



**SUBMISSION ON THE PREVENTION AND COMBATING OF HATE CRIMES AND HATE
SPEECH BILL (B9-2018)**

The Portfolio Committee on Justice and Correctional Services

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INTRODUCTION

This submission is made by Matimba and the Equal Education Law Centre (“**EELC**”) in response to the call for comments on the Prevention and Combating of hate crimes and hate speech Bill [B9-2018] (the “Bill”), as it relates specifically to lesbian, gay, transgender, queer and intersex (LGBTQI) and gender variant children and adolescents.

Matimba is an organization that was founded in 2019 to support trans and gender-variant children, teenagers, and their families to cultivate a healthy, caring, and safe environment for these children and teenagers to grow up in. We do work with families, schools, and all other avenues that may impact the lives of transgender and gender-variant individuals and their development. We advocate for these individuals to access adequate and competent services in order for them to have childhoods that all children deserve.

The EELC is a public interest law centre using legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa. One of our key focal areas of work is inclusive education where we advocate for regulatory reform to ensure the inclusion and protection of the rights of vulnerable learners. As part of EELC ‘s work we run a daily education walk in clinic where we have assisted learners and parents in instances of discrimination and violence against learners on the basis of culture, religion, disability and in particular sexual orientation and gender identity and expression within the schooling context. EELC therefore has first-hand knowledge of the violence, discriminatory conduct and prejudice which pervades the schooling system, its impact upon victimised learners and the urgent action required to properly address this intolerance. We have also seen how in many instances these intolerances and prejudices fuel high levels of bullying and hate based violence and speech in the schooling system.

CONTEXT

Bullying and violence against LGBTQI learners has been recognised as a prevalent issue which has been condemned by the United Nations Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Office of the High Commissioner for Human Rights, which have called on Governments to step up their action to tackle this harmful practice.¹

¹ United Nations for LGBTI Equality “Bullying and violence in schools” <https://www.unfe.org/wp-content/uploads/2017/05/Bullying-and-Violence-in-School.pdf> Accessed 29 September 2021.

Whilst many children experience bullying it is transgender and gender diverse children that face some of the highest and most alarming rates of bullying and abuse. Significantly, most of this bullying (verbal or physical) is experienced in schools from peers and educators alike. GLSEN's 2017 National School Climate Survey,² found 83.7% of trans and 69.9% of gender nonconforming (GNC) students experience bullying at school. According to a 2016 Love Not Hate report, 56% of LGBT South Africans surveyed said they'd experienced discrimination based on their sexuality or gender identity while attending school.

All learners have an equal right to quality education in a safe school environment.³ Violence in schools creates both a physically as well as psycho-socially unsafe environment for learners. Violence is particularly experienced by learners who do not conform to prevailing cisheteronormative sexual and gender stereotypes. Lesbian, gay, bisexual, transgender and gender-varient and intersex students, are significantly more vulnerable. All forms of discrimination and violence in schools act as a barrier to the realisation of a child and adolescent's fundamental right to equal and quality education as entrenched in Section 29 of South Africa's Constitution.⁴ Violence in schools also violates learners' constitutional right to "freedom and security of the person, which includes the right to be free from all forms of violence".

Bullying can erode self-esteem, increase isolation, and make it more difficult for a child to assert their gender identity. Some bullied children become depressed and suicidal. Centers for Disease Control and Prevention (CDC) reports that any involvement with bullying, whether as a victim, bully, or both, raises a child's risk of suicidal behaviour.

Violent behaviour in communities is reflected in schools as learners model the social behaviour they have been exposed to. Hate crime and hate speech is no exception, as learners continue to face hostility at school due to their race, gender identity and expression, or sexual orientation. Despite the fact that parents, educators, and other adults have significant power to reduce bullying and support LGBTQI learners at school,⁵ pervasive discriminatory attitudes against learners who are or are perceived to be LGBTQI or gender diverse, severely impacts the ability of such learners to enjoy their right to education. LGBTQI learners in South Africa face discrimination on a daily basis, including bullying, teasing, name calling, violence and

² <https://www.glsen.org/research/2017-national-school-climate-survey> Accessed 29 September 2021.

³ United Nations Educational, Scientific and Cultural Organization: UNESCO 2012.

