



UNDERSTANDING THE SOUTH AFRICAN VICTIMS' CHARTER

CONTEXTUAL ISSUES



the doj & cd

Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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

Date of issue: September 2008



UNDERSTANDING THE SOUTH AFRICAN VICTIMS' CHARTER

CONTEXTUAL ISSUES



TABLE OF CONTENTS

List of acronyms	2
Introduction	3
Rights and responsibilities in our democracy: a case study	6
A tango dance – government and citizens as partners	9
Human rights and victims of crime	14
Giving life to a paper tiger	16
Going somewhere slowly: empowering government employees with information	22
Youth and crime: implications for the Victims' Charter	25
Immigrants – inclusion in the definition of 'victim'	31
Key concepts	36

LIST OF ACRONYMS

CJCP	Centre of Justice and Crime Prevention
HRC	Human Rights Commission
JCPS	Justice, Crime Prevention and Security Cluster
NCPS	National Crime Prevention Strategy
NPA	National Prosecuting Authority
NGO	Non-governmental organisation
RDP	Reconstruction and Development Programme
SAPS	South African Police Services
UN	United Nations
UNHCR	United Nations High Commission for Refugees
VEP	Victim Empowerment Programme

INTRODUCTION

The South African Service Charter for Victims of Crime, 2004, affords all victims of crime legal rights when they encounter the criminal justice system. In order to effectively implement the Service Charter (also referred to as the Victims' Charter), all stakeholders need to understand the South African context that necessitated the development of the charter. These stakeholders include government departments in the Justice, Crime Prevention and Security Cluster (JCPS), together with non-governmental organisations and victims.

This discussion paper follows on the first paper (published in April 2008), which provided an understanding of the content of the Victims' Charter; particularly in terms of providing definitions for the terms 'victim' and 'secondary victimisation'. It is intended to assist all stakeholders in their efforts to make the rights of crime victims a living reality. In order to develop appropriate interventions for victims of crime, programme managers should understand the context in which the Victims' Charter operates. This discussion paper therefore attempts to provide some insight into the context of the charter, using a rights-based approach.

It begins with a discussion on rights and responsibilities, arguing for citizens to be more involved in sharing their responsibilities when claiming their rights. The article entitled 'Tango dance – government and citizens as partners', which centres on the partnership between government and citizens, elaborates on this point. Judging by the progress made since 2004, the paper moves from citizens to victims to show how life is given to the Victims' Charter, which is regarded as a 'paper tiger'.

A key component to understanding the term 'victim' is to recognise the difference between victims and to develop interventions that respond to these differences. The discussion paper addresses three different types of victims: employees, the youth and immigrants. The focus on these three different groups was deliberate, but not intended to exclude other groups. All three groups are the responsibility of government departments, which need to work with the respective groups to ensure the implementation of the Victims' Charter. These are the departments of Public Service and Administration, Education, and Home Affairs. The recognition of differences is significant to eliminate secondary victimisation, which often occurs in institutions and communities.

This discussion paper is not conclusive. It reflects some of the challenges faced by the Department of Justice and Constitutional Development (the Justice Department) over the past years in coordinating the implementation of the Victims' Charter by departments of the JCPs. Appropriately, the Justice Department should lead the Victims' Charter in government. With its mandate and a rights-based approach, commitment to the empowerment of victims, the department will continually strive to explore issues that impact on the implementation of the Victims' Charter, and aspires to 'give life' to the charter.

The discussion paper is intended to provide information to all those responsible for the implementation of the Victims' Charter. As the definition of 'victim' implies (Minimum Standards, 2004), we are all affected directly or indirectly by crime:

"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 dependent 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. '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 or birth."

Understanding the Victims' Charter

The Victims' Charter is an important instrument for promoting justice for all. Its origin dates back to 1996, when government approved the National Crime Prevention Strategy (NCPS).

The era of post-democracy was introduced with the finalisation of the South African Constitution, followed by various laws that attempted to ensure a victim-centred approach to the criminal justice system. This approach has been supported by South Africa's signing of a number of international laws, treaties and declarations that affirm victims' rights. One of these was the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

South Africa, through the Justice Department, was responsible for developing its own Victims' Charter, in line with the United Nations Declaration and section 234 of the Constitution, which gives Parliament the authority to enact charters. The Victims' Charter consolidates a number of existing rights and is part of government's victim empowerment programme, thereby putting South Africa on a par with international standards.

The Victims' Charter was developed by a group of stakeholders, including government departments, chapter 9 institutions (the Human Rights Commission and the Commission on Gender Equality) and NGOs in 2004. It contains the following seven rights (based on constitutional rights) that all victims of crime are entitled to when they enter the criminal justice system:

- 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

To support the Victims' Charter, the Justice Department developed the Minimum

Standards on Services for Victims of Crime (the Minimum Standards), both of which were approved by Cabinet on 1 December 2004.

The Justice Department is the lead government agency in coordinating the implementation of the Victims' Charter, while the Department of Social Development is the lead agency for the provision of victim support services. Other departments that play a role in implementing the Victims' Charter are the National Prosecuting Authority, the South African Police Service, and the departments of Health and Correctional Services.

The Victims' Charter is one of government's priority projects for 2008/09 and is part of the overall strategy of crime reduction, reformation of the criminal justice system and victim empowerment. Taking direction from the President's State of the Nation address in 2008, his objective to "give further life to the Victims' Charter" has been translated into five key result areas, one of which is information and awareness.

The discussion paper aims to provide information about the context of different types of victims so as to inform our realisation of the objective – making rights real.

Rights and responsibilities in our democracy: a case study

South Africa's democracy has changed the role played by government in society. From being regarded as an oppressor to being a liberator, government has made significant strides in improving the lives of its citizens. At the heart (and soul) of government's new role is its commitment to service delivery.

