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Submission

to the

South African Law Reform Commission

on

Discussion paper 167
Review of the Criminal Justice System: Review of South Africa's Bail System

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1. Introduction

The Centre for Applied Legal Studies ("CALS") is a law clinic registered with the Legal Practice Council and based at the University of Witwatersrand's School of Law. CALS was established in 1978 and has been one of the leading human rights research, advocacy, and strategic impact litigation organisations in South Africa. It operates through five (5) programmes, namely, Business and Human Rights, Environmental Justice, Gender Justice, Home, Land and Rural Democracy, and Civil and Political Justice Programme.

The Civil & Political Justice programme advances civil and political rights, such as the right to protest, the right to freedom of expression, the rights of the arrested and detained, and the right of access to information. In addition to this rights-based work, the Programme aims to protect and promote the systems and institutions of South Africa's constitutional democracy. This includes working to strengthen Chapter Nine institutions, supporting the transformation of the judiciary, and engaging with Parliament.

Furthermore, the Civil and Political Justice programme works closely with the Right2Protest project and both programmes are responsible for the safeguarding the civic space and upholding the rights of activists. We have worked together to support activist and believe that we are experienced to make recommendations to the proposed amendments of the Criminal Procedure Act.

Our submissions will focus on the proposed amendments relating to bail amounts, address verification requirements, and the expansion of police powers in respect of bail applications. In support of our recommendations, we will provide a brief analysis of relevant international and regional legal instruments to ensure alignment with human rights standards and best practices.

2. Bail amount

The Constitution guarantees that every arrested person has the right to be released from detention if the interests of justice permit, subject to reasonable conditions.[1] It is widely acknowledged that detention while awaiting trial should be the exception rather than the norm. According to international standards, several conditions must be satisfied before an individual can be lawfully held pending trial.

Theoretically, the South African criminal justice system adheres to regional and international agreements regarding bail and remand; however, the situation is markedly different. Due to the inconsistent enforcement of the Criminal Procedure Act and the reluctance to release eligible accused individuals on bail, South Africa faces significant challenges with overcrowded detention facilities.[2]

When properly implemented, bail provisions should ensure that individuals who pose a danger to the public or are likely to evade trial are held in detention, while those who do not meet these criteria are granted release. Bail decisions should be made based on the personal circumstances of the accused, rather than their financial or economic situation, to prevent the unjust detention of individuals simply because they cannot afford bail.

2.1 Overview of the legal framework regulating bail applications

2.1.1 International Instruments

The Universal Declaration of Human Rights

[1] s. 35(1)(f).
[2] Jameelah Omar 'Penalised for Poverty: The Unfair Assessment of 'Flight Risk' in Bail Hearings' SA Crime Quarterly (September 2016) Page 1.

Article 11 of the Universal Declaration of Human Rights (UDHR),[3] guarantees the right of accused persons to be presumed innocent until proven guilty in accordance with the law. Article 9 further provides that no one may be subjected to arbitrary arrest and detention. Whilst Article 3 guarantees the right to life, liberty and security of the person.

The International Covenant on Civil and Political Rights

South Africa is a party to the International Covenant on Civil and Political Rights 1966 (ICCPR),[4]which guarantees the right to liberty and freedom of security and outlaws arbitrary arrest and detention.[5] The ICCPR acknowledges the right to a trial without undue delay and supports the release of detainees awaiting trial upon assurances that they will appear at trial.[6]

Article 9 (1) of guarantees the right to liberty and freedom of security and prohibits arbitrary arrest and detention. *"To comply with article 9 of the ICCPR, states may not deprive people's liberty in a manner that is not authorised by the law, and where they do deprive a person of liberty this 'must not be manifestly unproportional, unjust or unpredictable"*.[7]

Article 9(3) of the ICCPR provides that the detention of individuals awaiting trial shall not be a general rule. According to ICCPR, persons awaiting trial may be released on bail subject to guarantees to appear for trial, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State Party.[8]

United Nations Standard Minimum Rules for Non-Custodial Measures[9]

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[3] 1948.
[4] South Africa ratified the ICCPR on 10 December 1998.
[5] ICCPR Article 9.
[6] Art. 9(3).
[7] M Nowak, UN Covenant on Civil and Political Rights: CCPR commentary, Kehl am Rhein: Engel, 1993, 173.
[8] Ibid.
[9] Adopted by General Assembly Resolution 45/110 of 14 December 1990.

