

**WISE 4 AFRIKA (The WISE Collective)**  
**COMMENTS ON THE PROPOSED LEGISLATIVE AMENDMENTS**

Submitted on 09 October 2020

TO: Mr. V Ramaano at [Gbvills@parliament.gov.za](mailto:Gbvills@parliament.gov.za)  
From: Brenda Madumise-Pajibo ([brenda@wise4afrika.org](mailto:brenda@wise4afrika.org))  
Onica N. Makwakwa ([onica@wise4afrika.org](mailto:onica@wise4afrika.org))

Thank you for the opportunity to submit these comments on behalf of Wise 4 Afrika. We wish to also express our interest in also making verbal presentations.

We know and appreciate that a law is not enough to stop domestic violence when is also compounded and aggravated by poor parliamentary oversight and difficulties in holding the police, prosecutors, clerk of the courts and magistrates for their shortcomings. The law transmits powerful messages about women and men, which construct and underpin our social relations. It is important that those messages do not reinforce stereotypical images of womanhood and femininity, or endorse notions of masculinity that are detrimental to women and negative for men. Ideally the law should be capable of transcending difference by first acknowledging it.

Domestic violence is a social evil that sits adjacent to so many other problems we as a society grapple with: education, economics, mental and physical health, crime, gender and racial inequality. it is hard to talk about but it is also utterly hidden and does not happen in a vacuum. It has an enormous financial burden to victims, to taxpayers, to the criminal justice system.

This is the time and opportunity to fund all the laws dealing with gender based violence adequately. The proposed amendments will require a sizable budget for effective application. We expect that all police stations will be fitted with closed cctv cameras, that police officers who respond to domestic violence calls will be equipped with cameras to photograph injuries and the mayhem they find at the home. We propose that every province should have a hotline for victims of domestic violence and that every police station must have a domestic violence unit.

We recognise that the law enforcement are most times the first responders to a violent situation at home and most times treat domestic violence as a nuisance rather than the criminal act that it is.

The proposed amendments place enormous responsibility on the police, prosecutors, clerks of courts, magistrates, social workers and the judiciary. Training in the application of the changes proposed is a must but not just training but a change in attitudes of the criminal justice officials which for the most part has been dismal and downright appalling.

The proposed amendments must be gendered in terms of victimization, perpetration and impacts of violence.

### **Criminal and Related Matters:**

1. **Number 1 - 51 A - Evidence through Intermediaries** is a welcomed amendment but the vetting of intermediaries cannot be left up to the State. The current amendment is silent on who actually appoints the intermediary while it speaks to the magistrate holding an inquiry to assess their competence.  
**Recommendation:** Current justice system is protracted which results in lengthy delays on cases. To ensure expediency and dissemination of power, we recommend setting up a body that includes civil society to form part of a panel charged with the responsibility of vetting and appointing intermediaries. In addition, once the inquiry (51B(2)) has been held by the magistrate on the competence of the recommended intermediary, a **decision to appoint must be made within 48 hours**.
2. **Number 1 - 51B (2) (iii) Qualifications of Intermediary** - What is the required experience envisaged by this clause?
3. **Number 1 - 51C** - we welcome the availability of multimedia platforms for these proceedings. **Recommendation:** The platform should be a closed circuit with technical invigilation level standards to confirm that no coaching or copying from text is taking place during proceedings. Alternatively a court appointed person

should be at both ends of the audiovisual link facilities to confirm that there is no coaching and/or coercion.

4. **Number 2 - 59 (2) - Concern:** The bail application at the police has been systematically abused, as a result there needs to be assurance to protect against continued abuse of this facility to ensure safety of victims.
5. **Number 2 - 59 (3)** - While we accept the right to be released on bail is a constitutional right; however the **State must ALWAYS oppose bail in cases of domestic violence and sexual assaults**. In the event that bail is granted, there must be stringent conditions attached to protect the safety of victims. One of the conditions should include requiring psychotherapy intervention, anger management training and some level of supervision by the police including a recorded check-in schedule at a designated police station on an agreed upon frequency until the case hearing. In addition, where there is no standing protection order against the accused, it should be issued as a condition of bail to ensure further protection for the victim(s).
6. **Number 4 - h(a)** - places the burden of disclosure regarding past offenses on the legal advisers. **Recommendation:** Change "legal adviser" to [registered legal representative] for greater clarity. Also, there must be consequence management for failure to disclose which should include, but not limited to, being reported to the legal practice council and possible disbarment.
7. **Number 9(h)(i)(ii)** - we welcome this provision and assume that it is mandatory and therefore failure to comply will attract sanction.

