



SUBMISSIONS BY ILITHA LABANTU:

DISCUSSION PAPER 167

REVIEW OF THE CRIMINAL JUSTICE SYSTEM: REVIEW OF SOUTH AFRICA'S BAIL SYSTEM

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Introduction

Ilitha Labantu is a social justice community organisation based in Gugulethu township, Cape Town. It is a psycho-social service and educational organization with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it.

The scope of our work is centred around meeting the needs of communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, we provide easily accessible services to Gender-Based Violence and Femicide survivors, victim families and the broader community. This violence perpetrated against women denies women in both townships and rural areas an opportunity and legal right to live in an environment that is healthy and conducive for them to thrive.

Ilitha Labantu welcomes the discussion paper by the South African Law Reform Commission(SALRC) on the Criminal Procedure Act with particular emphasis on the bail system. With the scourge of violence among women and children high in South Africa, the organisation takes this as an opportune time ensure that 'victims' remain central to the criminal justice process as envisioned by the Service Charter. In this context, the terms 'victim' and 'survivor' are used interchangeably, both referring to individuals who have experienced trauma or hardship. While each term may carry different connotations, 'victim' aligns with the legal language used in our laws to describe individuals affected by harm, but in this context, both terms emphasize resilience and overcoming adversity .

The organisation in 2021 partnered with other organisations and held discussions with the NPA to campaign for right of survivors to get a copy of bail conditions from the prosecutor as a necessary tool guaranteeing them the right to information. This is an ongoing campaign and we have to date, taken this campaign to various courts in the country particularly the Western Cape.

The following points outline the key concerns that inform our submission to this discussion paper:

1. Amid the unprecedented rise in gender-based violence and femicide cases, the organization has observed that survivors' greatest challenge lies in the accused's ability to exercise their constitutional right to bail. For victims, this often feels like a mockery of their suffering. Bail is often granted to offenders of serious crimes, such as sexual assault, domestic violence, and even femicide. This is particularly traumatic for victims, who now have to contend with the fact that their attacker is free to potentially harm them again and creates a sense of injustice for victims.
2. Whenever an accused offender is released on bail, the victim's safety concerns become very real. There is real fear of retaliation, further harm and intimidation particularly in cases where the accused person has made direct or indirect threats to the victim. This is not imagined fear as victims have been attacked and this points to a justice system that does not adequately protect victims. Furthermore, granting of bail often overlooks the emotional and psychological impact on the victim.
3. Bail conditions are sometimes too lenient or not forceful enough to ensure victim protection with accused persons being released back into their communities to face the very same victims. Victims' vulnerability to continued harassment or violence is a challenge as the breach bail conditions is too common. Victims struggle to understand why courts, despite having the unique judicial responsibility to determine how to best serve the interests of justice, fail to do so effectively.
4. There is little to no feedback given to victims by investigators or prosecutors to inform the victims (survivors) on the outcome of bail proceedings despite the Service Charter impressing on the need to inform victims on the outcome of bail proceedings, any special conditions and the implications of such bail conditions explained. This raises questions about whether the bail system is being used correctly to protect the public, particularly victims.
5. Victims seldomly participate in bail proceedings and most who are able to do so including attending bail hearings, do so because they receive support from non governmental victim support organisations. In actual fact, victims are discouraged by investigating officers to participate and are often informed that there is no need for them to go to court during the bail application of the accused person.
6. Communities affected by high levels of violence readily support victims at bail proceedings through submitting objections to the release of an accused person on

bail. However, courts often give little consideration to these petitions from the community if they ever do. This sends a message to the public that crimes are not taken seriously and discourages participation in initiatives to stop crimes, because justice will not be served.

Concern	Comment	Recommendation
<p>Enhancing protection afforded to the victims of crime (and by extension complainants and witnesses) in the criminal justice system and bail proceedings)</p> <p>-Making mandatory the provision of a copy of bail conditions to the survivor-</p>	<p>The organisation has been vocal about the need to provide bail information once bail has been granted. Women and child victims, particularly have been passengers in matters concerning them as far as bail applications are concerned. Even still, they are required to be proactive in requesting for the copy of bail conditions from the prosecutor. Victims often find themselves without protection from the accused once bail is given, there is no notification of all court proceedings, particularly bail hearings and their participation is very limited meaning there aren't opportunities to inform the court of the danger that the</p>	<p>A copy of bail conditions should be given to the victim when any accused person has been released on bail. This supports the recommendation '...victims and state witnesses [to] be informed of bail applications and [to] 'participate in them if they choose to. Where the witness is the complainant in the matter of a person below the age of 18 years and such witness is called to or wishes to participate in the bail application, such witness must be declared vulnerable witness and be afforded such protective measures as the court may deem necessary.' the organisation has campaigned since 2021 that prosecutors should provide</p>

	accused person poses to them that the court must take into consideration before releasing the accused	victims with a copy of the bail conditions as it enables victims the power to monitor the accused person's compliance with the condition set therein. Therefore, it is recommended that giving a victim a copy of the bail condition be made mandatory in any case where an accused person has received bail.
Child Justice Act of 2008 – bail rules applicable to children – child's previous convictions, may not be used against the child during bail application.	Repeat offending by children perpetrators is a problem in communities. While there is an understanding that even children in conflict with the law are to be protected, there is need to ensure that these children understand that childhood is not a pass for them to commit crimes.	It is imperative that statistics be provided that show this anomaly in not using previous convictions for accused children. This provides a better understanding if this provision is not doing more harm than intended. Communities continue to be terrorised by children who do not reform and continue to commit crimes.

The organisation has been advocating for the right of a survivor to obtain a copy of the bail conditions as a way of guaranteeing information for the exercise and protection of rights but also as a meaningful way of participating and contributing to proceedings that concern them. The organisation further suggests the following following reforms be implemented;

1. Implementation of more stringent bail conditions for individuals accused of violent crimes, particularly in cases of domestic violence and sexual offences. Perpetrators of these crimes will face the full might of the law which is a clear indication of the justice system's zero tolerance towards these crimes.
2. Participation of victims in the bail process will guarantee the safety and well-being as victims will be able to inform the court of the possible dangers posed by releasing the accused person on bail for the court to make a decision reflecting prioritisation of victim's rights.
3. Better enforcement of bail conditions could include tracking and monitoring accused individuals who have been released on bail, this could be progressively realised but it is a it can improve outcomes that improve the safety of victims when any accused person has been released on bail. The organisation welcomes the recommendation of 'the use of electronic monitoring system or electronic tagging that tracks and records the accused's movements and location while out on bail'.
4. Increasing public awareness of the issues around bail and victim protection could encourage more responsible use of the bail system and help change public attitudes toward gender-based violence and sexual offences. In practice, all bail campaign held at various courts have indicated that the public is generally unaware of the what bail entails or how victims are to be protected. As such, the justice system does not elicit confidence when victims see perpetrators of violent crimes released back into their communities.

Ilitha Labantu submits that the current bail system, particularly in serious offences like sexual offences, domestic violence and all other forms of violence within the ambit of Gender-Based Violence and Femicide (GBVF) does not ensure the victims' rights to safety, dignity, and justice. Ilitha Labantu is thankful for the for the opportunity to submit our input.