From the Reconstruction and Development Programme (RDP) to the principles of Batho Pele, government has drawn up a comprehensive policy and legislative framework for meeting the needs of its citizens. However, one of the major challenges that erode our democratic euphoria is the implementation of policy and legislation.

Beyond obvious problems of infrastructure, technical skills and resources that impact on implementation, what is the missing piece that will ensure government's promise of a better life for all? This article suggests that people (active citizens) are this missing element. Using the Victims' Charter as a case study, the article suggests that victims who know their rights and understand their responsibilities are the key to the effective implementation of the Victims' Charter.

Implementation can be understood as making a right real. This is often through an intervention, a service or a project. The intervention has both direct and indirect benefits to victims. Direct interventions are provided to victims by virtue of a right. Indirect interventions are provided to service providers so as to ensure they render an effective service to victims.

An illustration – the right to assistance: Batho Pele principles of access and courtesy

In order to implement the right to assistance, a government department identifies a direct intervention – provision of 'court preparation officers' to assist victims who go to court as witnesses. In line with the Batho Pele principles, all victims (witnesses) are entitled to access to preparation officers, who should assist victims with courtesy and consideration. A challenge identified by the department in the implementation of the right to assistance is the inadequate number of preparation officers. What is the role of a citizen in the implementation of the right to assistance

(which is translated as the provision of a court preparation officer)?

Citizens have a legal claim to the right (and intervention). This information must be known by all victims of crime. In addition, citizens should be actively involved in advocating for more resources for the appointment of court preparation officers. By writing to Parliament and the government department, by lobbying other stakeholders to be involved and by proposing ways of increasing the number of preparation officers (for example, through the use of law students or victims trained as volunteers), citizens can determine the success of the implementation.

South Africans are not an apathetic nation. Everyone, from taxi drivers to suburban housewives, debate national issues with robust enthusiasm. South Africans are informed about national issues. Scanning our daily newspapers and letters columns demonstrates how informed people are about current issues. Most South Africans have an opinion about crime. When one talks about crime, views are often expressed about government's inability to deal with crime.

At a recent memorial service held for a young girl, a media photograph showed a man holding a placard that asked: "Thabo Mbeki, what are you doing about crime?" We must empathise with the family members of the young girl, who are victims of crime. But, equally, we must ask ourselves: What are we doing about crime?

As victims of crime or concerned citizens, we understand that the criminal justice system (police, prosecutors and magistrates) are custodians of our legal rights. Furthermore, we understand that we have the right to protection against violence, and that government is responsible for reducing crime, investigating criminal charges, prosecuting offenders and rehabilitating criminals.

For many victims, the devastating impact of crime is either reinforced through the negative response of the criminal justice system (secondary victimisation), or it is mitigated through the positive support of the police, prosecutors or court officials. When government fails to enforce our rights and officials revictimise us, we should challenge government and hold its officials accountable.



As we challenge government, we must place our concerns in the context of government's promise of a better life for all. This promise is rooted in a 'people-centred' approach and can be traced back to the RDP principle of people-driven, integrated and sustainable programmes. People-driven programmes

are based on individual and collective responsibility. Active citizenry is when individuals understand that they have to participate in every sphere of social life. They have to claim their rights and exercise responsibility.

A tango dance – government and citizens as partners

Government has focused its attention, post-1994, on creating a rights-based culture built on the Constitution. Public communication has been focused on educating citizens about their rights. Thirteen years into democracy, we need to change the focus and include responsibilities as part of human rights education. Governments all over the world have established that social transformation can be achieved with active citizens. One of the key features of good governance is that of citizen participation. South Africa, as a member of the African Union, strives to uphold good governance, but also the African spirit of *ubuntu* – people as community.

The United Nations Millennium Declaration calls on countries to ensure greater participation by citizens. Implicit in this is the need for countries to create opportunities for citizens to understand their duties in the context of rights – one of the elements of good governance.

As we continue to bring about change, government should lead, with citizens following and cementing a partnership that will realise the promise of a better life for all.

The concept of government in partnership with active citizens is not new. Both the presidents of our new democracy have championed the role of informed and active citizens in social transformation.

Speaking at the Reconstruction and Development Conference in 1994, former President Nelson Mandela warned against the “insidious threat of complacency” among people. President Thabo Mbeki, in his explanation of the *letsema* Volunteer Campaign in 2004, clearly articulated the need for discourse into rights and responsibilities:

“We must continue to learn how to balance rights and obligations in our democratic society. We must continue to expand our understanding of the role of citizens in the process of the reconstruction and development of our country.”

We cannot lay claim to rights if we do not take an active role in asserting our rights. We should understand that asserting our rights is based on understanding both the right and its correlating duty, and taking action.

We need to acknowledge that understanding and acting on our responsibilities will place a burden on those who continue to perceive government as unsympathetic to victims of crime. It requires a mind shift from viewing government employees as being inefficient, often even before they have been given an opportunity to prove or disprove their abilities. It requires individuals to be the heart and soul of social transformation.

Responsibilities in the Victims' Charter

The Victims' Charter aims to provide easy reference to existing rights, so that victims are not revictimised by the criminal justice system. All citizens, government employees and victims need to be informed about the Victims' Charter. The associated Minimum Standards set out what victims can expect

from service providers, and will be reviewed and amended so that the standards are more concrete. Victims need to understand their responsibility for each of these rights.

When considering the right to offer information, for example, victims should understand that they have a duty to provide correct information. Incorrect information often leads to delays in investigation and prosecution. The correct home and work address of a victim will assist the police if they need to contact the victim again for purposes of further investigation. Moving from a past where any information given to government could be used against an individual, we need to change a victim's mindset, so that government is not viewed as the enemy.

