

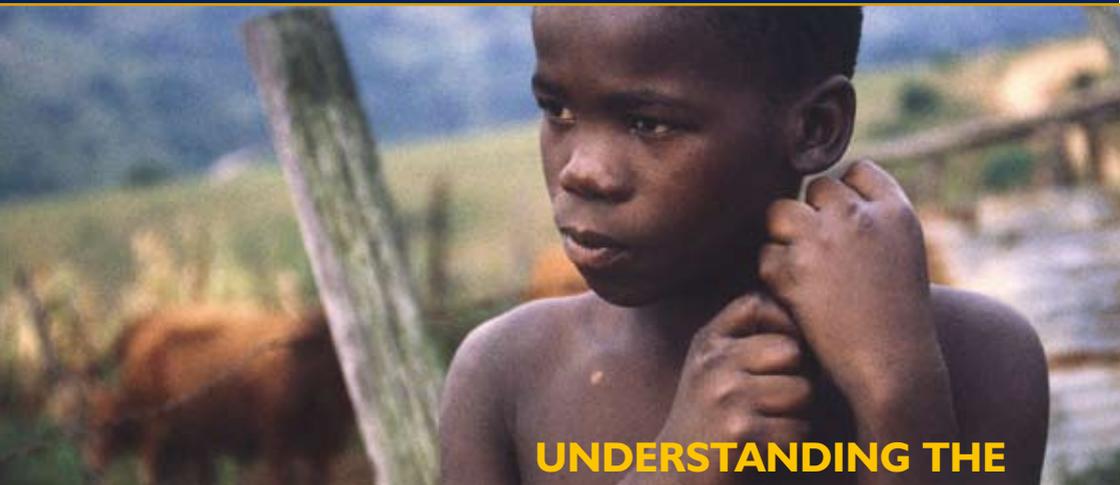


UNDERSTANDING THE
SOUTH AFRICAN VICTIMS' CHARTER
– A CONCEPTUAL FRAMEWORK



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



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Department:
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Compiled by:

THE DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT: GENDER DIRECTORATE
Naomi Webster

Private Bag X81
Pretoria
0001

Tel: +27 (12) 315 1670
Fax: +27 (12) 315 1960

Email: nwebster@justice.gov.za

Website: www.doj.gov.za

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LIST OF ACRONYMS

AU	African Union
DoJ&CD	Department of Justice and Constitutional Development
ISS	Institute for Security Studies
JCPS	Justice, Crime Prevention and Safety Cluster
MS	Minimum Service Standards for Victims of Crime
NAP	National Action Plan to End Gender Violence
NPA	National Prosecuting Authority
NGOs	Non-Governmental Organisations
PEP	Post Exposure Prophylaxis
SAPS	South African Police Service
VC	Victims' Charter
UK	United Kingdom
UN	United Nations
US	United States



UNDERSTANDING THE SOUTH AFRICAN VICTIMS' CHARTER – A Conceptual Framework

I. Introduction

The aim of the discussion paper is to present (working) definitions of victims and secondary victimisation in order to facilitate the effective implementation of the Service Charter for Victims of Crime (hereafter referred to as the Victims' Charter). The Victims' Charter was approved by Cabinet on 1 December 2004 in response to a Presidential promise to the nation,

“In the next two months Cabinet will finalise the Victims' Charter and by the end of this calendar year we will commence with the implementation of the Victims' Support Services Programme to attend urgently to the needs of the victims of crime”¹

Government departments implemented the Victims' Charter sporadically from 2004, and in 2007 the Department of Justice and Constitutional Development (hereafter referred to as the Justice Department), together with government bodies such as the National Prosecuting Authority, South African Police Service and the departments of Correctional Services, Health and Social Development, produced a consolidated national five-year implementation plan for the Victims' Charter. Each department committed to the effective and efficient implementation of the Victims' Charter, which include the following:

- The right to be treated with fairness and with respect for your dignity and privacy
- The right to offer information
- The right to receive information
- The right to protection
- The right to assistance
- The right to compensation
- The right to restitution

Implementation is to be guided by an understanding of each right in the Minimum Standards on Services for Victims of Crime, 2004 (hereafter referred to as the Minimum Standards). In addition, the definition of 'victim' - in line with the United Nations Declaration of Basic

Principles of Justice for Victims of Crime and Abuse of Power 1985 (hereafter referred to as the UN Declaration) - provided in the Minimum Standards, defines a recipient of government's victims' services. Understanding who is a victim, is significant because this informs *who* has standing to seek justice and redress.

However, in order to provide victims' services, government departments require a common understanding of 'victims' that is informed by South Africa's social context. To what extent, then, does the UN Declaration's definition of 'victim', reflect South African realities? This question informed the scope of the discussion paper.

In its democratic era, South Africa is faced with a demand for solutions to crime. Government service providers such as the police, doctors, prosecutors and other providers in the Justice, Crime Prevention and Safety Cluster (JCPS) are required to render services to all 'victims', with an understanding of *victims* so as to eliminate secondary victimisation. This expectation is within a context of a growing public outcry against high levels of crimeⁱⁱ, inadequate resources, and insufficient supportⁱⁱⁱ and training of government service providers. The result is overwhelming public dissatisfaction and insensitive, overworked^{iv} and stressed government service providers. For a victim of crime, the result is often revictimisation or secondary victimisation. Government service providers should understand what secondary victimisation is and how they can ensure that victims are not subjected to it.

The Victims' Charter and the Minimum Standards do not define secondary victimisation, although reference is made to *'minimising secondary victimisation in the various stages of the criminal justice processes'*. Departments should be provided with a definition of secondary victimisation so as to eliminate it when implementing the Victims' Charter.

