b. *Should magistrates be required to undergo specific training if they are required to handle maintenance matters?*

✓ **Yes**	**98.6%**

c. *Ad hoc magistrates should be appointed from senior specialist practitioners to assist with trials to ensure proper access to justice*

✓ **Yes**	**85.1%**
✓ No	8.1%
✓ Not sure	6.8%

d. *Are unrepresented parties properly assisted by court staff to prepare for hearings?*

✓ Yes	18.9%

- ✓ **No** **63.5%**
- ✓ Varies across court 17.6%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

e. *Court staff are helpful and friendly.*

- ✓ **26%** were neutral.
- ✓ **26%** of participants responded with “strongly agree” (11%) and “agree” (15%).
- ✓ **48%** responded with “disagree” (19.2%) and “strongly disagree” (28.8%).

f. *Admin staff are available electronically or telephonically.*

- ✓ **82.4%** responded with “disagree” (16.2%) and “strongly disagree” (66.2%).
- ✓ **12.2%** were neutral.
- ✓ The remaining responses were “strongly agree”.

g. *Magistrates treat parties with dignity and respect.*

- ✓ **48.6%** of participants responded with “strongly agree” (25%) and “agree” (23.6%).
- ✓ **30.6%** were neutral.
- ✓ **20.8%** responded with “disagree” (9.7%) and “strongly disagree” (11.1%).

h. *Admin staff are knowledgeable.*

- ✓ **15.1%** of participants responded with “strongly agree” (11%) and “agree” (4.1%).
- ✓ **27.4%** were neutral.
- ✓ **57.5%** responded with “disagree” (31.5%) and “strongly disagree” (26%).

i. *Magistrates are experienced in maintenance matters.*

- ✓ **45.8%** responded with “disagree” (23.6%) and “strongly disagree” (22.2%).
- ✓ **27.8%** were neutral.
- ✓ **26.4%** of participants responded with “strongly agree” (12.5%) and “agree” (13.9%).

j. *Admin staff do not treat parties with dignity and respect.*

- ✓ **36.1%** were neutral.
- ✓ **31.9%** responded with “disagree” (19.4%) and “strongly disagree” (12.5%).
- ✓ **31.9%** of participants responded with “strongly agree” (22.2%) and “agree” (9.7%).

3.5.4 Causes of delays

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *One of the parties is uncooperative.*

- ✓ **85.1%** of participants responded with “strongly agree” (60.8%) and “agree” (24.3%).
- ✓ **10.8%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

b. *Attorneys or litigants not complying with or abusing court procedures.*

- ✓ **72.9%** of participants responded with “strongly agree” (40.5%) and “agree” (32.4%).
- ✓ **16.2%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

c. *Files or documents getting “lost” at court.*

- ✓ **57.5%** of participants responded with “strongly agree” (34.2%) and “agree” (23.3%).
- ✓ **21.9%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

d. *There are insufficient clerks / investigators.*

- ✓ **81.1%** of participants responded with “strongly agree” (62.2%) and “agree” (18.9%).
- ✓ **10.8%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

e. *Trials get crowded out.*

- ✓ **71.7%** of participants responded with “strongly agree” (51.4%) and “agree” (20.3%).
- ✓ **17.6%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

f. Investigations are not conducted effectively by maintenance investigators.

- ✓ **77.1%** of participants responded with “strongly agree” (64.9%) and “agree” (12.2%).
- ✓ **12.2%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

g. No magistrate available.

- ✓ **50%** of participants responded with “strongly agree” (29.7%) and “agree” (20.3%).
- ✓ **27%** responded with “disagree” (13.5%) and “strongly disagree” (13.5%).
- ✓ **23%** were neutral.

h. Postponements by magistrates.

- ✓ **52.7%** of participants responded with “strongly agree” (29.7%) and “agree” (23%).
- ✓ **25.7%** were neutral.
- ✓ **21.6%** responded with “disagree” (10.8%) and “strongly disagree” (10.8%).

i. No court maintenance prosecutor available.

- ✓ **51.4%** of participants responded with “strongly agree” (36.5%) and “agree” (14.9%).
- ✓ **28.4%** responded with “disagree” (14.9%) and “strongly disagree” (13.5%).
- ✓ **20.3%** were neutral.

j. No court room available.

- ✓ **18.9%** were neutral.
- ✓ **37.8%** of participants responded with “strongly agree” (18.9%) and “agree” (18.9%).
- ✓ **43.3%** responded with “disagree” (20.3%) and “strongly disagree” (23%).

3.5.5 Documents required

a. Are section 6 applicants required to depose to an affidavit in support of their application (i.e. not just completing form A)?

✓ Yes	27.1%
✓ **No**	**58.6%**
✓ Varies across courts	14.3

b. Is a copy of the section 6 application attached to the subpoena served on the Respondent?

✓ Yes	22.9%
✓ **No**	**64.3%**
✓ Varies across court	12.9%

3.5.6 Comments

Participants were invited to provide comments, which are inserted verbatim below, save for some grammatical and spelling corrections.

- ✓ Maintenance court is more efficient than the other courts I’ve experienced but they need to be automated.

- ✓ I commend the staff at Benoni Court.

- ✓ Shortage of staff and if one is absent, the procedure cannot continue, and you have to comeback. Maybe 1 or no investigators to assist. In fact, the registrar's have often persuaded parties from NOT using the investigator, who is more often than not, not available or never ever ever gives feedback. Dignity to parties: clients who appeared on their own are discouraged after their first-time attendance at maintenance court. Months go between making an application to a section 10 enquiry. With no maintenance received in the interim. As an attorney I have no words of encouragement for the client. Because with or without an attorney, the delays are inevitable. The courts also only have one maintenance magistrate which often is the same one for domestic violence attending at both courts on the same day. Resulting in the day being too short to have your matter presented and this postponed . Only to have a repeat the next time. And if the magistrate is absent, there is no reserve magistrate, or the court stenographer/recorder is absent or equipment not working or maintenance officer absent etc etc more delays continue.

- ✓ Designated magistrates are required.

- ✓ Maintenance officers don't do their jobs and are often biased against the fathers in a matter.

- ✓ Candidate attorneys should be expected to do a month of community service at various maintenance courts (or any other courts that are frequented by the public) in order to assist the clerks of the court with admin and/or the convening of section 6 enquiries and/or assisting the general public to complete the maintenance forms.

- ✓ Maintenance officers refuse to argue matters and force parties to settle more than 6 months later!

- ✓ This court is appalling, and intervention is long overdue. Please just visit the court any time of the week and you will see for yourself. No justice is served by this court.

- ✓ This court is hopelessly flawed, and the maintenance officer does not discharge his duty in terms of the act. Many women are settling for R300.00 a month just to avoid

having to take off work for a postponement. It is embarrassing and frustrating to have to practice in this jurisdiction. Our concerns have been reported to the regional court manager, but nothing has been done.

- ✓ The maintenance Court must have the interpreters available for Court. It must not be the attorney's job to organise an interpreter in Court. The filing process must stop after the hearing has started. Magistrates must refrain from shouting attorneys in front of their clients no matter what the attorney has done.

- ✓ Some magistrates rely solely on legal practitioners to run the trial. Other Magistrates run the enquiry themselves. Practitioners are not warned as to which approach the Magistrate wishes to take and are simply advised that their "change is over" after examination took place. This is not proper access to justice and to the detriment of clients who pay for our services. Not fair. The process should be standardised around all courts and all role players should know what process they are in for at each stage of the enquiry.

- ✓ Maintenance is for the best interest of children. Some magistrates don't understand the precedent of Z v Z (adult dependent children).

- ✓ I have clients waiting more than 1 year for garnishee orders to be granted, when followed up with the admin staff, their response is that there is one magistrate doing the trials, court roll and only have limited time to sign the garnishee orders. This is the one department in court that the public needs speedy services because the children's school fees need to be paid and the children must eat, but then it takes then anywhere between 6 or more months to finalise their matter. If it is a garnishee order, it is a desperate situation for the client. A system should be implemented where an applicant can file her/his application with supporting documents online and receive their court date online. It will speed up the process drastically.

- ✓ Procedures themselves are overly elaborate; respondents are allowed endless postponements on the most spurious bases; staff are positively obstructive and try to shame applicants; there are no guidelines adhered to; section 26/27 and 28 applications could be handled in 1/10th of the time taken.

- ✓ Too many delays concerning court procedures and it ends up delaying justice for the child’s benefit maintenance matters takes too long to be finalized and court is always offline when applying to open a case.

