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PEOPLE WHO CARE ABOUT PEOPLE

**Submission On: Project 151: The Five Discussion
Papers on the Review of the Criminal Procedure Act
51 of 1977 By The South African Law Reform
Commission (SALRC)**

Ilitha Labantu, established in 1989, is a social justice community organisation based in Gugulethu township, Cape Town with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it. Its services include psycho-social services, legal and policy advocacy services, educational and outreach services as well as community nutrition and development services.

Ilitha Labantu welcomes the opportunity to comment on Discussion Paper 169,170,171,172,173 issued by the South African Law Reform Commission (SALRC). We provide services to survivors of domestic violence, intimate partner violence, sexual offences, and related forms of gender based violence (GBV), including counselling, shelter support, court accompaniment, and case advocacy. Our submission is informed by direct, daily engagement with survivors navigating the criminal justice system.

Proposal	Comment
PAPER 170: Protection of the Rights of Victims of Crime in Criminal Proceedings.	<p>We commend the SALRC for putting victims' rights at the centre of this paper and for clearly recognising that South Africa's criminal justice system still focuses mainly on the state and is highly adversarial, leaving victims on the side-lines throughout criminal cases. For survivors of gender-based violence, this exclusion directly affects their safety, dignity, recovery, and their willingness to take part in the justice system.</p> <p>We support that the Criminal Procedure Act (CPA) must be replaced with a victim-centric framework that promotes, protects and enforces victims' rights. We emphasise that ,survivors of sexual and domestic violence experience systemic secondary victimisation; delays, lack of information, and exclusion from decision-making disproportionately affect women and</p>



ILITHA LABANTU

PEOPLE WHO CARE ABOUT PEOPLE

girls; victims' rights must be legally enforceable, not merely aspirational or policy-based.

The paper correctly identifies that victims are treated as third parties whose role is confined to giving evidence for the prosecution. In GBV cases, this manifests as survivors being excluded from bail decisions despite clear safety implications; no formal role in prosecutorial decisions, plea bargains or postponements; survivors being thanked and dismissed once testimony concludes, with no further engagement.

The paper's discussion of secondary victimisation aligns strongly with GBV practice experience. Survivors routinely face, disbelief and minimisation of harm; repeated postponements without explanation; intimidation and fear when perpetrators are released on bail; lack of psychosocial support during prolonged trials.

We submit that secondary victimisation should be explicitly recognised in the new CPA as a form of injustice that the system must actively prevent.

The paper's critique of systemic delays is particularly relevant to GBV cases. Delays result in increased risk of intimidation or retaliation by perpetrators; survivors remaining economically, emotionally or physically dependent on abusers; withdrawal of cases due to exhaustion, fear or loss of faith.

We support the paper's finding that section 342A is victim-insensitive. Although it mentions victims indirectly, it focuses primarily on prejudice to the accused and the state fails to recognise prejudice to survivors, including trauma, safety risks and economic hardship; does not require courts to actively consider survivor impact when addressing delays.

We support the proposal to redraft section 342A to place victims, particularly survivors of violent crime at the centre of delay inquiries.

We support the proposal to insert a dedicated chapter on victims' rights in the new CPA,



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PEOPLE WHO CARE ABOUT PEOPLE

	<p>This chapter should, explicitly include victims of sexual and domestic violence; mandate protection from intimidation and retaliation; guarantee access to information, services and support in a language understood, provide for protective measures such as in-camera proceedings and audio-visual testimony.</p>
<p>PAPER 169: Mental and Intellectual Disability and the Criminal Justice System.</p>	<p>We strongly support the overall direction of Discussion Paper 169 and submit that GBV and disability responsive reform of the (CPA) is urgently required.</p> <p>We support the paper’s finding that the CPA is outdated; relies on assumptions about mental and intellectual disability; and fails to provide consistent, enforceable accommodations across the criminal justice value chain.</p> <p>These failures have disproportionate and gendered consequences, because women and girls with disabilities are at significantly higher risk of sexual and domestic violence; they are more likely to be disbelieved, excluded or infantilised by justice actors; and systemic barriers result in under-reporting, case attrition and impunity.</p> <p>In practice, survivors with disabilities encounter police reluctance to open cases due to assumptions about reliability; inadequate statement-taking and absence of support persons; delays, exclusion or outright prohibition from testifying in court; secondary victimisation through repeated questioning and disbelief.</p> <p>We support the paper’s critique of section 194 of the CPA, which imposes a blanket exclusion on witnesses with mental illness while the condition subsists; conflates mental illness with incompetence; reinforces discriminatory stereotypes.</p> <p>In GBV cases, this provision silences survivors with psychosocial or intellectual disabilities; enables perpetrators to escape accountability; conflicts with constitutional equality and CRPD principles.</p> <p>We strongly support the recommendation to amend section 170A to include persons with intellectual and sensory disabilities.</p>



