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Summary notes from the Goedgedacht Forum for Social Reflection dialogue of 20 October 2007: 'Mediation in the Children's Act'

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1 Input: Challenges in implementing the mediation provisions of the Children's Act

Adv. Shirin Ebrahim, Office of the Family Advocate, Cape Town

Speaking from the perspective of the Office of the Family Advocate, the Children's Act creates a highly complicated implementation and resource planning role for the state. An issue which arises is who can be regarded as a suitably qualified person to perform a mediation function, and this raises the related question of whether an accreditation system needs to be put in place for mediators. Family advocates are not trained mediators – we don't mediate in the pure sense of the word – and our social workers do not mediate either.

One of the major challenges in the public service is the difficulty of implementing the co-mediation model, given resource constraints and the volume of work. Having co-mediation at every level would mean that clients would have to wait six months for an appointment. Many matters must be dealt with as soon as possible. Some call for assessment e.g. whether access is viable in a situation where the parties are not open to mediation. Others call for mediation around, e.g., rights and responsibilities in respect of children.

When the Children's Act came into effect in July this year, we had 50 calls a day. Every query required advocates, administrative staff and other practitioners to spend up to 20 minutes just to explain what the Act means. These calls did not just come from the general public; we fielded queries from attorneys, social workers and psychologists as well. We held a workshops attended by 132 family advocates and social workers to try to equip them to implement the Act.

The challenge for the Office is to process those aspects which need to go to court and those which need mediation, and trying to ensure there is no overlap. We are creating partnerships with other organisations with mediation expertise and referring matters to them, e.g. the Johannesburg Office refers people to Family Life Centre, and we in Cape Town refer matters to FAMAC.

Successful mediators need to be diversity-sensitive. In some cultures, certain things are simply not up for mediation. Not all people with children are married. We have come across some psychologists and attorneys who come into a mediation session with a standard clinical approach; they are unable to adjust to a situation involving, e.g. a non-nuclear family or an extended family. The Act embraces the fact that we do not all operate from within nuclear families. Training on these and other aspects of the Act are required, and we aim to run courses every year.

The way in which we mediate has its own challenges, because it affects the number of families we can see and it limits the amount of time we can spend with each family. We are not able to sit with people for hours, even if that would be ideal. We cannot see a family more than three times because so many people are waiting for an appointment. Many people are unable to afford private practitioners. We deal with indigent people and people who struggle to understand the language and the process itself. A fair percentage of the time we are able to allocate to a matter must be spent on information-sharing to prepare the ground for mediation to be possible. Some parties come into the room with an adversarial mindset and are there to fight. But by the second or third session they have a better idea of what it means to focus on the best interests of the children and how mediation can assist.

When we refer parties to external mediators, it is always to serve the best interests of the children. We found initially that mediators focused on creating a power balance between the parents rather than acting in the best interests of the children. The line of accountability then is between us and the mediators, not between the mediators and the families themselves.

The Children's Act equalises parental power and takes the fight out of the situation. When parties operate from within a cultural context that sets up unequal roles for the parents, they are ill-prepared to put the interests of the children first. Parental training could be useful in such a situation, and organisations like FAMSA could assist with that. Parents need to understand what joint parental rights and responsibilities mean; that this is not the same as joint decision-making.

Many people find the Act a cumbersome piece of legislation and are resistant to learning to do things in a different way. Even legal practitioners are not familiar with the differences between Section 20 and Section 21. We find applications being brought in terms of the wrong section, and sometimes people are being given incorrect advice. There are times when parties who are unable to bring things to court use the Family Advocate's Office in an inappropriate way. They may have no sincere intention to mediate, and they may not act in the interests of the children. There should be a legal aid budget for bringing matters to court – at the moment the legal aid budget is aligned towards criminal justice matters. We find that some parties refuse to mediate the first few times we contact them, but if we persist they begin to realise they have nothing to lose, and may become more open to the process. But we do not have the resources to keep calling a reluctant parent.

2 Discussion points summarised, consolidated and thematically arranged

2.1 Broadening awareness and understanding of mediation

- The Act has created an opportunity to promote the value of mediation; we cannot afford to mess it up.

