**SUMMARY OF WRITTEN SUBMISSIONS AND RESPONSES:**

**CRIMINAL AND RELATED MATTERS AMENDMENT BILL [B 17- 2020]**

**Introduction**

The Select Committee on Justice and Correctional Services invited stakeholders and interested persons to make written submissions on the Criminal and Related Matters Amendment Bill [B 17 - 2020]. Eight written submissions have been received.

* Table 1 provides a clause by clause summary of the submissions and general comments.

**List of commentators:**

1. The Concerned Citizens
2. M Hadebe
3. Access Chapter 2
4. Fish Hoek Valley Ratepayers & Residents Association
5. R Ntsane
6. C James
7. R Mayman
8. C Sterzel
9. S Mqadi
10. M Buthelezi
11. B Memela
12. Z Ndzunge
13. Wise 4 Afrika
14. Economic Freedom Fighters
15. South African Police Service
16. South African Women In Dialogue
17. Voice It In Action
18. Sobahlangula Human Rights Champions
19. The Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)
20. The City of Tshwane
21. Children’s Institute
22. Dobsonville PCO
23. COSATU
24. L Tsebe
25. H Hadebe
26. ANC Women’s League
27. Western Cape Government
28. Women’s Legal Centre
29. The Centre for Child Law
30. Rape Crisis
31. Commission for Gender Equality
32. The South African Catholic Bishops Conference
33. The Embrace Project
34. Sonke Gender Justice
35. The International Women’s Forum of South Africa
36. P Dibale

