**SUMMARY OF WRITTEN AND ORAL SUBMISSIONS: CRIMINAL MATTERS AMENDMENT BILL**

**[B 20 - 2015]**

The Portfolio Committee on Justice and Correctional Services invited stakeholders and interested persons to make written and oral submissions on the Judicial Matters AmendmentBill [B 20 - 2015].

* Table 1 provides a clause by clause summary of the submissions.
* Table 2 reflects general recommendations.

**TABLE 1**

**Submissions/Recommendations by clause**

| **Clause** | **Name** | **Submission / Recommendation** | **DOJ&CD Response** |
| --- | --- | --- | --- |
| Preamble | National Prosecuting Authority (NPA) | Section 27 of the Constitution of the Republic of South Africa, 1996 (the Constitution), which provides for basic services namely, health care, food, water and social security, should be made part of the Preamble. | In one of the earlier versions of the Bill, the Preamble contained the following statement: “**WHEREAS** the Bill of Rights in the Constitution of the Republic of South Africa, 1996, guarantees certain socio-economic rights and enshrines the right to freedom and security of the person”. The Office of the Chief State Law Adviser (OCSLA) changed the statement to read as follows: “**WHEREAS** the Bill of Rights in the Constitution of the Republic of South Africa, 1996, guarantees certain rights and enshrines the right to freedom and security of the person”. The OCSLA argued that it is not clear what the significance of these rights is in the context of the Bill or why they are singled out.  It should be pointed out that since the Bill contains drastic measures, the intention is to confine the scope of the Bill to address specific problem areas experienced in practice relating to certain infrastructure. The infrastructure is the focus of the Bill and not the services *per se*. The infrastructure involved provides the “means” to different sectors so that they can provide the relevant services. The infrastructure involved provides the “means” for the benefit of the broad public, including schools, hospitals, businesses and individuals, which is needed in order to operate on a daily basis. The Department was requested to fast-track legislative amendments to deal with these problem areas. Amendments to a number of Acts are still being considered to deal with other identified problems regarding metal theft in relation to infrastructure, in particular public infrastructure. Consideration is being given to the drafting of a Bill to deal with the protection of general infrastructure. A Bill dealing with critical infrastructure to replace the National Key Points Act, 1980, is being prepared. |
| 1:1 Definition of “basic service” | TRANSNET | It is proposed that the definition of “basic service” be replaced with the following definition as–  (a) that definition is vague as not all services provided by the public and private sector will fall within the ambit of that definition, for example, some Transnet business operations; and  (b) it is not clear whether Transnet, when providing services to customers, will be regarded as providing a “basic service”:  “’public service’ means a service provided by the public body or private sector, and includes a service relating to energy, transport, water, sanitation, and communication … “. | TRANSNET proposed that another concept be used but that the meaning assigned to the definition of “basic service” be retained without any changes. The Bill has a specific focus. The infrastructure is the focus of the Bill and not the services *per se*. It is intended to address criminal conduct committed in respect of certain infrastructure, namely infrastructure providing the “means” to different sectors so that they can provide the relevant services. The infrastructure involved provides the “means” for the benefit of the broad public, including schools, hospitals, businesses and individuals, which is needed in order to operate on a daily basis. If a structure of TRANSNET is therefore damaged, but that structure is not used to provide or distribute the “means”, then that conduct would and should be outside the scope of the Bill. The provisions of the Bill focus on the negative impact and consequences of criminal conduct in respect of specific infrastructure. The Department is of the view that the concept used and the meaning thereof, as contained in the Bill, should be retained except may be for a few changes proposed by the NPA. The view is held that the meaning assigned to a concept, and not so much the concept itself, is important for interpretation purposes and therefore the view is held that it would not really serve any purpose if the concept “public service” instead of “basic service” is used. |
|  | COSATU | It is proposed that health, security and education services be included in the list of basic services: Health and security services must be included due to the potential life threatening consequences when their services are disrupted; education services must be included due to its importance and the constant challenges numerous township schools face with regard to vandalism. | See the response of the Department in relation to the comments of the NPA in respect of the Preamble. |
