

## Submission

to the

**Minister of Social Development**

on the

Victim Support Services Bill, 2019

[B – 2020]

**Due: 7 October 2020**

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## 1. Introduction

The Centre for Applied Legal Studies (CALs) is a civil society organisation based in the School of Law at the University of the Witwatersrand. CALs is also a law clinic, registered with the Legal Practice Council. As such, CALs connects the worlds of academia and social justice and brings together legal theory and practice. CALs operates across a range of programme areas, namely: business & human rights; civil & political justice; environmental justice; gender justice and home, land & rural democracy.

The Gender Justice programme at CALs focuses on ensuring the rights of people of all gender identities and expressions are realised and protected as set out in the Constitution of South Africa. The programme's work largely centres on addressing all forms of gender-based violence and in particular the trauma that victims and survivors face when they are failed by the systems that are meant to protect them.

The Gender Justice Programme at CALs has consistently engaged in various gender-related issues through numerous submissions to Parliament. Most recently, these have included submissions on the [Domestic Violence Amendment Bill](#), the [Criminal Matters Amendment Bill](#), the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act Amendment Bill](#), the [Cybercrimes Bill](#) and the [Prescription in Civil and Criminal Matters \(Certain Sexual Offences\) Amendment Bill](#).

As a law clinic, the Gender Justice programme assists a number of victims and survivors of gender-based violence and sexual offences. In particular, in the last few years, we have worked with women and children who have experienced sexual violence at school, tried to access justice through the criminal justice system, instituted damages claims, and needed to access assistance from gender-based violence shelters. We are thus well-placed to comment on the current text of the Victim Support Services Bill, and address provisions in this Bill primarily as they relate to victims and survivors of gender-based violence as opposed to victims of other violent crimes.

CALs welcomes the opportunity to comment on this Bill and its recognition of victims' rights, and the need for the state to provide and regulate victim support services and counter secondary victimisation in particular.

## 2. Purpose of the Bill

In terms of the ‘Memorandum on the Objects of the Bill’ the purpose of the Bill is to provide a framework within which support services may be provided to victims of violent crimes. There is the explicit acknowledgement that the Bill has been developed to address the gap in existing victim empowerment legislation, the problematic nature of the criminal justice system as ‘perpetrator friendly’ and that victims are not ‘recognised at equal footing as those of a perpetrator’. With this objective in mind the Bill must aim to realise these aims alongside the rights of victims in terms of the Constitution. CALS’ comments on this Bill aim to achieve harmony between the two.

## 3. Reflections on the Bill

Section	Proposal	Motivation
<b>CHAPTER 1 (section 1 to 4)</b>		
<b>Section 1</b> Definition and interpretation		
<b>“associated professions”</b>	A less vague definition. Remove the part of the definition referring to “such professions applying social sciences”.	The definition is too vague. It includes fields such as psychology, medicine and forensics, which is correct. Yet, legal or policing should also be included under this definition to include professions such as the police, lawyers, prosecutors and magistrates. Reference to the inclusion of “such professions applying social sciences” is nonsensical as social sciences include fields as diverse as sociology, anthropology to philosophy, languages and fine arts. This portion of the definition is meaningless.
<b>“victim”</b>	Clarity around the phrase “irrespective of whether any perpetrator is identified, apprehended, and prosecuted or convicted”.	It is not clear from the definition of “victim” whether an individual only qualifies as a “victim” in terms of the Bill if they have reported a violent crime. Persons <u>must</u> still be considered victims even if they choose not to report a case. This is especially important in the case of sexual violence where it is estimated that 1 in 25 women report cases of rape. <sup>1</sup>  The failure to include these individuals is not only a limitation on their right to equality before the law

<sup>1</sup> L Vetten, Rape and other forms of sexual violence in South Africa, *Institute for Security Studies* (2014). Available at <https://www.saferspaces.org.za/uploads/files/PolBrief72V2.pdf>.