⁴ [Bullying-and-Violence-in-School.pdf \(unfe.org\)](#) Accessed 29 September 2021.

⁵ <https://www.goodtherapy.org/blog/how-to-protect-transgender-kids-from-bullying-at-school-1211184> Accessed 29 September 2021.

harassment, despite the protections entrenched in our Constitution. This problem is often not addressed adequately by school management, teachers, or the broader school community.

While there are existing policies which have been published by the Department of Basic Education to combat violence and bullying in schools, it is imperative that the current Bill be amended to include recognition of children and their particular needs both as victims and perpetrators of Hate Crimes. It is further imperative that the Bill as it currently stands be brought into line with the transformative aspirations of South Africa's constitutional project.

SOUTH AFRICA'S OBLIGATIONS TO PROTECT CHILDREN AND IN PARTICULAR LGBTQI CHILDREN FROM HATE CRIMES AND HATE SPEECH

The Convention on the Rights of the Child, 1989 ("**CRC**") recognises that for the full and harmonious development of children, children should grow up in a family environment, in an atmosphere of happiness, love and understanding and should be brought up in in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The CRC also recognises that a child needs special safeguards of care by virtue of their physical and mental immaturity. Accordingly, signatories to the CRC undertake to take ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parent, legal guardians or family members.⁶

The CRC underpins the best interests of the child principle as contained in the Constitution.⁷ South Africa in ratifying the CRC has undertaken to ensure children have such protection and care as is necessary for their well-being and to take all appropriate legislative and administrative measures to achieve this.⁸ Importantly, article 3(3) obliges the South African government to ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, in particular areas, one of them being safety. In this regard, article 19 provides that state parties must take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

⁶ Article 2(2) of the CRC.

⁷ Article 3(1) of the CRC.

⁸ Article 3(2) of the CRC.

In terms of article 12(1), education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely. Furthermore, article 29(1) requires that schools be child-friendly and that they respect the dignity of children. Article 28(2) of the CRC obliges state parties to ensure school discipline is administered in a manner consistent with the child's human dignity and in conformity with the CRC.

In 2015, speaking ahead of the International Day against Homophobia, Biphobia and Transphobia, United Nations, and international human rights experts⁹ called for an end to discrimination and violence against lesbian, gay, bisexual, transgender and intersex young people and children. The UN Committee on the Rights of the Child, UN human rights experts, the Inter-American Commission on Human Rights, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights, and the Commissioner for Human Rights of the Council of Europe urged Governments worldwide to protect young LGBTQI people and children from violence and discrimination, and to integrate their views on policies and laws that affect their rights. Lastly the statement calls on States to protect all children and young adults from violence and ensure that effective child protection and support systems are in place.

African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child, 2000 ("**ACRWC**") mirrors the CRC quite closely in addressing various rights and responsibilities of children, including the right to education and non-discrimination. Article 16 of the Charter declares that state parties must take legislative, administrative, social and educational measures to protect the child from all forms of torture, inhumane or degrading treatment, and especially, physical or mental injury or abuse, neglect or maltreatment including sexual abuse. Furthermore, article 11 directs that every child shall have the right to education and that the education shall be directed at the promotion of the child's personality, talents and mental and physical abilities to their fullest potential. State parties to the Charter must take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the ACRWC.¹⁰

African Union Commission on Human and Peoples Rights landmark Resolution 275

⁹ Joint statement Discriminated and made vulnerable: Young LGBT and intersex people need recognition and protection of their rights by the Committee and other UN and regional bodies for the International Day against Homophobia, Biphobia and Transphobia, 17 May 2015.

¹⁰ Article 11(5) of the ACRWC.

We further wish to draw particular attention to the African Union Commission on Human and Peoples Rights landmark Resolution 275 which condemns acts of violence, discrimination and other human rights violations against persons on the basis of their sexual orientation and or gender identity. Resolution 275 highlights the Commission's concern regarding acts of violence against sexual minorities in Africa, including "‘corrective’ rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail." The Resolution further notes that the Commission is "deeply disturbed" by the failure of law enforcement agencies to investigate and prosecute crimes targeting persons on the basis of sexual orientation or gender identity. The Resolution therefore urges States to enact and enforce laws prohibiting violence targeting persons on the basis of their sexual orientation or gender identity, ensure "proper investigation and diligent prosecution of perpetrators," and establish judicial procedures that address the needs of the victims.

