

The Road to Justice

Victim Empowerment Legislation in South Africa
Road Map Report
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1. Terms of Referenceⁱ

The United Nations Development Programme (UNDP) engaged the Rape Crisis Cape Town Trust (RCCTT) and its contract partners the Women's Legal Centre (WLC) and the Open Democracy Advice Centre (ODAC) to perform services in respect of a Victim Empowerment Legislation Feasibility Study

1.1. The Purpose of the Victim Empowerment Legislative Research and Advocacy Initiativeⁱⁱ

The partners agreed to study as well as consult with sector stakeholders and Treasury about the feasibility of developing and passing a Victims Empowerment Legislative Act, to current cost-benefit propositions of services to victims of crime, and – if deemed feasible – propose a strategy for mobilizing support of government and parliamentary stakeholders to adopt such an Act. One of the major problems encountered by the different government departments working on Victim Empowerment is that victims related provisions may be found in a range of different legislations and/or draft legislations. At the moment, there is not a single, specific piece of legislation targeting and addressing specifically the needs of victims of crime; nor does there exist a single or explicit line budget for implementation of victim related services; not to mention an effective mechanism for the coordination of services delivered to victims of crime.

The Terms of Reference provided that the feasibility study should:

1. Base itself on the findings of an expert discussion forum which would provide the social space for consultations and the inputs of expert stakeholders, as well as retrieval of information relevant to the study.
2. Acknowledge the benefits of provision of services to victims of crime and a pragmatic assessment of the overall need for such services.
3. A thorough review of the literature documenting initiatives in support of Victims Empowerment Legislative Acts in the past (such as – for example – recent studies conducted by the South African Law Reform Commission); as well as a review of the academic and popular literature on how service providers are failing to uphold the rights of victims. In addition, a sample of services guided by policy or legislation should be assessed by
 - (1) determining what legislative and policy mechanisms are in place;
 - (2) whether and how services provided do indeed reflect legislative and policy mechanisms; and
 - (3) whether and how services provided do indeed give effect to the legislation and policy. In other words: since there is no legislation governing victims services – such as, for example, shelter services – who is ultimately liable if the services provided are of poor quality and detrimental to the well-being or health of the victim?
4. Assess the resources currently attributed to implementation of victim empowerment policy and/or incidental services delivered to victims of crime. This in turn requires a

scan of services delivered by NGOs and CBOs through donor-funding not related to government budgets. The overall purpose of this assessment will be to determine the need for streamlining victim empowerment legislation.

5. Address the issue of governance, by exploring structures that ought to be put in place and which would be responsible for the certification, de-certification, accreditation and de-accreditation, registration and de-registration of VE services and service providers. Here, again, a consultative approach with sector stakeholders will be required. The feasibility assessment sought from the SP must include an international comparison of victim legislation and office structures that exist internationally. It must also shed light as to the extent to which victim legislation and office structures are effective or not; and explore options for governance that must not necessarily be aligned to current governance arrangements.

The outcome expected from the SP is therefore multifaceted! The SP must – in consideration of the above paragraphs (#1 to #5) – propose a ‘roadmap’ for the Government of South Africa on how to get the legislation needed to support VEP policy passed (should this indeed become the recommendation of the study); or articulate why such an effort cannot be considered to be feasible. Should the SP testify to the feasibility of advocating for a legislative act, a persuasive strategy as to how to secure VE-supportive legislation must subsequently be proposed? Such a proposal must include recommendations for funding streams for implementation of such legislation; and how the sustainability of such legislation can be guaranteed.

2. Acknowledgements

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3. Introduction

3.1. The scale of crime in South Africa

“I left SA after being a victim five times over a 3 year period, not to mention the 12 burglaries in my parents’ home from 1980-1990. Many are experiencing this level of crime for the last 20 years. If government was serious about crime, it would have been a priority.”

Natalie – comment on www.victimempowermentsa.wordpress.com

A ‘Victims of Crime Survey’ focusing on South Africans aged 12-22 demonstrated that in 2005, forty-one and half percent (41.5%) of this age category were victims of crime and violence in the preceding 12 months.ⁱⁱⁱ Evidently, crime affects all people in South Africa—individual victims, families, and communities—in direct and indirect ways.^{iv} This perspective is affirmed in the Preamble of the Department of Social Development’s Integrated Victim Empowerment Policy of 2007, which states “victimisation negatively impacts the physical, emotional, social and economic well being of our society. Comprehensive services to reduce the negative impact of victimisation therefore need to be provided to all victims of crime.”^v

According to the South African Police Services Case Management report^{vi}, between 2003 and 2010,

- 129 833 people were reported murdered, at an average of 16 229 people per year
- 471 137 people reported being the victim of a sexual offence, at an average of 58 892 people per year
- 1 573 597 people reported being the victim of assault with the intention to do grievous bodily harm, at an average of 196 700 people per year and,
- 1 574 580 people reported being the victim of common assault, at an average of 196 823 people per year.

Although a paper analysing the 2009- 2010 crime statistics suggests that improvements have been made, more than 2.1 million South Africans were the victims of some form of crime during this period.^{vii} 31.9% of these crimes were contact crimes (defined as crimes that involved physical contact between the victims and perpetrators) including murder, attempted murder, sexual offences, assault with the intention to do grievous bodily harm, common assault, aggravated robbery and common robbery^{viii}. Of these categories of crime there were 68 332 reported cases of sexual offences, 205 293 reported cases of assault with the intention to do grievous bodily harm, 197 284 reported cases of common assault and 113 755 cases of robbery with aggravated circumstances. There were furthermore 16 834 reported murders, 17 410 reported cases of attempted murder and 57 537 reported robberies. This is a total of 676 445 victims of contact crimes during this period.^{ix} Crimes against women and children have increased significantly, with 197 877 reported contact

crimes against women 18 years or older, and 56 539 reported crimes against children younger than 18.

“I have been a victim of crime, my mum has been one and my dad has been one. These are our stories.

During my years at University I experienced a lot of petty crime. Clothes, CDs, shoes, bed linen, a laptop, 2 Ipods and the biggest thing, my car, being stolen. To this day I have not received any report backs from the police station in Grahamstown – granted, I haven’t actively pursued whether in fact my goods have been recovered. I suppose it’s all a bit of “oh, insurance paid out, I can move on.” So in this instance I would say it’s partly my fault, partly theirs. I’ve been lucky enough to never have experienced ‘violent crime’ although I have encountered an intruder who I screamed at, pushed (all while only half-awake) and he leapt back out the window he had come through and raced away. I was lucky that he didn’t hurt me.

My mum’s story is that she came home, parked her car outside the garage (we had a long driveway and you could see the cars from the road.) A well-dressed young man came to the gate called up after her as she was unloading the shopping and asked for directions. She walked down to the gate (mindful not to get too close and gave him the directions he needed – which were quite easy! He however, asked her to keep repeating them, and I suppose as one is trying to get their point across inadvertently they get closer and closer to the person they are speaking to. To cut this story short, at the moment my mum realised she was too close, another young man came around the corner holding a gun and said he would shoot her if she didn’t open the gate. When they came onto the property they stole all my mum’s jewellery and told her to lie down on the ground while they ran around trying to steal the car. At this point, when my mum realised they weren’t focused on her she got up and bolted across the garden and into our neighbours’ property. The police responded quite quickly as I recall, but they never caught the robbers and there has been no follow up from their side (again, my mum has not actively pursued this either.)

Lastly, my dad. He was driving home from playing golf one evening and was pulled over. The ‘Sandton’ cops (that’s what their badges proclaimed to say) that did so told him that he was over the limit (no breathalyzer). They then proceeded to intimate him and made him get into their car while one of the other “officers” drove his car, following them, whereby he was informed that he was in trouble. Big, big trouble and if he didn’t write them a cheque for R900 they would lock him up and unmentionable things would happen to him. Furthermore, they said if he told anyone they would hunt his family down, they knew where he lived, they knew his license plate etc and that would be the end of us. He wrote the cheque, they gave him back his keys and he came home. He told my mum what happened. She was livid (rightly so) and immediately called our local police station (she in fact worked very closely with our local police at that time) and reported the incident. The following day my dad’s license plates were changed. To this day that cheque has never been presented.

What can we do? We reported our crimes, but nothing has come of them. Granted, these are relatively minor crimes when you think of all the rape and murder that occurs every second of every day across South Africa. Sadly there are too many criminals, too few police, too few resources, too few prisons (major overcrowding in both the awaiting trial sections and sentenced prisoners sections), too little accountability (dockets go missing all the time); the court processes are too slow (allowing for remand after remand); and, I’ve been told, our public defenders are little to be desired. Hopefully with the advent of the new superior courts bill some of these issues will be more seriously addressed.”

Sarah – Comment on www.victimempowermentsa.wordpress.com

3.2. *The trauma caused by crime*

The South African Police Services (SAPS) report states that:

Physical contact between victims and perpetrators will always have a more serious psychological impact than cases in which property is stolen from the victims in the latter's absence (e.g. during a housebreaking when the victim is away from home or otherwise unaware of the crime's occurrence at the time it is committed). Contact crime derives from violence against the person, irrespective of the nature of such violence.^x

The psychological impact of crime in South Africa is very difficult to measure, but it is widely concluded that it is having a significant and worrying impact on the entire population. The SAPS Report elaborates that efforts to decrease the incidence of contact crimes have met with increasing difficulty for the following reasons:

- Social factors such as alcohol and drug abuse increase the likelihood of these types of crimes between people who know one another,
- Many instances of assault occur in places not thoroughly covered by visible or conventional policing, or in homes, places of employment or social gathering places, and
- The economic recession has increased the likelihood of property related crimes, and domestic violence.^{xi}

It is also argued that nations, like individuals, take time to heal. In the interim it is most evident that efforts need to be established to support the victims of crime, to reduce the escalation of existing tensions and to ensure that the psychological trauma of a living in a violent country is adequately contained and not allowed to emerge as a norm.

But perhaps the most far reaching and least considered aspect of the trauma caused by crime and by violent crime in particular is the way that it affects the victim's ability to act play a role in bringing the perpetrator to justice. Victim empowerment is not simply about doing what may be done at reduce the plight of victims and heal our nation. It is about strengthening the person who is the key to the State's case against the perpetrator of crime. When a victim of crime is attended to promptly, provided with comprehensive information and has access to trauma counselling they are an excellent source of information and evidence for the State. The empowered victim is more likely to give a coherent statement, provide a good description of the perpetrator, to assist in the accurate identification of the suspect and to offer consistent testimony at the trial of the perpetrators. When this support is not provided to the victim, it can result in a problematic case and an even more problematic court hearing.

Various governmental departments have created victim empowerment mechanisms in order to reduce the negative impact of crime on the people of South Africa even while they may seem to overlook the obvious benefits of having a victim that is able to fully participate

in the vital investigation and prosecution processes that will bring perpetrators to justice. Victim empowerment initiatives are generally a practical manifestation of the theory of restorative justice, and hence an approach toward dealing with crime that incorporates the victim and the community into the criminal justice process. Groups like the South African Law Reform Commission have made efforts to redefine crime based on the community-oriented restorative justice model, redefining crime as “an injury or wrong done to another person” rather than an offense against the State.^{xii} The theory of restorative justice also parallels the idea of “Ubuntu,” as a perspective that prioritises the well being of the community over the welfare of a single individual in that community.^{xiii}

Within the literature, increasing recognition has been given to the subjective, idiosyncratic experiences of individual victims, which differ on account of the unique characteristics of the victim, his or her “levels of isolation, access to resources, levels of vulnerability and previous experience of crime.”^{xiv} Among the themes that emerge when groups and experts consider the subjective needs of victims is the need for information about the progress of their case.^{xv}

The story captured below shows how powerful the trauma caused by crime can be, and how important it is for any victim empowerment initiatives in the future to take these into consideration, whether they are legislation, policy or service based.

“It’s true that the effects of violent crime are not always immediate.

My sister was hijacked in her driveway by five men working as a team. She was held at gunpoint and saw her domestic worker spread-eagled on the lawn and thought they were going to rape her. She handled the whole thing with a kind of dazed calmness and in the end the men were interrupted and left without harming anyone.

She said she felt fine but as the weeks went by she felt her concentration beginning to slip away until she could only really focus on something for a few minutes. She began to wake up in the early hours of the morning and not be able to return to sleep.

A few months after the incident she saw a suspicious looking character hanging around in their street and went into a complete panic, calling ADT, the police, her husband and her son – all for what turned out to be a perfectly innocent pedestrian waiting on the pavement for his girlfriend to knock off work.

I did some reading and found out that when you undergo a trauma your body reacts by flooding your brain with chemicals designed to help you survive. These can help you for a time but if they don’t recede they begin to disturb your daily functioning. A characteristic feature of this is that you lose your ability to discern a real threat from something innocent that triggers the memory of a previous traumatic incident.

My sister went for trauma counselling and a brief course of medication and now, although understandably anxious in moments when she feels vulnerable, is now really fine.”

Kate – comment on www.victimempowermentsa.wordpress.com

3.3. *Legislative efforts at victim empowerment*

Despite the significant trauma that high levels of crime cause, South Africa has not, as yet, introduced Victim Empowerment legislation, nor has there been a sustained campaign to introduce such legislation for the survivors of crime.

In the early part of 2000 there was significant interest and high-level support for research into victim compensation, and in legislation for such a scheme. This interest arose from the high levels of crime, particularly violent crime, in South Africa. However, after the development of a Discussion Paper on the matter in 2001, no further indication of an effort to create legislation, particularly for victim empowerment purposes, is evident. In particular, there are no reasons provided for the non-release of the 2004 Report on Project 82, which is relevant for victim empowerment.

Opposition political parties have argued for a 'compensation fund' for victims of crime, but no action has been taken on this. Many of the efforts of civil society organisations focused around reform in specific areas of crime and the impact on victims. Included, among these is a focus on children in conflict with the law, such as the Child Justice Bill, and certain categories of victim, such as the Sexual Offences Act, or the Domestic Violence Act. Thus victims of general crime continue to be dealt with in terms of various victim empowerment policies, but with no legislation empowering them in specific and direct ways. The overall result of the limited approach is a criminal justice system in which there is a perception that there is less focus on the victim of crimes than on the perpetrators.