		and a form of punishment for not speaking out, but also explicitly goes against studies which show reporting of sexual violence in South Africa is low.
<b>“victim support”</b>	The definition is vague.	Currently the definition of “victim support” includes “emotional and practical support, and management and referral to professional or other support services where necessary”. It is not clear if psychological, physical and/or medical support are included under “practical support”. Furthermore, it is not clear from the definition what the difference is between “professional” and “other support services”. The definition should be specific on what these terms mean. The use of vague terminology can render parts of the meaningless and Bill unenforceable.
<b>“violent crime”</b>	A definition of “violent crime” should be inserted under the <u>section 1</u> definitions.	It is not clear from the Bill what constitutes a “violent crime”. For example, one is lead to think this form of crime is only associated with gender-based violence if one refers to the ‘Memorandum on the Objectives of the Bill’ which states under the ‘Purpose of the Bill’ that “[g]ender-based violence, Femicide (sic) and abuse of women and children under general (sic) is a challenge in South Africa”, yet fails to cite other individuals who may experience acts of violent crimes. If the definition of “violent crime” includes other individuals and instances of violence outside gender-based violence then this should be clear.
<b>CHAPTER 2 (section 5 – 8 )</b>		
<b>Section 5</b> Rights of victim	This section solely focus on the rights of victims <u>once</u> they have reported an incident of violent crime and should reflect victims right more generally.	There must be the inclusion of the general right of victims as these rights extend beyond the institutions dealing with the criminal justice system and include rights to medical support, psycho-social support, housing, safety and security and education.
<b>Section 5(1)(f) and 5(1)(g)</b>	This section is unnecessary as it appears in other legislation. It also creates a false sense of hope for victims that they will be likely to receive a form of compensation.	It is unnecessary to include that a victim may apply for restitution or compensation in terms of the Criminal Procedure Act 51 of 1977 as this right is set out in that act.  Although the provision of legal practitioners by the state for individuals to attempt to get damages in violent crimes cases, appears on the face of it to be a good one, there is an issue of clarity needed around representation. Furthermore, the likelihood of the accused being able to afford such an award must be considered and discussed with the client as this really creates a false expectation.

		<p><b><u>Representation</u></b></p> <p>Who will represent individuals in these cases? This is not clear from this section of the Bill. The Bill claims that legal practitioners will be assigned to the complainant yet in terms of section 300 of the Criminal Procedure Act 51 of 1997 (CPA) this is done by the prosecution in the matter. Does the Bill thus imply that the complainant will be represented separately by a legal practitioner other than the prosecutor?</p> <p><b>(1) <u>Prosecutors</u></b></p> <p>As mentioned above, section 300 of CPA envisions that prosecutors would apply for the consideration of compensation to the magistrate or judge.</p> <p>There are currently not enough prosecutors in South Africa to carry the burden of the duties which they already have in terms of the CPA and other legislation. In 2015 the aspirant prosecutors programme was out on hold due to a lack of funding and in the National Prosecuting Authorities latest annual report the vacancy rate was at 21%, with 1 142 vacancies of a possible 5 550 posts.<sup>2</sup> Not only does South Africa not have enough prosecutors but those who are working in this field are overworked and face already high caseloads. For example in Khayelitsha prosecutors complained of “harsh’ working conditions that include high caseloads, lack of equipment and a shortage of office space to consult with clients”.<sup>3</sup></p> <p>In light of this it can be seen that having prosecutors take on more duties without the required support (financial, office space, equipment, psychological) <u>section 5(1)(f) and 5(1)(g)</u> cannot be claimed to be able to be met and becomes a right that cannot be enforced. This ultimately fails victims.</p> <p><b>(2) <u>Legal Aid Board</u></b></p> <p>If the “legal practitioner” it is Legal Aid then certain problems must be acknowledged around this. According to a report by the Portfolio Committee</p>
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<sup>2</sup> F Rabkin, Training the NPA’s next prosecutors, *Mail and Guardian*, 6 March 2020. Available at <https://mg.co.za/article/2020-03-06-training-the-npas-next-prosecutors/>.

