

## **Rights and Responsibilities in our Democracy – a case study of the Victims Charter**

***Naomi Webster, Department of Justice & Constitutional Development***

South Africa's democracy has changed the role of government in society. From oppressor to 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 (RDP) to Batho Pele, government has defined a comprehensive policy and legislative framework for meeting the needs of citizens. However, one of the major challenges that erode our democratic euphoria is 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 the missing piece. 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 effective implementation of the Victims Charter.

South Africans are not an apathetic nation. From taxi drivers to suburban housewives, national issues are debated with robust enthusiasm. South Africans are also informed about national issues – a scan of daily newspapers and letters column demonstrate how informed people are about current issues. Most South Africans will have an opinion about crime. When we talk about crime, often views are expressed about government's inability to deal with crime. At a recent memorial service held for young girl, a media photograph showed a man holding a placard which asked, 'Thabo Mbeki what are you doing about crime? We must empathize with the family 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, magistrates) are custodians of our legal rights. Further, we understand that we have the right to protection from violence and 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 by negative response from the criminal justice system (secondary victimization), or they are able to find healing through positive support of police, prosecutors or court officials. When government fails to enforce our rights and officials re-victimize us, we should challenge government and hold 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 'people-centred' approach and can be traced back to the RDP principle of 'people driven' integrated and sustainable programmes. People driven is 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, in creating a rights-based culture built on the Constitution. Public communication has 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 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, but also their duties to understand what partnership with government means.

As we continue to bring about change, government should lead, with citizens following and cementing a partnership that will ensure the promise of a better life for all. The concept of government in partnership with active citizens is not new. Both of our Presidents have championed the role of informed and active citizens in social transformation. Former President Mandela at the Reconstruction and Development conference, 1994, warned against the ‘insidious threat of complacency’ amongst people. President Mbeki, in his explanation of the *letsema* Volunteer Campaign 2004, clearly articulated the need for rights and responsibilities discourse,

‘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 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 right is based on knowing, understanding both the right and 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 every government employee as inefficient, often even before we have given them an opportunity to prove or disprove their ability. It requires individuals to be the heart and soul of social transformation.

## Responsibilities in the Victims Charter – a case study

The Victims Charter contains seven rights which are contained in existing legislation (the Constitution, the Criminal Procedure Act, the Access to Information Act and other legislation). For example, the first right of the Victims Charter is [the right] to be treated with fairness and with respect for your dignity and privacy. Section 10 of the Constitution guarantees the right to dignity. The Victims Charter aims to provide easy reference to existing rights so that victims are not re-victimized by the criminal justice system. We need to ensure that all citizens, government employees and victims are informed about the Victims Charter. It is this context that the Minimum Standards was developed with the Charter, as it sets out what victims can expect from all service providers. We need to ensure that victims understand their responsibility for each of the rights. The second right is to offer information. This imposes the duty on the victim to provide correct information. Often incorrect information, leads to delays in investigation and prosecution. For example, the correct home and work address of a victim will assist the police if they need to contact the victim if further investigation of the charge is required. Moving from a past where any information given to government could be used against an individual, we need to change our mindset and not view government as the enemy.

## Other examples of Responsibilities in the Victims Charter

The Department of Justice and Constitutional Development has developed a list of responsibilities of the correlating victims rights.

| <b>Your right</b>  | <b>Your duty</b>  |
|--|---|
| <i>To be treated with fairness and with respect for your dignity and privacy</i> | <ul style="list-style-type: none"> <li>• to be respectful to all services providers (police, prosecutor, magistrate, health workers, social workers and correctional service personnel).</li> <li>• to inform the police about yourself and any special needs you may have, so that your right to dignity can be upheld.</li> <li>• to know that information given to service providers will be treated with confidence.</li> </ul> |
| <i>To offer information</i>  | <ul style="list-style-type: none"> <li>• to inform police and prosecutor if you cannot read or write.</li> <li>• to inform the prosecutor about how the crime affected you and your family.</li> <li>• to give the police and prosecutor correct information – your address, contact details,</li> </ul>  |

|                               |  |
|-------------------------------|--|
|                               | <p>and any other information requested by the police or prosecutor.</p> <ul style="list-style-type: none"> <li>• to inform prosecutor if you need time off work to attend court proceedings.</li> </ul>  |
| <i>To receive information</i> | <ul style="list-style-type: none"> <li>• to ask if you do not receive any information</li> <li>• to act on information received – if you are required to attend court, arrive on time.</li> </ul>  |
| <i>To protection</i>          | <ul style="list-style-type: none"> <li>• to report to police and prosecutor if you are threatened in any way by the accused or anyone else related to the accused.</li> <li>• to participate in Witness Protection programme if required.</li> <li>• to request to be kept informed by Correctional Services, if the accused has escaped custody or is transferred.</li> </ul> |
| <i>To assistance</i>          | <ul style="list-style-type: none"> <li>• to be helpful to all service providers when they require cooperation with the case.</li> <li>• to follow procedure as provided by all service providers – report crimes, provide information, and report on time to court.</li> <li>• to not obstruct the police and prosecutor in carrying out their duties.</li> </ul>              |
| <i>To compensation</i>        | <ul style="list-style-type: none"> <li>• to inform the prosecutor about loss or damage to your property, or injuries you may have sustained as a result of the crime.</li> <li>• to follow up with the prosecutor about any claims made for compensation.</li> <li>• to return any money already paid if you do not want the compensation award.</li> </ul>                    |
| <i>To restitution</i>         | <ul style="list-style-type: none"> <li>• to inform the police and prosecutor about property or goods that the accused has taken from you.</li> <li>• to submit a request to prosecutor to ensure that if the accused took your property or goods, that they should be returned to you, in the position they were before the crime.</li> </ul>                                  |

Explicit in both the Victims Charter and the Minimum Standards is the call placed on all victims to complain about negative services they may have receive. Government is continuously striving to improve service delivery and this can be assisted when citizens provide constructive criticism when their rights are not upheld by service providers. It is the duty of all victims 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. She stated,

‘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; 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.