Additional provisions that **MUST BE INCLUDED** to this bill are:

8. **Disarming of Police with protection orders against them!** It is important to suspend firearm licenses of all with standing protection orders and block any new applications thereof. Example from an immediate past experience – a [female boxer in the Eastern Cape was murdered by a cop boyfriend whom she had a protection order against but he still had access to his service arm.](#)

In addition, here is an example of how a foreign jurisdiction addresses the [restriction of firearm licenses and/or possession to individuals with protection orders and/or misdemeanor domestic violence convictions](#).

Also, the proposed Amendments in the Domestic Violence Act include the seizure of arms possessed by members of the South African Police Service with protection orders - this should align and must include restriction of application for such weapons while a protection order is in force.

## **Criminal Law (Sexual Offences and Related Matters):**

We welcome the **expansion of the sex offenders registry** to include all persons who are or have been convicted of sexual offenses.





9. **Number 1 - Amendment of Section 2 of Act 32 of 2007** - introduces the protection of "**persons who are vulnerable**." This approach lacks the comprehensive understanding of rape as a crime of power of the perpetrator and less about the vulnerability of the victim. It is about the gender inequality, patriarchy and toxic masculinity of the perpetrator regardless of the vulnerability or lack thereof of the victim/survivor and therefore this should be about protecting all citizens from sexual violations and not just the vulnerable ones.
10. **Number 5 - Part (c) on the definition of person who is vulnerable** -
  - excludes persons who are **ages 26 to 59** despite the [many documented incidents](#) of women in that age category who have been violated, including but not limited to journalists, domestic workers, etc. Again, rape is not a crime of maturity and/or strength but rather it is about the power of the perpetrator as often advantaged by their gender and other factors related to power dynamics.
  - Furthermore, this criteria is silent on the protection of members of the **Lesbian, Gay, Bisexual, Transgender, Queer and other gender identities (LGBTQ+)** including gender nonconforming person despite the [nation's history of hate crimes through "corrective rape."](#)

→ In addition, the definition is silent on the **economic disadvantage** of women in particular. For example women tend to occupy the lower paying service jobs in the economy such as cleaners, domestic workers, waitresses, etc., which may place them in a more vulnerable position with regards to power dynamics in the workplace and society in general.

**11. Number 7 on Section 42 of the principal Act (c) on identification details to be entered in the register** - we recommend that the registry only includes the **first 6 digits of the sex offender's ID number (DOB)** in order to comply with privacy requirements as well as to not render the registry as a fertile site for identity theft data mining which could compromise the overall intent of the registry. In addition, the offender's image on file (mug shot) should be included. DOJ & CD must utilize the highest level of cybersecurity encryption on the electronically published website without compromising public access.

- The he registry should also include **an official image of the sex offender**.
- It must be **searchable by name and location**; the location search enables the public to search for offenders within a specific radius of the location. Below is an example of one such registry:

The screenshot shows the 'DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE' interface. It features a search section with 'SEARCH NSOPW' and 'SEARCH BY NAME' (First Name, Last Name) and 'SEARCH BY LOCATION' (Address, City/Town, State, Radius). A table of offenders is displayed on the right, with columns for OFFENDER, AGE, ALIASES, and ADDRESS. A note above the table states: 'The address provided was mapped at a HIGH accuracy level.'

OFFENDER	AGE	ALIASES	ADDRESS
 BANKS, NATHANIEL C	54		300 RHODE ISLAND AVENUE N.E. WASHINGTON, DC 20002 OUT OF STATE Residential + MORE
 BROWN, WILLIAM KENNETH	59	BROWN, WILLIE	DUKE STREET AND SOUTH WALKER STREET ALEXANDRIA, VA 22304 N/A Employment + MORE
 BURGESS, DEVONTE WILLIAM	40	BURGESS, DEVONTIA BURGESS, DEVONTIA BURGESS, DEVONTT BURGESS, DEVANTI	3001 NORTH BEAUREGARD STREET ALEXANDRIA, VA 22311 ALEXANDRIA School + MORE
 CALDERON, CLIFFORD MICHAEL	65	CALDERON, CLIFFORD M CALDERONE, CLIFFORD M	110 SOUTH BRAGG STREET ALEXANDRIA, VA 22312 ALEXANDRIA Residential

## 12. Number 16 Section 51 on removal of particulars from Register -

- (i) we accept the 20 year term limit
- (ii) we challenge the term of 14 years and believe that they must all be the same at 20 years to ensure uniform monitoring.
- (iii) We challenge the term of 5 years and recommend 20 years for the reason stated above.

Importantly, the impact of rape on victims is not any less and/or more severe based on their age, mental health, and otherwise. We must send a message that no act of rape against anyone is ever palatable.