African Youth Charter

The African Youth Charter, 2006 ("**African Youth Charter**") in article 2, declares that all state parties should take appropriate measures to ensure that the youth are protected against all forms of discrimination.

South African legislation and policy

The Constitution

The Constitution provides that a child's best interests are of paramount importance in every matter concerning the child.¹¹ It enshrines the right to basic education, the right to equality, the right to life, the right to dignity, the right to security of person, and the right of children to access basic health care and social services. As indicated above, research indicates that high levels of violence at schools leads to poor academic performance, high rates of absenteeism, and emotional and psychological trauma. Being exposed to violence severely impedes a learner's ability to learn and fully realise their right to a basic education and other intersecting rights. Eliminating violence in schools for LGBTI learners is therefore crucial to protecting the realization of their right to basic education which is an immediately realisable right.

¹¹ Section 28(2)

GENERAL COMMENTS

Failure to recognize and acknowledge South Africa's overall international law obligations to enact hate crimes and hate speech legislation (Preamble to the Bill)

A preamble to a piece of legislation sets out its purpose and guiding principles. It is intended to be an introductory statement which sets out the intention of the drafters of the specific legislation and the legislations' objectives.

While the opening sentence to the Bill's preamble makes reference to South Africa's obligations in terms of International human rights law, we note that the preamble singles out and only makes reference to South Africa's Obligations in terms of racial discrimination as provided for in the International Convention on the Elimination of All Forms of Racial Discrimination. Whilst, the elimination of racial discrimination is an important project, particularly given South Africa's legacy of apartheid and existing structural inequalities, South Africa's obligation to enact appropriate legislation to address hate crimes and hate speech is found in several other international treaties.¹² More particularly, South Africa is party to several international conventions which place positive duties on South Africa to combat all forms of discrimination.

Enacting domestic legislation to combat hate crime is one way by which states may discharge some of these duties. These treaties are therefore equally relevant. It is important that the preamble to the legislation not single out one characteristic ground of hate crime and hate speech over others as this detracts from the overall objective of the Bill. We therefore urge against the perceived hierarchy of prejudices which is currently presented within the preamble to the Bill. We suggest that Bill not expressly single out the International Convention on the Elimination of All Forms of Racial Discrimination and that either i) all the relevant international

¹²See Article 20(2) of the International Covenant on Civil and Political Rights which explicitly prohibits hate speech and Article 19 of the same Convention which protects the right to freedom of expression, but states the limitations associated with this right: 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or moral. See also Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, which South Africa is party to, and which prohibits incitement to racial hatred. See further Article 29(2) of the Universal Declaration of Human Rights which also recognises the restrictions to freedom of speech and expression. The Convention on the Rights of the Child also protects children against all forms of discrimination, see Article 2.

instruments be mention or that ii) the preamble simply make reference to South Africa's International Law obligations in general.

Definition of Hate Speech (Clause 3 and Clause 4)

Whilst we are encouraged by and welcome the extensive list of protected characteristics listed in Clause 3 and Clause 4, we suggest that the characteristic "gender expression" also be added to Clause 3(1)(h) and Clause 4(1)(h) of the Bill. In several jurisdictions, the "protected characteristics" from which a hate-based conviction can result include a victim's gender expression. The term gender expression refers to how a person publicly presents their gender, including through dress, hair, make-up, body language, voice, name, and pronoun. Including both the characteristics "gender identity" and "gender expression" will allow for the inclusion and protection of a wide range of gender diversity.

We further note with concern, the fact that the definitions section of the Bill singles out and defines the term "intersex" to the exclusion of the other listed "protected characteristics". This differentiation appears to "other" the term intersex. We therefore suggest that the definition of intersex be deleted and dealt with equally with the other protected characteristics and or that the Bill define the other protected characteristics.

Suggested wording and Recommendations:

Relevant provision in Bill	Recommendation(s)
Clause 3(1)(h)	The insertion of the term "gender expression" to the list of characteristics.
Clause 4(1)(h)	The insertion of the term "gender expression" to the list of characteristics.

