

To: The Select Committee on Security and Justice
For attention: Mr Gurshwyn Dixon
Per email: DVABill2021@parliament.gov.za and gdixon@parliament.gov.za

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

From: Adv Nadene L Badenhorst
Legal Counsel, *Freedom of Religion South Africa (FOR SA)*
Per email: legal@forsa.org.za

Date: Thursday, 8 July 2021 (Deadline: **Friday, 16 July 2021**)

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INTRODUCTION:

Dear Mr Dixon,

1. We refer to the [invitation](#) by the **Select Committee on Security and Justice** (“the Committee”) to make written submissions on the [Domestic Violence Amendment Bill \[B20B – 2020\]](#) (“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, our submission will focus on the aspect of the Bill that affects the right to religious freedom.

COMMENTS RELATING TO THE SUBSTANCE OF THE BILL:

6. 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;’

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

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

7. Clause 2(w) – Definition of “spiritual abuse”:

‘spiritual abuse’ means ‘(a) advocating hatred against the complainant because of his or her religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant; (b) preventing the complainant from exercising his or her constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to his or her religious or spiritual convictions and beliefs; or (c) manipulating the complainant’s religious or spiritual convictions and beliefs to justify or rationalise abusing the complainant;’

7.1. *FOR SA* supports this amended definition as it conforms to section 16(2)(c) of the Constitution, while simultaneously protecting the right to religious freedom and freedom of (religious) expression.

7.2. The definition can be strengthened by replacing the word “*abusing*” with “*committing domestic violence against*”.

8. Furthermore, one has to consider the impact of the Constitutional Court’s judgment in [Moyo & Others v Minister of Police & Others](#),¹ on both the Domestic Violence Act² (“the principal Act”) and this Bill. In the matter of *Moyo*, sections 1(1)(b) and 1(2) of the Intimidation Act³ which criminalised speech or conduct seen to threaten another person (whether or not this threat is actually carried out), were held to be unconstitutional because the sections limited the constitutional right to freedom of expression (section 16 of the Constitution). The Court held that criminalising any intentional conduct that creates an objectively reasonable fear of harm to person, property or security of livelihood is overbroad, because it would criminalise protected free speech that does not incite imminent violence, and that “*this understanding of intimidation does not equate to the ‘incitement of imminent violence’ under section 16(2)(b) of the Constitution.*”⁴ As a result, both sections were declared unconstitutional.
9. Although not decided on a religious freedom point, this judgment clearly has implications for the Bill and principal Act in as much as expressive conduct is criminalised without requiring imminent violence.

Recommendation:

10. *FOR SA* proposes that:

- 10.1. the definition of “controlling behaviour” be tightened further, by removing the phrase “*regulating ... everyday behaviour*”;
- 10.2. that the definition of “spiritual abuse” be strengthened, by replacing the word “*abusing*” with “*committing domestic violence against*”; and
- 10.3. the Bill and principal Act be brought in line with the Constitutional Court’s judgment in *Moyo*, by requiring imminent violence wherever expressive conduct is criminalised.

¹ [2019] ZACC 40.

² Act 116 of 1998.

³ Act 72 of 1982.

⁴ At paras 65 and 66.

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

Kind regards,

Adv Nadene L Badenhorst

Legal Counsel

Freedom of Religion South Africa (FOR SA)

Email: legal@forsa.org.za

&

Daniela Ellerbeck

Legal Advisor

Freedom of Religion South Africa (FOR SA)

Email: daniela.ellerbeck@forsa.org.za

THE END.