- ✓ The proceedings in the Maintenance Courts work fine but we definitely need to implement a "punish" element for attorneys/parties who try to drag out the matter by not properly disclosing their documents as requested by the Court. If the attorney/party does not file on the date stipulated by the Court, this must then grant the innocent party the right to immediately claim further legal costs incurred from the day of failure to the next court hearing (including that hearing) and the Maintenance Officer must be granted the authority to immediately make such a 'Punishment Court Order' which must be complied with by the other party/attorney within 30days - if they fail to pay the legal costs, by default the innocent party's application will be made an Order of Court at the next hearing as per the Magistrate's discretion, and the matter will be deemed finalized by way of default.

- ✓ More experienced Magistrates should be appointed to the Maintenance Court and not acting Magistrates with little experience.

- ✓ No formal enquiries are being held, files get lost all the time, judgments take extremely long, magistrates are not familiar with the Maintenance Act and the maintenance officers are not knowledgeable.

- ✓ Poor quality magistrates and maintenance officers break the system and leaves complainants high and dry, especially those that are not represented.

- ✓ The Investigator did not conduct any investigations and refused to do more than 1 month’s search and only did so when the Respondents attorney requested same. And then offered mero motu to him that he would do a search on the Applicant. This also was not done and we eventually were forced to withdraw the matter as a result of Applicants lack of funds and the Maintenance Officer refusing to let us before a Magistrate even though the matter had been set down for trial. I wrote to the National Prosecutor who referred it back to the Benoni SPP for investigation. That was in May 2023. To date there has been no response.

- ✓ Move maintenance and protection orders to another place only when opposed and must go to trial you go to court. There are many single parents that must take days off work just to receive a service or help. They are the ones I am worried about. A mom losing a few days salary for nothing.

- ✓ Empangeni Maintenance Court is DYSFUNCTIONAL, in the extreme! No amount of training of Mrs Mbuyazi, the maintenance officer, will help to get this court to become an effective, functional court. She can't write, can't speak proper English, can't construct a single sentence in proper English, and she has the same LLB degree as all attorneys have. She can't read a bank statement, she can't read a payslip, she can't issue a subpoena correctly, she can't type an email address correctly, she can't spell a child's name correctly . She is seldom at court on a day where she has to appear in court, in general, or specifically in a partly heard financial enquiry proceeding in court. The magistrate will tell applicants "this is a stupid application, the respondent doesn't need to pay you anything" in circumstances where she has not spent 5 minutes to consider the papers filed in the court file, leaving the applicant distraught, traumatised and in tears. (Magistrate Mariska Botha) Complaining to the court manager, Mr Ehrens, serves no purpose since he is equally incompetent, lack energy and commitment, and never ever keeps his promises. He never returns phone calls or messages. Original court files are lost, original court orders in those files are missing, subpoenas are issued against the wrong respondents, innocent, unexpecting members of the public are simply traumatised through the conduct of this court and its staff members . Nobody takes the time to consider and read the contents of a court file before a court date - it is shocking to observe how unprepared and ill-informed the maintenance officer and the magistrate are, when we appear before them on a set down date. Both of them (magistrate and maintenance officer), have no clue about the provisions of the Maintenance Act and its regulations, and what are their respective roles and duties and responsibilities which flow from the Act and the Regulations, respectively. It is a disgrace.

- ✓ The Maintenance Officer has too many powers and too much authority. Given the high caseloads (and often incompetence), the result is that matters are unnecessarily postponed and too dependent on the availability and attention of the MO. Often we have waited until 12:00 to do a postponement just because the Maintenance Officer is "busy", but she is not at court nor her office. I have had applications lying for months on

her table to approve for a date.

- ✓ The maintenance officers do not know how to conduct a section 6 inquiry (vide Isley v Lechoba) and the dept's own directive 12/2012 (?) Non compliance with regulation 3.

- ✓ There should be two roll-calls in a day - i.e. an 8:30 and perhaps a 12:30 so that people do not have to wait all day before they are assisted. Some can then come in a bit later. The maintenance officers do not adequately perform and arguably, their role is unhelpful. The Magistrates need specific training in maintenance matters as I often experience them as incompetent.

- ✓ Staff completely overwhelmed and under resourced.

- ✓ There is a great time delay in moving matters from section 6 to section 10. Unrepresented parties are guided by clerk officials but when they fail to comply upon return, postponements are easily granted. There is almost no engagement from the prosecutors prior to section 10 hearings which causes much confusion. Section 10's are also often set down but postponed due to badly managed diary systems. Often too many matters are set down for the same date and preference is given without consultation with all parties set down for the day. It seems as if there is more than one diary floating around and the continuous postponements due to administrative issues causes legal fees to be increased substantially as preparations are done in full prior to each hearing date set.

- ✓ The maintenance officers can be very good or very lazy. I am not surprised that most mothers requesting maintenance gives up. The system takes long, matters are postponed they are treated badly by the maintenance officer, maintenance officers are often not neutral. They often take the other party's side. Contempt of court orders are treated as a joke. There is no justice whatsoever or any consequences for fathers or mothers that do not pay. It is shocking and embarrassing. Except for one or two maintenance officers the rest are lazy and incompetent.

3.6 DOMESTIC VIOLENCE COURT

3.6.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to court procedures and processes, documents required to be submitted in their jurisdiction of practice, Magistrates and court staff and causes of delays. Participants were requested to indicate which courts they practice at. The responses indicated a range of practice areas across South Africa.

3.6.2 Court procedures and processes

The following questions were asked in respect of court procedures. The results of the data obtained from the questionnaires follows immediately below each question:

a. *On average, how quickly are matters finalised?*

- ✓ Within three months 11.5%
- ✓ Between three and six months 28.7%
- ✓ **Between six months and one year** **42.5%**
- ✓ Over a year 17.2%

b. *Does the court only deal with certain matters on certain days, i.e. Monday - only deals with new applications; Tuesday - limited to first return dates; etc.?*

- ✓ Yes 18.4%
- ✓ No 41.4%
- ✓ Varies across court 40.2%

c. *Does the court set dates for service and filing of affidavits?*

- ✓ Yes 40.2%

- ✓ No 35.6%
- ✓ Varies across court 24.1%

d. *Participants were asked to indicate what the consequences are for non-compliance. Responses included:*

- ✓ No consequences (majority of responses)
- ✓ Adjournment or postponement, indulgences granted
- ✓ Risk of dismissal or order being granted
- ✓ Strong reprimand or party barred from filing
- ✓ Depends on magistrate or clerk
- ✓ Potential costs

e. *Are DV matters where children are involved referred to the FA in accordance with section 5(1A) of the Domestic Violence Act?*

- ✓ Yes 12.9%
- ✓ **No** **62.4%**
- ✓ Varies across court 24.7%

f. *Does the court conduct formal pre-trial consequences?*

- ✓ Yes 15.5%
- ✓ **No** **77.4%**
- ✓ Varies across court 7.1%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

g. *Each domestic violence court makes its own procedures.*

- ✓ **65.5%** responded with “strongly agree” (41.4%) and “agree” (24.1%).
- ✓ **17.2%** were neutral.
- ✓ The remaining participants responded with “disagree” and “strongly disagree”.

h. The court procedures are in written format.

- ✓ **23.2%** of participants responded with “strongly agree” (15.1%) and “agree” (8.1%).
- ✓ **23.3%** were neutral.
- ✓ **53.4%** responded with “disagree” (17.4%) and “strongly disagree” (36%).

i. The procedures are changed without notification to legal practitioners or members of the public.

- ✓ **23%** responded with “disagree” (13.8%) and “strongly disagree” (9.2%).
- ✓ **25.3%** were neutral.
- ✓ **51.7%** of participants responded with “strongly agree” (35.6%) and “agree” (16.1%).

j. The procedures are easy to follow.

- ✓ **39.1%** were neutral.
- ✓ **31%** of participants responded with “strongly agree” (13.8%) and “agree” (17.2%).
- ✓ **29.9%** responded with “disagree” (11.5%) and “strongly disagree” (18.4%).

k. I know exactly what the procedure is.

- ✓ **19.5%** of participants responded with “strongly agree” (9.2%) and “agree” (10.3%).
- ✓ **29.9%** were neutral.
- ✓ **50.6%** responded with “disagree” (13.8%) and “strongly disagree” (36.8%).

l. There is uniformity of procedures at all domestic violence courts.

- ✓ **10.3%** of participants responded with “strongly agree” (5.7%) and “agree” (4.3%).
- ✓ **21.8%** were neutral.
- ✓ **73.2%** responded with “disagree” (16.1%) and “strongly disagree” (51.7%).

m. The filing system at domestic violence court is poor.

- ✓ **47.1%** of participants responded with “strongly agree” (29.9%) and “agree” (17.2%).
- ✓ **27.5%** responded with “disagree” (17.2%) and “strongly disagree” (10.3%).
- ✓ **25.3%** were neutral.

n. Standardised procedures should be available online and at each children’s court for unrepresented litigants.

