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TO: PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

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DOMESTIC VIOLENCE AMENDMENT BILL

JOINT SUBMISSIONS BY

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INTRODUCTION

1. We, a multi-stakeholder collection of civil society activists, technologists, policymakers, researchers, and feminists, welcome this opportunity to submit written comments in response to the Domestic Violence Amendment Bill (**the Bill**), introduced by the Minister of Justice and Correctional Services in the National Assembly and published in the *Government Gazette* in August 2020. This submission was jointly drafted by individuals from:

1.1. **Research ICT Africa (RIA)**, a regional digital policy and regulation think tank based in Cape Town and active across Africa and the global South. RIA conducts research on digital economy and society that facilitates evidence-based and informed policymaking for improved access, use and application of information and communication technologies (ICTs) for social development and economic growth. RIA also has a dedicated digital policy unit which specialises in Internet governance, digital rights, cybersecurity, gender, innovation (including artificial intelligence and the Internet of Things), and data justice. Understanding the needs and digital challenges of vulnerable and marginalised communities – including women, youth, children, the elderly, and people in rural areas, for example – form an integral part of RIA’s work. For more about RIA, please visit: researchictafrica.net.

1.2. **The Association for Progressive Communications (APC)**, an international network of civil society organisations founded in 1990, dedicated to empowering and supporting people working for peace, human rights, development and the protection of the environment, through the strategic use of ICTs, including the Internet. APC has worked to build a world in which all have easy, equal, and affordable access to the creative potential of ICTs to improve their lives and create more democratic and egalitarian societies. The APC Women’s Rights Programme (APC WRP) has worked for over a decade to render visible the impact of online gender-based violence (GBV) on women’s rights. Working with women’s organisations, we advocate to identify, monitor, analyse and combat uses of the internet and digital technologies that are harmful to women and marginalised communities. Additionally, we have advocated for Internet policy and regulation that enable the expression, protection and promotion of human rights,

women's rights, and the rights of people of diverse sexualities to both states and private sector actors. For more about APC, please visit, www.apc.org.

1.3. **ALT Advisory (ALT)**, a public interest advisory firm, based in South Africa, with experience in domestic, regional, and international human rights law and litigation. We assist a range of clients with advisory, research, training and technology services in the following practice areas: (i) public law; (ii) information rights; (iii) data privacy; (iv) emergent technology; and (v) social innovation. Moreover, ALT Advisory works in association with Power Singh Inc., a duly registered South African law firm, that also offers public interest litigation services, including a full range of legal services relating to sexual violence and harassment. ALT seeks, in all instances, to act in the public interest, and has the promotion and protection of human rights, both off- and online, as our overarching aim. We pride ourselves in providing quality services to our clients, timeously and effectively, that are individually tailored to ensure that our clients are best able to fulfil their own mandate through the assistance provided. For more about ALT, please visit altadvisory.africa.

1.4. **Feministing While African (FWA)**, is a community and network of feminists across Africa and the African diaspora organising on digital platforms seeking to establish safe collaborative spaces for feminist conversations and solidarity. The FWA has been created with the understanding that we have varied experiences while navigating society as African feminists and sharing them as a collective helps us grow and become more effective towards the political goals of feminism. The community is also meant to shape how we relate to each other in practice to dismantle an aspect of patriarchy that has socialized women to fear dialogue with one another. It is a value tool for solidarity within the movement through discussion-based learning, listening, speaking, consciousness raising, knowledge and resource sharing as well as lived experiences that will help unveil and dismantle oppressive structures and systems. Members of the FWA network who have signed onto these submissions include: Tinatswe Mhaka; Amanda; Azakhiwe Höhling; Lweendo Hamukoma; Chiedza Pasipanodya; Chipo Nyambuya; Lihlomile Jack; Nonhlanhla Chanza; Mihlali; Leandra Lawrence; Aza Lawrence; Danielle Wierenga; Anda; Somila Mtiya; Zoltán Höhling; Mihlali; Michel'le Donnelly; Marinda; Vicky; Anda; Olivia Wong; Kuhle Mande; Sine Bottoman; Mehluko Ntshokoma;

Katharina Fleiter; Karabo Rajuili; Matida Kebbeh; Mary Tumushime, Rahwa Tilahun Yohanness; Mase Ramaru; African Feminist Group; and Feminist Voices Zimbabwe. For more information about FWA, please visit twitter.com/feministingwaf?lang=en.