|  | South African Local Government Association (SALGA) | It is proposed that the Bill be broadened to also deal with the theft of water and electricity. | Section 27(2) of the Electricity Act, 1987 (Act 41 of 1987), created an offence in respect of the unlawful diverting of any electric current. The subsection provided that:  *Any person who without legal right (the proof of which shall be upon him) abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electric current, or consumes or uses any such current which has been wrongfully or unlawfully abstracted, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted, shall be guilty of an offence and liable on conviction to the penalties which may be imposed for theft.*  This section was, along with the whole of the 1987 Act, repealed by the Electricity Regulation Act, 2006, (Act 4 of 2006). No provision similar to section 27(2) is to be found in the 2006 Act.  It is understood that when Parliament was considering the new (2006) Electricity Regulation Act, Eskom made representations that a provision similar to the said section 27 should be inserted in the Act, but this was apparently not well received.  Notwithstanding the repeal of the old section 27, in a fairly recent decision of the Gauteng High Court, the Court held that the theft of electricity amounts to theft as defined in our common law. In the light thereof, it would appear that there are no legal obstacles in charging a perpetrator with theft of electricity. The onus of proof would, of course, be on the State and the supplier (Eskom) will have to provide evidence as to the quantum and monetary value of electricity thus stolen. While it might have been easier to prove a contravention of the old section 27(2) – evidence that the power-supply had been interfered with would *prima facie* have established the offence - the validity of a charge of theft would not depend on the existence of statutory provisions relating to electric currents.  The re-enactment of a provision that is similar to the repealed section 27(2) may contribute towards more effectively combating such crimes, but legislation is not a prerequisite for prosecutions in such matters.  The Electricity Regulation Act, 2006, is administered by the Department of Energy. One would expect that the re-enactment of a provision similar to section 27(2) above should ideally be considered by that Department for possible insertion in the 2006-Act.  The view is held that in view of the focus of the Bill, which is the protection of certain infrastructure, it is inappropriate to make provision in this Bill for the theft of electricity and likewise, for the theft of water. |
|  | City of Cape Town | The definition of “municipal service” as defined in Chapter 1 of the Local Government: Municipal Systems Act, 2000, should be incorporated in the definition of “basic services”. | Noted. The Bill focuses on infrastructure of a specific nature, namely infrastructure used to provide or distribute the “means” to different sectors so that they can provide the relevant services. In preparing this definition, we have considered the definitions in the said Act but in view of the fact that the Bill has a specific focus, a new formulation is required. |
|  | Eskom | The expression “the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public” in the definition of “basic service” will make the burden of proof more onerous and should be deleted. If the expression is deleted, Eskom simply needs to prove that it provides an energy related service and would be able to rely on the Act without having to demonstrate that the interruption of the energy related service prejudiced the livelihood, well-being, daily operations or economic activity of the public. | Noted. See the response of the Department in relation to the comments of the NPA in respect of this definition. |
|  | NPA | The comments of the NPA in respect of this definition can be summarized as follows:  (a) This definition should include all the basic services provided for in section 27 of the Constitution.  (b) The expression “the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public” is problematic for the following reasons:  (i) The prosecution will have to prove this fact by way of tendering oral evidence in court, which will place a logistical/cost burden on the complainant entity, because the court will not be able to take judicial notice of this fact and provision has not been made in the Bill for the handing in of a certificate in terms of section 212 of the Criminal Procedure Act, 1977 (the CPA), to prove this fact.  (ii) It is not clear whether this fact will be a matter requiring particular expert testimony or whether any adult person with a reasonable and sufficiently direct knowledge and understanding of the service, can provide evidence.  (iii) The Bill deals with criminal law matters and provides for offences and strict sentencing and bail provisions. Therefore the rules of interpretation demand clarity and certainty of meaning. It may potentially be arguable that this undefined phrase makes the offence void for vagueness.  (c) Although the word “includes” is used in relation to the services in order to open-up the categories of services, the use of the word “means” restricts these services. It is suggested that a strategy be adopted whereby one can easily add to the definition by empowering for instance the Minister to add services by publication in the *Gazette*. In addition, the following definition of a “basic service” is recommended:  *“A service whether provided by the public or private sector, providing –*  *(a) energy in the form of electricity, petrol, diesel or any other form of energy included in Schedule 1 to the Act;*  *(b) transport of any article or of a person or persons or both;*  *(c) water or any other liquid substance included in Schedule 1 to the Act;*  *(d) sanitation as defined in Acts dealing with sanitation;*  *(e) a means of communications as defined with reference to Acts dealing with communication;*  *(f) any other service included in Schedule 2 to the Act.”