- ✓ **90.8%** of participants responded with “strongly agree” (79.3%) and “agree” (11.5%).
- ✓ The remaining responses were “neutral”, “disagree” and “strongly disagree”.

o. *Court starts at 08h30 sharp every day.*

- ✓ **80.4%** responded with “disagree” (12.6%) and “strongly disagree” (67.8%).
- ✓ **9.2%** were neutral.
- ✓ The remaining responses were “agree” and “strongly agree”.

p. *There should be separate seating areas for victims and alleged perpetrators.*

- ✓ **85.1%** responded with “strongly agree” (66.7%) and “agree” (18.4%).
- ✓ **6.9%** were neutral.
- ✓ The remaining responses were “disagree” and “strongly disagree”.

3.6.3 Magistrates and court staff

a. *Does the magistrate's court have a dedicated magistrate for domestic violence matters?*

✓ Yes	49.4%
✓ No	29.9%
✓ Varies across court	20.7%

b. *Should magistrates be required to undergo specific training if they are required to handle maintenance matters?*

✓ **Yes**	**96.6%**

c. *Ad hoc magistrates should be appointed from senior specialist practitioners to assist with hearings to ensure proper access to justice and speedy resolution of matters*

✓ **Yes**	**78.2%**

- ✓ No 12.6%
- ✓ Not sure 9.2%

d. *Are unrepresented parties properly assisted by court staff to complete application forms?*

- ✓ Yes 43.7%
- ✓ No 37.9%
- ✓ Varies across court 18.4%

e. *Are unrepresented parties properly assisted by court staff to draft answering and replying affidavits?*

- ✓ Yes 11.6%
- ✓ **No** **69.8%**
- ✓ Varies across court 18.6%

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

f. *Court staff are helpful and friendly.*

- ✓ **27.6%** were neutral.
- ✓ **33.3%** of participants responded with “strongly agree” (16.1%) and “agree” (17.2%).
- ✓ **39%** responded with “disagree” (17.2%) and “strongly disagree” (21.8%).

g. *Admin staff are available electronically or telephonically.*

- ✓ **85.1%** responded with “disagree” (16.1%) and “strongly disagree” (69%).
- ✓ **9.2%** were neutral.
- ✓ The remaining responses were “agree” and “strongly agree”.

h. *Magistrates <u>do not</u> treat parties with dignity and respect*

- ✓ **28.7%** were neutral.
- ✓ **31%** of participants responded with “strongly agree” (23%) and “agree” (8%).
- ✓ **40.2%** responded with “disagree” (12.6%) and “strongly disagree” (27.6%).

i. *Staff need ongoing sensitivity training.*

- ✓ **80.4%** of participants responded with “strongly agree” (65.5%) and “agree” (14.9%).
- ✓ **12.6%** were neutral.
- ✓ The remaining responses were “disagree” and “strongly disagree”.

j. *Magistrates are experienced in domestic violence matters.*

- ✓ **49.4%** responded with “disagree” (20.7%) and “strongly disagree” (28.7%).
- ✓ **32.2%** were neutral.
- ✓ **18.4%** of participants responded with “strongly agree” (13.8%) and “agree” (4.6%).

k. *Admin staff <u>do not</u> treat parties with dignity and respect.*

- ✓ **28.7%** responded with “disagree” (14.9%) and “strongly disagree” (13.8%).
- ✓ **29.9%** were neutral.
- ✓ **41.3%** of participants responded with “strongly agree” (26.4%) and “agree” (14.9%).

3.6.4 Causes of delays

Participants were asked to rate the following causes of delays in matrimonial or family matters, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

a. *One of the parties is uncooperative.*

- ✓ **74.7%** of participants responded with “strongly agree” (51.7%) and “agree” (23%).
- ✓ **20.7%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

b. *Attorneys or litigants not complying with or abusing court procedures.*

- ✓ **65.5%** of participants responded with “strongly agree” (48.3%) and “agree” (17.2%).
- ✓ **20.7%** were neutral.
- ✓ The remainder responded with “disagree” and “strongly disagree”.

c. *Files or documents getting “lost” at court.*

- ✓ **49.4%** of participants responded with “strongly agree” (29.9%) and “agree” (19.5%).

- ✓ **31%** of participants responded with “disagree” (17.2%) and “strongly disagree” (13.8%).
- ✓ **19.5%** were neutral.

d. There are insufficient clerks.

- ✓ **52.9%** of participants responded with “strongly agree” (34.5%) and “agree” (18.4%).
- ✓ **25.3%** of participants responded with “disagree” (13.8%) and “strongly disagree” (11.5%).
- ✓ **21.8%** were neutral.

e. *Hearings get crowded out.*

- ✓ **59.7%** of participants responded with “strongly agree” (42.5%) and “agree” (17.2%).
- ✓ **21.8%** of participants responded with “disagree” (10.3%) and “strongly disagree” (11.5%).
- ✓ **18.4%** were neutral.

f. No magistrate available.

- ✓ **48.3%** of participants responded with “strongly agree” (23%) and “agree” (25.3%).
- ✓ **31%** responded with “disagree” (14.9%) and “strongly disagree” (16.1%).
- ✓ **20.7%** were neutral.

g. Postponements by magistrates.

- ✓ **54%** of participants responded with “strongly agree” (34.5%) and “agree” (19.5%).

- ✓ **28.7%** were neutral.
- ✓ **17.2%** responded with “disagree” (8%) and “strongly disagree” (9.2%).

h. No court room available.

- ✓ **27.9%** of participants responded with “strongly agree” (12.8%) and “agree” (15.1%).
- ✓ **31.4%** were neutral.
- ✓ **40.7%** responded with “disagree” (15.1%) and “strongly disagree” (25.6%).

3.6.5 Comments

Participants were invited to provide comments, which are inserted verbatim below, save for some grammatical and spelling corrections.

- ✓ The complaints process for corrupt court officials don’t work. The corrupt official reported for “losing files” and taking and asking for bribes was moved to the divorce court. Need to ask about the court manager being helpful and responsive and all admin in the corruption together. My DV magistrate was asking me out on a date.

- ✓ The admin staff assist the complainant with the forms and affidavits. They themselves do NOT know how to complete them correctly and therefore assist the complainant incorrectly, resulting the magistrates throwing matters out of court!! Or worse, the opposing attorney use this weak link to have it thrown out of court !!! It's not fair on the complainant who is already traumatised.

- ✓ Privacy is a big issue. Everyone sits in the general area and DV cases do not have priority, so everyone waits in the passage and know which matter are called. For instance, the clerk will say, are the following persons here for DV matters and then call the names, although the matter is being heard in chambers, everybody already knows why the party is at court. **Furthermore, mediators can deal with DV cases better than magistrates as DV cases involve emotion and the application of legislation**

does not always solve the problem. Specialist mediators will serve this best (emphasis added).

- ✓ Postponing matters on several occasions to accommodate Legal Aid has to stop. If a private attorney is late or does not show up, the matter proceeds.

- ✓ Some Prosecutors treat victims as if they are perpetrators and the way defence attorneys cross examine witnesses and victims same must come to an end as most don't use dignity at all and ask very difficult questions.

- ✓ I would suggest that for each different DV PO there should be a qualified person available offering to speak to applicant.

- ✓ Personnel should have the heart and patients to be able to see when the person applying for a PO needs to speak to someone and offer to ask if they need someone to speak to. (Sometimes a person feels at that stage like running away, isolated, ALONE, AFRAID) and maybe having a person to talk to while at the DV office they could feel SAFE, CALM, and have the COURAGE to move forward with the application.

- ✓ Clerks of the court tend to take sides and favour the other party. Being disrespectful. Only help one side. They also get involved in the case and tell the magistrate what to do. Which steps need to be taken because they favouring one side.

- ✓ Having to appear in DV court is the worst experience for legal practitioners and clients. **All the staff, including the magistrates treat you as you are an irritation to them**. Magistrates are being rotated to work in DV courts. You never get the same magistrate's presiding over a matter. The magistrate's allocated to DV does not want to work in DV courts and you can detect it from their attitude and the manner in which they treat the public and the legal representatives. **The staff are even more hostile and inefficient.** They make a point in not assisting lawyers representing clients. We as officers of the court should be treated with the same respect as any other officer of court and should have preferential treatment by being assisted before the public. Our clients suffer the consequences of having to wait for long periods at court. Magistrates take long lunches. I have waited from 9h00 and were told I would see a Magistrate at 14h00 after lunch. I waited and none of the three magistrates returned to DV court after

lunch. I left without being assisted by 15h00 (emphasis added).

- ✓ We need at least one police official for each d v court who is on duty everyday.