On a global scale, the issue of victim empowerment has been taken seriously. In the past few years, there has been a movement within the international community directed at encouraging countries to establish a framework of rights for victims of crime.^{xvi} As Cheryl Frank wrote:

“the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, and the proliferation of legislation and policy in countries such as the United State, Canada, Australia, New Zealand and elsewhere were clear indications that the issues of crime victims had been placed firmly on the international human rights agenda.”^{xvii}

In order to assess the potential for legislation in the South African context and investigate the gaps in terms of taking forward such potential provisions, two desktop reviews were conducted within the framework of this study. The first review^{xviii} examined the provisions that exist within the legal framework in the South African context, which seek to empower victims of crime. It set out the existing legislative framework governing victim empowerment, as well as pending Bills. Based on the information available, the study concluded that whilst there is some scattered legislation in place that protects various categories of victims of crime, there is no single comprehensive piece of legislation that covers the empowerment of all victims of crime in South Africa. Furthermore, it is also noted that the existing legislation is poorly connected and coordinated.

The legislative instruments that were considered are:

- the Domestic Violence Act No. 116 of 1998,
- The Witness Protection Act 112 of 1998,
- The Probation Services Act No. 116 of 1991 and Amendment No. 35 of 2002,
- the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007,
- the Judicial Matters Second Amendment Act No. 55 of 2003,
- the Older Persons Act 2006 (Act No. 13 of 2006),
- the Children's Act No 38 of 2005, and The Children's Amendment Act 41 of 2005, and
- the Child Justice Act No. 75 of 2008.

The second desktop review^{xix} analysed international trends, as a basis for assessing the efficacy for South Africa of the international model for victim empowerment set down by the United Nations in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, as the starting point for the international review and the foundation upon which victim empowerment could be based. It reflected on the clauses in South Africa's Constitution which allows for the use of international law for interpretive purposes. In addition to this obligation to consider International law in interpreting the Constitution, South Africa can also draw from the experiences of other jurisdictions when formulating victim empowerment legislation, to demonstrate a desire to position itself as a world-leader in victim support and empowerment.

The following international instruments were considered:

- Universal Declaration on Human Rights, 1948
- International Covenant on Civil and Political Rights, 1976
- International Covenant on Economic, Social and Cultural Rights, 1976
- International Convention on the Elimination of all forms of Racial Discrimination, 1965
- Convention Against the Elimination of All Forms of Discrimination Against Women, 1983
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child
- Vienna Declaration and Programme of Action, 1993
- United Nations Convention against Transnational Organised Crime, 2000
 - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
- The African Charter on Human and Peoples Rights, 1986
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa
- Convention on the Rights of the Child, 1989

As pending and draft legislation begins to address some of the gaps in the policies for victims of specific crimes the following were also considered:

- the Prevention and Combating of Trafficking in Persons Bill, 2010,
- the Criminal Law (Forensic Procedures) Amendment Bill, 2009,
- the Criminalisation of Torture Bill, 2003 and
- the Protection of Personal Information Bill, 2009.

Although the Bills cover a comprehensive range of issues, the reality is that there still remains very little provision for the ordinary victims of crime, who make up the majority of victims. Specialised provisions are still deemed necessary. This should however not be at the expense of the progressive developments within the current Bills and adopted legislation need not be abandoned for a more general piece. All experience and evidence do suggest that there is a need to make provisions that are applicable to all victims of crime.

Both the domestic and international desktop reviews reveal that there is certainly the potential to grow South African legislation to make it more empowering for the victims of crime. Furthermore, the international commitments that have been made by government require development of the law in line with deeper understandings of human rights and victims' needs. Domestic legislation should, as a matter of practice, also be supplemented by enabling and operational policies. These policies ideally embody the spirit in which the law should be implemented to ensure that victims receive a standardised level of support from all service providers and that the standards are high.

Of central importance to implementation is raising awareness about the rights provided in legislation amongst the general public in South Africa. It is particularly difficult for victims to feel supported when the law is inaccessible. As finding provisions for the victims of crime proved difficult for a team of trained professionals, it goes without saying that this would be almost impossible for ordinary citizens who would be exposed to a complex, adversarial and bewildering system, often in a language other than their own while experiencing the devastating effects of trauma. Perhaps a single body of law could be effective in creating an accessible document that all victims could refer to. Specialised legislation that exists in some countries and within international practice have some of the best provisions for empowerment, but the ordinary victim should no longer be excluded.

However while the desktop reviews showed the potential for growing legislation it did not immediately reveal obvious gaps or feasible solutions let alone a road map of the way forward. For this the partners turned to the expert discussion forums suggested by the terms of reference for the study.

3.4. Results: Expert Opinion

3.4.1. The Methodology of the Interview Process

For the purposes of this study, twenty-five (25) semi-structured in-depth interviews were planned. A total eighteen (18) interviews were conducted on a one-on-one basis and in two instances small groups of experts were interviewed together. These two smaller group interviews were conducted with a total of seven respondents. Purposive sampling was used to source people for these interviews. As it was not possible to interview everyone who had been involved in victim empowerment in the past, the consortium attempted to focus on the individuals who were cited in the literature review, and interviewed whoever was willing and available. In addition, the interviews themselves provided the team with further indication of who might be a good source of information. In this way, snowballing was also used as a sampling method. A snowball sample is achieved by asking a participant to recommend others who might be willing or relevant to the study at hand^{xx}.

In order to conduct these interviews a semi-structured interview schedule was developed which contained 17 open-ended questions. Open-ended questions were ideally suited for this research, because they are aimed at encouraging respondents to express their own opinions, and they provide scope for detailed responses from individuals^{xxi} without too much prompting. According to Fiona Thorpe (2010) they give the space for the question to “elicit underlying ideas, feelings, sentiments and suggestions that researchers may not have even considered.” Thus the interviews were guided by the responses of the person being interviewed, and were an excellent opportunity for the study team to gather insights. “This qualitative model of interviewing allows for information to flow in both directions, and therefore the interview can be said to be a co-creation of meaning between the interviewer and the respondent.”^{xxii} This was particularly true of the small group interviews where respondents were able to share insights and remind one another of previously forgotten information.

A key desire of the consortium was to illicit information that was not evident from the literature review, and to ensure that the responses given were authentic. “Authenticity refers to giving a fair, honest and balanced account of social life from the viewpoint of someone that lives it every day”^{xxiii}. Thus the team was less concerned with matching the content of the interviews to the literature review, than it was with receiving honest reflections on previous efforts at victim empowerment.

Where respondents were able to answer the questions posed directly, they were given the full opportunity to. Where the questions were deemed contextually unsuitable, the themes within the questions were discussed with the interview respondent, and information garnered.

The challenge with the interviews was that many of the interviewees had worked within victim empowerment in the past but were no longer working with such initiatives. The old

adage that ‘hindsight is twenty-twenty’ may hold true in some instances, yet in some cases reflection back on events long in the past can become complicated because of a lack of memory, or a lack of consistent participation in the field. Some of the respondents we had hoped to interview were not interested in participating, or were unable to be interviewed because of organisational constraints and commitments.

Several themes emerged in the course of the interviews and these assisted in shaping a gap analysis and the recommendations for the report. The experts who were interviewed are listed in Section 3.4.2. However, for the purpose of referencing, only the date of interviews will be provided, so as to retain anonymity and maintain the authenticity of responses.

Based on information captured from the interviews there are a number of experts who see new legislation as having value and a number of experts who provide alternative suggestions such as modifying existing legislation. The arguments of those who are in favour of new legislation can be summarised as follows:

- Legislation would be more likely to secure a budget for victim empowerment initiatives
- There would be more political will to implement legislation than there is to implement policy
- Legislation would more clearly define the roles of government role players to ensure that intersectoral collaboration works more effectively and give clearer consequences for a lack of collaboration and coordination
- Legislation would serve to define the relationship between government and Civil Society Organisations in providing services to victims of crime particularly with regard to consequences for poor service delivery
- Legislation could enhance the accountability of both State and NGO service providers
- Legislation could incorporate the principles of restorative justice better than policy
- Legislation might better cater for the victims of ordinary crime

In contrast, those who were opposed to the introduction of new legislation offered the following arguments:

- A lack of capacity and budget to implement existing legislation or to manage an existing budget would only be exacerbated by developing new legislation
- Resources could be better spent elsewhere such as on capacity building for community projects
- Implementing victim empowerment legislation would dismantle the perception of services for the victims of crime as rights for all victims rather than as privileges accorded to certain individuals

3.4.2. Introduction to the experts

The interviews have been incredibly useful in assisting the consortium to develop a sense of the history of victim empowerment in South Africa and some of the issues involving its success. People interviewed include:

1. Cheryl Frank (Institute for Security Studies)
2. Professor Thandabantu Nhlapo (South Africa Law Reform Commission)
3. Naomi Hill (previously of Centre for the Study of Violence and Reconciliation and NICRO)
4. Advocate Willie Van Vuuren (South African Law Reform Commission)
5. Joy Watson (Parliamentary Research Unit)
6. Sanja Bornmann (Alliance for Children's Entitlement to Social Security)
7. Barbara Holtmann (Centre for Scientific and Industrial Research)
8. Geraldine Fraser-Moleketi (United Nations Development Programme)
9. Advocate Thoko Majokweni (Special Director of Public Prosecutions, National Prosecuting Authority)
10. Venessa Padayachee (The National Institute for Crime Prevention and the Reintegration of Offenders)
11. Jody Kollapen (Human Rights Commission)
12. Ann Skelton (Lawyers for Human Rights)
13. Jacqui Lefelle (JHB Child Welfare)
14. Lisa Vetten (Tshwaranang Legal Advocacy Centre)
15. Helene Combrinck (Community Law Centre, University of the Western Cape)
16. Allison Wainwright (South African Police Services)
17. Juan Nel (Centre for the Study of Applied Psychology, University of South Africa)
18. Chandre Gould (Institute for Security Studies)
19. Lillian Artz (Gender, Health and Justice Research Unit, University of Cape Town)
20. Samantha Waterhouse (Community Law Centre, University of the Western Cape)
21. Dee Smythe (Law, Race and Gender Research Unit)
22. Aaron Makobane (Department of Social Development)
23. Tsholo Moloji (Department of Social Development)
24. Anna Sithole (Department of Social Development)
25. Lebogang Molai (United Nations Office on Drugs and Crime)

The existence of a previous advocacy campaign for victim empowerment was something that was assumed to have occurred when the study was initiated. However, it became clear during the study that that this was not the case. Despite the push from civil society for specialised rights for victims of specific crimes (for example the Domestic Violence Act allows for protection orders, or the Sexual Offences Act which provides Post-Exposure Prophylaxis for rape survivors), there had been no active lobbying from civil society for a comprehensive act for the victims of all crimes.

In order to probe this issue, the interviews conducted took various forms, including informal discussions and group interviews. The decision on which approach to use was based on the person being interviewed. The formal interview also explored the respondents' previous work on victim empowerment, how they felt the process could have run more effectively, and whether they felt that new legislation would be useful.

3.4.3. Interview results

As indicated, an advocacy campaign for victim empowerment was assumed to have occurred as a starting point for the research process. This assumption was an incorrect and as indicated by one respondent “there had not really been previous attempts at a single body of legislation. Instead the victim empowerment [effort] had come through in different pieces of legislation” and “after the NCPS, victim empowerment efforts became diluted to a vague ‘victims’ lobby” (Interview, 04/06/2010). They noted that “legislation was never really on the agenda in any significant way and there was no lobbying around it” (Interview 04/06/2010).

3.4.3.1. Why was Victim Empowerment not on the agenda?

3.4.3.1.1. Lack of Civil Society Influence

A number of explanations for the lack of a victim empowerment agenda were suggested by interview respondents. One explanation was that because civil society “had not picked it up, nothing had happened...if civil society had made more noise then something would have happened” (Interview 04/06/2010). Another respondent noted that the problem with advocacy in previous campaigns for specific legislation had been that “civil society was not coordinated, and often acted as individual organisations. They didn’t speak with a united voice” (Interview 1. 14/12/2010).

Despite the lobbying from civil society for specialised rights for victims of specialised crimes (for example the Domestic Violence Act allows for protection orders, or the Sexual Offences Act which provides Post-Exposure Prophylaxis for rape survivors), there had been no direct advocacy for a comprehensive act for the victims of all crimes. Another respondent noted, “the state gets away with horrific things because there is not enough pressure from civil society” (Interview 08/07/2010).

Nevertheless, one respondent felt that if new legislation were to be introduced, the push must come from civil society (Interview 1. 14/12/2010). He noted that this was because “Government officials cannot criticize other government officials when they are not performing because they are not allowed to, so it would be helpful if civil society could drive it” (Interview 14/12/2010).

3.4.3.1.2. Unsuccessful Parliamentary Influence

In the past were been actions, initiated at Parliamentary level and researched by the South African Law Commission (SALC), directed at establishing a Victim Empowerment Compensation Fund. One respondent indicated that SALC completed a report in 2004, but this was never published. The report “included recommendations on everything dealing with a compensation fund and legislation to put Victims Empowerment on a solid footing” (Interview 24/06/2010). Another respondent (Interview 1, 21/10/2010) confirmed that this report existed, but did not recommend a compensation scheme. In his opinion, such “a compensation scheme was problematic because its mandate was too broad or too vague and hence it would not have much value”. An interview respondent (Interview 1. 28/07/2010) noted that on the matters of costing of this previous parliamentary driven

attempt at legislation for victim empowerment, the conclusion had been that it would be too expensive for government.

The momentum behind the SALC document seemed to have dissipated with the delay in the comments process. The last round of comments was due in late 2004, yet the document remained unreleased in early 2011 when this report was finalised. One respondent (Interview 2 04/06/2010) suggests that legislation is extremely dependent on the particular role-players in the executive and the legislature. At the time; “victim empowerment had always been personality led in government” (Interview 28/07/2010). In addition, with elections, when these role-players changed, the momentum that gathered with a previous Minister, committee chair or SALC commissioner lost momentum (Interview 2, 21/10/2010). People become “disillusioned and that usually comes after a lot of work and nothing happening” (Interview 2 04/06/2010). In addition, the number of role-players meant that this process took exceptionally long (Interview 13/07/2010). Thus, any influence for legislation requires dedicated people who are willing to maintain the momentum at the governmental level.

3.4.3.1.3. Legislation for the victims of crime may have been seen as ‘soft’ or as a ‘women’s issue’ alienating potential supporters

Crime prevention in South Africa has largely been focussed on the offender. The entire criminal justice process relegates the victim of crime, in many cases, to the role of a witness. Civil Society organisations have argued that the emphasis on the perpetrator of crime severely disempowers the victims of crime in South Africa, because it denies them any control over their own case and limits their agency in playing the role that is required of them. This all takes place in a context where for many people in South Africa, the word ‘justice’ means retributive justice, rather than restorative justice.