The Justice Department has developed a list of victims' responsibilities that correlate with their rights in the Victims' Charter.

Your right	Your duty
To be treated with fairness and with respect for your dignity and privacy	<ul style="list-style-type: none"> • To be respectful to all service providers (police, prosecutors, magistrates, health workers, social workers and Correctional Services personnel). • To inform the police about yourself and any special needs you may have so that your right to dignity can be upheld. • To know that information given to service providers will be treated with confidence.
To offer information	<ul style="list-style-type: none"> • To inform the police and prosecutor if you can't read or write. • To inform the prosecutor about how the crime affected you and your family. • To give the police and prosecutor correct information: your address, contact details and any other information requested by the police or the prosecutor. • To inform the prosecutor if you need time off work to attend court proceedings.
To receive information	<ul style="list-style-type: none"> • To ask if you do not receive any information. • To act on information received. If you are required to attend court, arrive on time.
To protection	<ul style="list-style-type: none"> • To report to police and the prosecutor if you are threatened in any way by the accused or anyone related to the accused. • To participate in the Witness Protection Programme. • To request to be kept informed by Correctional Services if the accused has escaped custody or is transferred.

Your right	Your duty
To assistance	<ul style="list-style-type: none"> • To be helpful to all service providers when they require cooperation with the case. • To follow procedures as provided by service providers: report crimes, provide information and report on time to court. • Not to obstruct the police and the prosecutor in carrying out their duties.
To compensation	<ul style="list-style-type: none"> • To inform the prosecutor about loss or damage to your property or injuries sustained as a result of the crime. • To follow up with the prosecutor about any claims made for compensation. • To return any money already paid if you do not want the compensation award.
To restitution	<ul style="list-style-type: none"> • To inform the police and the prosecutor about property or goods that the accused has taken from you. • To submit a request to the prosecutor that if the accused took your property or goods, they should be returned to you in the condition they were before the crime took place.

Explicit in both the Victims' Charter and the Minimum Standards is the call placed on all victims to complain about poor services they may have received.

Government is continuously striving to improve service delivery and citizens can assist by providing constructive criticism when their rights are not upheld by service providers. Victims have a duty to complain about ineffective service.

At a recent workshop with government service providers, one of the participants attempted to highlight why the Victims' Charter is so important to all South Africans:

"As we approach 2010, the world will judge us for what we say and do as government and citizens of the country. In South Africa, we can be certain of three things: taxes, death and crime. We can ignore the Victims' Charter until one day when the face of the victim is your son, your neighbour, your colleague or yourself."

We have to change how we view government and our role as citizens. We have to understand our rights and responsibilities. Individuals must become the catalyst for change.

Human rights and victims of crime

“Crime is an affront to the human rights and dignity of all South Africans and we must join hands in ridding society of this scourge.”

Thenjiwe Mtintso, 1998

The celebration of Human Rights Day on 21 March each year is a pivotal moment in our legacy. The Sharpeville killing of 67 people – 67 victims of crime – is a sad reminder of our fight for human rights. Protesting against pass laws (injustice) and claiming human rights of equality and dignity, we honour victims of apartheid crimes. As we move into a new era of political freedom, we continue to face the challenge of building a human rights culture. We are suddenly confronted with questions about who we are, what we stand for and what values dictate how we engage with each other and the world.

The *-isms* (sexism, ageism, heterosexism, etc) that seemed insignificant in our quest for political freedom are brought to the fore as we define what human rights means in modern-day South Africa. We are faced with mitigating a compromise as we attempt to prioritise the different needs of individuals and interest groups in our interpretation of human rights.

A common feature that draws most South Africans together is the question of crime.

Whether we debate the increase, decrease or stabilising statistics of crime, most South Africans have an opinion, and indeed, an experience of crime. What do human rights mean in the context of crime; and more specifically, what do they mean for victims of crime?

In addressing this question, we must be constantly mindful of what our individual and collective responses should be to victims of crime. We cannot bury our heads in the sand and strike an ostrich pose as we read and watch daily media reports on crime. We need to ask this question, not with the fear that we may be the next victim of crime, but because we have fought for a country where human rights define who we are.

The Victims' Charter is a beacon of hope when navigating the criminal justice system seems a daunting task. By ensuring that victims are central to the process, the Victims' Charter dispels the often misconstrued assumption that criminals are treated better than victims. As we continue to celebrate Human Rights

This article is dedicated to Khensani M, who died in her mother's arms, a victim of armed robbery, on a sunny Johannesburg afternoon, as the world continued to live.

Day, we should ask ourselves how we respond to victims of crime. This question is particularly relevant to service providers who are called on to assist victims. Our response should be informed by the principles of Batho Pele. Often the response from a service provider – the police, a nurse or a prosecutor – can be a definitive factor in how victims engage (or disengage) with the criminal justice system.

The Victims' Charter, together with the Minimum Standards, is the blueprint for a precise and appropriate response from service providers. The situation of the Xaba family¹ is a case in point. The death of their father had a devastating effect, because the accused was their stepmother. After a lengthy court trial, she was found guilty and sentenced to 15 years' imprisonment. After five years, it was discovered that she would be eligible for parole. After numerous attempts to contact the parole board, the family was eventually given a date for the hearing. They had requested to make a presentation before the hearing but, due to delays, received a response after the date of the hearing. The Xaba family sent a letter to the Justice Department requesting assistance.

