



MEMORANDUM ON THE OBJECTS OF THE BILL

-VICTIM SUPPORT SERVICES BILL, 2020-

1. PURPOSE OF THE BILL

Gender based violence, Femicide and abuse of women and children under general is a challenge in the South Africa. There are victims every minute of the day who require services from government in order to curb or mitigate victimhood or deal with after effects thereof. The challenge is that there are various organs of state that provide services to victims of violent crime or crime under general in the country. However, there is a gap in the justice system because the system is only centred around the perpetrator and the victim is often left in isolation. The purpose of the Bill is therefore to bring the victim to the centre of the justice system in order to ensure that the rights applicable to a perpetrator are also extended to a victim to the extent that is applicable.

2. BACKGROUND OF THE BILL

It is widely acknowledged that South Africa has one of the world's most progressive and expansive constitution. There are a range of laws that deal with child protection, domestic violence, sexual offences and other aspects of violence against women and children. Despite the country's progressive Constitution and laws, and having ratified several international human rights treaties, South Africa, still has among the highest rates of violence against women and children in the world.

The Department of Social Development commissioned a feasibility study to assess whether there is a need for a comprehensive victim empowerment legislation. A consortium of NGOs was appointed to conduct such a study. A feasibility report was

presented to the Department of Social Development senior management, Victim Empowerment Management Team and other interest groups. The study recommends that a comprehensive legal framework be developed to assess the gaps in the existing victim empowerment legislation. This Bill has therefore been developed to address such gap taking into account that the criminal justice system is perpetrator friendly and interests of a victim are not recognised at equal footing as those of a perpetrator.

3. OBJECTS OF THE BILL

The object of the Bill is to provide a framework within which victim support services may be provided to victims of violent crime. It seeks to protect the rights of victims and direct that all service providers dealing with a victim treat such victim with dignity and respect regardless of their citizenship, race, gender, culture, religious and personal circumstances.

The Bill further seeks to ensure that a victim is assisted to access victim support service programmes and services from the Department and relevant service providers. It clarifies the roles and responsibilities of different service providers in the provision of victim empowerment services; mitigate secondary victimisation; make provisions for the relevant institutional arrangements.

It also provide for intersectoral programmes or support services that seeks to promote integrated service delivery for victim empowerment programme; for the registration of a facility; for accreditation of any programmes; for vetting of staff members; and minimum standards for the strengthening of security at service providers' premises. It provides for the procedure for the registration, the period of validity of such registration and the renewal thereof. It also caters for suspension of registration and voluntary deregistration.

4. CLAUSE BY CLAUSE ANALYSIS

Clause 1: Definitions and Interpretations

This clause provides for the definitions and interpretations of the clauses of the Act. It provides for general definitions and content based definitions such as the definition of a victim in the context of the Bill.

Clause 2: Objects of the Act

This clause provides for the objects of the Act and outlines what the Bill seeks to achieve including the issue which includes the paradigm shift of the justice system from being perpetrator based to being victim oriented. It places the victim of crime at the centre of the justice system and creates rights for victims of crime in the same context as rights of perpetrators.

Clause 3: Application of the Act

This clause provides for the application of the Act. It is understood that there are various definitions of the victim of crime. There may also be many types of victims. This clause limits the scope of the Act to certain category of victims and places its emphasis on victims of violent crimes. It also addresses the issue of indirect victims and limit the scope of application thereof to family members as it recognises that there can be various types of indirect victims and with the understanding that everyone in South Africa may be or is construed as an indirect of a violent crime in one way or another. It also applies to service providers and relevant departments.

Clause 4: Limitations of the Act

In the same context as in clause 3, this Bill acknowledges the broad scope of the definition of a victim and thus provides the extent to which one may be recognised as a victim of a crime not undermining that for every crime there is a victim but for the purposes of provision of psychosocial services there is a need to limit the application so as to be able cost the services to be provided.

