**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1871**

**DATE OF QUESTION: 21 AUGUST 2020**

**DATE OF SUBMISSION: 04 SEPTEMBER 2020**

**Ms J M Mofokeng (ANC) to ask the Minister of Justice and Correctional Services[🟊305] [Question submitted for oral reply now placed for written reply because it is in excess of quota (Rule 137(8))]:**

Regarding the legislation which will be dealing with gender-based violence and femicide (GBVF)(details furnished), what (a) progress has his department made with regard to drafting the legislation and (b) will be the classification of GBVF in the Schedule?

**NW2303E**

**REPLY:**

1. In September 2019, President Ramaphosa announced a 5-point emergency plan to tackle gender-based violence and one of the key elements is enhancing the legal framework in order to strengthen the response of the State to GBV.

With this in mind, Department of Justice and Constitutional Development is intensifying the fight against GBV and femicide and have prepared three pieces of draft legislation. The three Bills were approved by Cabinet on the 5th of August and will be introduced into Parliament soon.

The Bills are aimed at amending a number of Acts to prevent and combat GBV and offences committed against vulnerable persons, and to provide for additional procedures to reduce secondary victimisation of vulnerable persons in court proceedings. These Bills are -

1. **The Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill**:

This Bill seeks to give further effect to the 5-point emergency plan by, amongst others, introducing a new offence of sexual intimidation.

Currently the law provides that there is an obligation to report to the police the commission of a sexual offence against a child or a person who is mentally disabled. A person who has “knowledge” that a sexual offence was committed against a child must immediately report such knowledge. On the other hand, a person who has “knowledge, reasonable belief or suspicion” that a sexual offence was committed against a person who is mentally disabled must immediately report it to the police. The Bill now aims to ensure that the reporting duty is the same in respect of both groups.

With regards to the National Register for Sex Offenders (“the NRSO”), the law currently provides that the particulars of persons who have been convicted of sexual offences against children and persons who are mentally disabled, are to be registered on the NRSO and it prohibits persons whose particulars are on the NRSO from working with or having access to children or persons who are mentally disabled.

The Bill expands the scope of the NRSO to include the particulars of **all** sex offenders, in other words not only sex offenders against children and persons who are mentally disabled. It expands the ambit to include other vulnerable persons, such as female persons between the ages of 18 and 25, persons with disabilities and persons who are 60 years of age or older who, for example, receive community based care and support services.

It also makes provision for certain particulars of persons who have been convicted of sexual offences to be made publicly available and increases the periods for which sex offenders’ particulars must remain on the NRSO before they can be removed.

1. **The Domestic Violence Amendment Bill**

In 1999 the Domestic Violence Act was lauded as a progressive tool in the armoury against the abuse of women, but since then challenges relating to implementation of the Act have been identified.

This Amendment Bill will amend the Domestic Violence Act, in order to address practical challenges, gaps and anomalies which have been identified in practice during the implementation of the Act. It aims to optimise collaboration between relevant functionaries to streamline the provision of services to survivors. Interventions included in the Bill are the mandatory reporting of cases of domestic violence, screening, counseling, a referral to suitable shelters and the provision of medical treatment.

It also introduces electronic applications for protection orders which will allow for applications for protection orders to be made outside of ordinary court hours, thereby giving complainants of domestic violence speedy relief.

It also extends the protection for domestic violence to the elderly, places a duty on anyone who is aware that an act of domestic violence has been committed to report it, provides for mandatory arrest and prosecution where there is physical violence or a weapon is used, and increases the penalties for convictions for offences emanating from domestic violence.

Alcohol abuse fuels domestic violence. The Amendment Bill obliges a court to order the seizure of any weapon, recognises the role that alcohol plays in violence and enables the court to hold an enquiry whereby a perpetrator can be referred for treatment. It further aligns itself with mirror provisions in the Protection from Harassment Act.

1. **The Criminal and Related Matters Amendment Bill:**

This Amendment Bill seeks to amend numerous Acts intended to address GBV and offences committed against vulnerable persons and aims to reduce secondary victimization of vulnerable persons in court proceedings.

Currently, the intermediary service is available to a child witness or complainant in criminal proceedings. The intermediary service is currently not available to any other witness or complainant who may be exposed to similar undue mental stress or trauma. The proposed new amendments aim to extend the intermediary service.

It provides that a presiding judicial officer may appoint an intermediary in order to enable a witness under the biological or mental age of eighteen years, a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person to give their evidence through that intermediary, if it appears to the court that the proceedings would expose the witness to undue stress, trauma or suffering if he or she testifies.

The Bill further provides that in respect of an offence against a person in a domestic relationship an accused may not be released on bail before his or her first appearance in a lower court. The definition of a "domestic relationship" is wide and provides for many different types of relationships.

The Billfurther tightens up provisions relating to the granting of bail in respect of such offences, the placement of a person who has been sentenced in respect of such offences on parole, the powers of the State to appeal inadequate sentences that are imposed for such offences, the ability of the SAPS to arrest, the prescribed discretionary minimum sentences that may be imposed for such offences, and the protection of victims of such offences against victimisation during legal proceedings.

1. GBV comes in different forms, depending on the circumstances of each case. It can therefore take the form of various different offences, such as assault, assault with the intent to do grievous bodily harm, attempted murder, intimidation, stalking, various sexual offences and so forth. The different offences will therefore fall under different Schedules in the legislation.

What is important to note is that the Criminal and Related Matters Amendment Bill aims to ensure that the discretionary minimum sentences dispensation would apply, amongst others, to the offences of murder, where the death of the victim resulted from physical or sexual abuse as contemplated in the definition of “domestic violence”.