<sup>3</sup> S Phaliso, South Africa: Overworked Khayelitsha prosecutors plagued by stress’, *All Africa*, 8 May 2009. Available at <https://allafrica.com/stories/200905110088.html>.

		<p>on Justice and Correctional Services discussed on 3 June 2020, “budget constraints continue to affect the operations of Legal Aid SA”.<sup>4</sup> The lack of budget and high staff turnover in relation to the Legal Aid Board was once again emphasised on 18 May 2020 during a political overview by the Minister of Justice and Correctional Services, where it was stated “[o]f particular concern to members were the impact of budget cuts on Legal Aid SA’s service deliver... as well as issues relating to labour unrest and loss of employees to the private sector”.<sup>5</sup></p> <p>In light of the above it is unclear how Legal Aid would be able to perform this duty without having sufficient finances. When the state cannot afford to provide these services then it renders this right in terms of the Bill meaningless.</p> <p>This also creates the issue that Legal Aid may be representing both the accused and in terms of this section of the Bill, also the complainant. Would this amount to a conflict of interest?</p>
<p><b>Section 5(1)(h)</b></p>	<p>To re-word and or rephrase the section referring to: victim’s rights to remain silent if not ready to testify and to be informed promptly of the consequences of remaining or not remaining silent.</p>	<p>This section uses the terminology which is reserved for accused persons. This is a specific right under section 35(1) of the Constitution which applies to [a]rrested, detained and accused persons”. This type of language should not be used for victims and must be removed and replaced with victim-centric language. For example, this section can be versed in a more positive way to encourage the victim to come forward at any point so that proceedings can move forward.</p> <p>Furthermore, the reason an accused person is constitutionally permitted to remain silent is the principle against self-incrimination. What is not clear from this section is what is meant by “consequences of remaining silent” for a victim? When one speaks of consequences in law, this refers to legal consequences. If there is an intention by the legislature to introduce legal</p>

<sup>4</sup> ATC200605: Report of the Portfolio Committee on Justice and Correctional Services on the respective Strategic Plans and Annual Performance Plans 2020/21 of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, Special Investigating Unit, Public Protector South Africa, South African Human Rights Commission and Information Regulator; and Budget Vote 25: Justice and Constitutional Development for the 2020 MTEF, dated 3 June 2020. Available at <https://pmg.org.za/taled-committee-report/4167/>.

<sup>5</sup> Political overview by Minister of Justice and Correctional Services & Deputies; Legal Aid South Africa 2020/21 Annual Performance Plan. Available at <https://pmg.org.za/committee-meeting/30242/>.

		consequences against a victim for being silent (which must be avoided altogether) then this should be clear so that submissions can be made on this.
<b>Section 6</b> Screening and assessment of victim	To reconsider the <u>purpose</u> of this section and provide detailed information regarding the assessment criteria.	<p>This section provides for a social worker or a person working under the supervision of a social worker; associated professionals; a police officer; and a member of a registered service provider, to perform screening and assessment of victims.</p> <p>With regards to an “associated professional” it is not clear occupation is referred to. Kindly refer to <u>section 1</u> for a discussion around this definition.</p> <p>It is also not clear what the assessment means, does this refer to a criterion to be considered a victim? If this is the intention, then this section is extremely problematic as a “victim” is already described in <u>section 1</u> and has a broad definition which should not require an assessment. If the individual <i>prima facie</i> fits within the definition of “victim” then this should be sufficient.</p> <p>This section does not provide for victims where cases have not been opened and must be amended to reflect that one is a victim and has/must have services provided for them even if they choose not to report a crime. This issue has been discussed previously under <u>section 5</u>.</p>
<b>Section 7</b> Secondary victimisation	Introduce further guidance around preventing secondary victimisation for departments, professionals and service providers to be able to follow.	<p>A code of conduct alone will not be able to prevent secondary victimisation. Those that come into contact with victims will need to have adequate levels of empathy and understanding of the experience of victims so that they can minimise indirect harm to the victim in their interactions. Mandated trainings or workshops with professionals and service providers is one avenue that has been utilised to achieve this.<sup>6</sup></p> <p>In its current iteration, this clause is quite vague regarding what the code of conduct should entail. Is there a standard code of conduct? Is there a minimum or core set of clauses that should be included? How flexible will this code of conduct be between various departments/providers? How onerous will the code of conduct be? Will it be</p>

