



## CREATIVELY COMBATING GENDER BASED VIOLENCE

13 December 2021

### Department of Women, Youth and Persons with Disabilities

Attention: Ms Nondumiso Ngqulunga

Email: nondumiso.ngqulunga@women.gov.za

Dear Madam

### THE EMBRACE PROJECT NPC'S WRITTEN SUBMISSION ON THE NATIONAL COUNCIL ON GENDER-BASED VIOLENCE AND FEMICIDE BILL, 2021

1. The Embrace Project welcomes this opportunity to make submissions to the Department of Women, Youth and Persons with Disabilities ("the Department") on the National Council on Gender-Based Violence and Femicide Bill, 2021 ("the Bill").
2. The Embrace Project is a registered non-profit company which aims to "creatively combat" gender-based violence and femicide ("GBVF") in South Africa. We raise funds for grass-roots organisations combating gender-based violence and femicide in their communities through the sale of artwork generously donated to us by various South African artists and creatives. We also create awareness around gender-based violence and femicide (its prevalence and causes) through our social media presence, while simultaneously working at changing the narrative around violence and disempowerment. We do this by running prevention campaigns, and by participating in the development and amendment of legislation impacting gender-based violence and femicide, such as in the current instance.

### Purpose

3. The purpose of the Bill is to establish an independent multi-sectoral advisory body to ensure effective coordination and implementation of the National Strategic Plan on Gender-Based Violence and Femicide, with the inclusion of the necessary reporting mechanisms.

Directors: Leanne Berger and Lee-Anne Germanos

4. We commend the Department for the establishment of this statutory body.

### **Legislative suggestions**

5. We point out that at clause 1 of the Bill, being the definitions section, when defining “Chairperson”, reference is made to “section 6(7)” when in fact the correct section reference should be “section 6(6)”, which pertains to the election of the Chairperson.
6. An opening speech mark/inverted commas should be added to the beginning of the definition for “Committee” in clause 1 of the Bill.
7. The definition for “Constitution” should appear on a new line, and not on the same line as the definition for “Committee” in clause 1 of the Bill.
8. The definition for “Minister” in clause 1 of the Bill should also appear on a new line separate to that for the definition of “member”.
9. The definition for “Public Finance Management Act” should appear on a new line separate to that for the definition of “prescribe” in clause 1 of the Bill.
10. There are two clauses 9(1)(b) in the Bill which appear right after one another. The second sub-clause should be amended to read “9(1)(c)”. Consequently, the reference to section 9(1)(b) in clause 11(1)(d) should also be amended to read “section 9(1)(c)”.
11. Clause 16(a) of the Bill has a spelling error. “[M]anagement” should be corrected to read “manage”.

### **Substantive comments**

12. While we commend the Department for its definition of “Femicide”, we recommend the inclusion of obstetric violence/abuse in the definition of “Gender-Based Violence” in clause 1 of the Bill. Obstetric violence is a specific type of violence that is perpetrated only against pregnant or birthing women and includes physical, emotional, psychological, and even sexual violence committed by healthcare practitioners, such as doctors, nurses and midwives.<sup>1</sup> Obstetric violence is considered by the UN Special Rapporteur on Violence

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<sup>1</sup> Sheena Swemmer ‘Obstetric violence: A war against women that is being waged in the shadows’ Daily Maverick (28 November 2021) available at <https://www.dailymaverick.co.za/opinionista/2021-11-28-obstetric-violence-a-war-against-women-that-is-being-waged-in-the->

Against Women (“UN Special Rapporteur”) to be both widespread and systematic in nature.<sup>2</sup> This is based on a [report](#) that she released on 11 July 2019. This form of gender-based violence has gone unrecognised thus far in our law, because violence against women in childbirth is currently so normalised that it is not considered violence against women at all. This is according to the United Nations Population Fund. Silence on this serious issue is also compounded by the fact that most women who experience this form of gender-based violence are women from low socio-economic statuses. There has now, however, been an upsurge in reporting on the issue,<sup>3</sup> and we therefore strongly recommend that obstetric violence be included in the definition of “Gender-Based Violence” in this Bill, to specifically recognise it. According to the UN Special Rapporteur’s report, in 2015, the World Health Organisation came out in condemnation of obstetric violence, stating that it was “outright physical abuse, profound humiliation and verbal abuse, coercive or unconsented medical procedures (including sterilization), lack of confidentiality, failure to get fully informed consent, refusal to give pain medication, gross violations of privacy, refusal of admission to health facilities, neglecting women during childbirth to suffer life-threatening, avoidable complications, and detention of women and their newborns in facilities after childbirth due to an inability to pay.” The World Health Organisation further stated that obstetric violence “not only violates the rights of women to respectful care, but can also threaten their rights to life, health, bodily integrity and freedom from discrimination.” It violates women’s sexual and reproductive rights.

13. Does the Inter-Ministerial Committee not also include the Department of Women, Youth and Persons with Disabilities and/or the Office of the Presidency? If that is the case, then we suggest that it/they be included in the definition for “Inter-Ministerial Committee” at clause 1 of the Bill.