- ✓ "**Secondary abuse**" of victims occurs at court when unrepresented people attempt to apply for DV orders. I have heard them being shouted at, not had questions they have properly explained, and are generally made to feel stupid (emphasis added).

- ✓ More training should be provided to magistrates to also know the principles of civil law, the procedure often best done when the civil procedure and rules are followed. Magistrates should still be careful not to grant orders that does not fall within the division of the family court, such as granting eviction orders through domestic violence matters. This has resulted in severe technicalities for clients and the orders being referred to the High Court.

- ✓ Building and spaces for mothers and seating not available - no clarity of instruction to person unrepresented at court.

- ✓ Magistrate is insensitive and reluctant to grant protection order she cannot relate to the vulnerable members of society and likes to refuse granting orders.

- ✓ General comment - if attorneys do not understand Family Law and Domestic Violence legislation, they should refrain from attending to these types of matters. In personal experience, an opponent (acting on behalf of the perpetrator) filed a 200 page opposing affidavit explaining why only physical abuse must be considered and that there was no such thing as mental abuse, verbal abuse etc. and they felt my client (the victim) was making it up - we had clear proof of all the abuse on emails (and the Magistrate agreed with us). All that time and resources wasted because my opponent had no idea what constitutes abuse - it is clearly stated in the Domestic Violence Act. Completely unprofessional and unacceptable.

- ✓ **Matters should be first referred to mediation before inquiries are held. This will save a lot of court time and costs** (emphasis added).

- ✓ Admin staff has become desensitised to victims and their needs. Admin staff will question victims why they are bringing an application. Economical abuse is not understood, and magistrates in matter were parties are married tell the victims to withdraw their application and bring a rule 58 or rule 43.

- ✓ A magistrate needs to be allocated to deal with only domestic violence matters and there should be a backup magistrate if the allocated one is on leave.

- ✓ Magistrate Skosana was experienced in conflict resolution; the staff had no concern; poor training and don't fear being reported.

- ✓ Overall, this is one of the better run Sui generis courts in the division, provided that an experienced and competent magistrate oversees matters, alternatively ad hoc magistrates are appointed.

- ✓ 11 women per day tell the story of how DV courts are failing.

- ✓ More court rooms for DV matters should be made available. Matters usually run over and litigants need to return the next day or the next available date.

- ✓ Recording devices are unavailable. Parties are asked to pay for recordings. There is no secrecy in contempt procedures.

- ✓ The magistrates make up their own rules and certain courts are known to be incompetent. **The staff are rude** to the public and to legal practitioners. Clerks and admin give preference to their friends and attorneys they know. The system is lacking and is unprofessional and often the actual procedure due to the consistent postponements lands up being a **further abuse to the complainant**. **Some magistrate's FORCE parties to mediate, and the mediation is run by inexperienced people who have no knowledge of the law** but did some fancy course and now believe they are capable of mediating. Mediators should be properly trained and should have an LLB degree (emphasis added).

3.7 FAMILY ADVOCATE

3.7.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to ad hoc family advocates, delays in enquiries and reporting and general impressions of the family advocates offices. Participants were requested to indicate which family advocate's office/s most of their matters were referred to. The responses indicated a range of practice areas across South Africa.

3.7.2 Duration of matters at the office of the family advocate

The following questions were asked in respect of duration of matter referred to the family advocate's offices. The results of the data obtained from the questionnaires follows immediately below each question:

a. *On average, how quickly are matters finalised by the family advocate?*

- ✓ Within three months 26%
- ✓ Between three and six months 33%
- ✓ Between six months and one year 34%
- ✓ Over a year 7%

Participants were asked to rate the following questions relating to duration of matters at the office of the family advocate, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

b. *The family advocate takes far too long to give dates for enquiries.*

- ✓ **63.8%** of participants responded with "strongly agree" (42.2%) and "agree" (21.6%).
- ✓ **21.6%** were neutral.

- ✓ **14.7%** responded with “disagree” (7.8%) and “strongly disagree” (6.9%).

c. *The family advocate should not take more than 60 days to conduct their enquiry and file their report.*

- ✓ **89.2%** of participants responded with “strongly agree” (78.4%) and “agree” (10.8%).
- ✓ **2.9%** were neutral.
- ✓ The balance responded with “disagree” (4.9%) and “strongly disagree” (2.9%).

d. *I am tired of the excuses proffered by the family advocate for delays.*

- ✓ **55.9%** of participants responded with “strongly agree” (39.2%) and “agree” (16.7%).
- ✓ **27.5%** were neutral.
- ✓ **16.7%** responded with “disagree” (4.9%) and “strongly disagree” (11.8%).

e. *The family advocate should be bound by procedures and timelines that are available to the public.*

- ✓ **87.2%** of participants responded with “strongly agree” (69.6%) and “agree” (17.6%).
- ✓ **6.9%** were neutral.
- ✓ The balance responded with “disagree” (2%) and “strongly disagree” (3.9%).

3.7.3 Ad hoc family advocates

The following questions were asked relating to the appointment of ad hoc family advocates. The results of the data obtained from the questionnaires follows immediately below each question:

a. *Ad hoc family advocates should be appointed from senior specialist practitioners to assist with enquiries to ensure proper access to justice and speedy resolution of matters*

✓ **Yes**	**87.1%**
✓ No	8.9%
✓ Not sure	4%

b. *Ad hoc family advocates should be appointed from senior specialist practitioners to assist with endorsement of parenting plans*

✓ **Yes**	**85.3%**
✓ No	11.8%
✓ Not sure	2.9%

3.7.4 General impressions of the office of the family advocate

a. *Should all matters involving children be referred to the FA, even if parties have settled, either through their attorneys or via mediation?*

✓ Yes	45.1%
✓ No	54.9%

Participants were asked to rate the following general impressions of the family advocate's office, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

b. *My clients are generally happy with the service of the family advocate.*

- ✓ **30.8%** of participants responded with "strongly agree" (7.8%) and "agree" (22.5%).
- ✓ **24.5%** were neutral.
- ✓ **45.1%** responded with "disagree" (26.5%) and "strongly disagree" (18.6%).

c. *Certain family advocates are known to have strong biases.*

- ✓ **48.1%** of participants responded with "strongly agree" (34.1%) and "agree" (16.7%).
- ✓ **27.5%** were neutral.
- ✓ **24.5%** responded with "disagree" (12.7%) and "strongly disagree" (11.8%).

d. *The family advocate is understaffed.*

- ✓ **76.2%** of participants responded with "strongly agree" (60.4%) and "agree" (15.8%).
- ✓ **18.8%** were neutral.
- ✓ The balance responded with "disagree" (2%) and "strongly disagree" (3%).

e. *In my view the family advocate is efficient.*

- ✓ **22.8%** of participants responded with "strongly agree" (12.9%) and "agree" (9.9%).

- ✓ **32.7%** were neutral.
- ✓ **44.6%** responded with “disagree” (24.8%) and “strongly disagree” (19.8%).

f. Reports by the family advocate are often nothing more than a copy/paste.

- ✓ **53%** of participants responded with “strongly agree” (32.4%) and “agree” (20.6%).
- ✓ **24.5%** were neutral.
- ✓ **22.5%** responded with “disagree” (12.7%) and “strongly disagree” (9.8%).

3.7.5 Comments

Participants were invited to provide comments, which are inserted verbatim below, save for some grammatical and spelling corrections.

- ✓ FA offices should be increased based on regional court numbers. FA needs to produce stats like divorce court. FA should go online and have automated tools.

- ✓ FA office is a brilliant portal for children to be seen by neutral parties. However, the delay is not good enough and it prejudices the child and their families not knowing what to do. Or being denied contact.

- ✓ FAs don't seem to care about Parental Alienation nor the protection of father's rights to their children. They appear to be biased against fathers and not care about the children and their wellbeing.

- ✓ More staff can be allocated to the office of the FA.

- ✓ FA should act on the children’s best interest and must know their work.

- ✓ Need to communicate with attorneys involved which is likely to facilitate outcome.

- ✓ The receptionist at the Bloemfontein office is extremely inefficient, unfriendly, rude and does not follow procedures such as stamping your copy of the documents submitted, fails to write it in the book that she received it and on numerous occasions I end up not having a stamped copy to proof that I submitted the documents, and it cannot be found in the FA offices. She refuses to greet you back when you greet her. I personally hate going to the FA offices. I do not know how she treats the public. That has been my personal experience going to the FA offices.

- ✓ We have some excellent staff, there is just a shortage of FAs and investigating resources

- ✓ The "quality" of the reports differs vastly according to the Fam Adv who is assigned to the matter. There are certain Family Advocates who never write a full report or who avoid doing so for months on end. The same FAs do not properly investigate the matter or interrogate the parties or read the evidence, which leads to arbitrary reports where they have not applied their minds, thus defeating the purpose of their Office.

