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MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS INVESTIGATION INTO SENTENCING – A COMPENSATION FUND FOR VICTIMS OF CRIME (PROJECT 82)

1. The South African Law Reform Commission approved a Report containing recommendations and a proposed draft Bill on a compensation fund for victims of crime. The Report was submitted to the Minister of Justice and Constitutional Development.
2. The investigation into a compensation fund for victims of crime sought to -
 - a) investigate all aspects regarding the establishment of a compensation fund for victims of crime, including the question of how the plight of victims of crime in their interaction with the criminal justice system should be treated; and
 - b) recommend steps to be taken in respect of the establishment of a compensation fund for victims of crime and any other steps that should be taken to address the plight of victims of crime in their interaction with the criminal justice system.
3. Currently no compensation exists for victims of crime in South Africa outside the courts' prerogative to enforce a restitution order in respect of the offender if convicted. Victims have to enforce their right to compensation by instituting civil actions against the perpetrators.
4. The Commission's conclusions and recommendations in the Report are as follows:
 - a) The establishment of a compensation fund is, at this stage, not a viable option in view of two particular problems, namely the affordability of the fund in the current financial climate and the absence of prerequisites necessary for the effective and efficient administration of the fund. In the course of the investigation the Commission embarked on a process to determine the cost implications of establishing a compensation fund, an

exercise which clearly showed the huge financial implications of establishing a compensation fund. The exercise itself proved to be difficult, since an accurate estimate depended on a number of variables, too difficult to verify or to define with certainty. The range of possible and available policy permutations, for example, the offences for which compensation should be considered, the criteria to be used to determine a complainant's eligibility to claim, the extent to which compensation should be paid (full compensation, limited compensation or compensation in accordance with a tariff scheme) the number of claims and the lack of available and reliable data are examples.

Therefore, for purposes of determining the possible cost implications of establishing a compensation fund the Commission had to rely on a number of assumptions and estimates. In the course of this exercise the Commission's point of departure was to err on the side of conservative assumptions and to limit its costs analyses to certain categories of offences. On the above approach the cost implications for a compensation fund, paying full compensation, calculated for the year 1998, and limited in respect of a category of offences which included murder, attempted murder, rape, assault with intent to do grievous bodily harm, indecent assault and aggravated robbery, was R4,7 billion. The result clearly underlined the huge cost implications which should be considered and lead the Commission to conclude that such a fund is not a viable option in the current financial climate.

- b) In the alternative, the Commission proposed a victim empowerment programme aimed at providing and improving services to victims, which includes limited financial support for victims of crime in certain exceptional and limited circumstances and informed by policy recommendations of a newly created Victims Council. The Commission, however, recommended that the establishment of a compensation fund should not be abandoned, but developed over time as a project within the broader objective of improved services for victims of crime.
- c) The current Victim Empowerment Programme (VEP) still lacks the ability to deal effectively with all the issues relating to victims of crime. The current programme focuses on support services, where only particular

categories of victims are targeted, and it does not comprehensively deal with all the needs of victims.

- d) Without an effective legislative basis, support services will continue to be uncoordinated, fragmented and reactive in nature.
- e) The treatment of victims and services provided to them should be placed on a firm footing.
- f) Legislation should be adopted to provide for a comprehensive package when dealing with the needs of victims of crime, and should be based on the approved government policy of the National Crime Prevention Strategy, advocating for a victim-centred approach and which is reflected in the VEP mission statement as “to provide a caring and supportive service to victims of crime that is accessible, timeous, and thorough, thus contributing to a sense of empowerment and an environment conducive to peaceful communities” .

5. The Commission’s proposed legislation is based on the establishment of four major structural components to provide a package aimed at improved services and support to victims and the introduction of legislative principles, providing for the standards which the treatment of victims must meet. These include the following:

- a) As a minimum, the creation of a permanent structure, an Office for Victims of Crime, to take care of the needs of victims on a permanent basis.
- b) The creation of branch offices to provide victims with access to victim service delivery close to victims.
- c) The creation of a limited fund to support the development, improvement and provision of services to victims of crime. This Fund should not be confused with a compensation fund for victims of crime because of the name given to it in the Commission’s report, ie a “fund for victims of crime”. The purpose of the fund is solely to finance the establishment of support services to victims of crime.

The Commission’s recommendations also include a provision that in **exceptional circumstances** a victim may apply for compensation where there is absence of appropriate services. There may be circumstances where services cannot be provided and the only assistance that could be

provided would be financial assistance. Financial assistance could therefore be provided in exceptional circumstances, be of a limited nature and in compliance with clearly defined conditions.

- d) The creation of a permanent body or institution (Victims Council) to advise government on policy issues and legislative amendments to meet the needs of victims of crime.
- e) The introduction of legislative principles to guide the treatment of victims of crime.

The report will be made available on the Internet at the following site:
<http://salawreform.justice.gov.za>

ISSUED BY THE CHAIRPERSON OF THE SOUTH AFRICAN LAW REFORM COMMISSION



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