Victim empowerment often emerged as something associated with restorative justice (Interview 13/07/2010). Some respondents felt that changing the focus from perpetrator to victim was responsible for the delay in instituting this type of legislation, and implementing victim centred policy. One respondent (Interview 28/07/2010) suggested “victim empowerment [is] still misunderstood...it [is] not seen as contributing to crime prevention but [is] rather seen as a ‘soft’ response”. She elaborated that in a paternalistic society such as South Africa, when issues become seen as soft, or as women’s issues they are poorly supported (both locally and internationally) or lack momentum.

She added that there was also very little inclusion of men in these processes, despite the high levels of violence and crime involving men. She argued that “the gendered nature of advocacy campaigns in the past had fed into the lack of action for victims” (Interview 28/07/2010). In her opinion, breaking the cycle of violence would require interventions that were not only aimed at empowering women, but were also aimed at educating men about the rights of women. In her view, it would be essential to have a male political champion for this legislation, to ensure that victim empowerment was no longer seen as soft (Interview 28/07/2010). In addition, another respondent emphasised that victim empowerment legislation should not only “services only on women and children. This doesn’t support the majority of victims who are in fact young men” (Interview 21/01/2011).

Legislation had effectively not been on the agenda but there was a general feeling amongst interview respondents that it had the potential to be worthwhile.

3.4.3.2. *The Worth of legislation*

Of the 25 respondents, nearly all of them felt that legislation in some form would be worthwhile. There were several reasons for this.

3.4.3.2.1. *Legislation had a better chance of securing a significant or meaningful budget*

The clearest articulation of the importance of a budget for meaningful implementation was the statement that “the feasibility of legislation stands or falls on how much government can afford” (Interview 1, 04/06/2010). In most of the respondent’s answers there was hope that legislation, more than policy, was “critical to commit the country to budget and action” (Interview 1, 04/06/2010). Another respondent noted that “We also needed the budget – legislation needs to be funded...It all has to be calculated down to the last Rand and cent” (Interview 13/07/2010).

Some respondents felt that the funds were there but had not been allocated correctly to ensure that victim empowerment was strategic (Interview 08/07/2010). One respondent felt that “there were programmes and policy in place that had the [right] essence...but no legislation that gave the budgetary follow through” and that remedying this situation might speed up the delivery of services to victims of crime (Interview 1, 16/09/2010).

There was thus a general feeling that whilst policy might be detailed and useful, it did not command a budget thus rendering implementation extremely difficult. One respondent noted that “the Victims Charter had been through Cabinet but not through Parliament and thus it held no status” (Interview 10/02/2011).

3.4.3.2.2. *There was more political will to implement legislation than there was to implement policy*

One respondent thought that existing policy was confusing and complex but that legislation might be a “mechanism to lobby for social development” (Interview 1, 04/06/2010). In addition, another respondent described the policy framework as “disjointed and not cohesive enough...legislation would do better to pull together the policy and fill the gaps” (Interview 08/07/2010). She concluded “in summary, legislation is better than policy. There is no political will to implement policy.”

3.4.3.2.3. *It would more clearly define roles for the different governments to ensure that inter-sectoral collaboration could be effective*

Legislation or policy that doesn’t clearly explain how one government department is supposed to lead another or a cluster of departments was perceived by some as problematic. If guidelines, or legislation, clarifying coordination or cooperation, are drafted without the buy-in of the departments they affect, this results in “a toothless document” (Interview 2, 16/09/2010) that will not serve the end-user who in this case is a victim of

crime. At present many intersectoral bodies rely on memorandums of understanding or service level agreements. However, as will be demonstrated in section 7, there is a need to clarify the mandate of each body before entering into such agreements. “The key to the whole thing is that everyone knows what role they have to play” (Interview 2, 16/09/2010) and legislation might be a good source of this role description.

The VE Programme is currently administered by a number of Government entities with the Department of Social Development (DSD) as the lead department. However, the mandate of each department or entity and the power of the DSD to command compliance has not always been clear. The DSD is thus not always able to achieve its desired aims within the programme. This was noted by one respondent who said that the biggest challenge they had faced was an “inability to get a significant level of engagement from other departments” and in her view “the [current] coordination model did not work... [and] there was a need to change the way that collaboration in government was framed” (Interview 28/07/2010). However, in her view “although the DSD had occupied a difficult leadership role they had played a *consistent* leadership role” (Interview 28/07/2010). In contrast another respondent felt that there was a “dearth of leadership and management input” (Interview 1, 26/08/2010).

One respondent felt that support could be better ensured by legislation. She explained that “VE legislation was needed because legislation was clearer about what all parties need to do. It would define the role[s] of different government departments in terms of support” (Interview 08/07/2010). In this way legislation could play the role of ensuring that “coordination [was] replaced by enabling” (Interview 28/07/2010).

Respondents didn’t feel that this would be difficult and would require a simple clarification of roles and confirmation of commitment. In cases such as victim empowerment there was a need “to solicit political buy-in across departments so that [VE is] tabled at the relevant forum, and then planning activities [could] come...The key is to have a framework that is simple and easy to use” (Interview 2, 26/08/2010) because “government departments have not quite worked out how to work collaboratively” (Interview 08/07/2010). What is needed is a “clear strategy and implementation plan” (Interview 2, 26/08/2010). Suggestions included having a dedicated manager or a post created for victim empowerment at director level (Interview 1, 26/08/2010), “a Polokwane-like resolution” (Interview 1, 04/06/2010) and a structure to look at “an effective management plan” (Interview 08/07/2010). This might also assist the delivery of services from the national to the provincial level that were currently problematic (Interview 1, 04/06/2010).

3.4.3.2.4. It would be better equipped to define the relationship between civil society and government in providing services

Much of the work focussing on victim empowerment is not done by Government in isolation of the existence of other role-players. There are a number of civil society organisations that play a significant role in ensuring that victims receive the services they need. However, in many instances these relationships are difficult because of a lack of understanding of each others’ roles and responsibilities or duplication of efforts.

Dynamic and well informed discussions between government and civil society organisations are necessary to ensure that those providing direct services to the victims of crime are well resourced, and accountable to their clients and their funders. However, in many cases both bodies lack accountability mechanisms or communication channels that means that both parties remained frustrated. One respondent believed that this relationship strain was also a result of the funding of NGOs. She noted “there is a need for a public participation exercise to ensure that the activities of NGOs aren’t being duplicated by government and vice versa. In addition, it shouldn’t be [the] case that NGOs are afraid to do things because they get their funding from government” (Interview 08/07/2010).

As in intersectoral service level agreements, legislation could be well placed to make clear the roles of both government and civil society by providing well-structured paths for dialogue and information sharing. It could also be useful to regulate the accountability of each partner in any funding agreements, to ensure that the best services were delivered to victims that would result in their empowerment. One respondent noted that “legislation is great for coordination, which is generally where the collaboration has fallen flat so far” (Interview 14/12/2010).

3.4.3.2.5. Legislation could enhance accountability

As described, successful relationships and provision of services rely on clarity and consistency of roles. What is equally essential to a well-functioning Victim Empowerment Programme is the accountability of all role players. In the private sector, monitoring of accountability of the role-players would be done by an external body. In addition, it would require a good database system or monitoring system to ensure that information about role player performance was recorded in an effective method. One respondent felt that there was often a “lack of civic virtue in government” (Interview 07/10/2010) thus legislation would need to specify roles and clearly indicate accountability structures.

By legislating the need for dedicated monitoring capacity, including any external monitoring agency, you would have someone to “check that plans are rolled out” (Interview 2, 26/08/2010). In short, there is “a need for disciplinary assurances” which might be facilitated by clear legislation that specified “proactive review or reporting requirements” (Interview 1, 21/10/2010). It could also “help to enforce the roles of each player, and could go some way to clarifying them” (Interview 14/12/2010). This would allow for the “distinction between ‘victim empowerment’, which relied on the consciousness of the individual service providers at the time of interaction with the Criminal Justice System, and ‘victims rights’ which would create a legal framework for justice and a budget for implementing rights” (Interview 10/02/2011).

3.4.3.2.6. Legislation could better incorporate the principles of restorative justice

Relationships between victims and the services providers of the CJS are rarely good. Victims of crime often lack information on their rights, and how the systems work. In practice this means that victims are rarely empowered in their interactions with the system. According to one respondent three things are needed to change if victims were to be empowered; these were “1) the relationships between the CJS and the victims of crime needed to be

improved, 2) there needed to be an emphasis on the recovery of human rights and 3) there was a need to break the cycle of violence” (Interview 28/07/2010). For another respondent services were necessary for the victim, the perpetrator and the affected community (Interview 1, 16/09/2010). There would need to be an external body that monitored whether these services were being delivered. According to another respondent “the glue, linking the issues together, is restorative justice...The law is offender focussed without being particularly beneficial to offenders but even less beneficial to victims. Restorative justice approaches should place victims at the centre” (Interview 11/10/2010).

However, one of the difficulties with restorative justice that is focused on reconciliation between the victim and the offender is that in many cases the victim does not want to reconcile, is not aware of the need for support or the perpetrator is never arrested and does not enter the system.

3.4.3.2.7. General legislation might better cater for victims of ‘ordinary’ crime

In South Africa several pieces of legislation exist for particular types of crime such as rape or domestic violence. However, the lack of a piece of legislation that provides clear rights and duties within the system for ‘ordinary’ victims of crime means that many of these victims go unsupported. Legislation such as the Sexual Offences Act, the Domestic Violence Act, the Children’s Act and the Child Justice Act all have good provisions for victim empowerment and afford rights to particular groups of victims. In South Africa, victims of assault, robbery and violence do not have such access and there are few specialised services for them. In short, “the general experience of victims of crime in SA is not positive” (Interview 11/10/2010).

Perhaps the largest group of victims of crime are those in which no arrests are made, and these victims are rarely catered for in legislation. Providing legislation for services for all victims of crime, regardless of the status of their case is essential because “these victims also need support – victim empowerment should not only be linked to court systems” (Interview 11/10/2010).

In the group interview (10/02/2011) one respondent noted “the disempowerment of victims in the system today is profound. Policy or service level recommendations don’t shift that. The only thing that can is rights-based legislation.” Another added “there is a difference between having facilities to provide help and having the people capable of making those facilities useful” (Interview 10/02/2011). This was reiterated by another respondent (Interview 20/01/2011) who said that the problems with the CJS were “not necessarily a result of an absence of policy, or of good policy, or of law. It eventually comes down to the conditions and consciousness of the person from the CJS at the time they deal with the victim.” The response to victims when they report a crime is of serious significance to their feelings about the CJS as a whole.

"I have been a victim of crime ten times in five years, but reported it only once when it was with violence on our domestic.

The domestic was tricked into letting a woman through the security gate, and then two more women and a man rushed in from nowhere and beat her to the ground, held her and robbed the house. Our domestic managed to give the police a very good description of the gang and even the registration number of the car they speed off in.

After six weeks of no feedback from the police, even after many phone calls and being told not to harass the police detective as he is very busy. Then I got in touch with his senior; who promised to sort it out. Two weeks later I got a call from the very busy detective, who told me he had got the name of the male assailant and even his phone number; he went on to say that he had phoned him and told him to report as soon as he can to the police station bring the three women with him regarding the robbery!

I think the man is still laughing and the detective thinks he has done a good job. Now you know why people don't bother to report crime.

As for the decrease in crime? Easy answer, better burglar bars, higher fences, more clever alarms and a more secure prison (home) we all live in."

Alan – comment on www.victimempowermentsa.wordpress.com

3.4.3.3. Alternatives to legislation

Only a few respondents had concern that legislation would not improve the status quo. Like Alan's story above, their comments indicated a lack of faith in government to remedy the problems caused by previous mismanagement of funds, or failures to implement legislation. In some instances they felt that legislation would be better replaced with alternatives such as capacity building at local level, or further training to improve existing procedures and services. The themes that emerged are categorised below.

3.4.3.3.1. Lack of capacity to implement legislation or manage the budget

One respondent was particularly convinced that

"...there wasn't enough capacity to implement existing legislation and thus capacity and budget would be huge stumbling blocks for such legislation...the shortcomings of VE in South Africa has not been the result of a lack of legislation but rather because of capacity and budget...there were often competitive demands for attention in legislation and thus it was unlikely that this would get through" (Interview 28/07/2010).

She felt that although advocacy could strengthen the push for legislation to be implemented more fully, the concerns of Treasury for the budget that would be required to implement VE legislation would stymie the process, or would make it ineffective. Her concerns were validated by two other respondents. One respondent (Interview 1, 04/06/2010) said that government had "asked the CSIR to do a costing for a VE fund, but that the results of that

costing had never seen the light of day because it had seemed too costly”; and the second by (Interview 1, 21/10/2010), who said that in the reviews of the SALC document the call “to translate the victims charter in to legislation was received with reluctance because it was too expensive and would create a sense of victim entitlement”. A third respondent felt that “the state lacked capacity and that increasing their load of legislation to implement might not be the best idea” (Interview 07/10/2010).

This was echoed by another group of respondents (Interview 10/02/2011) who shared the concern that the problem with the system at the moment was related to poor management rather than lack of legislation. In addition, another respondent noted that it was “difficult to say where VE was actually happening because there wasn’t much data about it” (Interview 21/01/2011).

3.4.3.3.2. Funds would be better spent elsewhere

One respondent felt that where funds were available, they could be more effectively used for capacity building projects at a community level. In her opinion “the more people who could be equipped to help people recover the better” and “building this capacity was important and might cost less [than legislation]” (Interview 28/07/2010). Similarly, another respondent (Interview 14/01/2011) thought that,

“what could easily be fixed was the assumption that civilians know how the CJS works. They don’t. They don’t know who to ask, where to go or how the process works. Just getting that basic kind of information would go a long way towards victim empowerment.”

In contrast, another (Interview 1, 21/10/2010) felt that although the Victims’ Charter had not been well implemented because of a lack of capacity, this was not justification to let the standards remain unachieved. In his view government should pursue “an incremental approach”.

One respondent felt that it was essential to also include the community in victim empowerment activities because “we are looking at a community which has been very traumatized, and we can’t just deal with that on a case by case basis” (Interview 13/07/2010). She felt that legislation might be useful to organise this community healing. She said that “in legislation you can create a framework to innovate” (Interview 13/07/2010). In addition, another respondent thought that community-level interventions could reduce the instance of Post-Traumatic Stress Disorder (PTSD) amongst both the victims of crime, and the service providers who were supporting them (Interview 28/07/2010), but did not feel that legislation could achieve this. The story below indicates how important care for the care givers is.