<sup>6</sup> The United Nations Office on Drugs and Crime which advocates the use of training for those who work with child victims and witnesses in criminal matters. United Nations Office on Drugs and Crime, *Training Programme on the Treatment of Child Victims and Witnesses of Crime for Law Enforcement Officials*, 2015. Available at [https://www.unodc.org/documents/justice-and-prison-reform/Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - Law Enforcement.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Law_Enforcement.pdf).



		required to take into account intangibles such as burn out and compassion fatigue? These questions point to a lack of certainty that may be harmful to those trying to implement the code of conduct in good faith. It may also mean that, depending on what the code of conduct entails, it will be inadequate in addressing secondary victimisation in the system.
<b>Section 8</b> Services rendered to the victim	This section must be edited to replace the word “must” with language which acknowledges limited access to resources and aims to progressively realise all services.	This clause states that “[a] service provider or relevant department <b><i>must</i></b> provide the following services”. This provision fails to take into consideration the limited resources (financial, personnel and otherwise) that services providers and departments may have and thus sets up these groups for failure. This failure will ultimately have a negative effect on the victim. Instead, language should be used which reflects an understanding of these limitations and aims to progressively realise all forms of services that victims may require.
<b>CHAPTER 3 (section 9 to 19)</b>		
<b>Section 9</b> Implementation of the act	This section must be edited to replace the word “must” with language which acknowledges limited access to resources and aims to progressively realise all services.	As discussed above at <u>section 8</u> , it must be emphasised that government departments and especially NGO providers of services do not always have enough resources to ensure having both adequate human and/or financial resources to achieve the object of the Bill.  It is specifically problematic to mandate the provision of services and the realisation of the objects of the Bill when many service providers are not necessarily funded by the state or even partially funded by the state. For example, most gender-based violence shelters in South Africa are “state funded”, yet accord to a report by the Commission for Gender Equality, funding for these forms of shelters is inadequate. <sup>7</sup> Importantly it must also be emphasised that in some instances shelters which should in fact receive funding from the State have simply not been funded, for example in an open letter by the National Shelter Movement to President Ramaphosa in 2020, it was revealed that in the first 3 and a half months of this

<sup>7</sup> Commission for Gender Equality, *Investigative Report – State of shelters in South Africa*, (2019). Available at <http://www.cge.org.za/wp-content/uploads/2014/05/State-of-Shelters-in-SA.pdf>.

		<p>financial year, the Eastern Cape DSD had simply failed to transfer funding to 103 NGOs .<sup>8</sup></p> <p>In light of the above, the creation of mandatory laws around provision of services, especially in relation to NGOs, may cause the entire collapse of the victim services system.</p>
<b>Section 10(1)(a)</b>	Include reference to funding facilities and services which provide victim support services.	The use of phrases such as “co-ordinate” and “facilitate” fails to show that the duty to provide victim support services is on the State. Thus, “funding” should be included here.
<b>Section 10(1)(b)</b>  Minister responsible for social development	Clarity around the applicability of the “prescribed norms and standards”?	<p>The Bill states that The Minister responsible for social development must ensure that delivered services are rendered in terms with the prescribed norms and standards.</p> <p>In terms of <u>section 27</u> of the Bill these norms and standards will only come into operation within 12 months of the operation of the Bill. What will be the threshold to be met before these norms and standards are in place?</p> <p>This appears to be an instance of ‘putting the cart before the horse’ as this Bill, which relies heavily on the establishment of these norms and standards and refers to compliance with such throughout the Bill, will effectively come into existence <i>before</i> the norms and standards.</p>
<b>Section 12(1)</b>  Minister responsible for police	The duties of investigating officers must be set out in more detail.	<p>The Bill (regulations or National Instructions) should set out how frequently a victim should be updated on information around their case. The department has already issued National Instructions around handling sexual offences which intends to establish and maintain uniform standards of policing and similarly this can be done for victims of violent crimes.<sup>9</sup> The same process could be used to set out duties that investigating officers have towards victims of violent crimes.</p> <p>The Bill or regulations to the Bill should be specific around what threshold a member of the South African Police Service must meet for an investigation to be deemed reasonable and what</p>