The Victims' Charter gives victims the right to provide information and assistance (among other rights). In terms of the definition of a victim, this would include the Xaba family (children of the deceased). The Xaba family would have been entitled to provide information (either verbal or in writing) during the parole hearing. In addition, they would have been entitled to be informed – promptly – by the Department of Correctional Services of the correct date of the hearing and what role they were to play during the process. The Victims' Charter would ensure that the Xaba family's human rights were upheld by the state.

What is our responsibility as individuals? We need to ensure that we work with government and other stakeholders in supporting victims of crime. As we remember the significance of Human Rights Day in our fight against the tyranny of apartheid, let us recommit ourselves to take on the fight against crime. The debate should not be about crime statistics, but about how we can win the war against crime, and support victims. We need to take up the challenge because we believe in human rights. As Gandhi said, we have to be the change we want to see in the world.

¹ Not real name

Giving life to a paper tiger

You will always remember the day it happened and what you were doing just a second before the incident occurred. Nothing you have ever read or heard prepares you for the moment you become a victim of crime. Months later, when the scars have healed and you can sleep with the lights off, you will enter into discourse, like most South Africans, about what we can do to combat crime.

As a victim of crime, you may feel anger towards 'those people' who violated you: in your home, in your car, at a shopping mall. Somewhere in the debate, you might venture an opinion about services provided by government for victims of crime. If you experienced crime in an urban area, you may have gone to a police station with a private room, where your statement was taken. If, like so many South Africans living outside the city, you experienced the crime in a rural area, you would probably not want to report the crime because of the distance you may have to travel to the nearest police station. As you give your opinion, others may react with anger towards the government. As a victim of crime, and importantly, as a government employee, what would your response be?

As an employee, particularly of the Justice Department, it is your responsibility to respond to the debate about crime with accurate information about government services or interventions for victims of crime. Your first line of defence should be to provide information about the Victims' Charter.

Employees of the Justice Department are the custodians of the Constitution. This means that they are responsible for the administration and enforcement of the Constitution. Ensuring that the general public understands the Constitution is their first responsibility. They also need to ensure that the public is properly informed about the Victims' Charter, which is based on rights enshrined in the Constitution, so that everyone can participate in debates about crime from an informed perspective.

The Victims' Charter may seem like a foreign concept: like a sound you hear in the middle of the night, followed by hours spent trying to determine whether it was an actual sound in the night – an intruder breaking into your home, the sound of your neighbour beating his wife – or whether the sound is in your mind: a remnant from your memories of the attack.

Making the Victims' Charter real – remembering the past

All law students began their first lesson with a background that dates back to 1852. The history of the Victims' Charter began in 1996 when government approved the National Crime Prevention Strategy (NCPS), which introduced a victim-centred approach to the criminal justice system. The aim of the NCPS was to reduce crime through four interventions (or pillars): criminal justice processes, community values and education, environmental design and transnational crime.

Victim empowerment and support is located in the first intervention: the criminal justice processes. The Department of Social Development is the lead agency for the provision of victim support services. The era of post-democracy included the finalisation of the Constitution, followed by various laws that attempted to ensure a victim-centred approach. The Justice Department was responsible for the enactment of several laws, such as the Domestic Violence Act and the Maintenance Act in 1998.

South Africa also signed different international laws, treaties and declarations that affirmed victims' rights. One of these was the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. South Africa, through the Justice Department, was responsible for developing its own Victims' Charter, in line with the United Nations Declaration.

The Victims' Charter is not 'new', as it consolidates existing rights that should be implemented to assist victims, and is part of government's victim empowerment programme.

Using section 234 of the Constitution, which gives Parliament the authority to enact charters, the Victims' Charter was developed by a group of stakeholders: government departments, chapter 9 institutions (the Human Rights Commission and the Commission on Gender Equality) and NGOs in 2004.

The Victims' Charter and associated Minimum Standards were approved by Cabinet on 1 December 2004. This was significant, as

it was approved on International AIDS Day, during the 16 Days of No Violence Against Women and Children campaign, and (most importantly) in the year that marked the tenth anniversary of South Africa's democracy. South Africans could finally put away the notion that the country's legal system favoured criminals over victims.

A new era – giving life to a paper tiger

The period between 2004 and 2007 can be viewed as the testing ground for giving life to the Victim's Charter. What does the charter mean to a victim of crime? In response to this question, the Justice Department translated the Victims' Charter and Minimum Standards into all the official languages, including Braille. We can now all say – the Service Charter for Victims of Crime in South Africa:

TJHATA YA DITOKELO TSA DIPHOFU YA
AFRIKA BORWA
DIENSHANDVES VIR SLAGOFFERS VAN
MISDAAD IN SUID-AFRIKA
ITJHATHA YAMALUNGELO
WABONGAZIMBI YESEWULA AFRIKA
MARANGAPHANBA NGA MINISIYA WA
VHULAMUKANYI NA MVELEDZISO YA
MULAYOTEWA
TSALWA RA TIMFANELO RA VAXANISIWA
VA AFRIKA DZONGA
INCWADI YEMVUME YAMALUNGELO
ABAHLUSHWAYO
YASENINGIZIMU AFRIKA
ITSHATHA YAMALUNGELO AMAXHOBA
OLWAPHULO-MTHETHO ASEMZANTSI
AFRIKA

In addition to translating the charter, the Justice Department also conducted education awareness programmes using local radio stations and trained front-line staff from different government departments.

Other government entities, such as the National Prosecuting Authority (NPA), set up Thuthezele care centres, which are one-stop

centres for victims of sexual and domestic violence. For the first time in South Africa's history, the Department of Correctional Services introduced victim participation in parole hearings. Some 52 parole hearing centres were set up throughout the country. The Department of Social Development continued to support all victim empowerment programmes and to provide funding to non-governmental organisations and community-based organisations to provide counselling and support to victims of crime. The South African Police Service established victim-friendly facilities in 583 police stations.