“In January of 2010 I started volunteering as a rape crisis counsellor in the USA, and completely threw myself into it. I put so much of myself into the work mostly because I loved it; the work made me feel empowered and helpful, and I was excited to be a part of our fantastic local sexual assault centre. I took on about twice as much as the other new volunteers and by September I started to have a breakdown. Up until then, I thought I was handling things just fine- I didn't *feel* traumatized, and I thought I had done a good job of keeping up the proper barriers when I worked with victims. I still had this kind of belief that vicarious trauma may happen to *other* volunteers, but I was strong enough to handle anything.

Right now I'm on a leave of absence from the sexual assault center. Hopefully in a few months I can go back to volunteering, but right now I'm still working on dealing with the trauma, my own victimization, and (like a poster above mentioned) finding balance...I believe that after thoroughly retraumatizing myself, I need to completely avoid trauma. When I feel I am ready and able to properly serve victims again I will slowly reintegrate volunteering into my life in a balanced and healthy way.” *Abbey – comment on www.victimempowermentsa.wordpress.com*

4. Conclusions: The Purpose of the Road Map Report

Research into the gaps in legislation for victims has been conducted by the research consortium and was produced as a gap analysis report in 2010. This Road Map Report seeks to provide potential solutions to these gaps. The aim is to provide a road map of how victim empowerment in South Africa might proceed.

Five key gap areas were identified in the gap analysis report.

4.1. Gap 1: Information about the System

Victims need more general information about what is available to them by way of assistance, information about the criminal justice system, the role that they are required to play within that system and information about how the law works. Such information needs to be made available automatically to victims, just as criminals are advised of their rights and also to members of the public at large and to communities supporting victims of crime. The 'legal literacy' of South African citizens needs to be improved so that the empowerment of victims through information starts before a crime has even been committed.

4.2. Gap 2: Specific Case Information

A second identifiable gap is that many victims do not get prompt or adequate information about their progress through the health, South African Police Services (SAPS), justice and correctional services processes and that they do not understand what is happening to them. The system thus appears as a daunting labyrinth rather than a mechanism for their access to justice. Victims also need information about what is available to them by way of assistance, and information about how the law works. Such information needs to be made available automatically to victims, just as criminals are advised of their rights.

4.3. Gap 3: Psychosocial Care

Psychosocial care is one of the most important identified unmet needs of victims of crime in South Africa. The radical shortage of social workers and psychologists in the country means that this need cannot be met through conventional means. In addition, very few pieces of legislation make provision for any form of psychosocial care even when the victim of crime is accessing other services within the criminal justice system such as at a health facility.

4.4. Gap 4: Accountability

A central and well articulated gap relates to accountability for victims of crime. There is, in this respect, a need for better accountability mechanisms in the provision of victim empowerment services. Accountability is not provided for currently by law or policy in a way that victims of crime can adequately hold service providers in the victim empowerment arena to account for poor service delivery both within and outside of the criminal justice system. It is difficult for those responsible for the provision of services to identify where there are shortcomings in services as there are inadequate feedback mechanisms for the managers of VEP programmes and there is no legislation regulating the provision of services that provides for consequences for poor service delivery.

4.5. *Gap 5: Intersectoral Collaboration*

Intersectoral collaboration is a critical part of victim support, and participants from both civil society and government identified a need for intersectoral structures to be supported and enhanced by legislative recognition. As part of this civil society bodies need to have a legislated role in the process to ensure that they are able to hold governmental service providers accountable and vice versa.

This report will discuss the solutions to these critical gaps, in the context of victims needs, and will provide the estimated costs of providing these solutions. The final section of the report will provide an assessment of whether new legislation will provide the solutions to these gaps.

5. What a victim needs

5.1. Defining Victim

The needs of victims of crime vary substantially depending on their context. Whilst the needs of the victims of non-contact related crimes should not be ignored, particularly their needs to access justice, this section describes some of the more specific needs of those people who have been the victim of contact crimes. As noted earlier, the South African Police Services report states that:

Physical contact between victims and perpetrators will always have a more serious psychological impact than cases in which property is stolen from the victims in the latter's absence (e.g. during a housebreaking when the victim is away from home or otherwise unaware of the crime's occurrence at the time it is committed). Contact crime derives from violence against the person, irrespective of the nature of such violence.^{xxiv}

The South African Law Commission Issue Paper 7, Project 82 provides a broader conception of the victims of crime, the effects of crime extend further than individual victims, and in fact, crime affects the community as a whole. The document importantly provided the following definition of 'Victims':

Victims are 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 law. The term therefore includes direct victims (the person who was directly prejudiced by the commission of the crime) as well as indirect victims (persons who were not directly involved in the crime, but who were directly prejudiced as a result thereof, for example the family of a victim of murder).^{xxv}

A Community is a collection of individuals who maintain homogenous interests and customs in a distinctive social structure, in a limited territorial area and who show a strong inclination towards group identification.^{xxvi}

The discussion of the needs of a victim can thus potentially be extended to encompass the needs of the entire community. The feasibility of extending the services and procedures recommended in this report to all categories of victims will need to be further investigated. For the purposes of this section of the report, we discuss the needs of victims of contact crimes.

The Department of Social Development's National Policy Guidelines for Victim Empowerment use the same definition of a victim and adds that "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."^{xxvii} This means that the needs of victims that never enter the criminal justice system should also be considered in potential legislation, the most obvious gap area

being that of psychosocial care. When we refer to victims in this report it is therefore important to understand all these different perspectives on what a victim is.

5.2. *Theoretical arguments for empowering victims*

In the South African Law Commission discussion paper on victim compensation, four theoretical arguments for the implementation of a victim compensation scheme are put forward. These were^{xxviii}:

- a) Legal Liability Theory: This argued that the State has a legal duty to compensate victims for all damages and losses suffered because an offense was committed and the State was considered responsible for allowing it to be committed.
- b) Social Contract Theory: The philosophy of moral duty and thus violent crime victims have the privilege, not the right, to receive compensation, which is granted on grounds of sympathy, goodwill and humanitarian reasons (not because the State is liable for all crimes)
- c) Accountability Theory: The State makes contributions available to crime victims, and then a partnership is formed with the State in combating crime. This is likened to an insurance scheme where the State wants to maintain society to minimize pay-outs and citizens act responsibly to keep tax payments down
- d) Utilitarianism: the successes of a compensation scheme will benefit the judicial system and therefore will help restore relationships within the community. If victim compensation is available, victims will be more likely to cooperate with the justice system and possibly get involved in fighting crime.

These four models of understanding can also be applied to the need for empowerment for victims of crime and are worth reflecting on, together with the broader definition of a victim as suggested above. In addition to this there are certain elements in a victim's path to healing that require elaboration. These include the principles of empowerment, avoiding secondary victimisation, an understanding of the healing as a process, access to the necessary medical services, compensation and access to justice. These will be discussed further in the sections below.

5.3. *The Principles of Empowerment*

In order to make the transformation from victim to survivor, a victim of crime needs to feel empowered throughout the criminal justice process. The feeling of empowerment can be facilitated by subscribing to four principles of empowerment. These are:

- Safety
- Restored control
- Respect and
- Ongoing support

These principles can be translated into practice at the various points of the criminal justice system and are all linked to one another.

A victim of crime needs to feel physically and psychologically safe from further harm in order to be able to exercise their rights. They also need to feel safe within themselves, for example, they need to feel that they can be in command of their thoughts, their emotions and their actions. Feeling safe will give the victim of crime the opportunity to reflect more clearly on the event, and will allow them to become calm. This can be facilitated at the level of a police station by having a client services centre that is welcoming, clearly signposted and with sufficient well trained staff to respond to the needs of the victim. When a perpetrator is arrested they should be kept separate from the victim of crime in order to ensure that the victim is able to tell their story without interruption safe from further harm or the fear of further harm. At the health facility and court, safety can be provided through having a comfortable and secure waiting room that does not require the victim to be in contact with the perpetrator who may be at the same facility for blood tests for DNA matching, for instance. The same principles of safety need to be adhered to at the trial stage where victims should not be expected to wait in the same area as the perpetrator and where vulnerable victims should not need to face the perpetrator directly in court but should have access to the intermediary system.

Tied to safety is restoring the sense of control of the victim of crime. When a person becomes a victim of crime their control is taken away from them. Restoring control allows them to begin to regain some of the choices that were taken away from them. By providing the victim with a sense of control over their situation, their body and their surroundings they can engage more fully with the justice process. Putting this principle into practice can be facilitated by providing the victim with information about how the system will work, and information about their own case at every point in the justice system so that they can make informed choices about how they would like to proceed, the role they can choose to play and how they choose to play that role, the information they can share and how they share it, what services they would like to access, what options they have within the legal framework and who they would like to choose to have supporting them.

“One thing I have learnt is not to blindly believe authorities. I was a victim of rape in a different country and was told by that country that there was NOTHING they or I could do. This was a lie that I only saw through when I started speaking out about it and was given the advice to go to my local police station. The police here made all the calls to figure out what to do and now the ball is rolling and justice is possible rather than impossible, as I was told.”

Tamsin – Comment on www.victimempowermentsa.wordpress.com

Empowering the victim of crime also entails support - *ongoing* support. Having support in one instance but not another can be disempowering to the victim. Navigating the criminal justice system can be incredibly overwhelming and the trauma of the crime can be repeated and thus relived at each point in the victim’s pathway through the system – a hard road to travel by anyone’s standards. A victim of crime will recover more quickly if they have good support and feel free to ask all of the questions they need about what will happen to them

and what their role is. Psychosocial support can improve the ability of the victim to heal, and regular counselling may be necessary for some victims of crime. Support of this nature can be practical, emotional or circumstantial and can include secondary victims such as witnesses to violent crimes and the families of victims.

The final principle of empowerment is treating the victim with respect. When you are a victim of crime your constitutional rights have been disregarded and disrespected by the perpetrator of the crime. Treating a victim of crime with respect, and treating their account of the crime experience respectfully, treating them with respect for their dignity and sensitivity to their particular circumstances can go a long way to giving them faith in the criminal justice process, making them feel more in control and safe, and making them feel supported. There are crimes such as domestic violence and rape that carry enormous social stigma and officials in the justice system can be just as prone to believing the myths and stereotypes about rape and domestic violence as any other community member. There are categories of victims that are treated with more bias for similar reasons, such as the elderly, lesbian, gay, bisexual, transgendered or intersex victims and even the victim who is under the influence of alcohol. Simply treating the victim of crime with respect and dignity regardless of who they are, how they behave or what crime has been committed against them can encourage them to participate fully with the various criminal justice role players (police, health practitioners, prosecutors and magistrates).

These principles of empowerment should not be considered as added extras. They are essential to the State's case against the perpetrator. An empowered victim provides better evidence and is more likely to give a good statement. An empowered victim is able to fully understand their role in the process, and more likely to stay in the process until the end of the trial. The empowered victim of crime is a weapon in the state's fight against crime, and as such their empowerment must be of paramount concern to all service providers. The empowered victim is more likely to recover from the trauma of their experience and to remain a functioning member of their family who can parent effectively, sustain their livelihoods and not become vulnerable to further harm or indeed enter one of the many pathways to crime. Strong victim empowerment legislation thus has the potential to enhance the country's ability to provide an adequate deterrent to crime, to respond to the plight of victims and even to prevent further crime.

5.4. Information about Secondary Victimization

It is difficult to balance the rights of the victim against those of the accused, nevertheless the response of the support services can deeply affect the wellbeing of victims of crime, and consequently can affect their ability to recover from the trauma and assist the state in prosecuting the offender.

Secondary victimisation occurs when the victim of crime experiences certain problematic circumstances. These are normally based on preconceptions of how a victim of crime should behave or will behave. Secondary victimisation can be defined as

“unsympathetic, disbelieving and inappropriate responses that victims of sexual assault experience at the hands of society in general and at each stage of the criminal justice process”^{xxxix} or,

“Victim-blaming attitudes, behaviours and practices engaged in by community service providers which further the crime, resulting in additional trauma for the victim.”^{xxx}

An acceptance of certain myths and stereotypes about a victim of crime can lead personnel to treat victims in an insensitive manner.

Personnel may refuse to provide any assistance at all or refuse some form of assistance. And lastly, even if assistance is offered and even if it is offered in a sensitive manner, the procedures themselves are often traumatising. For example, reporting the crime requires the victim to relive the event and the medical examination required for contact crimes touches the same areas of the body that may have just been violated by the perpetrator, causing secondary trauma even when done in a sensitive manner.

Secondary victimisation has many negative outcomes. These can affect the victim and the criminal case, for example:

- A victim may withdraw his or her own case
- A victim may be excluded or alienated from their own case
- The victim may not be provided with information about key events, decisions or processes in the investigation or criminal trial
- A victim may feel intimidated in the presence of the accused while in court and cross-examination is often aimed at the degradation or destruction of the victim’s credibility, which can be extremely traumatic
- A victim’s experiences may be recast, misunderstood or wrongly interpreted and thus a victim may feel further disempowered

Believing stereotypes or myths may mean that a service provider could:

- Fail to provide a referral for a medical or forensic examination
- Deny services or not fully inform the victim of the health risks of a crime, such as rape
- Take a poor quality statement
- Miss crucial elements in taking a medical history
- Miss out on doing an important part of the medical examination
- Give an insensitive medical examination
- Be under-prepared for court cases

When a victim of crime experiences a negative response when they report a crime, this can increase the level of trauma that the victim experiences and make recovery more difficult.

“One night at about 3 a.m. my mom woke up to strange noises at home. She went down the passage to see what they were caused by, and found that she had been locked in one portion of the house with my younger sister and my sister’s friend. She immediately ran back to her room and called the police. Their conversation went as follows:

Mom: ‘I want to report that people have broken into my house and locked me and my daughter in one portion of the house’

Police: ‘How many people are there?’

Mom: ‘I’m not sure, because I’m locked in one portion of the house.’

Police: ‘Do they have any weapons?’

Mom: ‘I’m not sure, because I’m locked in one portion of the house and can’t get out. Please send help.’

Police: ‘We’d like to speak to your husband please.’

Mom: ‘I’m a single parent. I don’t have a husband.’

Police: ‘Why don’t you have a husband?’