2. Together, this multistakeholder community welcomes the opportunity to provide this submission. We note the important acknowledgement by the Portfolio Committee on Justice and Correctional Services (**Portfolio Committee**) that practical challenges, gaps, and anomalies have manifested since the Domestic Violence Act, No. 116 of 1998 was put into operation in 1999. In our view, the proliferation of online harms, or harms facilitated, abetted, or aggravated by the Internet, social media and the use of ICTs, is indeed a practical challenge that has grown increasingly prevalent over the last two decades. Owing to the prevalence of emerging technologies and the potential for harm, violence and abuse in the digital environment, we submit that the Bill reflect these emerging and developing challenges to ensure victims and survivors of domestic violence, both on- and offline, are afforded the maximum protection from domestic abuse that the law can provide.
3. This submission is tailored to three key issues: (i) ensuring that the Bill adopts a nuanced and evolving understanding of online domestic violence and domestic violence aided, facilitated or abetted by ICTs; (ii) reporting responsibilities in relation to directions; and (iii) the need for data protection requirements in respect of the integrated electronic repository for domestic violence protection orders.
4. The submission is structured as follows:
 - 4.1. **First**, an overview of the evolving context in which domestic violence occurs online;
 - 4.2. **Second**, our submissions regarding the overarching considerations to be taken into account in the Bill; and
 - 4.3. **Third**, our submissions regarding the specific provisions of the Bill.
5. These are dealt with in turn below.

THE EVOLVING CONTEXT OF DOMESTIC VIOLENCE

6. We make this submission in the public interest to help ensure that spaces (both offline and online) are accessible, safe, and inclusive. While we welcome emerging technologies and all of their potential for sustainable development, and encourage increased access to the digital world, we would be remiss not to note the increase in online harms, or harms facilitated, abetted, or aggravated by ICTs. The Internet, initially envisaged as a safe and accessible place with significant potential for empowerment, has in many instances become yet another space in which domestic violence, harassment, abuse, misogyny, sexism, racism, homophobia, and transphobia are amplified – also for victims and survivors of domestic violence.
7. Like the Portfolio Committee, we firmly believe in the importance of finding better ways to prevent and address domestic violence as a persistent human rights violation that not only threatens the security and safety of its victims and survivors,¹ but particularly hinders people from being full and equal participants in society. Given our respective experience in and extensive work on telecommunications and digital policy across the continent, we are particularly concerned about the fact that the same forms of discrimination in social, economic, cultural and political structures that result in gender-based and domestic violence are being reproduced, and sometimes even amplified, online or as a result of ICTs.² It cannot be gainsaid that the various forms of violence that occur online form a part of the same continuum of violence that occurs offline.
8. In a 2015 resolution on eliminating domestic violence, the UN Human Rights Council recognised that the act of domestic violence includes cyberbullying and cyberstalking.³ While domestic violence is far from new, an added technological dimension can aggravate the effects thereof for victims and survivors by introducing elements of searchability, persistence,

¹ Throughout the submissions we were to victims and survivors, mindful that it is important to take into consideration the different contexts, experiences, and responses that stem from violence, particularly gender-based violence. In *Centre for Child Law and Others v Media 24 Limited and Others* [2019] ZACC 46, the Constitutional Court adopted this terminology and reasoning.

² APC (2017) *Online gender-based violence: A submission from the Association for Progressive Communications to the United Nations Special Rapporteur on violence against women, its causes and consequences*. Available at: <https://www.apc.org/en/pubs/online-gender-based-violence-submission-association-progressive-communications-united-nations>.