In 2007, the Justice Department completed drafting national implementation plans for the Victims' Charter. The implementation plans share how each department can continue to give life to the Victims' Charter.

A winning argument

In February 2007, a young girl was killed by a neighbour. The community was understandably angry at the funeral and one of the family members carried a poster with

the words: "Mr President, what are you doing about crime? Nothing!"

As staff of the Justice Department, what should our reaction be to the poster? We could react in one of three ways. Firstly, we can challenge the idea that government is not doing anything to assist victims of crime. We can share information about the Victims' Charter and the current services provided by government. Secondly, we can continue to work diligently to realise our mission of 'access to justice for all' – particularly victims of crime. We can recommit ourselves to implementing the Victims' Charter, using the Batho Pele principles. Thirdly, we can change our attitude towards crime and believe that we can win this war. Using positive energy, we can begin to ask ourselves what we can do to end crime in this country and provide excellent services to all victims of crime.

Progress with the implementation of the Victims' Charter since 2004

- Four multidisciplinary rape care centres (Thuthezela care centres) were established in 2004 by the Sexual Offences and Community Affairs (SOCA) Unit of the NPA.
- The national directory on services for victims of violence and crime was launched in 2004. The directory is updated every year.
- An amount of R36 524 million is allocated by the NPA to victims of crime who participated in criminal cases as witnesses in 2006.
- Some 52 new correctional supervision parole boards were established in 2005.
- The Victims' Charter and Minimum Standards were translated into all official languages and Braille, and also made available on audio cassette in 2005.
- Some 54 sexual offences courts were established with an average conviction rate of 62%, thus ensuring justice for victims of sexual violence.
- Child victim/witness rooms were created in 35 courts with one-way glass partitions in 2005.
- Some 178 closed-circuit systems were installed in 2005 to protect victims who testify in court, thereby ensuring the right to privacy and protection.
- Some 4 237 Train-the-Trainers in government departments in the JCPS were trained on the Victims' Charter in 2005.
- Some 9 000 officials from all departments in the JCPS were trained on the Victims' Charter in 2005.
- Some 6 300 Justice Department personnel were trained on the Victims' Charter in 2005.
- A special directorate in the Justice Department was established in 2005 to deal with victims in court (the Victims' Support Directorate).
- With the implementation of the Victims' Charter, an improvement was recorded in 2005 in the number of days it takes to complete cases in the Sexual Offences Court – a drop from 285 to 142 days – thus ensuring justice for victims.
- Some 50 000 victims were prepared for court by 66 court preparation officers in 2006.

- The Transnet Foundation, working with the Department of Social Development, donated an amount of R600 000 to establish one-stop centres in the Eastern Cape, Western Cape, Free State and Gauteng in 2006.
- Five one-stop shelters were established in 2006 for victims of crime. The shelters offer victims place to recover and thus address the right to assistance.
- Some 387 police officers were trained in victim empowerment and the Victims' Charter in 2006.

Going somewhere slowly: empowering government employees with information

Travelling to another country, city or village is a journey that many of us have made: sometimes with excitement, other times with anxiety. Our journey begins with preparation: obtaining information that will enable us to reach our final destination, ensuring that we have sufficient provisions to sustain us, and nurturing a belief that those who drive the buses, trains, airplanes and taxis have the knowledge and ability to take us safely to our destination.

The journey one makes from being an ordinary person, through being a victim of crime, to being a survivor is one of the most desperate and fearful life experiences. Unlike any other journey, it is forceful and unexpected – intruding on one's personal and professional life. The journey does not allow for preparation: obtaining information about what to do, what your rights are, and who will support you. Often the belief (and confidence) that you are supposed to have that there are people who are supposed to protect, assist and support you as a victim of crime is non-existent. Whether you reach the final destination as a survivor (experiencing

healing, forgiveness and restoration back to the previous state prior to victimisation) is often determined by different interventions along the journey: responses and support from the criminal justice system (including the offender), as well as your family, community and work colleagues.

In South Africa's present context, anyone can be the next person on the journey to crime victimhood. This is a gloomy reality, but one that we have to confront. We cannot bury our heads in the sand and wait for the winds of change to blow crime away. Confronting crime and supporting victims is our individual and collective responsibility. This can only be achieved if we prepare ourselves with information and take action.

As the lead government agency for the implementation of the Victims' Charter, the Justice Department is busy preparing to undertake a journey with government employees across departments that do not ordinarily implement programmes for victims of crime (such as the departments of Minerals and Energy, Trade and Industry, Environmental

Affairs and Tourism, and Land Affairs). The final destination is the empowerment of government employees with information and an understanding of the Victims' Charter. The journey is from uninformed to empowered employees.

The focus on providing government employees with information is deliberate. Government departments embark on public information and awareness campaigns on an ongoing basis. These are often in the form of community roadshows, workshops and meetings. The target public excludes government employees, who are usually at work during the time of the community event. Providing information to employees is therefore necessary if we are to live up to the Batho Pele belief set of "we belong, we care, we serve". This belief set recognises that every member of the public service must feel that they belong to an institution that cares about them as human beings and not just as workers. It recognises that employees are vulnerable to crime (in their workplaces, their homes and their communities) and taking action demonstrates a commitment to empowering and supporting all victims of crime.

Government employees are important stakeholders in the fight against crime and providing support to victims of crime. As policy-makers, implementers, administrators and clerks, employees become the voice of government in many communities. A government employee in the community is often the first point of call for community members seeking information on any related government service: from advice on instituting a small claim to obtaining information on laying a charge at a police station. If government's Know your Service Rights and Responsibilities campaign is directed at citizens, it is equally important for government employees (as citizens) to know their rights in relation to services provided by other public servants.