Eventually my mom gave up trying to report the crime and called the nearest security company even though we didn’t have private security. They arrived 5 minutes later and my mom and sister were not harmed. The police only arrived at 8.30 a.m. the next day. I’m so glad that the security company arrived. “ *Jen – personal story*

There are environmental factors that may also cause secondary victimisation. Travelling from location to location and experiencing different environments and attitudes at each point of the criminal justice system can also place increased stress on the victim. In rural communities victims may simply be unable to access the criminal justice system because the facilities they need are too far away or too poorly resourced. The adversarial situation of the courtroom and the complex legal jargon used in that environment can cause the victim to feel attacked again or simply misunderstood and this too can lead to secondary victimisation and disempowerment.

According to the principles of empowerment^{xxxii} there are minimum standards for what a victim of crime needs in order to avoid secondary victimisation. These involve safety, restored control, respectful treatment and ongoing support. These are described in detail in 4.3 above. There are mechanisms for reducing secondary victimisation which are relevant to our recommendations^{xxxii}. These include:

- Specialised training for all service providers
- Specialised training for management structures

- The provision of sufficient information about their case to victims of crime
- The development of multidisciplinary teams in the system offering integrated care to victims of crime preferably at one stop style centres
- Increased use of specially trained community based volunteers in victim support initiatives
- Increased supervision and support to service providers

These interventions are central to the recommendations of this report and are a good guideline for the provision of services for victims.

5.5. Healing Process

When a person becomes a victim of crime they may need time to heal before they feel better. Ideally, a healing process empowers a victim and restores their dignity. This element of victim empowerment holds good for all categories of victim including those that never enter the criminal justice system at all. Healing after an experience of crime can be an incredibly long process, and there are some conditions that can improve the victim's chance of healing^{xxxiii}.

5.5.1. Environmental stability

A stable environment can greatly assist a victim in returning to 'normal'. If a person's belongings have been stolen, or their home has been broken into, they will need to feel safe in their environment again before it can be considered stable, and before they can heal.

5.5.2. Psychosocial support

To heal successfully on your own is difficult and hence the support of family, friends and the community can greatly assist a victim of crime by restoring their dignity and sense of control. Holding support groups with victims of similar crimes or accessing psychological counselling services can allow a victim to talk about their experience. Simply knowing that someone is there for them, or understands what they have gone through can make someone feel much better.

"I know from my own experience that little things like sending flowers or a card can make a big difference. I have one more thing to add: Don't make it about you. Statements like "I feel so upset about what happened to you" or other obvious signs of your own vicarious trauma can make things worse by making the victim feel guilty. I feel very blessed than when I was the victim of a crime, my friends responded by sharing their strength. If you are feeling traumatised yourself by what has happened to a friend of yours, maybe consider more hands-off ways of showing your support until you are feeling strong again."

Pam – comment on www.victimempowermentsa.wordpress.com

5.5.3. Medical assistance

In some instances a victim of crime may have been physically harmed (for example in assault with the intent to do grievous bodily harm, or in high jacking or rape) and will need medical assistance. Access to this assistance can allow the healing of physical wounds, which in turn can be part of the psychological healing process. In some instances the victim of crime may suffer from Post Traumatic Stress Disorder, or Rape Trauma Syndrome, or may require psychiatric medication before self soothing practices take hold.

Certain pieces of legislation make reference to the provision of particular types of medical assistance to victims of crime, but few pieces of legislation make provision for psychological or psychiatric assistance.

5.5.4. Information

In many cases information can facilitate healing because a victim of crime is more aware of what to expect from the various stages of the process and from the criminal justice system if they do become a part of it. The provision of information about trauma and its symptoms, and how to recover from trauma can allow a victim of crime to identify these symptoms in their behaviour, and gain control over them. Victims of crime also need information about how the system works, in order to mentally and psychologically prepare themselves for their role in the system.

5.5.5. Compensation

The issue of compensation for a victim of crime has been debated in South Africa by the South African Law Commission in Issue Paper 7, and Discussion Paper 97 for Project 82. The final report for project 82 was released just prior to this report and it is unclear whether the debate on the provision of victim compensation is complete. This issue is discussed in the Gap Analysis Report in some detail, but it is worth noting that some form of compensation can greatly assist the victim to access the services and structure to facilitate the healing process. Strengthening and expanding of national funds for compensation to victims should hence be encouraged.

5.5.6. Access to Justice

When it comes to justice there are many things that a victim needs. The Service Charter for Victims of Crime in South Africa (Victims Charter) is a good start for summarising these needs. According to the Victims Charter, a victim of crime has the following rights:

1. The right to be attended to promptly and courteously treated with respect for your dignity and privacy by all members of any department, institution, agency, organization or service provider^{xxxiv}
2. The right to offer information during the police investigation and court trial. You may offer information in your own language^{xxxv}
3. The right to be informed of your rights and how to exercise them^{xxxvi}
4. The right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse^{xxxvii}
5. Right to request assistance and have access to the available social, health and counselling services as well as legal services that are responsive to your needs^{xxxviii}
6. Right to compensation for loss or damage to property suffered as a result of a crime committed against you^{xxxix}
7. Right to restitution in cases where you have been unlawfully dispossessed of goods or property or where your goods or property have been damaged unlawfully^{xl}

A victim should be treated with dignity and respect. In order to achieve this, the fulfilment of the above seven rights is essential. The Victims Charter has not been passed as legislation in parliament, yet it contains an excellent source of legislative recommendations.

Something which is important in a country like South Africa with low legal literacy rates is the need for service providers to inform victims of their rights without them asking for them. There is provision in legislation and policy for informing victims of their rights when they ask, but this is problematic if a victim does not know that they need to ask for these. A victim should be informed of the procedures within the criminal justice system that affect them and be informed of all decisions made regarding their case. Matters need to be explained to the victim in a clear, understandable manner in their own language.

“I have not had to access the law yet and would probably not know where to start. As South Africans and fellow humans I think, we must put ourselves in others shoes and ask ourselves how would we handle this situation if it was our lives or livelihood threatened?

I think South Africans can show and practice this Ubuntu spirit we talk about, walk the talk, and be a caring and gracious human. There is no harm to you personally if you help someone else in their time of need; you never know when you might need them.”

Olwen – comment on www.victimempowermentsa.wordpress.com

We make recommendations at a later stage about specific changes that could be made to ensure that victims’ rights are respected, and that they can begin to feel empowered. Many of these relate to the way that victims are treated and the support that they are given to fulfil their needs. It is also important that there are accountability mechanisms in place when service providers do not meet these needs, or infringe upon victims’ rights to ensure that services are of a high standard.

5.5.7. Taking action

Finally one other way in which many victims of crime heal is to take some action to complete their healing process or to bring about their own empowerment. This could be as simple as changing the locks on a house that has just been broken into or as complex as deciding to volunteer to support other victims. South Africa has a high number of community based volunteer programmes such as the SAPS Victim Support Project that recruits community based volunteers to act as support at local police stations, who advise victims of their rights and walk them through the process. Many NGOs offer these kinds of programmes, as well as opportunities to take action in other ways. These include joining a campaign or participating in speak out activities where victims of crime speak publicly about their experiences in order to encourage other victims to come for help, to challenge society's denial of the intense problems we face, to warn young people about pathways to crime or to challenge perpetrators for their behaviour. Our communities are eager to heal and hungry to empower themselves and programmes that support these initiatives can be that much stronger if properly legislated for and correctly regulated.

6. Recommendations

6.1. Information about the system and rights: Communication and Education

An important gap identified during the study was victims' lack of knowledge about the criminal justice system generally and their rights within it. The criminal justice system is complex, involving multiple actors from multiple government departments, including police officers, prosecutors, social service providers and health care workers. It is often difficult for victims of crime to understand the roles these various actors are supposed to play, not to mention where or to whom they should complain if government officials are not adequately fulfilling their responsibilities.

The Victims Charter outlines the rights and services to which victims of crime are entitled in general terms. This includes the right of victims to be informed of their rights and how to exercise them. It also informs victims of who to complain to when their rights are not respected. However, the Victims Charter currently only has the status of policy rather than of binding legislation, making it difficult to hold government officials accountable for failing to fulfil their obligations under the Charter. Elevating the Service Charter to legislation would place a positive duty on relevant actors to inform victims of their rights and where to complain if they are violated. Furthermore despite efforts to popularise this justice promoting instrument most citizens know nothing about it and neither do victims of crime.

"I was mugged in 2009 whilst walking with my girlfriend along Liesbeeck River path. We went immediately to the police station, where we were told by the staff member on duty that we couldn't report the crime because we didn't have any identification on us.

We went back the next day with our ID books. The police officer on duty was furious that we had been turned away. He was incredibly helpful, took our statement thoroughly and was so empathetic. He explained to us what would happen next, and gave us a paper with his number on it and our case number on it. He really made me feel much better."

Mike – Personal Story

The Department of Justice and Constitutional Development has also developed Minimum Standards on Services for Victims of Crime (Minimum Standards), which elaborates on the standards of service victims can expect in relation to each of the rights set out in the Victims Charter including services provided within the NGO sector. The Minimum Standards identify complaint mechanisms for enforcing those standards. Elevating the Minimum Standards to the level of regulations would serve to further increase government accountability with respect to victims' rights. Both the Victim's Charter and the Minimum Standards require comprehensive communications strategies to popularise them further to the point where they become common knowledge.

These rights as they stand are framed generally. However, legislation could spell out more detailed positive duties on officials to inform victims of their rights during their interaction with the criminal justice system. A police official, for example, could be required by law to explain to a victim the process through the criminal justice system after laying a charge, or to hand them a diagram showing the process as a flow chart or to provide them with a list of organisations in the area that provide services to victims of crime. A prosecutor may have to tell a victim of their right to ask a criminal court for compensation in terms of the Criminal Procedure Act and to give them a copy of their original statement of complaint well in advance of the trial.

Legislation would also provide a separate body such as a Victim's Ombud (see 5.4) with powers to hold departments accountable for failing to meet these duties and make recommendations on how access to information about the system could be communicated effectively.

In addition, it is recommended that the Life Orientation curriculum in schools be expanded to teach children the path through the criminal justice system. This would improve general knowledge of how the system works, who the role players are and what victim's rights are when they interact with the system. A broad based communication strategy would also be needed to supplement the knowledge of youth outside of the school system.

6.2. *More information about your case: The Road to Justice Card and Database*

A victim of crime often struggles with tracking their case through the criminal justice system. This is because they are assigned a different case number by each part of the system (police station, medical facility, court and parole office). They are also introduced to a number of criminal justice system officials, some immediately after the crime when they may still be in shock, some even in quite a severe state of shock. They may never find out or soon forget the name of the person handling their case, the person who carries valuable information about the case should the victim or another official need to follow up on the case at a later date. These officials can also change through the process making it difficult for the victim to know who to call and when.

"We counseled a male client who told us that he had tried to report (not lay a charge) the rape to the XXXX police station and was told that he could not report that he had to lay a charge. This took place at the charge office, not in a private room. He felt terrible because everyone could overhear and was distressed at the way in which he was treated. It is also a corrective rape case. He was advised by his counsellor of his right to report and not lay a charge, the counsellor contacted the station commander who initially wanted our client to lay a charge but when the clients process was explained (reporting was empowering for this client), the commander appreciated this and asked for the survivor to contact him directly which he did. Our client received good treatment, appreciated the counsellors intervention and that the commander took his complaint seriously."

Counselling Coordinator – Rape Crisis Cape Town Trust

The difficulties for a victim in tracking their case are replicated for criminal justice system officials. The variety of different case numbers makes it difficult to track the progress of a case from start to finish. This data is rarely recorded centrally, which makes it difficult to access accurate statistics about the length of time a case takes to get through the criminal justice system. It also makes it difficult to understand why many cases fall out of the system before they are complete.

To answer the problem of problematic case information, it was suggested that a Road to Justice Card, much like a Road to Health Card, should be created to ensure that victims and the State were able to track information about their case. This card would have a unique number, and could be added to at each point in the reporting process. It would allow the victim of crime to have access to the names of those responsible for her or his case, to have a record of each different case number used by the different parts of the system, to be able to easily share those details with other people involved in the case who may need to follow up on the details of the case and to have a visible record of the progress being made. This would restore a sense of control to the victim and make access to information a great deal easier for everyone concerned with the case. From the State's side, having a single unique number throughout the process would assist in the generation of statistics around the criminal justice process, facilitate improved coordination between service providers and across sectors and would also enable better replication of good practice.

If a centralised database was combined with the Road to Justice Card it would allow for detailed tracking of cases, for all service providers to be equally informed about the progress of a case and to easily find out who else was involved in the case together with that person's contact details thus allowing improved coordination. It would ensure that victims are informed about their case, who their role players are, and who to contact. It would also assist government with monitoring the implementation of services and in finding flaws in the system as a whole.

6.3. *Psychosocial Care: The Victims Advocate*

The primary objective of the victims advocate programme would be to empower and support victims of crime so that they take their trials all the way through to completion wherever possible. Empowerment is considered here in the light of the Principles of Empowerment described in Section 4.3. and so services would be provided to victims of crime at various regional courts and criminal justice system facilities that endeavour to help them feel safe, respected, informed enough to make choices and supported on an ongoing basis.

The foundation of this service is that the Victims Advocate would act as a bridge between the victim and the criminal justice system. Most victims of crime are poorly informed about the nature of the system, how it works and what is expected of them during the course of the trial. They do not know all the role players in the court and what their responsibilities are and they struggle to understand the language of the court and the system with its technicality and jargon, let alone that it may not be spoken in their mother tongue. They

find the adversarial nature of the South African justice system a shock because as the victim of the crime they are not given any care and support or even very much information about the proceedings in a way that will truly allow them to interact effectively with it. In short, the State neglects to strengthen its greatest weapon in its case against the accused.

The Victims Advocate could replicate best practise models that make use of trained community based volunteers such as the one used by organisations like the Rape Crisis Cape Town Trust, Mosaic Training, Support and Healing Centre for Women, Tohoyandou Victim Empowerment Project, Resources Aimed at the Prevention of Child Abuse and Neglect and the SAPS Victim Support Project among others. These organisations have well developed systems for recruiting, screening, selecting, training, supporting and supervising community based volunteers as well as for ensuring the smooth running and well coordinated services delivered by these volunteers. Victim empowerment legislation and policy should enable the regulation of these services to ensure uniform standards and ongoing commitments to collaboration between NGO and government partners.

The following model, to illustrate how one organisation does this, is from the Rape Crisis Cape Town Trust, one of the contract partners for this study.

