**1. General comments**

1.1 Various general comments were made in respect of the Bill. Some of these comments are directly applicable to the Bill and some can be considered ancillary to the Bill. Such comments are usually indicative of the following:

(a) public expectations in respect of proposed legislation;

(b) public concerns regarding legislation; and

(c) ancillary matters that should have been addressed in legislation.

1.2 Paragraph 1 of the summary of comments and responses (the summary) (pages 1 to 36) deals with these general comments. General comments indicate the following:

1.2.1 Human trafficking and gender based violence (GBV) are interrelated and government should have a broader plan, with accompanying legislation, to address GBV (par 1.1); further interventions to ensure the effective prevention, detection, investigation and prosecution of GBV offences should be explored (par 1.26(a)

1.2.2 Victim intimidation (par 1.4); victim unfriendliness and general unacceptable treatment of victims in the system (par 1.13(d)); andthe inability of the SAPS to investigate and the NPA to prosecute GBV offences (par 1.27), deters victims from reporting of GBV offences.

1.2.3 Treatment of GBV-victims in the system is not victim centric (par 1.6; 1.13(d); 1.24(a)); social worker assistance at police stations to assist victims with the reporting of GBV offences to the SAPS may address secondary victimization (par 1.11(b); 1.17); police stations are not always readily accessible to report GBV offences (par 1.24).

1.2.4 Public education to influence public perceptions in respect of GBV is suggested (par 1.11; 1.16; 1.30); public are desensitized and regards GBV as normal behaviour (par 1.12(a)); conduct that is antecedents to, or stimulates GBV should be addressed (par 1.5; 1.13(a);1.16; 1.17; 1.29(d)).

1.2.5 Adequate resources must be made available to ensure effective implementation of the legislative interventions (par 1.13(c))

1.2.6 The prosecution and conviction rate of GBV offences are low due to the inability of the SAPS to investigation and the NPA to prosecute, GBV offencesadequately (par 1.14(b)).

1.2.7 Oversight and monitoring of the implementation of the legislative interventions and accountability of the executive (and functionaries), are essential for its success (par1.14(d)).

1.2.8 Harsh sentences is of little deterrence (punishment certainty is far more likely to deter crime than punishment severity) (par 1.16(a)); 1.18(a); 1.20; 1.27; 1.28A; 1.30(e)).

1.2.9 Deterrent sentences must be imposed for GBV offences (par 1.21; 1.17); assault of women must carry a minimum sentence (par 1.24(d) and (e)).

1.2.10 Victim support is necessary (par 1.16).

1.2.11 Programmes to assist/treat persons who may commit GBV offences (par 1.16(a); par 1.22) and perpetrator reform and integration (par 1.16(b); 1.18; 1.17; 1.29(c)), must receive attention.

1.2.12 Sentences imposed for GBV-offences that are not adequate should be taken on higher review (par 1.22; 1.29

1.2.13 Perpetrators of GBV offences must be liable for medical expenses of a victim (par 1.2(f)).

1.2.14 Many GBV-offences are committed by sentenced offenders, persons on bail and persons on parole or correctional supervision and the provisions of the Bill should further be strengthened to address this aspect (par 1. 25).

1.2.15 The NPA must automatically inform the victim of a GBV offence of its intention to prosecute or not to prosecute a matter and must furnish comprehensive reasons to a victim if it is not to prosecuted (par 1.26(c))

1.2.16The increased protection that is afforded to witnesses who testify in non-criminal proceedings is welcomed (par 1.26A).

1.2.17 Anyfailure in the system to deal adequately with GBV offences, must be identified, and corrective actions should be taken to address inadequacies that hampers its effectiveness (par 1.27).

1.2.18Further amendments may be considered to deal with evidence and procedure in GBV offences that are of a sexual nature (par 1.29).

1.2.19 Bail for GBV offences should be strengthen further to bring it in line with offences in Schedule 6 to the CPA (par 1.32).