Victim impact statement (Clause 5)

We welcome the provision in Clause 5 of the Bill for a victim or someone authorized by the victim to make a statement on the impact of the crime on the victim and his or her family member or 'associate'. The Bill however fails to provide guidance and or a definition as to what the term 'associate' means within the context of the Bill. It would therefore be unclear to prosecutors and those affected by hate crimes and hate speech, who falls within the ambit of an associate. We urge that the term be defined. To this end, it is our suggestion that the term be defined to include family members, colleagues, friends and persons closely linked to and or associated with the victim.

In addition, the preamble to the Bill recognizes that hate crimes and hate speech extend beyond the victim and to the group to which the victim belongs or is perceived to belong. Despite this Clause 5(2) of the Bill only goes so far as to mandate a prosecutor when adducing evidence or addressing the court on sentencing to consider the interests of a victim of the offence and the impact of the offence on the victim. It is our suggestion that prosecutors ought to also be required to consider the impact of the hate crime or hate speech on the community and on other persons falling within the same "protected characteristic" as the victim. Studies by the University of Sussex have shown the wider impacts of hate crime, looking at how simply knowing a victim, or even hearing about an incident, can have significant consequences. The Sussex Hate Crime Project is the world's largest and longest running research project into the community effects of hate crimes.

*"Through sharing a group identity, individuals form attachments to the group and its members as a collective. Thus, when something good or bad happens to the group (or any of its members), it is felt by others as if it is happening to them and so can affect how they think, feel, and act – especially if the social group is particularly important and meaningful to them. For instance, if a person is attacked because they are from a particular social group – as in the case of a hate crime – other group members may feel like it is an attack on themselves and so are likely to be impacted in similar ways to that of the direct victim. Reactions to such attacks include increased feelings of anxiety, which are likely to result in individuals avoiding certain locations, and anger."*¹³

Notably, the study found that *"hate crimes are more impactful than other comparable crimes because they are deemed to be more threatening to the entire community, and this leads to greater levels of anxiety and anger amongst group members."*¹⁴ Hate crimes and hate speech

¹³<https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430> Accessed 30 September 2021.

¹⁴<https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430> Accessed 30 September 2021.

accordingly have a great impact on schools and schooling communities and particularly not only for learners who are victims of those hate crimes within the schooling system, but to learners with similar characteristics upon which the hate crime or hate speech was based.

We wish to further strongly urge that in the instance of hate crimes and hate speech, prosecutors ought to be encouraged to, where appropriate, also obtain victim impact statements from civil society organisations advocating for the protection of persons belonging to particular groups and that they too be included in the definition of 'associate'.

We further note that Clause 5 is silent on instances in which the victim is deceased and fails to make explicit provision for a victim impact statement to be taken from 'associates' in such instances.

A victim impact statement enables a more participatory approach to criminal justice. Other jurisdictions such as Canada, recognise victim impact statements as a measure that contributes to the facilitation of justice. Every victim has the opportunity under the Canadian Victims Bill of Rights to submit a victim impact statement, which must be considered when sentencing an accused individual.¹⁵ If the victim is deceased, a victim impact statement may be written by anybody acting on the victim's behalf, including but not limited to, any family member. A representative or another member of the community who has experienced mental or physical damage or emotional distress as a result of the incident may also write a victim impact statement in terms of the Canadian Victims Bill of Rights. Given the prevalence of hate crimes in South Africa and the possibility that some family members may also be perpetrators of hate crimes, it is only appropriate for civil society groups, (or other individual who have been impacted by the crime) to be permitted to write victim impact statements in the event that the victim is deceased or is unable to prepare the victim impact statement due to distress or any other reasons.

Lastly, we note that Clause 5(2) states that a prosecutor is only required to obtain a victim impact statement "where practicable". Reference to "where practicable" in Clause 5(2) must be deleted as this wording allows too much discretion to prosecutors on whether or not to obtain a victim impact statement. Victim impact statements play a crucial role particularly in relation to the restorative justice which is required as part of combating hate crimes and hate speech and should therefore be mandatory. In instances where a prosecutor is unable to

¹⁵ <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/sentencing-peine/vis-dv.html> Accessed 29 September 2021.

obtain a victim impact statement they ought to be required to explain the inability to do so to the court.