³ UNGA (2015). *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo* (A/HRC/29/27/Add.2). Available at: <https://undocs.org/en/A/HRC/26/38>.

replicability and scalability which facilitate aggressors' access to potential victims and survivors; and can thereby escalate and exacerbate harm.⁴

9. The perpetrators of domestic violence have already exploited the affordances of the Internet and their insider knowledge of intimate partners to increase their capacity to control and harm their targets.⁵ For example:

9.1. There is an increased acknowledgement of the presence of cyberviolence against women in **South Africa**. UN Women released a statement calling for an end to cyber violence against women and girls in South Africa in April 2020, but concrete statistics on this form of violence have not been gathered or released as yet.

9.2. One in three women in **Uganda** have faced online gender-based violence; with 72.9% taking place on Facebook, 38.1% on WhatsApp, and 4.7% on Instagram.⁶

9.3. In the **USA**, a recent survey found that 97% of domestic violence programs reported that abusers use technology to stalk, harass, and control victims, while 86% of such programs reported that victims and survivors are harassed through social media.⁷

9.4. A recent study by Amnesty International polled women who experienced abuse or harassment on social media platforms, and found that 18% of women in the **UK** and 23%

⁴ OSCE (2019) *OSCE-led Survey on Well-being and Safety of Women*. Available at: https://www.osce.org/files/f/documents/9/2/413237_0.pdf; Sey, A. & Hafkin, N. (Eds.) (2019) *Report of Equals Research Group, led by the United Nations University*. UNU & Equals Partnership. Available at:

<https://i.unu.edu/media/cs.unu.edu/attachment/4040/EQUALS-Research-Report-2019.pdf>; Hassan, B.; Unwin, T. & Gardezi, A. (2018) Gender, Mobile, and Mobile Internet: Understanding the Darker Side of ICTs: Gender, Sexual Harassment, and Mobile Devices in Pakistan. *Information Technologies & International Development* (Special Section), vol. 14: 1–17; Kee, J.S.M.K. & Van der Spuy, A. (Eds.) (2016) *Internet Governance Forum (IGF) 2015: Best Practice Forum (BPF) on Online Abuse and Gender-Based Violence Against Women*. Geneva: IGF. Available at:

<https://www.intgovforum.org/cms/documents/best-practice-forums/623-bpf-online-abuse-and-gbv-against-women/file>; Nyst, C. (2015) *End Violence: Women's Rights and Safety Online - Technology-related violence against women: recent legislative trends*. APC. Available at:

http://www.genderit.org/sites/default/upload/flowresearch_cnyst_legtrend_in.pdf; End Violence Against Women Coalition (EVAW) (2013). *New Technology, Same Old Problems*. Available at:

[http://www.endviolenceagainstwomen.org.uk/data/files/Report New Technology Same Old Problems.pdf](http://www.endviolenceagainstwomen.org.uk/data/files/Report%20New%20Technology%20Same%20Old%20Problems.pdf).

⁵ Suzor, N.; Dragiewicz, Harris, B.; Gillett, R.; Burgess, J. & Van Geelen, T. (2019) Human Rights by Design: The Responsibilities of Social Media Platforms to Address Gender-Based Violence Online. *Policy & Internet*, vol. 11 (1).

⁶ Iyer, N.; Nyamwire, B. & Nabulega, S. (2020) *Alternative Realities, Alternative Internets: African Feminist Research for a Feminist Internet*. Pollicy.org. Available at: <https://ogbv.pollicy.org/report.pdf>.