The Rules advise against pre-trial detention, stating that it should be used as a last resort and not prolonged beyond the necessary duration.[10] This suggests that presiding officers, could, where possible resort to issuing non-custodial measures and order pre-trial detention where it is necessary and unavoidable.

2.1.2 Regional instruments

The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR/African Charter) enshrines the rights to be presumed innocent and not to be detained arbitrarily.[11] South Africa ratified the African Charter in 1996.

2.1.3 Soft law' Instruments

The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, 2002

The Ouagadougou Declaration emphasises the importance of a criminal justice policy that manages prison population growth and encourages alternatives to detention. The Ouagadougou Declaration's implementation plan lays forth methods for lowering the number of inmates who have not been sentenced. Through the use of increased cautioning of accused individuals, the expansion of police powers, the inclusion of community representatives in the bail process, and the establishment of time limits for those in remand detention, the strategies include detaining individuals awaiting trial only as a last resort and for the shortest amount of time possible.[12]

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[10] Clause 6 of the UN Standard Minimum Rules for Non-Custodial Measures (1990).
[11] Art. 7
[12] See: http://www.achpr.org/instruments/ouagadougou-planofaction/.

The Robben Island Guidelines for the Prevention of Torture in Africa[13]

The guidelines set out safeguards for pre-trial detention, such as the right to a legal representative, the right to contest the legality of the detention, and the right to be brought before a court of law without unreasonable delay.[14]

The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines)

The Guidelines provide guidance to policy makers and criminal justice practitioners with the aim of strengthening day-to-day practice from the arrest of an accused until trial, focusing on the decisions and actions of the police, correctional services, and other stakeholders. The Luanda Guidelines were adopted by the African Commission on Human and Peoples' Rights during its 55th Ordinary Session in 2014.[15]

The guidelines contain eight main sections that address the framework for arrest and detention, important safeguards, measures to ensure accountability and transparency, and strategies to enhance collaboration amongst criminal justice institutions.[16]

2.1.4 Domestic legal framework

The Constitution of the Republic of South Africa, 1996

Many rights enshrined in the Constitution of the Republic of South Africa, 1996 (the Constitution), influence the application of bail in South Africa.

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[13] Adopted by the Commission at the 32nd Ordinary Session, 2002.
[14] See art. 21 to 32 of the Robben Island Guidelines.
[15] Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa Luanda Guidelines Toolkit.
[16] Ibid.

Section 9 of the Constitution requires that all persons be treated equally, while section 10 of the Constitution enshrines the right of all persons to have their dignity respected and protected.

Section 12 of the Constitution provides that everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause.

Section 35 of the Constitution provides for the rights of arrested, accused and detained persons. Everyone that has been arrested for allegedly committing an offence has the right, among other things, to be released from detention if the interests of justice permit, subject to reasonable conditions.[17]

The Criminal Procedure Act 51 of 1977, as amended

The Criminal Procedure Act 412 of 1977 (Criminal Procedure Act) governs criminal procedure in South Africa's legal system and makes provision for procedures and related matters in criminal proceedings.

Chapters 6 and 7 of the CPA deal with securing the attendance of an accused in court through the issuing of a summons or a notice to appear in court (as alternatives to arrest in certain cases).

Chapter 9 of the Criminal Procedure Act governs the granting of bail and effect of bail. Bail has the effect of releasing an accused person from custody, on payment of a sum of money or the furnishing of a guarantee, on the basis that he or she will appear at the place and time appointed for his or her trial to proceed.

[17] Section 35(1)(f) of the Constitution.

Where bail is granted to the accused, it will remain in effect until the court renders a verdict, unless it is revoked. If the judgement does not include a sentence, bail will be extended until sentence is imposed. However, if the accused is convicted of an offence in Schedule 5 or 6 of the CPA, the court must consider the fact that the accused has been convicted of the offence, and the likely sentence that it might impose, when deciding whether to extend bail.[18]

In terms of the CPA, there are three types of bail an accused may access depending on the offence they are charged with.

