Decolonising prisons in South Africa

The need for effective bail affordability inquiries

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Prisons have been a major player in all countries with a history of tyrannical regimes, as people who attempted to resist repression frequently found themselves detained in prisons. Many countries have adopted democratic government, underscored by equality of all people before the law. Many states – South Africa among them – continue to make reforms to address these past injustices, and, as part of this shift, prisons across continents are attempting to decolonise. This article questions whether South Africa can decolonise its prisons, given that the country's poor are at a higher risk of detention because they are not able to afford bail. The article focuses on the concept of cashless bail and argues that, given South Africa's history of marginalisation and income inequality, this model can be one mechanism through which to address past injustices with a view to decolonising the country's prisons. The article makes a strong case for the effective implementation of provisions on inquiry on affordability of cash bail as one of the means to achieve this end.

Since an accused is innocent until proven guilty, s/he may be released on bail when certain conditions, set out in law, are met. In South Africa, bail is a constitutional right afforded in terms of section 35(1)(f) of the Constitution. Courts exercise profound discretion where bail applications are concerned.[1] This discretion notwithstanding, the process demands of courts to engage in a balancing act: in arriving at decisions on whether or not to grant bail, the court has to balance the interests of society, the accused and the victim(s) to ensure that the interests of justice are served.[2]

Since bail is a constitutional right, it may be reasonable to expect, at least on the face of it, that accused individuals would be able to access bail relatively easily. However, the challenge of bail affordability introduces enormous complexity. The law requires that judicial officers must inquire into the affordability of bail for the accused.[3] Ideally, judicial officers are mandated to conduct this affordability inquiry, based, among others, on the accused's

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access to the money necessary to pay bail. These provisions may lead one to reasonably conclude that, even for the poor in society, there are no apparent anomalies in accessing this right.

Unfortunately, these inquiries are often not conducted. In addition to the courts' mandate to make inquiries, they can also grant bail subject to 'special conditions', for example, requiring the accused to report to a specified authority or person at a specified place and time.[4] However, these options are seldom explored. Thus, although the application for bail itself is often successful, challenges arise when the accused cannot afford to pay the bail amount. Lines are therefore clearly demarcated between rich and poor, and bail applications often disproportionately affect poor and disadvantaged communities and fail to advance the broader goal of equality. This challenge is exacerbated by South Africa's high levels of inequality, which are rooted in the history of subjugation, marginalisation, racism and discrimination against black South Africans.[5]

Failure to raise the required funds to secure bail affects not only the accused but also the Department of Correctional Services, among others, because accused persons who cannot pay bail must be detained in a correctional facility. De Ruiter and Hardy[6] show that the inability to pay bail money contributes to the congestion of correctional facilities, with the poor constituting the highest percentage of those detained because of an inability to pay cash bail. Dissel and Ellis[7] argue that the large number of people without the assets or income necessary to secure their freedom from detention further exacerbates the problem of overcrowding in prisons.

Significant strides have been made in reforming South Africa's correctional services in the post-apartheid era.[8] During apartheid, prisons (as they were referred to at the time) mainly housed black inmates, the majority of whom were detained under apartheid legislation for breaking the laws that upheld the apartheid regime and discriminated against black South Africans.[9] The end of apartheid and South Africa's transition to democracy signalled the dawn of a new era anchored in equality, and encompassing, among other things, the redress of past injustices. Laws that formed the basis for detaining black citizens were repealed in favour of a constitutional dispensation founded on values such as equality and dignity.

Other, more practical reforms have also been implemented. For example, the criminal justice system now uses modern technology to effectively manage day-to-day operations, reduce costs, eliminate waste, and automate paper-intensive systems.[10] These reforms are praiseworthy, and the criminal justice system's orientation has certainly shifted since apartheid. But the question remains as to whether it has sufficiently decolonised, given the rampant inequality in South African society. Have we properly considered the question of affordability of bail, and taken account of the ways in which cash bail is a criminalisation of poverty for the majority of South Africans? What are the implications of this for the rights guaranteed under our Constitution?