Clause 5: Rights of victim

Currently the justice system focuses more on the rights of an arrested person, accused person in line with section 35 of the Constitution of the Republic of South Africa, 1996. When a person is charged with a crime the rights of such a person are read out to the arrested person and that also happens when the person appears before the court. However, this does not happen with regard to a victim despite the Constitution of the Republic of South Africa, 1996 providing that everyone is equal before the law and has equal benefit and protection of the law. This clause therefore seeks to cure such defect.

Clause 6: Screening and assessment of victim

This clause also acknowledges that there are many types of victims of crime and that there may be victims who are not contemplated in this Bill. It therefore provides for the screening of victims so as to ensure that the person concerned is indeed a victim of crime for the purposes of providing services contemplated in this Bill.

Clause 7: Secondary victimisation

This clause acknowledges that there is always a possibility of secondary victimisation and therefore creates a prohibition against such. It provides that secondary victimisation is illegal and needs to be prevented at all times as it makes a victim to relive the ordeal and therefore not different from the victimisation itself.

Clause 8: Services rendered to victim

This clause provides for a list of services that should be provided to victims. It provides that for each department or organ of state to provide services to a victim in line with each department's constitutional mandate. It places psychosocial services at the centre and also other services that can be provided by other departments since the services that a victim requires are often intersectoral and multisectoral. It also provides for medical services, witness protection services and such other relevant services.

Clause 9: Implementation of Act

This clause recognises that there are so many departments or organs of state that play a role when a person is a victim. It therefore creates a mechanism that must be utilised to ensure that each department organ of state plays its role in implementing the provisions of this Bill.

Clause 10: Minister responsible for Social Development

The clause provides for the Minister of Social Development to play a co-ordinating and facilitation role for the development the programmes and services to be rendered to victims. It also provides for the delivery of services through partnerships with service providers so as to ensure that such services are rendered in compliance with the norms and standards to be prescribed by the Minister. These services include statutory social work support services to the victim; provision of a victim with information regarding services available to them within their area of residence; provision of psycho-social and support services and trauma counselling under general.

Clause 11: Minister responsible for Health

This clause empowers the Minister responsible for health to provide professional, accessible, medical and psychological services to victims admitted to its medical facilities. It also provides for the designation of any public health establishment for the purposes of providing Post Exposure Prophylaxis to victims and carrying out compulsory HIV testing.

Clause 12: Minister responsible for Police

This clause provides for the protection of a victim from the time a matter is reported in the police station throughout the trial until the perpetrator is convicted. It requires that the manner in which a crime is reported should be protective of a victim and that a victim should be notified of the state and progress of a case. It also provides for a victim to be made aware when a bail is be granted so as to avoid a victim meeting his or her perpetrator surprisingly on the street and have his or her life jeopardised again.

It empowers the Minister of Police to ensure that there are victim friendly rooms for the victims to be able to report a crime in privacy.

Clause 13: Civilian Secretariat for Police

This clause empowers the Civilian Secretariat for Police to monitor the implementation of this legislation by the South African police and to report on subsection to the national committee for victim support services on annual basis.

Clause 14: Department responsible for Justice

This clause provides for the Minister responsible for justice ensure that victims and witnesses are treated with dignity and respect during criminal proceedings and in respect to support services in relation to such proceedings and to coordinate plans and programmes for the development, management, implementation, monitoring, evaluation, review, of the victim's charter.

Clause 15: Department responsible for Correctional Services

This clause provides for the National Commissioner responsible for correctional services provide a victim with the name and location of the correctional facility where the perpetrator is incarcerated when requested to do so. It also provides for the victim to be afforded an adequate opportunity to make written or oral representations for parole purposes and provide information relating to the consideration of parole for the perpetrator and for the victim to be notified of the official date of any release of the perpetrator.

Clause 16: Department responsible for Basic and Higher Education

This clause provides for the Minister responsible for education to protect learners within the learning environment from victimization; protect, and provide support to learners or students should they be victimised within or outside the premises of the learning institution; and to develop supporting policies and practice guidelines which

include abolishing any programme, practice or culture that may lead to the victimisation of learners within the learning institution.