- Most people have never heard about mediation. The term 'mediation' is so close to 'meditation' that people often misread it. There is a misperception that mediation is about getting couples back together again. We need a marketing and advertising campaign to build public awareness. The process should be driven by ordinary people, not lawyers.

- People confuse mediation and arbitration – they may come to us with a list of what the different parties want and expect us to sort it out. We are not facilitators or arbitrators, unless there is clause which specifically deals with this.

- We must take mediation to the people by creating a mediation culture beyond professional practitioners.

- Articles published in *You* magazine and *Femina* did a lot to bring mediation to the public's attention. Another article is due to be published in *Fair Lady* in the next two months.

2.2 Accreditation, quality assurance, training and mentoring

- We need to put a system in place to train and accredit practitioners, to ensure demographic representivity, to provide mentoring, to deal with complaints from the public, and to take disciplinary action where necessary. We must ensure that the image of mediation is not damaged by incompetent and inexperienced mediators. We need to send out a strong message that people need to look for accredited practitioners. Any mediator acting in terms of the Children's Act should be trained and certified competent to do so.

2.3 Improving access to services

- We need to ensure that everyone who needs mediation can access it, not only those who can afford to pay for private practitioners.

- FAMSA volunteers offer free mediation to needy people in Lenasia, Soweto and Alexandra.

2.4 Court review of mediation proceedings

- Once there has been mediation and an attempt to implement what has been agreed, there is nothing to stop a party asking a court for a review.

- It is not yet clear how far a court could go in reviewing mediation proceedings – whether the parties were present; whether there was an outcome, if so, the certificate of outcome; or whether it might invade the privacy of the mediation itself.

- A court may review everything that was said; even the record can be reviewed.

2.5 Mandatory mediation

- The mediation provisions of the Children's Act may be a precursor to mandatory mediation in divorce matters. Compelling parties to go to mediation is a good idea. Even if 70% of interventions do not work, the rest will work. This makes space for people to buy into the idea of mediation as an alternative dispute resolution mechanism. It makes sense to say that parties in dispute should be compelled to try to resolve the matter by mediation and only have recourse to the courts if that fails. Or mediation could be one step in a cascade of dispute resolution measures as it is in the Labour Relations Act. The best approach is to provide an incentive to mediate, e.g. saying that a court date or a date for a Rule 43 hearing will not be granted unless there has been mediation and the mediator certifies the mediation has failed. (One view.)

- Mediation should be voluntary, not mandatory. (Another view.)

- What happens if mediation is ordered and one party refuses to participate? We should look for a suitable High Court test case to clarify the position.

- The *Leibowitz* case court made it compulsory of the parties to go to mediation. A mediator was appointed to ensure the best interests of the child were taken care of and she was required to report back to the court.

- In the event that a party that has been directed to go into mediation does not participate in the process, the court may draw a negative inference from this.

- Under the Children's Act, parties are required to mediate if the father meets the requirements of Section 21, but sometimes mothers refuse.

- If parties cannot get a court date before engaging in mediation, this could be manipulated. A party who wants to go to court could be advised not to participate in order to get a certificate to proceed to court. Or if one party wants to stop the matter from going to court he or she could stall the mediation process.

- Family Life Centre mediators never contacts clients because that would compromise our neutrality – clients must approach us. Even if there is a court order to go to mediation, we ask for an attorney's letter to compel a person to participate in mediation so that our organisation is protected.

2.6 Mediation and the courts

- Rule 43 allows for an interim application for certain relief, e.g. contribution to costs, or access to a child, or application for maintenance. The application is usually heard quite soon after a summons has been issued. A Rule 37 application can only be heard after summons, reply and proceedings have been closed. It may take 6–8 months.

- The authorities are always looking at ways of reducing the number of cases on court rolls, and many judges want a hands-off position on family law matters. Initially judges used to ask why the Family Advocate was asking for mediation, now many of them include mediation clauses in their judgments.

- Mediators should be careful to avoid creating the impression that they are avoiding the courts. Arbitration professionals were accused of being racists using arbitration to avoid having to deal with black judges.

2.7 Children and the Act

- In terms of Section 10, children now have a strong right to have their views considered, but actually implementing it is a mammoth task.