This article considers these questions, and argues for a thorough inquiry into the affordability of bail as a mechanism through which to reform prisons in South Africa. To this end, the article begins with an examination of decolonisation and bail from both a national and international perspective. The article then shows how bail without proper inquiry disadvantages the poor, and ultimately undermines the decolonisation goal. The article concludes by making a case for a deliberate and systematic inquiry into the affordability of bail, to ensure that the poor are not prejudiced.

Decolonisation, bail and the law

Despite being the subject of considerable scholarly attention, there is little consensus on what decolonisation means. Given this contestation, it is particularly critical to map out the parameters of its meaning in so far as this article is concerned.

Himonga and Diallo define decolonisation as 'a move from a hegemonic or Eurocentric conception of law connected to legal cultures historically rooted in colonialism (and apartheid) in Africa to more inclusive legal cultures'.[11] In conceptualising decolonisation, commentators also draw insight from the history of colonisation and apartheid, and emphasise the subjugation of black people during both eras.[12] Decolonisation therefore demands that this history of subjugation and past injustice not only be acknowledged, but also addressed.[13] The process of redress may entail, among others, a dismantling of existing structures that continue to advance the subjugation and injustice experienced by the marginalised during the colonial and apartheid eras.[14] However, in deconstructing and ultimately reconstructing structures and systems, some scholars insist that a complete overthrow of all existing structures and systems would be unrealistic.[15] This is because (despite the need to address past injustices and dismantle Eurocentric machinery), recourse to structures remains critical to responding to the problems and people that these very structures aim to address.

From the perspective of prisons, decolonisation requires approaches that seek to address past injustices in correctional facilities and the criminal justice system at large. The goal of decolonisation in corrections, therefore, is to ensure that the injustices suffered by marginalised groups during the colonial and apartheid eras are effectively addressed. Bail affordability becomes a key site for decolonising the criminal justice system, because it holds the promise that accused persons can be given due regard in every decision pertaining to the application of bail.

Understanding bail: international and national perspectives

Bail is explicitly provided for under South African law. Although international law does not explicitly make provision for the concept of bail, various international treaties contain provisions which, if progressively interpreted, could give due regard to accused persons who cannot afford to be released on bail due to poverty. Fortunately, South Africa's Constitution contains provisions which demand that appropriate weight is accorded to international law. For example, in terms of section 39 of the Constitution, courts are mandated to consider international law in interpreting the Bill of Rights. Sections 231 and 232 also elaborate on the role and place of international treaties and customary international law in South Africa's legal framework.

From an international law perspective, there are standards that lend impetus to the cause of release of those accused of crime, pending their trial, despite not being an internationally accepted default practice.[16] South Africa ratified the International Covenant on Civil and Political Rights (ICCPR) in 1998 and this convention envisages the right to bail based on the fact that it guarantees the right to liberty and outlaws arbitrary arrest and detention.[17] Article 9(3) of the ICCPR provides that it is not a general rule that persons awaiting trial should be detained; however, release may be subject to guarantees to appear for trial. According to the United Nations Human Rights Committee,[18] this provision may suggest that detention should be a measure of last resort, save for exceptional circumstances such as a likelihood that the accused would abscond or destroy evidence, influence witnesses, or flee from the jurisdiction of the trial court.

The African Charter on Human and Peoples' Rights, to which South Africa is a party, also stands against arbitrary arrests.[19] In 2014, the African Commission on Human and Peoples' Rights adopted Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), which address a number of issues, including unnecessary and arbitrary arrest, and pre-trial detention. The guidelines are alive to the fact that pre-trial detentions contribute profoundly to the overcrowding of prisons in Africa. Prison overcrowding is exacerbated by the fact that sufficient inquiry is not always held into the affordability of bail for the poor, who often cannot afford bail money and end up in detention. Moreover, in terms of the Luanda Guidelines, pre-trial detention is conceptualised as a measure of last resort to be used in the absence of other alternatives.[20] Given that international law is inclined towards release of those accused pending trial, it is arguably also against any acts or omissions leading to unnecessary pre-trial detention. The inability to afford to pay bail is one such consideration.