Information on what the Victims' Charter is, what rights victims of crime have, how to report crime, what to expect at court, how to participate in parole hearings and lay a complaint about poor service all form part of the journey to be taken. This information is vital for any person living in South Africa – not because of the gloomy reality that anyone can be a victim of crime, but because it is

our constitutional and moral duty to combat crime and build a better community.

In April 2008, the USA hosted its 21st National Victims' Rights Week. Every year, a week is dedicated to victims of crime: raising awareness, celebrating successes and planning new strategies. The theme for the Victims' Rights Week in 2008 was 'justice for victims, justice for all'. In comparison to the previous year's theme, 'everyone is a victim of crime', the 2008 theme showed that victims' rights is an ongoing struggle, even in developed countries. One can take consolation in the fact that every nation has to deal with crime and victims. What sets us apart as South Africans is how we deal with the challenge and complexities of crime from our perspective of *ubuntu*. Part of the answer lies in providing information and raising the awareness of all South Africans.

Government has over one million public employees. Information must reach every single employee. The Justice Department cannot achieve this without support from other departments in the JCPS at national and provincial level.

Departmental information sessions

Working with the directorates of internal communications in the various departments, two-hour sessions are being planned during official hours. The choice of working with the directorates of internal communication is informed by their mandates: staff focus, boosting morale and building an organisational culture. Internal communication, according to the Department of Public Service and Administration, is aimed at ensuring that public servants themselves are informed and consulted on matters that affect them. Staff should be provided with copies of the Victims' Charter (in any of the official languages and Braille) and will receive promotional items (pens or T-shirts).

All employees should be encouraged to attend, to obtain information, to gain an understanding of the Victims' Charter and to make suggestions on how the respective departments should support staff if they become victims of crime. The journey begins. It may seem slow and arduous, but we will reach our final destination.

Youth and crime: implications for the Victims' Charter

Violence in South African schools is a problem that confronts us on a daily basis. In 2006, the Human Rights Commission (HRC) convened public hearings on school-based violence. The HRC report revealed that "schools are the most likely places where children would become victims of crime."¹ In addition, the report revealed the extent of violence in schools, with sexual violence, assault and robberies being the predominant cases reported to officials. Media reports in 2007 highlighted some horrific cases of young boys killing each other. Families are destroyed. In cases where children witness violence, they live in fear, which often limits their social skills and academic ability.

In April 2008, the Centre of Justice and Crime Prevention (CJCP) released the findings of research it had conducted. The findings showed that over four million learners in South Africa had experienced violence in schools. The CJCP identified assault, robbery, rape, bite wounds and firearm-related injuries as the major examples of crime experienced by learners. These alarming statistics should be cause for concern and should prompt us to act.

If four million learners are victims of crime, we should ensure that each one of them knows their rights and responsibilities.

Government has developed a comprehensive programme in response to the challenge posed by crime and victims. The programme is located in the Victim Empowerment Programme (VEP), which defines service interventions for victims of crime in the Victims' Charter, which, in turn, defines rights in existing legislation. The Department of Social Development is responsible for coordinating the VEP and the Justice Department is responsible for the Victims' Charter. All departments in the Justice, Crime Prevention and Security Cluster are responsible for implementing the VEP and the Victims' Charter.

In his State of Nation Address in 2008, the President stated that all departments are to adopt an approach to service delivery as 'business unusual'. What does this mean for service delivery to young victims of crime?

¹HRC Report: 'School-based violence', October 2006

Lessons from working with the youth – Take a Girl Child to Work campaign

A sea of beautiful young faces looked up in anticipation of receiving information on the Victims' Charter to be provided by the Justice Department as part of the Take a Girl Child to Work campaign. Girl children, immaculately dressed in school uniform, were a beautiful sight in the sometimes dull and hostile corridors of the Momentum Building in Pretoria, which houses the national offices of the Justice Department.

As part of the campaign, the department hosted two schools based in Pretoria. On a cold, crisp winter's morning, girl children, wearing bright yellow T-shirts with the logo of the Justice Department, silently waited for what they assumed would be an informative, yet predictably boring information session on the Victims' Charter.

The learners were surprised by the introduction to the session, which began with an offer to purchase one of the latest

cellphones, valued at R3 200, for R50. When the offer was made, more than half the learners raised their hands to be selected as a buyer for the cellphone. In order to be considered as a prospective buyer, a series of questions was posed to the buyers. The first question was whether it would be correct to purchase a cellphone without a receipt. Some of the buyers remarked that goods bought without a receipt and at a reduced price were probably stolen goods. After this response, buyers were again asked if they would like to purchase the cellphone. The number of buyers was reduced significantly, with learners shifting uncomfortably in their seats.

The introduction to the presentation aimed to highlight the challenge of crime in South Africa: in communities, in families and in schools. It focused on how we don't often think about the role we play in increasing the rate of crime and, importantly, how we inadvertently increase the number of victims in our country.

Throughout the presentation, girl children interjected with interesting and sometimes challenging questions. Far from being quiet

and observant (in accordance with the old idiom that children should be seen and not heard), girl children have a thirst for knowledge that is informed by their understanding. Answers that challenge young people in South Africa seemed to enhance their understanding of complex legal issues. For example, the link that establishes a victim (besides the definition) is also based on the commission of a legally recognised crime. The example given was that even though a girl can 'steal' your boyfriend and you feel victimised, you are not a victim because the crime of 'stealing a boyfriend' is not legally recognised. Some of the questions posed by the girl children included the following:

- If a person commits a crime, should his/her parents take responsibility for paying compensation to the victim?
- Can a person be put on trial for the same crime more than once?
- How can complaints be made against magistrates?
- How does the court determine the correct amount when a compensation order is made?