## 13. Number 18 Section 54 on “Obligation to report commission of sexual offences against children or persons who are mentally disabled.”

### Professionals Required to Report

Approximately 47 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands designate professions whose members are mandated by law to report child maltreatment.<sup>4</sup> Individuals designated as mandatory reporters typically have frequent contact with children. The professionals most commonly mandated to report across the States include the following:

- Social workers
- Teachers, principals, and other school personnel
- Physicians, nurses, and other health-care workers
- Counselors, therapists, and other mental health professionals
- Child care providers
- Medical examiners or coroners
- Law enforcement officers

Additional professionals who are mandated to report suspected or known maltreatment by some States include the following:

- Commercial film or photograph processors (12 States, Guam, and Puerto Rico)<sup>5</sup>
- Computer technicians (in 6 States)<sup>6</sup>
- Substance abuse counselors (14 States)<sup>5</sup>
- Probation or parole officers (17 States)<sup>5</sup>
- Directors, employees, and volunteers at entities that provide organized activities for children, such as camps, day camps, youth centers, and recreation centers (13 States)<sup>7</sup>

- Domestic violence workers (6 States and the District of Columbia)<sup>8</sup>
- Animal control or humane officers (7 States and the District of Columbia)<sup>9</sup>
- Court-appointed special advocates (11 States)<sup>10</sup>
- Members of the clergy (28 States and Guam)<sup>11</sup>
- Faculty, administrators, athletics staff, or other employees and volunteers at institutions of higher learning, including public and private colleges and universities and vocational and technical schools (11 States)<sup>12</sup>

### Reporting by Other Persons

In approximately 18 States and Puerto Rico, any person who suspects child abuse or neglect is required to report. Of these 18 States, 15 States and Puerto Rico specify certain professionals who must report but also require all persons to report suspected abuse or neglect, regardless of profession.<sup>13</sup> The other three States—Indiana, New Jersey, and Wyoming—require all persons to report without specifying any professions. In all other States, territories, and the District of Columbia, any person is permitted to report. These voluntary reporters of maltreatment are often referred to as “permissive reporters.”

<sup>4</sup> Alaska, Arizona, Arkansas, Connecticut, Maine, and South Dakota.  
<sup>5</sup> California, Colorado, Maine, Massachusetts, Ohio, Virginia, and West

The Amendment MUST identify professionals who will be seized with this “obligation to report,” such as teachers, medical professionals and social workers. In addition, there must be clear articulation of how this would be implemented to ensure that they receive proper training and an update to their duty of care code of conduct.

The amendment should state that **mandatory reporting guidelines would be developed within 30 days of the adoption of this amendments.** Here is an example of [a guide for mandatory reporting guidelines](#) from other jurisdictions.

## Domestic Violence Bill:

South Africa must aspire to be a nation intolerant of any form of domestic violence; this must be communicated through its laws that would also serve to overcome the existing impunity currently enjoyed by those who perpetrate such. To that end, in addition to the recommendations below and the proposed amendments, we also recommend the following:

- **Police Mistrust and Misconduct** - must be addressed to create a safer space for victims/survivors and to prevent revictimization. As such we recommend the installation and use of CCTV cameras in all police stations, especially to record police interactions with accused perpetrators who seem to enjoy a comrades that enables them to escape the full might of the law. Guidelines should be put in place to protect victims/survivors in the implementation and use of CCTV data. In addition body and dash cameras should be used by police to capture police interaction with the accused and during home searches. This would mitigate current challenges related, but not limited to, disappearance of dockets, accepting of bribes, coaching and advising the accused on escaping the law including advising them to open frivolous counter assault cases.
- **Repeat Pattern of Domestic Violence** - A police registry of those arrested and/or convicted for domestic violence must be automated and made available for reference and including for prosecutors.
- **Domestic Violence Related Criminal Record of Visitors** - where available embassies must review the record of visa applicants for domestic violence history and deny entry accordingly. This is being successfully [implemented in other jurisdictions such as Australia](#). In addition, the Department of Home Affairs cooperated under pressure to deny the entry of convicted abuser, Congolese musician, [Kofi Olomide, following a petition to ban him from entry](#) due to his horrific record of abuse.
- **Interim Safety Orders** must be issued on the spot once the police respond to a domestic violence call. The Police must remove the perpetrator and a 14 day return date must be given for the parties to appear in court for a final protection order.
- **Breach of protection order must be a criminal and civil offense** - to allow victims/survivors to seek recourse.

→ **Consequence Management** - we wish to recognize the inclusion of consequences to act according to the law by those in charge such as police, prosecutors, etc., and emphasize that this is an important aspect to ensure adherence and execution of the measures proposed.