*  (d) The factor to be considered by the Minister in order to determine whether or not to include any other service, is whether the interference of the service may prejudice the livelihood, well-being, daily operations or economic activity of the public.  (e) What in essence is protected, is basic products such as water and electricity. An omission of the Act is mining products, such as precious metal and minerals, and agricultural products, such as maize, wheat, vegetable, fruit and meat.  (f) It is assumed that the word “public” in this definition is supposed to be used to cover all sectors, including the private sector and in the particular, business. The question is whether the word “public” sufficiently sets out such an intention and whether it is not better to refer to the “public at large “ or the “public or private sector”. | (a) See the response of the Department in relation to the comments of the NPA in respect of the Preamble.  (b) Noted. See the response in (c) below.  (c) The concerns expressed by the NPA in respect of the definition of “basic service” have merit. However, the Department does not agree with the changes to the definition proposed by the NPA. The view is held that since the Bill deals with criminal law and drastic measures are contained in the Bill, Parliament and not the Executive should decide on the scope of the Bill. The definitions are part of the scope of the Bill.  In addition, since the measures are drastic, they should only apply when aggravating circumstances are present. Hence the insertion of the internal qualification in the definition of “basic services” which requires that the interference must be of such a nature that it may prejudice the livelihood, well-being, daily operations or economic activity of the public. Although it is appreciated that the court cannot take judicial notice of this fact and that evidence will have to be led by the State to prove this fact, the view is held that this is not an insurmountable problem. This kind of evidence may be given by a technical person in the service of a State Owned Company. The court may, from the evidence led, draw certain inferences. The SAPS and prosecutors will have to receive training in order to ensure that they know exactly what kind of evidence must be given. It needs to be mentioned that presently the prosecution relies on impact statements in order to place aggravating factors for sentencing purposes before the court. This is the same information that now needs to be presented to the court to secure a conviction.  (d) Noted.  (e) Noted but see the response of the Department in relation to the comments of the NPA in respect of the Preamble.  (f) Proposal may be considered but the view is held that the word “public” is not problematic. The word “public” is also used in the definition of “infrastructure facility” in section 1 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 33 of 2004. |
| 1.2 Definition of “essential infrastructure” | COSATU | It is proposed that health, security and education services be included in the list of essential infrastructure: Health and security services must be included due to the potential life threatening consequences when their services are disrupted; education services must be included due to its importance and the constant challenges numerous township schools face with regard to vandalism. | See the response of the Department in relation to the comments of the NPA in respect of the Preamble. See also the separate note prepared in this regard. |
|  | City of Cape Town | What is meant by the word “essential” in the definition of “essential infrastructure”? This definition should be compared with the definition of “infrastructure” and “public infrastructure” in the Infrastructure Development Act, 2014. One uniform definition is recommended. | Noted. The Bill focuses only on infrastructure of a specific nature, namely infrastructure used to provide or distribute certain “means” to the public and hence the expression “essential infrastructure” is used. In preparing this definition, we have considered the definitions in the said Act and have adopted some of the elements but in view of the fact that the Bill has a specific focus, a new formulation is required. |
|  | Eskom | The definition does not appear to cater for illegal connections to essential infrastructure and therefore the following expressions, which are underlined, should be inserted in the definition so that the definition reads as follows:  “means any installation, measurement device, basic service dispensing machine, structure, facility or system whether publicly or privately owned, the loss or damage of, or the tampering with, or diverting from which may interfere with the provision or distribution of a basic service to the public”. | See the response of the Department in relation to the comments of SALGA in respect of the definition of “basic service”. |
|  | NPA | Comments of the NPA in respect of the definition of “basic services” are also applicable in respect of this definition. | Noted. |
| New definition to be inserted | Eskom | It is proposed that a new definition be inserted to define the word “divert” as follows:  “means the branching off or abstracting of a basic service from essential infrastructure by any means, method or device. | See the Department’s response to SALGA’s comments in respect of the definition of “basic service”. |