Prevention of hate crimes and hate speech (Clause 9)

To prevent and combat the offence of hate crimes and hate speech, Clause 9 of the Bill places a duty on the South African Human Rights Commission (SAHRC) and the Commission for Gender Equality (CGE) to promote awareness of the prohibition against hate crimes and hate speech. It is submitted that this provision needs to be expanded on, in that it limits the role of educating and awareness to the SAHRC and the CGE.

Further, it is inadequate to list only “the State” as having duties to promote awareness aimed at prevention and combating hate crimes and hate speech. Specific role-players must be listed in order for concomitant duties to arise. More specifically, it is submitted that in so far as children can be offenders and victims of the crimes listed in the Bill and given the high rate of violence in schools towards LGBTQI learners, the Department of Basic Education (DBE) amongst other role players, must be included in the educative and awareness role that the Bill purports to give the SAHRC and the CGE. The current Bill fails to differentiate between children and adults, in so far as its applicability is concerned, this is exacerbated by the fact that one can attract a criminal offence for committing any of the crimes listed in the Bill. For this reason, it is crucial for the DBE to assume an active role in educating learners about the Bill and the possible repercussions if they are found guilty of having committed any of the offences contained therein. In addition, the DBE should require schools to include in their existing policies on bullying and violence in schools, hate crimes and hate speech.

The DBE’s National School Safety Framework states that many South African children experience high levels of crime and violence and that schools have an important role to play in breaking this cycle of violence. This framework is intended to provide comprehensive guidance to schools, districts, and provinces on a common approach to achieving a safe and violence-free learning environment. It also includes measures for preventing and managing bullying in schools. The DBE has also created a Social Cohesion Directorate whose mandate it is to ensure the rights of children are promoted and protected in schools, that schools are inclusive of all learners and that diversity in the learner population is protected and celebrated. Frameworks such as the Care and Support for Teaching and Learning (“**CSTL**”) Framework, prioritise a commitment to creating rights-based, socially inclusive and cohesive schools.

In addressing school safety and bullying in schools, there is a risk that hate crimes may be misconstrued and downplayed as bullying, should express recognition of the role of schools not be made. More work should be done with the DBE through its existing structures and frameworks, to ensure the express inclusion of education material aimed at understanding what hate crimes and hate speech are and to ensure that they are properly monitored in schools. Hence, the duty to create awareness as envisaged in the Bill should not be limited to the SAHRC and CGE.

In addition to this, it is concerning that the only obligation that arises in respect of prevention, is the duty to raise awareness of the prohibition against hate crimes and hate speech. Considering that prevention is one of the key aims of the Bill, and taking into account the complex causes for the commission of hate crimes and hate speech, a duty to raise awareness is woefully inadequate as a mechanism to prevent hate crimes.

Use of binary gender pronouns

It is deeply concerning that the Bill, which aims to facilitate inclusion and address intolerances and prejudices, uses gender binary pronouns such as “his” and “her” throughout. This has the effect of excluding persons who do not identify exclusively with man or woman or/and identify as non-binary; that is, a person who does not only and exclusively identify as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. All binary pronouns, such as “his” or “her” in the Bill must be changed to the inclusive terms “them”, “their” or “they”.

FAILURE TO MAKE SPECIFIC REFERENCE AND OR PROTECTIONS FOR CHILDREN

The Bill as it currently stands, fails to specifically recognize children as both victims and perpetrators of Hate Crimes and Hate Speech. Children do not exist in a vacuum, they are also victims/perpetrators of hate crimes. It is therefore pivotal that the current Bill makes specific provisions and protections for dealing with hate crimes affecting children. There is a need for regulatory coherence in this regard and to ensure that the Bill and the Child Justice Act are in harmony. All that the Bill currently appears to do is to amend the definitions of murder and rape in the Child Justice Act, 75 of 2008 and Regulations (“**Child Justice Act**”) to include hate crimes and hate speech. It does not take the issue of children any further and it fails to differentiate between adults and children. This is particularly concerning in respect of the sentencing provisions found in the Bill which we deal with below.