**1. General comments**

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|  | **Comments** | **Responses** |
| 1.1 | **Concerned Citizens**  (a) The commentator submits that Government should not separate gender based violence from human trafficking as most trafficked victims are actually women and children for sexual exploitation and other objectives. Sex trafficking is another form of gender based violence, a systemic oppression and abuse of women that has to be part of these bills. Human trafficking and GBV are interrelated issues that must be tackled together, as most human trafficking cases are mixed with a lot of gender based violence, sexual crimes etc. Government need to have clear broader definition of what is Gender Based violence in South Africa.  (b) According to the commentator the amendments proposed by the Bill only aim to address a small portion of an even bigger issue that happens domestically, than tackle all forms violence and systemic oppression of women and children, country wide. It is proposed that the Government should have a broader plan,with accompanying legislation to combat all forms violence against women, and not just offences committed in a domestic relationship- based offences,similar to the USA with their Strategy to Prevent and Respond to Gender-Based Violence, which does include sex trafficking and many other forms violence.  (c) According to the commentator, the South African Police Service (the SAPS) is under trained when it comes to human trafficking of women and their criminal statistics does not align with UN’s definitions of human trafficking, which impedes the fight against human trafficking and at the same time compromises the collecting of essential statistical data.It is recommended the SAPS should receive increased training in the field of human trafficking.  (d) According to the commentator, illegal migration contributes to trafficking of women and children which in turn contributes to gender based violence. It is recommended that the Department of Home Affairs must implementadequate border-control measures.  (e) Several measures for dealing with human trafficking are proposed by the commentator. | (a) Noted. This Bill is primarily concerned with making court proceedings victim-centric and does not look into any specific offence, except in the context of sentencing, and we submit that sentencing with regards to trafficking did not require amendments. In terms of the Criminal Law Amendments Act 105 of 1997 (Minimum Sentences Act), trafficking in persons as provided for in section 4(1) and involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013, are punishable in terms of section 51(1) of the Minimum Sentences Act, as offences listed in Part I of Schedule 2 to imprisonment for life.  (b) South African Legislation has developed substantially to address gender-based violence and sex trafficking. The Prevention and Combating of Trafficking in Persons Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, the Protection from Harassment Act, the Cybercrimes Bill, are among those laws. The Bill also addresses gender-based violence from a sentencing perspective, and proposes various procedural interventions to make the criminal justice process more victim centric. The Bill is therefore not only addresses domestic violence-related offence, but has a broader application.  (c) Noted  (d) Noted.  (e) Noted |
| 1.2 | **M Hadebe** is of the view that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies. | This seems correct. |
| 1.3 | (a) **Access Chapter 2(Access)** submits South Africa’s Constitutional and legislative framework offers comprehensive recognition and legal protection to LGBT people and is among the most progressive globally. The Constitution provides that the state is obliged to “respect, protect, promote and fulfil” the rights enshrined in the Bill of Rights (rights to equality, dignity, the right to life, the right to security of the person and the right not to be treated or punished in a cruel, inhuman or degrading way). However, South Africa is also known to be one of the most violent societies. Making it difficult for the Rights enshrined in the constitution to be a lived reality for ALL. There have been pockets of excellence with government having demonstrated political will in some areas responding to the call of making the fight against the scourge of gender-based violence a national agenda, including the progress made by the Department on the National Task Team on violence against LGBTI persons and the National Gender Based-Based Violence Strategy that was adopted by cabinet in March 2020.  (b)**Access** wish to commend government in making these visible strides of putting in place these mechanisms as key instruments of fighting the pandemic of GBV in the country and for reviewing the GBV related legislative framework for ease of implementation and enforcement by the duty bearers for the protection of the beneficiaries. | (a) Noted.  (b) Noted. |
| 1.4 | According to the **Fish Hoek ValleyRatepayers & Residents Association** sexual violence in South Africa is among the highest in the world. Victims often do not want to report sexual violence due to subsequent intimidation, shaming by their communities and harassment by the perpetrators or similar thinking perpetrators. Something more has tobe done to protect these victims. | Noted. One of the objectives of this Bill is to put in place measures to reduce secondary victimisation in the criminal justice process. |
| 1.5 | **R Ntsane** supports the Bill and submits that we need strong law against violent TV programs; violent movies, alcohol and drug abuse as children get corrupted from infancy and act it out as teens and adults. | Noted. |
| 1.6 | **C James** wrote to the Committeeabout her personal experience at the Ransburg Family Court when she applied for a restraining order. According to the commentator she waited for five hours before she (and other members of the public were attended to being attended to and they were attended to only after she called a complaints number that was displayed on the premises. The officials were indifferent, did not show any compassion or respect to her and the other members of the public. The processes are not efficient as members of the public are given forms and instructed to go back home to complete the forms and come back the next day, when the forms could have been completed there and then so that the process can begin earlier.  She finally got to see a judicial officer, who told the commentator to come directly to that him/her if the person against whom the restraining order was sought continued with the threats. When the commentator returned to the court at after some time a clerk told her that they are not interested in her issues and she must leave.  The commentator is questioning the rationale of the 16 days of activism against women abuse if the courts are not interested and treats people who are abused like dogs.  The commentator submits that if the government want to stop gender based violence, domestic violence and sexual offences the courts must be fixed. The government must employ people who want to help the victims and the punishment must fit the crime.We must stop wasting time talking and take action to fix the justice system. | Noted. Similar concerns were raised during public hearings. This is however up to Parliament to address and to ensure that competent, qualified persons with integrity, responsibility are appointed.Parliamentary oversight is becoming more and more important to deal with these aspects. A victims of crime ombudsman (a retired judge), which is accountable to Parliament, with extensive powers to investigate and call persons to account for failures to perform their duties and functions in the criminal justice process is a possible solution, but requires separate legislation. |
| 1.7 | **R Mayman** does not fully support the Bill. The commentator submits as follows:  *“ if you beat your wife and children they should pick you up get guys and beat you to a pulp then take you home as is with blue eyes ,swollen lips ,ect. If you kill you should be killed because who are you to take somebodies life. All those prisoners with life sentences should be killed because (life sentence say it all ) they just eating the tax money prisoners should have no rights".* | This opinion cannot be endorsed in any constitutional dispensation. |
| 1.8 | **C Sterzel** submits that the Bill an attempt to place the blame on men.It does not take into consideration that in most cases it is the women that are the instigators. They are the creators of the situations that lead to the violence against them. Very often, it is the women who are non-supportive, demanding; they 'sell' themselves to their husbands, and withhold themselves from their husbands. The commentator further submits that being in a relationship requires patience, understanding, support - all through thick and thin. For richer or poorer, for better or for worse, in sickness and in health, 'til death us do part. No bill can change that. It is the attitudes that must change. | It is the commentator’s attitude, the way of thinking that should change. It is the attitude and the way of thinking showed in this comment that must change. |
| 1.9 | (a) **S Mqadi** submits that police officers that commit crimes  (robberies, rapes and murders) should not be hidden by the  department, they should be charged and removed from their  positions, and their pension funds should be forfeited and  donated to the victim organisations, and their names should be  added on the offenders list  (b) According to the commentator itseems strange that there was  no national campaign urging the public to come forward with their  submissions considering we are going through a femicide in our  country. | (a) Members of SAPS are not above the law and must be held accountable for the offences they commit.  (b) members were afforded an opportunity to comment on the Bill by the Portfolio Committee and the Department |
| 1.10 | **M Buthelezi** is of the view is that the law should be revised and  there should not be many laws, and that law should be read by  everyone, and everyone should sign that they have read it, so  that there is certainty that everyone has read it. Prisoners should  also be taught new laws and be pardoned, released from prison  and start life afresh. Magistrates, judges, lawyers, prosecutors and  police should not have the monopoly of reading laws. A person  who commits a crime should represent himself or herself because  he or she has read the law and know it well, and there will be no  need for evidence because the law that a person has read will be  evidence in itself.If a person is found guilty of murder he should  first be beaten up in public view of the community, and then be  killed in public view of the community, this will serve as a deterrent  to other would-be-killers. For a person who has verbally abused  another, the appropriate sanction would be caning, and then be  allowed to return home; such person should not await trial in  prison or be sentenced to imprisonment. If a person is suspected  of any crime, he should be kept in custody and he should quickly  appear before a magistrate, and no bail should be fixed until trial.  No pardon for a person who offended with knowledge as he has  offended wilfully.The commentator is of the opinion that a lot of  crime would come to an end if trading with money could be  discontinued and replaced with the old practice of battering with  life necessities and without regard for the balancing of scales. The  basis for this view is that In the Bible there is a scripture to the  effect that ‘what once existed will exist again, and what was once  the practice will be the practice again’.  The commentator requests the government to implement all the  laws he has recommended before the nation destroys itself with  guns, stabbing one another with knives and rape and crime  caused by greed and theft of money. According to the  commentator these laws can be implemented better if land could  be returned to its owners and be ruled by traditional leaders and  not by democracy, because the rule of majority has caused too  much chaos in the country. The majority does as it pleases,does  not abide by the law. | We agree that members of society should be familiar with the laws of the country. Some of the proposals are irreconcilable with the Constitution |
| 1.11 | (a) **B Memela** submits that anational positive propaganda,  entailing the distribution of a weekly comic at high traffic areas like  taxi ranks. The comic would be centred around a positive  patriarchal figure who steps in to save the day in GBV scenes.  This will spark debate in areas of commute between home and the  workplace, instil a sense of community and collective pride and as  a role model, and be easy access to GBV centre information that  can be printed at the bottom of each pamphlet.  (b) The commentator further submits that GBV should not be  reported at police station as the police are ill-equipped to handle  GBV cases. A social worker must be involved and it is not enough  to place social workers in the station because for some women it  is even the environment of the station itself that perpetuates the  violence.  (c) There must be an audit of all police officers accused rape and  casesshould be reopened especially those with repeat  accusations.  (d) There should be medical castration for repeat offenders | (a) Noted  (b) Noted, one of the services offered by the Thuthuzela Care Centres is assisting victims to report offences.  (c) Noted.  (d) The proposal might not be in line with the Constitution |
| 1.12 | (a)**Z Ndzunge** submits that he/she has never been sexually  assaulted or been in an abusive relationship, but has have  witnessed men beat up women in public while feeling helpless  and the community watching and opting not to get involved. What  he/she found disturbing was the kids would be watching the  abuse and taking it in as normal behaviour.  (b) The commentator further submits thatwhere there is a video or  picture, audio the courts should not take long to convict. | (a) It is critical that parents, guardians, mentors and teachers to begin educating children about non-violence, gender equality and violence against women and girls as soon as possible.  (b) The court must take into account all admissible evidence. |
| 1.13 | (a) **Wise 4 Afrika** submits that they know and appreciate that the law is not enough to stop domestic violence, when it is also  compounded and aggravated by poor parliamentary oversight  and difficulties in holding the police, prosecutors, clerk of the  courts and magistrates for their shortcomings. The law transmits  powerful messages about women and men, which construct and  underpin our social relations. It is important that those messages  do not reinforce stereotypical images of womanhood and  femininity, or endorse notions of masculinity that are detrimental  to women and negative for men.Ideally the law should be capable of transcending difference by first acknowledging it.  (b) Wise 4 Afrika further submits that domestic violence is a social evilthat sits adjacent to so many other problems that we as a society grapple with (education, economics, mental and physical health, crime, gender and racial inequality). It does not happen in a vacuum, and it has an enormous financial burden to victims, to  taxpayers, to the criminal justice system.  (c) Wise 4 Afrika is of the view that this is the time and opportunity to fund all the laws dealing with gender based violence  adequately. The proposed amendments will require a sizable  budget for effective application. They expect that all police  stations will be fitted with closed cctv cameras, that police officers  who respond to domestic violence calls will be equipped with  cameras to photograph injuries and the mayhem they find at the  home. They propose thatevery province should have a hotline for  victims of domestic violence and that everypolice station must  have a domestic violence unit.  (d) Wise 4 Afrika recognises that the law enforcement persons are  most times the first responders to a violent situation at home and  most times treat domestic violence as a nuisance rather than the  criminal act that it is.  (e) Wise 4 Afrika further submits that the proposed amendments  place an enormous responsibility on the police, prosecutors,  clerks of courts, magistrates, social workers and the judiciary.  Training in the application of the changes proposed is a must and  there must also be a change in attitudes of the criminal justice  officials, which for the most part has been dismal and downright  appalling.  (f) The proposed amendments must be gendered in terms of  victimization,perpetration and impacts of violence. | (a) Noted  (b) Noted  (c) Noted  (d) Noted  (e) Training is very important  (f) Noted |
| 1.14 | (a) **The Economic Freedom Fighters (the EFF)** submits that the scourge of violence against women, children, the elderly, disabled  and the LGBTQ+ people is out of control, have been perpetuated  for generations and is deeply rooted in this country.From the  colonial invasion, dispossession and dehumanisation of  African people to the naked brutality of apartheid , and now the  neo-apartheid reality of post the 94 era it is women who have had  to endure the most heinous of offences.The inhumane nature in  which women and children are treated at home, school, workplace  and when they access government services and the fear they live  with makes the crimes deserving of specific attention.  (b) In the South African context GBV is used to refer to violence  waged against women in particular because they are women, and  it goes beyond the physical GBV, for instance women earning less  than men just because they are women.The commentator  submits laws alone are not enough to fight BGV, we need a  societal pact and to move away from our narrow focus.The  prosecution and conviction rate on sexual offences and domestic  violence is low mostly because of the inability of the police to  investigate and the inability of the NPA to prosecute these  offences successfully.  (c) The commentator submits that the Constitution provides sufficient cover for the limitation of the rights of accused persons as rights entrenched in the Constitution are not absolute and can be limited in terms of section 36 of the Constitution and a law of general application.  (d) The commentator submits that the amendments proposed in the Bill will go a long way in curbing violence meted out against women but they must be accompanied by other commitments by both the executive and the legislature. There must be a way of holding those responsible for implementing these laws accountable. Parliament must be an activist againstgender based violence and take proactive decisions to hold the executive to account on the implementation of these laws. | (a) Noted  (b) Noted  (c) Noted  (d) Noted |
| 1.15 | (a)The **SAPS** submits that it is committed to efforts by the government and Parliament to implement measures aimed to protect vulnerable members in our society, especially against acts of violence  (b) SAPS submit that it is experiencing serious challenges regarding the current bail dispensation in respect of sentenced persons who are granted bail pending an appeal. When a sentenced person applies for an extension of bail after being sentenced he or she is afforded 14 days to lodge an appeal. If such a person not lodge the appeal the clerk of the court must ensure that a warrant of arrest of the accused is issued after the expiry of the14 day period. If the clerk of the curt fails to initiate the process of the issuing of a warrant of arrest the convicted person will not be committed to a correctional facility and could pose a danger to society until such time that the investigating officer makes follow up. According to SAPS such persons can therefore easily evade imprisonment as the current bail dispensation does not require that the SAPS be notified on developments with regards to the lodging of the appeal.SAPS request the Committee to consider addressing this matter in the Bill in order to strengthen the justice system and public trust in the system. | (a) Noted  (b) The concern raised by SAPS is a serious one. However, the Bill cannot be used to address this. The SAPS must make a representation to the Department and it will be considered at a later stage. |
| 1.16 | (a) **South African Women In Dialogue (SAWID)**welcomes the  fact that tougher sentences will be applied to domestic violence  offenders, however they are aware that in a lot of cases, harsh  sentences do not deter and therefore appeal for a balance.  SAWID submits that their research and discussion of the Bill has  indicated that retributive legislation alone will not erode the  scourge of violence within the society and that it is important to  also strengthen the restitutive strategies that promote social  cohesion within the society, as in line with the principles of  Restorative Justice, since a crime occurring to a member of the  community does not only affect the primary victim, but the whole  community. SAWID recommends that over and above the  introduction of harsh sentences, there must be rehabilitative  programmes put in place as there are complainants/ victims of  domestic violence who would rather opt for restorative justice –  who rather want the perpetrator to get helped and be rid of the  abusive behaviour rather than being imprisoned. Restorative  Justice as part of the justice system is important in ensuring  healing, building social cohesion and mending the broken social  fabric of the South African society. Restorative Justice can be  implemented at three different levels within the Criminal Justice  System, namely pre-trial, during trial and during post-trial, after  sentencing.  (b) They submit that the Department of Justice has developed  and adopted the Minimum Standards on Services for victims of  crime in South Africa, which in line with the provisions of the  United Nations’ Declaration of the Basic Principles of Justice for  Victims of Abuse of Power (GA/Res/40/30) which South Africa is  signatory to; and it is important to strengthen these mechanisms  and ensure that retributive and restitutive justice are employed in  dealing with cases related to GBVF/VAW, to also promote building of social cohesion and uprooting the root causes of GBVF.  (c) SAWID submits that the doctrine of Common Purposes has always created anomalies and in the recent case of ***Tshabalala v the State*** where the Commission for Gender Equality was *amicus,* the Constitutional Court held that this doctrine applies to rape. This was an important step in legal reform through a victim-centered approach, which broke down structures that enhance patriarchal practices. SAWID therefore welcomes and appreciates the fact that the current formulation in the bill further clarifies the previous anomalies of applying the principle of common purpose to rape cases.  (d) They further submit that it is critical that as government is in the process of tightening the laws to address these issues, that strategies of identifying the root causes must be taken, and imbued with a similar sense of priority because the heightened violence within the South African society prevails despite the progressive Constitution that upholds human rights and legislative frameworks in place.  (e) If the GBV Bills are intended to combat and prevent violence against women, they have to address the structural violence of our apartheid past, the immense inequalities between people that resulted from unearned privilege and legislated inequality between the races, and the inequalities between the genders in terms of cultural and traditional practices prioritizing men’s rights over women’s rights, and tolerating income disparities between men and women for work of equal value, as well as addressing the amount of unpaid work that women have traditionally done to maintain and sustain the family.  (f) Since the laws compete with cultural beliefs and prescribed social norms and values, and given the fact that research shows that perpetrators of violence have often been victims of, or witnesses to violence as children, there is an urgent need for public education regarding preventative strategies, relationship skills, gender inequalities, and addressing the effects of physical violence as well as the mental or emotional abuse that can take place within families. | (a) Noted  (b) Noted.  (c) Noted.  (d) Noted.  (e) Noted  (f) Noted. |
| 1.17 | **Sobahlangula Human Rights Champions (Sobahlangula)** is concerned with the level of what they refer to as paternity fraud, which is committed when a mother names a man to be the biological father of a child, for self-interest, when she knows or suspects that he is indeed not the biological father. This practice strips the father and the child of their dignity, it deprives a child of a relationship with their real biological father and the non-biological father ends up paying maintenance when thee ought not to. The biggest fear of any father is these words ‘You are NOT the father! the test says 0%”.They say they have seen(on Utatakho- a TV SHOW) how broken these fathers become when they eventually find out that they are not the father. This emotional turmoil is often more prevalent to those who have been living under the same roof and raising the child in question. There are cases where a child is secretly meeting with the real father, and in other cases where a child is maintained by multiple fathers all threaten by the arm of the court which women have perceived to always favour them. They propose that going forward all new born babies will have a compulsory paternity certificate. A simple cheek swab from the infant, along with the alleged father’s cheek swab, is all that is needed to answer this important question. DNA testing is affordable and more available, and the government through public health service, must ensure to add this service in the suite of services offered. There after the legislature must enact a law dealing with this problem to enable the courts to have a more objective guidance for decisions.They submit that the unregulated and legislated paternity fraud is in conflict with the right to a name, because to a name, a surname is attached, surname is attached to culture, custom, rituals, tribal pride and language and social status.If a mother knowingly conceals the paternity of her child, she must know that she has committed a crime and must be convicted of paternity fraud, extorsion, crimen injuria, general damages and the economic loss he suffered as a consequence of her false declaration and She must be criminally prosecuted and be subjected to imprisonment and the fathers and the child should have a claim for damages. | Noted |
| 1.18 | (a) The **Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC),** a centre of the University of Johannesburg submits that the demands for stricter laws to address the harmful consequences of GBV as well as its root causes have remained largely unaddressed government until now. In order to address the increasing instances of sexual and domestic violence South Africa, it has been argued that harsher sentences have to be imposed on perpetrators of sexual and gender-based crimes, specifically for its deterrent value. However, counterarguments are that harsher sentences serve little to no rehabilitative purpose for offenders, do not address the root causes of these crimes, and do not assist in the prevention hereof. Further, sentencing only occurs once the accused is convicted, therefore victims are only protected long after the crime has been committed. They submit that any proposed amendments to existing legislation must clearly reflect the various purposes thereof, namely deterrence, retribution, restitution, rehabilitation and reform.  (b) They submit that stricter bail conditions and harsher minimum sentences proposed by the Criminal and Related Matters Amendment Bill will not serve the purpose of deterrence. Instead, they will likely violate human rights guaranteed in the Constitution. They recommend that legislative amendments must give due regard to the improvement of reasonable access to bail, the promotion of alternative measures to imprisonment, social reintegration of offenders and the protection of society and the victim. | (a) Noted  (b) We submit that the Bill has been drafted with due consideration of the rights entrenched in the Constitution. |
| 1.19 | (a) **The City of Tshwane (Tshwane)** submits that overall, all  the proposed Amendment Bills are supported by the City of  Tshwane. The amendments are a breakthrough and cameat a  time where the country is experiencing many deaths and  cases related to GBV and sexualoffences, proving serious  loopholes in the criminal justice in terms of protecting the victims.  The City of Tshwane welcome the Amendment Bill especially for tightening the granting of bail to perpetrators of GBV and femicide, and expands the offences for which minimum sentences must be imposed, of which it was the norm that different courts in different areas may impose totally opposing sentences on two cases that are similar factually. This Amendment Bill directs and clears the grey areas on the minimum sentences by the Courts as like all the other offences stipulated in the Act. | Noted |
| 1.20 | **Children’s Institute** submits that Imposing harsher sentences has not been proven to act as a deterrent to domestic violence or other forms of violence against women and children. To the contrary, evidence has shown that the death penalty and life sentences do not prevent crime or minimise violence. The Children's Institute rather advocates for a functional criminal justice system which successfully prosecutes offences and calls for law enforcement services which better serve communities. | Noted |
| 1.21 | **Dobsonville PCO** submits as follows:  • Courts should be made friendly and the use language should be made be clear  • Bails should be denied to offenders that are undocumented and to offenders of GBV  • High sentencing should be imposed in the absence of death penalty  • Offenders should be rehabilitated through skills development and through speaking up to the public including schools and NGO’s while still serving their sentence  • Street committees, CPF, should ensure that communities are protected domestic violence and ensuring that everyone knows their neighbours  • Communities especially from rural areas should be taught about different mentalIllnesses that are troubling elderly people and associated to witchcraft. Awareness should be done through campaigns that are supported by police  • Social workers should be stationed at police stations 24hrs  • Cyber crimes and media bullying should receive high penalty  • Corporal punishment should be reinstated through different punishment  • Parents should be granted rights to discipline their children without using physical force  • Every church should have a committee that deals with GBV and any assaults that occurs in churches. That should be recorded too  • Women should be granted land and houses for the betterment of families  • Offenders of domestic violence should vacate the premises  • No foreign officials should be allowed in communities without their fingerprints  • Toll free numbers for GBV should be linked to different NGO’s in designated areas for the assistance of victims  • Listing of offenders should be made public online  • Applications of protection orders should also be made available online  • The offender should be the one leaving the house where there’s protection order  • Social media should be used as evidence where threats and violation of rights are compromised  • The use of alcohol publicly should be prohibited  • The influence of media where women are badly portrayed should be prohibited  • Cancellation of cases opened by women should be regulated to 3months before cancellation  • False accusation by those with defamation motives should be granted high sentencing. | Noted |
