

QUALITY SERVICES
GUARANTEED?

**A REVIEW OF VICTIM POLICY
IN SOUTH AFRICA**

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EXECUTIVE SUMMARY

In the context of significant developments in the international arena relating to the recognition of rights relating to crime victims, this monograph seeks to analyse three of the central policy efforts relating to crime victims in South Africa. The documents that are the focus of this monograph are: the Service Charter for Victims of Crime in South Africa (more commonly known as the Victims' Charter); the draft Victim Empowerment Programme (VEP) and the National Prosecuting Authority's draft Uniform Protocol on Victim Management (UPVM). The findings are based on a series of interviews with key informants from both government and civil society and well an analysis of relevant documentation.

The monograph proceeds from the premise that measures to respond to victimisation should be based on the needs of crime victims. The needs crime victims are explored in some depth, recognising that needs may be material (e.g. medical costs), practical (e.g. the need for information or for safety); and emotional (e.g. the need for validation), and that they cannot be responded to without recognising that each person's experience of victimisation is unique. The subjective experience of victimisation is particularly emphasised, while also recognising that poverty and social isolation may magnify the effects of victimisation.

The international framework relating to crime victimisation is discussed, pointing particularly to the provisions in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the United Nations Convention on the Rights of the Child. It is also observed that regional instruments such as the SADC Declaration on Gender and Development, the African Charter on the Rights and Welfare of the Child, and the African Charter on Human and People's Rights also strengthen the international framework for crime victims.

The discussion then turns to South Africa, with an overview of crime victimisation in the country. The discussion focused particularly the high levels of victimisation, and the specific vulnerability of women and children.

This discussion is followed by an overview of key legislation relating to crime victimisation.

The discussion of the key provisions of the three policy documents under review is prefaced by a short introduction which describes the four central reasons forwarded for the development of victim policy in South Africa. These are: crime prevention, improving criminal justice efficiency, human rights and restorative justice. The central provisions of the three policy documents under review are then described. This is followed by a brief discussion of the range of government programmes aimed at the delivery of services to crime victims. Most critically, this section notes that the main instrument that claims to provide rights to crime victims (the Victims' Charter) cannot be accepted as providing rights at this stage due to its status, and only seeks to confer rights on those crime victims that engage with the criminal justice system.

The next part of the monograph seeks to provide an analysis of the three policy documents. The discussion notes that the status of all three documents and their relationship to each other is unclear. It is further observed that the three policy documents do not share the same theory or rationale for existence. In exploring the extent to which the three policy documents seek to respond to the needs of crime victims, the weaknesses of the Victims' Charter are discussed again, in terms of its recognition only of crime victims in the criminal justice system. The Victims' Charter is also criticised for the ways in which the rights conferred are limited and qualified, and its generally reactive orientation. In contrast, the broader orientation of the Victim Empowerment Programme is recognised, as is its focus on responding to the needs of victims. Its identification of the roles of the different government service-providers is recognised as positive and useful. The Uniform Protocol on Victim Management is noted for its efforts to make provisions relating to specific crime categories. However, the fact that it provides minimum standards in the context of the other sets of minimum standards that accompany the two other policies under review makes its implementation confusing to service-providers. The issue of setting standards for service-delivery is discussed in some detail, forwarding the view that the usefulness of such standards depends on the extent to which they are constructed to be measurable.

The three policies are also examined in terms of the extent to which their provisions target and provide specialised interventions; the extent to which the notion of restorative justice is harnessed and the extent to which new kinds of crime victimisation (e.g. electronic crime) are responded to.

The monograph continues on to a discussion of the key challenges to the implementation of victim policy. Here, the so-called 'partnership' between government and civil society in the delivery of services is discussed, together with an assessment of the central funding issues facing this sector. This discussion also explores the reliance on volunteers, as well as some of the current strengths and weaknesses in direct services to victims. The role of civil society in ensuring government accountability for services is also discussed, especially in the context of civil society organisations also playing a central role in the provision of services. This discussion is concluded with a description of the key tools required to aid in the implementation of victim services.

The monograph is concluded with a set of recommendations. These include: rationalise victim policy and clearly articulate its importance; orientate services towards the needs of victims; improve government and civil society relations and government funding to civil society; ensure the quality of services and establish the tools and systems for managing victim policy.

The monograph recognises that the advent of victim policy in South Africa is a critical step towards harnessing both the human rights and crime prevention benefits that services to victims may offer. It cautions, however, that victim policy is only good as the services that it creates; and that it is the quality of services that will result in these benefits and not merely access to these services.

LIST OF ABBREVIATIONS

CSIR	Crime Prevention Centre at the Council for Scientific and Industrial Research
CSO	Civil society organisation
DCS	Department of Correctional Services
DSD	Department of Social Development
EU	European Union
NCPS	National Crime Prevention Strategy
NICRO	National Institute for Crime and the Rehabilitation of Offenders
NPA	National Prosecuting Authority
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
SAPS	South African Police Service
UPVM	Uniform Protocols on Victim Management
VE	Victim empowerment
VEP	Victim Empowerment Programme
WPU	Witness Protection Unit

CHAPTER 1

INTRODUCTION

A Port Elizabeth family has lashed out at justice authorities, accusing them of negligence and threatening legal action after their 17-year-old daughter who contracted HIV during a rape ordeal seven years ago died. The Herald reports almost seven years after her rape when she was a primary school pupil, she died without seeing the finalisation of the case against her alleged attacker. The family claims the case was brought to court in 2001, two years after the attack. Since then it has received little attention due to the defence's representative not showing up at the court, a lack of witnesses, and the magistrate who was presiding over the case resigning. The family also accused the court of failing to communicate properly the cause of these delays and said they were given a different date every time they went for the hearing. Even though the victim was a minor, she was never given an opportunity to state her case in camera and had to face her alleged rapist in court in 2003. The case was postponed after she could not speak in court (Legalbrief Today 2006).¹

The past 30 years have seen unprecedented developments in the international arena with regard to the establishment of a rights framework for victims of crime. 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 States, 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 (Rock 2005).

These changes were primarily driven by a diverse set of interests, which has come to be known as the victims' rights 'movement'. While hardly a single, cohesive movement, the campaigns for victims' rights sought to ensure the recognition of crime victims as stakeholders in the criminal justice process, and to introduce measures both in the criminal justice and social spheres to respond to the many needs resulting from criminal victimisation, especially in relation to countering secondary victimisation.

The campaigns of the victims' rights movement, and indeed the movement itself, may be understood as a reaction to the essential orientation of Western criminal justice processes. These processes concentrate on the adjudication of the offence through a focus on the offender. This effectively relegates the victim to the role of witness, where s/he holds a status that is secondary to that of the offender and the state who are the primary actors (Fattah undated; Batley 2005). Within this legal framework, the obligations of the state in relation to offenders have been clearly established – the state must identify, adjudicate and punish offenders.

The state's obligations in relation to the other party in the crime event, the victim, have been always been in question. The victims' rights campaigns represent different attempts to compel governments to grapple with this question. There is no doubt, however, that notwithstanding the many wins that have been gained over the past years, the issue of the state's obligation to crime victims will always be a matter of contention.

By their very nature, crime events create an immediate disadvantage for the victim. Garkawe (2005) states:

Victims should be seen as a group of people in the community who, like other groups that have had their human rights violated, traditionally have been treated poorly by society and the systems designed to supposedly help them, including the legal system.

The most devastating consequences of what Garkawe (2005) points to are illustrated by the experience described at the beginning of this chapter. In this context, the achievements of the victims' rights movement may also be seen as a victory for humanitarian and compassionate concerns where human need resulting from victimisation, which may involve considerable physical and emotional trauma, is both recognised and responded to. This is based on the view that crime events create needs on the part of victims, to which the state is obliged to respond. Victim policy represents efforts by governments to respond to these needs, and policy responses differ in terms of the extent to which states accept responsibility, and the particular needs which they seek address.

Far from being one coherent policy document, government's approach to crime victims is often reflected in a complex assortment of legislation, policy documents and government programmes, all of which may, in different ways, be directed at responding to criminal victimisation.

In 2004, the South African cabinet approved the Service Charter for Victims of Crime in South Africa, more commonly known as the Victims' Charter (Department of Justice and Constitutional Development 2004a). The Charter was the product of a collaborative process involving several other government departments and agencies², and intended to confer a set of rights upon crime victims. The Charter was accompanied by the Minimum Standards on Services for Victims of Crime which sought to set standards for service delivery to victims of crime (Department of Justice and Constitutional Development 2004b).

The Victims' Charter became South Africa's first official policy relating to crime victims, notwithstanding that it had been preceded by the development of the Victim Empowerment Programme (VEP). The VEP originated in the National Crime Prevention Strategy (Department of Safety and Security 1996), and has been implemented since 1999, although it had, at the time of writing, yet to be finalised and approved as national policy.

More recently, the National Prosecuting Authority (2005a) released a further draft document, the Uniform Protocol on Victim Management (UPVM) for public comment. This document also relates to crime victims, but deals specifically with sexual offences and domestic violence as these relate to court processes. This followed other intradepartmental efforts that have sought to respond to specific kinds of victimisation (e.g. child abuse).

The primary purpose of this monograph is to examine South African policy relating to crime victimisation. The monograph seeks to describe the specific provisions that have been made and assess the extent to which these respond to the needs of crime victims. The study also considers how different policy instruments relate to each other, and assesses the overall value of victim policy in responding to the rights and needs of crime victims. This monograph focuses on national interdepartmental policies, and therefore emphasises the Victims' Charter, the VEP and the UPVM. While intradepartmental policies will be noted, it is not within the scope of this monograph to examine these in detail.

An obvious question at this juncture is how to delineate the boundaries of victim policy. Defining these boundaries is rendered difficult by the fact that while there may be policy and legislation that relates directly to crime victims, there may also be policy that is offender-focused but that may contribute to the rights and needs of crime victims. Some policy may also relate to crime prevention where the prevention of victimisation is the objective.

These provisions considerably widen the scope of what may be considered to be victim policy, and inclusion or exclusion of certain policy often requires weighty ideological questions. For example, the inclusion of mandatory minimum sentencing legislation may involve any or all of the following assumptions: that such legislation serves victims through the incapacitation of offenders for longer periods, that victims are offered a greater sense of 'justice' through harsher sentences, and that such legislation prevents crime through deterring other offenders. These are all assumptions that may or may not be true, and in the absence of evidence, judgements have to be made as to the contribution of such policy to a victims' rights agenda.

This monograph focuses on those policies that are intended to respond to victimisation, and related policy that concerns the administration of justice for offenders. Policies relating to crime prevention in which victimisation is recognised will be noted but not examined in detail.