- ✓ They do not interrogate the contents.

- ✓ The procedure of the FA is archaic, and they are not always reporting accurately.

- ✓ Pretoria Family advocate office is very efficient always delivering good service.

- ✓ With respect, the Office of the Family Advocate is (in my view) the only institution that can properly and fairly attend to the disputes between the parties/parents. I have incurred concerning biases with Social Workers and Mediators, but never with the Family Advocate. Each report, even if I do not agree with the report, I can respect and understand the viewpoints stipulated. Personally, I would recommend that in any family law matter pertaining to the minor children (divorce, parental rights, domestic violence, and even in maintenance matters if applicable) that the Family Advocate be the PRIMARY institution to be approached when the parties (and their attorneys) are unable to resolve a dispute. All other institutions such as private mediators, social workers, FAMSA, and so forth, must only be considered as a secondary option if the

Family Advocate has specifically indicated that it would be beneficial for the parties to do so.

- ✓ Family advocates should be based at all Regional courts to answer questions from the Magistrates.

- ✓ Highly disappointed with the arrogance and rudeness displayed by the junior staff. Simply unwilling to assist.

- ✓ More Family Advocates should be appointed. The FA office is greatly understaffed. We cannot demand reports be delivered faster if there are not enough staff to even answer phones.

- ✓ The biggest delay is in the investigation by the Family Counsellor - the FA needs to have more social workers available to assist - it is my experience that this is where the largest delay can be found.

- ✓ More suitably qualified family advocates need to be appointed to assist with the workload they currently have.

- ✓ The various level of qualifications of the psychologists that assist the FA vary so drastically that one has to question their experience in producing report and recommendations. The FA are exceptionally rude and, in my view, merely produce reports to ensure compliance with timelines. It is my submission that the FA does not consider the best interests of the children in all respects but rather genders contact which will end a dispute between parents which inevitably causes more disputes. Serious issues of domestic violence and financial and emotional abuse by one parent of the other isn't adequately considered in light of the true effect that same has on the children. FAs ought to investigate a matter and be assisted by two external psychologists with more than 10 years of experience in matters relating to high conflict divorces, false claims of parental alienation and post-separation abuse and coercive control. FAs ought to take heed of international advice regarding contact regimes in high conflict cases and ought not to advise on shared residency when parents are unable to get along. The contact regimes recommended are merely blanket

recommendations without considering the true psychological consequences of same for the children.

- ✓ The phone lines are constantly down. We can't get through to the office most days and when the phones do work, the relevant person isn't available. When we leave a message asking them to phone us back - they don't phone back

- ✓ Family Advocate's report should be separated from that of social workers because social workers are the cause of the delay as they don't observe time frames.

- ✓ The FA in my division is exceptionally efficient over a period of many years in my view and experience. However, there are one or two biased FA whose conduct can result in irreparable harm towards the minor children and family unit involved. This bias must be eradicated as priority.

- ✓ At this point this office is used as a gravy train and no significant contribution is made, cancel appointments, take too long to appoint team to assist in controversial matters.

- ✓ We only have a few that take too long. Otherwise, if there is a diligent FA, then things occur within the needed time limits.

- ✓ It is very difficult to respond meaningfully to all of these questions because they are too general and there is no room for specific commenting on them. I do think that you are asking the right questions, there is a lot of bias or perceived bias, and as unintentional as it may be on the part of the family advocate, you don't ever feel like there is any certainty when referring complex matters to the family advocate. I do think that they are understaffed, possibly not properly trained, and certainly very inefficient, but I am not sure which is the most relevant concern or whether it is the inefficacy and/or lack of training that has necessitated the need for more staff or whether that is just another concern? I do think that they are for the most part doing the best they can.

- ✓ The FA's office never answers its telephone , when phoning that office. They never return a call, even if they undertake to do so. They don’t keep their promises and they don’t keep to their undertakings. They are unapproachable, arrogant, disrespectful to members of the public and attorneys. There is no consistency in what they require from

you, from yesterday to today to tomorrow. Their reports don't assist the parties in any way whatsoever, in resolving the disputes between them (parents), while their recommendations are impractical, unenforceable, not properly considered, at times physically, financially and psychologically impossible to implement for parents and children . The FA's office wastes our time, waste the court's time, and is a disgrace. They don't consider the practical implications of their reports and recommendations. Their recommendations are vague and confusing, and their reports contain factually incorrect information and statements. They are extremely biased in their approach towards the parents - they choose sides and leave the non- favoured parent distraught and traumatised. They are unable to deal with really difficult matters, where they don't have the will or expertise to assist in these really difficult and challenging matters. Their response is always : they are not here to tell the parents how to be parents to their children and how to communicate with the co-parent. They are of the view that parties must go for sessions or training in order to learn how to communicate and be collaborating co-parents. This approach is extremely frustrating from an attorney's point of view since part of their responsibility is to act as a mediator between the parents. They don't get involved in any maintenance dispute - therefore they will recommend minor children to be cared for by an unemployed mother, with no further consideration about how this mother will practically care for the children, when the husband is obstructive and refusing to accept his maintenance obligations towards the children . By simply stating that the mother must go to the Empangeni Maintenance Court, does not help anybody, from a practical point of view, least the children. Because for an unemployed mother to get to the maintenance court, which in Empangeni is completely dysfunctional, is extremely difficult and she will ultimately leave that court, with no assistance received, and no maintenance payments received. The Newcastle FA office does not adhere to and does not fulfil its legal duties and responsibilities as set out in the Mediation in Certain Divorce Matters Act - those staff members have no clue about what their mandate, role and responsibilities are. As I said- they are a disgrace, and their reports and recommendations are not worth the paper it's written / printed on.

- ✓ The area FA in Mpumalanga must service is too big for the few FAs in service of the dept.

- ✓ More staff is required. They require updated systems to work on so that their reports can be handled more efficiently. Advocates should be rotated to avoid any biased opinions. Certain reports are copy and paste certain reports are more in-depth.

- ✓ I have had a good experience with both the FA in Pretoria CBD and the one in Johannesburg.

- ✓ They are not copy and paste but usually seem not to have considered submissions made or facts which are apparent between parties.

- ✓ The family advocate needs more experienced staff and should stop forcing people to mediate when clearly mediation is not going to work. It is supposed to be a voluntary process

- ✓ FA should conduct investigations accordingly especially if there are serious allegations that have been brought to his attention and you are surprised by his findings because he did not even interview all role players involved, e.g., you find FA having completed his recommendations without interviewed the concerned party

- ✓ They need to be more efficient and quicker in date allocations and in compiling the reports.

3.8 MEDIATION

3.8.1 Introduction

Participants were asked to complete a questionnaire comprising questions relating to referral of matters to mediation, child participation, the appointment of mediators, mediation bodies and mediator directories.

3.8.2 Mediation

The following questions were asked in respect of mediation. The results of the data obtained from the questionnaires follows immediately below each question:

a. *On average, what percentage of your family related matters are referred to mediation?*

✓ **Less than 10%**	**52%**
✓ 10% to 30%	16.5%
✓ 31% to 60%	15.7%
✓ 61% to 80%	10.2%
✓ 81% or more	5.6%

b. *Should mediation in divorce and child related matters be mandatory?*

✓ **Yes**	**60%**
✓ No	10.8%
✓ It depends on the circumstances	29.2%

Participants were asked to explain their answer to the above question if they replied no or it depends. The responses are set out below in the comments section.

c. *If yes, should a registry of family mediators be held at each court?*

✓ **Yes**	**93%**
✓ No	7%

d. *When a matter becomes settled and a parenting plan is concluded during mediation does the mediator ensure that a certificate of compliance with the child participation provisions in the Children's Act (section 10) and Regulations 8(3)(b) and 8(4)?*

- ✓ Yes 54.5%
- ✓ No 45.5%

e. Participants were asked to state who completes the certificate when this is done. These included: social workers, family advocate, the mediator or the parties themselves.

Participants were asked to rate the following general questions on mediation, 1 being strongly agree, 2 being agree, 3 being neutral, 4 being disagree and 5 being strongly disagree:

f. Judges should not be appointed as mediators.

- ✓ **54.6%** of participants responded with “strongly agree” (45.4%) and “agree” (9.2%).
- ✓ **19.2%** were neutral.
- ✓ **26.1%** responded with “disagree” (9.2%) and “strongly disagree” (16.9%).

g. I find that many legal practitioners do not understand what mediation entails.

- ✓ **71.5%** of participants responded with “strongly agree” (47.7%) and “agree” (23.8%).
- ✓ **12.3%** were neutral.
- ✓ **16.2%** responded with “disagree” (8.5%) and “strongly disagree” (7.7%).

h. Not enough is being done to promote mediation.