⁷ National Democratic Institute (NDI) (2019) Tweets that Chill: Analyzing Online Violence Against Women in Politics. NDI. Available at: <https://www.ndi.org/sites/default/files/NDI%20Tweets%20That%20Chill%20Report.pdf>.

of women in the **US** said that the perpetrators of the abuse were current or former partners.⁸

10. In countries like South Africa, where just over 50% of the population are online,⁹ it is essential that any legislative responses to violence facilitated by ICTs (such as those now proposed by the Portfolio Committee on Justice and Correctional Services) take into consideration how multiple and intersecting forms of discrimination can intensify experiences of domestic and gender-based violence.
11. It is therefore important to keep in mind that in a South African context, significant access discrepancies persist between rural or urban areas, between people of different sexes and gender, between poor or wealthier segments, between literate or illiterate people, and between children, adults and the elderly. For those who are online, Internet use is often intermittent and passive. A relatively small number of South Africans actually have the skills or resources to participate meaningfully online¹⁰ – or to protect themselves from the risks that accompany digital inclusion. Many households in South Africa share one Internet-accessible device, usually a smartphone. Younger members of the population are gaining some digital skills from school and may be more knowledgeable than their guardians,¹¹ which puts them at risk of engaging on the Internet without being supervised in a meaningful way.
12. Besides the need to consider the local contexts, challenges related to responding to domestic violence facilitated by ICTs evolve at a significant pace, continuously introducing new governance and regulatory challenges. While addressing online harms might be a key priority for policymakers around the world today, it is important to also consider the ways in which ‘new’ technologies that underpin the so-called Fourth Industrial Revolution (4IR),¹² like the

⁸ Amnesty International & Element AI (2020) *Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse against Women on Twitter*. Available at: <https://decoders.amnesty.org/projects/troll-patrol/findings>.

⁹ Gillwald, A. Mothobi, O. & Rademan, B. (2019) *The State of ICT in South Africa*. Research ICT Africa. Available at: https://researchictafrica.net/wp/wp-content/uploads/2018/10/after-access-south-africa-state-of-ict-2017-south-africa-report_04.pdf.

¹⁰ Gillwald, A. Mothobi, O. & Rademan, B. (2019) *The State of ICT in South Africa*. Research ICT Africa. Available at: https://researchictafrica.net/wp/wp-content/uploads/2018/10/after-access-south-africa-state-of-ict-2017-south-africa-report_04.pdf.

¹¹ Bulger M, Burton P, O’Neill B, Staksrud E. Where policy and practice collide: Comparing United States, South African and European Union approaches to protecting children online. *New Media & Society*, vol. 19(5): 750-764.

¹² Gillwald *et al.*, *ibid.*

Internet of Things (IoT), Artificial Intelligence (AI), and additive manufacturing, might create new avenues for violence and abuse now or in the future.

OVERARCHING CONSIDERATIONS

13. With this background in mind, and before submitting comments on specific sections and clauses of the Bill, we highlight the following overarching concerns or considerations before delving into specific provisions of the Bill.

Governing online and technology-facilitated behaviour

14. Governing online and/or technology-facilitated behaviour – such as that taken by a perpetrator of domestic violence – is difficult from a practical perspective due to the nature of the Internet as a network of networks.¹³ For governance responses to be effective, broad participation and collaboration with the private sector, including intermediaries and social media platforms, the technical community, and civil society, and users is ideally needed. Such multi-stakeholder approaches, responsive to inequalities and power structures in South Africa, are useful in enabling a higher degree of openness, transparency, and the broad-based collaboration and equal participation of all those affected. This includes the victims/survivors of domestic abuse and violence themselves.
15. **We therefore encourage the Portfolio Committee to continue to gather the input of various stakeholders – including through consultations with relevant communities, like feminist and civil society organisations and communities – before developing this Bill further.**

A lack of adequate data

16. One of the most significant policy challenges in curtailing potential risks that accompany digital inclusion (also for the victims/survivors of domestic violence) is the lack of data pertaining to how perpetrators and victims/survivors access and use the Internet, including their

¹³ Van der Spuy, A. (2017) *What if we all governed the Internet? Advancing Multistakeholder Participation in Internet Governance*. Paris: UNESCO. Available at: https://en.unesco.org/sites/default/files/what_if_we_all_governed_internet_en.pdf.

