**Submission to the**

**Portfolio Committee on Justice and Correctional Services**

**on the**

**Criminal and Related Matters Amendment Bill**

**[B17 – 2020]**

**1. Introduction**

The Parliamentary Liaison Office of the Southern African Catholic Bishops’ Conference welcomes the opportunity to comment on this legislation.

The Catholic Church broadly supports the measures contemplated in the Bill that seek to address gender-based violence and offences committed against vulnerable people, and to reduce secondary victimisation of vulnerable people in court proceedings.

We support the provisions that aim to make it more difficult for people accused of domestic violence offences to obtain bail, but we question whether the extension of mandatory minimum sentence provisions to domestic violence offences will have the desired effect. There is no persuasive evidence that the approach of imposing minimum sentences, first adopted by Parliament in 1997, has led to any noticeable reductions in serious crimes.

We are not competent to comment on some of the more technical aspects covered by the Bill, such as the giving of evidence through intermediaries or with audiovisual assistance.

We comment as follows on specific clauses of the Bill.

**2. Specific Comments**

***2.1. Clauses 2 – 5: New Provisions Regarding Bail***

We support the prohibition on the granting of ‘police bail’ to accused persons in custody on domestic violence charges (**clause2**), as well as the prohibition of the release on bail of such persons on the authority of the Director of Public Prosecutions (**clause 3**).

In **clause 4** we support the provision that the court, in considering bail, must take into consideration the view of any person against whom the offence was allegedly committed. We also support the other references in **clause 4** to offences under the ***Domestic Violence Act*** and the***Protection from Harassment Act***.

We support the provisions set out in **clause 5** relating to the cancellation of bail in circumstances where an accused contravenes, or fails to disclose, an order imposed on him or her in terms of the ***Domestic Violence Act*** or the***Protection from Harassment Act***.

***2.2. Clause 9: Complainant’s Rights Regarding Parole***

We support the proposed amendment to section 299A of the ***Criminal Procedure Act***, in terms of which a complainant in a domestic violence offence will have the right to make representations when the person sentenced for the offence is considered for parole. We question, however, why this will apply only when the sentence is one that exceeds seven years. A complainant surely has an interest in the question of her or his assailant’s release on parole even if the sentence was for a period of less than seven years. The adoption of a seven-year threshold is not addressed in the explanatory memorandum to the Bill.

***2.3. Clauses 11 – 17: Extension of Minimum Sentence Provisions***

All these clauses either

* increase the level of mandatory minimum sentence applicable to offences already subject to the minimum sentence regime set out in ***Act 105 of 1997*** (**clauses 16 & 17**);
* make the regime applicable to offences under the ***Domestic Violence Act*** (**clause 15 & 17**);
* broaden the description of some offences that are subject to minimum sentences (**clauses 11 – 14**); or
* broaden the categories of victims/complainants involved in the relevant offences (**clause 15**)

The effectiveness of this approach needs to be investigated. Mandatory minimum sentences were first introduced by the ***Criminal Law Amendment Act 105 of 1997*** (the ‘Minimum Sentences Act’) and were intended then as a short-term intervention to address high rates of serious crime.

Section 53 of the original Minimum Sentences Act provided that the minimum sentence provisions would fall away two years after the commencement of the Act, unless extended for a year at a time by the President, with the concurrence of Parliament. Such extensions were enacted for a number of years until, in terms of the ***Criminal Law (Sentencing) Amendment Act 38 of 2007***, the provision requiring annual extension of the minimum sentence regime was repealed, leaving the minimum sentences permanently on the statute book.

There is no evidence that the imposition of minimum sentences for a growing range of offences since 1997 has had any effect in decreasing the rate of serious crimes in South Africa. On the contrary, the fact that what was meant to be a temporary intervention was eventually made permanent suggests that serious crimes remained a persistent problem. This is confirmed by the annual crime figures published by the SA Police Service.

We question, therefore, whether there is any point in adding further offences to the list of those that attract minimum sentences, or of elevating the level of minimum sentences that apply to certain crimes. Neither is likely to have the effect of reducing the incidence of such crimes.

We suggest that Parliament’s role must be to pass laws that are, as far as possible, effective and capable of achieving their stated purposes. Legislating for more severe punishments without at the same time taking steps to address the real reasons for the persistence of crimes such as those set out in the ***Domestic Violence Act***, risks being seen as window-dressing.

**3. Conclusion**

We wish the Portfolio Committee well in its deliberations on the Bill, and we would be happy to address the Committee verbally if invited to do so.

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