Detention and the granting of bail in South Africa

Section 38 of the Criminal Procedure Act[21] provides for arrest as one of the ways of securing attendance of an accused in court for purposes of trial. However, one has a right to apply for release from custody pending trial. In terms of section 35(1)(f) of the Constitution, every person who is arrested for allegedly committing an offence has a right to be released from detention if the interests of justice permit, subject to reasonable conditions.[22] *Black's law dictionary* defines bail as the release of a prisoner after a deposit of security.[23] The Criminal Procedure Act provides that an accused may be released from custody upon payment of, or guaranteeing to pay, the sum of money determined for his bail.[24] This provision already sets the tone that bail must be paid in monetary form, although it suggests that alternatively, a valuable asset might be dispensed with by the accused. In reality, however, release on bail is impossible without access to money – in other words, for most detained people in South Africa, where over half of the population is poor, and where poverty is on the rise.[25]

With these figures in mind, it is crucial that inquiries into accused persons' ability to pay are consistently conducted to ensure the effective decolonisation of prisons. Failure or omission to inquire would arguably be akin to punishment, even though the requirements of bail were never intended to constitute punishment or discrimination against the accused. It is precisely for this reason that the overarching issue in assessing whether or not bail is granted is the extent to which it serves the interests of justice, in addition to considerations such as whether the accused constitutes a flight risk.[26] The Criminal Procedure Act further stipulates that accused persons may be released on warning in lieu of bail when they are in custody in connection with an offence that is not contained in Part II or Part III of Schedule 2, and which qualifies for bail.[27] However, this list of offences in Schedule 2 is broad, and includes crimes such as treason, murder, rape, sexual offences against children or the mentally disabled, robbery, kidnapping and housebreaking with intent to commit an offence. This means that bail is the sole option for most accused persons. Where an inquiry into affordability is not conducted, correctional facilities end up crowded with the indigent while those who can afford bail (the wealthy) remain at large, regardless of the gravity of their offence(s).

The prerequisites for securing bail in South Africa

Upon application, the presiding officer should grant bail, if the interests of justice permit.[28] The

question of what constitutes the 'interests of justice' must be determined by the courts,[29] but release of the accused will not be permitted in the following situations:[30]

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a schedule 1 offence; or

(b) Where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) Where there is the likelihood that the accused, if he or she were released on bail will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) Where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or

(e) Where in exceptional circumstance there is the likelihood that the release of the accused will disturb the public order, or undermine the public peace or security.

The implication of these requirements is that bail should be granted where an accused makes an application, and none of the grounds listed above is present. A bail application is, however, frequently described as a two-stage inquiry.[31] The first inquiry determines whether it is in the interests of justice to grant bail. This was emphasised in the cases of *S v Dlamini*, *S v Dladla*, *S v Joubert* and *S v Schietekat*,[32] which held that pre-trial arrestees are entitled to be released on reasonable conditions if the interests of justice permit. The second stage of the inquiry is to establish the amount of money to be paid by the accused. Here the presiding officer has to consider the amount that the applicant can afford. In terms of section 60 of the Criminal Procedure Act, the mandate of determining the bail amount rests with the court. The Act, however, does not provide specific criteria for determining the bail amount. As such, this is mostly omitted by the courts, thereby jeopardising the rights of accused persons who are too poor to be able to pay monetary bail.

There is divergence in commentaries regarding the factors which ought to be taken into account in determining the bail amount. Karth,[33] for instance, contends that the amount is not determined by the severity of the crime. Rather, the court is to assess whether the likelihood of forfeiting the amount of money is sufficiently severe to guarantee the accused's return to court.[34] Bates,[35] drawing on some of South Africa's high-profile cases that address the issue of bail, argues on the other hand that the presiding officer must consider the seriousness of the charge and the interests of justice in the granting of bail. Among the cases he analysed to reinforce his point are those against high-profile murder accused Shrien Dewani and Oscar Pistorius.[36] He used these cases to conclude that although release on bail has a lot to do with financial means, the seriousness of the offence also plays a critical role. Bates's view is supported by Ulrich, who is of the opinion that bail can be set at hundreds of rands, depending on the offence, and that the amount is subject to the presiding officer's discretion.[37] Considered together, what exactly should count for purposes of determining the bail amount remains controversial. However, what is clear is the fact that when bail money is set too high, the indigent in society are affected the most.