| 1.22 | **COSATU** submits that it is important that perpetrators of sexual offences and violence against women are held accountable for their actions and are no longer treated with impunity. We cannot continue to see extreme acts of violence going without consequence. COSATU believe that there should be clear guidance regarding minimum sentences for GBV, sexual violence and femicide, and they support the increase of minimum sentences and the tightening of parole conditions.  COSATU recommends that there should be clear processes for reviewing and imposing sanctions on magistrates and judges who are inexplicably lenient in cases of sexual and domestic violence and femicide. They also support the proposal to tighten bail conditions and argue that there should be clear stipulation of cases and conditions where bail should not be granted.  COSATU further submits that holding perpetrators accountable is extremely important but it does not only equate with harsher sentencing. Harshe1.22r punitive measures without restorative and rehabilitative measures may not address the causes of violence, especially in cases of domestic violence. There should be specialised treatment programmes for perpetrators, survivors and families.  COSATU further submits that alternatives to incarceration where appropriate should be considered, including specialised custodial rehabilitation programmes for perpetrators of domestic violence as in some cases children and women may not want perpetrators to be imprisoned, but rather to get help with their abusive behaviour. It is important to be responsive to the needs of families, to the extent that this helps to reduce violence, whilst ensuring effective accountability and restoration.  There is a need to conduct appropriate risk assessments when deciding on custodial or non-custodial sentences and deciding on possible rehabilitative interventions to ensure the safety of victims. The Detention Justice Forum proposes the following approach: “There needs to be a greater focus on perpetrator accountability and rehabilitation, both through the legal system, civil powers, and programmes that seek to change abusive behaviour. These can be offered both as a custodial or non-custodial option.” | Noted |
| 1.23 | **L Tsebe** submits that the amendments are much needed relief and respite. The commentator is of the view that the amendments have been well thought out, especially the provisions that allows victims to provide evidence through audio-visual link in criminal proceedings and the further regulation of granting and cancellation of bail.  According to the commentator the Bill cannot be stand-alone piece of legislation. There are integral external components that are desperately required to buttress the proposed legislation, without which the Bill would be end being stagnant and unable to achieve its objectives, which is the wellbeing of women and children  Firstly, the Bills need to be buttressed by the establishment of a National Council of Gender Based violence and Femicide (NCGBVF), which will be the ‘engine room’ of the mobility of the legislation. This Council needs to be comprised of Medical Doctors (Psychologists, Therapists and Paediatricians) as well as Social Workers and Art Therapists, specifically in relation to the wellbeing of children. Aside from this, a specialized financial vehicle needs to be established in efforts to accept public and private funding to be allow financial contributions for the fund the Council, so as to ensure that members of the public are able to participate in the Councils activities. Furthermore, it is important that national efforts and Corporate Social Initiatives (CSI’s) dedicated to GBV in the county, have a consolidated and linear road to dispense of their finances to the Council, which will then dispense the funds to CBO’s and NGO’s. | Noted |
| 1.24 | (a)**ANC Women’s League** submits that there should be a standardised questionnaire at the police station which will make the victim feel safe, heard and give them confidence.  (b) Reporting of GBV cases must not be limited to Police stations but also clinics and hospitals which are usually accessible to persons who live in the rural and remote areas and vulnerable persons. This is to address the inaccessibility of necessary facilities for those who are disadvantaged or do not have money to afford transport to their police station. This arrangement can enforce a great working relation between the Department of Health and SAPS.  (c) With regards to sexual crimes there should be a standardized sentencing Policy is not left to the magistrate to decide on how to sentence perpetrators.This would assist in fixing the racial inequality sentencing that our system.  While the Bill is protective of children and people who are people with disabilities, there is some sense of disregard for victims who do are not living with disabilities.  (d) ANCWL Minimum sentence regulation must also be amended to include assault of women and give a minimum sentence because this will serve as a deterrent to men as well that staying in prison for a long time will not only come in instances of murder etc, but even a slap can lend one in prison. The regulations already exist for other criminal offences. We therefore need to codify GBV offences in order to also include their minimum sentences in the already existing legislation.  (e) The release of a convicted sexual offender is dangerous. The scourge of GBV is perpetuated by adult perpetrators who were given a second chance into our communities. There should be no sexual offender etc. Who wonders the streets of SA. They should be institutionalized until they die. Perpetrators that are living with disabilities should also be institutionalized in a different facility for life. Arresting then releasing the perpetrator into the same community is also a dangerous act because people with disabilities cannot be told not to be around children (they'll want to play with children).  (f) Perpetrators must be liable for long term health expenses. It can be for transportation and any additional assistance apart from where the Government can assist victims who survive but end up disabled or can’t perform any other task.  OVERALL IMPRESSIONS  • The Bill is progressive in that it recognises the limitations of older persons and persons with physical and mental vulnerabilities.  • Intermediaries must be South Africans only. This will help us achieve the much-needed employment in the country amongst and other potential challenges of state security.  • In addition, the skills required for intermediaries are not rare as prescribed by the Public Service Act and this must be an area for South Africans only.  • The issue of Bail still must be amended further. The current proposed amendment are still not sufficient to ensure the safety of complainants especially on GBV and Harassment matters. | (a) Noted  (b) The Thuthuzela Care Centres assists victims with reporting of offences, maybe their services should be extended to as many areas as possible.  (c) Noted  (d) We have amended the Schedules to the CPA to expand on the offence of assault so as to afford victims better protection  (e) Bill has provisions that tightens the regulation of the granting of bail  (f) Noted |
| 1.25 | **The Western CapeGovernment** submits thatin the Western Cape, reports indicate that a large number of child rapes and murders in the province were committed by sentenced offenders who had been placed on parole and who resided in the area where the victim resided. As at March 2020, the Western Cape province has had the highest number of such cases nationally.  In response to the call by the Department of Justice and Correctional Supervision for comments on the Criminal Matters Amendment Bill, 2020, (‘the Bill’) in March this year, the Western Cape Government (‘WCG’) thus strongly recommended—  • more effective checks and balances regarding the system of parole and its intersection with the bail system;  • better constitution of the parole boards to facilitate improved complainant and community participation in the decisions of the parole boards; and  • stricter regulation of applications for bail, which are to include enquiries as to whether the applicant for bail is on parole, day parole or under correctional supervision or has previously violated any condition of parole or correctional supervision.  The WCG notes that several of the above-mentioned recommendations have been considered in the current version of the Bill as introduced to Parliament.  While this development is welcome and encouraging, it is submitted that there is still more room in the Bill for further amendments to regulate the granting of bail and the placement of sentenced offenders under correctional supervision, day parole, parole and medical parole.  In light of the serious matters raised above, the Portfolio Committee on Justice and Correctional Services is urged to consider the suggestions in these comments with a view to tightening the system of parole and the bail regime. | (a) The Bill requires the court to take into consideration the fact that the accused applying for bail was on parole when the offence was committed, and failure by the accused to disclose that they were on parole when the offence was committed is a ground for the cancellation of bail. |
| 1.26 | (a) **Women’s Legal Centre** is of the opinion that more extensive  amendments to legislation that regulate the investigation and  prosecution of sexual offences is necessary to decisively  and comprehensively manage the levels of sexual and domestic  violence in South Africa. They encourage the Portfolio Committee  to further engage with civil society to explore more comprehensive  ways of ensuring the effective prevention, detection, investigation and prosecution of both sexual and domestic violence matters.  (b) In addition, WLC is concerned that the commitments contained in Article 7 of theDeclaration on Gender Based Violence and Femicide have not been fulfilled to date:  *‘The finalisation of outstanding legislative measures and policies that relate to genderbasedviolence and femicide, as well as the protection of the rights of women and gender*  *non-conforming persons, be fast-tracked, in particular the Prevention and Combating ofHate Crimes and Hate Speech Bill, the Victim Support Services Bill, and the policyrelating to the decriminalisation of sex work’*. WLC encourages the Department tospecifically expedite the release of the policy on the decriminalisation of sex work anddraft legislation related thereto. While they commend the Department for developing draft Bills to address violence against women, it is our submission that the Department andPortfolio Committee cannot adequately address violence against women and femicideif it does not include the rights of sex workers and the decriminalisation of sex work itself.  (c) The current NPA Policy Directives require the NPA to provide  reasons to victims for thedecision not to prosecute, but only if the  victim requests said reasons. There is currentlyno automatic right  for victims to receive reasons from the NPA, nor is there any  requirement stipulating the extent or detail for said reasons to  which a victim is entitled.The practice of the NPA is to simply state that the reason they are not proceeding witha prosecution is because there is no reasonable prospect of a successful prosecution,even when reasons are requested by victims. This lack of detail provided to victims severely limits victims’ rights to access to justiceand / or to challenge or review the decision of the NPA. It is therefore recommendedthat victims are automatically provided with reasons by the NPA for a decision not toprosecute, and that the reasons are provided in writing. The reasons must be detailedand apply to the specific merits of the case in question**.** It is recommended that the NPA must notify the victim of a decision to prosecute, or notto prosecute, and provide detailed reasons therefore in writing, applicable to the specific  merits of the case, should the latter apply**.** | (a) Noted  (b) The Department has developed a draft Bill for the regulation of sex work.  (c) The Bill requires of the prosecutor to place on record the reasons for not opposing the bail application. The manner in which prosecutors communicates with the victims with regards to the prosecutors’ decision not to prosecute should be dealt with in directives that will be issued by the NPA for the implementation of the provisions of this Bill. |
| 1.26A | **The Centre for Child Law** welcomes the proposed amendments as set out in the Criminal and Related MattersAmendment Bill [B17-2020]. When compared to the findings in the Constitutional Court judgmentof Director of Public Prosecutions v Minister for Justice and Constitutional Development andOthers [2009] ZACC 8, the proposed amendments provide stronger protection to childrentestifying in proceedings, other than criminal proceedings. | Noted |
| 1.27 | **Rape Crisis** commend the Department of Justice for putting deed to word with this Bill, in respect of the commitment made by the President in both his State of the Nation Address on 13 February 2020, and in Article 5 of the Declaration of the Presidential Summit Against Gender-Based Violence and Femicide.  While they have no objection tothe first and second purpose of the Bill, as stated above, they do not believe that increasing South Africa’s already high minimum sentences will contribute meaningfully to access to justice for the greatest possible number of SGBVF survivors and their loved ones.They submit that one of the most impactful ways to achieve access to justice for survivors of SGBVF and their loved ones, and to deter sexual offences in general, is to significantly increase the number of successful convictions of sexual offences and prosecutions. Currently, a very small portion of reported sexual offences lead to successful convictions, and ultimately prison and other sentences. While the National Prosecuting Authority (NPA) annually reports high conviction rates, the actual number of convictions tends to decrease yearly As such, harsher minimum sentences will impact a very small percentage of reported sexual offences, and will only provide a sense of justice to a very small percentage of victims. This might have been worth it if harsher sentences had the effect of deterring sexual offences, but there exists no credible evidence to suggest that a longer or harsher sentences deters any crime, including sexual offences.  Rather than increasing minimum sentences, a more strategic focus would be on the attrition, or “falling out of the system”, of sexual offence cases. The attrition of SGBVF cases in South Africa happens at various points in the criminal justice system. Some victims may choose not to report a matter to the police. Victims who do report at a police station or forensic unit may be not taken seriously, and no docket is opened. Even when a docket is opened, the matter might be undetected or not referred for prosecution. Of the matters referred for prosecution, some matters will be prosecuted and some not. The prosecution of sexual offences take place within a framework existing of legislation and directives. Prosecutors may only prosecute matters where there is a reasonable prospect of success, and so matters where there is no reasonable prospect of success will not be prosecuted. The most recent research tracked more than 3 952 sexual offences matters in Gauteng and showed that only less than 9% of matters that were initially reported resulted in conviction. In this study, sentencing provisions were only relevant in less than 355 of the 3 952 matters. The sentencing provisions only brought a possible sense of justice to 355 of 3952 victims.  They therefore submit that case attrition is a far more pressing area for intervention, than minimum sentences. In order to truly ensure that the maximum number of victims of SGBVF and their loved ones have access to justice, the focus should on what happens before conviction, not after.  If South Africa wants to ensure a greater sense of justice for a larger number of victims of sexual offences, we must ensure that more sexual offences matters are prosecuted. And for this to be possible, we must ensure that more cases can reasonably result in a conviction.  The establishment of specialised forensic units (like the Thuthuzela Care Centres) across the country has shown that cases where the victim accessed a Thuthuzela Care Centre had a better chance of conviction than cases that just went through the general criminal justice system.3 The reason for this is that specialised forensic units provide the services that victims require after a rape incident in one place while also collecting the necessary forensic evidence. It is notoriously difficult to prosecute sexual offences matters and often it requires a number of specialist interventions. The medical forensic evidence must be collected by a trained medical forensic practitioner. A specially trained NPA case manager must provide guidance for the investigation. The victim must receive psycho-social support by a trained containment counsellor and referral for long-term counselling in order to be able to ultimately provide testimony during the trial. These components form an integral part of the model for Thuthuzela Care Centres and so these centres and other specialised forensic units must be accessible to all victims of sexual offences to ensure that more sexual offences cases are prosecuted because they have a reasonable chance of a successful conviction. | The rate of attrition should be addressed as although sentencing is also important in the criminal justice system, the accused person would have to be tried and convicted first before he or she is sentenced. |
| 1.28 | (a) **The Commission for Gender Equality (CGE)** fully supports the South African government in all its efforts to review existing laws and policies applicable to gender-based violenceand femicide, as it has committed to do in Article 5 of the Declaration from the Presidential Summit on Gender Based Violence and Femicide.  (b) The intention of the Bill is clear: to create more serious consequences for those accused and convicted of crimes involving sexual and gender based violence, and femicide; and to better protect survivors, witnesses, and society against perpetrators and those accused of such crimes. This is necessary, and the call for better protection from South African women, who rose up in August 2018, must be answered.  (c) However, the CGE does have concerns about whether the some of the provisions proposed in this Bill will truly achieve this aim, specifically with regards to the sentencing of perpetrators. Our concerns relate to the effects the new provisions may have on the criminal justice system, including over-burdened correctional services, in the long-term. | (a) Noted.  (b) Noted  (c) Noted |
| 1.28A | (a) **The South African Catholic Bishops Conference (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.  (b) They support the provisions that aim to make it more difficult for people accused of domestic violence offences to obtain bail, but they question whether the extension of mandatory minimum sentence provisions to domestic violence offences will have the desired effect. They submit that 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.  (c) They submit that 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. They 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. They 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. | (a) Noted.  (b) Noted.  (c) Noted |
| 1.29 | (a) **The Embrace Project** notes that, in November 2019, a Kwa-Zulu Natal magistrate, Kholeka Bodlani, sentenced a father who was convicted of having raped his 11 year old daughter to a wholly suspended 5 year sentence because he was a good father. In September 2018 the Western Cape High Court’s Judge Binns-Ward found, in mitigation in the sentencing of a rape accused, who had repeatedly raped a child under the age of 16 (being statutory rape at the very least), that the accused had a history of prior consensual intercourse with the victim who was 13 years old; there was no actual violence used other than forced sexual intercourse; and that the accused stopped his assault when the victim started bleeding. For these reasons the learned judge held, in dissent, that the accused’s sentence should be reduced. Such findings and sentences should not exist at the highest level of our criminal justice system as they evince a disregard for prescribed minimum sentences that the judiciary are obliged to apply, and display a total lack of understanding of the nature of the crime with which they are dealing. They therefore strongly recommend that the Amendment Bill provide for compulsory and regular judicial training, as well as sensitisation training, and effective judicial accountability mechanisms (other than the Judicial Service Commission), if these amendments are to prove effective.  In addition to intermediaries, they recommend that the Portfolio  Committee consider reforming the law of evidence applicable to  sexual offences victims. They recommend that the Portfolio  Committee take note of the International Criminal Court (“ICC”)  Rules of Procedure and Evidence for victims of sexual violence.  Rule 72 requires that when being tried before the ICC for sexual  violence any evidence put forward by the accused may not be  adduced during the trial without warning. In terms of the ICC  Rules, notice must first be given to the Court. The notice must  describe the substance of the evidence and its relevance. To  determine whether or not this evidence will be admissible, the  Court must hear the views of the prosecution, the defence, the  witnesses and the victim in a closed hearing. From there, the  Court is required to weigh up the degree of the probative value of  the evidence against the prejudice it may cause. If the evidence is  found to be admissible, the Court states on record its reasons for  deciding so. Only then may such evidence be adduced by the  accused at trial.  (c) The Amendment Bill should also make provision for  preventative measures with regards to sexual offences and other  acts of gender based violence. A part of these measures should  include a rehabilitation programme for perpetrators of these  crimes that is evidence-based, so as Correctional services  facilities should not exist purely for punitive purposes, but for  rehabilitative purposes as well to prevent offenders from  perpetrating the same crimes in future. Because correctional  services facilities have some of the most violent environments,  coupled with an abuse of power bycorrectional services  authorities, they are not conducive for releasing rehabilitated  offenders back into society subsequent to the serving of a prison  sentence. The system therefore requires an overhaul.  (d)The Embrace Project notes that violence is learnt behaviour. The majority of South African children who grow up in violent households (where violence is either perpetrated in front of them or against them) are likely to perpetuate the cycle into adulthood. Therefore, as a sexual violence prevention measure, they recommend that the Bill provide for the development of specialised curricula, by the Departments of Basic and Higher Education, for girls and boys, respectively, aimed at eradicating harmful practices, beliefs, attitudes and stereotypes which perpetuate gender based violence, and violence in general. The curricula should address consent, bodily autonomy and appropriate inter-sex conduct. This could form part of the Life Skills and the Life Orientation curricula at school. Educators teaching these curricula would also require specialised training. | (a) Noted  (b) The proposal is noted.  (c) Correctional Services does make provision for rehabilitation programs and any reviews thereof should be considered under the Correctional Services legislation.  (d) Noted. Such initiatives would have to be carried out by the departments of education. |
| 1.30 | (a) **Sonke Gender Justice(Sonke)**submits that overall the Bill is being well received, however there is a need to take into  consideration theirconcerns, provisions and suggestions and worktowards the adaptation of an integratedand sustainable and effective criminal justice system, in which the treatment of domestic violence perpetration, and the voices of victims remain central to the approach.  (b) Sonke supports the efforts of the drafters to combat domestic violence in South Africa and fully support and recognise the positive efforts to do so through ensuring that the criminal justice system can provide protection for victims of domestic violence and other vulnerable persons.  (c) They believe that punitive approaches do not necessarily motivate positive changes in behaviour and that the implementation of more perpetrator rehabilitative interventions, including specialised and targeted rehabilitation approaches will help transform our criminal justice system. To tackle South Africa’s unprecedented levels of crime and violence, we need to decrease the use of imprisonment and stop relying on the criminal justice system to solve social problems. They believe that if the State were to focus interventions from criminalisation, punishment and retribution and towards harm reduction, social justice, and where appropriate, treatment, reparation, and restorative practices; this would lead to a criminal justice system that is more constructive, socially just, and effective. We need to employ policies and interventions that prove to work, rather than simply adopting a “tough on crime” approach, which evidence shows does not curb crime or violence.  (d) Sonke is concerned that the Bill fails to address the expeditious processing of bail applications in domestic violence  cases with the necessary urgency. They believe that if this were to be done, it could ensure that most offenders who are detained  are those who have been convicted and only accused persons  who pose a serious threat to victims. This would garner the trust of victims of domestic violence in the criminal justice system and  ensure their safety. The restrictive provisions of “no bail” for all  domestic violence cases, in their current form will strain the  administration of justice. They believe that the Department of  Justice and correctional Services should insteadprioritise the finalisationof all domestic violence cases expeditiously.  (e) Sonke disagree that subjecting these crimes solely to harsher sentencing will reduce their prevalence or increase the safety of domestic violence victims and children. Sonke submits that since the inception of our democracy, there have been no studies to indicate a positive correlation between increased sentences and the safety of victims of domestic violence, GBV and rape. Increased sentences also contribute to the overcrowding problem in prisons and overcrowded correctional facilities hamper with the prospect of rehabilitation, and this may result in more dangerousoffenders being released back into society.  (f) Sonke is also concerned about the creation of categories of more punishable incidents of rape in Section 51(1) of the Criminal Law Amendment Act. Creating a distinction of incidents of rape bymaking certain incidents more reprehensible suggests that there are forms of rape which are more forgivable. South Africa has one of the highest sexual violence rates in the world and has even been said to be comparable to the sexual violence rates of countries in conflict.  (g)Sonke submits that rape is a social issue. Proactive, actionableand tangible social interventions need to put into place, prioritisedand funded by government and civil society alike. Society’sunderstanding and perception of rape needs to bechallenged and rape culture needs to be ended. Rape culture is part of South African culture. It is normalised in our daily interactions.It is a product of a system and a history of institutionalised coloniality, racism, patriarchy and misogyny. They believe that creating morepunishable categories of rapedoes not discourage rape, but instead institutionalises rape culture, andmakes certain categories of victims more vulnerable. If incarceration is in fact a deterrent for rapists,creating harshersentences for the rape of particular groups of people and not others can motivaterapists totarget those for whom they will not get as severely “punished”, for raping. They support auniform approach to addressing all rape systematically and through the criminal justice system. | (a) Noted.  (b) Noted.  (c) Noted, we submit that punitive measures are at the end of the value chain, when other interventions did not prevent the commission of the offence. Punishment is an integral part of a criminal justice system for those members of society who did not respond in a desired manner to the interventions that comes before punishment.  (d) Noted  (e) Noted  (f) Noted  (g) Noted |
| 1.31 | (a) **The International Women’s Forum of South Africa**  **(IWFSA)**compliments Government and all stakeholders for  getting us to this point and is committed to continue to engage  with all stakeholders in support of the full implementation of the Bills. They are encouraged by the collaborative approach,  transparency and urgency in dealing with these Bills and hope  to witness its promulgation very soon.  (b) The IWFSA submits that complainants who lay false charges  particularly in instances where there’s personal vendettas and  retaliation should be charged with perjury or any other relevant  offence given that such abuses take place often and give rise to  an overburdening of the system and to undermining the  seriousness and importance of the true complainants and victims. | (a) Noted.  (b) Noted. |
| 1.32 | **P Dibale** submits that the amendments related to bail do not go far enough and leaves loopholes that offenders can use to get bail. The amendments discounts the toxic nature of society and families sin particular, who may coerce victims to testify that they have no problem with an accused being granted bail. The commentator proposes that there should not be bail for persons accused of GBV and sexual offences, such offences must be categorised as Schedule 5 and 6. The accused persons should only be released by the court at the end of the trial if found not guilty. The proposal is not in line with the Constitution. | Noted |