- ✓ **77.6%** of participants responded with “strongly agree” (60.5%) and “agree” (17.1%).

- ✓ **13.2%** were neutral.
- ✓ **9.4%** responded with “disagree” (1.6%) and “strongly disagree” (7.8%).

i. *There should be harsh penalties for attorneys who do not refer parties to mediation.*

- ✓ **43.1%** of participants responded with “strongly agree” (30%) and “agree” (13.1%).
- ✓ **21.5%** were neutral.
- ✓ **35.4%** responded with “disagree” (9.2%) and “strongly disagree” (26.2%).

j. *There are mediators giving parties legal information during mediation that is incorrect.*

- ✓ **49.2%** of participants responded with “strongly agree” (33.8%) and “agree” (15.4%).
- ✓ **32.3%** were neutral.
- ✓ **18.5%** responded with “disagree” (10%) and “strongly disagree” (8.5%).

k. *There needs to be one national centralised mediation body for family mediators.*

- ✓ **66.2%** of participants responded with “strongly agree” (50.8%) and “agree” (15.4%).
- ✓ **10.8%** were neutral.
- ✓ **23.1%** responded with “disagree” (10.8%) and “strongly disagree” (12.3%).

3.8.3 Comments on why mediation should not be mandatory

The following comments were received by participants who felt that mediation should either not be mandatory or that it was dependent on circumstances:

- ✓ I answered yes BUT timing of the mediation is so important. Sometimes people need a taste of litigation to know the alternative is better.

- ✓ Parties might be set on certain aspects and unwilling to compromise. E.g.) parents who are divorcing who agree on all aspects of the divorce except how contact should be exercised (let's say, one proposed one week and the other proposed one week or every alternate weekend). Mediation would in all likelihood be a waste of time and resources - neither party really has room for compromise.

- ✓ **If there has been domestic violence** (emphasis added).

- ✓ Because unscrupulous Legal Practitioners prefer to run up costs.

- ✓ Clients do tend to settle things before going the legal route, it's very seldom that they decide to approach an attorney without having first trying to at least come to some sort of an agreement, so mediation by the time legal proceedings are instituted is sometimes only a delay in the finalisation of the matter.

- ✓ The conflict and animosity in these families and marriages already pave the way for meditation to be unsuccessful. It's set up to fail...and only the Mediator gains a +/- R3000 fee, regardless of outcome. Parties are paying that fee for the piece of paper saying "Unsuccessful" unnecessary.

- ✓ Mediation is unnecessary and time consuming. People are going to settle or not. Negotiation between parties is enough to attempt. Mediation is coercive and ineffective.

- ✓ Some parties are able to reach agreement on their own.

- ✓ You cannot force individuals to incur the costs of mediation. **It opens the doorway for abusers to take advantage of the system** (emphasis added).

- ✓ Parties in any divorce proceedings usually have had enough of each other. To compel them to sit in fruitless mediation against each other is traumatic. Most of the time a decision to divorce is taken after a prolonged family mediation.

- ✓ Mediation is tricky (although not impossible) is very high conflict matters and in matters **where the power imbalance is too skewed**, or where one person is afraid of talking with the other person in the room. But then shuttle mediation is an option. Mediation is not possible where clients are intent on hiding assets (emphasis added).

- ✓ When a party strongly feels that the other is not entitled to share in the estate or accrual, as the case may , it will be impossible to persuade them otherwise. Similarly, when one party does not trust the other's ability to parent, it is often impossible to refer them for mediation.

- ✓ If the parties have an acrimonious relationship, have no intent to resolve the issues amicably and not willing to compromise, mediation is not suitable in such circumstances. This matter dependent.

- ✓ Unless there is a real commitment to mediation it becomes no more than an administrative box to be ticked.

- ✓ Where a child is in need of care and protection forced mediation is a delay.

- ✓ Not everything can be mediated because some parties are obstructive and frustrate the process. They have no intention of mediating.

- ✓ Legal practitioners do not refer matters to mediation. Instead, they merely report that the matter cannot be mediated. There are legal practitioners who have built their practices by unnecessary prolonged litigation, for their own monetary benefit and not in the best interest of the client.

- ✓ Not every matter can be mediated. If the parties are not open to mediate, it is a waste of time and resources.

- ✓ In some matters, parties are not willing to engage in mediation until there has been a full and proper financial disclosure and matters including **elements of domestic violence** or a **power imbalance** are sometimes difficult to resolve through mediation (emphasis added).

- ✓ Mediation can be done if parties want to before proceedings commence. Mediation should not stop a party's rights to litigate and make of the use of the law in court.

- ✓ Where there is **domestic violence** and **long abusive relationships** there is no point in forcing mediation as it simply facilitates further abuse (emphasis added).

- ✓ Some matters cannot be resolved by mediation, such as cases where **allegations of abuse exist** (emphasis added).

- ✓ There are circumstances where the parties do not agree on for example their parenting styles. Then mediation is not possible, before certain issues have been resolved.

- ✓ If there is a **protection order in place** relating to anything other than financial abuse, I don't believe the matter should be mediated (emphasis added).

- ✓ In my experience, where the level of acrimony between the parties are at a high, mediation seems to become futile.

- ✓ Compelling parents of a child to mediate is not necessarily the most positive or productive way to resolve the current issues. Parents must have the freedom to choose whether they are emotionally prepared to engage in mediation and whether they truly have an open mind to amicably discussing the current issues with the other parent. If a person is forced to mediate, you run the risk of breeding more hostility between the parties - and unfortunately a lot of legal practitioners "cash in" on roundtables being conducted (some of my clients from other attorneys informed me that as many as 3 to 4 roundtables were conducted with their previous attorney to no avail - and the client just has to keep paying - it is not reasonable, productive or fair).

- ✓ Most matters that are settled in mediation could have been settled with a round table meeting; therefore, there is a duplication of legal fees. Matters settled at mediation, often after taking legal advice, are rightly "unsettled". People feel pressured to settle at mediation, and the mediators are often incompetent. Mediators do not remain objective and impose their religious or cultural views on the parties. Mediators are not able to right **power imbalances** (emphasis added).

- ✓ Mediation costs are too high for many to afford and often does not resolve the issues, so the parties have to litigate as well.

- ✓ **When there is abuse,** it is normally not an option for obvious reasons (emphasis added).

- ✓ If one party or both are just not going to attempt to resolve conflict, with a long history of litigation, mediation has done nothing but just cost the client more money and no positive results.

- ✓ Sometimes the parties have already settled the matter between themselves and other times they simply aren't ready for mediation. I also believe that in order for mediation to truly be effective it has to be voluntary. The parties have to understand the benefits. I do think that the majority of family law matters should proceed to mediation first.

- ✓ Parties should not be forced in a process to mediate if they choose not to do so. It should be voluntary.

- ✓ When the parties are too far apart from the onset, mediation become an expensive and fruitless exercise.

- ✓ Every matter has its own merits and should be treated as such. Some matters and because of the merits would be better handled/managed through mediation and some do not necessarily need mediation.

- ✓ Not all matters would be suitable for mediation and if parties are not committed to the process it fails.

3.8.4 General comments on mediation

Participants were given an opportunity to provide comments on mediation. What follows are the verbatim comments received (with minor edits for spelling and grammar):

- ✓ Lawyers cannot mediate for their clients too. Fees should be standardised. Automation tools should be used.

- ✓ Family mediators also need to have financial knowledge as besides children's issues, (contact, etc), then the rest all comes down to Rands and cents.

- ✓ Mediation is a good gesture; however the operation of the process should be concluded before a legal practitioner is consulted as divorce lawyers will be negatively affected should they refer each divorce action for mediation.

- ✓ The biggest problem why attorneys do not want to refer matters for mediation is because they perceive mediation as an act to earn less money. If they take a matter to court, they can earn more money that particular day or if the parties attend the mediation on their own, then they cannot charge for that time.

- ✓ SAAM (South African Association of Mediators) and all other mediation bodies should be disbanded as they appear to only be benefiting their own committee needs and not the mediator they claim to represent and a new national, independent organisation should be established which actually work for their members, the mediators.

- ✓ Judges only pay lip service to mediation. They should grant cost orders against parties who refuse to mediate.

- ✓ There should be widespread publication of mediation process so that those who prefer to use can use them.

- ✓ Bringing awareness to the public and other professionals such as attorneys is only a part of the solution. Real progress is only made when the courts are specialised, educated and openminded to the benefits of mediation. Proof is in the Protea Court Probono Mediation Project and the even older Benoni Mediation Project. Statistics do not lie. Improved court efficiency, improved family dynamics for combative parents and ultimately protected children. Nabfam already provide a centralised, standardised mediators body. It should, however remain independent of state and/or current legal oversight. Independence and impartiality is at the core of mediation, arbitration and other ADR solutions.