Omission of inquiry: a hindrance to indigents' rights and decolonisation of prisons

Section 60(2B) of the Criminal Procedure Act mandates the judiciary to conduct a separate inquiry into the ability of the accused to pay bail. If the accused cannot afford bail, the court is to

consider non-financial bail options or set bail at a price cognisant of the circumstances of the accused. Non-compliance with this mandatory probe has impeded the administration of bail in South Africa, and has consequently become a stumbling block in the realisation of the right to bail. Failure to inquire about the affordability of bail often undermines the findings of the first-stage bail application inquiry into whether the interests of justice permit release. This is because the accused gets detained without any effort on the court's part to inquire about the accused's financial ability. The Judicial Inspectorate of Prisons Annual Report[38] has highlighted this problem, arguing that non-affordability of bail is a major cause of overcrowding in prisons. This is exacerbated by the tendency of courts to set unrealistically high bail amounts. The report recommended a re-examination of this practice, based on the fact that bail should not be confused with a fine for an offence. High bail amounts pose challenges to the poor and disadvantaged, and consequently undermine the interests of justice. This resonates with Van der Berg's argument that bail in South Africa operates as 'privilege prejudicial to the poor'.[39] This state of affairs underscores the need for the criminal justice system to make a concerted effort to inquire into accused persons' ability to pay bail money, short of which, the inequality inherited from the apartheid and colonial eras will continue to thrive.

A 2014 study by the Centre for Applied Legal Studies (CALS) into adherence with the legal framework for bail found that courts mainly do not inquire about the accused's ability to pay bail.[40] Leslie adds that judicial officers are usually reluctant to conduct these inquiries, due to the difficulties in assessing and verifying the accused's financial standing, and the lack of clearly defined procedures guiding the inquiry.[41] The Criminal Procedure Act stipulates that appropriate conditions, that do not include money, must be considered for release of those accused who cannot afford bail.[42] Indeed, some accused who are given non-financial bail[43] do not appear in court for trial,[44] which may prejudice the court against a mechanism that is effectively designed to help the indigent. Because of this, some judicial officers prefer to err on the side of caution, and thus ensure that accused persons appear in court, rather than risk them jumping bail.[45] However, presupposing that all accused have the same dishonourable intentions impacts negatively on those indigent accused who are committed to appear for trial.

Section 63A of the Criminal Procedure Act adds another layer of redress for accused persons who cannot afford bail money. In terms of this section, an accused person who has been granted bail, but is unable to pay, can be released by the head of prison on warning. This, however, is on condition 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 an accused. It could be argued that section 63A affords relief to accused persons who cannot afford bail. The limitation is that the discretion of the head of a prison can only be invoked when prisons are overcrowded, so when they are not, there is no reprieve for the accused.

Section 63A(1) was never intended to advance the interests of the indigent accused. If anything, it serves the interests of the prison facilities, since it is only invoked to relieve the burden on correctional facilities. Even with section 63A(1) in place, accused persons routinely remain in custody when they cannot afford the stipulated bail amount, despite findings that releasing them would serve the interests of justice. Given that the largest proportion of people in pre-trial detention are from poor backgrounds, many of whom belong to groups that are socially, economically and politically discriminated against,[46] this finding

should hardly be surprising. Can we therefore speak of decolonisation when the poor and the marginalised continue to suffer the brunt of pre-trial detention, while the wealthy tend to enjoy their liberty? Even taking into account the impact that the nature of the crime has on the outcome of bail application, the odds remain stacked against the accused at the second stage of the inquiry, where one's financial status determines whether or not one will be detained. Failure to conduct an affordability inquiry has become a default filtering tool that determines who is released pending trial, and unfairly disadvantages and discriminates against the indigent accused.[47]

Thus, with the glaring structural inequalities in South Africa, it is apparent that bail has become punitive to the poor. Leslie remarks that:

> [W]e have a system whereby an indigent shoplifter will be remanded for being unable to afford a small amount of bail money, whereas a businessman who stole millions can afford his huge bail and will not be remanded. There is, therefore, an inconsistency in the way bail is applied. Bail serves as a mistress to those with money.[48]

Hopkins further notes that 'when an indigent South African is arrested, however, the cogs of the court system turn incredibly slow, and seemingly not much heed is paid to the principles of a fair trial'.[49] On the face of it, it does then appear that money is being used as a tool to discriminate against the poor.