The question that the discussion paper attempts to address is whether current definitions of 'victim' and 'secondary victimisation' are commonly understood and are reflective of the South African context, given the various definitions of 'victim' in legislation and policy. In addition, the paper asks what is the understanding of civil society (the media and NGOs) of the term 'victim'. The paper concludes with recommendations for a common definition of 'victim' and 'secondary victimisation' as applied to government departments, civil society organisations and the media.



2. Aim and objectives

The overall aim of the discussion paper is to present working definitions of ‘victims’ and ‘secondary victimisation’.

Specific objectives are to

- present various definitions of ‘victim’ and ‘secondary victimisation’, drawing from international charters, and national legislation and policies; and
- analyse various definitions of ‘victim’ and ‘secondary victimisation’ as included in victims’ charters, services rendered by NGOs in South Africa and newspaper articles in the South African media.

3. Methodology

Secondary research was used in developing working definitions of ‘victim’ and ‘secondary victimisation’. Part A considered the definition of ‘victim’. Information was sourced from victims’ charters and legislation from various countries, as well as newspaper articles and submissions received from NGOs.

The following analyses were done:

- A review of the definitions in various countries’ victims’ charter. Countries included Australia, Canada, Hong Kong, Jamaica, the United Kingdom and United States. The current Draft United Nations Convention on Victims Rights, 2006, was also included in the country review.
- A review of South Africa’s legislation and policy framework.
- An analysis of newspaper articles on crime. Newspaper articles were provided by an independent NGO - Cooperative for Research and Education (CORE) - that collates newspaper articles on request, on selected topics on request. Articles were sourced from daily (*Business Day, The Citizen, Sowetan and The Star*), weekend (*Mail & Guardian, City Press, Sunday Times and Sunday Independent*) and regional (*The Herald*) newspapers and covered a nine-month period (18 January to 25 October 2006). Articles under the topic ‘crime’ were analysed to ascertain an understanding of ‘victim’ as reflected by journalists.
- An analysis of NGOs’ submissions on the Victims’ Charter. In June 2007, the Department of Justice and Constitutional Development put out a public call for submissions on the implementation of the Victims’ Charter. Submissions were in response to various questions, in particular ‘what services are provided to victims of crime?’

Part B considered the definition of ‘secondary victimisation’. A basic literature review was conducted, which included articles, guidelines and policies.

PART A: CONCEPTUAL FRAMEWORK OF 'VICTIM'

Academically, the term 'victim' can be traced back the 1700s to criminologists such as Beccaria,^v although the term is rooted in religious connotations of 'righting wrongs'.

I. International comparative review

Since the UN adoption of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985^{vi}, countries worldwide have developed their own victims' charter and related victims' rights legislation (as illustrated in Figure 1). The UN Declaration is the standard against which countries developed their own legal instruments (victims' charter, legislation and policies).

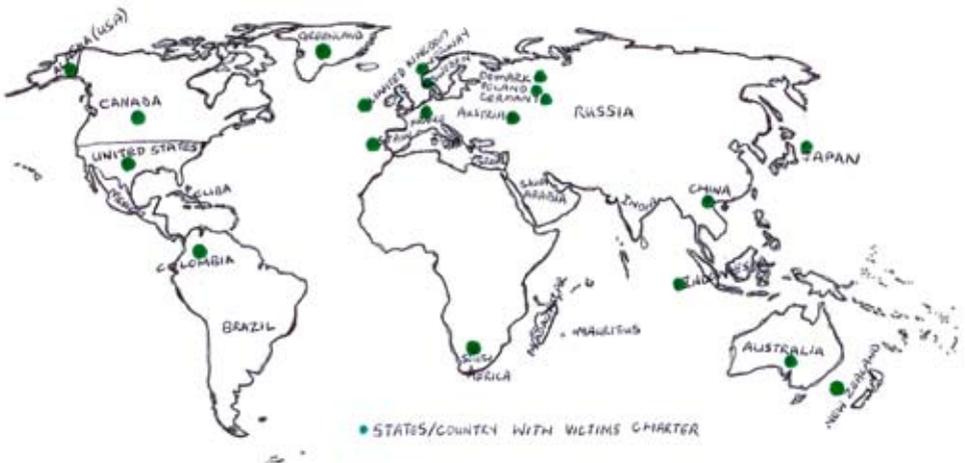


Figure 1: Examples of countries with victims' charters and victims' rights legislation as at 2007^{vii}

The definition of 'victim', as defined in the UN Declaration, formed the basis upon which countries interpreted and developed their national understanding of the term 'victim'. Although not inclusive of all countries, the review showcases differences and similarities across a range of countries, thus informing the proposed working definition.



Drawing from the definition contained in the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, the Victims' Charter and the Minimum Standards provide the following definition of 'victim':

A victim of crime is defined as a person who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights through acts or omissions that are in violation of our criminal law. 'Victim' also includes, where appropriate, the immediate family or dependant of the direct victim. 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. 'Victim' is inclusive of all, without prejudice of any kind on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

The Draft United Nations Convention on Justice for Victims of Crime and Abuse, 2006, defines a victims as "natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimisations identified under 'scope'".

A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimisation.

Three differences can be noted between the declaration and the Draft UN Convention: *the qualification of persons, the inclusion of a collective or group, and the inclusion of a new category of victims.* The Draft UN Convention includes *a natural person.* This is significant, because a person can also be understood to be a company. The Draft UN Convention removes any opportunity for misinterpretation.

The UN Declaration makes provision for an individual person, whereas the Draft Convention includes collective persons, thus making provision for groups to take class action against an offender. An example of this is in France where class actions have been instituted in cases of environmental crimes.

The third distinction is the inclusion of 'persons who have suffered in intervening to assist victims in distress or to prevent victimisation', which creates an additional category of victims. The *proviso* is that the persons must have suffered when assisting victims. This eliminates persons who are mere witnesses to a crime committed against a victim. It could include any person who intervenes in an attempted crime and is injured as a result of assistance to the victim. In some countries, for example Finland and the United States, this is referred as 'good-Samaritan laws'.