- Children's rights have been advanced because they now have a role in making the arrangements that will prevail. The incredible breakthrough of the Act is that it pulls the rug out from under parents who want to use children as weapons in their divorce/ termination of cohabitation arrangements.

- Including children in custody and access arrangements puts a lot of responsibility on them. Children's needs and wishes need to be taken into account, but anyone who intends to bring children into divorce matters needs exceptionally good training. There are social workers and others who hold themselves up as mediators but who are really not competent to deal directly with children. Interviewing children takes a specifically qualified person.

- Child-inclusive mediation is fine in principle, but bringing in the views of children is something that must be done by experts, regardless of the age of the children. Interventions must be responsive to the age, maturity and stage of development of the particular child.

- Once children have expressed their views, they may be subject to harassment and intimidation when they get home, or pressed to reveal what they said in confidence to a mediator. Where a mediator gets the impression that children do not feel able to speak freely, he or she should refer the matter to another person, e.g. a psychologist.

- When we speak to children with the aim of bringing their voices in, we tell them what is said is between us and them, and that part of what has been said will be written into a report. We try to protect them by telling them to contact us if they are put under pressure by adults. Some children will not make that contact. We also encourage parents to go for counselling.

- Where a mediator is aware or suspects that there may be sexual abuse or violence, he or she is obliged to stop the mediation.

- The Act says clearly that every decision that affects the child must be communicated to the child but it does not spell out *who* should communicate this. The Children's Act deals with much more than custody and access,

and it uses new terminology: care instead of custody; contact instead of access; and contribution instead of maintenance.

- There are particular parts of the Children's Act that cause problems in practice. Prior to the Act, it was possible to have joint custody or, more commonly, one parent with full custody. In the latter case, the other parent's consent was required when minor children entered into contracts, marriages or left the country. What we have now is that each parent is effectively given full custody, although parents are required to *consult* with one another on big matters. The parent where the children live has to hear the views of the other on e.g. moving to another city, but the other parent cannot actually stop such a move unless he or she is willing to bring a court application. This creates a situation where lip service can be paid to consultation, and the children will be caught in the middle of the conflict instead of being spared. The children and the parent where the children do not reside have the same right to express a view on a big decision, but cannot veto it. The parent where the children live can do whatever he or she wants. The legislation might be amended to require consent in certain matters, e.g. moving to another city or another school, but it is impossible to list every kind of decision which should require consent.

- The law should provide for parallel custody, not joint custody. Both parents should make decisions, and both should agree.

- The Divorce Act is still in place, so the old terms are still in use.

2.8 Managing contact once an agreement is in place

- If the custodian parent does not allow contact with the children once an agreement is in place, this is a criminal offence. But the agreement might provide for a refusal in certain circumstances, e.g. if a substance abuser is under the influence at the time.

- Domestic violence, substance abuse or a bipolar parent are examples of situations where a parent's right to contact *should* be fettered.

2.9 Attorneys and mediation

- There are many attorneys who claim to mediate but who are providing a poor service and giving mediation a bad name.

- Many attorneys do not know about mediation, and some of those who do avoid it because they think it is taking fees away from them. This is not true – attorney mediators are able to generate enough fees and they have better job satisfaction than those who litigate. Many attorneys and advocates are looking at mediation as a better way of resolving a dispute than going to court.

2.10 Suggested changes to the Act

- A Bill to amend the Act is coming up in Parliament and this creates an opportunity to polish up the Act and deal with concerns.

- The definitions of 'mediation' and 'mediator' in the Act need to be tightened up.

- Clause 21(3)(b) which makes provision for compulsory mediation should be withdrawn (one view).

- Section 21(4) which provides for taking mediation proceedings on review to the High Court is inherently problematic for mediators; the drafters of the Act clearly did not understand what mediation is.

- Parents are required to consult with one another on decisions, but they should be required to obtain consent when it comes to big decisions.

2.11 Issues of practice

2.11.1 The value of allowing parties to be heard

- A lot of adversarial relations arise from people not feeling that they have been heard. Once we have created space for the parties to be heard, educated them on their rights and how they could move forward, a lot often falls into place.

2.11.2 Co-mediation

- There is an international perception that attorneys make the best mediators, but co-mediation with a professional from another discipline such as psychology or social work is better because it attends to the emotional side of the intervention. Mediators who focus on numbers often miss out on emotional signals in a meeting.