Prosecutorial bail

Bail can also be granted by a prosecutor, authorised in writing to do so by an attorney-general, for offences in Schedule 7.[19]This is commonly referred to as 'prosecutorial bail' and requires consultation by the prosecutor with the police official charged with the investigation. Prosecutorial bail can only be granted for Schedule 7 offences, that is, public violence, culpable homicide, bestiality, assault, arson, housebreaking, malicious damage to property, robbery, theft, fraud, extortion (if the amount involved does not exceed R20 000), any offence relating to the illicit possession of dependence-producing drugs, and any conspiracy or incitement to commit any of the above offences.

Prosecutorial bail endures until the first court appearance of the accused. At the accused's first court appearance, the court may extend the bail on the same conditions, or amend the conditions, or add further conditions. The court may also consider the bail application and has the same jurisdiction as in the case of the bail proceedings set out in Section 60 of the CPA, which deals with a bail application in court.[20]

[18] Section 58 of the Criminal Procedure Act.
[19] Section 59A of the Criminal Procedure Act.
[20] Section 59A(5) of the Criminal Procedure Act.

Bail in court

Where an accused fails to get a police or prosecutors bail, the court can release an accused person on bail at any stage preceding the accused's conviction if the court is satisfied that the interests of justice so permit.[21] Before the court reaches a decision on a bail application, it must consider any pre-trial report, if available, regarding the desirability of releasing the accused on bail.

The CPA sets out many factors that a court may consider when assessing whether a ground has been established that indicates that the interests of justice do not permit the release of an accused on bail.[22] Such factors include , whether the accused has threatened any person; the assets held by the accused; whether the accused is familiar with the identity of witnesses; any previous failure on the part of the accused to comply with bail conditions; and whether the safety of the accused might be jeopardised by his or her release.[23]

Once the court is satisfied that the interests of justice permit the release of the accused, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered. This is referred to as the 'two-stage' bail inquiry.[24]

The CPA also provides provisions for the release or amendment of bail conditions due to inability to pay or on account of prison conditions. Section 63(1) of the Criminal Procedure Act allows the court to increase or to reduce the amount of bail set, or to amend or supplement any condition imposed, on application by the prosecutor or the accused. The Protocol on the Procedure to be Followed in Applying Section 63A of the Criminal Procedure Act, 1977 (the Bail Protocol), was established as a joint effort between the

[21] section 60 of the Criminal Procedure Act.
[22] Section 60(4) of the Criminal Procedure Act.
[23] See ss 60(5)-(8).
[24] See section 60(2B) of the Criminal Procedure Act.

SAPS, the NPA, the Department of Justice and Constitutional Development (Department of Justice) and the DCS in promoting and regulating cooperation in dealing with bail under section 63A of the CPA.[25] The main objectives of the Bail Protocol are to deal with congestion in prisons and to reduce the number of remand detainees in custody.

Section 63A of the CPA permits the release of certain accused persons from a correctional centre if the head of the centre is satisfied that the prison population is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of the accused. The accused person must be charged with an offence for which a police official may grant bail in terms of section 59 of the CPA, or with an offence in Schedule 7. The accused must have been unable to pay the bail granted by any lower court.[26]

3. Unaffordable bail amounts

The provision dealing with the payment of bail amount as a condition for bail is Section 60(2B) of the Criminal Procedure Act (Criminal Procedure Act). According to section 60(2B) provision a court must determine if an accused can afford financial bail conditions, and if not, the court must consider a bail amount appropriate to the accused circumstances or non- financial bail conditions. The process set out in section 60(2B) entails a two-step process, first, determining if an accused individual is eligible for bail and secondly, the type of bail that may be granted.[27]

When correctly applied, section 60(2B) should guard against the setting of high bail amounts and guarantee that accused persons are not detained based on their inability to pay bail. Unfortunately, our courts ' inconsistent application and, in some instances, non-application of this provision mean that our correctional facilities are filled with indigent

[25] Bail protocol.
[26] See section 63A (1) of the Criminal Procedure Act.
[27] R. Leslie, Bail & remand detention: entry points into evaluating Gauteng's court stakeholders, Wits Justice Project, November 2012, 12.

accused persons on remand detention due to the inability to pay bail, despite qualifying for and being granted bail.[28]

It is worth noting that section 60(2B) in safeguarding against the imposition of high bail amounts confirms that financial bail should not be regarded as the default system. According to section 60(2B), non-financial bail conditions such as restrictions on movement and communications, supervision, or mandatory reporting are some appropriate non-financial bail conditions that may also be considered. Sadly, in practice, these non-financial bail conditions are often overlooked.[29]

This discussion paper presents an opportunity to critically examine current practices in the setting of bail amounts; address concerns related to fairness and equality and explore the broader use of non-financial alternatives to monetary bail conditions.