preferences, needs, concerns, perceptions and experiences. A recent report, for instance, has cautioned that there is a lack of understanding of the prevalence of different types of online violence; data is often not gender-disaggregated; and data fail to take into account intersectional impacts on class, women with disabilities, refugee situations, or traditionally marginalised areas.¹⁴ Little research has also been done to investigate how the victims and survivors of domestic violence can use the Internet to understand, seek help, advice and find solutions for harms they face in the offline world. Without gathering such data, policymakers are unable to make assumptions about online risks. And they are even less able to develop policies on the basis of assumptions of the risks people face online. Local policymakers are unlikely to be able to make any reasonable inference from even conservative statistics from other contexts (especially from the global North, from where the limited data available comes).

17. **Accordingly, we urge the Portfolio Committee to consider the prevalence and incidence of domestic violence that is committed, abetted or aggravated, in part or fully, by the use of ICTs like the Internet by reviewing existing research and evidence, and where data is not available, to commission same before legislating on the issue. We also urge the gender disaggregation of domestic violence data to include the use of ICTs in the perpetuation of violence, including specific data on violence against gender and sexual minorities.**

The opportunities and challenges of the Internet

18. It is important to keep in mind that access to the Internet and other technologies can and do also help victims and survivors of domestic abuse or violence understand and respond to the risks that they might face online and offline, inform them about how to avoid risk, find help when they are exposed to negative online experiences, report violence, and connect with other victims/survivors who may have had similar experiences. ICTs can, for example, be used as safety tools and to monitor human rights and the abuse thereof – most of the time:

- 18.1. For example, in Egypt, HarassMap uses crowdsourcing methods to enable women to report sensitive challenges like harassment, which previously tended to be underreported in the country due to entrenched stigmas and stereotypes.

¹⁴ Iyer *et al.*, 2020, *ibid.*

- 18.2. Another example is rAIInbow,¹⁵ an AI-powered smart companion that helps victims/survivors of domestic abuse understand their rights, recognise abusive behaviour, and gain access to justice.
- 18.3. On the other hand, similar applications designed to promote women’s safety, for example by tracking them on their cellular phones, have been misused by families and/or abusive partners to monitor, follow and/or even abuse women.
19. Research shows that victims/survivors of online infringements of human rights (like those suffering from domestic violence), tend to under-report online infringements of human rights because victims often believe online harms are too ‘abstract’ to be taken seriously by relevant authorities (e.g., the SAPS) and online intermediaries (e.g., Facebook or Twitter), and are not ‘on par with’ the harms that result from ‘offline’ infringements.
20. **We strongly encourage the Portfolio Committee on Justice and Correctional Services to support the gathering of more research to provide a proper understanding not only the factors that may make some South Africans in particular more vulnerable to harm from online risks, but also the supporting environments they have or do not have to help them deal with such potential exposure to online risk.**

The role of Internet intermediaries

21. Domestic violence facilitated by or through ICTs form part of a plethora of other risks and harms that are often dealt with by other stakeholders (e.g., Internet intermediaries). To develop a sound legislative response to such harms, it is important to adopt a holistic approach to domestic violence facilitated by ICTs by considering the other uses and abuses of technologies. This includes the need to collaborate closely with digital platforms and intermediaries (e.g., Facebook, Instagram, Weibo, Twitter, or TikTok) to investigate and develop effective, scalable responses to prevent, mitigate and/or address related harms.

¹⁵ See: <https://www.hirainbow.org/>.

