



Submission on the Victim Support Services (VSS) Bill, 2020,
to the Department of Social Development
by Triangle Project

Contact persons:

Estian Smit, Research, Advocacy and Policy Manager: estian@triangle.org.za

Sharon Cox, Health and Support Services Manager: health@triangle.org.za

Thato Mabe, Parliamentary Monitoring Fellow: Research and Policy: thato@triangle.org.za

7 October 2020

Introduction

Triangle Project is a non-profit human rights organisation offering professional services to ensure the full realisation of constitutional and human rights for lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) persons, their partners and families. Our three core services centre around Health and Support, Community Engagement and Empowerment, and Research and Advocacy. We offer a wide range of services to the LGBTQI+ community. These include sexual health clinical care, counselling, support groups, a helpline, public education and training services, community outreach, court support to survivors of hate crimes, a needle and syringe programme, and research and advocacy to advance human rights and social justice for LGBTQI+ people, including the rights to sexual orientation, gender identity, gender expression and sex characteristics.

Triangle Project welcomes this opportunity to make a written submission on the Victim Support Services (VSS) Bill, 2020 (“the Bill”), to the Department of Social Development.

As a civil society organisation that provides a range of services to vulnerable LGBTQI+ communities, who constitute among the most marginalised subpopulations in South Africa, **Triangle Project notes with alarm, along with many other civil society sectors, that the Victim Support Services Bill in its current form would have a devastating impact on LGBTQI+ and other victim services organisations and the communities and clients we serve.** We hereby wish to raise the following points of concern, which are not exhaustive:

Erasure of LGBTQI+ survivors of violence and hate crime on the basis of SOGIESC

The Bill makes no mention of victims/survivors of violence and hate crime on the basis of their sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC). LGBTQI+ people face pervasive homophobia, transphobia and intersexphobia in society and from service providers. Many LGBTQI people, especially transgender sex workers, also face additional and intersectional forms of stigma, exclusion, discrimination and violence on the basis of their health status (e.g. HIV, TB), sex work, drug use and/or homelessness.

The **Objects of the Act** “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 **Memorandum on the Objects of the Bill** mentions women and children a number of times, but does not mention other groups vulnerable to violence and abuse. **Section 17 of the Bill** on “Department responsible for women” says “The Minister responsible for women must-(a) develop policy guidelines to reduce gender based violence; and (b) provide for the implementation of gender mainstreaming by relevant departments, and monitoring thereof”. **Section 16 of the Bill** on “Departments responsible for basic and higher education” says that the Minister responsible for education must protect learners within the learning environment from victimization and develop related policies and practice guidelines.

This creates the impression that GBV against women and children is the main focus of the Bill, as no mention is made of specific policies or measures to reduce violence against other vulnerable groups.

An important recent study¹ on experiences of violence, mental health, well-being and access to healthcare among LGBTI people in South Africa found that almost half of participants were survivors

¹ Müller, A., Daskilewicz, K. & the Southern and East African Research Collective on Health (2019). *Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and*

of sexual violence and more than half of participants had experienced some form of physical violence at some point in their lives.² These rates are higher than the general population. The study further found that social exclusion, marginalisation and stigma have a negative impact on the mental health and wellbeing of LGBTI people, and that they have higher levels of depression, anxiety and suicidality than the general population.³ Almost a quarter of participants had experienced healthcare being denied to them, and almost a third had experienced being called names or being insulted by healthcare staff.⁴ Additionally, 44% of participants reported that they had tried to hide a health concern related to their sexual orientation or gender identity from a healthcare provider.⁵

A recent survey among 71 clients of Triangle Project's Health and Support Services in Cape Town and rural areas of the Western Cape, found similarly concerning patterns. Intimate partner violence was experienced by 81% of participants, more than two thirds experienced depression and/or anxiety, alcohol and substance use were high, and almost half of participants avoided visiting public clinics due to LBGtQI+ discrimination.⁶

These research findings indicate an urgent need to expand comprehensive, inclusive and nondiscriminatory support services to LGBTQI+ people who are victims of violence and hate crime.

Proposals

- Objects of the Act: Include sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) with the already listed categories to ensure that LGBTQI+ people are also treated with dignity and respect.
- Objects of the Act: Include health status, occupational status/sex work, drug use and homelessness with the already listed categories to ensure that sex workers, people who use drugs, and people who are unhoused/homeless are also treated with dignity and respect.
- Bill as a whole: Ensure that violence and hate crime against LGBTQI+ people and other vulnerable groups (sex workers, people who use drugs, people who are unhoused/homeless, people with disabilities, older persons, foreign nationals, asylum seekers, refugees, etc.) are adequately addressed.
- Bill as a whole: Wherever "his or her" occurs, please use gender-neutral pronouns instead ("their"), or at least add a gender-neutral pronoun (her, his or their) to ensure that nonbinary persons are included.

gender identity and expression in South Africa: Research report based on a community-led study in nine countries. Amsterdam: COC Netherlands, p.41. Available at: http://www.ghjru.uct.ac.za/sites/default/files/image_tool/images/242/PDFs/Dynamic_feature/SOGIE%20and%20wellbeing_07_South%20Africa.pdf

² Ibid. pp. 41, 46.

³ Ibid. p.93.

⁴ Ibid. p.38.