Clause 17: Department responsible for Women

This clause provides for the Minister responsible for women to develop policy guidelines to reduce gender based violence; provide for the implementation of gender mainstreaming by relevant departments and to monitor same.

Clause 18: National Prosecuting Authority

This clause provides for the National Prosecuting Authority to notify the victim of a decision to prosecute, or not to prosecute, and the reasons in case the latter applies. It also provides for notification of a victim with regard to the court where a case is enrolled as well as the case number and issues of whether the bail has been granted or not so as to avoid a situation where a victim accidentally meets his or her perpetrator without having been informed about the progress or status of the case. The notification should also be about the status of the case throughout the trial process until the case is finalised.

Clause 19: Legal Aid South Africa

This clause provides that Legal Aid South Africa is expected to provide legal aid to victims so that they can be able to litigate against perpetrators. This is in the context that an accused has a right to legal representation paid for by the state in an event where an accused cannot pay for such by himself or herself. This Bill recognises this discrepancy in the legal system and requires that a victim must too be entitled to legal representation in an event where a victim decides to sue a perpetrator for damages.

Clause 20: Procedure for registration of victim support facility

There is a need for every facility that provides services to victims to register with the Department of Social Development. This clause provides for the procedure that must

be followed by a person who intends to register a victim support facility. It provides a process map for ease of registration.

Clause 21: Requirements for registration of facility

This clause spells out the requirements for registration of a facility. It must be noted that every facility needs to be registered in terms of clause 20 and this clause recognises that not every facility is eligible to register as some may have a history of abuse of women and children which therefore automatically excludes them from qualifying for registration.

Clause 22: Provincial register for registered service provider

This clause creates an obligation for a provincial head of social development to keep a register of all service providers who render services to victims in his or her province. This register must also contain the nature of services provided, operating hours and such other details that will enable victims to know how and when to access such services.

Clause 23: National register of registered service provider

This clause creates an obligation on the Director-General of social development to keep a consolidated record of all the provincial registers of service providers. The consolidated report must contain the details of the nature of services provided in each province, the registration details and registration status of each service provider in every province.

Clause 24: Vetting of staff members of service provider

This clause provides for the vetting of all staff of the service providers. It ensures that persons who have a history of abuse of women and children or any such violent behaviour that may further jeopardise victims or expose them to secondary

victimisation are prohibited from working for service providers or service providers with such history are not registered as for provision of victim support services.

Clause 25: Suspension of registration

This clause for circumstances upon which a service provider may be removed from a registration record or suspended. It provides that once the qualifying criteria requirements have been violated a service provider's registration may be suspended.

Clause 26: Voluntary deregistration and winding up or dissolution of a service provider

This clause provides for a service provider to deregister or be dissolved as a service provider. This helps the department of social development to know who is still providing services so as to know areas where the department should be intervene.

Clause 27: National norms and standards for facilities

This clause provides for the Minister of Social Development to develop minimum norms and standards so as to ensure that all the facilities or service providers provide services in a manner that is consistent with the ideals of this legislation.

Clause 28: Registration and cancelation of registration of facility

This clause provides for registration requirements and registration of facilities that provide services to victim. Each facility is expected to register in compliance with requirements set in the Act.

Clause 29: Notice of enforcement

This clause provides a process of ensuring that steps are taken in an event where a facility is not registered. It also gives powers to the head of department of social development to give a notice to the facility to stop operating as a facility. It is a procedural provision that takes into account the developmental efforts of the department to assist the facility to comply with the registration requirements before a facility can be closed.

Clause 30: Monitoring of registered facilities

This clause provides for the monitoring of facilities that have been registered by the department of social develop. It monitors whether the facilities continue to comply with registration requirements and whether norms and standards are adhered to at all times. The committee tasked with monitoring the registered facilities has a power to enter premises, inspect records and interview any person who is believed to be in possession of information that may assist for monitoring purposes.

Clause 31: Death or injury in the facility

This clause provides for a manager of a centre to report any death or injury that happens in a facility to the police, next of kin and provide a full report to the head of social development in the relevant province within a period of 48 hours from the time of the incident.