4. Recommendations

We recommend that the Commission consider including, or emphasising, the following issues relating to the unaffordable bail amounts:

4.1 Guidelines for determining bail amounts

Having clear rules or criteria for determining bail amounts would be helpful in addressing the challenges around the setting of excessive bail amounts. While the Criminal Procedure Act empowers courts to grant bail to eligible accused, it lacks guidelines for determining the appropriate sum. Currently, the considerations that courts should examine when deciding the appropriate bail amount are vague, with most courts focusing

[28] The Judicial Inspectorate for Correctional Services 2023/24 Annual Report.
[29] De Ruiter and K Hardy, Study on the use of bail in South Africa *African Police and Civilian Forum Research Series 2018,* 22.

on the seriousness of the offence. This uncertainty results in inconsistent bail rulings. Establishing precise criteria would guarantee that bail is used fairly and consistently.

The absence of clear and uniform guidelines for determining bail amounts creates opportunities for the abuse of the criminal justice system. In the absence of clear guidelines, the determination of bail may turn arbitrary, subjective, and susceptible to manipulation, especially in cases of activist and communities involved in demonstrations, protest or acts of dissent against both private institutions and the state.

CALS and R2P have observed a troubling practice in which high bail amounts are set as a punitive measure to suppress dissent, particularly in cases involving activists, community leaders, or protesters, as illustrated in the case study below.[30]

4.1.1 Case study

In June 2018, R2P represented thirteen community members from Mpumalanga who were arrested during a service delivery protest and charged with public violence. R2P appeared before the magistrate on behalf of all thirteen clients, with the prosecution requesting that the bail be set at R2,000.00 per person. After making representations for their bail application, the magistrate granted bail of R300.00 per person for all thirteen clients.

This case highlights the practice of effectively denying bail through the imposition of unreasonably high bail amounts as a form of anticipatory punishment targeting activists and protesters. The accused in this matter were indigent community members engaged in protest action over inadequate service delivery and were charged with a minor offence. Despite the non-serious nature of the charge, the prosecutor-recommended bail amount was excessive and unjustified, reflecting a punitive approach aimed at suppressing legitimate dissent.

[30] Victimization Experiences of Activists in South Africa Second Edition 2022, 27.

Such practices not only undermine the principles outlined in section 60(2B) of the Criminal Procedure Act but also amount to punitive measures aimed at silencing dissent. It is essential for the legal system to ensure that bail amounts are fair and just, reflecting the circumstances of the accused rather than serving as a punitive measure.

4.2 Clear criteria for “indigent” or “inability to pay”

Having clear legal definitions of terms such as “indigent’ or “inability to pay” would also be helpful in providing guidance to courts in determining the appropriate bail amounts. As recommended by Justice Cameron, establishing such definitions would not only avert the abuse of the bail system, as evidenced by the treatment of activists and protesters, but would also guarantee the safeguarding of justice and equality for every person, irrespective of their financial status.

4.3 Alternatives to financial bail conditions

The Commission notes that while the CPA provides for alternatives to monetary bail conditions, these options are rarely utilised by our courts. The Commission should emphasise the importance of utilising non-custodial alternatives to bail, such as electronic monitoring, community-based supervision, and mandatory check-ins, to ensure that accused individuals are not unnecessarily detained while awaiting trial.

These alternatives to financial bail conditions are particularly important for indigent and marginalised accused persons who might lack the financial means to pay the high bail amounts, ensuring they are not unjustly placed in pre-trial detention solely because they cannot afford bail. By implementing these measures, the justice system can foster fairness and equality, preventing the criminalisation of poverty and the pre-trial detention of the accused persons due to inability to pay bail.

4.4 Pledging of property in lieu of bail amount

The Commission recommends that section 60(2B) be amended to provide for provisions that property could be pledged as security in lieu of payment of the bail amount. We commend the commission's work and the proposed amendment; we, however, submit that the pledging of property as security in lieu of bail might not offer relief to most indigent accused persons. In some cases, an accused individual might not even have property to provide as security, yet their personal circumstances might dictate that they be granted bail.