<sup>8</sup> iAfrica, *National Shelter Movement calls for the President to address funding of women’s abuse shelters*, (2020). Available at <https://iafrica.com/national-shelter-movement-calls-for-the-president-to-address-funding-of-womens-abuse-shelters/>.

<sup>9</sup> South African Police Service Act 68 of 1995, s25(1)(b).

		<p>failure to conduct a reasonable investigation would result in.</p> <p>CALS submits that the Bill should act alongside the Service Charter for victims of crime in South Africa (“Victim’s Charter”).<sup>10</sup> The Victim’s Charter states that victims’ have the right to be treated with fairness and with respect for dignity and privacy, the right to receive information, the right to protection, the right to assistance, the right to compensation and restitution.</p> <p>In order for these rights to be realised we assert that victims must know (in detail) what duties investigating officers have and whether they have in fact complied with these duties. This could include regulations setting out these duties in details as well as victim’s access to the docket or parts of the docket to certify such compliance.</p>
<b>Section 12(1)(f)</b>	<p>Include advising victims of appeals sought by the accused as well as details about the case such as case number, court and prosecutor</p>	<p>There is the need to give victims information around an accused’s application for appeal.</p> <p>One of CALS client’s became aware that the man that raped her was out on bail in his appeal case when a family member encountered the accused at a restaurant in the community. She was not advised that the accused had applied for an appeal, that he had applied for bail and that he had successfully been granted bail.</p> <p>This was an extremely traumatic experience for both the victim and her family and could have been avoided if they had been kept abreast of developments in the case.</p>
<b>Section 12(2)(c)</b>	<p>What is the standard for making a decision that “there is not enough evidence to merit referral for prosecution”?</p>	<p>This section refers to a decision by the police that there is insufficient evidence to warrant submitting a case to the NPA for a decision on whether or not to prosecute.</p> <p>Who decides if a case has insufficient evidence at SAPS level? What is the threshold of insufficiency? What if this insufficiently was brought about due to SAPS not investigating sufficiently?</p> <p>These questions arise from a lack of clarity that victims have in relation to the duties of SAPS in investigations. Victims have a right in terms of the</p>

<sup>10</sup> Service Charter for victims of crime in South Africa. Available at <https://www.justice.gov.za/vc/docs/vc/vc-eng.pdf>.

		Constitution and the Victim's Charter (as set out above at <u>section 12.1</u> ) to this information.
<b>Section 15(c)</b>  Department responsible for correctional services	Afford both the victim and the victim's family, loved ones, support structure to make representation at parole hearings.	<p><u>Section 15(c)</u> of the Bill correctly creates the mechanism for victims to have an input around parole. Yet, the individuals which can and should have a right to make submissions should be broad enough to include the family, loved ones and/or support system of victims. Violent crimes do not just affect the victim of the crime but the family, loved ones and/or support system.</p> <p>Furthermore, in instances whereby the victim is no longer alive, professionals should be permitted to attend the parole hearings on behalf of the deceased, in addition to relatives of the victim because the perpetrator and the victim in some instances might be relatives.</p>
<b>Section 16</b>  Department responsible for basic and higher education	Definition of "victimisation".	<p>The term "victimisation" is not defined in Bill. When used in this section it plainly is not akin to "secondar victimisation". Instead the term seems to refer to the actual serious and/or violent crime or offence that victims experience. If this is correct, then correct legal terminology must be used.</p> <p>Furthermore, if the above is correct then it is peculiar why these departments have an explicit duty in this act to protect against serious and/or violent crime but no other department has this duty?</p> <p>When requiring these departments to "[act] against perpetrators" what exactly is implied? Is this in assuming that perpetrators are educators or other students/learners and thus conduct a disciplinary process?</p> <p>Finally, since the departments have a duty to "protect...learners or students should they be victimised within or outside the premises of the learning institution" and no perpetrator type (educator/learner/student) is mentioned, this creates a duty that is well-beyond that of common law <i>paterfamilias</i> or other jurisprudence on the duty of care. This would then include protecting these individuals from victimisation from anyone anywhere. This section must be recrafted to properly explain the duties of these departments and fix the issue of non-specificity which creates an absurd situation.</p>

