



## **SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT**

On the Victim Support Services Bill

By

Just Detention International – South Africa

7 October, 2020

**Lifeline Johannesburg endorses this submission. As a mental health and emotional wellness organisation dealing extensively with cases of abuse, including sexual abuse, we are in full support of the proposals and motivations made herein.**

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## **Introduction**

Just Detention International - South Africa (JDI-SA) is a health and human rights organisation that seeks to end sexual abuse in all forms of detention. JDI-SA participates in legislative and policy reform processes; works inside prisons to train and provide technical assistance to staff; raises public awareness on the problem of prisoner rape; and provides support and information to prisoner rape survivors. Our work is based on the core principle that when a government takes away someone's liberty, it takes on an absolute responsibility to keep that person safe. No matter what crime someone may have committed, rape is not part of the penalty.

## **Background**

Sexual violence is a crime, whether it's committed in the home, in the community, or in a detention facility. South Africa's prisons, for example, are rife with violence and rape. In some cases, the perpetrators are prison staff—the very people responsible for keeping inmates safe. Prisoner rape is also recognized internationally as a form of torture.

Sexual violence in Department of Correctional Services (DCS) facilities is linked to gang violence and its power structures. While anyone can be raped in prison, those who are perceived as weak are at especially high risk. They include lesbian, gay, bisexual, transgender, intersex, queer, and gender non-conforming inmates (LGBTIQ+); young people, those of small build; first-time inmates; mentally ill and disabled people, and those who are timid and not aggressive. In men's prisons, hyper-masculine, misogynistic attitudes are widespread, meaning that perpetrators of sexual abuse are often considered strong—or manly—and victims are considered weak—or feminine. These attitudes make it extremely dangerous for rape victims to report abuse and seek the help they need. As a result, many suffer in silence.

While every victim's experience is unique, there are many common reactions, including fear, shame, anger, panic attacks, nightmares, and flashbacks. For people in correctional facilities and other detention facilities such as police holding cells and immigration detention facilities—be they women, men, or gender queer or gender non-conforming persons—these symptoms are exacerbated by the absence of privacy, lack of control over the environment and, often, by the continuing presence in the facility of the person who raped them—who may continue to rape them. Victims are typically targeted again and again, and sexual abuse in prison is rarely a once off event. LGBTIQ+ inmates are particularly hard hit, as they typically have to face homophobia and transphobia from inmates and officials alike.

Incarcerated and formerly incarcerated rape victims who have not been provided with services to assist them with their emotional pain are far more likely to reach for, or revert to, risky or criminal behaviour. Many become indigent. With support, victims of rape in detention can learn to deal effectively with their trauma, express their feelings in a way that does not cause themselves or others harm, and rebuild their lives.

Sexual abuse in detention, regardless of the perpetrator, represents a government's failure to uphold its responsibility to keep persons in detention safe. The Victim Services Bill presents an opportunity to ensure that no victims are left behind—including victims of sexual abuse behind bars.

## 1. Executive Summary

Just Detention International–South Africa welcomes the Department of Social Development’s (DSD) commitment to a human rights-based approach to rendering services to victims of crime and is grateful to the Parliamentary Portfolio Committee on Social Development for considering this submission.

It is for this reason that we make this submission to urge:

- a) The inclusion and articulation of rights for victims of crime in detention;
- b) The expansion of the roles and responsibilities of the DCS National Commissioner as spelt out in the Policy to Address Sexual Abuse of Inmates in DCS Facilities (2013), as well as the inclusion of other relevant departments and bodies;
- c) The acknowledgement of representatives or employees of the state in places of detention as possible perpetrators of violent crimes, such as assault, torture, and rape so as to ensure that victims have recourse in instances where the perpetrator wields state power and authority;
- d) The rewording or revision of particular definitions and sections.

## 2. Purpose of Submission

\* \_\_\_\_\_ Words underlined with a solid line in the table below indicate insertions in existing text in the Bill.

CLAUSE COMMENTED ON	PROPOSAL	MOTIVATION
2.1. The VSS Bill in its entirety + Memorandum on the Object of the Bill (Purpose of the Bill)	Rape, torture, assault, and other forms of violent crimes happen in places of detention. The Victim Support Services Bill should provide a statutory framework for the promotion and upholding of the rights of victims of violent crime behind bars so as to prevent secondary victimisation and provide integrated and multi-disciplinary co-ordination of victim empowerment and support inside places of detention.	The Victim Support Services Bill needs to affirm the rights of victims of violent crime behind bars, especially victims of sexual abuse and torture in detention. The Bill, in its current form, reads as though crime and violence do not take place in detention, or that incarcerated or detained persons cannot themselves be the victims of these crimes or violence and therefore have no right to recourse. The Bill rightly makes specific mention of special categories such as women and children so as to emphasize their particular vulnerability or to remedy the historical inadequate provision of victim-centred support