Clause 32: Management structure of facility

This clause provides that each facility must have management structure in order to ensure good quality service and proper running of the facility. It provides for the development of regulations to spell out how the members of the management structure should be appointed and who qualifies to be in such a structure.

Clause 33: Record and strategy of facility

This clause provides for the empowerment of a provincial head of social development to maintain a record of all facilities in the province. The record must indicate type of facility and the total number of each type of facility that renders services in a province. It also provides for the development and implementation of a provincial strategy for the provision of facilities which must include facilitating the establishment and operation of sufficient facilities in that province.

Clause 34: Department of Social Development facilities

This clause provides for identification of various and different types of facilities in terms of the services they provide including Khuselekas, One-centres and white doors.

Clause 35: Department of Health facilities

Whenever the department of health designates health facilities to provide assessment of victims, such must be reported to the Director-General, to enable the department to provide adequate victim support services.

Clause 36: National Prosecuting Authority facilities

This clause creates an obligation on the National Prosecuting Authority to ensure that whenever Thuthuzela care centres are established, such centres are reported to the Director-General of social development in order for the Director-General of social development to be able ensure that the department of social development provides adequate victim support services.

Clause 37: South African Police Service facilities

This clause provides for the South African Police Services to provide a private room where victims may be interviewed and statements taken in a confidential respectful and dignified manner. It seeks to ensure that the dignity of a victim is further impaired by being exposed to secondary victimisation.

Clause 38: Provision of funding of facility

This clause creates a power for the member of the executive council responsible for the relevant departments to budget for facilities responsible for providing services to victims. It also mandates the member of the executive council responsible for substance abuse to ensure that the relevant provincial legislature appropriates funding for the purposes of providing funding to facilities for victims of violent crime in each province.

Clause 39: Provision and accreditation of victims' support programmes and service provider

This clause empowers the Minister to develop a policy in consultation with other ministers identified in the clause for the accreditation of victim support programmes. This helps to ensure uniformity of programmes and that programmes are evidence based. This in a way ensures that victims receive proper programmes that have been tested and proven to be reliable.

Clause 40: Regulations

This clause empowers the Minister to make regulations for the purposes of implementation of the Act. It recognise that some provisions cannot be easily implemented and in that way provides a platform for the Minister to make regulations.

Clause 41: Delegation of power

This clause recognises that crime takes places in every corner of the country and in that way the Minister, MEC, Director and Heads of Department of Social Development need to empower through delegations officials closer to the implantation of the Act to have the necessary legislative ammunition to implement the Act.

Clause 42: Transitional arrangement

As service providers are expected to register in terms of this Bill it is acknowledged that there are service providers that will have been in existence at the time of commencement of this Act who will then be given a period of 12 months from commencement of this Act to sort out their registration status.

Clause 43: Short title and commencement

This clause provides for the name of the Act and date upon which it is anticipated to come into force.

5. PERSONS CONSULTED

It must be noted that intensive consultations were held with the Government Departments, non-governmental organisations, local municipalities, FBOs, CBOs and members of the general public in every Province including National. The JCPS Cluster, Social Protection Cluster and their technical committees were also consulted during the process of development of this Bill. Further consultations were also done with African Diaspora Forum, Department of Public Service and Administration, Interim Steering Committee for Gender Based Violence and Religious Sector (National Association for Spiritual Care Givers and Chaplain). Inputs that were received were effected into VSS Bill where necessary.

6. FINANCIAL IMPLICATIONS FOR THE STATE

A cost analysis of the Bill is in the process of being finalised and while Departments are budgeting for victim support services, bids to National Treasury to ensure that this is prioritised in their budgets must be made.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 75 and 76 of the Constitution since it falls within a

functional area listed in Schedule 4 to the Constitution, namely “Welfare Services” which is a concurrent competence.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18 (1) (a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

7.3 Further, the relevant Socio-economic Impact Assessment (SEIAS) has been approved.

DATE

DEPARTMENT OF SOCIAL DEVELOPMENT