Methodology

The discussion that follows is based on a review of documentation that included policy documents as well as available local and international research. This was augmented by a short series of interviews with key informants in government and civil society. Government departments selected for interviews were those most closely associated with criminal justice processes such as the Department of Justice and Constitutional Development, the Department of Social Development, the South African Police Service, and the National Prosecuting Authority. The civil society organisations selected for interviews were selected on the basis of their involvement as researchers, advocates and practitioners in work relating to crime victimisation in South Africa. In all, interviews were conducted with:

- Dr Zodidi Tshotsho, National Department of Social Development
- Adv Brandon Lawrence and Chief Prosecutor, Sanette Jacobs of the National Prosecuting Authority
- Assistant Commissioner Susan Pienaar of the South African Police Service
- Lulama Nongogo, Director, Victim Support and Specialised Services, Department of Justice and Constitutional Development

- Carol Bower of RAPCAN
- Barbara Holtmann of the Crime Prevention Centre at the Council for Scientific and Industrial Research
- Adv Ann Skelton of the Centre for Child Law at the University of Pretoria
- Ashley Green-Thompson and Zuzelle Pretorius of Themba Lesizwe

A draft of the monograph was forwarded to all interviewees and other selected specialists for comment.

CHAPTER 2

VICTIMISATION IN SOUTH AFRICA AND THE NEEDS OF CRIME VICTIMS

Overview of crime victimisation in South Africa

There is no doubt that crime victimisation is an unnerving and often tragic fact of life in South Africa. The 2003 Victims of Crime Survey conducted by the Institute for Security Studies (which focused on respondents aged 16 and over) indicated that 23 per cent of South Africans were victims of crime between September 2002 and August 2003 (Burton et al 2004). The authors reported that this represented a reduction of 8 per cent from the previous survey conducted in 1998. Box 1 below summarises some of the central findings of this survey with regard to the incidence of crime.

Box 1: Selected findings from the 2003 Victims of Crime Survey

- 22,9% of South Africans were victims of crime during the period under review
- Housebreaking was the most common crime, reported by 7,5% of respondents
- 5,6% reported being asked by a government official for a bribe
- 4,7% reported theft of personal property
- 2,5% reported theft out of motor vehicle
- 2,5% reported theft of livestock
- 2,2% reported assault
- 2% reported robbery
- Less than 1% reported that they had been victims of sexual assault or car hijacking or that a member of their family had been murdered

Source: Burton et al 2004.

The Centre for Justice and Crime Prevention recently conducted a national study on the victimisation of children and youth (aged between 12 and 22), relating to the 12-month period preceding the study. The central findings are presented in Box 2.

Box 2: Selected findings of the 2005 National Youth Victimization Study

- 41,5% (4,3 million) were victims of crime and violence
- 26,6% of youth reported experiencing violent crime
- 25,6% of youth reported experiencing property crime
- 46,1% of males and 36,1% of females reported being the victims of crime
- 16,3% (or one in five) have reported being threatened, were scared, or actually hurt at school
- 21,8% reported witnessing violence in the home
- 68,6% reported witnessing violence or injury in their community
- Children between 12-14; and 18-20 were mostly likely to be victimised

Source: Leoschut and Burton 2006.

The statistics above confirm that South Africans do indeed experience high levels of criminal victimisation, and illustrate the exceptionally high levels of victimisation experienced and witnessed by children and youth.

In Britain, it has been noted that notwithstanding significant developments in victim policy and practice in that country, that 'these provisions do nothing to help 96 per cent of victims. These are the people whose offenders are not detected and whose cases are not processed through the criminal justice system' (Victim Support 2002). The British organisation, Victim Support (2002), notes that according to government statistics, half of the victims of crime do not report crimes, with only 3 per cent of crimes ever reaching the criminal justice process.

This reporting pattern was also noted in South Africa, where the first national victimisation survey conducted in 1998 indicated that only 50 per cent of all crimes were reported to the South African Police Service (SAPS) (Progetti 2005). The comparable 2003 national victimisation survey noted increased reporting rates in relation to some crime types, with reporting rates ranging between 29 per cent for robbery to 97 per cent for car theft (Burton et al 2004). The more recent youth victimisation survey noted the concerning trend that only one out of every ten respondents reported assault to the police (Leoschut and Burton 2006).

The needs of crime victims

Describing the needs of crime victims accurately is a tricky task. Crime is a broad and nebulous concept, relating to a wide range of acts, all of which may have different effects on the victim and result in different needs. Zehr (1990) characterises the impact of crime as follows:

Why is crime so devastating, so hard to recover from? The reason is that crime is in essence a violation: a violation of the self, a desecration of who we are, of what we believe in, of our private space. Crime is devastating because it upsets two fundamental assumptions on which we base our lives; our belief that the world is an orderly, meaningful place, and our belief in personal autonomy. Both assumptions are essential for wholeness.

It is also true that victims are unique individuals and may experience the same offence differently, and therefore express different needs in relation to the very same offence (Oetinger 2003). In addition, a number of other factors influence the ways in which people experience victimisation. These include levels of isolation, access to resources, levels of vulnerability and previous experience of crime (Zedner 1997).

Victimisation where there are high levels of poverty warrants specific mention. Zedner (1997:592) notes that isolated people are not only more fearful of crime, but are likely to suffer higher levels of stress when victimised. She also states:

Criminal damage, theft and burglary are all likely to place heavier burdens on those with fewer financial resources, particularly because these are the very groups least likely to be insured against such loss. Generalized feelings of vulnerability amongst groups such as women, ethnic minorities, and the elderly also appear to magnify the impact of crime. Lack of ability to resist or to defend oneself against an attacker may amplify pre-existing feelings of vulnerability.

Overall, then, this suggests that need is not directly determined by the nature of the crime, but relates to a range of factors not least of which is the subjective experience of victimisation by the specific victim involved (Zedner 1997).

Research indicates that the psychological reactions to events that can cause stress and trauma, such as that relating to criminal victimisation, can range from mild to severe. Mild reactions to these events may be evidenced by symptoms that include 'minor sleep disturbances, irritability, worry, interpersonal strain, attention lapses and the exacerbation of prior health problems' (Markesteyn 1992). Markesteyn (1992) states that symptoms associated with severe psychological effects are characteristic of post traumatic stress disorder and include 'persistent heightened arousal, psychic numbing, and recurring thoughts about the stressor'. He notes that repeated victimisation seems to compound the impact of the crime with every subsequent occurrence.

While the devastating effects of crimes related to sexual violence have been the subject of a fair amount of study, the psychological and other effects on victims of non-sexual but otherwise serious criminal offences (such as robbery, murder, and kidnapping) have received far less attention. Markesteyn (1992:8) argues that there is no qualitative difference between the psychological effects of different kinds of crime on victims, but that difference is to be found in the degree to which victims may feel the effects:

The psychological effects of sexual assault, physical assault, robbery, burglary, and kidnapping vary in intensity, but share many features. Although victims of sexual assault suffer greater distress than victims of robbery and burglary, the nature of their psychological distress is qualitatively similar.

British organisation Victim Support (2002:1) notes:

A fundamental principle is that crime affects the whole person. Health and quality of life can suffer; money is needed to pay for the consequences, both direct and indirect; and support is needed by most people to cope with the often overwhelming emotions that are a natural consequence of crime.

Based on its vast experience in Britain, Victim Support (2002:5) concludes that 'Measures to help victims of crime must be centred on their needs'.

A number of efforts have been made to enumerate and describe the central needs that emerge from crime victimisation. Based on the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of

Power (1985), as well as experiences from around the world, the following themes emerge when considering the needs of crime victims.

The need for access to justice and fair treatment

While it has been argued that access to justice and fair treatment is obvious and should be a given (Fattah undated), this issue is regularly noted by victim advocates as a need, due to the fact that victims are often not taken seriously, and have their needs subordinated to the criminal justice process (which prioritises the offender and the administration of justice). This is essentially about the need to be treated with dignity and respect, which also relates to other needs discussed below.

The need for contact with the criminal justice system

This need relates to victims' being recognised as having a legitimate interest in the process and outcome of criminal justice, and to feel that justice will be done (Zehr 1990). This also embodies victims' ability to participate in the justice process, regardless of their circumstances (International Association of Chiefs of Police 1999). While this need is often interpreted as relating to the giving and receiving of information about the criminal justice process, it requires much more and consists of the requirement to be recognised as a legitimate participant in the process.

The need for safety

The need for safety covers a broad range of concerns. It relates, firstly, to the period directly after the crime event and the victim's need to feel safe and protected from further harm. Secondly, it relates to the need for safety within the context of the criminal justice process, where the victim may be acting as a witness. This relates to feeling safe from harassment and intimidation by the perpetrator as well as safety from further victimisation by the systems and procedures of the criminal justice system itself (International Association of Chiefs of Police 1999). A third dimension of this need relates to the need for a 'restored sense of safety and well-being' (International Association of Chiefs of Police 1999), where the victim needs to be assured that s/he would not be revictimised.

The need for information

The need for range of different information arises out of victimisation, and this is the need most often expressed by victims, irrespective of the nature of the crime (Pretorius and Louw 2005). Victims require information about, among other things, progress relating to their case (i.e. whether the offender has been arrested, whether the offender had been granted bail, etc.), how the criminal justice system works, what will be expected of them by the criminal justice process and how and where they may access assistance (International Association of Chiefs of Police 1999). One of the most urgent, yet often overlooked, information needs articulated by victims is the need to make sense of the crime event and understand the reasons for their victimisation (Zehr 1990).

The need for assistance and services

A wide range of needs relate to assistance and services:

- Victims require practical assistance in the direct aftermath of the crime. Beyond information, this could include medical treatment, financial assistance, transport, and other practical assistance, such as the repair of broken windows or locks after a burglary.
- Victims may require other support (beyond information) to enable them to participate in the justice process, for example, emotional support (International Association of Chiefs of Police 1999).
- Services may be needed to assist victims to recover from the trauma resulting from the crime event (International Association of Chiefs of Police 1999). The services and assistance required at this level may range from limited immediate counselling to longer term in-depth psychological intervention. Such services may relate to, for example, assistance with child care after a rape or shelter away from home after an incident of domestic violence.

The need for continuity

It has been noted that victims need the safety that results from consistency in approaches and methods across the different agencies in the criminal

justice process. This also relates to continuity in language that is used, as well as continuity of support through all the phases of the justice process (International Association of Chiefs of Police 1999).

The need to have a voice

This need relates to much more than just participation in the criminal justice process as noted above. Victims have a need to be heard, specifically about the harm that has been done to them. Zehr (1990:28) states, 'they need opportunities to speak the truth of what happened to them, including their suffering'. In addition, victims also have a need to speak about what is happening with their individual case and want opportunities to influence system-wide policies and practices (International Association of Chiefs of Police 1999).

The need for validation and acknowledgement

Victims often experience unexpected reactions to crime, even in relation to non-violent crimes such as burglary (Pretorius and Louw 2005). The need for acknowledgement relates to victims' need to be assured that their reactions and feelings are normal under the circumstances (Pretorius and Louw 2005). This relates to the victim's need for others to understand what s/he went through and to acknowledge the full complexity of the impact of the crime on him/her (Skelton 2006). Zehr (1990) argues that victims need to be both heard and affirmed.

