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**To:** The Portfolio Committee on Justice and Correctional Services  
**For attention:** Mr Vhonani Ramaano  
**Per email:** [Gbvills@parliament.gov.za](mailto:Gbvills@parliament.gov.za) and [vramaano@parliament.gov.za](mailto:vramaano@parliament.gov.za)

**Re:** **Domestic Violence Amendment Bill [B20-2020] - FOR SA Submission**

**From:** Ms Daniela Ellerbeck (Attorney)  
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**Date:** Thursday, 8 October 2020 (Deadline: **9 October 2020**)

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**INTRODUCTION:**

Dear Mr Ramaano,

1. We refer to the invitation by the **Portfolio Committee on Justice and Correctional Services** (“the Committee”) to make written submissions on the *Domestic Violence Amendment Bill [B20 – 2020]* (“the Bill”).
2. We make the following submissions to the Committee with regard to the Bill. We would further appreciate an **opportunity to make verbal submissions** at the appropriate time.

### **ABOUT FOR SA, AND OUR INTEREST IN THE BILL:**

3. *Freedom of Religion SA NPC (2014/099286/08) ("FOR SA")* is a legal advocacy organisation working to protect and promote the constitutional right to religious freedom in South Africa.
4. *FOR SA* currently has an endorsement base of religious leaders representing 6 million+ people in South Africa. Its constituency spans across various denominations, churches and faith groups.
5. As such, and because the constitutional right to freedom of religion, belief and opinion (section 15 of the Constitution) is directly affected by any law that attempts to define and regulate "*spiritual abuse*", our constituency has a direct interest in this matter.

### **EXECUTIVE SUMMARY OF SUBMISSIONS:**

6. We note that the Bill, as per the [President's statement](#), is part of "*the most far-reaching legislative overhaul in the fight against gender-based violence and femicide... designed to fill the gaps that allow some perpetrators of these crimes to evade justice and to give full effect to the rights of our country's women and children.*"
7. We further note that as per the Memorandum on the objects of the Bill, the Bill's purpose is to address the practical challenges, gaps and anomalies which have become obvious since the implementation of the Domestic Violence Act (Act 116 of 1998) - "the principal Act", as well as to align the principal Act with the Protection from Harassment Act (Act 17 of 2011).<sup>1</sup>
8. At the outset, *FOR SA* wishes to clearly state it is impossible to hide a criminal act behind the cloak of religious freedom. A crime remains a crime, irrespective of whether it is committed by the postman, policeman or pastor.
9. We commend the Legislature in being part of the multipronged strategy to end gender-based violence. Furthermore, we agree with, and support, the Bill's purpose in broad.
10. We are, however, very concerned about certain provisions of the Bill that would potentially negatively affect and/or interfere with the constitutional right to religious freedom, which our highest court has already defined as including the protection of beliefs which are "*bizarre, illogical or irrational*".<sup>2</sup>

<sup>1</sup> Memorandum on the objects of the Domestic Violence Amendment Bill, 2020 at page 27.

<sup>2</sup> [Prince v President, Cape Law Society, and Others 2002 \(2\) SA 794 \(CC\); 2002 \(3\) BCLR 231 \(CC\)](#) at para 42.

11. This when the Constitutional Court has already said that the fundamental right of “*freedom [of religion] implies an absence of coercion or constraint and ... may be impaired by measures that force people to act or refrain from acting in a manner contrary to their religious beliefs*”.<sup>3</sup>
12. For this reason, FOR SA recommends, in particular, that “*spiritual abuse*” should be removed from the Bill, because the definition is unnecessary as the harm that this definition is trying to legislate, is already prohibited by a multitude of existing laws which ought to be enforced.

### **COMMENTS RELATING TO THE SUBSTANCE OF THE BILL:**

13. We now turn to detailed comment on particular clauses of the Bill.

14. Clause 2(c) – Definition of “coercive behaviour”:

*‘coercive behaviour’ means any abusive conduct or acts of force, intimidation or undue pressure intended to cause a complainant or a related person to act, not to act, or be subjected to certain acts against his or her will.*

14.1. The current definition is problematic in that “*undue pressure*” is a difficult concept to define, because it is by nature hard to develop an objective standard to assess whether or not undue pressure occurred in a specific situation. Indeed “*undue pressure*” remains undefined in the Bill at present. This will pose practical problems to the Bill’s effective implementation.

14.2. *FOR SA* proposes that the definition be tightened further removing the term “*undue pressure*”.

15. Clause 2(d) -Definition of “controlling behaviour”:

*‘controlling behaviour’ means causing the complainant or a related person to be dependent on or subordinate to the respondent by— (a) isolating him or her from sources of support; (b) exploiting his or her resources for personal gain; (c) depriving him or her of the means needed for independence, resistance or escape; or (d) regulating his or her everyday behaviour;’*

15.1. The current definition is problematic in that it includes the “*regulating his or her everyday behaviour*”, when in many domestic relationships (as defined by the Bill) it is common for example, for parents to regulate the behaviour of their children or an employer (whose domestic worker or other employee lives on the same premises) to

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<sup>3</sup> [S v Lawrence & Others v The State & Another 1997 \(4\) SA 1176 \(CC\)](#) at para 92.

do so with his/her employees. This is not necessary controlling behaviour in the sense contemplated by the Bill.