22. ***We strongly encourage the Portfolio Committee to take a broader view to understanding the role(s) of technology and digital intermediaries in supporting or mitigating the impacts of domestic violence in diverse contexts in South Africa (e.g., for people with more or less connectivity, or people with more or less digital literacy skills).***

The amended Films and Publications Amendment Act

23. Some of the domestic violence facilitated by or through ICTs may overlap with conduct that will be dealt with by the Cybercrimes Bill, 2017, and the amended Films and Publications Amendment Act. But this should not mean that the Bill should not deal with this conduct. Both the Cybercrimes Bill and amendments to the Film and Publications Act are focused on very different objectives to the Domestic Violence Act and to the Bill. Importantly, neither the Cybercrimes Bill nor the Film and Publications Act give sufficient agency to those who suffer from violence facilitated by or through ICTs, whereas the Domestic Violence Act and Bill have as their objective providing the maximum protection from domestic abuse that law can provide. The Cybercrimes Bill has not yet been enacted and may well not be enacted before the amendment of the Domestic Violence Act by the Bill, while the amendments to the Film and Publications Act are not yet in force. As a result, there is a regulatory gap that should be addressed by the Bill, but in a manner that recognises victims/survivors agency.
24. ***We strongly encourage the Portfolio Committee on Justice and Correctional Services to ensure that domestic violence facilitated by or through ICTs is adequately and appropriately addressed in the amendments to the Domestic Violence Act and not deferred to other legislation.***

The right to privacy

25. ***We strongly encourage the Portfolio Committee to ensure the right to privacy and data protection principles relevant to the use of ICT and data-driven technologies are reflected (or properly implemented and/or enforced, when they have not yet been) in the Amendments. This is important in order to avoid the replication and even amplification of harm in cases of security breaches and assurance to victims that their personal information will be secured. This requires collaboration with the Information Regulator to be responsive to privacy and data concerns in the context of gender-based violence.***

SUBMISSIONS ON SPECIFIC PROVISIONS OF THE DRAFT REGULATIONS

Section 1: Definitions

26. We commend the Portfolio Committee for recognising the need for expanding the definition of harassment. However, we are concerned that the proposed amendments do not go far enough in providing for digitalised environments.
27. We respectfully submit that the definition of harassment should more clearly encompass abuse and violence facilitated by ICTs. This is important because, over the past few years, increasing attention has been paid to understanding the nature, harm and consequences of online forms of gender-based violence and abuse, including domestic violence and gender-based violence facilitated through ICTs and related datafication processes. This is evidenced by the formal recognition of online abuse and gender-based violence in significant human rights policy spaces and the focus on secure online practices for women, gender and sexual minorities, survivors and victims of domestic abuse victims, and human rights defenders.¹⁶
28. In raising this concern, we are mindful of some of the challenges, definitionally, that these emergent forms of harm create.
- 28.1. **Various definitions:** Conduct that amounts to GBV, including abuse or violence that is experienced online or facilitated through the use of ICTs and datafication processes, is still not consistently defined. Different institutions and stakeholders refer to related incidents using a plethora of terms that are similar but not necessarily synonymous (e.g., gender-based cybercrime, online abuse, cyber violence, online violence, technology-related gender-based violence). This sometimes amounts to unnecessary confusion and may make it more difficult for stakeholders (including private sector actors) to respond effectively to related issues.

¹⁶ UN HRC (2018). Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/214/82/PDF/G1821482.pdf?OpenElement>; CEDAW (1992). *General Recommendation No. 19 (11th session, 1992): Violence against women*. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

- 28.2. **The evolving nature of online harms.** While we acknowledge the inclusion of ‘electronic means’ in the Bill, we submit it is imperative that emerging technological mediums, some of which are yet to be developed, may pose risks or facilitate harm. In addition to ‘traditional’ mediums that are used for harassment, therefore, the terminology as far as the medium is concerned should cover examples of harassment or violence that are facilitated by or through ICTs and datafication processes as well as examples of conduct that include online violence, harassment and/or abuse.
- 28.3. Such a definition should acknowledge that domestic violence can both be facilitated through ICTs (commonly in ‘offline’ spaces, e.g., at public access facilities) and can occur online (e.g., cyber stalking) or through datafication processes (e.g., the creation of ‘deepfakes’).
- 28.4. Further to this, victims and survivors who may not be online, may also suffer online violence and/or abuse (e.g., the distribution of rape videos online where victims/survivors are unaware of the distribution of such videos online).
- 28.5. On the other hand, for many women who are active online, online spaces are intricately linked to offline spaces; making it difficult to differentiate between experiences of events that take place online versus events offline events.
- 28.6. Given the rapidly evolving nature of ICTs and datafication processes, abuse and violence should be defined in technology-agnostic ways to remain relevant for changing technologies and related processes. Future or so-called ‘new’ or ‘emerging’ technologies (e.g., those of the Fourth Industrial Revolution), for instance, might facilitate seemingly novel forms of abuse (e.g., artificial intelligence bias against black women resulting in economic harms).
- 28.7. For this reason, definitions should not be exhaustive or definitive but rather facilitative.