The indigent accused is disadvantaged not only in terms of the amount of bail set by the court but also by the factors that are taken into account in assessing whether or not the accused is a flight risk. Notably, among the factors that the courts consider is whether the accused has permanent employment or owns valuable assets (see, for example, Madi and Mabhenxa in this edition). Accused persons who meet these requirements are less likely to be deemed a potential flight risk than their indigent counterparts.[50] It is, therefore, apparent that accused persons who are poor tend to be disproportionately prejudiced by the implementation of the bail system. This is itself discriminatory to the indigent accused. The fact that the possession of valuable assets and money remains a major consideration in arriving at an assessment of flight risk not only disadvantages the indigent but also has adverse effects on the dignity and other rights of accused persons who are poor.[51]

Three cases make this point. In *S v Masoanganye*,[52] three accused were charged with, among others, the offence of theft. One of the three accused was tried separately after being granted bail, and the other two co-accused were refused bail because the trial judge was not satisfied that the appellants were not a flight risk, as they did not have sufficient assets registered under their names. The accused who was granted bail was considered not to be a flight risk, merely because he possessed valuable assets.[53] The matter was ultimately appealed in the Supreme Court of Appeal (SCA), which adopted a more progressive approach in overturning the High Court decision:

> [T]he trial court apparently failed to consider that the personal circumstances of an accused – much more than assets – determine whether the accused is a flight risk. Had the court considered the personal circumstances of the appellants, the SCA held, it would have been satisfied that they were not a flight risk.[54]

The point, however, is that similar rulings remain pervasive, clearly denoting how one's means are used to determine whether or not one is a flight risk. *S v Letaoana* addressed a similar issue.[55] In this case, the accused was a scholar who resided with his parents and owned no real

assets of value except a bed and his clothing. The investigating officer in the case testified that if the accused did not return to court, he would not know where to find him. The stance of the investigating officer is highly problematic. Making asset possession a requirement for bail for a 20-year-old schoolboy who, like most of his peers, does not own property or any valuable assets in his own name, is not only discriminatory and unreasonable, it also strikes at the core of South African constitutional values of equality and dignity. Not coincidentally, the court in *Letaoana* ruled that 'to take into account the minimal assets possessed by an accused as a factor for refusing bail is tantamount to imposing a penalty for poverty'.[56]

The *Letaoana* case, though decided in the democratic era, underscores the ignorance and unwillingness of criminal justice professionals, including investigating officers, to take cognisance of the practical realities that ordinary and disadvantaged South Africans have to contend with. This is an indication that the criminal justice system still harbours discriminatory views, many of which directly impact the prison system and undermine the decolonisation of our prisons. This is tantamount to the criminalisation of poverty, and it appears that it is offensive to be poor in so far as bail applications are concerned. Omar affirms this conclusion, contending that such a trend remains problematic and ignores the need for justice and fairness in what remains a very unequal society.[57] It is submitted that unless there are reasons to believe that the accused will evade trial, a lack of ownership of assets is a discriminatory basis for denying bail.[58] It undermines the equality clause, and can hardly be justified in South Africa's free and democratic society.[59]

Looking forward: cashless bail?

Alternative ways should be considered to resolve the issue of whether or not an accused person is a flight risk. The decision in the case of *S v Pineiro*,[60] though not focused on indigent accused, addresses the viability of alternative means to ensure that accused attend trial once released on bail. In the *Pineiro* case, the applicants, who were citizens of Spain, were denied bail because their risk of absconding from trial was high. Despite this risk, the appeals judge considered other ways to deal with the issue, without resorting to keeping the accused in detention. Bail was granted to the applicants subject to certain conditions, notable among which were that the accused had to report to a specified police station once a day, had to hand over their passports to the police, and also could not leave specified areas without reporting to the police. This decision shows that pre-trial detention can remain a matter of last resort if courts creatively consider alternative means to securing the attendance of the accused. This stance resonates with, and would be a furtherance of, section 35(1)(f) of the Constitution, which underscores that '[e]veryone who is arrested for allegedly committing an offence has the right to be released from detention if the interests of justice permit, subject to reasonable conditions'. Here, reference is made to the phrase 'reasonable conditions'. Arguably, conditions that result in discrimination of accused persons on account of their indigence is a far cry from reasonableness as envisaged in section 35(1)(f). This is because, rich or poor, accused persons should be released on bail if the interests of justice permit.