**2. Clause 1 and 8: Intermediariesand evidence through audiovisual link.**

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|  | **Comments** |  |
| 2.1 | (a) **Wise 4 Afrika** submits that although evidence through intermediaries is a welcomed amendment, the vetting of intermediaries cannot be left up to the State. The currentamendment is silent on who actually appoints the intermediary while it speaks tothe magistrate holding an inquiry to assess their competence. Wise for Afrika recommends the setting up a body that includes civil society to form part of a panel charged with the responsibility of vetting and appointing intermediaries in order to ensure expediency and dissemination of power.  (b) Wise 4 Afrika welcomes the conduct of proceedings by audiovisual link, but seem to question to the integrity of evidence by a witness through the process. | (a) Intermediaries are appointed by court from the categories the category or class of persons determined by the Minister of Justice by notice in the Gazette. It is for a court to decide to determine whether an intermediary is competent or not and the court may remove an intermediary.  (b) Noted. The court may make the giving of evidence subject to such conditions as it may deem necessary in the interests ofjustice. The use of audivisual links to give evidence may also take place at the facilities at the court in question to protect a witness against prejudice or harm. |
| 2.2 | (a) **Gauteng Legislature Multi-Party Women’s Caucus (the Gauteng Legislature) recommends that the categories of persons for whom an intermediary may be appointed be expanded to include a witness *“who exhibits lack of capacity to act for oneself”.***  (b) The Gauteng Legislature further recommends that the court must put the interests of the witness first where an intermediary must be replaced should the witness express dissatisfaction with the appointed intermediary or if the witness insists that she or he can represent her or himself.  **(c) An enquiry into the competence of an intermediary should include an enquiry into whether the intermediary has a sexual offence record.** | (a) **It is submitted that 2.2"lack of capacity to act for oneself" can be accommodated under the criteria of "who suffers from a physical, psychological, mental or emotionalCondition".**– **No amendment**  (b) The replacement of an intermediary is in the discretion of the court. If a person is an adult for whom an intermediary may be appointed who wants to give evidence without an intermediary, the court will not appoint an intermediary. Once an intermediary is appointed it is in the discretion of the court as to whether a person can further give evidence without an intermediary.  **(c) The criteria to determine the fitness of a person for appointment is specified in the proposed 51B(2)*(b)* of the MCA, 37B(2)*(b)* of the SCA and 170A(11)*(b)* of the CPA, and is open ended by virtue of the words "include but is not limited to". This will include whether a person has a sexual offences record. Obviously, in a criminal case involving a sexual offence, such an intermediary may not qualify.– NO AMENDMENT** |
| 2.3 | **P Dibate** welcomes theamendment that allows the use of intermediaries by younger witnesses and those who suffer from a range of conditions and submit that it will be a crucial intervention in the quest for justice. | Noted |
| 2.4 | **Gauteng Province Community Safety** comments that the provisions in the proposed section 51A seem to require a court to hold an enquiry to determine whether a witness suffers from a physical, psychological mental or emotional condition. The commentator submits that this clause should allow the court to appoint an intermediary at its discretion or on the court’s observation that the witness is struggling with either physical, psychological mental or emotional condition. | The provision provides for this. |
| 2.5 | **The Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)** submitsthat the use of intermediaries by various categories of vulnerable witnesses should not be left to the discretion of the courts as proposed in the Bill. SAIFAC is concerned that the discretion given to the courts will likely result in the inconsistent application of this provision. A similar challenge has been highlighted in the interpretation of section 170A of the Criminal Procedure Act (CPA), which gives the court a discretion to order the use of an intermediary when the witness is a child and if such a witness would be exposed to “undue mental stress or suffering” when giving testimony in criminal proceedings. This provision has been challenged before in the Constitutional Court in Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development (Transvaal DPP), specifically that giving a discretion to judicial officers makes the appointment of the intermediary dependent upon how judicial officers exercise that discretion, and this adds to the inconsistency in the application of section 170A(1). | (a) We agree with the decision of the Constitutional Court in the Transvaal DPP matter that it is necessary to consider the appointment of an intermediary on a case by case basis as persons under the age of 18 will be at different stages of development and a blanket provision will therefore not be appropriate. |
| 2.6 | (a) **ANC Women’s League**  submits that, with regards to the verification that the complainant has the biological and mental age of 18 year old or below, the state must ensure that the requisite tests are provided for the persons under consideration should they be required by the court to prove their limitations. The responsibility must not be left with the complainant or the family. It must be dealt with like the Criminal Procedures Act, 177 proves mental capacity in sections 77, 78 and 79. The state must provide for the tests, assessments and responsibility to present the outcomes to court. This will ensure justice for those complainants who may not afford the services to prove their limitations.  (b) The Women’s League proposes a number of categories of persons that the Minister could consider as competent to be appointed as intermediaries (unemployed graduates trained in certain sectors, paralegals, auxiliary social workers).The Women’s League further submits that there must be a sufficient pool of intermediaries and there must be a minimum number available at the courts to avoid unnecessary postponements which results in secondary victimisation in sexual offences cases. The Women’s League further requests that the intermediaries be multi-lingual and that the interpreters not be used as intermediaries as they were not trained as such.  (c) The Women’s League supports the provisions that provide for the use of audiovisual links to give evidence. | (a) The commentator refers to criminal proceedings, where the prosecutor will deal with this aspect. In civil proceedings the onus is on the litigant or witness to persuade the court that he is a person in respect of whom an intermediary must be appointed.  (b) An application to this effect may be submitted to the Minister of Justice, who will after extensive consultation decide whether a specific category of persons should be designated.  (c) Noted |
| 2.7 | (a) **The Western CapeGovernment** refers to a matter in the Upington Regional Court where a person was convicted and sentenced for the sexual assault of a girl child who was 7 years old at the time of the commission of the offence and who had a mental and physical disability. Due to her mental and physical challenges, in particular a speech impediment, she was unable to give evidence.As a result of research by the University of Pretoria’s Centre for Augmentative and Alternative Communication, which assessed the girl, it was found that she could communicate using a specially designed tablet that was programmed in her home language. **Legislation which recognises alternative means to give evidence should be considered.**  (b) **It is, furthermore suggested that section 51B, should be amended to provide for an application by a party, or of the court's own accord, to permit the use of technology as an alternative and augmentative form of communication to enable witnesses who, due to physical and mental conditions, are unable to give evidence *viva voce*.** | (a) **Section 161 of the Criminal Procedure Act, is broad enough to allow for "other forms of non-verbal" communications as a medium to give evidence (see clause 7). It was held in S v Roux 2007 (1) SACR 379 (C) that it had not been the intention of the legislature to set out in section 161(2) a *numerus clausus*of what would constitute viva voce communication. Interpreters, said the court, were routinely employed in the courts to translate evidence into a language with which the court and the accused were familiar, and the courts had, over the years, adopted a wide interpretation of the concept of viva voce evidence as described in s 161– No amendment.**  However, technologies in this field develop at a rapid pace and may require a procedure for the court to evaluate the extent of autonomy of the witness to communicate as well as the reliability of the communications received or interpreted by experts. This will be addressed in the revision process of the Criminal Procedure Act.  **(b) Alternative means to give evidence, other than *viva voce*, is generally recognised and is subject to the discretion of the court to allow this if it is in the interest of justice. Section 51A deals with intermediaries and they are not persons with technical expertise to operate technologies that enables a witness to communicate. – No Amendment** |
| 2.8 | (a) **Legal Aid SA** supports the proposed new sections 51A and 37A, aimed at extending the intermediary service to a witness who suffers from a physical, psychological, mental or emotional condition, and to older persons as defined in the Older Persons Act, 2006. They also support the extension to proceedings other than criminal proceedings. They are of the opinion that persons with disabilities can also be assisted to testify in court if an intermediary is used and court preparation is given. For example, the intermediary can inform the court and presiding officer of the concentration span of the person and, should that person have a severe communication disability inform that they may need more time than an able-bodied individual to respond to questioning in court.  **(b) With regards to the proposed amendment that a court must provide reasons for refusing any application or request for the appointment of an intermediary, Legal Aid SA suggests that provision should be made for review of the decision by court. This will ensure the protection of witnesses. This could be achieved by inserting the following in section 51A(5):**  ***“should circumstances change and new facts become known to any of the parties the court can, on application, review this decision”.***  **(c) Legal Aid SA notes that section 51B makes reference to the Head of Court. They hold the view that the Head of Court means the official appointed to the position of Head of Court or an Acting Head of Court. They suggest that this be changed to refer to the Senior Judicial Officer at that Court which may not necessarily be the Head of Court.**  (d) Legal Aid SA supports the proposed new sections 51 C of the Magistrates’ Courts Act and 37C of the Superior Courts Act, that provide for evidence through audio-visual link in proceedings other than criminal proceedings. They note that during June 2019 the Rules Board for Court of Law proposed amending the Uniform Rules of Court to regulate the procedurewhereby a party intends evidence in civil trials to be taken by audio-visual link and requested comments on the proposal.The taking of evidence by audio-visual link is intended to apply where a witness is unable to attend the trial in person and testify orally. Uniform Rule 38 was proposed to be amended by the insertion of subrule (9) which regulates the taking of evidence by audio-visual link. The draft amended Uniform Rule 38(9) provided as follows:  (**9)(a) Where it appears convenient or necessary in the interests of justice for evidence to be taken through audio-visual link, the court may, on application on notice by any party, make such order;**  **(b) A court making an order in terms of paragraph (a) shall give such directions which it considers appropriate for the taking of such evidence;**  **(c) An order to be applied for in terms of paragraph (a) shall be in accordance with Form K of the Second Schedule; and**  **(d) For purposes of this rule “audio-visual link” means facilities that enable both audio and visual communications between a witness and persons in a court to be transmitted in real-time as they take place.**  This proposal will be aligned to the courts’ sentiments expressed in the matter of Krivokapic v Transnet Ltd 2018 4 All SA 251 (KZD). The facts were briefly that the applicant, a resident from Yugoslavia, could not proceed with her claim in the High Court because she was too old and ill to travel to SA to give evidence. The application was to grant permission for her to testify from the premises of a law firm in Yugoslavia, by way of a video conference link, availing to the respondent an opportunity to appoint legal representatives to monitor and be present during the process. It entailed that the applicant's attorneys of record would arrange for the video conference link to be set up at the offices of a law firm or any other place so agreed to by the court in order for the presiding officer and the legal representatives of the respondent to be present during the process.  In support of the application two medical practitioners certified that she was not capable of long distant travel, by plane or otherwise and therefore unable to attend trial in SA. Lastly, she was unable to afford the cost of travelling and accommodation for herself and a chaperone/caregiver to SA in order to testify. The relief sought was granted.  (e) Legal Aid SA is of opinion that video link conferencing will extend and expand access to justice especially for older persons. The taking of evidence by audio-visual link will curb the making of extensive and time-consuming journey to court rooms, thus it will limit costs for both litigants and witnesses.Legal Aid SA supports the proposal to make use of audio-visual links in court rooms and suggests that all court rooms should be fitted with such equipment. If all court rooms are fully equipped, it will minimise unnecessary postponements as opposed to instances where only certain court rooms have this facility in a court building. | (a) Noted  **(b) Agree. Section 51A and 37A should be amended to accommodate this proposal. In many instances the underlying conditions as contemplated in the respective provisions, will become apparent only when a person gives evidence.**  **(c) There is no legislation that provides for the head of a magistrate's court.The proposed amendment defines "Head of Court" with reference to "Head of Court"– No Amendment**  (d) Noted.  (e) Noted. |
| 2.9 | **The Women’s Legal Centre** supports the proposed amendments. | Noted. |
| 2.10 | (a) **The Commission for Gender Equality (CGE)**strongly supports the introduction of clauses 1 and 18 The use of intermediaries in giving evidence, whether in a civil or criminal court, is widely recognised as an effective protective measure for complainants and witnesses alike, and is proven to create a more enabling environment for the giving of sensitive evidence. This practice reduces the probability of secondary victimisation of witnesses by the defence, or the traumatisation of complainants in the already formal court setting.  (b) Section 51A(b), and Section 107A(b) which refers to persons “who suffer from a physical, psychological, mental or emotional condition.” The CGE submits that these sections may be phrased too vaguely, and that care should be taken to either define “condition”, or to qualify the phrase with further reference to the impact of the condition on the witnesses’ ability to testify. | (a) Noted  (b) The ability to testify is not at the heart of the matter, but rather, whether the condition will expose the witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies. |
| 2.11 | **Embrace Project** which requires that an intermediary to be appointed must be a person fit to undertake such a role. Provision should be made for vetting. This must include particulars included in National Register of Sex Offenders and any other relevant register, which will disqualify such a person to work with the witnesses intended in the various proposed sections. | The criteria for the appointment is specified in the proposed 51B(2)(b) of the MCA 37B(2)(b) of the SCA and 170A(11)(b) of the CPA, that includes without limitation a the fitness of an intermediary as a person to be so appointed. Obviously, in a criminal case involving a sexual offence, such an intermediary may not qualify. |
| 2.12 | **Sonke Gender Justice** supports the appointment of intermediaries for proceedings other than criminal proceedings and the use of audiovisual link as a means to give evidence as a means to reduce secondary victimization of witnesses. | Noted |
| 2.13 | **Fish Hoek Valley Ratepayers & Residents Association** considers evidence by audiovisual link from the perspective of protecting the identity of a witness or complainant.According to them, if the identity information about the victim is not properlyprotected through image and voice distorted, not much will change inbringing the perpetrators to book. | It is submitted that evidence by audiovisual link, may be used if it is in the interest of the security of the State or of public safety or in the interests of justice or the public, or to prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings, it does not provide for witness or complainant de-identification. Section 153 and 154 of the CPA do provide for the powers of a court to protect the identity of a witness, but also do not extent to victim or witness de-identification in proceedings. The general rule is that an accursed must be able to confront a witness in criminal proceedings and must for such purpose know the identity of a witness. In the laws of other jurisdictions there are provisions that do provide for witness and victim de-identification in exceptional circumstances, such as organised crime and terrorism cases where such witnesses must be protected. |
| 2.14 | **P Dibate** welcomes theamendment that allows the use of intermediaries by younger witnesses and those who suffer from a range of conditions and submit that it will be a crucial intervention in the quest for justice. | Noted |
| 2.15 | **The ANC Women’s League** submits that the amendments proposed are supported. | Noted |
| 2.16 | **City of Tshwane** welcomes the amendments that deal with the use of intermediaries and evidence by means of audiovisual link in proceedings other than criminal proceedings as measures to protect witnesses against secondary victimization. | Noted |

**3. Clause 2 and 3: Bail by SAPS (section 59 of the CPA) and NPA (section 59A of the CPA)**

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|  | **Comments** | **Responses** |
| 3.1 | **Wise 4 Afrika** submits that the bail application at the police has been systematically abused, as a result there needs to be assurance to protect against continued abuse of this facility to ensure safety of victims. | The amendments to sections 59 and 59A of the CPA with regard to bail where an offence was committed against –  \* a person in a domestic relationship with the accused; or  \* a person who obtained an order of court to protect him- or herself from the accussed,  is necessary to afford additional protection to victims, and for this purpose ensures that a person cannot be granted bail in terms of those provisions. |
| 3.2 | The **SAPS** submits that a person arrested by a peace officer without a warrant at the scene of an incident of domestic violence in terms of the provisions of the Domestic Violence Amendment Bill, will be detained until his or her first appearance in court. It should be kept in mind that domestic violence incidents often involve emotional reactions and irrational actions. It is therefore important to consider the potential abuse of this provision and the risk of reciprocal claims of physical abuse by the people involved aimed at humiliating each other. | The amendments to section 3 of the DVA provides for arrest in the following circumstances:  (i) A contravention of a DVA protection order;  (ii) an act offence of domestic violence where physical violence involved was committed; or  (iii)an act of domestic violence which constitutes an offence in terms ofany law, was committed.  Surely, in respect of paragraphs (i) and (ii), *supra*, bail should only be granted by a court. Paragraph (iii), however, requires further consideration, since it may involve minor offences such as *crimen iniuria*, *de minimus* malicious injury to property, etc, where continued detention after arrest pending a court appearance may be regarded as an unjustified intervention.  This will be addressed in the revision of the Bill. |
| 3.3 | **South African Women In Dialogue** welcomes the fact that offenders of the Domestic Violence Act will no longer get bail easily and that they will be precluded from getting bail before their first appearance. They take note that this may be deemed by others as an unjustifiable limitation to section 35(1)(f) of the Constitution (accused persons is entitled to be released from detention). According to the commentator this must be weighed up against the high rates of gender-based violence and intimate partner killings. Granting bail by a court will afford protect to victims since a court can weigh up the various interests. | Noted |
| 3.4 | The**City of Tshwane** welcomes the proposed amendment which ensuresthat a court must take into account the circumstances of a matter before granting bail, which may ensure additional protection to victims of gender based violence. | Noted. |
| 3.5 | The **ANC Women’s League** supports the amendment. | Noted. |
| 3.6 | The**Western Cape Government (WCG)** submits that the proposed insertion of subparagraph (ii)in clause 2, which excludes the granting of so-called ‘police bail’ (bail before the first appearance of an accused in a lower court) to an accused who is in custody for an offence against a person with whom he or she is in a ‘domestic relationship’, as defined in the DVA, is missing key words.The missing words must establish the existence of a relationship or past relationship between the accused and the complainant.  (b) The WCG submits that clause 2 ought to contain a subparagraph which disallows the granting of police and prosecutor bail where the accused is alleged to have committed an offence while on parole. | (a) The definition of a domestic relationship in the DVA includes previous relationships.  (b) The aim of this Bill is to strengthen legislation with regards to offences that has a bearing on gender based violence. The proposal of the WCG,is not relevant to the object of the Bill. It is a possible strengthening of the CPA and may be considered during the revision of the CPA. |
| 3.6 | (a) **Legal Aid SA** submits that although they understand the reasoning behind the provision relating to police bail and the concomitant imperative to protect victims of domestic violence, they are not sure whether the proposed amendments would be the best way to achieve this goal. They hold the view that there is enough anecdotal reports of abuse of these processes for the purposes of domestic disputes, to warrant one to tread very carefully with these provisions. They note that the current regime already provides for assault and any real threat of violence would anyhow be included in the wider definition of assault, which would already provide the required safety-net the amendment aims to achieve. Thus, it is their view that this amendment is not necessary.  (b) With regards to the amendments relating to prosecutor bail Legal Aid SA notes that the prosecutor would, even more so, be expected to apply his/her mind to the matter before agreeing to the release. They submit that even if it is considered that a police officer would not be entrusted with this responsibility; the prosecutor could serve as an important safety-net to avoid abuse and injustice. The national instructions/orders by the National Commissioner of SAPS and the training material that will be developed for the purposes of implementing this amendment should take cognisance of the concerns raised in the comment and address them accordingly.  If any limitation were to be placed on bail with regard to these offences; the prosecutor should still be given the responsibility to consider the bail, prior to the court appearance. | (a) Part II of Schedule 2 excludes assault when a dangerous wound is inflicted from the ambit of section 59 of the CPA. Schedule 7, includes assault, when a dangerous wound is inflicted, within the ambit of section 59A. Bail can therefore be granted for assault in terms of section 59, and assault, when a dangerous wound is inflicted, in terms of section 59A. With reference to the comment of Legal Aid SA, the question may be asked what is the perceived safety-net that makes the proposed amendments unnecessary. (See clause 11 to 14, which amend the Schedules to the CPA in respect of the offence of assault that is considered to be more serious than ordinary assault.)  (b) We submit that because of the levels of gender based violence in the country is important that all the factors in the amended section 60 be taken into consideration in respect of gender based violence, hence the bail application must be decided upon by the court. Section 60(12), provide for a unique process, where the court may issue a protection order in terms of the Domestic Violence Act. |
| 3.7 | The **Women’s Legal Centre,** in general,supports the amendments. | Noted. |
| 3.8 | The**Commission for Gender Equality** broadly supports the amendments. Oneconcern they do have in this context, is the practical reality that respondents in domestic violence situations often use the system against complaints – either by obtaining protection orders against the true victims first, or making counter applications for protection orders of their own against the true victims. | The support for the amendments is noted. The concern raised by the commentator cannot be addressed in the context of the amendments, since it relates to decision by a court that there are sufficient grounds to issue protection order. |
| 3.9 | **The South African Catholic Bishops Conference**supports the restriction on the granting of police bail and bail by a prosecutor to accused persons in custody on domestic violence charges. | Noted |
| 3.10 | **Sonke Gender Justice**indicates that they do not support the amendments as proposed. According to the commentator, section 35(3)(h) of the Constitution provides that everyone has the right tobe presumed innocent until proven guilty. Section 35(1)(f) of the Constitution grants everyone the right to have bail if it is in theinterest of justice to do so. In line with these constitutional principles, they support the reasonablerestriction of police bail and prosecutor bail only in cases where there are reasons to believe that if theaccused is not detained, the victim will be in immediate danger. | It is submitted that in order to determine whether or not there are *reasons to believe that if the accused is not detained, the victim will be in immediate danger,*must be left to a court to decide. |