The Draft UN Convention's definition is significant for all countries of the international community because it increases states' obligations to all their citizens. It demonstrates an increasing awareness of the complexities of crime and victims in society. For countries that provide monetary compensation, (see Box 1) to victims of crime, the new category will undoubtedly increase the demand for resources to respond to all victims of crime.

Box 1: Countries that provide state compensation to victims

- | | |
|---|---|
| <ul style="list-style-type: none">• Austria• Australia• Canada• Denmark• Finland• Germany• Hong Kong• France• Japan | <ul style="list-style-type: none">• Netherlands• Norway• Portugal• Spain• Sweden• Switzerland• Britain• Northern Ireland• United States |
|---|---|



Other countries have provided the following definitions of ‘victim’ in their victims’ charters, legislation and policies:

- ***The African Charter on Human and People’s Rights, 1987***

The African Charter on Human and People’s Rights makes provision, under Article 45, for the formulation of principles and rules for solving legal problems relating to human and people’s rights. The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa is in fulfilment of the African Charter’s mandate.

The Principles include the following definition: ‘Victim’ means a person or persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws or that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress.

Interestingly, the definition includes violations of human rights contained in international instruments that are not covered in national legislation. This is significant, because victims who have been violated can seek redress, even if national legislation does not recognise the violation. The African Court on Human and People’s Rights, established in 1994, can be used by individuals to seek redress.

- ***Australian Victims’ Rights Charter and Victims’ Rights Act 1996***

The Victims’ Rights Charter provides the following definition: A ‘victim of crime’ includes a person who, as a direct result of a criminal offence suffers physical or emotional harm or loss or damage to property. If the criminal offence results in the death of the person, a member of that person’s immediate family will also be included as a victim of crime.

The Victims’ Rights Act: provides the following definition: A ‘victim of crime’ is a person who suffers harm as a direct result of an act committed or apparently committed by another person in the course of a criminal offence. A person suffers ‘harm’ if, as a result of such an act (a) the

person suffers actual physical bodily harm, mental illness or nervous shock, or (b) the person's property is deliberately taken or destroyed or damaged. If the person dies as a result of the act concerned, a member of the person's immediate family is also a victim of crime for the purposes of the act.

- ***The Australian Community Law Reform Commission^{viii}***

This Australian Community Law Reform Commission defines 'victims' as including persons who have suffered harm (including physical or mental injury), emotional suffering (including grief), economic loss and/or substantial impairment of rights accorded them by law through acts or omissions that are in violation of the criminal law. The definition includes people who have suffered such harm as a result of the death of a person upon whom they are financially or psychologically dependent and/or to whom they are closely related. The definition includes people dependent on the harmed person if they see or hear the harm being done to the person directly affected in circumstances where it is probable that they will themselves suffer harm.

- ***Canadian Victims' Bill of Rights, 2003***

According to the Canadian Victims' Bill of Rights, 'victim' means an individual or a corporation, organisation or other entity against whom an offence is committed or is alleged to have been committed. A victim who is deceased means an individual – other than alleged offenders - who, at the time of the offence was:

- a) married to or living with the victim;
- b) cohabiting with the victim and together with the victim has registered the common-law relationship; or
- c) cohabiting with the victim in a relationship for not less than one year, or where no person qualifying under a), b) or c) is the victim's nearest relative; or where the victim is an individual who is a minor or is incapable of handling his or her affairs, it means the person - other than the alleged offender - who is the victim's parent, guardian, committee or substitute decision-maker.

The Victims' Rights Movement in Canada^x dates back to 1970, when NGOs advocated for victims' rights and this increased debates around the definition of 'victim'.



- ***European Convention on the Compensation of Victims of Violent Crimes, February 1998***

European Convention on the Compensation of Victims of Violent Crimes does not define a 'victim', but makes reference to those who can receive compensation: "those who have sustained serious bodily injury or impairment of health directly attributable to an international crime of violence and the dependents of persons who have died as a result of a crime."

- ***The Council of the European Union, 2001***

The Council of the European Union defines a 'victim' as "a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State".

- ***Hong Kong Victims' Charter***

According to the Hong Kong Victims' Charter, a 'victim' is a person who suffers physical or emotional harm, or loss or damage to property because of a criminal offence. This covers not only the person against whom the offence was committed but also anyone who has suffered directly from the commission of the offence. The definition of 'victim' may include, for example, the parent of a child who has been sexually abused or the immediate family of a murder victim.

The definition includes people who have suffered such harm as a result of the death of a person upon whom they are financially or psychologically dependent and/or to whom they are closely related. It also includes people who are not financially and/or psychologically dependent on the harmed person if they see or hear the harm being done to the person directly affected in circumstances where it is probable that they will themselves suffer harm.

- ***United States Justice for All Act 2004***

The United States Justice for All Act defines a victim as "a person directly and proximately harmed as a result of the commission of a federal offence or an offence in the District of Columbia." This definition is supposed to expand the definition contained in the Crime Victim's Rights Act, 18 USC, which provided services to those who "suffered direct physical, emotional or pecuniary harm".