1.2.20 The restrictive bail provisions will burden the workload of the courts (par 1.30(d)).

**2.** **Clause 1 and 8: Intermediaries and evidence through audiovisual link (pages 38 to 45)**

The provisions are supported by all commentators. The following amendments have been proposed:

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| Par |  |  |
| 2.2(a) | ***Sections 51A(1) of the MCA and 37A(1) of the SCA:***Person for whom intermediaries may be appointed nust be extended to include a person “who exhibits lack of capacity to act for oneself” | ***No amendments recommended:***The "lack of capacity to act for oneself" can be accommodated under the criteria of "who suffers from a physical, psychological, mental or emotional Condition". No amendment |
| 2.2(b) | ***Section 51B(2) of MCA and 37B(2) SCA:***Enquiry into the competence of an intermediary should include an enquiry into whether the intermediary has a sexual offence record | ***No amendments recommended:***The criteria to determine the fitness of a person for appointment as an intermediary 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. |
| 2.7 | ***Section 51A of the MCA and 37A of the SCA(possibly also section 170A of the CPA)***Assisted means to give evidence is referred to and it is recommended that legislation that recognise alternative means to give evidence should be promoted and 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*. | ***No amendments recommended:***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.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)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. |
| 2.8(b) | ***Section 51A(1) and (5) of the MCA and 37A(1) and (5) of the SCA***Provision should be made for review of the decision by court. | ***Agree***In many instances the underlying conditions as contemplated in the respective provisions, will become apparent only when a person gives evidence.***Amendments proposed:***Subsection (5): Current paragraph becoming paragraph (a)and to insert following paragraph: “(*b)* A court may, on application, if it is satisfied that there is any material change in respect of any fact or circumstance which influenced the refusal contemplated in paragraph *(a),* review this decision”. |

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

The provisions are supported by the commentators. No amendments that are relevant to the objects of the Bill requested or proposed.

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

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|  | **Section 60(5) of the CPA**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. | ***Agree: Amendments proposed:***On page 7 in line 45, after "bail"to insert ", on parole, day parole or under correctional supervision". |
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**5. Clause 5: Cancellation of bail (Section 68 of the CPA)**

The provisions are supported by most of the commentators. No amendments that are relevant to the objects of the Bill requested or proposed.

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

The provisions are supported by the commentators. No amendments are proposed.

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

The provisions are supported by the commentators. No amendments are proposed.

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

The provisions are supported by the commentators. No amendments are proposed.

**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)**

The amendment is mostly supported by the commentator. As indicated in the comments and responses document, shortcomings in respect of parole must be addressed in terms of the Correctional Services Act, 1998, and not the CPA.Section 299A(1) of the CPA is amended, among others, to provide that where a court sentences a person to imprisonment fora period exceeding seven years for any offence, which that person committedagainst any person in a domestic relationship, with that person, the court it must inform the complainant that he or she has a right to make representations when placement of the prisoner on parole is considered. Various commentators question the seven years qualification.

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

Clause 10 amends section 316B of the CPA, to allow the State to appeal a sentence imposed by a 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.

The clause is supported by most of the commentators.

However, Legal Aid SA, relying on the Judgment in DPP Western Cape v Kock 2016 (1) SACR 539 (SCA) at 8 – 10 and 19 – 20 (the accused should not be exposed to an increase in his sentence after the trial), indicated that they cannot support the amendment.

The Department is, however, of the opinion and with reliance on the judgment of DPP, Gauteng v Ramolefi 2019 ZASPA 60, that the amendment can be justified on the basis of the narrow criteria on which the State may appeal, namely –

(a) where a grave failure of justice wouldotherwise result; or

(b) the administration of justice may be brought into disrepute.

**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)**

The provisions are supported by all commentators and no amendments are proposed.

**12. Clauses 15 (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)**

In general the commentators support the amendments. However, the following are raised:

(a) Attempted murder – Part II of Schedule 2

Legal 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.

It is the submission of the Department that 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 Schedule 2. This may need to be reconsidered.

(b) Imprisonment of life – Rape/compelled rape

Embrace Project is of the opinion that Rape and compelled rape as contemplated in Part II of Schedule 2 is due to their severity not catered for adequately and that minimum sentences of life imprisonment, should be imposed in respect thereof.

It is the submission of the Department that a distinction between the gravity of the offences in question (those in Parts I and II of Schedule 2) are necessary. 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 discretion to impose a sentence in accordance with the triad consisting of the crime, the offender and the interests of society. It is the Department's submission that rape and compelled rape is therefore appropriately scheduled.