**4. Clause 4: Bail application in court (Section 60 of the CPA)**

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| 4.1 | (a) **Wise 4 Afrika**submits that while they accept the right to be released on bail is aconstitutional right; the State must, however,always oppose bail in cases ofdomestic violence and sexual assaults.  (b) Wise 4 Afrikarecommends that when bail is granted, theremust be stringent conditions attached to protect the safety of victims. One ofthe conditions should include requiring psychotherapy intervention, angermanagement training and some level of supervision by the police including arecorded check-in schedule at a designated police station on an agreed uponfrequency until the case hearing. In addition, where there is no standingprotection order against the accused, it should be issued as a condition of bail toensure further protection for the victim). | (a) The Bill does not compel the State to always oppose bail because the NPA is an independent institution. The Bill does, however, include mechanisms that are aimed at ensuring that the a public prosecutor applies his or her mind with regards to the decision whether or not to oppose bail with regards to domestic violence offences.  (b) Section 60 read with section 62 of the CPA provides for conditions to be imposed in respect of a person that is released on bail. However, those conditions do not extend to those contended for by the commentator. Section 60(1)(b) do provide for protection orders in terms of the DVA on release of Bail. |
| 4.2 | The **South African Police Service** welcomes the proposed amendment requiring an accused to disclose the existence of any protection order issued against him or her during bail proceedings. | Noted |
| 4.3 | (a) **The Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)** submits that while there is a need to protect victims and survivors of domestic violence from their abusers, measures to tighten bail requirements must be consistent with the provisions of the Constitution. According to section 35(1)(f) of the Constitution, all accused persons have the  right “to be released from detention if the interests of justice permit, subject to reasonable conditions”. In terms of the Bill, the interests of justice must be interpreted to include the safety of the person against whom the offence was committed. A number of other factors that must be considered by the Court in a bail application are listed in subsections (4) and (5). These include any threat of violence that the accused may have made to the victim, and any resentment that the accused may harbour. The effect of the proposed amendment is that even where there is no likelihood that the accused will abscond or interfere with state witnesses if released on bail, the court may still deny bail if it is in the interests of justice to do so. The constitutionality of such a provision is questionable. It should be noted that the right to bail is based on the presumption of innocence. This principle is not reflected in the proposed amendment.  (b) A similar provision, section 60(11)*(a)* of the CPA, which requires the accused to satisfy the court that his/her release is in the interests of justice with respect to Schedule 5 offences, was previously subject to a constitutional attack on the basis that it “imposes an onus which is so difficult to discharge that the right to release on bail is illusory.” In dismissing the constitutional challenge, the Court held that an important qualification has been built into this section that the accused must be given a reasonable opportunity to establish the requirements of this section. Despite the existence of such qualification, we are concerned that it will be difficult for most accused persons to meet the requirements for their release. Considering the large scope of actions that constitute domestic violence, obtaining evidence that will satisfy the court is very challenging, especially in cases where no physical violence is involved.  (c) While we welcome the mandatory inclusion of considering the victim’s safety during bail decisions, we are equally concerned about how the provisions in the Bill may be interpreted by courts in weighing up or safeguarding accused persons’ right to bail under the proposed amendments. It is therefore our submission that the Bill needs to be drafted in a manner that clarifies that the views of victims of gender-based violence regarding their safety during bail proceedings must not be without qualification, specifically to safeguard the rights of the accused under such bail proceedings.  The deprivation of a person’s liberty merely because he or she is accused of having committed a crime, and not found guilty of it yet, cannot possibly reduce the crime rate. There are other proposed measures that will ensure the protection of victims while accused persons are out in bail. For instance, a protection order could be issued against the accused following his or her release on bail if the offence was allegedly committed against a person in a domestic relationship | (a) The right to be released on bail as provided for in section 35(1)(f) of the Constitution is acknowledged. Section 35(1)(f), also qualifies this right by providing that the release must be in the "interest of justice". In S v Dlamini and Others 1999 (4) SA 623 (CC), the Constitutional Court held that the right of an accused person to be released on bail is a “circumscribed one”. The Constitutional Court held that the limitation of the accused’ constitutional right by section 60(11)*(a)* of the CPA is reasonable and justifiable in terms of section 36 of the Constitution in the current circumstances in South Africa. It is submitted that the more stringent requirements that the amendments to section 60 aim to bring about, do not take away this right to be released from detention, but impose additional considerations that must be considered to determine when the release from detention will be in the interest of justice. The amendments to subsection (5), further prescribe when, as contemplated in subsection (4)*(a)*, where it will not be in the interests of justice to permit release from detention, on the on the ground that there is the likelihood that the accused, if released on bail, he will endanger the safety of the public or any particular person. Subsection (4)(a) is one of five grounds which must be considered when it is in the interest of justice to release a person. Two of these grounds are referred to by the commentator, namely, interference with a witness ((4)*(c)*) or evade the trial ((4)*(b)*). If any one of the five grounds is established, the release from detention is not considered to be in the interest of justice.  (b) The commentator refers to S v Dlamini *supra,*wherethe court held that section 60(11)*(a)* is constitutional even though it places a formal onus (burden of proof) on the accused to adduce evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit release. In paragraph [77], the Constitutional Court also held that the requirement 'exceptional circumstances' limits the right in s 35(1)(f) of the Constitution, but that it is a constitutionally permissible limitation in terms of section 36 of the Constitution. See also S v Botha en 'n ander 2002 (1) SACR (SCA) [17] and S v Mabena & another 2007 (1) SACR 482 (SCA) at [5].  (c) The commentator did not take into account that subsection (5), specifically clarifies the applicable principles that relates to gender based violence, Another aspect that is not considered is that there is already an order in place against a person that prohibits the accused not to embark on certain conduct, yet ignored such order. Similar to a person who fails to comply with bail conditions, a higher onus is placed on such a person to satisfy the court that it is in the interest of justice to release him or her from detention. An aspect that may need clarification isthe offences against a person in a "domestic relationship". These offences may range from serious offences, as provided in Schedule 1, to *de minimus* type of offences.Similarly contraventions of a protection order may be serious in nature or insignificant without causing harm to a complainant such as entering a place in a shared residence. |
| 4.4 | (a) **The ANC Women’s League** submits that the CPA must be amended by the inclusion of all GBV offences under Schedule 6 to the CPA. This which will make it difficult for the accused persons to be released on bail.It is further remarked that "as much as the public may have a misunderstanding of the bail system and its purpose, it gives the public confidence when perpetrators are not released often and this is not only with reference to the cases which are famously reported in the media, but also those unreported cases where a man beats his wife or girlfriend because it has been argued that such conduct precipitates the killings".  (b) The NPA must also issue a directive to all its prosecutors that bail must be opposed in all GBV-cases. This will assist in ensuring that a structural and systemic issue of GBV is addressed as perpetrators will be aware that they will not easily be granted bail when committing these sexual offences. Furthermore, the provision must be amended to provide that prosecutors must oppose all bail applications on all GBV Cases.  (c) The amendment to section 60(4) of the CPA is excellent. It must also include the other persons close to the complainant. It is common knowledge that in the case of GBV, perpetrators tend to harass beyond their primary victim. So the words “or related persons” has to be included.  (e) The amendment to section 60(5)(b) of the CPA is very good as it allows threats against family members to be considered as reasons to deny bail.  (f) The Women’s League is also recommending that the proposed amendment to section 60(12)*(a)* that requires the court to interpret the interests of justice to include the safety of the victim should be extended to include the safety of any other person. | (a) As pointed out above GBV – offences may range from a really insignificant offence to very serious offence, and may include offences that do not involve physical violence. To place all types of offences against another person who is in a domestic relationship with the accused means that those minor offences are on par with offences in the range of premeditated murder, death of a person as a result of rape, rape where a person was rape by more than one person and rape of a child. Gender based violence offences are currently on par with Schedule 5 offences, and thereby placing the *onus* on the accused to satisfy the court that the interests of justice permit his or her release on bail.  (b) A blanket approach might not be appropriate. The Bill does require that prosecutors must provide reasons for not opposing bail in gender based violence offences. To amend the bail provisions to the effect that prosecutors must oppose bail in all circumstances in all GBV-cases, will would interfere with the independence of the NPA.  (c) A GBV- offence is "an offence against any person in a domestic relationship with the accused". Section 60(10) caters for other persons close to the complainant. In terms of section 60(10) the court has a duty, to weigh up the personal interests of the accused against the interests of justice, and for that purposes the interests of justice should be interpreted **toinclude, but is not limited to**, the safety of any person against whom theoffence in question has allegedly been committed (see paragraph 4.6(d), below.  (e) Noted.  (f) The provision is all inclusive and includes any other person. |
| 4.5 | (a) The**City of Tshwane**requires clarity on where gender activists should report such failures of the court officials to act in accordance with the Bill on bail, especially on the fact that they have to put it in record why they did not oppose bail.  (b) According to the City of Tshwane the procedures relating to bail is a breakthrough to deal with GBV-offences and imposes obligations on officers of the court for which they may be held accountable. | (a) There is an NPA hotline that can be used for reporting prosecutors  (b) Noted. |
| 4.6 | (a) **The Western Cape Government** submits that the proposed amendment to section 60(2A), which requires a court considering an application for bail to consider the view of any person against whom the offence was allegedly committed regarding their safety, that is the complainant (or victim), while being commendable, may be interpreted as being limited to only those complainants who are able to present their views to the court. Various suggestions are made how such a "view" may be brought to the attention of the court, among others, by way of affidavit or oral evidence by the complainant or other persons.  **(b) An important factor that has not been included in the list of factors to be considered by the court in terms of section 60(5) is whether the accused has committed an offence or the offence in question while on parole, day parole or under correctional supervision in respect of a conviction for an offence with an element of violence against any person.**  (c) Although clause 4 does not propose any amendment to section 60(8), it is suggested that a provision similar to the proposal suggested above, to section 60(5), be included here.Section 60(8) requires the court to consider the factors in paragraphs (a) to (d) in considering whether the ground in section 60(4)(d) has been established, namely, whether there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system. It is strongly recommended that the Bill expands the grounds in section 60(8) to include an extra ground referred to in paragraph (b).  (d) The proposed amendment confirms that the imposition of bail conditions by the court in the ‘interests of justice’ must be interpreted to include the safety of any person against whom the offence was allegedly committed. It is submitted that in matters of domestic violence, the safety of the complainant is often linked to the safety of other persons connected to the complainant, such as children and other family members, for example.It is submitted that it would be in the interests of justice to extend this concept to include the safety of other persons connected with the complainant, who are affected by the offence in question. It is suggested that additional wording be inserted into the proposed amendment which refers to ‘the safety of any person against whom the offence in question has been committed or the safety of any person connected with the complainant who is affected by the offence.’. | (a) There is no obligation on a court to ensure that the view of the person against whom the offence in question wasallegedly committed, must be placed before it.The State is obliged to place such evidence before a court if they deem it necessary.  **(b) Agree: An amendment to paragraph (*g)* of section 60(5), may be considered to accommodate such a proposal, by inserting the following words after "bail" at the end of that paragraph: ", on parole, day parole or under correctional supervision".**  (c) Although the amendment is outside the scope of the Bill, it may be considered.  (d) The proposal should be considered. |
| 4.7 | (a) **Legal Aid SA** comments that the proposal in terms of section 60(2A) of the Criminal Procedure Act, 1977 is that the court must, before reaching a decision on a bail application, take into consideration any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available. In this regardLegal Aid SA is of opinion that making such report mandatory would frustrate the bail process, which is by definition urgent.In the ordinary course matters would be postponed for 6 weeks for probation officer’s reports. It would be virtually impossible to obtain a report by the first court appearance, when bail should at least be considered.At best the court could be required to have regard to any previous reports, where available.  (b) Legal Aid SA suggests that the amendment to section 60(4) which requires the court to consider whether there is a likelihood that the accused will, if released on bail, endanger the safety of the ***any person*** against whom the offence was committed the court should instead consider the safety of the specific complainant.  (c) Legal Aid SA supports the inclusion of the “public safety” (to matters that has to be taken into consideration by the court during bail proceedings), in general as it is a valid consideration.  Legal Aid SA is opposed to wording “or any other person” in section 60(5)(b). This provision requires the court to take into consideration any threat of violence which the accused may have made to the victim or any other person. The Legal Aid submits that in its current format it is too broad and subjective. It entails that an investigating officer can say for example, that the accused has a problem with the witnesses and then the accused will not be granted bail.  (d) With regard to the wording “any disposition to violence on the part of the accused, as is evident from his or her past conduct,” does this refer to previous convictions of a violent nature? This could result in matters where the accused was acquitted, or that was withdrawn on the merits; being brought into the equation.  In its current format the word ‘disposition’ refers to a person’s temperament, mood or personality. This is too broad as anyone can be angry or in a bad mood at times but that does not necessarily mean this factor (bad temper or anger or personality trait) make him a suitable candidate for the commission of violent crime. Legal Aid SA suggests this factor be removed or better defined.  (e) Legal Aid SA is concerned about the phrase “harbouring resentment” in paragraph 5(c) as it is very wide and subjective. It is an allegation that would be easy to make, but near impossible to refute. This is especially apposite where a relationship is ended. Many parties in divorce proceedings surely harbour justified resentment, which does not even begin to approach criminal conduct, in most instances.  (f) Legal Aid SA propose that the word ‘type’ of offence in paragraph 5(f) should be deleted as it is too wide and open to interpretation.  This could result in the accused being sacrificed on the altar of deterrence, even before the commencement of the trial. (Considering schedule 5 and 6; this may already be the case). They hold the view that the prevalence of an offence in a specific area is not directly connected to an accused person’s entitlement to be released on bail. Prevalence is not verified and it abolishes the presumption of innocence. On the current wording the prevalence is not even restricted to an area. That could result in offences being prevalent in another area being taken into consideration where none are committed in the relevant area.  (g) Section 60(10) of the Criminal Procedure Act, 1977, provides that even if the prosecution does not oppose bail, the court has a duty to weigh up the personal interests of the accused against the interests of justice. The following amendment to section 60(10) is proposed, namely, to clarify that the "interests of justice" should be interpreted to include,but is not be limited to, the safety of any person against whom the offence in question has allegedly been committed.Legal Aid SA supports the amendment. | (a) The provision is already in the Act and it clearly states that court should take these reports into consideration if they are available    (b) Even if the provision uses the phrase “any person” the phrase is qualifies by the insertion of “against whom the offence I question was allegedly committed”.  (c) We submit that this provision cannot be regarded as broad or subjective because it is either the accused has or has not made threats.  (d) What the court is required to take into consideration is the accused’ disposition to violence and to disposition to become angry or in a bad mood  (e) It is one of the factors that the court will take into consideration and it should not be viewed in isolation  (f) The deletion of the word is not going to make any difference  (g) Agree |
| 4.8 | **(a) The Women’s Legal Centre (WLC)** supports the addition of the requirement of the provision of reasons by theprosecutor where they do not oppose bail in matters where the offence was perpetratedby a person against someone with whom they were in a domestic relationship, andsecondly, where the offence was a contravention of a protection order in terms of the  Domestic Violence Act or Protection from Harassment Act**.**  (b) WLC supports the amendment and the requirement for the court to take intoconsideration the view of the victim before reaching a decision on the bail application.  (c) WLC supports the codification of inconsistent police and prosecutor practice of(in)formally obtaining the views of the victim on the issue of bail for an accused personin a sexual or domestic violence matter. The practice is somewhat regulated in terms ofSAPS National Instructions and NPA Directives, but it is not widely implemented.Currently, the investigating officer provides the court, by means of testimony at the bail application, with evidence to support either the release of the accused on bail orevidence to oppose the bail application. Very often the views, information and/orevidence from the victim/complainant is not placed before the court, either by theinvestigating officer or the victims herself, which may lead to the court not being in full  possession of all the relevant facts on which to base the decision to grant bail or not. The formal requirement of this provision will necessitate a regulation and / or NPAdirectives in terms of the Criminal Procedure Act to provide for a formal mechanism interms of which this information is obtained from victims/complainants and placed beforethe court.. This provision is drafted broadly for all victims/complainants and is not limited to victimsof sexual and domestic violence.  (d) WLC supports the amendments in the rest of this section. | (a) Noted.  (b) Noted  (c) Noted, the NPA is aware of the provisions of the Bill and has already identified the provisions that will require directives.  (d) Noted. |
| 4.9 | **The CGE** fully supports clause 4 of the Bill. They are especially pleased by the introduction of greater accountability for prosecutors who do not oppose bail applications in certain offences (including offences committed against person with whom the accused is in a domestic relationship), and the provisions that give the victim’s voice and interests better consideration and more weight in court. They are satisfied that these provisions achieve a more victim-centred approach to bail applications at court. | Noted |
| 4.10 | **Catholic Church** 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. They also support the other references in clause 4 to offences under the Domestic Violence Act and the Protection from Harassment Act. | Noted |
| 4.11 | (a) **Sonke Gender Justice (Sonke)**  submits that the proposed amendments which require for the accused to remain in custody until trial, unless the accused can show evidence that satisfies the court that it would not be in the interests of justice to detain the accused further. This shifting of burden from the State to the accused amounts to an unreasonable limitation of the accused’s right to be released on bail. These amendments as well as the amendment to Section 59A renders detention the default position for offenders in domestic relationships and bail the exception. They believe that this is at odds with Section 35(1)(f) if the Constitution and they submit that legislative reforms should be put in place to improve reasonable access to bail and promote alternative measures to detention.  (b) Taking away a person’s personal liberty should be a measure of last resort and pre-trial detention should be legislated with due regard for a reduction of the overcrowded South African prison population, alternatives to imprisonment, and the protection of society and the victim. South Africa’s correctional facilities are experiencing serious overcrowding challenges. According to the Department of Correctional Service Annual Performance Plan of 2019/2020, the number of inmates stands at 162 875 against the bed spaces of 118 572, which translates to an overall 37% level of overcrowding. The challenge of overcrowding within correctional centres undermines the creation and maintenance of a safe and secure environment for inmates that allow for effective rehabilitation. It also aggravates many life-threatening challenges including high transmission of infectious diseases, staff shortages, and higher risks of exposure to physical and sexual violence. The denial of bail to offenders in domestic relationships contributes to South Africa’s large remand population, this exacerbates the overcrowding challenge and does not serve the accused or the victim. Overcrowded conditions do not provide an environment that is conducive for reflection and rehabilitation for theaccused. The violence that the accused will be subjected to further endangers the life of the victim, should the accused encounter the victim again. They submit that the denial of bail has no proven benefit for the rehabilitation of the accused, or the safety of the members of the community. Over the past 20 years, there has been no evidence to suggest that there is a correlation between similar amendments and a curb in violence in the country, in fact, similar provisions have resulted in serious miscarriages of justice for awaiting trail persons. | (a) See paragraph 4.3(b), *supra.*  (b) We submit that the accused persons who should not be granted bail cannot be granted bail solely because of the living conditions in the prisons, but the conditions in prisons should rather be redressed. |
|  | **Gauteng Province Community** submits that during bail proceedings, when the safety of the person against whom the offence was committed is considered, the court and the NPA must also consider the evidence of the third party that reported the act of domestic violence as envisaged in the Domestic Violence Amendment Bill. | Noted |