The need for restitution, redress and apology

Victims wish to be compensated in some way for the harm caused to them, and this relates to both to restitution that may be made by offenders as well as compensation that may be provided by the state. This need relates to payment for the harm or loss suffered, the reimbursement of expenses incurred as a result of victimisation, but also to symbolic acts of restitution and apology (Zehr 1990).

CHAPTER 3

POLICY AND LEGISLATION RELATING TO CRIME VICTIMS

International instruments

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in 1985 and represents the cornerstone of UN efforts to respond to the needs of crime victims (Waller 2003). The Declaration defines who may be considered a victim, and makes provision for four central principles relating to the treatment of victims:

- Access to justice and fair treatment
- Restitution
- Compensation
- Assistance

The Declaration also provides for victims of the ‘abuse of power’ as a means of providing for those who have suffered harm ‘through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights’ (United Nations 1985).

This document is supported by other instruments such as the Guidelines on Justice for Child Victims and Witnesses of Crime (United Nations 2004), as well as a range of broader instruments such as the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the United Nations Convention on the Rights of the Child. In addition, a range of regional instruments apply. These include the 1997 SADC Declaration on Gender and Development (SADC 1997), the African Charter on the Rights and Welfare of the Child, and the African Charter on Human and People’s Rights.

The Palermo Protocol (United Nations 2000), which supplements the United Nations Convention against Transnational Organised Crime also applies as it includes in its provisions the protection and assistance of victims of trafficking.

South Africa's policy and legislative framework

As noted earlier, victim policy is seldom contained in one comprehensive document, but may be found in a range of legislative and policy provisions. The discussion that follows charts provisions made for crime victims in South African law and policy.

The Constitution

The Constitution (1996) does not make specific mention of crime victims. However section 12(2) in the Bill of Rights provides for the 'right to bodily and psychological integrity', which includes the right 'to security in and control over their body'. Furthermore, section 12(1) states that 'Everyone has the right to freedom and security of the person', which includes the right 'to be free from all forms of violence from either public or private sources' and 'not to be treated or punished in a cruel, inhuman or degrading way'.

Discussing the rights of victims of sexual offences, although the argument is also more generally applicable, Barday and Combrinck (2002:19) argue that the above provision, read together with section 7(2) of the Constitution which obligates the state to 'respect, protect, promote and fulfil the rights in the Bill of Rights', implies that a victim may expect 'some sort of protection from the state against further assault or injury'. This is, however, an issue that has received little attention in policy and legislative provisions, which are discussed in further detail below.

Section 234 of the Constitution (1996) states that 'In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution'. It is in the context of this provision that the Victims' Charter was developed.

Legislation and draft legislation

There is no legislation that provides specifically for the needs of all victims of crime. However, victim-focused provisions may be found in a range of legislation and draft legislation. These are described briefly below.

The Domestic Violence Act No. 116 of 1998

This Act replaced the Prevention of Family Violence Act, and describes the range of behaviour that may be defined as domestic violence. It recognises

domestic violence in relation to different domestic relationships, and makes provision for a 'protection order' – a civil instrument that prohibits respondents (the perpetrators of abuse) from certain acts of violence. The Act places 'positive duties' on the police to provide assistance to victims (in the context of the scene of a domestic violence incident, or when taking a domestic violence complaint) (Artz and Smythe 2005).

The Child Care Act No. 74 of 1983

This Act is expected to be replaced soon (refer to discussion below on the Children's Bill), and makes provision for responding to child victims of abuse and neglect. The Act provides for investigations where abuse or neglect is suspected, and for alternative care arrangements to be made for children who are found to be in need of care. This Act specifically provides for a range of institutions which should provide alternative care.

The Judicial Matters Second Amendment Act No. 55 of 2003 (which amends the Criminal Procedure Act)

This Act provides for the right of a complainant (victim) to make representation relating to an offender being placed on parole, on day parole, or under correctional supervision by the Department of Correctional Services (Muntingh 2005).

The Sexual Offences Act No. 23 of 1957

This legislation was enacted in 1957 and is expected to be replaced soon (refer to the discussion below relating to the Criminal Law (Sexual Offences) Amendment Bill). It provides for the administration of justice in relation to sexual offences against adults and children.

The Criminal Law (Sexual Offences) Amendment Bill No. 50 of 2003

This Bill is intended to replace the Sexual Offences Act of 1957, but has been the subject of significant delays since its introduction into Parliament in 2003. The Bill seeks to comprehensively overhaul South African legislation relating to sexual offences, bring legislation into line with the Constitution, and improve the experiences of complainants within the criminal justice system (Artz and Smythe 2005).

The Child Justice Bill No. 49 of 2002

This Bill has experienced similar delays to the Bill discussed above in relation to its development. It intends, for the first time, to make provision

for children that come into conflict with the law. While the Bill is offender-focused, it has been described as 'uniquely victimological' in its orientation in that it 'accepts that children that come into conflict with the law are often themselves victims of violence, neglect and other environmental factors' (Artz and Smythe 2005). In addition, this Bill provides for restorative justice options to be applied in response to offending, which allows for greater scope for victim engagement in the criminal justice process.

The Older Persons Bill No. 68 of 2003

This Bill was introduced into Parliament by the Department of Social Development but remains under review. The Bill seeks to 'deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status, rights, well-being, safety and security; and to provide for matters connected therewith' (The Older Persons Bill No. 68 2003).

The Children's Bill No. 70 of 2003

This Bill was split into two sections. The section 75 Bill was passed by the National Assembly in June 2005 and by the National Council of Provinces Select Committee on Social Services on 30 November 2005. Among other things, the Bill seeks to give effect to certain children's rights contained in the Constitution and 'to set out principles relating to the care and protection of children' (The Children's Bill No. 70 2003). The Bill includes a range of provisions relating to the protection of children, including the identification of children in need of care, Children's Courts, and the specific orders that may be made by Children's Courts.

The Probation Services Act No. 116 of 1991 and Amendment No. 35 of 2002

This legislation stipulates that probation services must provide 'the assessment, care, treatment, support, referral for and provision of mediation in respect of the victims of crime'. The 2002 amendment is also noteworthy given that it defines and provides for restorative justice processes which are intended to benefit victims.

Other pieces of legislation which may be deemed to relate to crime victims are: the Films and Publications Act No. 65 of 1996 (which relates to the classification of film and published material) and the Criminal Law Amendment Act No. 135 of 1991 (which relates to the treatment of witnesses

under the age of 18). Legislation relating to crime victims is examined in some detail by Artz and Smythe (2005), who include in their analysis the role of minimum sentencing legislation.

Government policy

The three policy documents under review each articulate several reasons for their existence. The following issues have been noted as the primary drivers of victim-centred provisions in these documents.

- **Crime prevention:** The National Crime Prevention Strategy (NCPS) specifically promoted service provision to victims as part of a crime prevention agenda. The NCPS expressed the view that there was a need to move away from a state centred system of criminal justice to a 'victim centred, restorative justice system', describing this as 'one which is concerned to address the direct effects of crime and place emphasis on those victims least able to protect themselves' (Department of Safety and Security 2006:6). The theory expounded by the NCPS that made the link between victim services and crime prevention was articulated as follows:

Victimisation itself lies at the heart of much retributive crime, and the absence of means of victim aid and empowerment play an important role in the cyclical nature of violence and crime in South Africa. Whilst victim aid is often regarded as a remedial rather than preventive measure in dealing with crime, this view is dangerously misleading. Victims of past or current criminal activity, if untreated, frequently become perpetrators of either retributive violence or of violence displaced within the social or domestic arena (Department of Safety and Security 2006:20).

The NCPS went on to describe the results of failing to provide services and support to victims. It stated: 'the absence of victim-aid services has added to the sense of powerless of victims and has contributed to public perceptions that perpetrators lie at the heart of crime prevention strategies in South Africa' (Department of Safety and Security 2006:21). The VEP originated as a programme within the NCPS and is thus firmly rooted in this rationale for the provision of victim services.

- **Improving criminal justice efficiency:** The NCPS also argued that services to victims would increase the efficiency of the criminal justice system. This rationale also underlies the UPVM which presumes that standards

for service providers would reduce evidence contamination relating to sexual offence and domestic violence cases in court.

The Thuthuzela Rape Care Centres which are led by the National Prosecuting Authority are also based on the view that immediate and better treatment of rape survivors, which includes the early involvement of a state prosecutor (in terms of prosecution-led investigations), would increase the chances of successful prosecutions.

- Human rights: As was noted earlier, South Africa has ratified a number of international instruments that have a bearing on issues relating to crime victims. The Victims' Charter, the VEP and the UPVM all point to South Africa's obligations in terms of these instruments, in describing their rationale.
- Restorative justice: More recently, restorative justice has emerged as a rationale for services to victims of crime. In the foreword to the Victims' Charter, Minister of Justice and Constitutional Development, Brigitte Mabandla, refers to restorative justice in explaining the purposes of the Charter.

The three government policy documents that are reviewed next include: The Service Charter for Victims of Crime in South Africa (Victims' Charter), and Minimum Standards, the National Victim Empowerment Programme, and the Uniform Protocol for the Management of Victims, Survivors and Witnesses of Domestic Violence and Sexual Offences – draft.

The Service Charter for Victims of Crime in South Africa (Victims' Charter) and Minimum Standards

The Victims' Charter is contextualised by its authors in international instruments such as United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), and the Prevention and Eradication of Violence against Women and Children addendum to the SADC Declaration on Gender and Development. The Charter's (Department of Justice and Constitutional Development 2004a:2) stated objectives are:

To provide for the consolidation of the present legal framework in South Africa relating to the rights of and services provided to victims of crime and to:

- Eliminate secondary victimisation in the criminal justice process
- Ensure that victims remain central to the criminal justice process

- Clarify the service standards that can be expected by and are to be accorded to victims whenever they come into contact with the criminal justice system
- Make provision for victims' recourse when standards are not met

The Victims' Charter claims to confer a range of rights on crime victims. This claim is problematic given that additional rights may only be conferred in terms of Section 234 of the Constitution if these are adopted by Parliament. As yet, the Victims' Charter has only been approved by the cabinet (Nongogo 2006). The Charter notes that these rights specifically relate to victims in the criminal justice system. The 'rights' afforded by the Victims' Charter are as follows:

- The right to be treated with fairness and with respect for dignity and privacy: The Charter describes this right in terms of being attended to promptly and courteously, for victims to be treated with respect for their dignity and privacy, and for service providers to take measures to minimise inconvenience to victims by, among other things, conducting interviews in the language of their choice and in privacy 'where necessary'.
- The right to offer information: The Charter explains that the crime victim may 'participate (if necessary and where possible), in criminal justice proceedings' by attending the bail hearing, the trial, sentencing proceedings and/or parole board hearing'. In affording this right to crime victims, criminal justice service providers are expected to take measures to ensure that any contribution that a crime victim wishes to make in relation to investigation, prosecution and parole, is heard and considered in these processes. This includes being able to make further statements to the police when the victim feels that his or her previous statement was incomplete, as well as giving evidence in court during sentencing proceedings (in order to 'bring the impact of the crime to the court's attention'). The crime victim may also make a written application to the parole board to attend the parole hearing, and submit a written input to the board.
- The right to receive information: This right relates to crime victims being informed of their rights and how these may be exercised. This includes the right of victims to have their rights explained in their own language, to be informed of the services available to them, and to be informed about their role in the case, and the approximate duration of

the case. The Charter states that victims may also request information about court dates, witness fees and the witness protection programme. Victims may also request that they be informed about the status of the case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted or sentenced as well as the reasons regarding decisions that have been taken in relation to the case regarding whether or not to prosecute. The Charter notes that victims are entitled to receive documents that the law entitles them to, and that they can request to receive notification of proceedings which they may attend. Victims may also request that the prosecutor notify their employer of any proceedings which necessitate their absence from work.