<p><b>Section 17</b></p> <p>Department responsible for women</p>	<p>Too narrow in its duties.</p>	<p>This section creates a duty on the department responsible for women to develop policies which would aim to reduce gender based violence and provide implementation for gender mainstreaming by relevant departments, yet, this Bill is aimed at realising the rights and providing services for all victims of violence crimes.</p> <p>These duties should include development of policies around other vulnerable and intersecting groups such as violence against persons with disabilities, violence against children, violence against LGBTI+ individuals, violence against religious and cultural minorities and violence against non-nationals.</p>
<p><b>Section 18(a)</b></p> <p>National Prosecuting Authority</p>	<p>No change, yet more information.</p>	<p>Currently many victims of sexual violence are not advised at all that (1) the NPA will not prosecute the offence committed against them (2) Reasons for such. This process involves the victim having to write to the National Prosecuting authority to receive the decision and reasons.</p> <p>Will this section of the Bill make it compulsory for NPA to engage the victim on this? Or, alternatively, will victims still be required to ask for the reasons before being given such?</p> <p>On the above, victims should also be made aware of what factors are considered in whether a crime will be proceeding to prosecution.</p>
<p><b>Section 19</b></p> <p>Legal Aid South Africa</p>	<p>Use of the term “may” does not acknowledge a legal duty and leaves space for discretion to assist victims.</p>	<p>When referring to the duties that Legal Aid South Africa has in terms of victims the use of the word “may” gives what is ultimately a government department the choice on whether to assist victims or not.</p> <p>Instead there could be reference to “must, depending on its available resources”, which acknowledges there is a positive government duty towards victims, however this duty may be limited by resource constraints.</p>
<p><b>CHAPTER 4 (section 20 to 33)</b></p>		
<p><b>Section 20</b></p> <p>Procedure for registration of the victim</p>	<p>Give a grace period for existing facilities to be able to register their facilities under the proposed Bill.</p>	<p>There are currently facilities that provide for victim support of people who have been victims of different crimes. <u>Section 20</u> of the Bill proposes that every facility that seeks to provide these services must be registered with the relevant</p>

support facilities		department. This puts victims at disadvantage and even dangerous position. This is because these facilities are currently housing these victims and if the facility is not registered and subsequently dissolved, the victims will have nowhere to turn to and might face the danger of going back to places where they were made victims to begin with.
<b>Section 20(14)</b>	There is no need to create a criminal offence in relation to registration.	There is the incorrect belief that creating offences for every failure of a duty will result in the eradication of that failure. There is no evidence to support the notion that criminalisation will result in changed behaviour or social change. The use of criminalisation to ensure registration and compliance is extremely excessive.
<b>Section 21</b> Requirement for the Registration of Victim Support facilities	Inclusion of a more detailed requirements for the registration of the facility especially a requirement that will reflect not only structure, health and safety but also the psychological and emotional wellbeing of the victim.	The Bill is centred on having a supportive system for the victims of violence. The requirement for the psychological and emotional support to the victim must be explicitly stated in this section.
<b>Section 30(3)</b> Monitoring of the registered facilities	The provision must put measurements in place upon inspection to guarantee the safety and the right to privacy of the people living in the victim support facilities.	This section of the Bill makes provision for any person sent from the office of the Director-General or the provincial head of the department to inspect victim support facilities. The section does not provide for measures to be put in place to ascertain the identity of these officers or the protection of the rights of the people living in the victim support facilities.  There are issues of confidentiality and safety that may be contravened by <u>section 30(3)</u> . This section should be amended to be cognisant of the rights of individuals to privacy and security of the person under the Constitution and should reflect this.
<b>CHAPTER 5 (section 34 – 39)</b>		
<b>Section 34 to 37</b> Service facilities for victims	Clarify the status of state-run facilities that may not currently fall under the departments cited under <u>sections 34 – 37</u> of the Bill.	In our experience, several state-run gender-based violence shelters are funded by provincial Departments of Community Safety. Such as Ikhaya Lethemba in Johannesburg, Gauteng.  This is an opportune moment to employ uniformity around these state-run facilities.