⁵ Ibid. pp.38-39.

⁶ Tran, J. (2020). Exploring wellness and health care access among LGBTQI+ people in the Western Cape, South Africa. Presentation at Triangle Project, 7 September 2020.

Unattainable Registration and Funding Requirements for LGBTQI+ and other Organisations providing Services to Victims

We are extremely concerned about the Bill's introduction of additional registration and programme accreditation processes for organisations that provide services to victims. Triangle Project offers a range of services across different programmes to LGBTQI+ survivors of violence and hate crime. Accreditation of all these programmes would be so costly and time intensive as to render many organisations unsustainable and ineffective.

For a relatively small non-profit organisation like Triangle Project, it would mean redirecting scarce, limited funding and valuable human resources away from actual support services for LGBTQI+ victims, and towards additional administrative and bureaucratic processes. This would be in addition to the extensive array of regulations and requirements we are already obligated to meet in terms of existing legislative and policy frameworks, and grant agreements with our funders.

If Triangle Project, as an established organisation, will have great difficulty functioning under such circumstances, then there is very little likelihood of smaller and emerging LGBTQI+ organisations surviving such a new, additional regulatory regime.

Furthermore, **Section 9(2) of the Bill** requires that "Every relevant department and service provider must ensure that there is adequate human and financial resources to achieve the realisation of the object of the Act".

Non-profit organisations who provide services to LGBTQI+ or other victims struggle hard to obtain scarce funding and resources to provide necessary victim services that are in fact the responsibility of government, but which government is not providing. It is the duty of government to ensure adequate funding for services, and this legal burden cannot be placed on service provider organisations.

The programme accreditation and funding requirements of the Bill will be impossible to meet for many organisations, and will cut off critical services from LGBTQI+ communities and individuals who urgently need an expansion of services for their safety and survival, not increased exclusion. The situation for LGBTQI+ people in rural areas is especially dire, and this Bill will make it even more difficult for organisations to emerge and become established in such contexts. We are concerned that many community-based and emerging organisations who will be severely impacted are not aware of this Bill and do not have the opportunity to engage with it.

Proposals

- Remove the requirement for organisations who provide services to victims to obtain accreditation for each of their victim support programmes.
- Remove the requirement that organisations who provide services to victims have to ensure that they have adequate financial resources to provide services to victims.

Government Overreach breaching Confidentiality in Victim Support Services Facilities

The Bill allows extensive breach of confidentiality and violating victims' right to privacy. **Section 30(3) of the Bill** allows a member of the provincial committee for victim support services, a social worker employed by the Department of Social Development or a provincial department, or a police officer, upon written instructions of the Director-General or a provincial head of the department, at any time, to enter a victim support services facility, interview any victim and gain access to any

records or documents. **Section 30(4) of the Bill** criminalises noncompliance or obstruction of the aforementioned actions.

Such actions constitute unacceptable violations of ethical obligations of client confidentiality towards LGBTQI+ and other victims, and of their rights to privacy and dignity, as well as undermines the need to create an environment of safety and trust.

Proposal

- Remove the extensive and unjustifiable powers of the Department of Social Development and other authorised persons to enter and carry out these actions at any time at a victim support services facility.

Untenable Criminalisation of LGBTQI+ and other Organisations providing Services to Victims

The Bill provides for the wide-ranging criminalisation of service provider organisations that do not comply with its requirements. **Section 20 of the Bill** requires any person who wants to establish or manage a victim support facility that renders physical, psychological, spiritual or social services, to register the victim support facility in terms of the Bill, and criminalises failure to do so.

As mentioned above, **Section 30(4) of the Bill** criminalises noncompliance or obstruction of actions by persons authorised by the Department of Social Development to access a victim support services facility and its records, and to interview victims in the facility.

Section 40(2) of the Bill criminalises any person or service provider who contravenes or fails to comply with any of a long list of Regulations under General Provisions (such as minimum requirements for different types of facilities, and the format of the annual report, among others).

It is completely untenable to unnecessarily criminalise a large proportion of organisations who are working hard to provide critical services to victims with the limited resources they have available, and who simply do not have the funding, resources or capacity to meet all the Bill's additional regulations, many of which will not contribute to the improvement of services.

Due to stigma, ignorance and discrimination, there are very few inclusive, nondiscriminatory and accessible services available to LGBTQI+ people. These regulations have the potential to severely harm and close down already limited services to LGBTQI+ people, as well as discourage and obstruct the establishment of more services, and further clog up the criminal justice system. Instead of criminalising service provider organisations for unnecessary reasons, government must provide more support, funding and resources to organisations.

Proposal

- Remove the criminalisation of organisations who provide services to victims.

Conclusion

Triangle Project witnesses on a daily basis the urgent need to provide comprehensive, inclusive, nondiscriminatory and accessible support services for LGBTQI+ survivors of violence and hate crime. Unfortunately, despite good intentions, the Victim Support Services Bill in its current form will reduce rather than expand access to services that are

critical for the safety and survival of LGBTQI+ people and other marginalised and vulnerable groups.

We therefore urge the Department of Social Development to work with civil society and community-based organisations who provide services to victims of violence and hate crime in rethinking and revising the Bill to ensure it advances comprehensive, nondiscriminatory and accessible services to victims.