		<p>services to these groups. The same ought to be done for incarcerated persons, whom we know to be especially vulnerable to violent crimes, including rape and torture. This can be done in the Bill by explicitly affirming people in detention as one of the populations whose rights it seeks to enshrine, protect, and promote.</p> <p>Not only is sexual violence in detention facilities rife, but it is also greatly informed by the same misogynist rape culture embedded in our communities—affecting women and children. In prison, this violence affects everyone, women, incarcerated minors, and men alike. In addition, a 2014 evaluation of the Western Cape Victim Empowerment Programme by the Gender, Health, and Justice Research Unit at the University of Cape Town acknowledged that the rape of men is not as incidental as many assume it to be but is, in fact, a significant problem in the country. The same report also highlighted how greatly underreported this violence is due to the heteropatriarchal stigma associated with it.</p> <p>Despite this reality, there remain drastically few support services available for male survivors of rape, let alone incarcerated or formerly incarcerated survivors in the country. As such, stronger collaboration between DSD and DCS needs urgent fostering. Ultimately, a major gap exists in the Bill as it does not appear to open up</p>
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		<p>victimhood and make it available to people in detention facilities—as if their incarceration or detention render them perpetual perpetrators and therefore, people who are “inviolable” in its current form. This needs to be addressed urgently.</p>
<p><b>2.2. Clause 15</b></p>	<p>The roles and responsibilities of the DCS National Commissioner must be expanded in the Bill as stated in the DCS Policy to Address Sexual Abuse of Inmates in DCS Facilities and as such, other relevant departments and bodies also need to be included in this Bill.</p>	<ul style="list-style-type: none"> <li>• <b>DCS National Commissioner</b></li> </ul> <p>The specific role and responsibilities of the DCS National Commissioner in the provision of victim empowerment services can be expanded by making reference to the duties spelt out in the Policy to Address Sexual Abuse of Inmates in DCS Facilities (The Sexual Abuse Policy, attached)—adopted in 2013. The Sexual Abuse Policy charges DCS with a duty to detect, prevent, respond to, and report on sexual abuse happening in its facilities.</p> <p>The policy’s crucial standard for all facilities stipulates that:</p> <ol style="list-style-type: none"> <li>1. Since the persistent silence surrounding incidents of sexual abuse in correctional facilities is a reality that both victims and professionals in the field acknowledge, a written policy mandating zero tolerance toward all forms of sexual abuse should be made publicly available to all inmates.</li> <li>2. Staff and inmates must understand what constitutes sexual abuse, know penalties exist for perpetration by prisoners or staff, and believe management will take all incidents seriously.</li> </ol>

		<p>3. Staff must be trained to identify early warning signs that someone is at risk of sexual abuse, prevent abuse from occurring, and respond appropriately when it does occur.</p> <p>4. The policy also requires that inmates be informed of their rights, not only to be free from sexual abuse, but to be free from retaliation if they report it. These and other roles and responsibilities for the DCS National Commissioner should be listed in the Bill in order to ensure adequate resourcing for services aimed at sexual abuse victims in detention.</p> <ul style="list-style-type: none"><li>• <b>Additional relevant departments</b></li></ul> <p>The Bill rightly aims to foreground interdepartmental collaboration on the provision of support to victims of crime and it is for this reason we insist on the inclusion of other relevant departments and bodies to this Bill as per the issues we have highlighted thus far. These statutory and Constitutional bodies, as well as government departments that need to be included in the Bill are as follows:</p> <ol style="list-style-type: none"><li>1. The Department of Home Affairs as the department responsible for immigration detention facilities;</li><li>2. The Judicial Inspectorate for Correctional Services (JICS) as the oversight body for DCS facilities;</li><li>3. The Independent Police Investigative</li></ol>
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		<p>Directorate (IPID) as the oversight body for police detention;</p> <ol style="list-style-type: none"> <li>4. The Military Ombud as the oversight body for military detention facilities; and</li> <li>5. The Health Ombud as the oversight body for health facilities.</li> </ol> <p>The inclusion of these departments and these bodies will help ensure that victims of crime and violence in detention have access to recourse.</p>
<p><b>2.3. Clauses: 10-40</b></p>	<p>The Bill needs to recognise representatives or employees of the state as potential perpetrators of crime.</p>	<p>The Bill does not recognize that agents of the state can be perpetrators of violence. A plethora of local media reports have, over the years, exposed numerous incidents of police and DCS officials perpetrating or facilitating unlawful acts of violence against persons in their custody and citizens in general—in the form of police brutality in the public space or via domestic and sexual violence, for example, in the private space. This exclusion in the Bill needs to be corrected.</p> <p>South Africa ratified the Convention against Torture and Other Cruel; Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol of the same (OPCAT), however, the obligations of the state as set out in these very important international instruments are not reflected in this Bill. Citizens need to be protected from crimes enacted against them by the state and similarly, need to be able to report the crimes without fear</p>