- The right to protection: The Charter states that victims 'have the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse' and that victims who are witnesses are required to report these to the police or senior state prosecutor. The Charter also makes provision for victims who are witnesses to apply for and be placed in witness protection, if certain requirements are complied with. This also includes, under certain circumstances, the court prohibiting the publication of certain information (including the identity of the crime victim), and ordering that the case be held in camera. The Charter also states that a crime victim may request that the Department of Correctional Services inform him/her if the offender has escaped or been transferred.
- The right to assistance: The Charter states that crime victims have the 'right to request assistance, and where relevant, have access to available social, health and counselling services, as well as legal assistance which is responsive to your needs'. In this regard, the Charter describes the responsibility of the police to explain its procedures, inform the crime victim of his/her rights, and to make an appropriate referral to other relevant service providers. Other assistance that the Charter affords crime victims are the services of an interpreter at court, and special measures (including specialised courts, where available) will be ensured by prosecutors in relation to sexual offences, domestic violence, child support or maintenance matters. The Charter states that when victims have special needs, service providers will take reasonable steps to accommodate these and ensure that the victim is treated in a sensitive manner.
- The right to compensation: The Charter states that crime victims have the right to compensation, and defines compensation as 'an amount of

money that a criminal court awards the victim who has suffered loss or damage to property, including money, as a result of a criminal act or omission by the person convicted of committing the crime'. A crime victim may do this by requesting to be present at the sentencing hearing, and requesting that the prosecutor apply to court for a compensation order. The victim will subsequently be informed by the prosecutor if the compensation order has been granted, and she/he will explain its contents and how it may be enforced, and the clerk of the court will provide assistance to the victim with regard to the enforcement of a compensation order. The Charter states that crime victims may also institute a civil action against the accused when the criminal court did not grant a compensation order.

- The right to restitution: The Victims' Charter states that victims have the right to restitution when they have been unlawfully dispossessed of goods or property, or when their goods or property have been damaged unlawfully. Restitution is defined by the Charter as 'cases where the court, after conviction, orders the accused to give back to you the property or goods that have been taken from you unlawfully, or to repair the property or goods that have been unlawfully damaged, in order to restore the position you were in prior to the commission of the offence'. The Charter states that the prosecutor will inform victims of what restitution involves and that the clerk of the court will assist them in enforcing this right.

It should be noted that some of the provisions of the Charter are merely a restatement of what is already provided for in law. For example, the Criminal Procedure Act No. 51 of 1977 makes provision for compensation and restitution.

The Victims' Charter is accompanied by the Minimum Standards on Services for Victims of Crime (Department of Justice and Constitutional Development 2004b). These standards relate to the services that are intended to be provided in terms of the Charter. The Minimum Standards spell out the processes that should take place once a victim reports a crime, as well as the responsibilities of the different government departments.

The National Victim Empowerment Programme (VEP)

The VEP has its origins in the National Crime Prevention Strategy. The programme's development can be traced back to a broad process of consultation undertaken in the wake of the NCPS – originally launched in

1998. While the VEP has retained some profile since its inception, the policy document that supports its existence remains in draft form and is currently in its fourth draft. This notwithstanding, the programme has been officially implemented since 1999.

The fourth draft of the VEP policy document states that its goal is 'to inform, guide and facilitate the provision of services to victims of crime and violence in order to address their needs efficiently and effectively' (Department of Social Development 2004:17). This goal is supported by the following three objectives:

- To give strategic direction to the provisioning of services to victims of crime and violence.
- To identify the roles and responsibilities of the various role players.
- To create a common understanding of victim empowerment amongst various State Departments, victims, perpetrators, NGOs and CBOs and individual members of the community.

The VEP is led by the Department of Social Development (DSD) which coordinates, at a national level, the Victim Empowerment Management Team. This structure consists of representatives from relevant government departments (such as the DSD, the SAPS, the Departments of Health, Justice, Education, Correctional Services, Justice, etc.) as well as representatives from civil society organisations and academic institutions. Since its inception, the VEP had also made provision for the development of provincial VEP forums, which were to act as a provincial coordinating mechanism for VEP services. Therefore, these forums were to duplicate this representation at provincial level.

The central actions of this programme, from its inception in 1999, have been noted as follows (Department of Social Development 2005:3):

- The training of service providers, including the police and justice officials, to create greater victim sensitivity
- Establishing referral mechanisms between service providers to services intended to address the effects of crime and violence
- Implementing a multi-disciplinary victim support programme

- Providing information to victims to facilitate interaction with the criminal justice system.

The objectives of the VEP from 2002 to 2005 included the development and finalisation of the VEP policy document, developing and sustaining management structures and systems for VEP at national and provincial levels, and a programme to enhance the scope and quality of services to victims of crime, especially women and children in rural and underdeveloped areas. The plan for this period also included objectives relating to training and capacity building, and research, monitoring and evaluation. A new Strategy Plan has been developed for the 2006 to 2008 period, which defines the purpose of the VEP as follows:

To develop, strengthen and monitor integrated victim empowerment policies, programmes and services at all levels through strategic partnerships within and between government and civil society. Specific emphasis is placed on the prevention of victimisation, providing support, protection and empowerment for victims of crime and violence, with a special focus on vulnerable groups (Department of Social Development 2005).

Objectives of the VEP for 2006 to 2008 remain relatively similar for this period, and are presented in Box 3.

Box 3: Objectives of the VEP for 2006 to 2008

- Policy: To develop, monitor and evaluate the implementation of a comprehensive integrated policy framework for victim empowerment in South Africa
- Management: To develop and capacitate victim empowerment governance to ensure effective decision making and enhance service delivery at all levels
- Direct service delivery: To develop best practice models and increase the scope and quality of services for victims of crime and violence
- Marketing and communication: Ensure effective communication and marketing of victim empowerment related issues to promote accessibility and accountability in service delivery
- Education, training and development of victim empowerment practitioners: To enhance the capacity of victim empowerment service providers to provide appropriate and effective victim empowerment services for all victims of crime and violence
- Research, monitoring and evaluation: Conduct research on victim empowerment related issues, monitor the implementation of services and evaluate the impact thereof.

The objectives for this period include some of the following activities:

- The finalisation, costing and launch of the VEP policy at national and provincial levels
- The appointment of dedicated, full time VEP managers and coordinators at decision making level in all departments
- Facilitation of the development of departmental policies to guide implementation of the VEP
- Developing implementation guidelines and protocols
- Facilitation of dedicated budget allocations for VEP in all relevant departments and at all levels (including budget for funding allocation to CSOs)
- Conduct a skills audit and develop education, training and development plan for service providers
- Develop an integrated VEP information management system
- Audit current services in relation to minimum standards
- Geographical mapping of victim empowerment services to reduce duplication and enhance partnerships and referrals

Source: *Department of Social Development 2005*.

The objectives and activities above indicate that there have been serious attempts to address the weaknesses of the previous three year cycle of the VEP. The new cycle of the VEP from 2006 to 2008 is to be the recipient of substantial donor support from the European Union, with the Department of Social Development being the primary beneficiary, and Themba Lesizwe being recognised as the primary government partner in relation to implementation.

Uniform Protocol for the Management of Victims, Survivors and Witnesses of Domestic Violence and Sexual Offences

This document (referred to here as the 'Uniform Protocol') was released for comment late in 2005 (National Prosecuting Authority 2005a). The process for the development of the Uniform Protocol was facilitated by the Social and Community Affairs Unit within the National Prosecuting Authority (NPA), and also involved a range of government service providers and civil society role players in its development. According to the NPA, the UPVM was developed due to the fact that both the Victims' Charter and the VEP do not 'offer sufficient protection for victims, survivors and witnesses in sexual offences and domestic violence' (Majokweni 2005).

It is the NPA's position that the Victims' Charter and the VEP were only binding on government departments and the UPVM sought to 'address the

accountability of not only the government departments in services provided to these victims but also civil society organisations' (Majokweni 2005). The NPA states that it found that there were at least 200 different NGOs providing support services to victims that ultimately testify as witnesses in court, and that there was no standard approach to dealing with these witnesses or victims. It said that 'moreover the applicable legal principles that govern the South African law of evidence were not adhered to by all service providers and this gave rise to evidence contamination in certain respects' (Majokweni 2005).

The UPVM seeks to provide a set of standards relating to the services that are provided to victims of sexual offences and domestic violence. As noted above, these standards are intended to apply to all the agencies that provide services to victims within the context of the justice process, and apply to both government and civil society organisations. The objectives of the UPVM are:

- Promoting the education of victims in relation to their rights and responsibilities
- Promoting the education and awareness of service providers in relation to their duties and the legal process
- Promoting an attitudinal change in the treatment and understanding of these victims and addressing the gender imbalances
- Empowering victims to make informed decisions
- Further entrenching the need to uphold and promote the rights enshrined in the Constitution so as to instill confidence in the criminal justice system
- Bringing qualitative uniformity to these services
- Providing equal access to services

The UPVM articulates a list of 16 standards that relate to the specific duties of service providers. These are described in Box 4.

Box 4: Uniform Protocol for Victim Management (draft)

Standards for services to be provided to victims of sexual offences and domestic violence:

- Service providers shall not discriminate against any victims on any of the following grounds: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth in or out of wedlock.
- Service providers shall respect the dignity of the victim.
- Service providers shall uphold the victim's right to privacy.
- Service providers shall uphold and respect the victim's right to freedom and security of the person.
- Service providers shall ensure that the best interests of victims are taken into consideration when referring to a registered therapist.
- Service providers shall strive to eliminate secondary victimisation.
- Service providers shall inform victims about the justice processes, cycle times of cases, the victims' rights, roles, responsibilities and or opportunities to participate in all processes.
- Service providers shall inform victims of services available and relevant to the victim in order to provide a holistic victim support service.
- Service providers shall ensure that information provided by the victim is recorded and or processed appropriately and at all times maintain the integrity of such information.
- Service providers shall uphold an applicable code of ethics and conduct.
- Service providers shall ensure that there are victim safety measures in place.
- Service providers shall promote knowledge and skills development.
- Service providers shall implement mechanisms for monitoring and evaluation as determined by an authorised governing body.
- Service providers shall satisfy all requirements imposed on them by this document.
- Service providers shall seriously, expeditiously and without reprisal address concerns and complaints by victims about any of their services.
- All service providers shall, where applicable adhere to the procedures and guidelines, as set out in their respective policies or instructions, laws, the Service Charter for Victims of Crime and the Minimum Standards attached thereto and the Victim Empowerment Policy and Minimum Standards attached thereto and other relevant policies when providing VEP services.