29. However, and notwithstanding these challenges, we propose that the definitions of (i) domestic violence and (ii) sexual harassment be expanded to reflect violence and harms that occur online. In this regard, we propose the following definition be read into the Bill:¹⁷

Online domestic violence means acts of domestic violence that are committed, abetted or aggravated, in part or fully, by the use of information and communication technologies (ICTs), such as mobile phones, the internet, social media platforms, and email.

30. Additionally, and listed below, are definitions adapted from various sources, that may be of use to the Portfolio Committee in revising the Bill.¹⁸ However, we caution that this is not an exhaustive list of online harms and violence and implore the Portfolio Committee to be cognisant of the evolving nature of the digital environment and the evolving nature of harms and violence that may occur.

30.1. Surveillance, tracking and monitoring: Using technology to monitor, track and or/surveil person's activities and behaviour both on- and offline, either in real-time or historically. This can include the use of spyware or keyboard loggers without a person's consent, and/or using GPS or other geolocator software to track person's movements without consent, and/or using a connected device including a camera, microphone or audio speaker to watch, or pursue the complainant or a related person.

30.2. Controlling devices: Accessing, using, and/or manipulating a person's electronic devices without their consent. This can be done in the presence of the person or remotely. This can include controlling smart or IoT devices to destabilize the complaints or a related person's perceptions of reality, and controlling, or preventing the complainant or a related person from controlling connected devices and systems. This can also amount to controlling behaviour and/or coercive behaviour.

¹⁷ This has been adapted from Association for Progressive Communications, 'Online gender-based violence: A submission from the Association for Progressive Communications to the United Nations Special Rapporteur on violence against women, its causes and consequences' (2017) (accessible at https://www.apc.org/sites/default/files/APCSubmission_UNSR_VAW_GBV_0_0.pdf).

¹⁸ Iyer *et al*, 2020 (*ibid*); Brudvig, I. & van der Wilk, C. (2020) Covid-19 and increasing domestic violence against women The pandemic of online gender-based violence' Web Foundation. Available at: <http://webfoundation.org/docs/2020/07/WWWF-Submission-COVID-19-and-the-increase-of-domestic-violence-against-women-1.pdf>.

- 30.3. **Online harassment:** Use of technology to cause harm or inspire the reasonable belief that harm may be caused to the complainant or a related person by unreasonably following, watching, engaging in electronic communication, sending texts, photos, videos, recordings, or other electronic content. This can include cyber bullying; abuse comments; the unsolicited sending and/or receiving of sexually explicit materials; and the use of sexist and/or gendered comments.
- 30.4. **Direct threats and/or violence:** Directly or indirectly disseminating online or through electronic devices threats of violence, including threats of sexual and/or physical violence.
- 30.5. **Malicious distribution:** Using technology as a tool to manipulate and distribute content; including creating fake content of a person without consent; the non-consensual sharing of personal and/or intimate images; the non-consensual dissemination of personal information, obtaining, making available, broadcasting or distributing, by means of a computer system, private and confidential information of the complainant or a related person without consent; and doxing which includes researching and broadcasting personally identifiable information about an individual without consent.
- 30.6. **Intimate image:** A visual depiction (i) real or simulated and made by any means in which—(aa) the subject is nude, or their genital organs or anal region, or if the subject is a female, her breasts, are displayed; (bb) the covered genital or anal region of the subject B, or if the subject is a female, covered breasts, are displayed in a manner that violates or offends the sexual integrity or dignity of the subject and (ii) in respect of which the subject so displayed retains a reasonable expectation of privacy at the time that the data message was made.
- 30.7. **Intimate audio recording:** An audio recording whether real or simulated by any means in which the subject is engaged in an intimate act including sexual intercourse."
31. The above conduct (which is not an exhaustive list) abuses, humiliates, degrades, or otherwise violates the sexual and bodily integrity of a person, and should be incorporated in the Bill.