**14. Number 2, Section 1 item on definition of domestic violence**

(i) must include “stalking” and “online violence”

(n) should include Thuthuzela Care Centres in functionaries

(o) on definitions of **harassment**, roman numerical (i) should mention stalking (watching)

→ Also **missing** from the list is: **Cat Calling** - [Webster dictionary definition - the act of shouting harassing and often sexually suggestive, threatening, or derisive comments at someone publicly  
Though I seldom witness catcalling or verbal harassment, I've come to understand how constant and burdensome it can be for women, especially when the words used are crude, violent, or degrading. –]

(w) on definitions of **spiritual abuse** part (c) replace shame with abuse so the sentence reads: “using the complainant’s religious or spiritual beliefs to control, manipulate or abuse him or her” - in order to also capture the sexual abuse within the religious and spiritual practices as well as the mental abuse that could be effected through such manipulation.

**15. Number 3 Section 2A (1) and (2) on Obligations of functionaries relating to domestic violence.**

The amendments are silent on the training requirements for ensuring the effectiveness of functionaries. We therefore recommend that:

- For the South African Police Service - a subset of the service should be created to serve in this functionary role
- Dedicated and ongoing training be conducted with clear monitoring and evaluation of the effectiveness of functionaries
- A domestic violence Whistleblowing Line be setup



**16. Number 3 Section 2B (i) on Obligation to report domestic violence and provide information**

- A standardized prescribed form for reporting must be widely available in all official languages and easily accessible through government buildings, commercial sites, schools, community buildings, etc.
- A Whistleblower/Reporting line must be enabled for voice reporting to ensure inclusion of those who may not be able to write, including but not limited to electronic voicenote facilities.

**17. Number 4 on Arrest by peace officer without warrant**

- Must include automation for **expediting an interim protection order** without the same rigor as when no arrest had been made.

**18. Number 6 on “Application for protection order” Section 4 part 3 (a) on bringing application on behalf of complainant** should include:

- NGO registered with Department of Social Development
- Arresting Peace Officer as noted above in Number 4

**19. Number 7, Section 5 issuing of interim protection order**

In order to help mitigate the burden of locating and identifying the accused by the victim, we recommend that the government use all electronic data at their disposal to build effective, efficient and collaborative systems.

- Courts should have access to the Home Affairs database to retrieve the most recent official image of the accused - if taken in the past 5-10 years, this can be used to assist the officer with identification. This may require an update to Home Affairs forms to disclose that the image could be used for such purposes. Essentially everyone with an ID and/or who has entered the country in the past five (5) years should have a picture and fingerprint deposited with Home Affairs.
- Additional databases such as SARS electronic contact should be available for gathering contact information should an electronic delivery be necessary.

## 20. Number 10 Section 6A on the Establishment of an integrated electronic repository for domestic violence protection orders and related matters

We welcome the electronic automation of protection orders as you will notice this was a key demand accepted by The President from [#TheTotalShutdown](#) [#24Demands \(demand number 17\)](#); it is therefore important that this automation includes the following elements:

- **MUST be accessible** nationally to all law enforcement as and when needed for the sole purpose of protecting victims/survivors
- In practice, it should **eliminate the need for a victim/survivor to need to produce a certified paper copy** especially when experiencing an emergency that requires urgent intervention by police.
- Furthermore, it must be used by police in all jurisdictions for overall monitoring and to inform patrols for **safeguarding communities** without harassment - the best time to protect is before an assault even happens!
- In addition to seizure of existing weapons, new applications for firearm licenses should be restricted and current ones suspended.

## 21. Number 15, Section 11 PART (2) (a) “No person may publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.”

- We vehemently oppose this statement as it seeks to SILENCE victims/survivors of GBV who have a right to tell their story and share their experience.
- Men who perpetrate most reported incidents of domestic violence have historically enjoyed such privacy through the silencing of victims with “defamation suits” while manipulating the criminal justice system to frustrate victims and prevent their access to justice. Finding their voice and being able to freely tell their story is a big part of victims/survivors' journey to recovery and in fact, what has even brought us to this moment of the revision of these bills - womxn refusing to be silenced!
- The impunity that is enjoyed by perpetrators who use “defamation of character” to silence victims/survivors while dodging the criminal justice

system where such character could be reviewed, is another form of system victimization of survivors.

**22. Number 21, Section 18 Parts (a) (2), (b) (a), also Number 22, Section 18A (a) and 18B (1), and Number 23, Section 19 on Regulations**

→ Must all include a **Timeline of within 30 days of the adoption of the new Amendments** by Parliament.

----THE END----