- Co-mediation is generally problematic because of the cost, but it makes sense to refer to other mediators with specialist orientations, e.g. psychologists.

2.11.3 Cultural issues

- Traditional African leaders have a well-established mediation role, and in African communities children go to their grandparents. Child-directed mediations do not fit well within a system of customary law.

- We have to be sensitive to what each culture presents. The idea of the best interests of the child comes from a constitutional point of view. African systems tend to be patriarchal – the children tend to follow the father, unless *lobola* has not been paid. Among Muslims, the practice is that, once children have reached a certain age of maturity, they must be taken care of by the father. We need to go beyond Australian and US models of mediation. India has an extremely diverse set of communities, and its legislation caters for mediation that is appropriate for set of circumstances. Other examples we could look at are mediation practice in Kenya and Uganda. We need to be cautious of sitting as mediators where we don't understand the cultural issues at play, but we also need to be aware that culture is fluid. We might expect people from a certain background to have a certain set of cultural beliefs, but individuals and individual families have their own understandings and the practice may differ in different contexts, e.g. rural and urban areas. It is helpful at the outset to ask clients from a different background to you how they understand their culture; ask them to explain it to you.

- People from one 'culture' may have different values. The parties in a couple may have different understandings of how things should work, and we can ask them to find out more to help us understand the situation better in the next consultation. We must alert people to the legal context and bring in the cultural context as best we can. Mediation can be very creative – if they parties agree, they agree, and the only other issue is whether the agreement meets legal requirements.

- There has been a conservative backlash against recommendations in favour of care arrangements involving same sex couples.

2.11.4 Voice and power

- One member of a couple – often the man – may take up the largest part of the 'air time' in a consultation and there is a risk that mediators may become overwhelmed by this, or appear to be partial as they try to achieve a more even balance in the power relations between the two. Mediators have internalised their own perceptions of how things should be.

- Whether parties have a voice or not, mediation helps people become more conscious of how power is working for them in the relationship. This is the case even if the mediator is not versed in the particular cultural context.

2.11.5 Mediator self-awareness

- We need to be aware that all of us come into mediation situations with our own baggage in respect of our relationships, children, possibly divorces. Clients may stereotype us in terms of how we dress or the background we appear to come from.

- In our mediation practice we need to be aware of our personal responses – when our buttons are pushed.

- At FAMAC we place a lot of emphasis on supervision. We have monthly meetings and call each other if we have problems.

- As long as we are aware of our own biases, we can avoid bringing them in.

2.11.6 Process vs. outcome – what determines success?

- Process is very important, but resource constraints make mediations more outcome-oriented than they would ideally be. Available resources may not allow for dealing with the emotional stuff that arises.

- As mediators we need to allow the parties a certain amount of space to say what they need to say, but the bottom line when a marriage or cohabitation arrangement is over is that the parties are there to get closure, to get an outcome that will enable them to formally end the relationship. We should refer them to other resources for specific help, e.g. with parenting counselling. Our aim should be to bring the parties into their own power instead of being subjected to the opinions of lawyers.

- If a mediation is too settlement-oriented, it will fail. This raises the issue of what constitutes success in a mediation. A mediation may be judged successful even if a settlement is not reached as long as it addresses the needs of a specific set of circumstances. The need for a particular couple may be simply to identify what is needed and refer the parties to a service provider who can meet that need.

- In some cases it is impossible to come up with a divorce memorandum of understanding simply because one of the parties does not want to get divorced, so that person will not agree on the last issue.

3 Input: Report on the World Mediation Conference

Craig Schneider, Craig Schneider & Associates

The World Mediation Conference took place in Jerusalem from Tuesday 9 October to Thursday 11 October.

The conference dealt with, *inter alia*, the Israeli Palestinian conflict and whether mediation can help; cross-cultural and cross-religious mediation; the culture of disputing parties and third party involvement in dispute resolution; whether mandatory mediation is the best solution; best practices in training and regulating mediators; guiding the dynamic mediation process with metaphors; conflict resolution in the Arab world; mediation, justice and law; the UN's mediating role in the Israeli-Arab conflict; psychology in mediation; building coalitions; mediation and coaching; diversity; stereotypes; and fear and perception (conditioning and techniques to deal with these effects and psychological input on various mediation techniques).