| 2: Amending sections 59 and 59A of the CPA dealing with bail |  |  |  |
| 3: New offence relating to essential infrastructure | Legal Aid South Africa | 3.1 The creation of the offence in clause 3 is welcomed but –  (a) it should not be used to deter legitimate service delivery protests; and  (b) it should be limited to organised crime where the perpetrators have the deliberate intent to tamper with essential infrastructure. | Noted.  In terms of clause 3, a person can only be found guilty of the offence if he or she knows or ought reasonably to have known that it is essential infrastructure.  It needs to be kept in mind that through the Bill we seek to address offences which of themselves are relatively minor and are committed by individuals but which cause considerable damage to essential infrastructure and have serious negative consequences for the public. These negative consequences follow irrespective of whether or not organised criminals are involved or, only individuals, such as petty thieves. |
|  | Eskom | Eskom recommends the introduction of electricity theft as a new offence. Amendments to clause 3 are therefore recommended. The insertions are underlined.  “Any person who unlawfully and intentionally—   1. tampers with, steals, damages or destroys essential infrastructure; or 2. colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph *(a)*; or   *(c)* diverts from essential infrastructure,  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 or to pay the following penalties:   1. a first offender, R15 000,00 2. a second offender R30 000,00; and 3. a third or subsequent offender R60 000,00.”. | See the Department’s response on SALGA’s comments in respect of the definition of “basic service”. |
|  | NPA | The creation of the new offence is welcomed but the sentence is inadequate in that there is too much discretion left to the courts as they can impose any sentence ranging from 3 months. It is suggested that the legislature look at the possibility of introducing a minimum sentence of 10 years’ imprisonment or even 15 years in order to compel the courts to impose severe penalties. | Clause 6 provides for this aspect and a minimum sentence of 15, 20 and 25 years is prescribed for the offence created in clause 3. |
| 4: Amending Schedule 5 to the CPA in order to be able to apply the reverse onus in respect of bail | Legal Aid south Africa | Not in agreement with clause 4 which makes all offences of clause 3, no matter how minor, fall under Schedule 5. | See the response of the Department on the comments of Legal Aid South Africa on clause 3. The offences provided for in clause 3 are regarded as serious because of their negative consequences. These consequences follow even if the value of the cable stolen is low. The minimum sentencing regime allows for judicial discretion. |
| 5: Amendment of section 51 of the Criminal Law Amendment Act, 1997, to insert new Part V making provision for minimum sentences of 3, 5 and 7 years |  |  |  |
| 6: Amendment of Part II of Schedule 2 to the Criminal Law Amendment Act, 1997, to insert additional offences to which the minimum sentencing regime of 15, 20 and 25 years can apply | Legal Aid South Africa | The imposition of discretionary minimum sentences for essential infrastructure-related offences is a severe form of punishment. Reservations were expressed relating to minimum sentences and the severity of sentences in instances where a minor offence is committed. Therefore clause 6, which makes all offences of clause 3, no matter how minor, subject to minimum sentencing, cannot be agreed with. Reference is made to the judgment of the Constitutional Court in the *Makwanyane*-*case.* The view is expressed that while in certain cases sentences of life imprisonment may be called for, the current system of minimum sentencing is not a sufficient deterrent. The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. This is still lacking in our criminal justice system and the State must seek to combat lawlessness at this level and through addressing the causes of crime. | Noted. See the response of the Department on the comments of Legal Aid South Africa on clause 3. Also see the response of the Department on the comments of the LHR below. |
| 7: Amendment of Part IV of  Schedule 2 to the Criminal Law Amendment Act, 1997, to insert additional offences to which the minimum sentencing regime of 5, 7 and 10 years can apply |  |  |  |
| 8: Amendment of  Schedule 2 to the Criminal Law Amendment Act, 1997, to insert Part V and list a few offences in that Part to which the minimum sentencing regime of 3, 5 and 7 years can apply. |  |  |  |

**TABLE 2**

**General recommendations and comments**

| **Name** | **Submission / Recommendation** | **DOJCD Response** |
| --- | --- | --- |
| 1. TRANSNET | 1.1 The Bill is supported.  1.2 Although the Bill is presented as an Amendment Bill, it contains substantive provisions that will turn its actual status into that of a standalone Act. | 1.1 Noted  1.2 Noted |
| 2. COSATU | 2.1 The Bill is supported and welcomed and COSATU urges Parliament to pass the Bill as a matter of urgency.  2.2 It is proposed that consideration be given to the placing of a moratorium on the export of certain non-ferrous metals, such as copper, or at the very least a 40% export levy as an additional measure to stem cable theft.  2.3 The SARS and other government agencies need to be capacitated to inspect and account for all export containers to ensure that illegally obtained copper is not exported. | 2.1 Noted.  2.2 The recommendations cannot be accommodated in the Bill but will be submitted to the Non-Ferrous Metal Crime Combating Committee for further attention.  2.3 The recommendations cannot be accommodated in the Bill but will be submitted to the Non-Ferrous Metal Crime Combating Committee for further attention. |