		<p>of retaliation from the state and its actors, and in a manner that safeguards their needs and well-being.</p> <p>Victims of crime don't often access justice precisely because of the power dynamics between them and the perpetrator and this is worsened when the perpetrator is a representative of the state. In order to adequately protect victims of crime by representatives of the state, we must reemphasize our position that detention oversight bodies and Chapter 9 institutions need to be included and explicitly mandated to render services to victims of crime in detention in the sections of this Bill that consider the avenues made available to victims to lodge a complaint or file a report.</p>
<p><b>2.4.</b> Clause 1</p>	<p>Definition of <i>victim &amp; violence</i> need to be amended.</p>	<ul style="list-style-type: none"> <li>• <b>Victim</b></li> </ul> <p>One of the issues highlighted by the evaluation of the Western Cape Victim Empowerment Programme is the lack of a common definition of the word "victim" in various laws in the country. While the definition of victim in the Bill attempts to be concise, we find that the adoption of a combination of the United Nations Declaration of Basic Principles of Justice for Victims of Crime as well as the national Domestic Violence Act No. 116 of 1998 would be more all-encompassing and better suited for the purposes of inclusivity. The recommended definition of victim would read as follows:</p>



		<p><u>[p]ersons who, individually or collectively, have suffered harm, including physical, sexual, verbal, spiritual or mental injury, emotional suffering, economic loss, intimidation, harassment, stalking, damage to property, entry into the victim's residence without consent, any other controlling or abusive behaviour, or substantial impairment of their fundamental rights through acts or omissions that are in violation of national criminal laws, including those laws proscribing criminal abuse of power. A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and victim. It also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.</u></p> <ul style="list-style-type: none"> <li>• Violence</li> </ul> <p>Taking into account the above recommendation, there is also a need to amend the current definition of violence to read: <u>Violence includes emotional, mental, sexual, verbal, spiritual, and economic abuse as well as intimidation, harassment, stalking, damage to property, entry into the victim's residence without consent, physical harm or threats of physical, spiritual, or financial harm.</u></p>
2.5. Clause 2	Amendment of the Object of Act.	Section 2(c) of the Act should be amended to read:

		<i>direct that all service providers dealing with a victim treat such victim with dignity and respect regardless of their citizenship, race, gender, <u>sex</u>, <u>sexual orientation</u>, culture, religious and personal circumstances e.g. <u>detained by the state or living and working on the street.</u></i>
<b>2.6.</b> Clause 6	Amendment of the Screening and Assessment of the Victim section.	This section must include corrections officials, migrant detention facility officials, military detention officials, and medical staff in the list of people who will be assisting victims wishing to report a crime or violation.
<b>2.7.</b> Clause 10	Amendment of the Minister of Social Development's responsibility.	Sub-section 3(a) of section 10 of the Bill speaks to responsibility of the Minister responsible for Social Development to establish a toll-free helpline for victims that operates 24 hours a day, 7 days a week. We recommend following amendment to the sub-section e.g.: <i>A toll-free number for reporting of complaints of victimisation from any member of the public <u>or any government department official or public servant.</u></i>
<b>2.8.</b> Clause 11	Amendment of the Minister of Health's responsibility.	Sub-section 11(b) speaks to the responsibility of the Minister responsible for Health regarding services to be provided victims. We recommend that this section includes the provision of any other health services necessary following the sexual abuse of a victim that are in line with the AU's Protocol on Women's Rights and are inclusive of gender queer bodies, which include

		emergency contraception, access to a safe abortion or any surgical procedures that might be necessitated by the sexual abuse of the victim.
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**3. Conclusion**

We commend the DSD for developing this Bill. It would be unfortunate if it did not serve to protect the rights of all victims of crime, wherever they might be found. Persons in detention remain rights-possessing members of society, deserving of protection and support after suffering a crime or violation. There is no better way to show that commitment to human rights as a nation than by respecting and upholding the rights of the most vulnerable and the most marginalised in our society—including those in detention or previously incarcerated. The DSD has an opportunity and responsibility to put such a principle into action. JDI-SA is grateful for the opportunity to comment on this Bill and would welcome the opportunity to make an in-person presentation of this submission before the Portfolio Committee.