It was highlighted that in cross-cultural mediation it is essential for mediators to be versed in the cultures of the groups which they are to mediate with,[1] and to decode your own behaviours in order to improve your professional understanding and mediation skills. It is also essential to have sensitivity to the needs of others, specifically bearing in mind your own background. It was felt that Western mediators and Western mediation models do not take enough account of ethnic differences and it is therefore essential that we learn to respect difference. We must also be aware that

[1] E.g. should a party not look one in the eye, this may not necessarily show resistance to mediation or treatment; it may take place because looking at another person in the eye is considered undignified in certain cultures.

the younger generation may have different values to those considered 'traditional' among the older generation, i.e. don't line up everyone as if they have the same set of beliefs.

We discussed whether an ethnic conflict with national and religious consequences can be resolved at all. Diametrically opposed approaches were canvassed where ethnic conflict was looked at by investigating the basic desires of the parties. It was felt that, considering the basic desires of the parties in the Arab-Israeli conflict, this conflict is too deep-rooted to be resolved. The second approach was that a compromise could be reached through a managed process which would take into account that each party has their own consciousness, beliefs and reality through which they perceive their own realities, and they have their own perceptions of justice which is created through different religious and cultural differences. However, a compromise could be reached by investigating the differences along a managed approach, exploring and unpacking same, respecting and acknowledging these, and then looking to reintegrate these in a different manner. Naturally numerous other factors would also come into play.

Another point of view was that what makes the Arab Israeli conflict intractable is that a supreme authority with the requisite authority has not yet been found to resolve the problem. If it were possible to change the awareness of the parties, then there is a possibility of making peace. It is essential to bring in new tools in to resolve this old conflict. The culture of mediation is part of this discourse and it can be brought into the political realm. It was suggested that it is better to look at the context and connections between the parties than rather who said what. In this regard, it is essential to reject definitions of, e.g. Jews and Arabs as anachronistic and a clash of civilisations. It would be better to rather look at citizens of democratic and theocratic hemispheres, not look at a division into good guys and bad guys or fundamentalisms of religions but rather to look at resolving the matter on a broader level.

It is essential to understand the cultures of others, their fears and anxieties. (For example, when one Jew is killed it is one plus the Holocaust, when one Arab is killed it is one plus colonialism.) We could rather look at the European model where a thousand years of bloodshed has been placed behind them to form the European Union – to put ethnic national bloodshed behind and move towards a model of patriotism without chauvinism. The main argument therefore is to take care of the issue by putting it into a broader context. Since conflict is so deeply rooted in the Arab-Israeli conflict, education is also an important tool.

A further viewpoint was put forward by a Palestinian Minister wherein he stated that the conflict was not only ethnic and religious but also political, demographic and cultural. He pointed to the steps taken the Oslo Accord in 1993, Camp David in 2000, the *Intifada* and Israeli attacks. The conclusion he reached is that the Palestinian and Israelis hate each other so much that they cannot make peace themselves. Mediation is not impossible but the complexity of the conflict means it is essential for someone else to assist them to find a solution and impose its implementation.

In relation to this conflict, it was said that it is better to try to find a win-win ('two carrots') approach than adopt a carrot and stick approach. It is important to work from the bottom up to change the consciousness rather than from the top down, i.e. work on grassroots level rather than with the top political and other authority figures. It is also essential that each party understands the other in order to reach a solution. No matter how educated the parties are, they may not know or see each other. It is necessary for the parties to be educated about the other and to meet in a regular atmosphere in order to be able to understand each other.

Further input was put in as to whether a superpower can mediate and the problems associated therewith. This raised the question of whether there is such a thing as a neutral mediator and whether it is possible to be neutral. The answer 'no' was postulated because we all bring our baggage, agenda, beliefs, culture and historical background to the table. For example, is it possible for the United States to mediate the Middle East conflict when they have such a vested interest? The answer put forward was no – they are not seen as neutral and their interest is too vested. However it is clear that America, being such a valuable player in the Middle East, would be required to have input.