| 3. Mr A G Dickson | Mr Dickson is proposing minimum sentences for substance abuse offenders | Noted. The recommendations cannot be accommodated in the Bill. |
| 4. Parliamentary Committee of the General Council of the Bar | The benefits gained by the amendments outweigh the disadvantages relating to the granting of bail and the imposition of minimum sentences. | Noted. |
| 5. Legal Aid South Africa | Subject to the comments in respect of specific clauses, any proposal to curb crimes related to essential infrastructure in the Republic of South Africa is welcomed. | Noted. |
| 6. SALGA | 6.1 The Bill is supported.  6.2 It is proposed that the Bill be broadened to also deal with the theft of water and electricity.  6.3 The policing of stolen infrastructure also needs to be strengthened particularly in terms of the selling of stolen infrastructure. Municipalities can play a more effective role in this regard.  6.4 In order to strengthen the policing of stolen infrastructure and to combat the trade in stolen infrastructure, it is proposed that the powers granted to the police ito Chapter 8 of the Second-Hand Goods Act, 2009, which includes the right to entry, search and seizure and seal-off, be extended to metro police officers and traffic officers. | 6.1 Noted.  6.2 See the Department’s response on the comments of SALGA in respect of the definition of “basic service”. The view is held that the Bill is not the appropriate legislative instrument to deal with the theft of water.  6.3 The recommendations cannot be accommodated in the Bill but will be submitted to the Non-Ferrous Metal Crime Combating Committee for further attention.  6.4 The recommendations cannot be accommodated in the Bill but will be submitted to the Non-Ferrous Metal Crime Combating Committee for further attention. |
| 7. Lawyers for Human Rights | 7.1 Although the objectives behind the Bill are made clear and there can be no objection to such factors, the relationship between the Bill’s stated objectives and the proposed amendments in the Bill relating to sentencing specifically is unclear.  7.2 Given Government’s and Parliament’s responses to minimum sentencing in the past, it appears that the one of the fundamental objectives of the Bill is to reduce the commission of certain infrastructure-related crimes through the imposition of harsher sentences.  7.3 Although a term of imprisonment incapacitates an offender, at this stage harsher penalties have never been shown to have a deterrent effect on behaviour or a positive outcome in respect of public safety.  7.4 A significant amount of research indicates that harsher sentences lead to an increase in the rate of further offences and reduce the chances of rehabilitation.  7.5 What does deter crime is the certainty of prosecution and according to research, the rate of successful prosecutions is very low and proportionally fewer cases are placed on the court roll each year and fewer are brought to trial. Therefore, until the conviction rate improves dramatically it is difficult to see how the incorporation of additional offences into the minimum sentencing regime will be an effective deterrent to thousands of criminals who evidently do not get apprehended.  7.6 The number of verdicts and the number of persons sentenced to prison show a general decline meaning that we are sending fewer people to prisons than we were 20 years ago but  there is a radical shift in the profile of the prison population and those sent to prison are spending much longer there than ever before. The Criminal Law Amendment Act, 1997, is undoubtedly the most important contributing factor to the change in the sentenced prison population.  7.7 The implementation of the Bill comes at great cost:  (a) Offenders serving a lengthy term of imprisonment display many more psychological and social problems than short-term offenders and negative reactions to the prison structure actually increase as an offender’s sentence progress.  (b) An amount of R10 000 is spent per prisoner per month with no positive outcomes as only 5% is spent on social re-integration and 14% on rehabilitation and care while interpersonal violence increased at much the same point in time as the prison population.  (c) According to research, excessively long terms of imprisonment, are the leading cause of family poverty, juvenile delinquency, poor academic performance and depression and mental illness.  (d) Certain groups of people are over-represented in the prison population which means that whole communities are plagued by the devastating consequences of incarceration and the Bill will deepen such inequalities.  7.8 The Criminal Law Amendment Act, 1997, came into effect at a time when violent crime was at an all-time high and –  (a) was intended to be temporary while Government was undertaking the necessary action to bring crime under control;  (b) was passed by Parliament with next to no publicity attached to it;  (c) was challenged in 2005 because –  (i) despite the fact that sentenced admissions were dropping, the sentenced population had been increasing at a rate of more than 7 000 prisoners per year on account of longer sentences and the rate of release having slowed down; and  (ii) sentences generally were getting longer, and, sentencing practices more disparate;  (d) made permanent despite the fact that in 2005 one of the political parties received an undertaking from the then Minister of Justice that draft legislation situating minimum sentences within a comprehensive framework would be provided and the matter be aired fully in Parliament within the following two years.  