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PEOPLE WHO CARE ABOUT PEOPLE

	<p>For GBV survivors, intermediaries and special measures are often decisive in enabling testimony; reducing trauma and intimidation; improving evidentiary quality.</p>
<p>PAPER 171: Ensuring the Continuity of Criminal Trials: Reforming the “De Novo” Rule and Court Record Management in South Africa</p>	<p>We support the SALRC’s core conclusion that the routine restarting of criminal trials is not a neutral procedural safeguard, but a symptom of systemic failure; and reform of the de novo rule must be accompanied by improvements to court record management and technology.</p> <p>We emphasise that trials starting afresh often result in secondary victimisation; survivors face heightened risks of intimidation, withdrawal, and disengagement; continuity of trials is essential to meaningful access to justice for survivors of violence.</p> <p>We support the paper’s identification of a critical gap in the Criminal Procedure Act. While sentencing can be finalised by a different judicial officer, part-heard trials cannot be continued before conviction. This gap disproportionately affects GBV cases because Such cases often rely heavily on oral testimony and credibility assessments; delays increase the likelihood that survivors disengage; restarting trials frequently results in cases being withdrawn or struck from the roll.</p> <p>We therefore support the proposal to insert a new CPA provision allowing continuation of part-heard trials where it is in the interests of justice.</p> <p>We support the recommendation that the head of court be empowered to decide whether a trial should continue before a new presiding officer; or start anew. This discretion must explicitly consider the impact of delay and retrial on the survivor; he likelihood of survivor withdrawal; the emotional and safety consequences of repeated testimony.</p> <p>We welcome the requirement that reasons be recorded in writing, which promotes accountability and transparency.</p>



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PEOPLE WHO CARE ABOUT PEOPLE

	<p>For survivors of gender-based violence, justice delayed is often justice denied. Discussion Paper 171 correctly identifies that the routine restarting of criminal trials undermines fairness, efficiency, and public confidence. For GBV survivors, it also undermines safety, dignity, and the willingness to engage with the criminal justice system</p>
<p>PAPER 172: Employment of Lay Assessors</p>	<p>We support the continued use of lay assessors in criminal proceedings and endorse the paper’s finding that the current assessor regime is fragmented, inconsistent, and in need of constitutional alignment.</p> <p>We support the recommendation to include assessors in Child Justice Act proceedings. In cases involving, child sexual abuse; domestic violence in the home; child witnesses to femicide. Assessors with appropriate expertise can assist courts in understanding child development and trauma; safeguard the best interests of the child; improve the quality of fact-finding.</p> <p>We recommend that the SALRC encourage the appointment of assessors in GBV and sexual offence cases, particularly where credibility and context are central, provide for assessors in Child Justice Act proceedings.</p>
<p>PAPER 173: Strengthening Governance and Accounting Mechanisms in the Criminal Justice System</p>	<p>We support the objectives and direction of Paper 173 and submit that weak governance and fragmented accountability systematically disadvantage survivors of domestic violence; delays, poor coordination, and lack of oversight exacerbate trauma, increase case attrition, and expose survivors to further harm; reform of the Criminal Procedure Act (CPA) must explicitly recognise survivor-centred justice as a core accountability outcome, not a peripheral concern.</p> <p>Survivors routinely experience Police, prosecutors, courts, and correctional services operating in isolation; no single authority accountable for case progression; repeated postponements with no explanation or consequences. These acts undermines protection orders; leads to case withdrawals; discourages reporting and cooperation with prosecutions.</p>



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We therefore support the paper's call for system-wide accountability mechanisms, rather than department-specific reforms.

We strongly support the establishment of a statutory Integrated Criminal Justice Information Management System, as proposed.

This system must include :

- Track cases end-to-end (from reporting to finalisation of GBV cases);
- Flag repeat offenders and serial domestic violence cases;
- Monitor compliance with protection orders and bail conditions;
- Capture survivor withdrawals and reasons for withdrawal.

We support aligning CPA reform with the National Development Plan 2030.

We further submit that CPA reform must be aligned with the National Strategic Plan on Gender Based Violence and Femicide; accountability and oversight reforms must recognise domestic violence as a systemic justice issue, not merely a social welfare concern.