- ✓ This is a very loaded situation in that the legal representatives have their own views and interpretations which are as a rule based on their own financial perceptions.

- ✓ People that approach mediation with a legal mindset seem to be a problem. Instead of finding peaceful solutions, they focus on what the court would grant if they fought about it.

- ✓ Some Mediators in my experience tend to get involved where they should not. They provide incorrect legal advice just to get parties to settle, and as there is no body that regulates them some Mediators cause a lot more harm than good just to have a 'successful' mediation recorded. I have had a lot of feedback from clients who were angry and said they will never again consider mediation due to being given wrong advice which later just made their situation worse. If I as an attorney does that I can be scrapped, Mediators have no consequences when they are recklessly giving advice.

- ✓ In my opinion Mediators need to be more promoted and a national registry need to be available on the internet for clients to find in their area or close to their area.

- ✓ There should be a standard for who is allowed to become and practise as a mediator. At the moment all and sundry who have no formal training and from different backgrounds are mediating! For example, in one of our children's courts currently, an engineer and a banker are mediating family mediation!? In the same court, parties with no mediation training and no accreditation mediate! In my humble opinion there should be a ruling that only lawyers and psychologists / social workers with a n honours

degree minimum, and with the relevant mediation training and experience should be accepted as mediators, we need a standard to be adhered to!

- ✓ Most attorneys think that a round table meeting with attorneys and their clients is mediation.

- ✓ All family law practitioners should do a mediation course or also be mediators.

- ✓ Mediation is speedy unlike litigation to which some practitioners also postponed matters so that they can have costs for services rendered unnecessary. LSSA must be a family mediation forum also.

- ✓ Mediation is only for those parties who is open to mediate. If you force them to mediate, they will merely not agree on any of the points in dispute. This results in a waste of resources and time. Parties should not be forced into mediation. More Attorneys should be trained in mediation with the aim of focusing on working with his/her client towards reaching a settlement instead of having a combative attitude and wanting to litigate.

- ✓ Mediation should not delay the already extended period of litigation so whatever obligations to mediation there may be should not be delays in the litigation process and a mediator should not be forced to mediate beyond the point where the mediation can see no further progress can be made.

- ✓ Mediation is confused with "round table" discussions. The lack of knowledge regarding mediation is staggering. Mediation is not proposed as an option to parties as it influences the amount to be billed.

- ✓ I do not agree with mediation by Mediators (other than the Office of the Family Advocate, FAMSA and the relevant Social Workers). (1) Certain mediators charge clients more than attorney fees - I have personally experience this (2) Certain mediators advise the parties incorrect pertaining to their rights - again I have personally experiences this (3) Certain mediators have drafted documents that are so incorrect that it is frankly unacceptable - again personal experience (4) Compelling parties to us a mediator is not fair, productive or reasonable - on this point I respectfully recommend

that ONLY the Office of the Family Advocate be allowed to determine whether the parties must mediate and whether there is in fact ANY reasonable prospects for the parties to reach a compromise.

- ✓ Mediation in family units must be prioritised to maintain the dignity of the family unit and encourage communication and cooperation within the family unit in order to strengthen and preserve it, before the family unit is forced to approach a court for relief.

- ✓ In Family Court the Attorneys/Adv should only be allowed if the estate is higher than R1mil.There should be more competent DOJ employees Litigation in Family Court is detrimental for our society and families/children.

- ✓ Mediators are not qualified, or this is done by the legal practitioners who also deal with the matter which can never be accepted. As there are no regulations regulating mediators every person believes himself to be a mediator which is also not right.

- ✓ Attorneys should advise of the process but should not be punished if the client is not interested in mediation.

- ✓ Mediation course should be at least 12 months, mediators dealing with matters in court should be supervised for 24 months before dealing with matters on their own. Some cause lots of harm because of inexperience.

- ✓ Family disagreements need resolutions that build & support people . Dealing with a divorce does not mean people should be hurtful to each other. Mediation can help people be more accommodating.

- ✓ Ongoing training is crucial.

- ✓ Mediation only works if both parties are willing to accept their decision. Mediation is a waste of time and resources if a party is adamant on constant litigation. A party with a history of litigation is not going to be a good candidate for mediation, it is just an avenue to continue conflict, it never works and if such party does not agree with the mediator, they stop the process and go back to court. Potential clients and their resistance to resolving conflict should not be referred to mediation, it simply is a waste

of time that is used against the other party who is put through all sorts of litigation, facilitation, mediation and any other legal option out there.

- ✓ I am concerned that there in an effort to set up a more effective system of referring matters to mediation that it will become over regulated, and I am concerned that this will make it a system that everyone works around instead of participating meaningfully in it.

- ✓ The approach of the attorneys in family matters, is the reason for mediation not playing any significant role in family courts. These attorneys must be heavily penalised.

- ✓ It seems that mediation is just another way for practitioners to make more money from already vulnerable clients. When two advocates with neighbouring chambers always refer mediation to each other it makes one wonder.

- ✓ Attorneys can act as a "mediators" before such action is taken to mediation - a roundtable.

- ✓ There should be a compulsory course for all legal practitioners to understand the importance of mediation and the benefits because I think most of the legal practitioners see it as a waste of time as most matters seem to be too complicated to be settled in mediation.

- ✓ Mediators I have encountered are not knowledgeable about law. Only legal practitioners should be mediators in certain matters. A social worker dealing with intricate legal complexities should not be appointed a mediator.

CHAPTER 4 : CONCLUSION

4.1 INTRODUCTION

The purpose of this study was two-fold: firstly, to determine the answers to questions relating to the South African family law system in its current form,[17] and, secondly, to establish workable recommendations for practical solutions to improve the system.[18] The qualitative research undertaken in this study indicates that the family law system is dysfunctional at best and that the majority of participants have lost faith in the legal system and related service providers providing justice to litigants, certainly from the perspective of legal practitioners.

4.2 ANALYSIS OF DATA

The analysis of the data has been broken down as follows: the high and regional courts; the children's, maintenance domestic violence courts; the Office of the Family Advocate; and mediation.

4.2.1 The high court ("HC") and regional court ("RC")

A main theme in both these courts, as in the district courts,[19] is the delay in having matters finalised. Various reasons exist for these delays. In both courts, whilst the majority of summons are issued on the day (66.2% HC; 52.1% RC), where summons is not issued on the same day, this can take as long as two months. Other causes of delays include:

- ✓ The family advocate taking too long to conduct an enquiry and file their report (84.4% HC; 71.2% RC)
- ✓ Non-compliance with or abuse of the rules (73.4% HC; 61.7% RC)

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17 See ch 3 above.
18 See ch 1, para 1.4 above.
19 See ch 4, para 4.2.3 below.

- ✓ High conflict litigants (80.7% HC; 68.5% RC) or attorneys (82.8% HC; 67.1% RC)
- ✓ Failure to disclose (81.2% HC; 68.4% RC)
- ✓ Difficulty in obtaining dates for the hearing of matters (68.3% HC; 49.3% RC)
- ✓ Difficulty getting a matter trial ready (78.1% HC; 58.9% RC) or into case flow (54.7% HC)

It is submitted that many of these delays could be vastly reduced, if not eliminated, if the court rules were properly followed and severe consequences flowed from non-compliance. Whilst delays in obtaining dates is a result of courts being understaffed, it is submitted that this could be alleviated by the appointment of ad hoc judges and magistrates from a pool of experienced family law professionals, who could provide this service on a *pro bono* basis, which would also assist the practitioner to discharge their statutory duty to perform 40 hours per year *pro bono* services. This will then not place a further burden on the already over-stretched purse of the Department of Justice.

Another clear them was that different jurisdictions have different procedures relating to what documents are required to be attached to the summons. Given that many legal practitioners practice across jurisdictions, it is more practical to have a set standard in this regard across jurisdictions. This will avoid errors being made, which increases costs and causes delays.

Non-compliance with the rules was also evident in the failure of legal representatives to attach a rule 41A notice to the summons or rule 43 papers. This rule is not being enforced by the registrar who issues the papers. It is noteworthy that sheriffs charge separately for service of the rule 41A notice, even though it is attached to a summons or rule 43 application, thus resulting in additional costs for the client.

Whilst the large majority of participants agreed that the financial disclosure form ("FDF") should be mandatory across jurisdictions (73.8% HC; 57.5% RC), far fewer legal practitioners insist that their clients complete the FDF (40% HC; 35.6% RC). The majority of participants also agreed that a more detailed parenting questionnaire is required (67.7% HC; 65.8% RC). It is submitted that whilst this may cause inconvenience to litigants, having them make a full financial disclosure at the outset and requiring the completion of a more detailed parenting questionnaire may well result in quicker settlement being achieved.