Input was given on various approaches in mediation: a narrative approach and a transformative approach. Input was also made from South Africa in trust building in cross cultural conflicts e.g. the Truth and Reconciliation Commission, as well as guiding the dynamic mediation process with metaphors – identifying the use of language by the parties, running with it, unpacking it and highlighting it.

An extremely interesting lecture was made by Bob Kaplan from America titled 'Beyond diversity – creating successful and sustainable community-based coalitions'. Mr Kaplan spoke about making New York's new diversity work. The race card plays a great role in the American story. In New York there are 200 different ethnic, religious and language groups who are no longer minorities but are referred to as emerging majorities. The particular programme with which

he is involved was designed to empower communal leadership of diverse communities and to inform and train them. There were six areas of concentration being community building, coalition incubation and capacity building, community leadership institutes, teaching a new generation of leaders in the skills of community building, community-based consultation and crisis management.

The way that the institute brought about these coalitions was focusing on quality of life issues that were common – health care, domestic violence education and finding out what the intrinsic needs of the parties are. As a result of focusing on the commonalities of issues and concerns, they were able to bring about a community-based forum which could communicate in times of crisis e.g. 9/11.

With regard to the culture of disputing parties and third party involvement in dispute resolution, various aspects were looked into, particularly the history and culture of the disputing parties. It is essential to have a reality-based solution which is steeped in the culture. Historically in the Middle East the head of the tribe is the mediator. In Arabic culture, they use the process known as *solhar* which involves three stages: ceasefire, *utuwa* and reconciliation. In ceasefire, the people need to calm down and you separate the parties for a period of three days with certain conditions. Thereafter you separate the parties in terms of *utuwa* for a period of six months. Then, one year later, you bring about reconciliation. It therefore takes between one and two years for this process to run its course. The Arabs feel that mediation is threatening the power of *solhar*. However certain Arab mediators integrate *solhar* and Western mediation to great effect.

In Israel, the promise of mediation has not materialised. Mediation has rather become a victim of the increased backlog in the courts as the courts have become a forum for settlement. There are conceptual differences between mediation and settlement. Settlement is a rights-based discourse whereas mediation is an interest-based discourse. They are also different goals in that mediation is forward-looking whereas settlement is backward-looking. It was felt that Israel is in a major crisis regarding the future of mediation. They have similar problems to South Africa with regard to the uses of mediators – people are ignorant, they want a quick and cheap solution (whereas mediation can be expensive), lawyers want settlement and do not like their power or control being taken away, it is easier to sell settlement than mediation, and creative solutions are problematic for judges.

Online dispute resolution was also discussed as being a separate culture which is taking off – they run under the maxim 'fit the forum to the fuss'.

Various input was also given around the chaos theory in that we need chaos to create something new and therefore chaos is not necessarily destructive, it may be constructive. We need to look at showing how to reconcile control and chaos to move from action to interaction, and accept that the contact and context may be more important than the task itself. It is necessary for us to not only look along the horizontal axis being our missions and aims, but also the vertical axis – the relationships. However, we must not only focus on the two axes but also look at the diagonal lines. If we accept that the whole is greater than the sum of its parts then possibly the converse is time in mediation and the whole is less than the sum of its parts. This is somewhat technical and psychological and I am not going to get into it at this stage. However if we look at the fact that organisation is greater than the sum of its parts it does enable us to understand organisation better. This helps us to look at the role of mediation and how to analyse the success of our interactions.

One of the interesting theories put forward was that of transformative mediation as postulated by Robert Bush and Joseph Folger in their book *The Promise of Mediation*.

It was clear from the conference that it is essential for us as mediators to increase our understanding of cultures, to cultivate tolerance and satisfy interests by being educated in respect of parties and groups, and by building interpersonal and intergroup relationships in order to build trust and to start a real dialogue to increase understanding. Whilst there was very little family mediation at the conference, these aspects are equally applicable to family mediation. I strongly recommend that people make an effort to attend the next World Mediation Conference.

4 Proposed establishment of SANCOM

4.1 Background

At the moment there are four or five regionally based mediation organisations in South Africa. The Department of Justice & Constitutional Development and the South African Law Reform Commission would like to deal with a single

organisation that represents and accredits mediators. The meeting therefore discussed the proposed formation of the South African National Mediators' Council (SANCOM) and circulated a draft constitution for discussion.