6.4. *The Victim's Advocate: a Model*

In order to ensure that both ends of the bridge between the victim of crime and the criminal justice system are firmly in place, the Victims Advocates in a particular setting would need to build strong collaborative relationships with the relevant stakeholders. For the purposes of example let us say that this setting is a regional court. On the side of the system, a coordinator from Rape Crisis would meet with decision makers within the Departments of Social Development, Justice, Community Safety and Health as well as within the National Prosecuting Authority and the South African Police Service and, on the side of the community from which the victim of crime comes, between the organisation's fellow Civil Society Organisations offering services to victims and to donors. In so doing, the organisation negotiates access to funding, to court premises and acquires office space and access to meetings that take place routinely within the court. It could also serve to forge strategic partnerships across these departments and ensures its participation in intersectoral forums where these role players engage and coordinate.

On the side of the communities from which victims of crime are drawn the organisation would recruit community based volunteers who are later trained as court supporters. These community members share the same background at many of the survivors in terms of language, religion, race, ethnicity, class, culture and gender. Court support training would take these community members through a rigorous three stage screening and selection process including (1) a written paper, (2) a group interview and (3) an individual interview. Only after successfully negotiating each process would a final group of individuals be selected to go through to the training process.

The training itself, based on the Rape Crisis court support training model, consists of 18 three hour workshop sessions broken up into three separate phases and at different points in this process further screening and assessment takes place. The Rape Crisis training model

focussing on providing support to rape survivors, but the victims advocate model would need to focus on providing support to victims of a variety of crime. The training phases would be adjusted accordingly. The first phase would deal with the personal growth necessary to find people who are capable of offering support on a sustained basis often under stressful circumstances. Participants would be to assess whether they feel ready and able to proceed with the course and receive detailed feedback from training facilitators and fellow participants. The next phase would deal with crime in South Africa including medical, legal, social and psychological factors and the final phase would deal with the practical and interpersonal skills needed to offer court support to victims of crime.

This training would be followed by an orientation process including site visits to police station, health facility and court (where they sit in on trials) as well as to organisations that victims of crime are commonly referred to for other forms of support. This process would end with a written exam. For the next four months the victims advocates in training would shadow experienced court supporters who are already deployed at the courts where the programme operates, learning through direct observation and reflection afterwards how to apply their new found skills.

Each Victims Advocate would then receive an information pack of notes to ensure that they are well informed. All Victims Advocates would need to have regular supervision with an experienced court support supervisor where they speak about the cases they have seen, the victims of crime they have supported and their responses to them. They would do this in small groups so that they would learn not only from sharing their own experiences but also from those of their peers. In this way they would also learn how to offer support to one another and to work as a team. Each Victims Advocate would be required to write detailed reports on each victim of crime they support and in this way they are held accountable by the victims advocate coordinator, who would ideally be a person with a law or social work degree and some years of professional experience in order to be able to assist Victim's Advocates with complex cases.

The Victims Advocate coordinator and a team of supervisors made up of experienced volunteers would coordinate the various facility rosters and attend regular meetings with criminal justice system personnel and related officials, keeping track of the victims advocate programme across the different facilities in South Africa. This could be further monitored by the Victims Ombud (described in more detail in section 5.4). The Victims Advocate coordinator would also convene monthly problem solving meetings.. This meeting also serves to maintain a strong bond between the Victims Advocates, informing them of relevant process or decisions and ensuring they have a voice in the smooth flowing of the criminal justice system.

The Victims Advocate coordinator would be responsible for reading all reports from the Victims Advocate and would ensure the gathering and collating of statistics that could be shared with the Victims Ombud and intersectoral collaboration teams (described in section 5.5nine). These mechanisms would assist with tracking the progress of cases through the criminal justice system and in monitoring trends. This information would also need to be captured and further analysed by the Victims Ombud. The Victims Advocate coordinator

would also deal with formal complaints about the criminal justice system from the victims of crime and could raise these in the relevant forums.

At Rape Crisis, the court support programme distributes information booklets to all court personnel and to each rape survivors that makes use of the court support service including the *You and Rape* booklet produced by Rape Crisis but also booklets produced by the Department of Justice such as booklets about the criminal justice system called *Understanding the Criminal Justice System* and a booklet on the Victim's Charter called *The Service Charter for Victims of Crime*. The Victims Advocates could also be responsible for this task, ensuring that all facilities had the relevant materials available to them to make victims of crime feel well informed, and to empower them to make informed decisions about their case.

The Victims Advocate would thus be the bridge between the victim of crime and the criminal justice system, and could help each party better support and assist the other.

6.5. *Better Accountability Mechanisms: The Victims Ombud Office*

The report highlights the need for better accountability mechanisms in the provision of victim empowerment services. This accountability is currently not provided for by law or policy in a way that victims of crime can adequately hold service providers in the victim empowerment arena to account.

While the Victims Charter maintains that victims have the right to complain of inadequate service, it is often difficult for victims to identify how or where to do so. The Charter offers no clear guidance on this point, identifying no less than seven organizations—including the Office of the Public Prosecutor, the South African Human Rights Commission and the Independent Complaints Directorate—which may be able to assist victims with their complaints. Consequently, it is difficult for those responsible for the provision of services to identify where there are gaps and shortcomings in services as there are inadequate feedback mechanisms for managers in victim empowerment programmes.

One possible solution to this problem would be the creation of a Victims' Ombud Office modelled along the lines of Canada's Federal Ombudsman for Victims of Crime. The role of the Victims' Ombud Office would, in part, be informational and focus on advising victims of their rights and of the programmes and services available to them. However, such an office would also be responsible for receiving and reviewing victims' complaints concerning service provision at any of the many departments (police, health, justice, etc.) with which victims interact. It would thus act as an effective accountability mechanism by monitoring and ensuring compliance with VE laws and policies at all levels.

A centralised Victims Ombuds Office would be well positioned to identify emerging issues and systemic problems that negatively impact on the victims of crime. It would be able to provide feedback to managers in VE programmes, helping them to better meet the needs of the people their programmes serve. It would also be able to make recommendations to government on laws and policies concerning the rights and needs of victims.

It might be possible to explore setting up such an office within an existing structure, such as the Public Protector's office, which is already responsible for maladministration in government. With legally binding standards being put in place for the provision of assistance to the victims of crime, such an office could ensure that all aspects of the victim empowerment system work in harmony.

6.6. Better Intersectoral Collaboration

In order to further investigate some of the challenges and strengths of inter-sectoral coordination, the consortia approached Sanja Bornman of the Alliance for Children's Entitlement to Social Security (ACCESS) to write a discussion paper on the issue. This section contains a summary of her discussion paper and recommendations from the research study. Effective co-operative, inter-sectoral and co-ordinating structures are rare, and even well functioning structures face many of the challenges. However, some structures have been able to surmount several common challenges. In the course of its research, ACCESS was able to draw on examples of good practice from various structures and the suggestions of structure representatives, and to formulate recommendations for improvement.

6.6.1. Factors that enhance intersectoral collaboration

Financial resources in this context have to be understood not only as sufficient financial budget to co-ordinate projects, but to fund task teams and the participation of civil society more fully in order to guarantee ongoing commitment and co-operation from civil society.

In practice, the structures with the **strongest and most dynamic leadership** are the ones that have most success and are best at recruiting and retaining their representatives from civil society. It is essential for government to support its structures and especially structure chairpersons to ensure:

- proper co-ordination
- strong strategic direction
- accurate and timely reporting and accountability
- emphasis on action plans

National structures must take a strong leading and oversight role in relation to its provincial equivalents, and in turn in district and local equivalents. While it is appropriate for provincial structures to have a certain amount of autonomy, it should be the national equivalent's role to oversee consistent implementation of policy and co-ordination in subordinate structures.

Linked to this is the importance of **common strategic plans** and **monitoring and evaluation frameworks**. The leadership of a structure must facilitate thorough consultation between national and provincial equivalents, including civil society, in order to achieve coherence, consensus and synergy between national and provincial activities.

Proper leadership ensures that representatives understand structure goals and objectives, and their own roles and responsibilities clearly. Similarly, structure managers and secretariats also have certainty about their own authority and deliverables.

Together with certainty regarding authority and lines of accountability, a structure must have **certainty regarding its mandate**, and exactly which policies or laws it is responsible for implementing.

Structure leadership should not be privy to this knowledge to the exclusion of civil society. Knowledge of the mandate must be common to **all** structure representatives, especially at a structure's lowest levels where there is direct interaction with communities – when the majority of a structure's representatives cannot name the document from which the structure's mandate emanates, much less comment on its content, it is not surprising that a structure fails to function as intended.

A way of fostering a common understanding of a structure mandate across all levels is to workshop it, break it down into activities for each structure representative, and incorporate it into reporting and monitoring and evaluation systems. If a mandate is work-shopped and debated in a collaborative manner, it also allows for alignment with existing work programmes other relevant priorities, policies, and laws for which structure representatives may be responsible.

Practise reveals that the best kind of mandate is a written one that is easily accessible, and easy to read and understand. This means that a structure's mandate should ideally emanate from a governmental policy document, action plan, or in the best-case scenario, legislation. This is the best way to ensure that there is:

1. Political buy-in around the necessity of the structure
2. Designated, supported leadership, and therefore, accountability
3. A clear understanding of its purpose
4. A steady flow of financial resources and administrative support to the structure
5. Information management systems and sound communications infrastructure needs to be in place

There is indeed evidence of a trend to mandate inter-sectoral collaboration in legislation, as evidenced by provisions in the Children's Act of 2005^{xlii} and the Sexual Offences Act of 2007^{xliii}.

Once structures have clear strategic goals and objectives, they must agree on the roles and responsibility of representatives. The agreement should be reduced to writing, in the form of **Memorandums of Understanding** (MOU) or Memorandums of Agreement (MOA) or **terms of reference** (TOR) or any other document the structure may be comfortable. This will allow structures to hold their representatives accountable, and vice versa, making sure that goals and objectives are achieved.

MOUs may seem intimidating or prescriptive, but in practice, we have found that they are best way to ensure accountability. Structures that have chosen to use them as part of their internal protocol have overall had greater success, and happier representatives.

Appropriate MOUs and MOAs, preceded by negotiation and discussion, serve to

- Build a relationship based on consensus
- Lead to more strategic and appropriate representation
- Clarify a structure's authority and ensure long-term commitment from representatives

MOUs are also an appropriate way to deal with:

- succession of representatives and organisations on a structure, and what happens when individuals leave particular representative organisations
- exactly what resources a representative can commit and place at the structure's disposal
- what authority the representative has to bind her/his organisation to structure activities

MOUs would ensure compliance, regular attendance at meetings, and would clarify the roles of various government departments. This would allow the committee to avoid poor attendance, and would encourage participation.^{xliii}

Structures should have clear identities and communicate not only with their representatives, but also with one another, the public they serve and civil society in general in a consistent and regular manner. This should preferably be set out in a **communications strategy** or protocol. Effective communication is critical if structures are to reach their potential as action-takers and co-ordinators, especially in an advocacy context.

Experience shows that, despite any structure difficulties, representatives themselves view co-operative, inter-sectoral and co-ordinating structures as inherently valuable sources of information with the potential to make a difference at grass-roots level.

There is also ample scope for structures to use information technology to communicate easily with its stakeholders. Due to the scarcity of resources, it is understandable that not all structures can facilitate electronic access through their own websites. However, alternatives could include dedicated informative pages on existing departmental websites, blogs or social networking sites where registration is free. There is also the enormous potential of cell phone technology. In this context, civil society can play an important role, and there are examples of structures that have out-sourced its communications or secretariat function to a civil society representative with access to greater technological expertise and resources.

Perhaps most importantly, departmental help desks and switchboard operators should, at the very least, have knowledge of and be able to connect any member of the public with relevant structure chairpersons or secretariats. When a member of the public is transferred to unidentified directorates in an attempt to find the relevant official by what appears to be

trial and error, the image of the structure and its lead department is damaged, and the impression is created that the structure unimportant and obscure, alternatively, uninterested in receiving communications from the community it serves.

In line with the findings, the following recommendations for future structures were developed by the contract partners:

- Structures should be assisted by a **steering committee** made up of government and civil society members in order to make it more representative and to ensure that it plans ahead for meetings and gathers thought leader input prior to meetings to guide meaningful discussion.
- **Informal discussion spaces** should also be created at meetings as this is often the only opportunity for some representatives to have the ear of government and for relationship building – either this or representatives could be asked for a list of people they would like to meet with and smaller discussion groups could be convened as pre-set break away sessions.
- Representatives leaving the structure must give **suitable notice** and plans must be in place for **crossover and for orientation** of new members, such as updated information packs and a short briefing by support staff outside of the meeting space.
- Local and provincial participation must be fully **funded and budget** for the structure's full functioning be legislated as well as a full training and capacity building budget to address weaknesses in management and coordination skills.
- **On-going consultation with provincial and local equivalents** should happen outside of meetings and proper information management and communications infrastructure should be in place for this.
- **Training for district level structures and information sessions for communities** must be factored into the communications strategy and the budget so that civil society is privy to the same knowledge as national and provincial government and to encourage coherence and consensus and a sense of ownership of the policy and legislation behind the structure's mandate.
- **Poor attendance** needs to be addressed and not allowed to erode confidence in the structure. Members that don't attend must be taken off the invitation list and new members recruited in their place to ensure that capable people are included. Of course before the deadwood is cut off it should be held accountable for non-attendance via the relevant MOU.

Due to the plethora of structures in the children's sector, and the numerous inter-related and often systemic problems that beset them, there is much debate about the value of the on-going existence of some structures. However, the continual appearance and creation of

structures is indicative that there is a need for them, and a growing recognition of the importance of co-operation, collaboration and co-ordination in any service delivery context.

Given how creatively and successfully some structures have gone about over-coming their predominantly practical challenges, there is reason to believe that these structures can be effective and have an important impact.

The victim empowerment sector now potentially has a fresh opportunity to create effective structures for co-operation, collaboration and/or co-ordination from scratch, using and incorporating the lessons learnt from the children's and other sectors.

7. Overall estimated costs of solutions

In order to evaluate the costs of the proposed recommendations, the contract partners approached Debbie Budlender of the Community Agency for Social Enquiry (CASE) to provide us with her expertise. She prepared a document detailing the background of the request, an explanation of the costing process and some notes on the recommendations detailed above. As she explains, it is difficult to complete a costing on a document that is not yet draft legislation; nevertheless her recommendations are extremely useful.