<p><b>Section 34 to 37</b></p> <p>Service facilities for victims</p>	<p>Clarify any contradictions between this chapter and <u>section 8</u> of this Bill.</p>	<p><u>Section 8</u> lists the services a service provider or relevant department must provide, including medical assistance, psychosocial services <u>and</u> 'any other relevant services'. This chapter breaks down the responsibilities of each department or facility. Does this mean not all departments or facilities will be responsible for each of the types of assistance outlined in <u>section 8</u>? This requires clarification.</p>
<p><b>Section 34 to 37</b></p> <p>Service facilities for victims</p>	<p>Include adequate child care services at facilities. If adult-only facilities are required, designate sufficient facilities which will also accommodate children.</p>	<p>Facilities which accommodate children, or provide services to adults with children, <u>must</u> have safe, quality child-care services available. Many victims of gender-based violence, and particularly domestic abuse, will bear the responsibility for caring for their children. In order to be able to make use of services, including health care and psychosocial services, as well as other areas of life such as searching for jobs or accommodation, they will need to have access to safe, quality child care services to ensure their children are looked after at these times. Depending on the facility, this should include crèche and after care services, at least within available resources.</p>
<p><b>Section 34 to 37</b></p> <p>Service facilities for victims</p>	<p>Clarify the co-ordination between services offered by different departments and facilities.</p>	<p>Although the Department of Social Development is in theory disposed with the task of being the centralised department handling all issues related to victims of violent crime, this does not happen in reality.</p> <p>There is a lack of co-operative governance in relation to the provision of services to victims, especially victims of gender-based violence.</p> <p>In our experience the departments do not 'speak' to each other and act together in achieving a working victim services system.</p> <p>For example, in 2020 in Ikhaya Lethemba (a Johannesburg state-run gender-based violence shelter) a woman passed away due to a 'chronic illness' (the details of her death are not yet confirmed). The Department of Community Safety explained to CALS and the SAHRC that although they had 'tried' to attain hospice facilities or something akin to this, the woman had no money and thus could not be assisted. Instead the individual's health deteriorated in the shelter without the correct medical assistance and without the option of a dignified passing.</p> <p>This event occurred despite the positive obligation on the state to provide emergency medical treatment and despite this being a state-run facility.</p>

		<p>The woman's death exemplifies the lack of communication between government departments as well as the total ignorance of government departments around their positive constitutional obligations towards people in the country and specifically victims of gender-based violence.</p> <p>We must also be aware that reducing co-operative governance to legislation or policy without the actual will-power of the departments may be mere lip-service and victims of violence are the individuals who suffer the consequences.</p>
<p><b>Section 34</b></p> <p>Department of social development facilities</p>	<p>Clarify the difference between a Khuseleka One-Stop Centre and a shelter in the definitions.</p>	<p><u>Section 34 (1) and (3)</u> appear to make a distinction between 'Khuseleka One-Stop Centres' and 'shelters'. If so, this may defeat the purpose of a 'one-stop centre'. Will this require victims to be transported from shelters to Khuseleka Centres to access the services there, as well as to Department of Health facilities to access services there, etc.?</p> <p>If so, provision must be made for transport for victims to safely access these services. We have had clients who have experienced further acts of gender-based violence and victimisation when they did not have proper transport from a shelter to a health care facility and back again.</p>
<p><b>Section 34 (2) (b)</b></p> <p>Department of social development facilities</p>	<p>Provide more detailed explanations of what is included in 'care and support services'.</p>	<p>This provision is vague and it is not clear if this is supposed to include accommodation or basic needs, like food, sanitation, or sanitary products including sanitary pads and nappies.</p>
<p><b>Section 34 (2) (b)</b></p> <p>Department of social development facilities</p>	<p>Remove the six month limitation on access to victim support services.</p>	<p>There is no evidence to suggest that six months is enough time for all victims of gender-based violence to be able to move on from all support services offered to them, particularly counselling services.</p>
<p><b>Section 34 (2) (d)</b></p> <p>Department of social development facilities</p>	<p>Include accredited training and career development services in areas related to more than just care work.</p>	<p>Victims and survivors of gender-based violence, particularly domestic abuse, are often victims of economic violence and may have been kept from finding a job or earning a living. In order to rebuild their lives, they will need access to careers guidance services as well as vocational training. In our experience, when state-run shelters do provide training, this is often not accredited and the</p>