An important lesson from the session is the approach to information provision for the youth – never make assumptions about the level of knowledge and understanding of young people. In addition, information must be relevant to the experiences of young people. Girl children were able to understand their rights as victims of crime in the context of crimes in schools: theft, assault (following from bullying) and even murder.

National school pledge and the Victims' Charter

The Victims' Charter was also discussed in the context of the draft national school pledge. Juxtaposing the pledge with the Victims' Charter, girl children were able to identify similarities, particularly because both documents include the constitutional rights of dignity and equality. Girl children were able to see the importance of the Constitution and its application in the relationships between individuals and with the state.

Draft national schools pledge	Victims' Charter
<p>We the youth of South Africa, recognising the injustices of our past, honour those who suffered and sacrificed for justice and freedom.</p> <p>We will respect and protect the dignity of each person and stand up for justice.</p> <p>We sincerely declare that we shall uphold the rights and values of our Constitution, and promise to act in accordance with the duties and responsibilities that flow from these rights.</p> <p>! KE E: / XARRA // KE Nkosi Sikelel' iAfrika.</p>	<p>If you have been a victim of crime, the following rights (as contained in the Constitution and relevant legislation) will be upheld in your contact with the criminal justice system:</p> <ol style="list-style-type: none"> 1. The right to be treated with fairness and with respect for your dignity and privacy 2. The right to offer information 3. The right to receive information 4. The right to protection 5. The right to assistance 6. The right to compensation 7. The right to restitution

Before concluding the session, learners were asked how they would support the Victims' Charter. Some ideas included not contributing to crime by buying stolen goods, sharing information on the Victims' Charter with other

learners, learning how to deal with conflict so that they don't use violence to solve problems, and being kind to learners who were victims of crime.

Working with the youth in developing an understanding of victims and crime

One of the most significant moments in South African history was the 1976 Soweto uprising. Young people were able to take a stand against apartheid as it began to rear its head in schools with the proposed introduction of tuition using a 50/50 (English/Afrikaans) language medium policy. Learners organised protest marches that culminated in the historic mass demonstration on 16 June. Learners gave their lives for what they believed in and this noble gesture resulted in a new era that eventually brought democracy to South Africa.

Similarly, learners of today are confronted with crime: an enemy, unlike apartheid, that does not discriminate and has no boundaries. During Youth Month in June, we need to pay tribute to our past and encourage learners to organise events to fight crime. As we provide multifaceted responses to crime, we focus on victims' rights and ask learners to be part of the solution.

The national school poster competition that the Justice Department has introduced together with the Department of Education provides learners with an opportunity to develop their own understanding of the Victims' Charter. This competition, which is open to all registered schools, requires learners to develop posters in their own language to show what they understand about the Victims' Charter. The winning posters will be used in an awareness campaign targeting the youth.

Antoinette 'Tiny' Sithole, class of 1976, will never understand what it means to be part of today's youth. In a similar way, the learners from the two schools in Pretoria who visited the Justice Department as part of the Take a Girl Child to Work campaign won't understand what it means to sit in a classroom and learn Mathematics in Afrikaans. The common thread that binds Antoinette and today's learners is their ability to change the world. We must never lose sight of this as we embrace our new democracy.

Working with girl children has informed 'business unusual' – instead of developing information and awareness campaigns for the youth based on existing communication

strategies, we should involve young people in developing the campaign. This is not a new approach, but for some government departments, this will be 'business unusual'.

Specific issues affecting young victims of crime

- Entry into the criminal justice system is different for youth victims than for adult victims of crime. Reporting the offence is usually done by an adult (caregiver), school or welfare or NGO.
- Victim and offender may attend the same school. This has implications for safety and protection from further victimisation.
- It takes a long time to process cases. In some cases, victim and offender may have completed school and entered new chapters in their lives. The case may have a destabilising effect in the victim's life at university or in a new job.
- There is diversity among young victims – although 'age' is a common denominator, other differences, such as gender and disability, should be noted.

Immigrants – inclusion in the definition of 'victim'

Takesure (not his real name) walked to the national offices of the Justice Department on 29 May 2008 from Mamelodi, Pretoria. Arriving at the reception area, he requested to speak to someone about how he could reclaim his property from his neighbours. Takesure did not speak English, so by the time it had taken the receptionist and security guard (20 minutes) to conclude that he was a victim of crime, officials of the department were preparing to leave work.

He was told to come back in the morning, with a promise that someone would assist him then. Having no home to return to, Takesure spent the night on the street. Waking up tired and hungry, he approached the receptionist at eight in the morning. He was referred to the Gender Directorate, as it had been established that he was a victim of what is referred to as xenophobic attacks against non-nationals. Takesure came to the Justice Department because he didn't want to cause any problems and wanted his television and microwave back to sell to go back home to Zimbabwe.

Providing Takesure with information about the Victims' Charter presented a challenge

because the Victims' Charter takes as its premise an assumption that victims are empowered to take action. How can victims like Takesure use the Victims' Charter? This is a challenge that all implementing government departments (and civil society organisations) must address to assist victims of crime who are legal or illegal immigrants.

Historically, government and civil society have predominantly provided services to victims of domestic and sexual violence: specifically to women and children. Post-1994, the Constitution (and related legislation) has facilitated recognition of the need to be all-inclusive. Further, the definition of victim broadly includes all sections of the community: male, female, young, old, national and non-national.