We further recommend that emphasis be placed on ensuring this proposed provision is not rigidly applied to imply that individuals who cannot either afford the bail amount or pledge property should automatically be considered a flight risk, as has sometimes been the case with the interpretation of the fixed address requirement. This would help ensure fairness and avoid unintended consequences for those without property or financial means.

5. Widening the Powers of Police in Bail Matters

Bail can be granted for lesser offences by any police official of or above the rank of non-commissioned officer, in consultation with the police official in charge of the investigation,[31] that is, the accused must be in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2. Parts II and III of Schedule 2 include serious crimes such as murder, rape, arson, kidnapping and robbery.

To be granted release, the accused is required to pay a specified amount of money, which is set by a police official. This form of bail is commonly known as 'police bail'.[32] SAPS Standing Order (General) 382 outlines the procedures for handling money received from the public for bail. It mandates that SAPS officials inform arrested individuals of their obligation to appear in court and the consequences of failing to do so.[33]

[31] Section 59 of the Criminal Procedure Act.
[32] de Ruiter and Harny '*Study on the Use of Bail in South Africa*' (APCOF Research Paper, 23 May 2018) at pg 8.
[33] Ibid.

Experience has taught us that, police bail is seldom granted; obtaining police bail is a demanding process, often necessitating considerable effort from legal representatives to secure it for their clients. The infrequency with which police bail is granted underscores certain challenges within the criminal justice system regarding bail.

Whether police powers should be strengthened to grant bail in South Africa is a complex and contested issue that requires careful balancing of rights, practical considerations, and broader justice system reform goals.
The current discretionary powers granted to police officials under section 59 of the CPA to grant bail prior to a first court appearance raise serious concerns regarding the concentration of unchecked authority within law enforcement. The proposal that only officials above the rank of sergeant should exercise this power reflects a concern that junior officers may lack the training or judgment required to make such critical decisions. Furthermore, giving police officers the authority not only to grant bail but also to determine bail conditions, assess affordability, and decide whether to release someone on warning effectively places them in a quasi-judicial role without the same safeguards, transparency, or oversight expected in a court setting.

Without clear guidelines requiring affordability assessments or the option of release on warning, indigent accused persons are at risk of being unnecessarily detained simply due to an inability to pay bail. This concern is echoed in the Constitutional Court judgment in *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat*[34], where the Court emphasised that bail determinations must be conducted fairly and must not result in automatic or unjustified detention. The Court further emphasised that the grant or refusal of bail is unmistakably a judicial function. Meaning that, while societal interests may necessitate the detention of individuals suspected of crimes, such deprivation of liberty is subject to judicial supervision and control.[35] This approach aligns with the Constitution, which provides that everyone who is arrested for allegedly committing an offence has the

[34] *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat* 1999 (4) SA 623 (CC).
[35] Ibid.

right to be released from detention if the interests of justice permit, subject to reasonable conditions.[36]

International standards also support a cautious approach to police discretion in pre-trial detention. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[37] stress that pre-trial detention should be used as a last resort and encourage the development of procedural safeguards for all pre-trial decisions, including bail. These rules show the importance of ensuring that decisions affecting liberty are made transparently and with due regard to individual rights and legal protections.

Reform is necessary to ensure that this discretion is exercised fairly, transparently, and in a manner that respects both individual rights and the broader principles of justice. This includes restricting the authority to higher-ranking officers, requiring affordability assessments, and ensuring that release on warning is meaningfully considered as an alternative to bail, especially for indigent accused persons.

6. Verification of address

The practice of verification of address is used by courts during bail applications for the courts to determine whether an accused is eligible for bail. Section 60 (1) (4) provides for the conditions upon which bail may be granted and one important consideration for the court to make is whether the accused is a flight risk, thereby impacting their ability to stand trial. There are several variables that affect the decision of whether the accused is a flight risk, one of them is whether the accused has a verifiable address. This question is not always an easy one to answer because the socio-economic variables in South Africa do not present a uniform picture for everyone. The question is often easily

[36] The Constitution of South Africa, section 35(1)(f).
[37] United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted 14 December 1990 by General Assembly resolution 45/110.

answered in respect of accused from middle class to upper class backgrounds in the country but for the poor and homeless the answer is not always a straightforward one.