Source: National Prosecuting Authority 2005a.

**Government programmes:
Interdepartmental and intra-departmental initiatives**

In addition to the policies noted above, individual government departments have developed programmes and department specific policies that relate to crime victims. These are not the specific focus of this monograph but detailed information is provided on these by Pretorius and Louw (2005) and in the National Victim Empowerment Programme Strategy Plan for 2006 to 2008 (Department of Social Development 2005). In addition, the central responsibilities of individual government departments are noted in the Integrated National Victim Empowerment Policy (fourth draft) (Department of Social Development 2005).

Some programmes (and the departments responsible for them) that are worth noting for the purposes of this monograph are:

- Victim Empowerment Policy Framework and Guidelines (SAPS)
- Family Violence, Sexual Offences and Child Abuse (FCS) Units (SAPS)
- Victim support rooms at police stations (SAPS)
- Minimum Standards for Shelters (DSD)
- Funding support to NGOs to run one-stop crisis centres (DSD)
- Funding support to NGOs to train victim support volunteers (DSD)
- Specialised courts (Justice and NPA)
- Establishment of Thuthuzela Rape Care Centres (Justice and NPA)
- Patients' Rights Charter (Department of Health)
- Establishment of one-stop crisis centres (Department of Health)
- Guidelines for the Management of Child Abuse (Department of Health)

CHAPTER 4

CHALLENGES FOR VICTIM POLICY IN SOUTH AFRICA

This discussion explores the central challenges that relate to victim policy in South Africa. While this monograph has focused on the substance of victim policy, the burning issue of implementation cannot be ignored. The challenges discussed below are divided into two kinds: challenges related to policy and legislation, and challenges relating to the implementation of policy.

Challenges related to the policy and legislation

The status of the policy documents under review

The three policy documents under review represent three very different kinds of policy efforts. The stated purpose of the Victims' Charter is the articulation of rights, and it is supported by a set of standards. The VEP expounds a framework of services which is also accompanied by a set of minimum standards, while the UPVM also addresses itself to the setting of standards.

At first glance, it may seem as if the Victims' Charter has the greatest status, given its focus on rights, the fact that it was approved by Cabinet (in 2004), and the claim that it has status in terms of section 234 of the Constitution (Department of Justice and Constitutional Development 2004a). Yet this is problematic given that the 'rights' contained in the Charter cannot be recognised as such in terms of section 234 of the Constitution without the approval of Parliament. Given that there has been no such approval process, and that no such process has been planned for the future (Nongogo 2006), the status of the Victims' Charter is unclear.

While the VEP represents a much older and far more comprehensive effort to respond to victimisation by primarily the same government departments, it also has no status as government policy as it has never been approved by Cabinet. The UPVM is a newer initiative, and also remains in draft form at the time of writing.

The relationship between the policy documents under review

At first glance these policies may seem complementary, but a range of inconsistencies frustrate attempts to understand how these documents relate to each other and provide a comprehensive framework of rights, services and standards for crime victims. Civil society role players have noted the lack of coherence between the different policy instruments, and the failure of government to explain this apparent disjuncture (Padayachee 2006).

The most fundamental expression of this incoherence relates to the fact that the 'rights' articulated by the Victims' Charter relate specifically to victims in the context of the criminal justice system. This means that, through this policy instrument, rights are only intended to be conferred on those victims that choose to report crimes and engage with the criminal justice system. While the Department of Social Development states that its documents comply with the Charter (Tshotsho 2006), it seems clear that the VEP, with its service delivery focus, takes a much broader view, seeking to provide services to crime victims wherever they try to access these in the health system, the welfare system or the criminal justice system.

Yet, while the VEP may seek to provide these services, access to these services is not guaranteed in terms of rights, as conferred by the Victim's Charter. The Uniform Protocol brings another dimension, as it relates only to specific crime categories and only as these relate to court processes.

Incoherence also arises out of the existence of three sets of service standards. The standards proposed by the Uniform Protocol seek to address very specific crime categories i.e. sexual offences and domestic violence, and its provisions overlap to some degree with the more general standards articulated in relation to the Charter, as well as those that relate to the VEP (Padayachee 2006). These standards differ significantly in terms of which service providers they intend to regulate, as well how they seek to standardise services (discussed in more detail later).

Overall, on the most superficial level, the associations between these documents are difficult to discern, and there has been little effort on the part of government service to expand on the nature of their relationship. The lack of coherence and clarity in this regard is particularly important in relation to implementation. Given that these policy documents have different objectives and targets for action (discussed in more detail later), there is the danger that they will take departments on three different implementation paths

rather than engaging in one focused programme to provide comprehensive services to victims.

Another result of this lack of alignment is that there is no clear progression of the three sets of issues that policy has sought to address i.e. the rights of victims, the services that emerge from these rights, and the standards at which these services need to be delivered. While all three issues have been addressed, this has been done in ways that have created omissions and duplications, and that are likely to cause confusion among both service providers and users of services.

It has been noted that the alignment of the priorities of the different government departments has been a challenge up to now (Lawrence and Jacobs 2006). It may be argued that the weaknesses of inter-departmental cooperation are reflected in the mix of policy documents, programmes and standards that exist; and that this proliferation of different processes, led by different departments, will only serve to further frustrate efforts at improving service delivery.

The lack of a common theory and rationale for victim policy

It may be noted from the discussion in Chapter 3 that the policy documents under review expound no common and clearly articulated theory and rationale for the provision of services to crime victims, or the value of these services for society. Crime prevention, criminal justice efficiency, human rights obligations and restorative justice have all emerged in different documents and in different permutations as the rationale for the existence of different policies.

While all these may indeed be legitimate sources for policy provisions, the problem once again relates to the need for consistency across policies that target the same group, and concerns once again arise relating to implementation. Civil society commentators argue that central to the current weaknesses in service provision is that many government service providers at ground level do not perceive the purpose and intent of policy, nor have they 'bought in' to the need for these services (Holtmann 2006; Padayachee 2006).

If policy is to function as the primary vehicle for communicating expectations to service providers, then it needs to offer a clear rationale for its existence,

provide a clear exposition of the problem it seeks to address and provide clear direction relating to implementation, monitoring and evaluation. This is not achievable when this inconsistency exists.

It has also been argued that there is a lack of understanding among policy makers as to the value of victim empowerment in relation to such objectives as crime prevention, as there seems to be the assumption that the crime problem will be resolved through the criminal justice system. This has resulted in the failure to invest adequately in victim empowerment, and therefore the failure to take advantage of the vast opportunities that victim empowerment may offer for crime prevention and reduction (Holtmann 2006).

There is no question that, at least in theory, that victim policy has the potential to prevent crime, to serve a human rights agenda, to increase the efficiency of the criminal justice system and to offer restorative justice outcomes for victims and offenders. However, the failure to provide clarity with regard to the overall rationale and purpose of victim policy may weaken the possibility of any of these becoming a reality.

The extent to which policy responds to victims' needs

There was little disagreement among the respondents to this study as to the value of the existing policy documents. The advent of victim policy in South Africa was seen as an important development, especially as these documents are intended to commit government to certain actions in response to crime victimisation (Padayachee 2006). The general opinion of civil society respondents was that the broad brush strokes of policy do reflect what is generally required in terms of provisioning for victims (Bower 2006; Holtmann 2006; Padayachee 2006). However, it is with regard to the detail of the policies under review that questions may be raised about the ultimate value of these documents in responding to the needs of victims.

As noted earlier, the dominant approach relating to serving victims of crime argues that responses need to be based on the needs of victims. The discussion that follows explores the extent to which the policy instruments under review offer the potential for responding to the needs of victims as described in Chapter 2 above.

The Victims' Charter and Minimum Standards

Central to the problems relating to the Victim's Charter and its accompanying minimum standards is the uncertainty of its status and therefore the

legitimacy of the rights it seeks to confer (discussed earlier). The failure of the Victim's Charter to provide for all crime victims (in favour of those that seek to engage in the criminal justice process) also renders it a relatively weak instrument for responding to the needs of victims. This is particularly problematic in the light of national and international trends relating to crime reporting which indicate that only a fraction of victims report crime (refer to the discussion in Chapter 2). In effect, crime victims that access services or support either through the health and welfare systems, or through the range of civil society service providers, are offered no guarantees of services. The requirement that crime victims engage in the criminal justice system in order to gain access to the 'rights' conferred by the Charter may in fact be more damaging to victims.

The Victims' Charter recognises six central 'rights' of victims. These rights are consonant with the primary international instrument on crime victims, the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. However, it is in the detail of how these rights are defined, limited and qualified that the many weaknesses of the Charter emerge. These problems are illustrated in the following examples:

- The right to protection: In relation to the right to protection, the Charter states boldly that crime victims have a right 'to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse' (Department of Justice and Constitutional Development 2004a:3). The Charter suggests three ways in which this could be done, one of which is that witnesses may apply to be placed in the witness protection programme, which will be happen if certain conditions are complied with.

Moran (2004) argues that the promotion of the Witness Protection Programme as a means of protecting victims is unrealistic given that this programme seems to be used only in relation to very serious matters, is extremely expensive, and provides limited protection and only until the end of the trial. The limitations of this programme, especially in terms of the protection that it may offer to crime victims (who are witnesses) are obvious when the current capacity and functioning of the Witness Protection Unit (WPU) is examined. The WPU has very limited resources, with a staff of 118, 84 of whom are police officers and a further 34 who are employed by the NPA (National Prosecuting Authority 2005b). In 2004/05, the WPU protected 499 people, who were involved in 329 court cases over that period. Most tellingly, 80% of the witnesses in protection were there in relation to organised crime

cases, and become witnesses for the prosecution (National Prosecuting Authority 2005b). Given these conditions, it is clear that this programme offers only very weak protection to the vast majority of crime victims who may feel threatened.

Also on the question of protection, the Charter is silent on the broader and more difficult question of protecting victims when they return to their communities. The principle of protecting victims beyond just the criminal justice process is well established in international practice, and is accepted by the VEP, which makes provision for such services as shelters, which may aid in the protection of victims in their communities. The absence of this kind of provision from the Charter reduces its ability to serve the broader needs of victims.

