



Crime and Xenophobia – challenges for implementation of the Victims Charter

Takesure (not his real name), walked to the National Department of Justice, on 29 May 2008, from Mamelodi, Pretoria. Arriving at Reception area, Takesure requested to speak to someone about how he could reclaim his property back from his neighbours. Takesure did not speak English, so by the time it had taken for the Receptionist and Security Guard (20 minutes), to conclude that he was a victim of crime, Justice Department officials, were preparing to leave work. Takesure was told to come back in the morning, with a promise that someone would assist him. Takesure, having no home to return to, spent the night on the street and waking up tired and hungry, approached the Receptionist at eight in the morning. Takesure was referred to the Gender Directorate because it was established that he was a victim of what is referred to as 'xenophobic attacks against non-nations'. Takesure came to the Department of Justice because he 'didn't want to cause any problems and wanted his television and microwave back to sell to go back home [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 organizations) must address for victims of crime, who are legal or illegal immigrants.

Empowerment is defined as having control, having a say, being listened to and being recognized and respected as an individual (moving from victim to survivor).

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Historically, government and civil society have predominately provided services to victims of domestic and sexual violence; specifically, 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;

Victim 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. (The Victims Charter and Minimum Service Standards for Victims of Crime, 2004)

Government departments have not developed programmes of implementation of the Victims Charter for different sector of the community (given diverse needs of victims of different communities). Takesure and many other victims like him, presents 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, gender etc, as well as nature of crimes.

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

Providing Takesure with information about the seven rights in the Victims Charter;

- 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,

should be begin by addressing some of the assumptions.

In an attempt to empower Takesure, service providers would need to communicate with Takesure, 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 language such as 'mitigating evidence', 'crime administrative system number', '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 service providers. Is there a policy or directive on how police officers should process reported crime where the victim is illegally resident in the country? How do police process crimes of victims, like Takesure, who have no identification documents, telephone or cell phone, and no physical address? How does the Department of Justice provide information on the Victims Charter to victims, who are not organized in groups? How does the prosecutor prepare a Victim Impact statement if the victims 'disappears' before conclusion of the trial? Without trust, victims and service providers, will not work together to address crime.

Service providers need to ensure that they eliminate secondary victimization. In Takesure's case, the Receptionist should not ascertained if there were officials after official closing hours (which is always the case with the most Directorates) and requested their support. Often, service providers are not able to empathize with victims and this can result in secondary victimization. From Takesure's physical appearance, it was clear that he had recently suffered trauma, his clothing, bandages on his hands, the tiredness in his eyes, speaking in Shona, necessitated immediate response to help. By turning him away, we are all guilty of secondary victimization.

Secondary victimization refers to the attitudes, processes, actions and omissions that may intentionally or unintentionally contribute to the re-victimization of a person who has experienced a traumatic incident
Department of Justice Discussion Paper: 'Understanding the South African Victims Charter – A Conceptual Framework', 2007

Takesure, in his humble quest to get his belongings, did not report to the police station. He came to the Department of Justice because he believed that we 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 empathatize with his situation, to tell him how to get his belongings; without putting him in danger of re-victimization. He needed to be provided with relevant information about why it was important to report the matter to the police, what services are available to him, such a shelters, what immediate support is available from social workers (such as clean clothing, food, medical examination, etc). He needed an opportunity to determine what action he would take based on information provided to him. Thereafter, he needed referrals to all of the relevant service providers.

Takesure didn't need a Victims Charter brochure, 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 implementation of the Victims Charter. Policies and directives should respond to different circumstances of victims, without any ambiguity and expressed penalties for perpetrating secondary victimization.

In our constant fight against crime, we cannot lose sight of the importance of our rights based approach to the criminal justice system – making victims rights central. The Victims Charter must become a living document for all victims of crime.

The Department of Justice, as lead department of the Victims Charter, continues to work with all departments, civil society organizations, and other stakeholders in realizing the vision of 'justice for all'. We will confront all challenges of implementation of the Victims Charter because it is our moral obligation to act.