- **United Kingdom Victims' Rights Charter**

According to the United Kingdom Victims' Rights Charter, the term 'victim' includes the victim, parents and guardians of the victim and, in the event of murder, the victim's close friends. In the UK, a victim was regarded as an ordinary citizen but later evolved to a 'special' citizen with victims rights.^x

2. Definition of 'victim' in South African legislation and policy:

A review of all South African legislation reveals disparity among government departments in definitions of the term 'victim'. Legislation includes the word 'victim', but with limited or no definition of the term. A specific review of government departments (DoJ&CD, NPA, SAPS and the departments of Health, Correctional Services, Education, and Social Development) responsible for the implementation of the Victims' Charter, also revealed a limitation in terms of defining 'victim', although the term is used in several legislation and policy documents. Legislation such as the Constitution Act, 1996 (Act No 108 of 1996), the Criminal Procedure Act, 1977 (Act No 51 of 1977), the Witness Protection and Services Act, 1998 (Act No 112 of 1998) and the Sexual Offences Bill, 2003 do not do not mention the term 'victim'. It can be assumed that the use of 'complainant' is the equivalent of 'victim'. 'Complainant' is defined in the Criminal Procedure Act as "the alleged victim of a sexual offence".

Legislation with definitions of the term 'victim' includes the following:

- **Promotion of National Unity and Reconciliation, 1995 (Act No 34 of 1995)**

'Victims' include:

- (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights – as a result of a gross violation of human rights; or as a result of an act associated with a political objective for which amnesty has been granted;
- (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimisation of such persons; and
- (c) such relatives or dependants of victims as may be prescribed.



- **Domestic Violence (Act No 116 of 1998)**

‘Victim’ means any person who alleges to have been subjected to an act of domestic violence.

- **Compulsory HIV Testing of Alleged Sexual Offenders Bill, February 2003**

‘Victim’ means any person alleging that a sexual offence has been committed against him or her.

Policies and Reports with definitions of the term ‘victim’ include the following:

- **The South African Law Commission^{xi}**

The South African Law Commission defines a ‘victim’ as a biological person who has suffered harm at the hands of another person in the course of a crime of violence. Harm or suffering, which can be physical or psychological or both, must have resulted in a material loss for the victim and/or had a negative, quantifiable impact on her or his current and/or future capacity to earn an income.

A person may be considered a victim regardless of whether the offender has been identified, apprehended, charged, prosecuted or convicted. People can be deemed to be victims regardless of the familial relationship between the offenders and themselves, and the category can include people who were injured while intervening or assisting other victims, or the police during activities aimed at law enforcement.

- **The Victims’ Empowerment Programme of the Department of Social Development**

The Victims’ Empowerment Programme of the Department of Social Development defines ‘victims’ as persons who, individually or collectively, suffered harm (including physical or mental injury), emotional suffering, economic loss or substantial impairment of their rights, through acts or omissions that are violations of national criminal laws or of internationally recognised norms relating to human rights.

- **The National Policy Guidelines for Victims of Sexual Offences, 1998, of the Department of Health**

According to the National Policy Guidelines for Victims of Sexual Offences, 1998, of the Department of Health a ‘victim’ is defined as ‘a victim or survivor of rape or sexual assault is defined as a female or male of any age who claims to be a victim of rape or sexual abuse.

- **The Uniform Protocols for the Management of Victims, Survivors and Witnesses of Domestic and Sexual Offences of the National Prosecuting Authority of South Africa**

These protocols define 'victim' in line with the definition contained in the Minimum Standards on Services for Victims of Crime, with two additions (indicated in bold). "A 'victim of crime' is defined as a person who has suffered harm (including physical or mental injury), emotional suffering, economic loss, or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of our criminal law **relating to sexual offences and domestic violence**. 'Victim' also includes, where appropriate, the immediate family or dependants of the direct victim. 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 the victim. **Where appropriate, it also refers to witnesses.**"

- **The Directives: Complainant Participation in Correctional Supervision and Parole Boards, October 2005, of the Department of Correctional Services**

The Department of Correctional Services uses the definition of 'victim' interchangeably with that of 'complainant'. 'Complainants' are defined in the following cases: murder or any other offence that involves the intentional killing of a person, rape, robbery where the wielding of a firearm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved, assault of a sexual nature, and kidnapping or any conspiracy, incitement or attempt to commit any of the offences mentioned above. In the case of murder or the intentional killing of a victim, any immediate relative of the deceased will be regarded as the complainant. Complainants have the right to make representations when the offender is considered for placement on parole, day parole or under correctional supervision.

Analysis of media's use of 'victim' in newspaper articles

Media analysts define the role of the media in post-apartheid South Africa, particularly in the context of crime and victims, as "a responsibility towards citizens (to inform, entertain and educate) and government (to analyse, review strategy and hold accountable)"^{xiii}. The media is often viewed as a 'double-edge sword in its coverage of crime and victimisation', because of its role in reporting to the public while upholding victims' right to privacy. The media, particularly



print media in the form of newspapers, is failing to fulfil its role “because of dramatic coverage without context and focusing on dramatic violent crime”^{xiv} and “minimal coverage of other crimes such as gender-based violence and child abuse.”^{xv} In the case of reporting on victims, some newspapers fail, and an example that is often cited^{xvi} is that of a daily newspaper that published a photograph of a rape victim without her consent. Concluding that newspapers often violate victims’ rights and subject victims to secondary victimisation, it should be determined what is the media’s understanding of the UN definition of ‘victim’ and how reporting should be done (see Box 2).

Twenty-seven newspaper articles were analysed in an attempt to provide a response to the question as to the role of the media in the context of crime and victims. Table 1 captures newspaper references to ‘victim’.