**5. Clause 5: Cancellation of bail (Section 68 of the CPA)**

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| 5.1 | (a) **LEGAL AID SA** holds the view that in its current format, the Act places an onus on the accused to disclose certain facts, including the fact that a domestic violence interdict or a harassment order has been made against him or her. In some instances, orders are not properly served on accused persons and they are unaware of such orders. The onus should rest with the State who will be in a position to prove that such order was served on accused personally or not. In the alternative the wording may be amended to reflect that it only refers to matters that was brought to his attention. A strict application of this provision could cause a court to cancel bail where the interdict was not served. It may, as well, apply to pending cases where summons was issued, but not served on theaccused, or even at the investigation stage; where it could be considered a pending case, before the accused is aware of the matter.  (b) It is also proposed that,in terms of section 68(2), any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under section 68(1), upon the application of any peace officer and upon a written statement on oath by such officer that similar grounds as referred to in section 68(1), are present, issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison.  Legal Aid SA notes that section 68(2) does not pertinently refer to a formal enquiry and an amendment making that clear may be prudent. They suggest including the following words:  In terms of section 68(2), any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under section 68(1), upon the application of any peace officer and upon a written statement on oath by such officer that similar grounds as referred to in section 68(1), are present, issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, and after conducting an enquiry, providing the accused the opportunity to respond to the allegations cancel the bail and commit the accused to prison. | (a) In proceeding relating to the cancelation of bail the onus is always on the State to prove non-compliance with a bail condition (S v Nqumashe 2001 (2) SACR 310 (NC) at 314). Obviously, if the protection order never came to accused's attention, he or she will not knowledge thereof and cannot disclose it as provided for in section 68.  (b) Suggested amendment not supported. The accused person is usually brought before the court on the warrant of arrest and an enquiry takes place. |
| 5.2 | WLC supports the amendments in this section. | Noted |
| 5.3 | The **CGE** fully supports clause 5 of the Bill, which will hopefully discourage accused persons from making threats towards or interfering with victimsand witnesses, or being dishonest with the court regarding existing or pending protection orders. |  |
| 5.4 | **The South African Catholic Bishops Conference (Catholic Church)** 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. | Noted |

**6. Clause 6: Criminal proceedings to take place in presence of accused (evidence by electronic media) (section 158 of the CPA)**

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| **6.1** | (a) **Legal Aid SA** supports the amendment and is of opinion that all witnesses (irrespective if they are called by the State or the accused) should have equal opportunity to give evidence by means of CCTV or similar electronic means if consent is obtained. Equal access to these facilities should be afforded. The obtaining and maintaining of such equipment for all court rooms should be prioritised.  (b) In addition to this, where the witness does not testify through the facilities available at the court; the court should be obliged to issue such directives, as would be necessary to ensure that the evidence is presented in a controlled environment, as close to the facilities at court as possible; after hearing all relevant parties on this issue as well. | (a) Noted.  (b) The CPA provides that similar electronic media may be used. Proposal not supported. |
| **6.2** | **The Women’s Legal Centre**supports the amendments in this section. | Noted. |
| **6.3** | **The Commission for Gender Equality**fully supports clause 6 of the Bill, and the use of CCTV and other electronic technology to facilitate the hearing of evidence in court – even by witnesses outside of the Republic. This clause will ensure that geography does not stand in the way of crucial testimony. | Noted |
| **6.4** | **International Women’s Forum of South Africa** submits that the proposed amendment to section 158 is that witnesses outside theRepublic and who give evidence by means of closed circuit television orsimilar electronic media are regarded as witnesses who have beensubpoenaed to give evidence in the court in question There should bestrict guidelines given for the evidence of such witness to testify via anyvideo audio means in that the witness should be physically monitored toensure that his or her evidence is not tainted. Provision should be madefor an independent legal representative, court official etc or any otherindependent party to supervise the giving of evidence This will reduce anyconcerns regarding tainting of evidence and narrow grounds of appeal | The court may impose conditions as it deems fit in the interest of justice to regulate the giving of evidence. The proposal is not supported. |
| ***6.5*** | **Sonke Gender Justice (Sonke)** supports the clarification regarding whether Section 158 of the Criminal Procedure Act 1997 (CPA) can be invoked to obtain evidence from a witness who is based aboard, and they believe that these are positive steps in facilitating an efficient and effective criminaljustice process. | Noted |

**7. Clause 7: Witness to testify *viva voce (Section 158 of the CPA)***

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| 7.1 | (a) **Legal Aid SA** notes those individuals with severe communication disabilities and who are victims of crime, experience many access and opportunity barriers in the criminal justice system and in the South African context this includes children and people with little or no functional speech, and they will benefit from the provision. The World Health Organisation estimates that 2.2% to 3.8% of individuals worldwide have a severe communication disability, which implies that they are unable to rely on their natural speech to meet their daily communication needs. Unfortunately, individuals with a disability are four-to-ten times more likely to be the victims of crime than their peers without thus making them disproportionally more vulnerable. Thus, individuals with disabilities are at a high risk of being victims of crime.  (b)(i) Legal Aid SA suggests that the use of Augmentative and Alternative Communication (AAC) devices as an aid during testimony by witnesses / complainants should be included. The ACC involves the use of other means of communication beyond the use of verbal communication alone, to enable persons with significant communication difficulties, for example individuals with autism spectrum disorder (ASD), cerebral palsy and motor neuron disease (MND) to successfully share information. The goal of ACC is to enable persons with communication disabilities to effectively engage in a variety of interactions and to participate in activities of their choice. ACC can be divided into two categories, namely a) unaided and b) aided communication.  Unaided communication require persons to use only their bodies to convey their messages, such as using a formal sign language, such as the South African Sign Language (SASL), natural gestures, facial expressions and vocalisations. Legal Aid SA notes that in the South African courts, persons with communication disabilities have been allowed to use communication strategies such as informal signs and gestures to testify in court (see for example the matte of R v Ranikolo 1954 (3) SA 255 (O)).  (ii) Aided communication systems may be defined as systems that require external assistance to produce a message, and also fall on a continuum of linguistic features similar to unaided systems, ranging from symbols sets on the one end (without linguistic features) to symbol systems (with linguistic features). The difference between symbol sets and symbol systems is that the symbol sets consist of a defined number of symbols that have no rules for expansion or generating new messages, such as Picture Communication Symbols (PCS). Therefore, messages can only be compiled by selecting symbols from the preselected set without generating a new message. The vocabulary required to access the court system, could be selected and presented in the form of pictures or graphic symbols that could be displayed as a communication board or book or programmed into a specific speech-generating device such as a tablet with specific ACC software.  (iii) In the matter of S v David (RC 61/2017 Upington Sexual Offences Court), the State brought an application that the complainant testifies with the aid of a speech generating device, the ACC. The court noted that section 161(2) which provides that a witness must testify viva voce, should be widely interpreted to include any other form of non-verbal expression.  It was held in the matter of S v Roux 2007 (1) SACR 379 (C) that it had not been the intention of the legislature to set out in s 161(2) a *numerus clausus* of what would constitute viva voce communication. In this matter, the complainant in an indecent assault case was a minor with Down’s syndrome. He was able to speak, but not in a manner that was comprehensible to the court. It appeared, however, that a speech therapist might be able to interpret his speech. The magistrate halted proceedings and referred the matter to the High Court on special review for a determination of whether or not evidence so interpreted would be admissible. The court noted that interpreters were routinely employed in the courts to translate evidence into a language with which the court and the accused were familiar. Over the years the courts had adopted a wide interpretation of the concept of viva voce evidence as contained in section 161 of the CPA.  (iv) Legal Aid SA notes that persons with communication disabilities, who were victims of crime, as well as their families, still face many barriers when accessing the justice system. As a result, they sometimes choose not to report the victimization, as all too often this process seems to be more of an obstacle than a benefit. Similarly, perpetrators with communication disabilities may experience profound disadvantages in preparing and presenting their defence if not provided with appropriate assistance during both pre-trial and trial.  (v) Foreign and national laws forbid discrimination against persons with disabilities and insist that they should be given fair and equal access to the court system. For transformative equality to be achieved, certain laws need to be changed to include specific assistance for witnesses with communication disabilities so as to enable them to participate effectively in the court system. These suggestions may assist all persons with communication disabilities to experience the effective fulfilment of their human rights. | (a) Noted  (b) Section 161 provides that *viva voce* does includes "any other form of non-verbal expression". Also see discussion on page 40 (paragraph 2.7). The judgment of S v Roux referred to in subparagraph (iii) of the comments clarify the position. |
| 7.2 | **Women’s Legal Centre** supports the amendments in this section. | Noted |
| 7.3 | **The Commission for Gender Equality**welcomes and fully supports clause 7 of the Bill, which recognises alternative forms of expression by witnesses that are not able to speak their evidence in court. This addition is in line with the constitutional rights of persons with disabilities, and others medically affected in ways that make speaking articulately difficult, or impossible. | Noted |
|  | **Sonke Gender Justice (Sonke)** supports the use of positive and inclusive language in this clause. They believe that these are positive steps in facilitating an efficient and effective criminal justice process. |  |

**8. Clause 8: Intermediaries (Section 170A of the CPA)**

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| 8.1 | (a) (i)**The Sexual and Gender-Based Violence Unit at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)** submits that the use of intermediaries for child victims or witnesses in court proceedings should not be left to the discretion of the court as suggested in the Criminal and Related Matters Amendment Bill. Instead, the imperative must be to protect the best interests of children, and to ensure consistent application of the proposed amendment. Section 170Ahas been challenged before in the Constitutional Court in Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development (Transvaal DPP), specifically that giving a discretion to judicial officers makes the appointment of the intermediary dependent upon how judicial officers exercise that discretion, and this adds to the inconsistency in the application of section 170A(1). SAIFAC submit that when children testify at any proceedings, irrespective of whether it is criminal or not, the use of an intermediary should be compulsory unless exceptional circumstances demand otherwise , and even the Constitutional Court rejected the proposal in Transvaal DPP matter the Court itself noted that:  *“[u]nless appropriately adapted to a child, the effect of the courtroom atmosphere on the child may be to reduce the child to a state of terrified silence. Instances of children who have been so frightened by being introduced into the alien atmosphere of the courtroom that they refuse to say anything are not unknown.”*  (ii) Furthermore, in most instances, the child has to give evidence in the presence of the accused. In cases where the accused has previously threatened the child with physical harm, the child is faced with the choice to either testify or risk the accused carrying out his threat, or, to stay silent. The Constitutional Court also highlighted that the questioning of a child requires a special skill which most prosecutors are not adequately trained for. The process of cross-examination is often a terrifying ordeal for child witnesses as it is done for the sole purpose of discrediting the witness. Should the cross-examination be conducted by a legal representative, “the child will be taken through his or her evidence in the minutesdetail. The cross-examination may bring out facts that were so grotesque that the child could never have imagined being forced to recount them  The Constitutional Court argued that the discretion of a court is necessary as the appointment of an intermediary should be decided on a case-by-case basis to cater to the specific needs of each child. However, in light of all the factors discussed above, it is difficult to imagine a situation where a child witness would not require an intermediary during such proceedings. The courtroom is a bewildering atmosphere for most child witnesses, yet courts will only allow the use of intermediaries for minors likely to experience undue stress or suffering. Even where expert evidence is led to prove that testifying in the presence of the accused may aggravate the distressed state of a child witness or victim, the appointment of an intermediary is not guaranteed as it depends upon the discretion of the court.  (iii) SAIFAC would further like to highlight S v F in which the state applied for the appointment of an intermediary. Expert evidence was submitted by a psychiatrist to the effect that the child in question was suffering from a partially unresolved post-traumatic stress disorder as a result of the rape. In the psychiatrist’s expert opinion, testifying in open court was likely to have an adverse effect on the child’s condition. However, the court concluded that there was not much of a difference between the child testifying through an intermediary and testifying in an open court. The court accordingly declined to appoint an intermediary.  (iv) In order to ensure the protection of witnesses that are under the mental or biological age of 18 in all proceedings, they propose that section 170A(1) should be re-worded as follows:  “Subject to subsection (4), whenever criminal proceedings are pending before any court in which any witness under the biological or mental age of eighteen years is to testify, the court *shall* appoint a competent person as an intermediary for each witness under the biological age of eighteen years in order to enable such witness to give his or her evidence through that intermediary as contemplated in this section, unless there are cogent reasons not to appoint such intermediary, in which event the court shall place such reasons on record before the commencement of the proceedings; and the court may appoint a competent person for a witness under the mental age of eighteen years in order to give his or her evidence through that intermediary.”  (v) In respect of Clause 1(a) of the Criminal Matters Amendment Bill, they propose that it is re-worded as follows:  “A court *must*, on application by any party to proceedings in terms of Part II of this Act before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness under the mental or biological age of 18 to give his or her evidence through that intermediary as contemplated in this section, unless there are cogent reasons not to appoint such intermediary, in which event the court shall place such reasons on record before the commencement of the proceedings; and the court may appoint a competent person for a witness under the mental age of eighteen years in order to give his or her evidence through that intermediary.” | (a) We agree with the decision of the Constitutional Court that it is necessary to consider the appointment of an intermediary on a case by case basis as persons under the age of 18 will be at different stages of development and a blanket provision will therefore not be appropriate. We suggest that the exercise discretion by the courts should be addressed in the training that will be required for the implementation of the provisions of this Bill. |
| 8.2 | **ANC Women’s League** submits that intermediaries should be South Africans. | A blanket provision to this effect may create problems as we do not have an exhaustive list of situations where intermediaries may be used. |
| 8.3 | (a) **The Western Cape Government** suggests that a section 170B be inserted after section 170A of the CPA to provide for the use of technology as an alternative and augmentative form of communication to enable a witness to give evidence where it is not practicable or required to use a person as an intermediary. It is suggested that consideration be given to the judgment of the Upington Regional Court, with a view to developing the law in this area so as to provide for situations where certain witnesses are not able to give evidence viva voce, or who would require an intermediary and the use of technology as an alternative and augmentative form of communication.  (b) It is, furthermore, suggested that a draft section 170B be inserted after draft section 170A to—  • provide for the court, on application, or of its own accord, to permit the use of technology as an alternative and augmentative form of communication to enable witnesses who, due to physical and mental conditions, are unable to give evidence viva voce or in another manner, to give evidence where it is not practicable or required to use a person as an intermediary;  • oblige the court to provide reasons for allowing or refusing an application for the use of alternative or augmentative technology to enable a witness to give evidence through this medium;  • provide for the training of intermediaries in the use of augmentative technology to further assist witnesses who require an intermediary to give evidence in court; and  • provide for related matters. | This aspect is discussed on page 40 paragraph 2.7), and  P64 (paragraph 7.1). The recommendations are not suported. |
| 8.4 | **Legal Aid SA** supports the proposed amendments to section 170 A. | Noted |
| 8.5 | (a) **The Women’s Legal Centre (WLC)**generally welcomes the amendment to section 170A. The extension of theprotective measure of use of an intermediary to witnesses who are over the biologicalor mental age of 18 is recognition of the vulnerability of adult witnesses who are usuallyrequired to give evidence viva voce.  (b)(i) The WLC raises a concern as to the meaning of ‘condition’ referred to in subsection (1)*(b)*. According to WLC itis unclear whether the ‘condition’ is one that must be proved i.e. established by meansof expert evidence, and if it is a ‘condition’ such as a medical condition that existsseparate from the state of mind of the witness as a result of having to testify *viva voce*  in court. It is submitted that the only criteria that should apply for a witness to qualify for the useof an intermediary should be if the witness would be subjected to undue psychological,mental or emotional stress, trauma or suffering if the witness testifies at courtproceedings.  (ii) WLC recommends the following amendment of section 170:  *8. Section 170A of the Criminal Procedure Act, 1977, is hereby amended—*  *(a) by the substitution for subsection (1) of the following subsection:*  *“(1) Whenever criminal proceeding are pending before any court andit appears to such court that it would expose any witness—[*  *(a) under the biological or mental age of eighteen years;*  *(b) who suffers from a physical, psychological, mental or*  *emotional condition; or (c) who is an older person as defined in section 1 of the OlderPersons Act, 2006 (Act No. 13 of 2006), ]*  *to undue psychological, mental or emotional stress, trauma or suffering ifhe or she testifies at such proceedings, the court may, subject tosubsection (4), appoint a competent person as an intermediary in order toenable such witness to give his or her evidence through that intermediary.”* | (a) Noted  (b) The amendment requires:  \* That the person in respect of whom a court considers to appoint an intermediary must be a person -  - under the biological or mental age of eighteen years; or  - who suffers from a physical, psychological, mental or emotionalcondition; or  - who is an older person as defined in section 1 of the Older PersonsAct, 2006; and  \* that, if the afore-mentioned person is to testify at such proceedings, it would expose that person to undue psychological, mental or emotional stress, trauma or suffering.  Not all persons therefore qualify as persons in respect of whom intermediaries may be appointed. The practical effect of the proposal of the commentator is that all persons who may suffer from undue psychological, mental or emotional stress or trauma if he or she testifies at such proceedings, is entitled to intermediary service. This proposal cannot be supported. |
| 8.6 | **The Centre for Child Law** supports the proposed amendments, particularly the amendments to section 170A (7). The proposed amendments to subsection (7) requirea court to provide reasons for refusing an application for the appointment of an intermediaryimmediately upon refusal in all cases involving children as opposed to the current provisionwhich states that reasons are to be provided immediately only for child complainants below the  age of 14 years. | Noted |