Government departments have not developed programmes to implement the Victims' Charter in different sectors of the community (given the diverse needs of victims in different communities). Takesure and many other victims like him present an unfortunate, yet crucial opportunity for departments to explore ways in which they can provide

information and awareness of the Victims' Charter to non-national victims of crime. In addition, departments need to review their services to ensure that they are inclusive of all victims, irrespective of differences such as national, non-national, age and gender, as well as the nature of the crimes.

The Victims' Charter aims to locate all victims at the centre of the criminal justice system and to eliminate secondary victimisation. It is premised on the assumption that victims are empowered with knowledge about the criminal justice system: what it is, how it functions, who its role-players are and how they relate to each other. A further assumption is the understanding of government service providers about what secondary victimisation is and how to eliminate it. Finally, an assumption is made that both victims and government service providers will work together to eliminate revictimisation and assist in crime reduction.

Providing Takesure with information about the seven rights in the Victims' Charter should begin by addressing some of these assumptions. In an attempt to empower

Takesure, service providers would need to communicate with him in a language that he understands. In addition to communicating in his home language or English, service providers need to communicate using simple language that demystifies 'legal jargon'. The criminal justice system uses terms such as 'mitigating evidence', 'crime administrative system number' and 'restorative justice', which would need to be explained in a manner that Takesure understands.

A relationship of trust would have to be established between Takesure and the service providers. Is there a policy or directive on how police officers should process reported crime when the victim illegally resides in the country? How do the police process crimes against victims like Takesure who do not have identity documents, telephones, cellphones or physical addresses? How does the Justice Department provide information on the Victims' Charter to victims who are not organised into groups? How does the prosecutor prepare a victim impact statement if the victim 'disappears' or returns to his/her country of origin before conclusion of the trial?

Without trust, victims and service providers will not be able to work together to address crime. Service providers need to ensure that they eliminate secondary victimisation. In Takesure's case, the receptionist should have ascertained whether there were officials available after official hours (which is the case in most directorates) and should have requested their support. Service providers are not always able to empathise with victims and this can result in secondary victimisation. From Takesure's physical appearance (his clothing, the bandages on his hands, the tiredness in his eyes, his speaking Shona) it was clear that he had recently suffered trauma, which necessitated an immediate response for help. By turning him away, we are all guilty of secondary victimisation.

Takesure, in his humble quest to get his belongings, did not report to the police station. He came to the Justice Department because he believed that the department would provide him with 'access to justice for all'. Takesure didn't want a brochure explaining the Victims' Charter. He needed someone to listen to him, to empathise with his situation, to tell him how to get his

belongings without putting him in danger of revictimisation. He needed to be provided with relevant information about why it was important to report the matter to the police, what services (such as shelters) are available to him, and what immediate support (such as clean clothing, food and medical examination) is available from social workers and public hospitals. He needed an opportunity to determine what action he should take, based on information provided to him. Thereafter, he needed referrals to all the relevant service providers. He needed the Victims' Charter to be a living and practical intervention in his time of trauma. The reassurance of rights is meaningless if victims are not empowered.

Takesure and all victims of crime require efficient and coordinated services from government departments; services that are rights-based and in line with Batho Pele principles. Departments should assist their staff in implementing the Victims' Charter. Policies and directives should respond to different circumstances of victims, without any ambiguity and expressed penalties for perpetrating secondary victimisation.

In our constant fight against crime, we cannot lose sight of the importance of our rights-based approach to the criminal justice system, which makes victims' rights central. The Victims' Charter must become a living document for all victims of crime. The Justice Department, as lead department of

the Victims' Charter, continues to work with all departments, civil society organisations and other stakeholders to realise the vision of 'justice for all'. It will confront all challenges to the implementation of the Victims' Charter because it has a moral obligation to act.

Specific issues affecting immigrants

- Immigrants are more susceptible to revictimisation by other immigrants, service providers and communities.
- Reporting crime and fear of deportation, separation from family and children.
- Women and children are more vulnerable to domestic and sexual violence.
- Appreciation of differences among immigrants – distinction between legal and illegal immigrants and refugees.
- The Victims' Charter must be understood in the context of international refugee instruments such as the 1961 Convention relating to the Status of Refugees, which aims to "assure refugees the widest possible exercise of fundamental rights and freedoms"

KEY CONCEPTS

Batho Pele	From the White Paper, 1997, 'Transforming Public Service Delivery'. 'Batho Pele' means 'people first'.
Citizen	Co-creator, working in partnership with government to address society's problems (big and small), and to develop solutions of lasting, public value (Institute for Democracy in South Africa). The term 'citizen' can also be understood to be a permanent resident who has rights, privileges, duties and obligations and is expected to participate in public life.
Empowerment	Defined as having control, having a say, being listened to and being recognised and respected as an individual (moving from victim to survivor). Draft Victim Empowerment Policy, 2007
Immigrants	See Home Affairs – Act
Rights-based approach	Using a rights-based approach to planning and implementation requires the involvement of all stakeholders, particularly victims. Involvement of victims can lead to empowerment. "Rights determine the relationship between individuals and groups with a valid claim (rightsholders) and the state with correlative obligations (duty-bearers). Groups are no longer beneficiaries but rightsholders entitled to exercise their rights." – UNHCR
Secondary victimisation	<p>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:</p> <ul style="list-style-type: none"> • 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.

<p>Victim</p>	<p>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/her fundamental rights, through acts or omissions that are in violation of our criminal law. Victims also include those who assist or intervene to assist the victim or the police.</p> <p>Victims also include, where appropriate, the immediate family or dependants of the direct victim. Where the victim dies a result of a crime, those financially and psychologically (family and friends) dependent on the victim shall also be regarded as victims.</p> <p>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.</p> <p>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.</p>
<p>Youth</p>	<p>Aged between 16 and 35, National Youth Policy, 1999. See definition in National Youth Policy.</p>