Table 1: Newspaper articles reference to victims

Headline and date	Reference to ‘victim’
<i>Beaten to death for shooting</i> 18 January 2006	The police were unable to say what happened as the victims were too shocked to speak
<i>Hijacking order</i> 31 January 2006	Victim tells court he was stripped and car taken
<i>Coach Da Silva shot in Soweto</i> 31 January 2006	It is not the first time Da Silva has been a victim of crime
<i>Two arrested for Sebokeng man’s murder</i> 31 January 2006	The three men had argued and the victim had died at the scene
<i>Court doc robbed</i> 22 February 2006	To give evidence about the first of Dube’s victims. His first alleged victim testified yesterday.
<i>Two murdered in Zandspruit</i> 13 March 2006	The murder victim
<i>Abducted man beheaded</i> 20 March 2006	In possession of a cellphone belonging to the kidnap victim
<i>He’s not body 459 – he’s my husband</i> 21 March 2006	He was just a nameless victim
<i>Burglary victim invents rape story to speed up cops response time</i> 27 March 2006	Burglary victim invents rape story to speed up cops response time

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Table 1: continued from p16

<i>12 years for hijacking and kidnapping</i> 28 March 2006	The victims managed to free themselves
<i>Taking the law into their own hands</i> 29 March 2006	From a robbery victim
<i>Jilted lover accused of killing girlfriend's entire family</i> 21 April 2006	The victims struggled in vain to open the door. The victims were the pensioner, her daughter, her grandchildren
<i>3 Robbers killed</i> 26 April 2006	The victim's or suspect's identities have not been released
<i>Charges dropped against 3 accused</i> 27 April 2006	Related to the killing of two victims
<i>Will bodies be exhumed</i> 28 April 2006	Waiting for forensic results before deciding whether or not to exhume the three victims
<i>Community in uproar over death under car</i> 21 May 2007	When the victim's family arrived on the scene
<i>Bail for two who shot men, then threw them in a dam</i> 24 May 2006	The two victims were taken to hospital
<i>Infant among victims in grisly killing</i> 28 May 2006	The victims were found by the domestic worker
<i>Suspects arrested at funeral</i> 29 May 2006	Interviewing the victim's mother
<i>The killing field</i> 1 June 2006	The three victims were found buried
<i>DNA tests to show if girl was victim of possible serial killer</i> 8 June 2006	Two other victims , a man and a woman
<i>Securities ministers to face queries on crime</i> 20 June 2006	Government fund for victims of crime
<i>Woman gets 20 years for concrete killing</i> 21 June 2006	The victim's body was found encased in concrete
<i>Man dies in Joburg hijacking</i> 23 June 2006	The victim was taken to the Sandton Medi-Clinic where he later died
<i>Roses for slain child</i> 4 August 2006	In memory of victims of crime
<i>Shock as Dube tries to attack victims family members</i> 17 August 2006	Dube tried to attack journalists and some of the family members of victims . Relatives of the victims
<i>No forgiveness for son's killer</i> 25 October 2006	The angry mother of a Komatipoort murder victim



From the newspaper articles, the following deductions were made:

- Victims are usually deceased – the implication is that if a person is involved in any crime, they are not considered a victim if they are still alive.
- Victims are associated with particular crimes – robbery, hijacking, burglary and murder. Victims were never reported for crimes such as domestic violence and rape. In the case of domestic violence, no newspaper articles included any crime as ‘domestic violence’. (This is not to say that the newspapers did not report on domestic violence, as this could have been included in other articles on ‘violence against women’.)
- Victims do not include indirect victims such as family members – most articles that referred to family members (mother or brother) did not regard the family members as victims.
- With the exception of one article (8 June 2006), most articles did not refer to the gender of the victim. Some articles also included the name of the victim and one is expected to make assumptions about the gender.

Box 2: Recommendations for newspaper reporting on victims

- Use the definition of ‘victim’ as proposed in the discussion paper.
- Refer to all victims of a particular crime (the mother of the direct victim is also regarded as a victim),
- Provide balanced reporting of all different forms of crime – to show different ways in which victims deal with crime).
- Obtain informed consent should be obtained from victims when reporting on all crimes.
- Follow established guidelines for reporting on victims of gender-based violence.
- Attend information sessions, seminars on victims’ rights, related legislation and human rights so as to report accurately to the public.

Analysis of NGO services’ use of the term ‘victim’

South African civil society organisations, particularly NGOs, have historically provided services to victims of crime. Currently, NGOs have a dual role of making government accountable for services and providing services^{xvii}. NGOs have played an important role in defining who should benefit from government and civil society services for victims of crime. The nature of services can be used to define who is regarded as a victim. Research on services for victims of crime^{xviii} highlighted the current recognition of the limitation of services (from both government and

NGOs) to victims; that abused women and children were often the predominant recipients of victim services.

Furthermore, the nature of services provided by NGOs also sheds light on who is regarded as a victim. The nine key elements of a blueprint for a victim service programme for all victims^{xix} are as follows:

- Crisis intervention
- Counselling
- Advocacy
- Support during the investigation of a crime
- Support during criminal prosecution and trial
- Support after case disposition
- Training for allied professionals on victim issues
- Violence prevention
- Public education on victim issues

Interestingly, South African NGOs (see Table 2 on p20) that provided services to victims listed^{xx} the following additions to the blueprint:

- Child witness support in sexual offences cases
- Rehabilitating perpetrators
- Restorative group conferencing
- Intermediary services for child witnesses
- Home visits for Poverty and Economic Policy and Post Exposure Prophylaxis monitoring

From the services provided to victims, as well as the target group (See Table 2 on next page), it can be deduced that NGOs view victims in the context of 'direct victims'. Some victims receive priority, particularly women and children. Some NGOs also include men as victims, particularly perpetrators who are victimised in prison.