It was decided that the current meeting did not have the power to adopt the draft constitution and elect office bearers. Participants would take the matter back to their parent bodies for further discussion and input.

4.2 Summary of discussion points

1. SANCOM will be made up of member mediation organisations, starting with those organisations represented at the current meeting, but open to new members so that it does not become a gatekeeper.

2. Member organisations will continue to have individual mediators as members. Being an accredited SANCOM mediator will require being accredited by the member organisation and being a member in good standing. Accreditation requirements will need to be harmonised. (See Appendix for the position in respect of those organisations represented at the current meeting). Member organisations will be responsible for dealing with disciplinary issues.

3. The matter of how to determine whether an organisation which applies for SANCOM membership is a legitimate mediation organisation or an organisation established to promote the business interests of its members was the subject of extensive discussion. It was noted that it would be difficult to disbar organisations established in bad faith once they had become members. One view was that an organisation would have to have at least 13 members to apply for membership of SANCOM so that a person could not simply bring together a number of friends and family members to establish an organisation with a business objective. Opposing views were that having a specific number is arbitrary and that it potentially excludes mediators who live in areas where there are very few practitioners, especially in rural areas. One potentially accommodating suggestion is that, where it is not feasible to establish a member organisation, that the nearest member organisation take on the responsibility of bringing those mediators in its structure, and encourage contact, liaison, accountability and monitoring.

4. Training unit standards will be developed and registered with the relevant sectoral education and training authority (SETA). It was noted that achieving SETA accreditation can take years, but that there is a precedent for bodies wishing to continue training a skill approaching the South African Qualifications Authority to motivate why they should continue to provide training pending SETA accreditation. It is unlikely that further training will take place until the regulations in terms of the Children's Act are published (expected in January 2008).

5. The draft constitution should add an objective along the lines of 'to seek to be as inclusive as possible of all non-profit organisations that have mediation as an object'.

4.3 Decisions and way forward

1. MISA, SAAM, FAMAC and the Family Life Centre are the founding members of the proposed body.

2. John O'Leary is the initial chair of the committee, with Alfred Wolpe as vice-chair.

3. The committee will work towards a national conference in 2008, possibly in partnership with the Department of Justice and Constitutional Development.

4. The representatives of MISA, SAAM, FAMAC and Family Life Centre present here will take this matter back into their organisation to obtain a mandate for further discussions.

Appendix: Summary of existing mediation accreditation requirements

	FAMAC	Family Life Centre	SAAM	MISA
Pre-screening	Experience in family law or family counselling or in working with families in crisis (e.g ministers of religion, teachers and lay counsellors). No academic qualifications necessary.		Attorneys, social work and mental health professionals are welcome. Anyone with a criminal conviction is excluded.	
Training	40-hour FAMAC training or recognised alternative. Several FAMAC training workshops are held every year.	Initial 5-hour Family Life Centre training or similar. FLC runs three advanced trainings a year taking two days each: 1) financial aspects of divorce; 2) emotional aspects of divorce; and 3) legal aspects of divorce.	Does not yet do its own training; uses Family Life Centre training.	40-hour training, not family law-focused.
Post-training initial accreditation requirements	Three co-mediation sessions with an accredited mediator. Written summary of the mediation processes or memoranda checked by co-mediator. Application in writing with a letter of support from accredited mediator.		Candidates must apply for accreditation. SAAM may recommend that an individual undergoes additional training before accreditation.	Three post-training co-mediation sessions. Two settlement agreements or case summaries.
Membership fees	Yes.	No.		Yes.
Ongoing membership	Paid up membership. Attendance at least one FAMAC	Members are currently encouraged to voluntarily attend some of the ten in-service annual trainings, FLC is		Paid up membership.

requirements	training workshop per annum. Attendance at at least three FAMAC case discussion meetings per annum.	currently aiming to make it a minimum of three a year. After their initial training, members will be required to do at least one advanced training a year. Members are supposed to make themselves available for one mediation per month, but in practice this is a minimum of one or two in a financial year.		
Miscellaneous	Accreditation certificate issued every year.	Supervision in meetings and over the telephone.		