



ILITHA LABANTU
PEOPLE WHO CARE ABOUT PEOPLE

**SUBMISSION ON THE DOMESTIC VIOLENCE AMENDMENT BILL AND
THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS
AMENDMENT ACT) AMENDMENT BILL**

09 OCTOBER 2020

ATTENTION: THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

Mr V Ramaano email: GBvbills@parliament.gov.za

Submitted by:

Zoliswa Mbekwa

Clinical Department Ilitha Labantu

Email: zoliswa@ilithalabantu.org

Tel: 021 633 2383

Research and Preparation by Sikhulule Monakali

Email: sikhulule@ilithalabantu.org

With input from Ella Mangisa

Email: ella@ilithalabantu.org

SUBMISSION ENDORSED BY:

St Mary's Home of Hope

Bambanani for Social Development

St Mary's Home of Hope Contact:

Director: Maria Basson

Tel: 083 238 9167

Email: st.m.ofhope@gmail.com

Bambanani for Social Development Contact:

Director: Nyameka Marriam Makhosana

Tel: 073 262 8412

Email: m99.makosana@gmail.com

Ilitha labantu herby welcomes the opportunity to comment on the Domestic Violence Amendment Bill and Criminal Law (Sexual Offences and Related Matters Amendment Act) amendment Bill. **The organization is also available for Oral Presentation**

INTRODUCTION

Ilitha Labantu, established in 1989, is a social service and educational organization that focuses on addressing violence against women and children and supporting those affected by it. This is accomplished through individual and family counselling, providing emergency accommodation for women and their children, skills training, empowerment and capacity building workshops, Ilitha Labantu meet the needs of the communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, the organization provides easily accessible and inclusive services to gender based violence survivor and the broader community.

The Domestic Violence Amendment Bill

South Africa is a country that has been crippled by gender based violence and we have seen how over the years there has been an ever increasing plight faced by women and children in the form of abuse, secondary victimisation and trauma suffered by those who are directly and indirectly impacted by this pandemic.

Although as a country we are viewed as one of the best countries when it comes to policies aimed at addressing the scourge, the very nature of which stems from various factors. We have failed to properly implement these strategies in addressing this violence in our society. Throughout the last century we have seen how there has been a decline in trust in police, prosecution and the judiciary as people and victims seeks justice which has not been forthcoming.

Police actions are always viewed in a negative light and therefore the community at large has had to depend on people that it doesn't trust. Especially in the cases of domestic voice where many women have faced the eager task of being in front of a police officer who sees nothing wrong with the violence you have been subjected to, due to his/her personal beliefs on the matter.

Clause	Proposal	Motivation
S 2	The definitions of domestic violence has been greatly expanded upon but there are several key issues that we need to ensure still form part of the domestic violence act	Through the definitions we can ensure that there is holistic understanding of matters and it should lead to more effective policing and prosecution through its defined concepts
S 2 d	The insertion of controlling behaviour s welcomed but it cannot be overlooked with parenting	Once we ascertain the right of parents and the rights of children through the expanded definitions here and definitions placed in the Children’s Act 38 of 2005, we must ensure that by parenting should not be construed as controlling behaviour onto a child, especially in terms of subsection (d) which states “regulating his or her everyday behaviour” .
S 2 l	The expansion of domestic violence is one that was greatly needed but the exclusion of stalking, cat calling, ukuthwala have yet to be recognised	The removal stalking is damaging as one may think it is in line with the definitions as set out in harassment, but stalking in its self is an altogether different action but still induces fear and trauma n a victim, so too does cat calling and or wolf whistling this causes a victim to feel intimidation and harassment without necessarily falling in line with those very definitions. We need to also acknowledge Customary, religious and other practices which are inherently traumatic to those who are member sofa a family or religion or tradition, these

		actions although recognised do not allow for a person to have their own true freedoms of choice and thus could have traumatic and violent implications on various individuals if they too are not brought to the foreground.
S 2 l	The insertion of emergency monetary relief is one that is welcomed by ilitha Labantu, but this needs to be extended upon to include immediate emergency monetary relief	This monetary relief stems from the fact that it is losses incurred by the complainant before or at the time of incident it further does not allow for monetary relief or assistance after the event, as one needs to ensure that she can move from wherever she is to a place of safety, which is also not covered, the monetary relief should extend beyond mere compensation for losses incurred but ensure that there is monetary relief for the victims safety, as we have witnessed many cases of secondary victimisation due to the lack of support from family members, people being removed from the family home etc.
S 2 y	The insertion of weapon is welcome, but we have to be clear on the matter in terms of s 2 (y)(b)	Objects that seek to not only inflict grievous bodily harm or dangerous wound, should also be considered as the weapon could be something that the perpetrator uses on the complainant to cause harm, an example as extreme as it may sound if a person is extremely ticklish and urinates themselves upon uncontrivable body