Table 2: Profile of NGOs providing services to victims of crime

Organisation	Province	Target group
Nkosingathi Foundation for Blind and Partially Sighted People	Eastern Cape	Blind people who are victims of crime
South African Institute for Trauma Stress	Gauteng	Children Communities Abused women
People Opposing Women Abuse	Gauteng	Abused women
Resources Aimed at Prevention of Child Abuse and Neglect	Western Cape	Children
International Association for Human Values	Gauteng	Communities
Restorative Justice Centre	Gauteng	Victims Offenders
National Institute for Crime Prevention and Rehabilitation of Offenders	National	Youth Perpetrators Victims
Childline	KwaZulu-Natal	Children Youth offenders
Civil Society Prison Reform Initiative	Western Cape	Prisoners Victims
University of Free State, Theology Department	Free State	Students
Thohoyandou Victim Empowerment Trust	Limpopo	Abused women and children
Southern African Catholic Bishops Conference	Western Cape	Bishops
The Bethany House Trust	Gauteng	Street children Child witness
Rape Crisis	Western Cape: Khayelitsha, Manenberg and Observatory	Abused women
Umtata Women's Support Centre	Eastern Cape	Abused women
Justice and Women	KwaZulu-Natal	Women in rural areas
Mosaic, Training Service and Healing Centre for Women	Western Cape	Victims of abuse and domestic violence

Table2: continued from p20

<p>Trauma Rooms Focus Group on the Western Cape: (Representing)</p> <ul style="list-style-type: none"> • The Western Cape Network on Violence Against Women • National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) • Business Against Crime 	Western Cape	Abused women and children
<p>OUT Lesbian, Gay, Bisexual and Transgendered Well-Being and UNISA Centre for Applied Psychology</p>	Gauteng	Lesbian, gay, bisexual and transgendered victims of hate crimes
<p>KwaZulu-Natal Summit, June 2007: 150 representatives from NGOs, the Human Rights Commission, the Commission on Gender Equality, a mayor from Ixopo, councillors, members of the community policing forums, the departments of Community Safety and Liaison, Social Welfare, SAPS and area court managers</p>	KwaZulu-Natal	<p>Communities Victims Abused women and children Service providers</p>

3. Analysis of definitions of the term 'victim'

Common themes that emerge from the definitions are as follows:

- a. It is an individual person – often qualified as 'natural' person.
- b. Victims include those who intervene to assist .
- c. The term includes witnesses to a crime (provided it is probable that they would have suffered the harm)
- d. In case of the death of a victim, the immediate family, close relatives, close friends and parents or guardians if the deceased victim is a minor are also included as victims

An interesting feature from most of the definitions is that a victim is defined as a 'person'. Although singular, it can be collective if one considers the inclusion of witnesses to the crime or those intervening or assisting the victim. In countries like France and Canada, the word 'collectively' is used, making provision for a group of victims.



A 'person' is qualified as biological^{xxi} and an assumption that can be made is that person is a natural and juristic person. A contrary view is given by the Canadian Charter, which includes a corporation, organisation or other entity. In this case, even companies can be regarded as victims of crime.

In the South African context, the inclusion of organisations could assist those working at shelters (NGOs under the Department of Social Welfare). In cases of domestic violence, shelter workers are often exposed to violence from abusers who enter the shelters and assault workers. In this regard, the NGO could be regarded as a victim. This could further the work of the NGO as a partner with government departments in dealing with violent crimes. However, the inclusion of organisations and entities would need to be further explored, as it could also have a negative impact on victims.

The inclusion of family and friends of the deceased victim is particularly relevant in the South African context. Although there is a reported decrease in the crime of murder^{xxii}, it is suggested that murder against women by intimate partners is a threat that makes South Africa the worst country with regard to crimes against women.^{xxiii} Family and friends often have to endure the tragic loss of a loved one and they are often excluded from the criminal proceedings if they are not witnesses. This often results in secondary victimisation of family members and friends. If family and friends are included as victims, it should be qualified by taking into account the different forms of family in South Africa.

In recognition of South Africa's diversity, the definition of family member^{xxiv} as 'a person who is related to another person - biologically or by statutory, customary or religious law, including affinity by marriage, adoption or foster care, a person's permanent life partner, or in the case of an orphan, a care-giver as defined in the Children's Act, 2005 (Act 38 of 2005) is all-encompassing.

Immediate family members are defined as "persons within the second step of kinship, where *marriage* or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted"^{xxv}.

PART B: CONCEPTUAL FRAMEWORK OF 'SECONDARY VICTIMISATION'

Neither the Victims' Charter nor the Minimum Standards on Services for Victims of Crime defines secondary victimisation. However, one can assume that the Minimum Standards document is based on an exploration of secondary victimisation in different government departments so as to present what standards are required to realise rights. However, it is imperative for all government departments to have a common understanding of secondary victimisation and to consider the different forms it can take in specific departments. Several definitions were gathered from the broad thesis on secondary victimisation. It intends to show the strengths and limitations of the definitions in an attempt to provide greater clarity to departments as they implement services to victims.

The concept of secondary victimisation was first used during the 1980s by NGOs working with victims of gender-based violence. This was a time when the word 'victim' was replaced by 'survivor' in an attempt to affirm the experiences of those who had been abused or raped by perpetrators. Research considered women's experiences after rape and explained why women were reluctant to report cases to the police. This experience was defined as secondary victimisation.

The mental health profession, in developing responses to rape victims, defined 'secondary victimisation' as the re-traumatisation of the sexual assault, abuse or rape victim. It is an indirect result of assault that occurs through the responses of individuals and institutions to the victim. The types of secondary victimisation include victim blaming, inappropriate behaviour or language by medical personnel and by other organisations with access to the victim post assault .

Secondary victimisation should not be confused with repeat victimisation, such as domestic violence, racial attacks and school bullying, which occurs repeatedly to one person over a period of time.

In the guide prepared for use with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse, 1985, 'secondary victimisation' is defined as 'the victimisation that occurs not as a direct result of a criminal act, but through responses of institutions and



individuals to the victim^{xxxvii}. The definition is further expanded to include institutionalised secondary victimisation, which is most apparent in the criminal justice system, and is understood as the ‘complete denial of human rights to victims of particular cultural groups, classes or a particular gender, through the refusal to recognise their experiences as criminal victimisation’.