The law around verification of address is vague, unclear and unhelpful to courts. This often results in inconsistent and problematic application of the law by different courts. The accused persons often bear the brunt of the inconsistency and vagueness of the law, and prejudice is usually most felt by indigent and sometimes homeless accused persons. As it stands, according to section 50 (6) (d) of the CPA a court may postpone bail proceedings for up to seven (7) days if verification of address was not carried by the police prior to the court hearing. According to a 2016 study, that investigated the frequency of postponements and the courts invocation of section 50 (6) (d) the Wynberg Magistrates court in Cape Town postponed approximately 50% of cases it heard due to unverified residential addresses.[38] There were five applications where bail was refused by the court because the police were unable to verify the accused's address.[39] For some hearings, bail proceedings had been postponed at least once because of unverified addresses. Courts tend to apply a default position of postponing for a seven (7) day period when postponements could be for a shorter period as the provision states that postponement could up to seven (7) days. The increase in volume of postponements affects over burden court rolls and increases the overcrowded court cells. Presiding officers in courts have also acknowledged that verification of address presents different dynamics for accused people residing in informal settlements.[40] The situation is even more dire for accused people who do not have homes but sleep under bridges and use other makeshift structures to lay down their heads.

The amendment of the CPA presents an opportunity for correction of the law so that there is a decrease in the volume of postponements of bail proceedings and that there are less inconsistencies in application as it pertains to verification of address. It is also necessary that the criminal justice system provides justice to all parties involved, that cases are

[38] Palesa Rose Madi and Lubabalo Mabhenxa 'Possibly Unconstitutional? The Insistence on Verification of Address in Bail Hearings' SA Crime Quarterly (December 2018).
[39] Ibid.
[40] Ibid.

adjudicated and decided upon based on that which is in the interests of justice. For this to happen, CALS and R2P are of the view that a complete review of section 50 (d) (i) is required, and that the amendment ought to propose a reasonable and flexible approach to the requirement of verification of address. The approach needs to take cognisance of the differences in socio-economic backgrounds, class and race of everyone in South Africa, to avoid possible challenges of unconstitutionality. The review is also a necessary effort to solve the well elaborated problem of overcrowding in detention centres which has been identified as of the impediments to the success of the criminal justice system. Conditions of most detention centres have been described as appalling and have been subjected to constitutional challenges for violation of the right to human dignity and other rights in the Bill of Rights. Therefore, a co-ordinated and multi-faceted approach is required to deal with the challenges connected to overcrowding in detention centres, one of which being, the review of section 50 (d) (i).

6.1 Recommendations

To adequately address the challenges presented by section 50 (d) (i) a conservative cost saving approach could be, for presiding officers to consider bail application and circumstances surrounding verification of address on a case-by-case basis. Where presiding officers establish that there are challenges in obtaining a verifiable address of the accused, and to avoid unnecessary and unreasonable delays, presiding officers can consider issuing an order for house arrest, pending the finalisation of the process of verification. In this way, accused people are released home and do not become a burden to the state by enduring detention in over-crowded and congested places of the detention. We also recommend that training institutions such as the Justice College and the South African Judicial Education Institute establishes sensitivity training and adopts training methods geared towards embracing intersectionality how race, class gender intersect and impact on different individuals. The training would allow presiding officers to adopt uniform approaches as they decide what is in the interest of justice as required in terms of the Constitution and the CPA.

The introduction of a foot tracking electronic system is also an option that can be considered, although this may require extensive state resources, it can be implemented in phases and can be a long-term solution. The state should also see that investing in such devices as means to ensuring the provision of justice to all involved in the criminal justice system and can an upgrade to the criminal justice system.

It must be a pre-requisite for police officers to exhaust all measures possible to present facts and evidence, in an affidavit presented before court of its efforts to conducting and finalising the verification of address process immediately upon arrest of accused persons to ensure that upon the exhaustion of the 48 hour detention period, the state is prepared to proceed with its case. This will encourage police officers to work diligently, effectively and ensure that the wheels of justice do not turn slow, jeopardising the integrity of the system.

Specific bail provisions that presiding officers rely on to deny persons of bail when there is no fixed address or ownership of assets. Strictly speaking, there is no specific provision in South African law that sets out that a fixed address and / ownership of assets is a prerequisite for the granting of bail. Consequently, there is limited law to guide presiding officers in respect of how addresses must be verified. This creates uncertainty in the law and results in the law not being applied in a uniform manner.