		functions due to being tickled and such perpetrator knows this and wishes to embarrass, insult or cause harm to the complainant through tickling of a feather would that feather not constitute a weapon that was used to cause harm.
S 2 A 1	We welcome this section as it deals specifically with those who wish to assist and allows for assistance from a multifaceted approach of people, but failure to put forth the fact that not all people speak the same language and have the same cultures, such information that is given to complainants must also allow for the understanding of the complainant	One matter that is persistent throughout the measuring of duties and information given to complainants is one of understanding. As an ngo we have seen it countless times where victims of abuse have said they did not understand what was happening and this is from all levels from police to the judicial process and agreed just on the bases of hearing what was said but not understanding what was said. There is a clear difference between understanding and hearing information. Understanding information means it has been mentally digested and one fully comprehends the magnitude and actions of what is being said. But just hearing something as it is told to you may not lead to understanding it and therefore that creates a disjunction which causes many issues for victims.
S 2 B 1	We understand and welcome the call for the fact that children abuse should be reported, but we would also like to state that we	We have to understand that this is going to cause further harm than good that those who are adults who know or even have a suspicion of

	<p>feel that people should be encouraged to report matters as S2B 4 makes it a criminal offence for failing to report domestic violence</p>	<p>acts of domestic violence occurring will be now be held liable for the mere knowledge of such. We also understand how fear grips people and this fear now will be extended to those who would want to help. People now will have a constant fear of what could happen if they fail to report or if they do it will it be to late and they would still be seen as guilty.</p>
S 3 2	<p>It is a positive step to see more powers been given to the police but we have to ensure that it is not only when physical abuse is present</p>	<p>By limiting the arrest to when there has been domestic violence and physical abuse is present we then have to ask whether or not in many instances where the partner has been intimidated and no physical abuse is present once the police leave, will that perpetrator not act on his own feelings, we cannot arrest just on one aspect which is physical violence alone</p>
S 3 3 b	<p>Access to information is a great way in which to keep the complainant informed, but it does not ensure their safety</p>	<p>This act stands to look at all aspects of domestic violence and ensure that a person's wellbeing is kept intact, but we have to look at the many instances where perpetrator is locked and the complainant still either ends up dead or is harassed etc., this trend of violence cannot continue and we must ensure that everyone else x</p>
S 3A 1	<p>Just as in section 3 (2) the aspect of physical violence</p>	<p>There are those who have the power to manipulate</p>

	<p>is present meanwhile psychological and emotional trauma have no bearing, this should be inclusive of the holistic approach to addressing domestic violence</p>	<p>and harass without using physical violence and yet still leave a victim in a state of complete distraught. We have to ensure that such measures are taken to ensure that an individual's safety is paramount to any that can be done not only physically but in all forms that are possible.</p>
--	---	---

Criminal Law (Sexual Offences and Related Matters Amendment Act) amendment Bill

INTRODUCTION

Our courts have a duty to uphold the law and justice, but what we have found in many cases including those in relation of criminal offences in regards to the Criminal Law and Sexual Offences Amendment act amendment bill we are still in situation where we have to ensure accountability at all levels and ensure the safety of victims of these crimes. We have stated many instances that have shown that the crime in relation to sexual offences can also be one that has one the most severe punishments according to the bill but is it necessarily a form in which we can truly state that it will deter the violence that occurs on a daily basis.

In many homes and areas of daily life it is clear that the perpetrators of most of these actions are people who are known to the victim s and thus there is an element of protection from these perpetrators who can manipulate many of their victims, but our evidence is still based on a beyond a reasonable doubt purpose. We cannot rely on this logic anymore as it is failed us tremendously, but rather we as ilitha Labantu proposes that as the criminal law relates specifically to sexual offences and related matters, we change the system of evidence to that of a balance of probabilities.

With this action we can use reasonable and sound judgements based on the actions of a reasonable person and weigh up the actions of the person in question with those of

reasonable person to determine whether or not such violations of a complainant have occurred. Factors such as culture and religion continuously plague the victims mentally and also allow for certain actions to be taken by the perpetrators, it does not negate the fact there is still a lot that needs to be done to ensure a proper prosecution of a perpetrator. By ensuring this change we can ensure that many more cases will be dealt with in an expedite manner.

IN CONCLUSION

The current bill has made tremendous effort in ensuring that the current register of sexual offenders be made public as to ensure that there is adequate information to members of our own society, and those who have been previously convicted to not be areas of concern for the society at large. But further should allow for the oversight of such a register to organisations as they stand at the forefront of ensuring that members of the communities that they operate from are aware of such individuals and necessary precautions can be made to ensure that those actions do not permeate throughout their community

As Ilitha Labantu we fully support the bill, with the concern raised on matter of evidence and distribution thereof.