The guide distinguishes between two forms of secondary victimisation: institutional (through policies and procedures) and individual (attitude that informs response and treatment of victim). Examples of institutions where secondary victimisation is common include government departments (particularly the criminal, justice and education sector), community structures (religious and civic organisations) and the media.

Interestingly, the Draft United Nations Convention on Justice for Victims of Crime and Abuse, 2006, does not define secondary victimisation, but makes reference to victimisation. The convention notes that training should be provided to personnel so as to eliminate ‘secondary victimisation’.

‘Secondary victimisation’ can also refer to ‘the processes, actions and omissions that may intentionally or unintentionally contribute to the revictimisation of a person who has experienced a traumatic incident as a victim through disbelief of the person’s account, blaming the victim and lack of (or insufficient) support services to assist the victim at interpersonal, institutional and broad social level^{xxxviii}.

This definition highlights the ‘overt and covert processes that undermine the legitimacy of a person’s status, claims and consequential experiences as a victim of a traumatic incident^{xxxix}. However, it is limited in that it does not explicitly raise the issue of attitudes. A service provider who appears disinterested and apathetic may, for example, revictimise the victim.

Secondary victimisation can also be defined as the ‘unsympathetic, disbelieving and inappropriate responses (exacerbating the effects of gender-based violence) that women experience at the hands of society in general and at each stage of the criminal justice process^{xxx}.

This definition is gendered, which is problematic, but includes an important aspect of victimisation at the hands of society, thus broadening the scope and form that victimisation can take. The use of inappropriate response is problematic, as it is subjective. Is it inappropriate to ask an elderly rape victim from a rural community about recent sexual intercourse where this is a standard question during medical examination?

Another definition of secondary victimisation provided by the National Prosecuting Authority (NPA) is as follows: 'secondary victimisation can result from the failure to treat victims with dignity, respect and understanding of the dynamics of offences.' This definition presupposes that service providers have knowledge and understanding of the dynamics of offences. It would be necessary to qualify what the dynamics are.

The United Nations Centre for International Crime Prevention^{xxxi} defines 'secondary victimisation' as the 'victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim'. They also provide an explanation as to why secondary victimisation takes place: "Institutionalised secondary victimisation is most apparent within the criminal justice system. At times it may amount to a complete denial of human rights to victims from particular cultural groups, classes or a particular gender, through a refusal to recognise their experience as criminal victimisation. Secondary victimisation through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimisation, from investigation, through decisions on whether or not to prosecute, the trial itself and the sentencing of the offender, to his or her eventual release."

Given the different ways in which victims will respond to and deal with crime, it is important to provide an understanding of secondary victimisation that is broad and allows scope for appropriate and correct interpretations.



Table 3: Examples of secondary victimisation, within the criminal justice system

Government department	Secondary victimisation of victims
Department of Justice <ul style="list-style-type: none"> • Court personnel 	<ul style="list-style-type: none"> • Delay in court dates. • Court personnel not sympathetic to victims – not being patient when victims make mistakes due to unfamiliarity with court proceedings: for example, speaking out during proceedings.
<ul style="list-style-type: none"> • Board of Sheriffs 	<ul style="list-style-type: none"> • Implementation of Domestic Violence (Act No 116 of 1998) - not serving interdicts on time • Sheriffs attaching and removing items such as food, beds, clothing
Department of Health	<ul style="list-style-type: none"> • Doctors, district surgeon and nurses examining victim without introductions and without explaining procedures. • Conducting examinations in a cold and brash manner. • Complaining to victims about being called out late at night to do the examinations. • Not wanting to conduct examinations because the victim appears intoxicated. • The Primary Health Care Package for South Africa – a set of norms and standards (specifically the section on services for victims of sexual and domestic violence) – is not being implemented and monitored properly.
South African Police Service	<ul style="list-style-type: none"> • ‘Loyalty’ among police officers in dealing with colleagues where there is domestic violence – not wanting to get involved. • Police not responding on time to a call to attend to the scene of the crime. • Limited assistance by police in assisting with completion of J88 forms. • Non-compliance with duties of police in the implementation of the Domestic Violence, (Act No 116 of 1998) as set out in directives.

Secondary victimisation can also occur if victims are revictimised because of their status or vulnerability in society.

Box 3: Recommendations on reducing secondary victimisation

'Special' victims	Form of secondary victimisation	Role for project partner in reducing secondary victimisation.
Where victim is a high profile personality	The media, in unethical reporting or through reporting, fails to acknowledge that the person is a victim (as per definition of the term 'victim').	The Commission on Gender Equality (CGE) could assist in monitoring the media.
Where the victim is an illegal immigrant	The police may not be as sympathetic	The Human Rights Commission could assist by educating immigrants about their rights in the Victims' Charter The Department of Home Affairs could be a distribution channel for Victims' Rights Charter to immigrants

Given the inclusion of a non-discriminatory clause in the definition of the term 'victim', it may be necessary to consider how different categories of victims (children, the elderly, etc), are subjected to secondary victimisation.

The United Nations has developed guidelines for 'child victims' in recognition of their special needs to assist in the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse^{xxxii}.

It is recommended that project partners, in consideration of the implementation of the Victims' Charter, develop a definition of secondary victimisation that provides examples specific to the partner. This would assist in reinforcing victims' rights.



RECOMMENDATION: CONCEPTUAL FRAMEWORK OF 'VICTIM' AND 'SECONDARY VICTIMISATION'

President Thabo Mbeki, in his State of the Nation address in February 2008, called on South Africans (in particular government departments) to “further give life to the Victims’ Charter”. As the DoJ&CD strives to give meaning and life to victims’ rights, it has to ask who is a victim and how can it ensure, by giving meaning and putting in practice victims’ rights, the elimination of secondary victimisation.