- The right to assistance: This right is explained in the Charter in an awkward and unhelpful way, stating that the crime victim has the 'right to request assistance...' (Department of Justice and Constitutional Development 2004a:3). Essentially this is a restatement of the right to free speech as all citizens have the right to make requests for just about anything. The focus of this provision should be the right of access to services, and it is here that the Charter is particularly weak. The Charter states that victims have the right to request assistance, 'and, where relevant, have access to available social, health and counselling services, as well as legal assistance which is responsive to your needs'. No explanation is offered as to how 'relevance' will be decided. Most importantly, the Charter deliberately refers to access to 'available' services. This word alone significantly weakens the value of the Victims' Charter as a whole, given that the right of access to services applies only when services are available, thereby creating no obligation on the state to make services accessible. A similar qualification relating to the availability of the service is made in relation to specialised courts in the case of sexual offences, domestic violence and maintenance.
- The right to offer information: The Charter makes provision for the right of a crime victim to provide information at a parole board hearing. The Charter states that this may be done through making a written application to the chairperson of the parole board to attend the hearing and make a written submission. This right is specifically also provided for in legislation, where the Judicial Matters Second Amendment Act (which amends the Criminal Procedure Act), provides for the right of a complainant to make representation in relation to matters relating to an offender being placed on parole, on day parole, or under correctional

supervision. Here, the complainant is understood to include both crime victims as well as the families of victims (in the case of murder). It should be noted that the focus of this provision is on serious offences and not all types of crime (Muntingh 2005).

It has been noted, however, that with regard to the right to offer information discussed above, due to the recent release of DCS Directives Regarding Complainant Participation in Correctional Supervision and Parole Boards, giving effect to this right is procedurally very difficult.

While in terms of the Act, all that was required of the complainant was to inform the Commissioner of Correctional Services of his/her interest in making representation, as well as contact information, the new DCS directives place the onus on the complainant to inform the relevant parole board of his/her interest in making representation, as well as to find out about meetings of the parole board. In addition, the complainant is required to inform the Chairperson of the parole board of a range of information including the name of the offender, the offence committed, the case number, the date of conviction, the name of the court where the conviction took place, and the physical and postal address of the complainant (Muntingh 2005). Muntingh (2005) argues that these Directives:

- Place an unfair burden on the complainant (given the range of information that s/he would ordinarily have at their disposal)
- Do not facilitate the objectives of the legislation
- Are, overall, not in keeping with the intentions of the Victims' Charter which seeks to offer a service to victims that is sensitive to their needs

Generally, the approach and language of the Charter has been framed in such a way that the onus is placed on victims to make requests for services before these will be provided. This effectively places the responsibility for accessing services on victims rather than on the state to offer services to victims. This is severely problematic given that many victims may not be in a position to articulate their needs due to a range of factors, including their age (e.g. child victims) and his/her mental state.

The overall orientation of the Victims' Charter is also reactive. It defines the role of the state as only coming into play after the crime has occurred, and then only if the victim chooses to engage in the criminal justice process. Effectively, this ignores any responsibility that the state may have in relation

to the prevention of crime, and the rights and needs of citizens in this regard. This differs substantially from the broader orientation of the VEP, which is addressed below.

Also concerning in relation to the Victims' Charter is the absence of a framework for implementation. Several years ago, Moran (2004) noted that the overall responsibility for leading the implementation of the Victims' Charter lay with the Department of Justice and Constitutional Development. At the time, he noted that this Department was planning a public awareness campaign, including a plain language draft of the Charter, publications, and a media campaign. Since then, however, there have been no signs of these coming to fruition. More recent information indicates that government intends to develop a five-year implementation plan for the Charter, which was being developed at the time of writing (Nongogo 2006).

Overall, concerns relating to the Charter have been well summarised in the words of Jody Kollapen, the Chairperson of the South Africa Human Rights Commission:

The Charter is less a charter of rights (as understood by lawyers and human rights activists) than a charter of service standards. It contains a number of vague promises of improved service delivery without really detailing how to access these or what to do if they are not provided (Moran 2004).

The Victim Empowerment Programme (VEP)

The VEP is primarily a framework for service provision, but it also provides for a range of other activities to support service delivery, such as training, monitoring and evaluation. It expounds the view that 'the disempowered victim has a diversity of needs, and in order to enable him/her to recover from the exposure to crime, such needs must be met through a multidisciplinary approach' (Department of Social Development 2004).

This is commendable in that it reflects a broad needs focused philosophy in relation to the provision of services to victims. Furthermore, given the origins of the VEP, it is clear that it is firmly located within a crime prevention framework and, as such, concerns itself with both with the immediate needs of victims as well as their broader need to feel safer in their homes and neighbourhoods.

While the VEP expounds a needs focused philosophy, it does not specifically identify the needs of crime victims that it seeks to respond to. This is an unfortunate omission, as providing a clear statement on this issue would significantly strengthen the VEP's needs based approach. However, what the VEP policy document does identify are:

- Target groups for services
- The intervention settings where services to victims should be provided
- The specific roles that should be played by the different government departments in responding to the needs of crime victims

These roles and activities identified for government departments include the provision of information (the Department of Health and the SAPS), the provision of services (Departments of Social Development and Health), the provision of prevention services (the Department of Education), etc.

The primary weaknesses of the VEP lie in its current lack of status as government policy, notwithstanding more than seven years of effort by both government departments and civil society role players to establish the policy (Padayachee 2006; Holtmann 2006; Pretorius and Green-Thompson 2006), as well as the problems in implementation (discussed later). Furthermore, when it is finalised (which is planned for the current three-year cycle of the VEP, which runs from 2006 to 2008), it will not enjoy any special status.

In evaluating the VEP's progress up to now a number of key issues have been raised. There was general agreement from respondents in this study, which is supported by documented sources, that there are patches of excellence and creativity in service provision across the country, but that there is no real certainty for crime victims as to the nature and quality of service that will be received (Padayachee 2006; Holtmann 2006; Van Zyl 2005).

This indicates that Camerer's (1997) observation a decade ago that the programme provides 'a limited and patchy service to specific types of victims' may generally still be true. She also noted then that there was great fragmentation in services to victims and that there was a heavy reliance on donor funding (Camerer 1997). These comments still apply, although it may be said that the numbers of victims that are being served may have increased.

A range of strengths and weaknesses have been noted when considering the effectiveness of the VEP. These are examined in further detail later. Overall, notwithstanding the many problems that have been experienced by the VEP, it remains, in substance, South Africa's most comprehensive policy effort relating to crime victims. In particular, the VEP makes the important contribution of setting out the responsibilities of the different government departments in relation to the provision of services to victims.

Notwithstanding the long delay in the finalisation of the VEP, civil society commentators commended the national Department of Social Development for its success in keeping victim issues on the agenda. This has been achieved under difficult circumstances that have included the lack of dedicated funding and adequate personnel (Progetti 2005).

At the time of writing, expectations of the VEP were high given the potential for substantial donor funding from the European Union for the period 2006 to 2008. This is important because the draft funding agreement emphasises delivery in areas considered to have been weak previously. The donor agreement was also intended to provide funding opportunities to civil society organisations through the NGO Themba Lesizwe. However, during 2006, no progress was made in terms of finalising this funding agreement between the EU and the Department of Social Development.

Ultimately, the question is whether, in its new and improved version, the VEP will be able to deliver the key services that are required of it. There is no question that efforts have been made to build a programme that can achieve its objectives. The programme contains all the elements that are critical to success in that it makes provision for governance and management, funding, training and human resource development, monitoring and evaluation, partnership building, and marketing. However, many challenges remain. These are in the domain of implementation and are discussed in further detail below. The VEP has also recently undergone an extensive costing process, but it remains to be seen how this will serve to support the implementation of the programme.

Uniform Protocol for Victim Management (UPVM)

This policy most clearly defines the victims for whom its provisions are intended (i.e. victims of domestic violence and sexual offences), which are a sub-group of those targeted by the Victims' Charter and the VEP. The document articulates a set of standards for the provision of services to this

group of victims, and notes that these services apply to all service providers that operate in the criminal justice system, and not just to those in the employ of the government (National Prosecuting Authority 2005a).

Although the Victims' Charter is also accompanied by a set of minimum standards, these relate only to the services provided to victims in the criminal justice system, and only to services provided by government agencies. The VEP has also developed a set of minimum standards, but these are generic and apply to all victims of crime and to all service providers working with those victims. In addition, the VEP minimum standards provide for standards relating to prevention and early intervention, and are therefore far broader than those contemplated by the UPVM and the Victims' Charter.

The primary concern here is the existence of three sets of minimum standards, some applying to certain victims and service providers, and others applying to all victims and all service providers. This could create great confusion among those who work directly with victims on a daily basis. It seems, once again, that parallel policy processes involving the same government departments have been undertaken and have resulted in different products. In fact, the UPVM document notes that its development was motivated by the need to address a gap in the Victims' Charter, and develop standards for civil society service providers (National Prosecuting Authority 2005a). This approach – of developing new policy documents to make up for the weaknesses of others – may not be the best one given the confusion that may result at ground level.

Overall, the primary question that must be asked regarding all three instruments under review, individually and collectively, is what guarantees they provide in relation to meeting the needs of crime victims? At this stage, guarantees are very limited and to a great extent, quite unclear to potential users of services. While the Victims' Charter purports to confer rights, it has been noted that these rights are in themselves questionable, and would ultimately only apply to those victims that chose to engage with the criminal justice system. Also, these are subject to the range of qualifications and limitations discussed earlier, which weaken any guarantees that they may offer victims.

Legislating for the rights of victims

While South Africa has a range of policy relating to crime victims, a question that has been raised is whether legislation is also required. More generally,

Fattah (undated) has asked whether victims want and need formal legal rights, or whether they require specific social and humanitarian considerations. Fattah (undated) states that victim rights advocates in the international sphere have focused on ensuring the legal rights of victims, to the detriment of what may be more important to the victim – that which relates to their actual treatment when they have been victimised.

Legislation is often favoured as it is believed that this would offer greater guarantees for victims of crime. While this is not in dispute, it is also useful to consider the experiences of other countries in this regard. For example, recent research in the United States assessing the value of greater or lesser legal protection to victims across the various states found that victims fared better in states that offered higher rates of legal protection, but that such legal protection was no guarantee of services to victims (Kilpatrick et al 1998).

The National Prosecuting Authority has expressed the view that relying on policy may not be enough, and that South Africa should be working towards the development of legislation relating to the rights of victims (Lawrence and Jacobs 2006). The NPA asserts that legislation is needed to provide for the standardisation and accreditation of services to victims – an idea that extends from the work of the NPA on the Uniform Protocol (discussed below).

The NPA also believes that this should be done through a national structure such as a victim's council, and that legislation should be developed to specifically make provision for such a structure. Initially, the proposed victim's council should focus on all of the service delivery needs to victims and could also provide a means for integrating all the policy provisions (articulated in the range of documents discussed in this monograph). The NPA sees the UPVM as the first step in this process, and hopes to take this further by conducting consultations relating to the establishment of the victim's council (Lawrence and Jacobs 2006).

Setting standards for service delivery

The establishment of standards is motivated by an interest in ensuring the quality of services. This is an important development in relation to victim services as it indicates that policy intentions have progressed beyond just an interest in making services accessible.

