

CENTRE FOR CHILD LAW SUBMISSIONS
ON
THE CRIMINAL PROCEDURE AMENDMENT BILL, 2021



**CENTRE FOR
CHILD LAW**

FACULTY OF LAW, UNIVERSITY OF PRETORIA

23 JULY 2021



CENTRE FOR CHILD LAW



**UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA**
Denkeleers • Leading Minds • Dikgopolo tsa Dihalefi

ABOUT THE CENTRE FOR CHILD LAW

1. The Centre for Child Law (“CCL”) is a public interest impact litigation organisation registered with the Legal Practice Counsel. The CCL contributes towards the establishment and promotion of the best interests of children in South African law, policy and practice through litigation, advocacy, research and education.
2. The CCL was the first applicant in the matter that precipitated the current proposed amendments and thus contributed to the wording of the judgment granted by the Constitutional Court and in turn, what is being proposed in the CPA Amendment Bill. We however wish to make submissions that we hope can contribute to the refinement of the proposed amendments in order to enhance the protection of child victims, witnesses and offenders by ensuring that the wording of the law is clear for the public and the media in order to minimise the risk of violation of the rights of those the law intends to protect.

THE CENTRE’S EXPRESSION OF SUPPORT

3. The CCL welcomes and supports the Department of Justice and Correctional Services (“the Department”) process for the amendment for the Criminal Procedure Act 51 of 1977 (“the CPA”) in order to align the provisions thereof with the Constitutional Court judgment in the case of *Centre for Child Law and Others v Media 24 Ltd and Others*¹ (“the CC judgment”). The importance of the judgment and the proposed amendments are crucial to ensuring that child victims, witnesses and offenders’ identities are protected in order to minimise trauma and stigmatisation in matters that pertain to them.

¹ 2020 (3) BCLE 245 (CC).



THE CENTRE FOR CHILD LAW'S SUBMISSIONS

4. The CCL submits that the Amendment Bill provisions should be strengthened and the following particular issues should be addressed:

The meaning of “publish”

5. Section 154(3) of the CPA has always provided that “[n]o person shall publish in any manner” the information contemplated in the sub-section. The current proposed amendment to the section does not change the wording in so far as this aspect is concerned. However, the CCL is concerned that section might be construed by the public and some members of the media to refer only to traditional forms of media publications.
6. The process of the litigation that led to the CC judgment has highlighted the need for legislation to be clear and precise in order to minimise misinterpretations and in turn to avoid violations of rights of vulnerable groups such as child victims, witnesses and offenders.
7. The use of social media platforms has become the order of the day and information spreads at lightning speed far more than through traditional forms of publication. Thus, where the publication on social media platforms pose a risk to the identification of an accused, victim or witness under the age of eighteen years, protection is crucial and the law must be clear that the prohibition of publication extends to such social media platforms.
8. Although publications via social media are difficult to regulate and police in terms of the scope, audience and speed with which such information can be shared, and also there may be challenges in holding the authors and those who share the publication accountable, we submit that making it clear that the provision applies to social media and other online platforms may have a deterrent effect on anyone seeking to act contrary to this provision.



9. We therefore recommend that the words “...including on any social media or electronic platform...”, be inserted after the word “manner” or after the words “publish” in section 154(3).

Protection beyond 18 years and upon conclusion of proceedings

10. Section 154(3B) is welcomed as it ensures that protection of identity continues beyond the conclusion of criminal proceedings and that there is a process should any person wish to apply for the publication of information which reveals the identity of an accused, a witness or a person contemplated in subsection (3)(a)(iii) who has attained the age of 18 years.
11. We are of the view that an accused, a witness or person contemplated in subsection (3)(a)(iii) should be able to publish or reveal their own identity without needing a court order, except if there had been a court order authorising their protection.
12. In *Centre for Child Law and Others v Media 24 Ltd and Others*, KL had to apply to the High Court before she could publish her book- thus revealing her true identity- because there was a court order that had been made to protect her identity pending the order of the Constitutional Court.
13. Although the requirement that there should be a court order may appear to ensure maximum protection, it is actually cumbersome as it will require an accused, a witness or a person contemplated in section 3(a)(iii) to obtain legal representation and bring an application where there is no other party affected/prejudiced by the publication of one’s own identifying information.

CONCLUSION

The CCL expresses its thanks for the opportunity to make written submissions and avails itself to the Department if any assistance is needed going forward and to make oral submissions should it be need.

Centre for Child Law



Karabo Ozah – Director – karabo.ozah@up.ac.za

Zita Hansungule – Project Co-ordinator – zita.hansungule@up.ac.za

