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**COMMENTS OF LEGAL AID SOUTH AFRICA ON THE CRIMINAL MATTERS  
AMENDMENT BILL (BILL 20 OF 2015)**

**September 2015**

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**1. Introduction**

The Portfolio Committee on Justice and Correctional Services has called for comments on the Bill which aims to amend the Criminal Procedure Act 51 of 1977 so as to regulate bail in respect of essential infrastructure-related offences, to amend the Criminal Law Amendment Act, 1997, so as to regulate the imposition of discretionary minimum sentences for essential infrastructure-related offences; to create a new offence relating to essential infrastructure; and to provide for matters connected therewith.

**2. Comment**

Legal Aid South Africa recognises the importance of essential infrastructure in providing basic services to the public and agrees that there is an unacceptably high incidence of crime relating to essential infrastructure in the Republic which poses a risk to, among others, public safety, electricity supply, communication and transportation.

Clause 3 provides as follows:-

**Offence relating to essential infrastructure**

3. Any person who unlawfully and intentionally—

(a) tampers with, damages or destroys essential infrastructure; or

(b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a),

and who knows or ought reasonably to have known that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years.

Legal Aid SA welcomes legislation that will deal more effectively with essential infrastructure-related offences where these are the result of organised criminal activity. We submit that the provisions of Clause 3 should not be used to deter legitimate service delivery protests.

Thus the creation of the offence created in clause 3 is welcomed, provided that this is limited to organised crime where the perpetrators have the deliberate intent to tamper with essential infrastructure which is defined as follows:-

"essential infrastructure" means any installation, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, which may interfere with the provision or distribution of a basic service to the public; and

"tamper" includes to alter, cut, disturb, interfere with, interrupt, manipulate, obstruct, remove or uproot by any means, method or device

It is, however, our submission that the imposition of discretionary minimum sentences for essential infrastructure-related offences is a severe form of punishment. We therefore have our reservations on minimum sentencing and the severity of sentencing in instances where a minor offence is committed. We similarly cannot agree with the provisions of clause 4 which makes all offences of clause 3, no matter how minor, fall under schedule 5 for the purposes of bail. Nor can we agree with the provisions of Clause 6 which makes which makes all offences of clause 3, no matter how minor subject to minimum sentencing,

We refer to the comments of Chaskalson P in the case of **S v Makwanyane** 1995 (3) SA 391 at paras 122-123 where he stated as follows:-

[122] The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.

[123] In the debate as to the deterrent effect of the death sentence, the issue is sometimes dealt with as if the choice to be made is between the death sentence and the murder going unpunished. That is of course not so. The choice to be made is between putting the criminal to death and subjecting the criminal to the severe punishment of a long term of imprisonment which, in an appropriate case, could be a sentence of life imprisonment. Both are deterrents, and the question is whether the possibility of being sentenced to death, rather than being sentenced to life imprisonment, has a marginally greater deterrent effect, and whether the Constitution sanctions the limitation of rights affected thereby.

.It is our submission that whilst in certain cases, sentences of life imprisonment may be called for, the current system of minimum sentencing as set out of Act 105 of 1997, is similarly in and of itself not a sufficient deterrent and that indeed the greatest

deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It remains so that what is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.

### **3. Conclusion**

Subject to what is said above, Legal Aid South Africa welcomes any proposal to curb crimes related to essential infrastructure in the Republic of South Africa.

**LEGAL AID SOUTH AFRICA**