This article set out to demonstrate the need for the criminal justice system to be serious about inquiries into affordability of bail, with a view to decolonising the system. The article has demonstrated that both national and international law lend impetus to the argument that a price should not necessarily be attached to bail, particularly where such a price makes it hard, or close to impossible, for the vulnerable

to be released. With such a high percentage of individuals in South Africa living under the poverty line, failure to conduct the necessary inquiry on bail affordability not only undermines the notion of equality but also constitutes an affront to the values of dignity, both being pillars of South Africa's constitutionally-based free and democratic society. It is highly unlikely that the indirect penalisation of poverty through this practice is justifiable in terms of South Africa's constitutional limitation clause under section 36. The fact that the marginalised constitute a substantial percentage of those in pre-trial detention ought to send a signal to stakeholders about the implications of the failure to conduct an inquiry and follow the necessary procedure thereafter. Where, in the past, the marginalised in South Africa suffered the brunt of detention and imprisonment, it now seems history is repeating itself – this time clothed in the failure of the criminal justice system to follow the legal requirement to make inquiries into the affordability of bail for those accused of crime. Seemingly, this is resulting in the penalisation of the poor.

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Notes

1 This can be gleaned from Criminal Procedure Act 1977 (Act 51 of 1977), sections 60–63.

2 This view was captured in the joint cases of *S v Dlamini*, *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* (CCT21/98, CCT22/98 , CCT2/99 , CCT4/99) [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 June 1999) ; *S v Rudolph* 2010 SACR 262 (SCA) (paragraph 9 thereof indicates that, S60(11)(a) of the Criminal Procedure Act places an onus on the applicant to produce proof, on a balance of probabilities, that 'exceptional circumstances exist which in the interests of justice permits his release); V Karth (compiler), Between a rock and a hard place: bail decisions in three South African courts, Open Society Foundation for South Africa, 2008, https://acjr.org.za/resource-centre/OSF_Bail_text_web.pdf

3 On the provision on alternatives to monetary bail and inquiry into the financial means of the accused, see e.g. Criminal Procedure Act, sections 62 and 60(2B)(a). In particular, section 60(2B) (a) provides that '[i]f the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), and if the payment of a sum of money is to be considered as a condition of bail, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered or any other appropriate sum'.

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27 Criminal Procedure Act, section 72(1).

28 Constitution, section 35 (1)(f).

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31 De Ruiter and K Hardy, Study on the use of bail in South Africa, 9.

32 *S v Dlamini*, *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* (CCT21/98, CCT22/98 , CCT2/99 , CCT4/99) [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 June 1999).

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37 In an interview between eNCA.com and lawyer Ulrich Roux. See Bates, Bail's sliding scale.

38 Correctional Services Portfolio Committee, Judicial Inspectorate of Prisons annual report 2005/2006: briefing, 24 May 2006, https://pmg.org.za/committee-meeting/6916/

39 J van der Berg, *Bail: a practitioner's guide*, Lansdowne: Juta Law, 2001.

40 Ibid.

41 Leslie, Bail & remand detention.

42 Criminal Procedure Act, section 60 (2B) (b)(i).

43 Non-financial bail is a mechanism used when an accused is unable to afford bail and usually includes conditions such as prohibiting the accused from visiting certain geographical locations; prohibiting the accused from communicating with certain people; regular reporting at police stations.

44 Leslie, Bail & remand detention.

45 Ibid.

46 Harvard Law School, Criminal Justice Policy Program, *Moving beyond money: a primer on bail reform*, October 2016, http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf

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50 J Omar, Penalised for poverty: the unfair assessment of 'flight risk' in bail hearings, *South Africa Crime Quarterly,* 57, 2016.

51 Ibid.

52 *S v Masoanganye and Another* 2012 (1) SACR 292 (SCA).

53 Omar, Penalised for poverty.

54 *Masoanganye v The State* (252/11) [2011] ZASCA 119, para 19.

55 *S v Letaoana* 1997 (11) BCLR 1581 (W), 1594.

56 Ibid.

57 Omar, Penalised for poverty.

58 Ibid.

59 Constitution, section 9.

60 *S v Pineiro* 1992 (1) SACR 577 (NM).