15.2. FOR SA proposes that the definition be tightened further removing the phrase “*regulating ... everyday behaviour*”.

16. Clauses 2(i)(g), 2(i)(hB) and 2(i)(hC) – Definition of “domestic violence”:

**‘domestic violence’ means—**

*(a) physical abuse; (b) sexual abuse; (c) emotional, verbal [and] or psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) [stalking] spiritual abuse; (h) damage to property; (hA) elder abuse; (hB) coercive behaviour; (hC) controlling behaviour;*

16.1. The inclusion of “*spiritual abuse*” in the definition of “*domestic violence*” is unnecessary, because the behaviour in question is already prohibited by a multitude of existing laws. To name but a few examples:

- a) **The principal Act** - can already be used by people suffering abuse at the hands of religious organisations / cults, due to its existing wide definitions of both “*domestic relationship*” and “*domestic violence*” and which allows protection not only against physical abuse (which would be the crime of assault), but also includes - amongst other things - emotional, verbal and psychological abuse, intimidation, harassment (i.e. a pattern of conduct that induces the fear of harm), and controlling behaviour that causes imminent harm to the safety, health or wellbeing of the person);
- b) **The Intimidation Act 72 of 1982** (which makes it a criminal offence to force someone to do (or not to do) something, by intimidating them with violence or threats of violence);
- c) **Consumer Protection Act 68 of 2008** (which covers instances of manipulation, and/or exploitation);
- d) **Protection from Intimidation and Harassment Act 17 of 2011**;
- e) **Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000** (which also prohibits harassment);
- f) The common law crimes of **Assault** (including rape and other forms of sexual assault) and Assault with Intent to do Grievous Bodily Harm (**Assault GBH**);
- g) The common law crime of **administering poison** (which will often overlap with the crimes of assault, **culpable homicide, attempted murder, murder** etc.) and
- h) The common law crime of **fraud** etc.

- 16.2. *FOR SA* has already written extensively on how these existing laws can be applied to combat situations that arise within a religious organisation.<sup>4</sup> These articles are also attached to this submission as annexures A through D.
- 16.3. The fact that these existing crimes are committed within a supposedly religious context does not matter. **It remains a crime even when the victim is a willing participant**, because South Africa's criminal law protects the public's interests too, not just the interests of the "consenting" person. This means that the State has an interest in prosecuting all activities that are against the law, i.e. crimes. By way of analogy, our law says that even if you specifically ask someone to kill you in the event of an assisted suicide, the person who kills you is still guilty of the crime of murder. The State (because it has a duty to protect the public interest) has an interest in bringing all criminals to justice for all crimes, even where your consent (e.g. to be killed) was to your own detriment. In most cases, the consent given, is not true consent because it was not given voluntarily. Rather, it was given as a result of coercion, for example where rogue pastors abuse their power and authority or commit fraud by misleading congregants about the results which will follow the act they are agreeing to. None of this is considered legally to amount to consent.
- 16.4. *FOR SA* submits that when religious practises are conducted in a manner that is harmful, criminal or otherwise unlawful, the answer remains effective enforcement of the relevant, existing laws.
17. Clause 2(w) – Definition of "spiritual abuse":  
*'spiritual abuse' means—*  
*(a) ridiculing or insulting the complainant's religious or spiritual beliefs; (b) preventing the complainant from practising his or her religious or spiritual beliefs; or (c) using the complainant's religious or spiritual beliefs to control, manipulate or shame him or her, including using religious texts or beliefs as a pretext to justify, minimize or rationalize abusive behaviour*
- 17.1. In addition to the problems set out in paragraph 16 above, this definition is problematic as it attempts to create a separate category of abuse for actions which very comfortably fit into the general definition of abuse and/or which are already covered by the provisions relating to emotional abuse etc. This is unnecessary – controlling,

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<sup>4</sup> See for example the following articles available [here](#), [here](#), [here](#) and [here](#).

manipulative, intimidatory, harassing etc. behaviour is illegal despite how it is dressed up (whether religious or otherwise). The definition is also confusing and muddies the waters, because instead of focussing on the type of behaviour that is problematic, it focusses on what that behaviour attempts to disguise itself as.

17.2. *FOR SA* submits that when religious practises are conducted in a manner that is harmful, criminal or otherwise unlawful, the answer remains effective enforcement of the relevant, existing laws.

18. Clause 6 – Application for protection order on behalf of another:

18.1. *FOR SA* supports this inclusion to allow third parties with a material interest in the well-being of a victim of domestic violence, to apply for a protection order on their behalf.

**CONCLUSION**

19. We trust that you will find these submissions of assistance. We would appreciate any feedback or information regarding developments in this regard.

Kind regards,

**Daniela Ellerbeck**

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**THE END.**