Section 5B: Electronic communications service provider to furnish particulars to court

32. We commend the Portfolio Committee for recognising the need for expanding the powers of Courts considering applications for protection orders to include obtaining information from electronic communications service providers. Since the use of electronic communications services to perpetrate violence is a growing issue the extent of which is both rapidly changing and not fully known it would be helpful in combating the problem to require electronic communications service providers to report on the number of court orders they receive a year. The data report would not include any confidential information but it would be helpful in combating violence committed through electronic communications services to have electronic communications services give statistical information on the number of court orders per magisterial district, per province and per month.

33. Accordingly, we propose the following addition to Section 5B

13. Every electronic communications service provider listed in the list that is created in terms of (8)(a) shall, not later than 31 January of each year succeeding a year in which it was listed in the list created in terms of (8)(a) send a report to the South African Human Rights Commission setting out in respect of directions made in terms of (1)(b) and received by that provider during the previous year:

- (a) the number of directions;
- (b) the number of directions in which it was possible to provide information which indicated that the electronic communication was not from the electronic communications identity number;
- (c) the number of directions in which it was possible to provide information which indicated that the electronic communication was not from the electronic communications identity number of the person to the electronic communications identity number of the complainant;
- (d) the number of directions in response to which the service provider was able to provide information of assistance to the court to identify the person who disclosed the electronic communication or the

electronic communications service provider, that provides a service to that person;

- (e) the number of directions in response to which the services provider was able to provide information of assistance to the court to identify the electronic communications service provider whose service was used to host or was or is used to disclose the electronic communication in question;
 - (f) the number of directions in response to which the service provider indicated that it was able to remove the electronic communication or a link to the electronic communication;
 - (g) the number of directions in response to which the service provider indicated that it was able to disable access to such electronic communication or a link to such electronic communication;
 - (h) the number of times in which a court directed the service provider to remove an electronic communication or a link to the electronic communication;
 - (i) the number of times in which a court directed the service provider to disable access to such electronic communication or a link to such electronic communication;
 - (j) in respect of each of the numbers in (a) to (h) the number in that category by originating court and by month of first receipt.
- (14) The Director General (or another appropriate entity or individual) shall aggregate the reports received in terms of (13) to publish and aggregate report annually on the operation of this section.

Section 6A: Establishment of an integrated electronic repository for domestic violence protection orders and related matters

34. We commend the Portfolio Committee for recognising the need for expanding the abilities of victims and survivors to apply for protection orders online, and we welcome the acknowledgement that the integrity of the integrated electronic repository is paramount. However, further safeguards are necessary to ensure that the sensitive and personal data is

protected. We note with concern that further harm and violence may occur if this information is not appropriately secured and protected.

CONCLUSION

35. We welcome and encourage the efforts of the Portfolio Committee in respect of this Bill. We appreciate the opportunity to provide this submission and would welcome the opportunity to make further oral submissions.

36. Notwithstanding the important strides that have been made, there is still work to be done to ensure that victims and survivors of domestic violence are afforded the maximum protection the law can provide. Additionally, and as our lives continue to move increasingly online, there is an urgent need to ensure that such protections extend to the digital realm. Accordingly, for the reasons we have advanced, we urge the Minister and the Portfolio Committee to reconsider its approach to online domestic violence, and appropriately implement the submissions set out above.

9 October 2020

Research ICT Africa
Association for Progressive Communications
ALT Advisory
Feministing While African

ADDITIONAL READING SUGGESTIONS

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