		<p>majority of the training is for care work. This is both promising false hope and assumes that women, who are the ones most often accommodated in these shelters, are only suited to particular kinds of undervalued and underpaid work.</p> <p>On a recent site visit at a state-run gender-based violence shelter the options available for women with regard to advancing their potential economic avenues was limited. The 'available' options included sewing (where it was not clear that any women actually were enrolled in any courses for such). There were 'printing' facilities yet this was non-operational and no staff at the shelter appeared to know how any of the machinery worked.</p>
<p><b>Section 34 (3)</b> Department of social development facilities</p>	<p>Make provision for long-term facilities.</p>	<p>There is no evidence to suggest that six months is enough time for victims and survivors of gender-based violence, particularly women and children who have experienced domestic abuse, to be sufficiently prepared to leave shelters. Many people who experience domestic abuse have faced economic violence, have no jobs and have difficulty finding work, are not qualified and do not have other resources or support structures to draw on – otherwise they would not have turned to the shelter for assistance to begin with.</p> <p>In our experience, many of our clients who have accessed state-run shelters have been unlawfully evicted before they are ready to leave. The choice they often face is either living on the street or returning to abusive homes. Both of these are places of violence where they risk being further violated and traumatised. Shelters <u>must</u> be sufficiently resourced to accommodate the number of people who need their services for as long as they need them.</p>
<p><b>Section 34 (3)</b> Department of social development facilities</p>	<p>Include more specific safety and basic needs like food and sanitary supplies.</p>	<p>Defining a shelter purely as a 'residential facility' is, once again vague and problematic. Shelters perform an essential role in providing safety and support to women and children in crisis. They should be more than accommodation and must provide for basic needs, including food, sanitation, and sanitary products including those needed for children.</p>
<p><b>Section 34 (3)</b> Department of social</p>	<p>Ensure there are sufficient facilities available which are able to accommodate persons with disabilities, including children.</p>	<p>In our experience, it is very difficult to find a shelter which is able to accommodate victims and survivors with physical disabilities, and at times also psychological disorders. Research should be used to determine the number of places needed</p>

development facilities		for people with disabilities, bearing in mind that they are disproportionately impacted by violent crime and rendered particularly vulnerable by society's treatment of them.
<b>Section 34 (5)</b> Department of social development facilities	Clarify what is envisioned by a 'white door safe space' in the definition section.	Are these facilities there for emergency situations? Are they responsible for providing the same services listed in <u>section 8</u> or <u>34 (2)</u> ? Are they simply a stop over until more permanent shelter or assistance can be found for a victim or survivor?
<b>Section 38</b> Provision of funding of facility	Clarify that there must be sufficient funding and enough facilities to accommodate and provide services to victims and survivors of gender-based violence who need to access them, whether in state-run or private shelters.	The funding of different facilities must be based on research which provides evidence for the number of victims and survivors who need to access services at any time. This should be reviewed frequently to ensure that facilities are not under-resourced and victims and survivors are not further traumatised by a lack of access to services or having access to these services removed prematurely.