**9. Clause 9:Right of complainant to make representations in certain matters with regard to placement on parole, on day parole, or under correctional supervision (section 299A of the CPA)**

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| 9.1 | **P Dibale** submits that the Criminal Procedure Act, must not include provisions for parole for those convicted of sexual offences and murder of women during the commission of sexual offences. Anyone found guilty of sexual offences should be sentenced to life imprisonment without the possibility of parole. The Presidential pardon should not include sexual offences. | Noted. |
| 9.2 | **South Africa Women In Dialogue (SAWID)** submits that under the UN Declaration of Basic Principles of Justice for Victims of Crime, victims have the right to have their personal views and concerns considered in justice proceedings where their personal interests are affected. When dialogues on gender-based violence are held with communities, a lot of times members of society indicate loss of trust in the justice system because victims would just see perpetrators walking among them in communities without having been consulted or just even alerted that the perpetrator will be out on parole.  SAWID therefore, supports the principle that victim’s voices must be heard when parole processes unfold. SAWID further proposes that clear regulations to guide this process be put in place and proper risk assessments done to ensure that the perpetrator does not re-offend. | Noted.The Correctional Services Act, 1998, deals with parole and not the CPA. |
| 9.3 | **The City of Tshwane** submits that is a breakthrough for the family and relatives and the victim to be given an opportunity to express the reasons why an individual convicted of GBV, must not be granted parole. When it comes to parole, a complainant or relative of a deceased victim must be able to make representation to the Parole Board. The concern with this inclusion is that the State still considers parole for these perpetrators. | Noted |
| 9.4 | **The ANC Women’s League** submits that “Intentional” in section 299A of the CPA is limiting, for instances where a person dies in the process of a rape, domestic violence or robbery and death was not intended. | Noted, and for this reason the requirement of "intention" is omitted. |
| 9.5 | (a) **The Western Cape Government** submits that while the proposed insertion of paragraph *(h)* to section 299A of the CPA is commendable, more is required in so far as the criminal justice system, which includes the courts, is able to promote the participation of victims / complainants in making representations to the parole boards concerning the placement of prisoners on parole, day parole and correctional supervision.  South Africa has ratified various international declarations and conventions and implemented various strategies and policies to highlight the needs and rights of victims in the criminal justice process – notably the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power. The Services Charter for Victims of Crime and the Minimum Standards for Service Delivery in Victim Empowerment are initiatives to promote the provision of services to victims. Beyond this are the initiatives to promote victim participation in the criminal justice system, which includes decision-making around sentencing and making written submissions to parole boards.  Under section 299A of the CPA and in terms of section 2 of the Directives Regarding Complainant Participation in Correctional Supervision and Parole Boards, referred to earlier,sentencing courts are obliged to inform complainants that are present of their right to make representations to and attend hearings of the parole board.  It may be the case that a complainant is fearful to attend the hearing although there is no compulsion to do so. In these instances and others, such as where the victim is a minor or illiterate, or a person with a mental or physical disability, it is strongly recommended that a person with a direct interest in the complainant should be permitted to attend the hearing of the relevant parole board to give input on the question of parole, day parole or correctional supervision on behalf of the complainant.  (b) Section 299A requires the court to inform the complainant, or in the case of murder, any immediate relative of the deceased, if he or she is present, of his or her right to make representations to the parole board. Paragraph (h) contemplates that where the court has imposed a sentence of imprisonment of 7 years or more for any offence which that person committed against a person with whom he or she was in a domestic relationship, the obligation referred to above is triggered.In the context of the courts, the meaning of ‘present’ must mean present in court.If the complainant or immediate relative of the deceased is not present in court, then there appears to be no obligation on the court to so inform the complainant or immediate relatives of the deceased.  (c) The Correctional Services Act, 1998, provides in section 75(4) that where a complainant or relative is entitled in terms of the CPA to make representations or wishes to attend a meeting of a board, the National Commissioner must inform the board in question accordingly and that board must inform the complainant or relative in writing when and to whom he or she may make representations and where and when a meeting will take place.  This system is dependent on whether the relevant officials of the Department of Justice and Correctional Services managed to get hold of the complainant in time to inform them of the dates of the sentencing proceedings and the date on which judgment will be delivered. There is no obligation in either the CPA or the abovementioned Directives which place any obligation on the officials of the Department to arrange these matters timeously or failing the ability to contact the victim, to communicate to the victim the order and judgment of the court concerning parole. The court is not obliged to make an order that in the absence of the victim at court, the rights of the victim must be communicated to him or her through the Department. It is, with respect, an unsatisfactory state of affairs, which does not promote victim participation in the parole process.  Victims are expected to register their desire to participate in the parole consideration process. In addition, they must notify the parole board in the area where the offender is being detained of their desire to make representations in writing. They must also supply details of the name of the offender, the offence committed, the case number and the name of the court where the offender was convicted. These requirements appear to be burdensome to victims. Clearly,victims could benefit from a system of services staffed by officers to assist victims in their interactions with parole boards, collaborate with relevant departments to trace victims, assist victims with their representations and provide general information and support in navigating the system, for example a website to inform victims of how the parole system works. A parole board must consist of a chairperson, a vice-chairperson, an official of the Department of Correctional Services and, importantly, two community members so that the parole board can be characterised by a wide variety of participation in terms of background and experience and so that the community is able to bring its concerns and values to bear in the release of prisoners on parole. It often happens, however, that parole boards do not have the required two permanent community members and often use members from other boards, some of whom are brought in on a month to month basis instead of the required three-year tenure. | (a)Noted. Parole is regulated under the Correctional Services Act, 1998, and not the CPA.  (b) We submit that the right of the victim or the victim’s relative to participate in parole proceedings is not subject to them being informed thereof in terms of section 299A of the CPA, and section 75(4) of the Correctional Services Act provides that the Parole Board must inform the complainant or relative in writing when and to whom they may make representations and when and where a meeting will take place.  (c) The shortcomings related to the parole system should be considered and addressed in the Correctional Services Act, 1998. |
| 9.6 | **Legal Aid SA** suggests that suggests the 7-year requirement be replaced to simply reflect direct imprisonment. Any person who was the victim of domestic violence that justified imprisonment; should surely have a vested interest in the consideration of parole where the perpetrator could return to resume the abuse. In addition to this, a consideration of the geographical placement of the perpetrator could also be very important. | We submit that the proposed amendment should be viewed in the context of the other offences provided for in section 299A(1), that includes among others, murder, rape, compelled rape, robbery with aggravating circumstances, which are serious offences. To keep in stride with those offences a period of 7 years' imprisonment is suggested. The proposal of the commentator is not supported since direct imprisonment may be imposed for relative trivial offences, especially for repeating offenders. |
| 9.7 | **The Women’s Legal Centre**supports the amendments in this section. However, concern is expressed regarding the current implementation of this section asit pertains to the Commissioner of Correctional Services complying with therequirements of section 299A. Very few complainants are in court at the time ofsentencing; this means that the duty on the court to inform complainants and / orrelatives of their rights to participate by means of representations in terms of section299A(1) amounts to very little unless there is a similar duty on the police and / orprosecutor to inform the complainant and / or relative of their rights to participate. Inpractice not enough is done by personnel in the criminal justice system to ensurecomplainant participation in parole hearings when prisoners apply for parole.The right exists irrespective of whether the complainant and / or relative is in court at thetime of sentencing. The current wording of the section implies that the court only has theduty to inform the complainant ‘if he or she is present’ in court. Therefore, the sectionmust place a legal duty on the system as a whole to inform the complainant of their rightto participate in the placement of a sentenced person on parole WLC recommends that the duty is placed on the court to inform the complainant, and asecond duty placed on the police and prosecution to do the same.The directives issued by the Commissioner of Correctional Services must include a legalobligation to contact the complainant prior to the date when the prisoner is considered for parole or correctional supervision in order to inform the complainant of her right tomake representations and attend the parole hearing. | We submit that the right of the victim or the victim’s relative to participate in parole proceedings is not subject to them being informed thereof in terms of section 299A of the CPA, and section 75(4) of the Correctional Services Act provides that the Parole Board must inform the complainant or relative in writing when and to whom they may make representations and when and where a meeting will take place. |
| 9.8 | **The Commission for Gender Equality fully** supports clause 9 of the Bill. According to the Commission theprovisions further assist in creating a more victim-centred criminal justice system and ensure that victims will be made aware of their right not only to be present, but to participate in parole proceedings and have their voice heard. | Noted |
| 9.9 | **Catholic Church** 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. They question, however, why this will apply only when the sentence is one that exceeds seven years. They submit that a complainant 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. | See page 77 (paragraph 9.6) |
| 9.10 | **Embrace Project** commend the Portfolio Committee for the inclusion of section 299A(1)*(h)* in the Criminal Procedure Act, at clause 9 of the Amendment Bill. However, the requirement for an accused to have been handed a seven year sentence on a conviction of domestic violence, in order for a complainant to qualify to be informed of an accused’s parole consideration, does not take into account the uniquely abusive relationship which is perpetrated in a violent domestic relationship. A complainant in a case of domestic violence should always be informed of an accused’s parole consideration, regardless of the length of the sentence, as the possible release of the accused will have a direct impact on the complainant’s situation; considering the domestic relationship that existed, and that might continue to exist subsequent to the accused’s release. They therefore recommend that the words “a period exceeding seven years for” be removed from section 299A(1)*(h)*. | See page 77 (paragraph 9.6) |
| 9.11 | (a) **Sonke Gender Justice (Sonke)** submits that parole is an important aspect of the criminal justice process. This is because it incentivises rehabilitation which is measured through positive behaviour during the offender’s sentence. When offenders who are considered sufficiently rehabilitated and safe to be integrated back into society are released during parole instead of at the end of their sentence, this serves to protect the offender’s  constitutional right to personal liberties and being detained only when absolutely necessary. Parole also reduces the prison population which contributes to addressing the overcrowding challenges which the Department currently faces. They support the amendment of Section 299A(1) to include the victim in the parole process but would like to caution that this be weighted and balanced with the rights of accused persons as guaranteed in the Constitution. Although they support a victim-centred criminal justice process the absence of a victim’s participation should not prohibit the offender’s ability to be granted parole, especially in the case where the victim does not wish to participate in the process or is unable to do so due to circumstances beyond their control.  (b) They are concerned that the Bill does not address how the system – which at present is inadequate for informing and engaging victims of this process, supporting them in making representation to a parole board and engaging them in supportive processes such as victim-offender mediation – will be made to be more efficient and effective. They propose that mechanisms for drawing on the services of civil society organisations to support the Department in this regard be strengthened. | (a)Noted  (b) The shortcomings related to the parole system should be considered and addressed in the Correctional Services Act, 1998. |

**10. Clause 10:Appeal against sentence of superior court (Section 316A of the CPA)**

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| 10.1 | **The ANC Women’s League** submits that the amendment is a good suggestion. | Noted |
| 10.2 | **Legal Aid SA** notes that the SCA has ruled that such appeals could be permissible on points of law in the matter of Director of Public Prosecutions, Gauteng v MG 2017 (2) SACR 132 (SCA) and Director of Public Prosecutions, Gauteng v KM 2017 (2) SACR 177 (SCA) where the judgement in the matter of Director of Public Prosecutions, Gauteng v Mphaphama 2016 (1) SACR 495 (SCA) was overturned.  Legal Aid SA holds the view that the legislator should be slow to erode the age old common law principles that the accused should not be exposed to an increase in his sentence after the trial. In support of our contention they note that in the matter of DPP Western Cape v Kock 2016 (1) SACR 539 (SCA) at 8 – 10 and 19 – 20 it was said that:  The history and policy of our law has over centuries been loath to allow for Appeals by the prosecuting authorities against sentence; and that such right should not be inferred in the absence of express provisions. This is particularly apposite where the appropriate sentence was already the subject of judicial scrutiny, by a court consisting of more than one Judge.  This provision will potentially give the State a second and even further Appeals against a sentence imposed at a trial and it is submitted that the subject should reach the point where clarity on his position should be reached at some point.  In the result they cannot support such an amendment. | Section 316B of the CPA, regulates appeals by the State against a sentence imposed by a superior court. Section 316B was inserted in the CPA, by section 11 of the Criminal Law Amendment Act, 1990 (Act No. 107 of 1990), and provides that the National Director may appeal to the Appellate Division (Supreme Court of Appeal) against a sentenced imposed upon an accused in a superior court (High Court). There has been uncertainty whether this section empowers the State to appeal against a sentence imposed by a High Court sitting as an appeal court from a lower court (section 310A of the CPA). This uncertainty has been a subject of judicial consideration. As early as 2005, in Director of Public Prosecution v Olivier 2006 (1) SACR 380 SCA, Ms Olivier, convicted of theft and sentenced to six years imprisonment by a regional court, appealed to the High Court against the sentence. The High Court set aside the sentence imposed by the regional court and substituted it with a sentence of six years imprisonment wholly suspended for five years on certain conditions. With the leave of the High Court, the Director of Public Prosecutions (the "DPP") appealed to the Supreme Court of Appeal (the "SCA") against the sentence imposed by the High Court. In considering the matter, one of the questions the SCA raised, was whether the DPP has a statutory right to appeal a sentence granted by a high court sitting as a court of appeal, on the backdrop of section 316B of the Act and sections 20 and 21 of the repealed Supreme Court Act, 1959 (Act No. 59 of 1959). The SCA (at paragraph 15) stated that subsection (1) of section 316 provides for appeals to the SCA against a sentence imposed by a superior court, and that this does not mean a superior court sitting as a court of appeal. It clearly means a superior court sitting as a court of first instance. The SCA noted that this was in line with established common law principles limiting the right of appeal of the State. The SCA concluded that, in the absence of an empowering provision in the CPA, which specifically grants the SCA jurisdiction, and which is consistent with the Constitution, the SCA does not have jurisdiction to entertain the appeal. Later on, in S v Nabolisa 2013 (2) SACR 221 CC, a matter involving an application for leave to appeal by Nabolisa against a sentence that was increased on appeal by the SCA after his appeal from the High Court, the Constitutional Court, held that section 316B did not empower the SCA to adjudicate the increase of the sentence where the State did not apply for leave to cross appeal the sentence as the State’s right of appeal is sourced from the CPA (section 316B), and no other legislation empowered the State to appeal in the manner that it did. The Constitutional Court thus concluded that the SCA did not have jurisdiction to increase the sentence and re-instated the sentence imposed by the trial court. In DPP Western Cape v Kock 2016 (1) SACR 539 (SCA), similar to the Olivier matter, Kock was convicted by the regional court for fraud and sentenced to five years imprisonment, wholly suspended for five years. The DPP appealed to the High Court, which further reduced the sentence to four years’ imprisonment suspended for five years. The DPP then sought special leave to appeal to the SCA in terms of sections 16(1)*(b)* and 17(1)(*a*)(i) and (ii) of the Superior Courts Act, 2013. Referring to Olivier, the SCA held that sections 16 and 17 of the Superior Courts Act, 2013, do not apply in criminal matters, and that there is no specific provision in the CPA, that empowers the State to appeal against a sentence imposed by a High Court substituting a sentence of a lower court (paragraph 12). Recently, in DPP, Gauteng v Ramolefi 2019 ZASPA 60 (delivered 3 June 2019), involving an appeal by the State against a sentence imposed on appeal by a High Court, the SCA reluctantly relied on its decision in Olivier, Nabolisa and Kock in respect of the State’s right of appeal against a sentence imposed by the High Court on appeal. Although the SCA noted (at paragraph 5) that, on the facts Ramolefi’s case may be distinguished from Kock’s matter, in that Kock’s matter involved a further (or second) appeal by the State, whilst in Ramolefi, the first appeal from the trial court was by the accused, the SCA concluded (at paragraph 15) that, on the reasoning in Olivier and Kock, the court does not have jurisdiction to determine the matter ("as no provision is made for a situation where appeal court wildly errs in the opposite direction”), noting that this is a situation that may expose a *lacuna* which may merit consideration by the legislature. It is on this basis that the clause 10 of the Bill seeks to clarify the matter. Clause 10 seeks to address this matter by amending section 316B of the CPA to allow the State to appeal a sentence imposed by the High Court sitting as a court of appeal in terms of section 310A, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute. The provision is intended to maintain the common law principle of limiting the right of appeal by the State, in that the State is not given a free and endless right of appeal, but limiting the right to cases where injustice may result if the State is not afforded the right of appeal, as the court noted in Ramolefi’s matter. |
| 10.3 | **Women’s Legal Centre**supports the amendment. | Noted |
| 10.4 | **The Commission for Gender Equality**strongly supports clause 10 of the Bill, which will allow prosecutors a remedy in situations where a court’s sentencing discretion has been misdirected. | Noted |
| 10.5 | **Embrace project**suggests that the words “Appellate Division” should be replaced with “Supreme Court of Appeal”, as it is now called, in section 316B of the Criminal Procedure Act, in clause 10 of the Amendment Bill. | Noted. Clause 10, amends subsection (1), only where there is no reference to “Appellate Division”. |
| 10.6 | **The Embrace Project** submits that amendment to section 316B of the Criminal Procedure Act in clause 10 of the Amendment Bill makes it more onerous for the National Prosecuting Authority to lodge an appeal. They do not believe that it is the intended aim of the amendment. They therefore recommend that, aside from the replacement of “attorney-general” with “National Director”, and “Appellate Division” with “Supreme Court of Appeal”, section 316B should remain unamended. | The clause aims to achieve the exact opposite. |
| 10.7 | **Sonke Gender Justice (Sonke)** supports the creation legislative certainty in section 316B. | Noted. |
| 10.8 | **The Western Cape Government** submits that There is an outdated reference to the Appellate Division in the proposed amendment to section 316B of the CPA. Replace Appellate Division with Supreme Court of Appeal. | Noted. Clause 10, amends subsection (1), only where there is no reference to “Appellate Division”. However, to update the Statute Book with current developments, this can be considered. |