Penalties or orders (Clause 6)

The Child Justice Act provides a separate criminal justice system for children found guilty of a crime. The Child Justice Act, aims to establish a criminal justice system for children and primarily aims to divert matters involving children who have committed offences away from the criminal justice system where appropriate, and where this is not possible, to deal with matters in child justice courts. The Child Justice Act applies to any person who is alleged to have committed an offence and was under the age of 10 years at the time of the alleged offence or was 10 years or older but under 18 years. The Child Justice Act has been drafted with a rights-based approach and seeks to ensure children are held accountable through the use of diversion, alternative sentencing and restorative justice. It is therefore the statute which governs the penalties which children are subject to. As a result, we submit that the Bill be unequivocally clear about this and add a sub-section to section 6 which states that in the case of child perpetrators, they are subject to the provisions of the Child Justice Act. We further urge that specific restorative options be incorporated in relation to the sentencing options provided for by the Bill.

The principles of humanity and community: “ubuntu”, is a theme in the new constitutional dispensation, and promotes the acceptance of a different kind of justice, unlike the traditional forms of retributive justice.¹⁶ The Bill currently does not contemplate a restorative justice approach. Restorative justice “believes that the offender also needs assistance and seeks to identify what needs to change to prevent future re-offending.”¹⁷ In *Dikoko v Mokhatla* [2006] ZACC 10; 2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC) at paras 114-5, Sachs J’s concurrence notes that the elements of restorative justice are encounter, reparation, reintegration and participation. The CJA defines restorative justice to mean—

“an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation”.

In fact, Clause 6 of the Bill merely lists imprisonment, periodical imprisonment and declaration as habitual criminal, to name a few, as possible penalties or orders to which one may be subjected if found guilty of committing the offences listed in the Bill. It would seem these forms

¹⁶ Ann Skelton “Restorative justice as a framework for juvenile justice reform: A South African perspective” *BRIT.J.CRIMINOL* (2002) 42, 496-513, 496.

¹⁷ <https://www.justice.gov.za/rj/2011rj-booklet-a5-eng.pdf> Accessed 30 October 2021.

of punishment do not resonate with the spirit of ubuntu and restorative transformation, in particular when applied to children.

Moreover, there is a need for a balance as the Bill currently leans towards the side of criminalisation as opposed to restoration. Therefore, this submission strongly suggests that the Bill be amended from a child's right perspective and prefer a restorative justice approach to retribution. This view finds support in existing legislation such as the Child Justice Act,¹⁸ which reflects a restorative justice approach. Restorative justice is understood to be both "backward-looking" as it deals with the "aftermath of the offence", and "forward-looking", since it takes into account the implications for the future.¹⁹ Restorative justice encourages rehabilitation and reintegration. The Constitutional Court,²⁰ has held that these worthy objectives may assist in holding child accused responsible but that restoring them to "the status of a moral being who can make and act on choices"; it is necessary for us to understand that "a restorative justice approach can be a catalyst to create possibilities for a crime-free life for the offender, and by doing that create a safer environment for all".²¹

Finally, the Constitutional Court has expressed its views in the *Centre for Child Law v Minister for Justice and Constitutional Development*,²² that alternatives to imprisonment should be preferred in particular when it comes to children.²³

CONCLUSION

Matimba and the EELC welcome the introduction of the Bill and believe it presents a much needed opportunity for meaningful reform and transformation regarding the experiences of LGBTI learners. Furthermore the Bill will ensure the protection, promotion and realisation of the rights to education enacted in Section 29 of the Constitution and the rights to equality and dignity contained in Section 8 and 12 of the Constitution. While Matimba and the EELC welcome the introduction of the Bill we wish to note our concern at the passage of time which has taken place, since the introduction of the Bill in 2018 and urge that it speedily be brought into force.

¹⁸ Act 75 of 2008.

¹⁹ Skelton "Tapping Indigenous Knowledge: Traditional Conflict Resolution, Restorative Justice and the Denunciation of Crime in South Africa" (2007) 1 *Acta Juridica* 228 at 234

²⁰ *Centre for Child Law and Others v Media 24 Limited and Others* (CCT261/18) [2019] ZACC 46; 2020 (3) BCLR 245 (CC); 2020 (1) SACR 469 (CC); 2020 (4) SA 319 (CC) (4 December 2019)

²¹ Skelton and Batley "Restorative Justice: A Contemporary South African Review" (2008) 3 *Acta Criminologica* 37 at 47.

²² [2009] ZACC 18.

²³ *Ibid.*

Matimba and the EELC are thankful for this opportunity to make submissions and request to make oral submissions to the Portfolio Committee when hearings are held.