7.9 Reference is made to the comprehensive proposal by the South African Law Reform Commission detailing the various options for sentencing reform with a draft Sentencing Framework Bill in 2000 which have been allowed to remain dormant for reasons unknown.  7.10 The Bill adds to the already distorted sentencing regime and it is recommended that the Committee refrain from agreeing to such legislation until the possibility of sentencing reform generally has been examined. | 7.1 – 7.10: Noted. The introduction of minimum sentences is an important measure in fighting serious crimes. The offences referred to in the Bill are serious having regard to their negative impact and negative consequences.  Although the personal circumstances of the accused must be taken into account, the rights of the public should be protected. Statistics South Africa conducted research and in April 2015 issued a media release indicating that there is a perception that the courts impose sentences that are too lenient and that most households are of the opinion that guilty offenders are not sent to prison.  Despite other Governmental initiatives, the level of crime in relation to metal theft is very high. Unless this type of crime is reduced significantly, the implementation of the National Development Plan, in particular in respect of infrastructure, will be at stake.  In the *Makwanyane*-case the court stated that the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. The court in effect stated that a long term of imprisonment is a deterrent. Since the Executive is in the process of improving operational measures in order to ensure that perpetrators of these crimes are arrested, brought before court and convicted, it is important that an appropriate legislative sentencing framework is in place.  It is uncertain what the basis of the LHR’s interpretation is that the minimum sentencing legislation is the most important contributing factor to the change in the sentenced prison population or is to be blamed for the increase in the rate of further offences. |
| 8. City of Cape Town | 8.1 The Bill is supported.  8.2 The success of the legislation depends on rigorous enforcement and the rate of conviction. Due to the tremendous strain on the SAPS, an extension of the powers of the SAPS in terms of the Second-Hand Goods Act, 2009, to law enforcement officers of the City will address the problem.  8.3 Law enforcement officers of the City do not have powers of arrest in relation to sections 36 and 37 offences under section 40(1)(e) of the CPA. This creates an unwarranted administrative burden to formally communicate and report any suspicion to the SAPS. It also causes unnecessary delays.  8.4 It is recommended that the offences under the various pieces of legislation be written into this Bill in order to promote ease of reference. | 8.1 Noted.  8.2 The recommendations cannot be accommodated in the Bill but will be submitted to the Non-Ferrous Metal Crime Combating Committee for further attention.  8.3 The recommendations cannot be accommodated in the Bill but the Department will consider this recommendation.  8.4 This will unnecessarily clutter the Bill and this is not in line with drafting practices. |
| 9. Eskom | 9.1 The Bill is supported. | 9.1 Noted. |
| 10. NPA | 10.1 The new offence created in the Bill should be included in Schedule 1 to the POCA so that the State can apply to the High Court for a forfeiture order where a vehicle has been used to transport suspected stolen cable to a scrap yard, for example.  10.2 Copper theft is often committed with the assistance of corporate bodies and they should be charged together with private persons. It is proposed that the penalty provision should provide for more heavy fines in respect of legal persons.  10.3 It is also difficult to comprehend that the penalty provision does not provide for the possibility of imposing the sentence of a fine. In certain instances the accused can be dealt with properly by imposing a hefty fine because a hefty fine may be coupled with a period of suspension. This might in suitable cases address the crime and also ensure that the accused is immediately reconciled with society and the prisons can handle over-population. The imposition of a fine must be in extremely deserving cases. | 10.1 Agreed. A new clause 9 can be inserted in the Bill dealing with this aspect.    10.2 Noted. The law provides for instances where corporate bodies are involved in criminal activities. Section 332 of the CPA provides for example that directors of these bodies must in such instances be charged. Only fines can be imposed on these bodies. The Bill clearly requires the imposition of imprisonment for the prescribed terms. In terms of section 51(5) of the Criminal Law Amendment Act, 1997, the operation of a minimum sentence cannot be suspended. In addition no fine, instead of imprisonment, can be imposed for an offence which is subject to a minimum sentence. The view is held that clause 3 should provide that in addition to the term of imprisonment a maximum fine can be imposed where corporate bodies are convicted.  10.3 See comment above. |