**11. Clause 11, 12 ,13 and 14 (Amend Schedules 1, 2, 7 and 8 to the CPA, respectively, to expand on the offence of assault when a dangerous wound is inflicted)**

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| 11.1 | **The ANC Women’s League** supports the proposed amendments to Schedules 1, 2 and 7 | Noted |
| 11.2 | **Women’s Legal Centre**supports the amendments in this section. | Noted |
| 11.3 | **The Commission for Gender Equality** supports these clauses of the Bill, and the inclusion of dangerous forms of assault to the schedules to the CPA | Noted |
| 11.4 | **The Embrace Project** recommend that the offences referred to in Schedules 1 and 8 of the Criminal Procedure Act be included in the exceptions to being released on police bail in terms of section 59(1)(a) of the Criminal Procedure Act, contained in clause 2 of the Amendment Bill. The offences referred to in Schedules 1 and 8 are of equally serious a nature as those contained in Parts II and III of Schedule 2, and no other provisions in the Criminal Procedure Act address the offences in Schedules 1 and 8 in respect of bail. They are therefore subject to police bail, which is nonsensical given the seriousness of the offences. | We submit that an accused person who is in custody for an offence listed in Schedules 1 and 8 is not eligible for police bail by virtue of the provisions of section 59 of the CPA. |
| 11.5 | **Sonke Gender Justice** supports the amendment of Schedules 1, 2, 7 and 8 to expand the offence of assault when a dangerous wound is inflicted. | Noted |

**12. Clauses15 (amends to Part I of Schedule2to the CLAA), 16 (amends Part II of Schedule 2 to the CLAA); and 17 (amends Part III of Schedule 2to the CLAA)**

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| 12.1 | Z Ndzunge submits that the minimum sentences for violent crimes should start with 5 years to 10 years, and that where a fine is imposed a 5 years'imprisonment should also be imposed. Any form of violence should start with a 5year sentence  going up. | 5 year imprisonment would not be suitable for most violent offences. |
| 12.2 | **The South African Institute for Advanced Constitutional, Public, Human Rights and International Law SAIFAC**submits that the inclusion of other vulnerable persons in Part I of Schedule 2 is welcome as studies have shown that in rape cases particularly, the vulnerability of the victim is inextricably linked to the impunity with which the perpetrator commits the offence, as the latter takes advantage of the fact that his/her victim is devoid of any appreciable means of defence.However, SAIFAC submits that there is no empirical evidence suggesting that imprisonment for a longer period of time guarantees that offenders will be rehabilitated, nor does it solve the problem of sexual and gender-based violence, or make victims safer. Sentencing occurs after the perpetration of a crime and the imposition of harsher sentences does not necessarily protect would-be victims from sexual and gender-based violence. Imprisonment does not address or offer solutions to social problems such as substance abuse, domestic violence, child abuse and mental illness for example, all of which have been shown to have a strong correlation with the perpetration of sexual and gender based violence. | Noted. |
| 12.3 | (a) **The ANC Women’s League** supports both for Parts I and II.  (b) The Women’s League submits that Amendment of Part III of Schedule 2 is inconsistent with all other laws where a child is defined as under 18. The Women’s League is enquiring why the amendment proposes 16 years in (a)(i) and (ii), and submits that it must increase to 18 years to be in line with all other legislation. | (a) Noted  (b) A person who is 18 years old and who assaults a person who is 17 years and 11 months old, can hardly be regarded as a suitable candidate for a minimum sentences, even if it amounts to assault to do grievous bodily harm. Paragraph (a)(ii) aims to ensure that there must be a certain age difference between the accused and the victim before the minimum sentences dispensation can be applied. The qualification in paragraph (a)(ii) does not apply where the victim is under 16 years of age. It does not change the recognised principle that a child is a person under the age of 18 years. |
| 12.4 | With regards to clause 16 and 17 **Western Cape Government (WCG)** suggests formatting changes. | This is not necessary. |
| 12.5 | (a) **Legal Aid SA (Legal Aid)**supports the amendments proposed with regards to the offence of murder.  (b) Legal Aid SA notes that the intention is to clarify the legal uncertainty regarding how the minimum sentencing regime would apply in cases of multiple rapes. They note that some courts interpreted the current wording of the section to refer only to matters where the accused was convicted and not yet sentenced, thus severely limiting the impact of the provision. Therefore, multiple convictions at the same trial or; a previous conviction where the accused had been sentenced, would not qualify him for the minimum sentence of life imprisonment.The proposed amendment in its current form makes it clear that life imprisonment would be applicable for multiple rapes, irrespective whether the convictions resulted from a single, or multiple trials.The proposed amendments have the same effect for compelled rape.Legal Aid SA submits that the proposed amendments will provide greater certainty with regards to minimum sentencing.  (c) To understand the impact of the provisions one must start with Part III of Schedule 2 (rape in circumstances other than those committed under Part I). Possible sentences would under normal circumstances be for a first time offender a sentence of 10 years’ imprisonment; for a second time offender a sentence of 15 years’ imprisonment; and for a third time offender a sentence of 20 years’ imprisonment.The amendment is effectively doing away with Part III (second and further convictions). The proposed amendment is basically a duplication of the original without the “whethersentenced or not…” part. The result will therefore be that each subsequent rape, no matter how closely related, or how far removed would mandate a sentence of life imprisonment.This may result in a dispensation that would be Constitutionally objectionable.Where the minimum sentence for rape in Part III of Schedule 2 immediately progresses to life imprisonment upon a further conviction; the more severe minimum sentence for other offences in Part II, including murder, would only increase from 15 years to 20 years’ imprisonment upon a second conviction.It could be argued that the right to equality in terms of section 9 of the Constitution of the Republic of South Africa, 1996 would be impacted by such a dispensation.Theysuggest that the blunt resort to life imprisonment may lead to injustice and the issue would require a much more nuanced solution  (d) With regards to the proposed insertion of the offence of attempted murderLegal Aid SA is of opinion that there can be no justification to place attempted murder on the same footing as the completed offence. Where the minimum sentence for murder, other than contemplated in Part I, is 15 years’ imprisonment the sentence for the attempted offence should not be the same. (See the matters of Bhola & others v The State (800/18; 123/2018; and 346/18) [2018] ZASCA 121 (21 September 2018); and S v Nkosi 2011 (2) SACR 482 (SCA) at par 36. They therefore do not support this proposal.  (f) With regards to the inclusion of the offence of rape in Part III Legal Aid SA supports the amendment.  (g) With regards to the offence of sexual exploitation of a children / mentally disable person ,as far as the grading of sentences are concerned, it may lead to fairer results to place these offences under Part III. | (a) Noted  (b) Noted  (c) Noted. But disagree with the submission.  (d) Murder under Part I of Schedule 2 to the CLAA give rise to a sentence of imprisonment for life. If the accused is, despite all efforts, unsuccessful in killing the victim, a lesser sentence should be imposed. By including attempted murder in Part II of Schedule 2, cater for this. However it also now applies to murder in Part II of Schedule2.  (f) Noted  (g) Noted |
| 12.6 | (a) **The Women Legal Center (WLC)** supports the inclusion of persons under the age of 18 in Part I of Schedule 2 (life imprisonment). WLC believes that the minimum sentence of life should be imposed for the murder of achild, which in South African law is a person under the age of 18 years and not 16 years.  (b)The WLC supports this addition to the Schedule to include victims who have been murderedin the context of a domestic violence relationship or murdered as a result of physical orsexual domestic violence.  (c) The WLC supports the amendment’s relating to sentencing for the offence of rape.  (d) They also support the amendments in clauses 16 and 17. | (a) In terms of the amendments to Part I of Schedule 2, as effected by clause 15, the age is now 18 years.  (b) Noted  (c) Noted  (d) Noted |
| 12.7 | (a) **The Commission for Gender Equality (CGE)** submits that although crimes involving SGBVF are heinous, and perpetrators must be punished severely, the CGE has strong reservations about supporting the further increase of minimum sentences in South Africa, based on research evidence.  (b) Some of the supposed benefits of having a minimum sentencing framework include reducing inconsistent sentencing, andpreventing presiding officers from being too lenient in imposing sentences.However, criminal case law in South Africa clearly illustrates that our minimum sentencing framework for sexual offences has not yielded either of these benefits. Sentencing has been and remains inconsistent, even in cases with very similar facts. Minimum sentences in sexual offence cases are regularly treated as maximum sentences instead, and often departed from, by courts. Lesser sentences are then imposed on the grounds of “substantial and compelling circumstances,” as courts are empowered to do in section 51(3)(a) of the Criminal Law Amendment Act of 1997. Courts have a wide discretion in deciding what constitutes “substantial and compelling circumstances”. The only legislated guidance can be found in section 51(3)(aA) of the Criminal Law Amendment Act of 1997, which contains a very short list of circumstances that cannot be considered to be “substantial and compelling”. The CGE therefore urges the Department to first consider putting in place legislated guidance to encourage adherence to the existing minimum sentences, before increasing already high minimum sentences – which may in any event be departed from for “substantial and compelling circumstances”. This could include an expansion of the list of circumstances that can never be considered as “substantial and compelling” for the purpose of section 51(3)(a), or introducing sentencing principles for courts with the help of legal and criminology experts.  (c) Minimum sentences do not deter or reduce sexual offences. In our eager attempts to deter and reduce sexual offences, we assume that perpetrators would be scared off by the prospect of longer prison sentences, and over time we would see a fear-based drop in the number of SGBVF crimes committed.However, as logical as this may seem at first, it is not and has never been supported by any evidence in criminological, legal, or any other academic disciplines. This is easily illustrated through the consideration of examples such as murder, which carries the highest possible sentence in our law. The prospect of life imprisonment has not stopped or reduced murders in South Africa.While many people living in South Africa may initially be pleased by the increase of minimum sentences for sexual offences, public dissatisfaction will ultimately remain because this intervention will not create meaningful reduction or deterrence over time.There is expert consensus across jurisdictions that the only proven deterrent to any crime, including crimes involving SGBVF, is the certainty of apprehension and prosecution – the severity of a sentence is not a persuasive factor. It follows that interventions should rather focus onimproving police skill and competence in detection and response; ramping up forensic collection and analysis capabilities; and increasing successful prosecutions through Sexual Offences Courts and other specialised services, that focus on creating a victim-friendly and victim-centred response. South Africa simply cannot afford legal and policy interventions in the fight against SGBVF that will achieve no material impact on prevention and deterrence of sexual offences. | (a) Noted.  (b) Noted.  (c) Noted |
| 12.8 | (a) **The Embrace Project** commend the Portfolio Committee for the amendments to Parts I, II and III of Schedule 2 of the Criminal Law Amendment Act, in clauses 15, 16 and 17 of the Amendment Bill, which implicate the minimum sentences provision in section 51 of that Act.  (b) They would, however, like to draw the Portfolio Committee’s attention to the superfluity (and possible contradiction) of the whole of paragraph (iii)(bb) under the offence of rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 in Part I of Schedule 2 of the Criminal Law Amendment Act (in clause 15 of the Amendment Bill). Paragraph (iii)(aa), under the same offence, more than covers the whole of paragraph (iii)(bb). In fact, paragraph (iii)(bb)’s inclusion confuses things. They therefore recommend that paragraph (iii)(bb) be removed. They make the same comment and recommendation in respect of paragraph (iii)(bb) for the offence of compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, under the same part of Schedule 2 and clause in the Amendment Bill.  (c) They note the removal of the offences of rape and compelled raped, without aggravating circumstances, as well as the offence of sexual exploitation from Part III of Schedule 2 of the Criminal Law Amendment Act, and note their insertion into Part II of Schedule 2 of that Act. They note further that, Part III of Schedule 2 of that Act attracts minimum sentences of between 10 and 20 years, whereas Part II of Schedule 2 attracts increased minimum sentences of between 15 and 25 years, in terms of section 51 of the Criminal Law Amendment Act. They commend the Portfolio Committee for the increased minimum sentences for sexual offences. However, they wish to point out the severity of the offences identified in this paragraph which, they believe, is not adequately reflected by the minimum sentences assigned to the offences. These sexual offences should not require the existence of additional aggravating circumstances in order for them to qualify for a minimum sentence of life imprisonment, in terms of Part I of Schedule 2. In support of this contention, they quote the International Criminal Tribunal for the former Yugoslavia which described rape as, “one of the worst sufferings a human being can inflict upon another.” The International Criminal Tribunal for Rwanda described sexual violence as “a step in the process of destruction of...the spirit, of the will to live, and of life itself.” Our own Constitutional Court described rape as being “not simply an act of sexual gratification, but one of physical domination. It is an extreme and flagrant form of manifesting male supremacy over females.” The Constitutional Court held further that, “for far too long rape has been used as a tool to relegate the women of this country to second-class citizens, over whom men can exercise their power and control, and in so doing, strip them of their rights to equality, human dignity and bodily integrity” and that, “sexual violence and the threat of sexual violence goes to the core of women’s subordination in society. It is the single greatest threat to the self-determination of South African women.” Victims of sexual violence would prefer death to sexual violation. Studies conducted in South Africa and elsewhere have shown that post-traumatic stress disorder (PTSD) and depression are common among rape survivors – which have the effect of deteriorating a survivor’s quality of life. That is why sexual violence (without more) is constitutive of circumstances aggravating enough to warrant a minimum of a life sentence, and not a minimum of between 15 and 25 years imprisonment. What’s more is that, when asked by UN Special Rapporteur on Violence Against Women why they commit these crimes, the majority of South African sexual abusers answered that they do it out of boredom, for fun or because they are entitled to. If sexual violence is ever to be seriously condemned in South Africa, Parliament must send an unequivocal message to even potential first-time offenders. They therefore recommend that the offences of rape and compelled rape, without the need for additional aggravating circumstances, as well as sexual exploitation, be included in Part I of Schedule 2 of the Criminal Law Amendment Act. | (a) Noted.  (b) The provision in (iii)(aa) refers to a previous conviction, whereas (iii)(bb) refers to current matter before the court in respect of which the accused has been convicted.  (c) Noted. However, there need to be a distinction between the gravity of the offences in question. Furthermore, retribution and deterrence is not the only objective of criminal law in a constitutional dispensation. Reform of the perpetrator must also be considered as part of a sentencing option provided for in legislation that leaves a court without a discretion to impose a sentence in accordancewith the triad consisting of the crime, the offender and the interests of society. |
| 12.9 | (a) **Sonke Gender Justice** submits that they agree with the moving of offences listed in Part III to Part II the offences concerned are closely connected with domestic violence crimes and should be considered more serious.  (b) They also agree with the amendment in clause 17 to insert into  Part III of Schedule 2 of the Minimum Sentences Act the listed violations against children. | (a) Noted  (b) Noted |