It may be useful, at this juncture, to examine what is required of standards. Muntingh and Ehlers (2005) describe minimum standards as the 'level

of performance below which we cannot drop, as this will hold a direct and severe risk for the recipient of the intervention... and compromise the intended outcome of the intervention'. They describe the purpose of standards as being to manage risks relating to the protection of rights, and to ensure accountability for the provision of services. The authors further state that standards need to be objective, transparent and verifiable. This is described by others as 'observable and measurable'. Muntingh and Ehlers (2005) also emphasise that minimum standards need to be tested, and that both their desirability and feasibility need to be examined.

In assessing the three sets of minimum standards under review, it is immediately noteworthy that these standards are expressed in different ways and are not directly comparable to each other. The minimum standards that accompany the Victims' Charter are expressed as activities (e.g. 'the crime will be investigated', 'they (the police) will respond to your report as quickly as they can'). The minimum standards articulated in the UPVM are also expressed as activities (e.g. 'service providers shall at all times take the therapeutic needs of the victims into consideration'). In contrast, the VEP's minimum standards are stated as outcomes. The VEP's standards have also been developed in such a way that they articulate requirements in three areas: management actions, outcomes for victims, and programme practices.

In assessing the minimum standards in the three documents in terms of their 'observability' and 'measurability', it is immediately apparent that many of the standards that have been established, especially those in support of the Victims' Charter, are very weak in this regard. Examples include:

- They (the police) will respond to your report as quickly as they can
- Measures will be taken to minimise any inconvenience to you.

Minimum standards for service delivery are a critical piece of the broad framework that needs to be in place for victim policy to be effective. However, several conditions are necessary:

- In order to avoid confusion, one set of standards needs to apply to the activities of each service practitioner.
- Standards need to articulate service outcomes (i.e. state what result is expected of the service) rather than describe the service to be provided.

- Standards need to be observable and measurable if they are to be used for the purposes of accountability.
- It is necessary for standards to undergo a process of testing before they are finalised.

Based on the discussion above, it may be noted that the standards documents under review do not all comply with these ideas. The testimony of respondents also indicates that there has been little testing of any of the standards that have been established (Padayachee 2006; Pretorius and Green-Thompson 2006). It is clear that there is some way to go in this regard if standard-setting is to assist in assuring the quality of services to victims.

The targeting and specialisation of victim services

An unfortunate requirement of victim services is that they need to be both general and specific. On the one hand services need to meet the generalised needs of all crime victims; on the other they also need to make provision for the additional specialised needs that may relate to some victims. It has been noted by respondents that efforts to develop broader victim related policy may result in policy being not specific enough for the needs of some victims, such as children (Bower 2006).

The specialisation of services presents a particular challenge. The rhetoric relating to victims in South Africa has historically focused on women and children (Department of Social Development 2005). The VEP has broadened the range of groups in need of specific attention and notes violence against women, child abuse, domestic violence, victims of sexual assault, the abuse of older persons, and the abuse of people with disabilities as priority areas (Department of Social Development 2004). An important group missing from this list is the youth.

Young people are often the targets of disproportionately high levels of victimisation. A recent study on youth victimisation in South Africa found that 41,5 per cent of children and youth between the ages of 12 and 22 years had been victims of crime between September 2004 and September 2005 (Leoschut and Burton 2006). Compared with the findings of the National Victims of Crime Survey conducted by the Institute for Security Studies (Burton et al 2004), the findings indicate that young people are twice as likely to be victimised as adults. The youth victimisation survey also found

that young males are more at risk of becoming victims of crime than young females (Leoschut and Burton 2006).

These incredibly high levels of victimisation of children and youth indicate the need for better targeting of victim services to this group, as well as increased investment in crime prevention in relation to this group. Holtmann (2006) emphasises the need to focus on boys and men that have been victimised, noting that such services are critical to intervening in the cycle of violence given that victims who do not receive support services may be at a higher risk of becoming perpetrators.

Many other groups may be identified as requiring specialised services or at least special consideration. Some groups are at a direct disadvantage purely due to their identity and specific care needs to be taken to ensure their access to services. Such groups may warrant specific attention due to the disadvantage created by discriminatory attitudes and prejudices that are prevalent in society (including among those who are responsible for the provision of assistance to victims). These groups include women, foreigners, migrants, sex workers, gay and lesbian victims, male victims of rape, etc. Tourists are another example of a group who may require a specialised response, given that they may have limited time in the country and not be able to engage in the usual justice processes due to these time constraints.

Overall, the targeting and specialisation of victim services has significant implications, not only in terms of the consequences for individuals, but also in relation to crime prevention. It is important to note that there are also serious implications for service provision given that specialised services and different target groups require more highly trained human resources that are able to offer a diversity of skills.

Victims' rights and restorative justice

Restorative justice has been noted in the policies of several government departments including the Department of Correctional Services and the Department of Social Development. In the foreword to the Victims' Charter, the Minister of Justice and Constitutional Development notes that 'in keeping with the cultivation of a human rights culture, the focus has gradually shifted from an adversarial and retributive criminal justice system to that of restorative justice' (Department of Justice and Constitutional Development 2004a).

One of central tenets upon which restorative justice is based (and a notion that is specifically noted in the foreword to the Victims' Charter) is the idea that conflicts exist between people and that solutions are best found through parties engaging directly with each other towards the resolution of these conflicts. This emphasis is important given Fattah's (undated) view that the problems currently faced by crime victims are precisely due to historical developments that have defined crime as a conflict between the offender and society, rather than as a conflict between offender and victim.

The unfortunate reality of restorative justice practice in South Africa however, is that notwithstanding its inclusion in government policy, such practices have remained overwhelmingly offender focused and have yet to demonstrate their value for victims (Skelton 2006). Restorative justice approaches such as victim-offender mediation and family group conferencing have received far greater attention in relation to services that are provided in the child justice system, and their value for victims on a broader scale has yet to be demonstrated.

Skelton (2006) notes that there is great potential within the values and practices of restorative justice for serving the needs of crime victims, but that this potential is not recognised by current policies and practices. She states that restorative justice may offer victims many advantages, some of which may not be possible through the traditional criminal justice process. These include:

- The opportunity for the victim to give expression to their thoughts and feelings, and to ask questions to the offender
- The opportunity for the victim to obtain validation for his/her responses to the crime event
- The opportunity for victims to reach some resolution of their needs, even when an offender is not arrested (which cannot happen in the traditional criminal justice system)

Skelton (2006) also argues that restorative justice processes, when practiced with appropriate skill, have the potential to impact on the longer term healing of victims. This is something that may not be possible in the context of the short term support interventions provided currently through victim support interventions.

While restorative justice interventions may not be suitable for all kinds of offences and all situations, Skelton (2006) argues that there is much international evidence to indicate that such interventions are valuable in a far broader range of victimisation that merely property offences, which are the current focus in South Africa.

Restorative justice has, up to now, been the province of civil society organisations and its expansion and development within the system has not been championed by government to any great degree, notwithstanding policy promises. The mainstreaming of restorative justice within criminal justice practice is essential to it serving the needs of victims. Achieving this is, however, not within the ambit of civil society organisations.

Skelton (2006) states that for restorative justice to develop in South Africa, its promotion must be led by government in partnership with experienced civil society organisations. She suggests that an appropriate means of doing this, with the aim of extending these practices to better reach and serve crime victims, is for government to establish a national pilot project offering family group conferences or victim-offender mediation as options when victims report crimes. This project can then be used to evaluate the value of such services to victims in a far more meaningful way.

It may be that great opportunities for serving the needs of crime victims are being lost by not exploring the potential offered by restorative justice approaches. This cannot be known unless direct investment is made in implementing such programmes in the context of victim support initiatives. Skelton (2006) cautions, however, that restorative justice programmes should not be implemented without appropriate skills being transferred to the relevant personnel, and in the absence of clear standards for service provision.

Victimisation by the state and in state custody

Victimisation by the state and in the custody of the state has received little attention in the victim policies under review. Yet it is accepted that those in the custody of the state, particularly when they are deprived of their liberty (such as arrestees held in police custody, convicted offenders serving sentences in prisons, those held in mental health institutions, and children in institutions such as Places of Safety, Reform Schools, Schools of Industry, etc.) are particularly vulnerable to victimisation from staff and fellow detainees.

This vulnerability has motivated the development of instruments such as the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 1984) which was ratified by South Africa in 1998, as well as the 2002 Optional Protocol to this Convention. Other research has noted that victimisation by government officials under these circumstances is incredibly difficult to detect and report, as victims are often afraid for the consequences of such complaints (Muntingh forthcoming). It is also true that complaints procedures may be absent, or unknown to those who are victimised.

Victimisation may also be an issue of concern in more open settings such as schools and hospitals. Both Human Rights Watch (2001) and the Centre for Justice and Crime Prevention (Leoschut and Burton 2006) have recorded significant problems of abuse and victimisation relating to children in schools, and have particularly noted the involvement of teachers in this regard.

These conditions require specific steps be taken by the state to ensure the safety of those in its care and custody, and systems need to be created to ensure that those who are victimised under these conditions have access to complaints mechanisms as well as victim empowerment services.

E-crime: The new frontier

Technological developments in digital communications, in terms of internet and mobile telephone communications, are creating an entirely new world of human interaction. This brings with it new ways in which crime may be committed, as well as providing avenues for more traditional offences to be conducted in new and enhanced ways. 'E-Crime' also creates victims and has created the need for a different understanding about how to reach these victims and how to respond to their needs.³

While there has been some concern over the issue of child pornography, the broader field of 'e-victimisation' has yet to be identified and addressed in debates relating to victim policy. As this new world of technology opens up communications at a rapid rate, it is necessary to grapple with the new crimes and the new ways in which victimisation may occur. From the perspective of victim policy, it is necessary to anticipate the ways in which policy, services and standards should respond.

Challenges related to the implementation of policy

The government-civil society 'partnership' for service delivery

Given that all three of the policy documents under review require the provision of services that are outside the ambit and capacity of government service providers, there is no question that services to victims of crime will be substantially dependent on civil society organisations. Holtmann (2003) has noted in the past that 'service delivery is largely dependent on non-governmental, volunteer and community-based initiatives', and the policies under review have been constructed to extend this approach into the future.

The Victims' Charter does not address this dependence, notwithstanding making provision for 'the right to assistance'. The VEP recognises, in a far more direct fashion, the nature of support services that need to be provided and the extensive role that is expected of civil society. In this context, it should be noted that civil society organisations are far more experienced than government agencies in the development and delivery of services to crime victims. Many services have been researched and developed by civil society organisations, and in some cases, these have been taken to a high level of sophistication and include service and management protocols, minimum standards and monitoring and evaluation systems.

Much of the rhetoric in the VEP and the UPVM either explicitly or implicitly refers to a 'partnership' for service delivery between government and civil society. While it is clear that such a partnership would be essential to deliver the kinds of services contemplated in the policies under review, there is much scepticism about how much of a partnership can be said to exist.