The faceless victim is real when we look at our neighbour, our colleagues, our friends, ourselves – victims are persons who have suffered a crime, both directly and indirectly, irrespective of differences of age, gender, geographic location, economic status, etc. If we see the victim as ourselves, we must expect the most humane and compassionate response from others as we would expect to receive from them – thus eliminating all forms of secondary victimisation.

The definitions of ‘victim’ and ‘secondary victimisation’ below could be used for the effective implementation of the Victims’ Charter.

A proposed working definition of ‘victim’:

A ‘victim of crime’ is defined as a person who has suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of the criminal law. Victims also include those who assist or intervene to assist the victim or the police. Furthermore, victims include, where appropriate, the immediate family or dependant(s) of the direct victim. If the victim dies as a result of a crime, those financially and psychologically (family and friends) dependent on the victim shall also be regarded as victims. 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 the victim. Victims are inclusive of all, without prejudice of any kind on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

A proposed working definition of ‘secondary victimisation’:

‘Secondary victimisation’ refers to the attitudes, processes, actions and omissions that may intentionally or unintentionally contribute to the revictimisation of a person who has experienced a traumatic incident as a victim through failure to treat the victim with respect and dignity, disbelief of the person’s account, unsympathetic treatment, blaming the victim and lack of (or insufficient) support services to assist the victim at interpersonal, institutional and broad social level.

Annexure I:



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

CALL FOR SUBMISSION

The Department of Justice and Constitutional Development (the Justice Department) is the lead agency for Service Charter of Victims of Crime (hereafter referred to as the Victims' Charter). The Justice Department and various other government departments are currently engaged in a process of drafting implementations plans for the Victims' Charter. As part of the drafting process, the Justice Department has, from November 2006 – June 2007, consulted with provincial government departments. The Justice Department would like to receive input from civil society organisations on:

- What services are offered by the organisation to victims of crime?
- What services government should offer victims of crime?
- How to strengthen government and civil society partnerships to support victims of crime?
- Proposals on how civil society should monitor implementation of the Victims' Charter.
- Any other issues related to the Victims' Charter that you believe the Justice Department should be informed about.

Submissions can be made in the form of written or oral (audio cassettes) and should be sent to:

Department of Justice & Constitutional Development
Gender Directorate
Private Bag X81,
Pretoria
0001

The deadline for submission is 31 July 2007, Tuesday.

Enquiries can be made to Naomi Webster at (012) 315 1670 / (012) 315 1296 OR
email: nwebster@justice.gov.za



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South African Law Reform Commission Discussion Paper 97, Project 82, 'Sentencing (a compensation scheme for victims of crime in South Africa), 2001

New Directions from the Field: Victims Rights and Services for the 21st Century, US Department of Justice, Office of Justice Programs, Office for Victims of Crime

Guidelines:

UN Handbook on Justice for Victims – on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 1999, UN Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, New York

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ENDNOTES

- i. President Thabo Mbeki, Address to Parliament, May 2004
- ii. As reported in South African newspapers (print media)
- iii. Civil society organisations have repeatedly highlighted challenges of resources and support in responding to victims of crime, particularly sexual and domestic violence. See the 365-day National Action Plan to End Gender Violence, 8 March 2007.
- iv. For example, the national ratio of police officers to citizens is 1:349, SAPS Journal 2007
- v. Dussich J, 'Victimology – past, present and future', 131st International Senior Seminar, 2007
- vi. GA/Res/40/30
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- viii. International Crime Victim Compensation Directory 1998 – 1999, US Department of Justice, Office of Justice Programs, Office for Victims of Crime.
- ix. Report No 6, 1993
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- xi. Reeves H, 'The growth of policies and services for victims of crime in the UK, 1974 – 1994'
- xii. Discussion Paper 97, Project 82, 'Sentencing (a compensation scheme for victims of crime in South Africa), 2001
- xiii. For example, Da Silva I, 'The state of media crime coverage in South Africa, 2007'
- xiv. UN, 'Handbook on justice for victims – on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power'
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- xvi. Southern African Media and Gender Institute, 'Femicide report' – Newspaper coverage, 2005
- xvii. Pongoma L and Roberts R, 'Protecting human rights in crime coverage', Media Monitoring Report, 2007

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- xix. Ibid
- xx. UN guide for policy makers – on the implementation of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, New York, 1999
- xxi. In May 2007, the DoJ&CD put out a public call for submissions on the implementation of the Victims' Charter. NGOs listed services in response to the question: 'What services are provided to victims of crime?' (See Annexure 1)
- xxii. SA Law Commission Report
- xxiii. SAPS Country Report to the 11th United Nations Congress on Crime Prevention and Criminal Justice
- xxiv. POWA (People Opposing Woman Abuse – an NGO) Report that one woman is killed every six days by partner
- xxv. Regulation of Interception of Communications Amendment Bill 9, 2006
- xxvi. Immigration Act (Act No 13 of 2002)
- xxvii. Campbell R, Raja S, (1999) 'Secondary victimization of rape victims: insights from mental health professionals who treat survivors of violence', *Violence Vict.* 14 (3):261-75
- xxviii. UN, New York, 1999
- xxix. G Stevens and F Mohamed, 'Beating the battered: the psychology of secondary victimisation', ISS, March 2001
- xxx. Ibid
- xxxi. S Stanton and M Locrenhberg, 'Justice for sexual assault survivors', 1995
- xxxii. UN, 'Handbook on justice for victims – on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', UN Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, New York, 1999
- xxxiii. Guidelines on justice for child victims and witnesses of crime, 2004



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UNDERSTANDING THE
SOUTH AFRICAN VICTIMS' CHARTER
– A CONCEPTUAL FRAMEWORK



Issued by
The Department of Justice and Constitutional Development
P/Bag X81, Pretoria. 0001
Tel: 012 315 1698
Fax: 012 315 1901