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<sup>2</sup> United Nations General Assembly *Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence* (11 July 2019).

<sup>3</sup> Nonkululeko Mbuli and Rumbi Goredema Görgens ‘The nurses stood around her laughing’: It’s time to raise the alarm on obstetric violence’ News24 (7 December 2021), available at <https://www.news24.com/parent/pregnant/birth/the-nurses-stood-around-her-laughing-its-time-to-raise-the-alarm-on-obstetric-violence-20211207>.

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14. With regard to the composition of the board set out in clause 6(5)(c) of the Bill, we recommend that it expressly state that the board must be made up of at least 51% women. We make this recommendation given the purpose of the establishment of the National Council on Gender-Based Violence (“the Council”) is to end the war being waged against women, and the fact that women have poor representation in top level management positions in South Africa. Thus, the secondary purpose for this recommendation would be to ensure the attainment of substantive gender equality in the Council – the lack of which is one of the root causes of gender-based violence and femicide.
15. Clause 7(a) of the Bill disallows the appointment of anyone who has been convicted *and sentenced* for any gender-based violence and femicide related offence as a board member. We recommend that conviction of such a gender-based violence and femicide related offence be sufficient for purposes of disqualification for appointment as a board member, and that sentencing should not be an added requirement. Furthermore, because public perception of the Council is vital to its success, we would go as far as to recommend the disqualification of persons *charged* with having committed gender-based violence and femicide related offences, inclusive of such offences committed in labour law, *unless acquitted by a formal process*. Many employees charged with sexual harassment in terms of South African labours laws and workplace policies resign from their places of work prior to the completion of an investigation into, and disciplinary hearing on, such charges in order to circumvent a guilty finding. Furthermore, in terms of South African criminal law, and even labour laws, victims are often intimidated into withdrawing charges. The latter recommendation aims to guard against the two aforementioned scenarios for purposes of preserving the Council’s reputation.
16. Clause 7(g) of the Bill permits the Minister to condone a criminal conviction for purposes of appointment as a board member. We recommend that there be an exception to this condonation. We recommend that clause 7(g) clearly state that the Minister’s condonation does not extend to a person convicted of a gender-based violence and femicide related offence. This exception would align with clause 7(a) of the Bill.
17. With regard to clause 12(2) of the Bill, we recommend that the removal process of a member of the board by the Minister, and such member’s opportunity to be heard prior to removal, be clearly detailed in the Bill so as not to leave the removal process open to challenge, and unnecessary litigation.

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18. We recommend that the “60% of the members present” in clause 13(6) of the Bill be replaced either by “half of the members present plus one” or “an ordinary majority”. The reason for that recommendation is that clause 13(6) does not provide for a scenario where 60% is not attained, and there is no equality of votes either. For example, if all 13 members are present at the meeting, 60% of 13 is 8 members. If 7 members vote one way and 6 members vote another way neither 60% nor an equality of votes is reached in order for the presiding member’s casting vote to be triggered. Even in instances where there is an equality of votes and the presiding member’s casting vote is triggered, it may not result in 60% of the members’ votes depending on the total number of members present at the meeting. To avoid all of these scenarios which are not catered for by the clause, we make the aforementioned recommendation. Alternatively, we recommend that the provision for a casting vote, by the presiding member, in the case of an equality of votes (50%), be removed entirely, as 60% will not have been attained in any event, and the decision should fail on that basis alone.
19. We recommend that the invitation extended to other persons to join board committees, as provided for in clause 14(3) of the Bill, be subject to the same requirements for the appointment of board members, contained in clause 6(5) of the Bill, and disqualifications, contained in clause 7 of the Bill, with the inclusion of the recommendations that were made in paragraph 15 above. We further recommend that the composition of each committee be made up of at least 51% women for the reasons provided in paragraph 14 above.
20. With regard to clause 15(1) of the Bill, which regulates the appointment of the Chief Executive Officer, we recommend that she/he be subject to the same disqualifications as board members in terms of clause 7 of the Bill. We reiterate the additional recommendation made in respect of clause 7 disqualifications, in paragraph 15 above, for clause 15(1) as well.
21. We reiterate the recommendation made in paragraph 20 above, and suggest that disqualification of appointment be extended to the Secretariat – the appointment for which is provided for in clause 17(3)(b) of the Bill. We also recommend the inclusion of a requirement that the Secretariat be made up of at least 51% women for the same reasons articulated in paragraph 14 above.

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## General comments

22. Any employees employed by the Council should be subject to the same disqualifications from employment as those contained in clause 7 for the appointment of board members. Furthermore, we recommend that they also be disqualified from employment based on the additional recommendations that were made in paragraph 15 above. We make these recommendations because the reputation of the Council is paramount, and because it cannot be seen to be employing persons against whom it is meant to be guarding. Lastly, we recommend that the total number of employees employed by the Council be made up of at least 51% women, given the reasons articulated in paragraph 14 above.

## Conclusion

23. We thank the Department for the opportunity to comment on the Bill at this late stage, and look forward to the establishment of the Council.

24. We hope that our comments are helpful, and that they add value.

25. Should you have any queries, please do not hesitate to contact us.

Yours faithfully



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