A major issue in the Gauteng division of the high court appears to be the implementation of case lines and court online. Comments by participants in this regard were not favourable, it being said that the system was difficult to understand and not user friendly. It is submitted that if legal professionals are experiencing difficulties, it is to be expected that unrepresented litigants will be further prejudiced. The same issue applies to practice directives of the various high courts which are constantly changing, are difficult to understand and onerous on litigants.

As regards the courts and court staff, the majority of participants agreed that judicial officers dealing with family matters should have specialised training (89.2% HC; 95.9% RC). Participants supported the proposal that all regional courts should have the same procedures (83.5%) and that these should be available online and at each court for non-represented litigants (87.7%).

Alarmingly, the vast majority of participants conceded that the provisions and regulations of the Children's Act relating to child participation[20] are not being complied with (81.3% HC; 81.9% RC). Given the import of the Children's Act, it is submitted that this needs to be addressed as a matter of urgency.

[20] Section 10 and regulations 8(3)(b) and 8(4).

4.2.2 Children's court ("CC"), maintenance court ("MC") and domestic violence court ("DVC")

Several main themes presented in all these courts, including issues around causes of delays, procedures, the manner in which parties are treated and training of court staff. In respect of the delays in having matters finalised, various similar reasons were noted in all three courts. In the CC and DVC, the majority of cases take between six and twelve months to finalise (46.6% CC; 42.5% DVC). The results for the MC show that the majority of cases take more than a year to finalise (46.6%). Causes of delays include:

- ✓ Non-compliance with or abuse of the rules (61.3% CC; 72.9% MC; 65.5% DVC)
- ✓ Uncooperative parties (78.5% CC; 85.1% MC; 74.7% DVC)
- ✓ Insufficient clerks (43.5% CC; 81.1% MC; 52.9% DVC)
- ✓ Files getting lost (57.5% MC; 49.4% DVC)
- ✓ Crowding out (51.6% CC; 71.7% MC; 59.7% DVC)
- ✓ Matters being referred to the family advocate (67.8% CC; 62.4% DVC)
- ✓ Postponements by magistrates (42% CC; 52.7% MC; 54% DVC)
- ✓ In MC – investigations inefficient (77.1%); no magistrate available (50%); No maintenance prosecutor available (51.4%)

Responses to whether or not dates were set for the filing of documents in the various courts differed, but there was agreement that the consequences of a failure to adhere to the rules or directives were slim, mostly resulting in further adjournments. The vast majority of courts do not conduct formal pre-trial hearings (72.6% CC; 67.6% MC; 77.4% DVC). Participants agreed that the majority of courts make their own procedures (72.6% CC; 60.8% MC; 65.5% DVC), that these are not in written format (34.2% CC; 59.4% MC; 53.4% DVC) and that they are changed without notification (49.1% CC; 56.8% MC; 51.7% DVC).

Participants further agreed that the exact procedures are either unknown or difficult to follow (51.6% CC; 45.9% MC; 50.6% DVC); that all jurisdictions should have the same procedures (83.5% CC; 79.8% MC) and that same should be available online and at the courts (87.1% CC; 89.1% MC; 90.8% DVC).

It was found that the vast majority of courts do not start at 08h30 (83.9% CC; 80.9% MC; 80.4% DVC). Participants were almost unanimous that magistrates should be provided with specific training (100% CC; 98.6% MC; 96.6% DVC). Furthermore, participants were largely in agreement that ad hoc magistrates should be appointed to alleviate the burden on the courts (82.3% CC; 85.1% MC; 78.2% DVC). Participants found that court staff do not treat unrepresented parties with dignity and respect (74.2% CC; 82.4% MC; 85.1% DVC). This is a particularly alarming result.

In respect of the DVCs, participants noted that 62.4% of DV matters are not referred to the family advocate's office in accordance with section 5(1A) of the Domestic Violence Act. 85.1% of participants agreed that separate seating arrangements should be made for victims of domestic violence and 80.4% agreed that staff require ongoing sensitivity training.

It is submitted that many of the issues faced in these courts are easily overcome without the need for additional funding. There is general consensus that procedures at the various courts need to be standardised across jurisdictions. This is easily achievable and will be of great assistance to legal practitioners who practice in different jurisdictions. Furthermore, the rules and procedures need to be properly followed and applied consistently. This will ensure the speedier resolution of matters. Presently, parties face no penalties for non-compliance or obstructive behaviour. This is particularly prevalent in maintenance matters and needs to be addressed as a matter of urgency to protect the most vulnerable in society.

4.2.3 The family advocate

The results show that most matters referred to the family advocate take between three and twelve months to finalise (67%). Given that the majority of participants agreed that the family advocate is understaffed (76.2%), these delays can be understood. The shortage of staff was a strong theme in the general comments. That said, the vast majority of participants agreed that ad hoc family advocates should be appointed to assist with enquiries (87.1%) and with endorsements (85.3%). This would go a long way to easing the backlog at the family advocate. Such services could be offered on a *pro bono* basis, thus not requiring additional funding.

Participants were largely in agreement that the family advocate takes too long to give dates for enquiries (63%) and that it should not take longer than 60 days to conduct the enquiry and file a report (89.2%). 87.2% of participants agreed that the family advocate should be bound by procedures and timelines, which should be available to the public. 54.9% of participants did not feel that settled matters should be referred to the family advocate; 55.9% indicated that they were tired of the excuses proffered for delays and 48.1% felt that certain family advocates were known to have strong biases.

45.1% of participants indicated that their clients were not satisfied with the services of the family advocate, 44.6% of participants felt the family advocate is inefficient and 53% believed that the reports of the family advocate are often nothing more than a copy/paste. Several comments were received that the family advocate did not properly consider all the information provided to them by the parties and that the recommendations tended to be ill-conceived.

4.2.4 Mediation

Whilst 52% of participants referred less than 10% of their matters to mediation, 60% felt that mediation in divorce and child-related matters should be mandatory.

Although no questions were posed relating to mediation being conducted in domestic violence matters, a strong theme came through in the comments sections that mediation should not take place in domestic violence matters, where there is a power imbalance or where there is coercive control.

66.2% of participants agreed that there needs to be one national centralised body for family mediators and 93% felt that each court should have a register of family mediators. 77.6% of participants indicated that not enough is being done to promote mediation and 71.5% of participants felt that legal practitioners do not understand what mediation entails. Comments included the importance of proper training and qualifications for family mediators and that there was a lack of knowledge of the law amongst mediators. This was supported by the data reflecting that 49.2% of participants indicated that mediators are giving incorrect legal information and advice to parties. Participants also indicated that there needs to be education about mediation for the public, court officials and legal practitioners alike.

Comments included that certain matters cannot be mediated, for example where the parties are not committed to the process, where they are “too far apart” or where levels of acrimony are high. Several comments were made that mediation is a waste of time and money or was used to further delay matters. Another recurring theme is that attorneys are opposed to mediation as they fear the loss of income from litigation.

What is evident from the data is that opinions on mediation are diametrically opposed. On the one hand, mediators support and encourage mediation and on the other hand, attorneys are often opposed to mediation, for various reasons, including the potential loss of income. It is submitted that without proper education and information on the benefits of mediation, as opposed to litigation, this divide will not be narrowed.

4.3 CONCLUSION

It is submitted that a far more pro-active stance is required by all role-players involved in family law matters to ensure that family law matters are resolved as quickly as possible. Whilst the financial implications of any procedural amendments must always be considered in a developing country such as South Africa, consideration needs to be given to the appointment of senior legal representatives to act, possibly on a *pro bono* basis, in order to alleviate the burden on the courts and the family advocate, in order to ensure faster access to justice.

It is submitted further that it is possible to implement procedures which support the relevant provisions of the relevant legislation and current Rules and procedures without incurring prohibitive costs. This could be done by seeing to it that parties and their legal representatives adhere strictly to the current procedures prescribed under the Uniform Rules of Court in high court matters and to the Magistrate's Court Rules in regional court matters, but with the addition of some minor changes. Furthermore, standardised procedures need to be implemented across jurisdictions in each court of the lower courts to prevent each court having its own procedures.

This report will be distributed to the various role players to invite inclusive discussions on possible solutions to the ongoing problems encountered in the current family law systems.

LIST OF SOURCES

Appendices

- Appendix A: High Court questionnaire
- Appendix B: Regional Court questionnaire
- Appendix C: Children's Court questionnaire
- Appendix D: Maintenance Court questionnaire
- Appendix E: Domestic Violence Court questionnaire
- Appendix F: Family Advocate questionnaire
- Appendix G: Mediation questionnaire