



SUBMISSION BY
THE SOUTHERN AFRICAN CATHOLIC BISHOPS'
CONFERENCE
PARLIAMENTARY LIAISON OFFICE
ON THE
PROTECTION FROM HARASSMENT BILL [B1-2010]

Introduction

The SACBC Parliamentary Liaison welcomes this opportunity to engage with the Portfolio Committee on Justice and Constitutional Development on this significant matter which seeks to ensure and protect the dignity, privacy and safety of citizens.

Many vulnerable groups in our society are subject to harassment, and indeed to physical harm. For example, the issue of xenophobia and the harassment of refugees and those perceived to be foreigners; those of differing sexual identities; elderly women perceived to be witches. In addition, there are the more well-known problems relating to ethnic, gender and racial discriminations which also regularly give rise to harassment. Apart from the legislation now being discussed, public education programmes countering such prejudices are urgently needed.

Specific Points

This Bill is particularly welcome in that it addresses many of the lacunae in the Domestic Violence Act.¹ Specifically, it seeks to protect the rights of those who are not, or who are no longer, in a ‘domestic arrangement’ with a respondent. However, the reach of this Bill goes much further, and extends to other aspects of our social discourse and the protection of the vulnerable whether they are individuals, groups or organizations.

Furthermore, great emphasis is placed on strict compliance with the parameters of the Bill by the South African Police Force, both in terms of the delivery of protection orders, and their enforcement should the terms of an order be breached. Those violating the order may be found guilty of a criminal offence.

While we very strongly support the Bill in broad terms, we do have some specific concerns.

Firstly, there is no definition of ‘stalking’. This term has been used interchangeably with harassment in the public discourse and greater clarity would be welcomed.² We suggest that the word ‘stalking’ be added to sub-paragraph (a) of the definition of ‘harassment’ after the word ‘pursuing’.

Secondly, it remains unclear whether or not forms of harassment known as ‘mobbing’ and ‘hazing’,³ are included in the definition. Both these forms of harassment compromise the dignity and safety of those targeted and result in fear and humiliation.

Thirdly, sexual harassment appears not to have been addressed in the Bill. We suggest that this form of harassment is as harmful as other forms of mental and psychological harassment, and should be included.

We welcome the amendments to the Criminal Procedure Act which places a greater obligation on the authorities to act decisively and with urgency.

Firearm control has long been a matter of great concern to us so we welcome the provision made for the confiscation of firearms from respondents, should this be deemed necessary. It is our hope that the provisions of this Bill will contribute to greater gun control.

The many difficulties in both the implementation and enforcement of the Domestic Violence Act suggest that there is a need for training of members of the South African Police Service and officers of the courts. We therefore welcome the provisions in clause 17(2)&(3) regarding the issuing of instructions and directives to members of the SAPS and clerks of the courts, respectively. We note that reference is made in paragraph 7 of the Bill’s Memorandum to the need for funds for the training of police officers and clerks, and we urge that a realistic amount be allocated for this purpose.

We look forward to a publicity campaign as to what constitutes harassment and the legal remedies available and enforceable. Such a campaign would be a useful adjunct to the criminalization of harassment, and would hopefully contribute to greater awareness of, and a reduction of, the problem.

We are mindful that there are ‘grey’ areas where the provisions of the proposed Bill may be used for purposes other than those intended, for example, it may be used against investigative journalists and civil society organizations concerned with public policy issues.

The experience of the United Kingdom with respect to the ‘Protection from Harassment Act of 1997’ suggests that “although the Act was designed to protect people from stalkers, in recent years it has been widely criticized as being a weapon for corporations against peaceful protesters to stifle legitimate protest. Companies have used the Act to apply for very broad injunctions to prevent any sort of protest against them. These injunctions can be granted not just against an individual or a specified group but also against anyone with notice of the injunction”⁴.

The act has been used to shut down protests against militarism and climate change. The Guardian columnist George Monbiot argues that it criminalizes protest, claiming the legislation blurs the distinction between civil and criminal offences.⁵ Measures should be put in place to guard against such cynical exploitation of the proposed legislation.

Various civil society organizations including the Tshwaranang Legal Advocacy Centre, Women’s Net, the Women’s Legal Centre and the Triangle Project have expressed concerns that the Bill is silent on Information and communication technologies (ICT), except to acknowledge that electronic means can be used to harass someone. They suggest that “the Bill should also provide for

comprehensive protection measures to specifically protect children, as they grow up in a technological age where they interact with people through online social media on a daily basis”.⁶ We share these concerns.

Conclusion

We reiterate our previous submission in asserting that, in a society fraught with a culture of violence, where crimes against the vulnerable are commonplace, it is our hope that this Bill will bring us a step closer to the realization of a community where the rights to dignity, corporal integrity, privacy, safety and freedom from fear are protected and promoted.

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¹ The Catholic Parliamentary Liaison Office made a Submission to the Portfolio Committee on Women, Children and Persons with Disability on the Domestic Violence Act and the many difficulties encountered in the implementation thereof.

² For example the Sowetan of 8th May carried an article entitled ‘Protection from Stalkers’.

³ An example of ‘mobbing’ is the treatment of the complainant by the supporters of President Jacob Zuma during his trial on charges of rape. While examples of ‘hazing’ would include brutal and belittling student initiation practices.

⁴ Protection from Harassment Act, 1997, guardian.co.uk, Wednesday, 4th November 2009.

⁵ ibid.

⁶ ‘Call for stronger digital focus in Harassment Bill’ IT-Online, 17th September 2010.