7.1. Background

Currently in South Africa there is a range of victim related provisions in legislation and policy that govern the operations of different parts of government. There is not a single, specific piece of legislation targeting and addressing the specific needs of victims of crime. There is also not a single or explicit budget line item for implementation of victim-related services. There is also no effective mechanism for coordination of the activities of government and other actors in respect of victim empowerment.

At the time of Debbie Budlender's report, there was no draft legislation available. This document discusses what this situation means in terms of costing. In so doing, the documents highlights different types of costings, as well as different types of costs. These differentiations are then exemplified through an annotation of a table of "solutions" produced by the consortium based on the gap analysis.

7.2. What is costing?

The term costing can be used to refer to several different activities that bear some similarities but represent different types of exercise. The following are examples of common forms of costing:

- *Costing related to new legislation:* This exercise aims to inform parliament what the financial implications will be if they pass the legislation. The focus is usually on the ongoing costs that will be incurred on an annual basis, for example for services or regulation provided for in the legislation. In South Africa, the Public Finance Management Act of 1999 makes this type of costing mandatory for legislation that has budget implications for provinces.
- *Costing related to "action plans" or similar specific initiatives:* This exercise is often done to construct a budget to take to donors. It could also be done within government by an agency that seeks an allocation from the Ministry of Finance to cover the costs of the initiative. The focus in this type of costing is often primarily on one-off costs, such as development of legislation and policy, pilot projects, and campaigns. In some ways this type of costing is similar to the budget formulation that would be done by a civil society organising submitting a project proposal to a prospective donor. As such, there might be a tendency not to use the standard categories used in government budgeting in a particular country but instead to use the categories required by the prospective donor.
- *Costing done/commissioned by agencies such as the UN or governments to see how much extra (government and donor) money is needed to achieve particular targets,*

such as the Millennium Development Goals. These exercises are often done on a global or regional level. They can also be done for a specific country. They would often have at their core the cost of scaling up delivery of a range of different services. Thus, like costing of new legislation, they would focus primarily on ongoing annual costs.

- *Costing to estimate how much is being spent on implementing particular legislation.* An example here is the costing of the Domestic Violence Act done by the Centre for the Study of Violence and Reconciliation some years ago which aimed to estimate how much was being spent by different government agencies (courts, police, etc) on implementing the Act in the absence of a separate programme or separate budget line items for the Act.

In the current case, the aim is to cost victim empowerment legislation, i.e. the first type of costing specified above. Given that legislation is developed by government and passed by parliament, the costing should in the first instance reflect the monies that government should provide through the annual budget. Where it seems that donors might be prepared to support government in the area of victim empowerment, the costing could include possible donor allocations. In the South African situation, the donor contribution to the government budget is much less than in many other developing countries, at about 1% of the government budget. Further, given that victim empowerment will need to be an on-going service for the foreseeable future, while donor support to South Africa can be expected to tail off in coming years, the costing will for the most part indicate what costs will need to be covered in the government budget.

Besides government and donors, there could however be other sources of funding. For example, there have been proposals that perpetrators might be required to compensate victims in some way, which could include monetary compensation, as a form of restitution. If this proposal were to be included in the legislation, the government budget would not need to include the compensation amounts provided by perpetrators but would need to cover the costs of administering and enforcing these payments. For the purposes of this paper, such costs are not included as this type of payment was not included in the gap analysis recommendations. The document also does not consider the government costs that would be established in setting up and running a compensation fund or providing for financial compensation in other ways.

The point above about donor versus government contributions leads on to a further point, namely that several different types of costs need to be considered in such an exercise. Firstly, there are the on-going costs of service provision. In the case of victim empowerment, this could include payment of the stipends for the proposed court supporters and supervisors. Secondly, there are set-up costs associated with establishing the new systems and activities associated with the legislation. In the case of victim empowerment this could include development of a know-your-rights component for the Life Schools curriculum. It is this second type of cost that would be more appropriate for donors to cover, as the costs are for a limited time period. In the document, we refer to ongoing costs of service provision as “programme” costs, while setup costs can be referred to as “project” costs.

While costing of victim empowerment legislation would, for the most part, take the form of the first type of costing listed above, with some elements of the second type, there might also be elements of the third type. This would occur to the extent that other legislation already provides for victim empowerment services. Where this is the case but the specific victim empowerment legislation provides for expansion of these services, the costing would need to identify the additional costs rather than costs that were already covered in the government budget.

As is clear from the above costing should establish the likely amount associated with each of the activities associated with the legislation. It should also establish for how long the costs will continue. The consortium was also tasked with recommending the “funding stream”. The costing should therefore indicate where in the government budget provision would be made. The latter includes consideration of the sphere of government (national, provincial, local) that would be responsible for the activity, the agency (department or other institution) within that sphere, and the budget programme and sub-programme within the budget of that agency.

The absence of even draft legislation means that executing the tasks above is difficult, if not impossible. Without draft legislation we do not know what activities government will need to undertake, nor what agency will be responsible. We do not know which activities will be mandatory for government and which optional. For example, will government need to provide victim empowerment services for every single victim, or for every victim of specified types of crime, or only for victims with specified characteristics (such as below a given means test or who have suffered physical injury or impairment).

The answers to these questions are essential for a costing, as underlying the costing of each activity is the equation:

$$\text{Cost} = \text{Quantity} \times \text{Input} \times \text{Price}$$

where quantity is the numbers of the “item” (e.g. service) to be provided, input is a “thing” (such as staff time) needed to provide it, and price is the cost of the “thing”.

If we know that a particular service is mandatory for a particular type of victim, we can use an estimate of the total number of this type of victim for the “quantity” element. Without this information, we cannot do the computation. The task is complicated by the fact that the term “victim” can be conceived as including both direct and indirect victims. Estimates of the number of the latter would be especially challenging.

Costing can be done at various levels of detail, depending in part on the purpose. Where legislation is costed, the aim is usually not to detail every single cost. Instead, the aim is to identify the key “cost drivers” associated with each activity i.e. the main determinants of the likely budget implications. Unfortunately for our purposes, the number of victims for whom services should be provided is such a key cost driver in the case of victim empowerment. We are thus missing a key element of the puzzle.

To complicate matters further, the table developed by the consortium suggested that there would be piloting of Road to Justice cards. This suggests that even if Road to Justice cards are provided for in the legislation, it is not yet clear how this would be implemented. Different approaches to implementation would almost always have different costs. Thus for this element of the legislation in particular one would not be able to specify an ongoing cost to the government budget until the pilot was completed and the approach for the future agreed.

Given the absence of draft legislation and the challenges highlighted above, this document discusses the types of costs that are likely to be associated with key activities that could be included in legislation. It also highlights some of the questions that would need to be asked in a costing exercise if such activities were to be included in legislation. It does not attempt to assign any numbers as this would be premature. A full costing exercise involves considerable energy and time, and it is not appropriate (or “economic”!) to expend this energy and time until there is more certainty as to what needs to be costed.

The questions in the table below include some that question to what extent the legislation will require expenditure for additional staff, equipment and other such costs, rather than utilising what is already in place. This is important as a costing that results in too large a predicted budget could enjoy the same fate as the earlier costing of compensation for victims. The costing should thus be realistic, but not be based on unnecessary over-provision.

7.3. Understanding the table

The table below has four columns. The first column specifies the gaps identified by the consortium. The second identifies the possible solution identified by the consortium. For our purposes, this is taken as an indication of provisions that might be included in an Act. The third column gives more detail on the type of activities that could be associated with each provision. The final column discusses the type of costs involved, and notes some of the key questions that would need to be answered in a costing exercise.

Gap Identified	Solution Identified	Specific requirements for solution	Cost considerations
Lack of general information about rights	Publicity and awareness campaigns	Development of a know-your-rights addition to the Life Skills curriculum	This is a one-off “project” activity. It is likely to take the form of an outsourced* consultancy. Once the curriculum is developed, there might be further “project” activities in the form of piloting the addition and/or training of teachers. There should not be any on-going costs attached to the know-your-rights addition as government should already be covering the costs of teachers, etc, associated with the life skills curriculum. The relevant agency would presumably be the Department of Basic Education.
		Development of a comprehensive communication strategy	This would again involve one-off “project” costs, probably outsourced to a consultancy, of developing the strategy. The costs involved in implementing the strategy could be one-off if the objective is to alert relevant stakeholders, including the general public to the existence of the new legislation. Costs would include development of media, etc, as well as dissemination of the information. There might also be ongoing costs if continuous communication is envisaged, but this might also be covered in an existing communications budget of the agency

			concerned. The Department of Social Development (DSD), as the likely lead agency, would probably be the relevant agency for the project costs. Implementation costs might be spread across different agencies depending on dissemination strategy.	
Lack of information about specific case details	Road to Justice Card	3 provincial stakeholder meetings to define requirements for card involving JCPS cluster	This should be a one-off cost. To the extent that the stakeholders are government officials, costs should be limited as the time is already covered in their salaries. Costs should be confined to those such as venue, accommodation, and travel. Government might well have standard costs for such events. The relevant agency could be DSD as the lead agency for victim empowerment, but could instead be a lead agency within the JCPS cluster.	
		Design of card by government design agency/similar	This should be a one-off cost. If it is done by a government design agency, there should be minimal costs involved as salaries are already covered. If it is outsourced, there will be costs.	
		Piloting of cards in 3 provinces ^{xliv}	Printing of 300 cards	This is a one-off cost.
			Dedicated person in 3 provinces for M&E	If this is only for the piloting, it is a one-off cost. The cost would depend on the skill level of the person involved. The fact that it is for a limited period suggests that it would involve short-term consultancies.
	Management of	It is not clear what additional costs would		

			information for 300 cards	be incurred here apart from the costs of the person doing the M&E.
			Laptops for 3 data managers in each province	Given that the piloted is a one-off limited time activity, this cost could be that of hiring of the laptops.
			3 stakeholder meetings to present findings, review progress and make suggestions	This should be a one-off cost, with considerations similar to the stakeholder meeting described above.
		Electronic case management system design	Database design	This is a one-off activity that would presumably happen only after the pilot and related refining of the approach. The activity would probably be an outsourced consultancy. The cost would depend on the level of detail and sophistication required in the system.
			Database testing	The costs of this one-off activity could be included in the previous consultancy.
			Database maintenance and upkeep per annum	These costs would be ongoing programme costs. It is not clear to what extent additional budget would be needed as the agency responsible would probably already have database maintenance and upkeep capacities, whether within the agency or as an outsourced contract.
			Printing of 2.2 million cards (figure based on previous year's annual crime stats)	This is envisaged as an ongoing annual programme cost. As noted, the figure is based on the previous year's statistics. The estimate would vary depending on whether it related to all crimes committed, reported crimes, or those which reach a certain point in the criminal justice system

			process.
		Data capture and entry training for service providers in every police station, health facility, court and parole board	This is probably a one-off project cost at the time of introduction of the database, with the hope that each agency and office will subsequently ensure that the necessary knowledge and skills are passed on to new staff. Government presumably has experience of previous introduction of new software and would be able to suggest a method that is both cost-effective (given the large number of offices concerned) and effective in passing on the necessary knowledge and skills. For example, if the system is simple, manuals and on-line tutorial might be sufficient rather than face-to-face training. If the latter approach is adopted, the costs could be budgeted for by a lead agency. If a face-to-face approach is adopted, government might decide that each agency must budget for its own costs of training.
		Dedicated computer per facility to capture this inform	Before costing this item, one would need to check that a separate dedicated computer is necessary for each facility. This seems unlikely as (a) each facility is likely already to have at least one computer and (b) work on the database is unlikely to be full-time in each facility. Where computers are needed, there would be one-off costs of acquiring the computers, and repeat costs every few

			years as the computers needed to be replaced.
		Dedicated person per province to monitor and evaluate progress quarterly (skills Masters or equivalent in Monitoring and Evaluation)	This is an on-going programme cost of employing a person at the appropriate government salary.
		Meeting for 9 dedicated staff members to present annual figures to one another	This is an on-going programme cost that is probably too small to include as a separate item in a costing.
		Meeting to present consolidated figures to the inter-sectoral committee	This is an on-going programme cost that is almost certainly too small to include as a separate item in a costing.
Lack of psychosocial care ^{xlv}	A system of court supporters based on the Rape Crisis Model	2 Court Supporters at all of the courts in each of the following categories High Courts of South Africa Divorce Courts Magistrates' Courts Community Courts Equality Courts Maintenance Courts Sexual Offence's Courts Children's Courts Courts for Chiefs and Headmen Paid a stipend of R3500 per month	This is an on-going programme cost. The size of the cost would be determined by the total number of courts. Where courts do not sit daily, consideration might be given to having supporters who work across several courts, or having only one supporter per court. Given inflation, it would be important to specify to which year the R3500 is applicable. Further, if stipends rather than salaries are paid, the legislation would need to specify the legal employment status of the supporters as there are standard government salary scales and government cannot employ outside these scales except under special circumstances, such as the time-bound Expanded Public Works Programme. Alternatively, the provision of this service could be outsourced to non-profit service providers. In this case, full costing would

			need to cover the full costs of these service providers, including overheads. The relevant agency could be DOJCD.
		1 Court Support supervisors (Social work graduate) for all of the courts in each of the following categories High Courts of South Africa Divorce Courts Magistrates' Courts Community Courts Equality Courts Maintenance Courts Sexual Offence's Courts Children's Courts Courts for Chiefs and Headmen	This is an on-going programme cost. Again, the number of courts would need to be calculated, as well as the average number of courts that would be covered by a single supervisor. The cost would then be calculated according to the government salary scale, with additional allocations for transport, accommodation, etc associated with covering more than one court.
		1 Court Support Provincial Coordinator per province	This is an on-going programme cost that would be calculated according to the government salary scale.
		Quarterly meetings for provincial coordinators	This is an on-going programme cost that is probably too small to include as a separate item in a costing.
		Two meetings per year with provincial coordinators and Inter-sectoral Management Team	This is an on-going programme cost that is probably too small to include as a separate item in a costing.
Better accountability mechanisms needed for service providers	Victims Ombud	To be based on the older persons ombud costs	This is an on-going programme cost which would have, at its core, the staff associated with the Ombud and perhaps also offices. The relevant agency might be the overall lead agency for victim empowerment. Alternatively, it could be DOJCD given the "legal" component of an Ombuds work.

	Positive Duties for CJS Service Providers	Development and implementation of checklists for CJS role players to ensure they fulfil minimum obligations	Development of checklists is a one-off project cost that might be outsourced. The nature of the procedure developed would determine whether there are subsequently substantial on-going programme costs
		Development of complaints procedure	This is a one-off project cost that might be outsourced. The nature of the procedure developed would determine whether there are subsequently substantial on-going programme costs.
		Development of disciplinary procedure	This is a one-off project cost that might be outsourced. There should not be substantial on-going programme costs associated with a disciplinary procedure.
		Liability for the state budget	If this item aims to provide for possible legal costs incurred by the state, this would take the form of an on-going contingency allowance based on an assessment of risk.
Ineffective inter-sectoral coordination	Inter-sectoral management and administration team	Salary for a chair	It is not clear why a salary should be necessary when the chair is likely to be a government official.
		Salary for administration team	This is an on-going programme cost. The relevant agency would presumably be the lead agency for victim empowerment. The costing exercise would need to consider to what extent this function can be performed by existing staff and would then budget salary only for any additional people needed.
		Secretariat/fund for annual indaba	This is an on-going once-a-year cost. The

			size of the cost would depend on the number of people invited to the indaba, number of days, etc.
		Funds for quarterly meetings at national, provincial and local level	This is an on-going programme cost that might be too small and spread across different agencies, offices and budgets to include as a separate item in a costing.
		Funds for offices, computers and operating costs	This represents on-going costs. As with salaries, the costing would need to consider to what extent additional offices, computers, etc are needed for this function.
	Fund for Civil Society participation in this management team	Budget for the involvement of a designated number of NGOs per province	This is an on-going programme cost. The nature of the envisaged involvement would need to be more clearly specified for this item to be costed.
		Salary for a dedicated coordinator for each province	This is an on-going programme cost. It would first need to be ascertained whether a separate coordinator, different from the person responsible for coordination of other activities such as the court supporters, is required. If so, the level of the coordinator in terms of government hierarchy would need to be decided for the salary costs to be estimated.

* This and other activities for which it is suggested that there is outsourcing would, in the ideal situation, be undertaken by government officials. Outsourcing is provided for in this document in acknowledgment that such activities are often outsourced.

8. The Road to Justice

The road map to Victim Empowerment Legislation must be developed by many players working together as cartographers to draw a pathway through this difficult and complicated terrain. The issue of crime in South Africa is critical to the success of our democracy and one that is charged with all the deep emotions left behind in the wake of Apartheid. The brief sketch of that map that the contract partners dare to draw consists simply of a brief look at how laws are drafted and then lays out an influence strategy to drive that process.

8.1. Drafting Legislation

The South African Parliament is comprised of two houses: the National Assembly and the National Council of Provinces (NCOP). The executive ministries are responsible for drafting legislation based on policy discussions at the ruling party's conventions. A new piece of legislation starts out as a 'green paper document'. A green paper document is an overview of an issue with a basic policy recommendation.

Next, the legislation goes into the 'white paper' stage. The white paper provides a statement of intent and a policy plan for the future bill. The white paper is the basis of the legislation. It is debated on the Parliament floor as a draft bill once a Ministry decides that its policy plan effectively executes the statement of intent. The draft bill becomes a bill after it is tabled in Parliament. The green paper, white paper, cabinet approved draft bill, and bill are all released for public comment.¹ Once a new bill is drafted, it must be introduced to both houses of Parliament for consideration. Most bills begin in the National Assembly, and are initially sent to a special committee responsible for reviewing and amending the bill.

There are four types of bills outlined in the Constitution:

1. Constitutional Amendments (Section 74 bills)
2. Ordinary bills not affecting the provinces (Section 75 bills)
3. Ordinary bills affecting the provinces (Section 76 bills)
4. Money bills (Section 77 bills)

For a constitutional amendment bill, committees are required to publish the bill in the Government Gazette for public comment, and may also organise public hearings regarding the bill, depending on public interest. National and provincial governments publish bills in separate Government Gazettes. If you would like to submit a comment on a piece of legislation, you can send your submission to the address listed on the appropriate gazette. The official website of the South African Parliament also includes a comment function that allows website visitors to comment and receive updates on bills that are "currently before parliament".² The committee "must submit any written comments received from the public and the provincial legislatures" to the Speaker of Tabling in the National Assembly.³

¹ "The Policy and Law Making Process." Community Organisers Toolbox, Education & Training Unit for Democracy and Development (ETU). Accessed 22 June 2011<<http://www.etu.org.za/toolbox/docs/govern/policy.html>>

² Parliament of the Republic of South Africa. "Bills Before Parliament." Accessed 23 June 2011.

<http://www.parliament.gov.za/live/content.php?Session_ID=2ece20e68538e4fcbe7ee34207e9a4&Category_ID=72>

³ Act 108 of 1996, Section 74, article 6.

For ordinary bills not affecting the provinces, ordinary bills affecting the provinces, and money bills, this process of gathering public input is not explicitly required. However, articles 59 and 118 of the Constitution require the National Assembly and the provincial legislatures, respectively, to “facilitate public involvement in the legislative and other processes of the legislature and its committees”.⁴

For all types of bills, the committee must complete its review and any changes before officially introducing the bill in the National Assembly. Once the National Assembly has considered the bill, it is sent to the NCOP. If both houses pass the bill it is forwarded to the President for his signature. When the President signs a bill it becomes a law.

8.2. A Draft Influence Strategy Template⁵

The purpose of the influence strategy is to define project outcomes and activities in a systematic manner. This exercise is useful in understanding specific objectives and creates a basis for charting progress throughout the project.

Outcome
<p><i>What do you want to change? Describe what the project aspires to achieve within a 1-2 year timeframe. This should be 1-2 paragraphs outlining your vision of success in terms of laws and implementation. Outcomes should be “SMART:” specific, measurable, actionable, relevant and time bound.</i></p> <p>We want to introduce legislation that will empower the victims of crime. This legislation should create a framework, using the current policies around victim empowerment, which will allow victims of crime to hold the providers of services for victims to account for failures to adhere to agreed service delivery standards. The legislation would have five parts:</p> <ol style="list-style-type: none">1. Creating systems to educate the public about the workings of the criminal justice system for victims of crime2. Creating standards around giving information to victims of crime about their cases and creating a Road to Justice card, which will centralise the information about the victim that remains in the hands of the victim3. Developing affordable mechanisms for psychosocial care for victims of crime4. Creating a Victim’s Ombud that would be empowered to hold service providers accountable across departments5. Creating systems for intersectoral collaboration

⁴ Act 108 of 1996, Section 118, article 1(a).

⁵ Thanks to World Resources Institute for the template.

Target Audience(s)

Who do you need to reach in order to achieve your outcome or vision of success? List out target audiences and indicate your top priorities – be as specific as possible.

- Members of Parliament, both majority party and opposition, in the Justice and Social Development Committee
- Government officials (Central and Local Government) working in Treasury, Justice and Social Development
- Media houses (print and electronic) and social media
- Citizen groups, especially grass roots organizations working on victim empowerment.
- Lawyers, and particularly prosecutors

Message

What message do you think will persuade your audience? Who should the messengers be?

Victim empowerment legislation is the best way to improve the empowerment of victims of crime, and ensure they are able to fully participate in the criminal justice system.

Outreach Tools

What resources will you use to reach your target audiences? How do your audiences receive information? Identify tools for outreach and indicate what resources you have and which need to be developed.

- Publications including research reports, policy briefs to document the issues at stake, the policy objective that is intended to be achieved and how the government can be engaged to bring about change
- Uploads of research reports and findings in *pdf* on the website, PowerPoint presentations and e-mail updates for members on the listserve
- Parliamentary petitions and submissions to Parliamentary Committees
- Phone text messages sent to mobilise the public and create awareness on specifically on what information is available, and how they can access it for their use and who to engage
- Media articles and press releases to campaign for law reform.
- An effective media strategy and message that will be acceptable to editors so that the stories are covered on front pages or at prime time
- A social media strategy that combines the strategies of website, blog and social networking platforms to allow for public debate and social commentary
- Public dialogues

Challenges

What do you see as the biggest challenges to achieving your outcome? How do you plan to manage them?

- The biggest perceived challenge to the introduction of VE legislation is the cost of implementing the new systems
- Another challenge is whether or not the political will exists to take on the issue of victim empowerment and deal with the challenges of resources and split mandates
- Different government departments tend to work in silos and it is difficult to get the intersectoral cooperation that will allow for victim empowerment and full service coordination
- Civil society is fragmented, and has no systems for holding itself accountable.

Partners

Who has not been drawn into this initiative? Who would be the unusual suspects?

- Detectives
- Prosecutors
- Community organisations
- Ratepayers
- Community police forums

Throughout the study and consultative process it has been evident that a clear potential within existing structures to remedy many of the problems that victims of crime currently face exists.

It thus recommends that actions be taken towards actualising the potential of the current criminal justice system. An assessment of feasibility involves assessing both the practical and psychological space for legislation. It is clear that although the practical space may still need to be created, there is a very welcoming psychological space which indicates a clear need for better and deeper support for victims of crime, and for communities, to address the trauma caused by the millions of criminal acts in our country every year.

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- ⁱ Project Number XAMT15. Terms of Reference for Service Providers to Conduct Research into the Feasibility of Creating Legislation for Victim Empowerment in South Africa. May 2009
- ⁱⁱ *Ibid*
- ⁱⁱⁱ *Id.* at 7-8.
- ^{iv} The Department of Social Development. 2007. *Integrated Victim Empowerment Policy (Fourth Draft)*. 1, 3.
- ^v *Id.*
- ^{vi} South African Police Services. 2010. The Crime Situation in South Africa.
- ^{vii} *Ibid.* Page 1
- ^{viii} *Ibid.* Page 2.
- ^{ix} *Ibid.* Page 3.
- ^x *Ibid.* Page 6.
- ^{xi} *Ibid.* Page 10.
- ^{xii} South African Law Commission, *Issue Paper 7, Project 82: Sentencing Restorative Justice* Section 2.7 (1997).
- ^{xiii} Hanno N. Olinger, Johannes J. Britz & Martin S. Olivier, *West privacy and/or Ubuntu? Some critical comments on the influences in the forthcoming data privacy bill in South Africa*, 39 THE INTERNATIONAL INFORMATION & LIBRARY REVIEW 31, 33 (2007).
- ^{xiv} Frank, Cheryl. 2007. *Quality Services Guaranteed? A Review of Victim Policy in South Africa*, 137 ISS MONOGRAPH SERIES 1. Page 9.
- ^{xv} *Ibid.* Page 12
- ^{xvi} *Ibid.* Page 1.
- ^{xvii} *Ibid.*
- ^{xviii} The assistance of Rebecca Eapen, Nicolette Laume and Cary Mayberger with this review was invaluable.
- ^{xix} The assistance of Rebecca Eapen and Laura Hilly with this review was invaluable.
- ^{xx} Thorpe, F. 2010. "How Co-Creation Occurs in a Post-Modern Society: An Intimate Affair Between Brands and Consumers." Thesis submitted to the University of Johannesburg for the Degree of Honours in Marketing and Communication.
- ^{xxi} Du Plooy, G.M. (2002). *Communications Research: Techniques, Methods and Applications*. Juta&Co. Ltd: Lansdowne.
- ^{xxii} Thorpe, F. 2010. "How Co-Creation Occurs in a Post-Modern Society: An Intimate Affair Between Brands and Consumers." Thesis submitted to the University of Johannesburg for the Degree of Honours in Marketing and Communication. And, Hesse-Biber, N and Leavy, P. 2010. *The Practice of Qualitative Research*. (2nd Edition). California: SAGE Publications Ltd.
- ^{xxiii} Thorpe, F. 2010. "How Co-Creation Occurs in a Post-Modern Society: An Intimate Affair Between Brands and Consumers." Thesis submitted to the University of Johannesburg for the Degree of Honours in Marketing and Communication.
- ^{xxiv} South African Police Services. 2010. The Crime Situation in South Africa. Page 6.
- ^{xxv} South African Law Commission. "Issue Paper 7, Project 82. SENTENCING RESTORATIVE JUSTICE (Compensation for victims of crime and victim empowerment). Chapter 1.
- ^{xxvi} This definition needs to be read alongside the definition in the Department of Social Development's Victim Empowerment Policy (2009). This should be born in mind throughout the process. These definitions should be born in mind throughout the document.
- ^{xxvii} The Department of Social Development. *The National Policy Guidelines for Victim Empowerment Social Service Providers*
- ^{xxviii} *Ibid.* Page 47
- ^{xxix} Artz, L and Smythe, D, eds. 2010. *Should We Consent, Rape Law Reform in South Africa*. Page 268
- ^{xxx} Rape Crisis Cape Town Trust. www.rapecrisis.org.za
- ^{xxxi} *Ibid.*
- ^{xxxii} The Department of Social Development. *The National Policy Guidelines for Victim Empowerment Social Service Providers*
- ^{xxxiii} Naparstek, Belleruth. "Invisible Heroes: Survivors of Trauma and How They Heal.". Pages 68-142, 322
- ^{xxxiv} The National Prosecuting Authority. *The Service Charter for Victims of Crime in South Africa*. Page 8.
- ^{xxxv} *Ibid.* Page 9
- ^{xxxvi} *Ibid.* Page 10
- ^{xxxvii} *Ibid.* Page 11.
- ^{xxxviii} *Ibid.* Page 12.
- ^{xxxix} *Ibid.* Page 13.
- ^{xl} *Ibid.* Page 14.

^{xii} Section 5 states: “To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.” No dedicated co-ordinating structure, solely responsible for overseeing the implementation of the Children’s Act, has been established. However, the Department of Social Development, as main implementer of the Act, leads NACCA and other inter-departmental committees and forums that deal with matters falling within the ambit of the Act. It could be said that those committees and forums indirectly give effect to section 5 of the Act. Examples of this include provincial Child Care and Protection forums, and the National Victim Empowerment Management Forum.

^{xlii} Part 3 of the Sexual Offences Act provides for a *National Policy Framework* and section 63 specifically mandates the established of a committee known as the Inter-sectoral Committee for the Management of Sexual Offence Matters. Specific provisions on how the committee must meet and function appear in sections 64 and 65 respectively.

^{xliii} The Sexual Offences Act makes provision for a Director General Inter Sectoral Committee and this could be an example upon which the Victim Empowerment model is read.

^{xliiv} This would begin as a manual pilot initially, and could become electronic when the first pilot was deemed successful.

^{xliv} It is important that the provision of psychosocial care is provided to direct victims as a priority, and to secondary victims as the capacity of the State allows it.



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