The relationship between government and civil society is essentially an unequal one, and one which civil society actors have noted is often fraught with difficulty (Padayachee 2006; Progetti 2005). Some of the concerns relate to the fact that while government agencies are aware of the need to engage the assistance, support and cooperation of civil society organisations, government officials make few efforts to lead and manage this process (Padayachee 2006). Furthermore, the funding of services remains a point of contention, with very limited government funding being made available to civil society organisations for the provision of the required services.

Given the dependence of victim services of this 'partnership', policy efforts must be mindful of the conditions under which civil society organisations operate. These organisations operate under very uncertain funding conditions, having to rely primarily on donors and the public for their survival. Many carry enormous caseloads, and struggle to obtain the resources to ensure that skilled staff is retained, and properly capacitated to deliver the specialised services that are required (Bower 2006).

On the other hand, many society organisations have pioneered several of the services that are required and may find it difficult to submit to standards and conditions established by the government, especially when they believe that they are vastly more experienced than government role players in the provision of services, and when they feel that they have not been sufficiently consulted by government (Padayachee 2006).

Research conducted by European Union (EU) in relation to the VEP found that civil society organisations reported their relationships with government to be poor, with the quality of these relationships depending on the government department and individual government officials concerned. The EU report also pointed to the lack of a shared understanding between government and civil society regarding the concept of victim empowerment (Progetti 2005). This has also been noted by civil society commentators consulted for this study (Holtmann 2006; Padayachee 2006).

While this issue may seem to only be related to the implementation of policy, it should also be seen as a comment on the substance of policy. Here, policy has been constructed to be significantly dependent on civil society, and where this is so, it follows that proactive efforts need to be made by government to cultivate the cooperation of those that may be central to the provision of the required services. Furthermore, it is also incumbent upon government under these circumstances to develop a proactive strategy around how the needs of crime victims will be responded to, and to plan for the role that it expects each player to serve. This also places the onus on the state to act as the primary broker of the required relationships; and to act as the primary manager and overseer of the content and quality of the partnership.

What seems to be missing is an organised and trusted means for structuring the interaction between government and civil society organisations. The building of partnerships for service delivery should be based on concrete information, or at least educated estimates as to the quantity of the different

services required in different areas. This should inform efforts to ensure that the right kinds of services are available where they are most required.

At this stage, it does not seem as if there is the capacity for these kinds of projections, nor for the proactive relationship-building that will be required to secure the requisite services. While the Victim Empowerment Programme recognises this to some extent, and plans for structures at provincial and local levels where this will be addressed, it is unclear as to how these efforts will interface with the implementation of the Victims' Charter and the NPA's plans relating to the UPVM and the Victim Council.

More generally, the relationship between government agencies and civil society organisations in the provision of services is an issue that cannot be ignored for much longer. There is no question that crime victims will suffer if government agencies develop programmes without the benefit of the substantial expertise and experience of civil society organisations.

Funding services to victims

As with other services that rely on civil society organisations, the funding of victim services requires far greater attention according to civil society commentators (Bower 2006; Padayachee 2006). While many of the services that should be provided to victims (such as the provision of information) may be provided by criminal justice and other government personnel at no additional cost to the system, the critical social support services that are primarily provided by civil society need to be funded if victim policy is to be successfully implemented.

At the outset, funding issues need to be placed in context. Services to victims are but one of a range of services that are provided by civil society organisations in support of government policy. Other areas of service provision that are substantially supported by civil society include: prevention and early intervention relating to child abuse and neglect, diversion and alternative sentencing programmes for child and adult offenders, crime prevention, substance abuse treatment and prevention, the care of older people, etc.

While provincial Social Development departments 'subsidise' many of these services, supposedly based on the guidelines provided in the Financial Awards Policy (Department of Social Development undated), this system has

been noted to be problematic on a number of levels. Some of the problems noted are:

- The fact that overall budgets available for all these services are vastly inadequate, resulting in equally critical services having to compete with each other for funding.
- The systems for the management of financial transfers are weak.
- The subsidy system under funds civil society organisations in terms of the actual costs of services (Progetti 2005).

Furthermore, it may be noted that there are disparities across the provinces in terms of the funding available for the services provided by civil society organisations (Frank 2006). Civil society advocates have also noted that government subsidies to CSOs for particular services are also far below what it budgets for itself to deliver the same service. For example, the Gauteng Welfare, Social Service and Development Forum (2005) stated in 2005 that the Gauteng province provided R1 100 per child per month for a CSO-run children's home compared with around R6 000 per child per month provided for the same service in one of its own facilities.

It should be noted that, as yet, there have been limited efforts by the departments responsible for policing, justice and corrections to grapple with the issue of funding to civil society organisations.

In reviewing the state of victim services in civil society, an EU report emphasised that the primary concern was dwindling resources for the sector due to reduced donor funding and the weakness of local funding efforts such as the National Development Agency and the National Lottery. Funding was also reported to be a cause of some conflict and competition between civil society organisations (Progetti 2005).

Civil society respondents in this study also pointed to other concerning weaknesses in relation to funding. When donor funding is available, these funds often drive the agenda of CSOs in terms of what issues are prioritised. The result is that the nature of the services is dictated by external interests and priorities rather than locally defined needs (Bower 2006). Donor funding is also unrealistically premised on civil society organisations undertaking short term 'projects' – not recognising that the demand is for the provision of ongoing services, such as those that are required for the implementation of victim policy.

This scenario is certainly not conducive to CSOs developing and retaining a creative and critical edge to their contributions to South African society. Overall, the failure to establish a clear and coherent model for the funding of services to be provided by CSOs will spell disaster for crime victim policy, due to the significant role that these organisations play in service provision.

The current VEP programme for 2006 to 2008 seeks to address this in the interim by creating a means for donor funding to be made accessible to civil society organisations. This does not resolve the broader problem of how government intends to fund victim services in the future. This is even more of a concern in the context of the range of service delivery demands on very limited budgets available through the provincial Social Development departments.

Voluntarism: Victim policy's dependence on citizens

The provision of services to victims – while dependent on civil society organisations – is also significantly dependent on individuals. The backbone of civil society efforts in this sector resides not in paid employees, but in thousands of citizens who volunteer their time and skills. There are many ongoing debates about the advantages and disadvantages of voluntarism, and how best it should be managed, which are explored in greater detail elsewhere (Pretorius and Louw 2005).

Because South African victim policy has been constructed to rely on the goodwill of citizens, obligations are placed on the state (and by implication, its civil society partners) to actively manage the many issues that arise out of this situation. These include:

- Voluntary workers may come from disadvantaged communities, and policies for managing voluntarism need to respond to practical issues such as volunteers need for funds for transport.
- The careful selection of volunteers is necessary to ensure the safety and well-being of crime victims. For example, all those that have direct contact with children should be subject to checks in relation to the Child Protection Register (mandated by the Children's Bill).
- The training, monitoring and supervision of volunteers are essential, as this impacts on the nature and quality of services provided to victims.

It is likely that volunteers may also themselves have been the victims of crime and violence, and under such circumstances, it is incumbent on government and its partners to ensure that such people receive appropriate support, and are emotionally capable of delivering the required services.

- Volunteers also need to be considered in relation to skills development planning, in accordance with the broader government policies in this regard.
- Appropriate standards need to be developed with regard to the working conditions of volunteers to ensure that such conditions are respectful and non-exploitative. This is important given that the activities of volunteers are not protected through labour or other legislation.

Government's obligation to respond to the issues relating to voluntarism has received little attention from policy processes thus far. It is only the Victim Empowerment Programme that actively addresses this, defining one of its outputs as 'Effective and appropriate utilisation and management of volunteers in the VE (victim empowerment) sector' (Department of Social Development 2005).

Direct services to victims

A wide range of services are required in response to the wide range of needs that result from victimisation. These include: information, medico-legal services, counselling and therapeutic services, witness preparation and witness support services, shelters, and crime prevention services in the community. These services should respond to the needs of a diverse group of people in terms of economic background, age, mental and physical ability, gender, etc.

Specifically in the context of the vulnerability of the people involved, it is incumbent on government to ensure that all measures are taken to assure the quality of services. This includes ensuring that the interface between service provider and victim has been regulated to guarantee that:

- Service providers are adequately trained
- The services rendered are evidence based and proven to achieve the desired impact

- Staff are both monitored and supported in the delivery of services
- At the most superficial level, services do not harm those they intend to help.

It is also incumbent on government to increase access to services by identifying underserved areas, incentivising service providers to enter these areas, and ensuring that there is no duplication of services.

At the current time, while increasing access to service delivery has seemed to be a focus, the issue of the quality of services has remained secondary. Notwithstanding the requirement to regulate and strengthen services, it has become clear that government agencies are by no means the specialists in many of the key victim services, yet there has been a strong reluctance to accept the specialised knowledge offered by civil society service providers. As work in this sector develops, the issue of quality of service, and how this should be ensured and regulated, will become an area of contention between government departments and civil society organisations if there is a failure by government to use the expertise of civil society role players.

Accountability: The role of civil society

While it is clear that a strong and vibrant civil society is an essential element of our democracy, the accountability role that must necessarily be played by civil society does not seem to be understood by many in government. The result is that civil society criticism is viewed with suspicion, with some in civil society being branded as problematic or troublesome. This notwithstanding, there is no question that civil society organisations should continue to play this role into the future (Pretorius and Green-Thompson 2006).

Civil society respondents in this study noted that CSOs have had no strategy in place to deal with the issue of accountability in work relating to victimisation and often simply react to government rather than follow an independent programme of action (Holtmann 2006). While some sectors of civil society, such as those relating to children and women, may be more organised than others, it has been noted that the absence of a forum or means for the debating issues relating to victimisation as a whole may limit the ability of civil society to play its accountability role effectively (Holtmann 2006).

While civil society seeks to ensure government accountability, NGOs and CBOs also fill vital gaps in the provision of services. As a result, difficulties arise when civil society organisations act as both government partners as well as watchdogs over government activities, and the joint exercise of these roles can create confusion. The challenge for civil society in this sector is to continue to balance these two roles in proactive and goal directed ways. The independent monitoring of the implementation of policy has provided great dividends in the past (e.g. in relation to the monitoring of the implementation of the Domestic Violence Act) (Artz and Smythe 2005), and this needs to be a focus of civil society efforts in future.

In the area of service provision, civil society organisations are uniquely placed to act in the role of innovator regarding new and improved services. Similarly CSOs are in a position to highlight new concerns and identify problems that require further attention. Some of these problems are:

- Developing recommendations relating to rural service delivery.
- Piloting strategies for dealing with young males as victims of crime.
- Addressing victimisation relating to cybercrime.
- Critically evaluating the need for legislation in relation to crime victimisation (Holtmann 2006).

Overall, civil society needs to 'ensure its own relevance' through offering both comment and action that enhances the cause of needs-based services to crime victims (Holtmann 2006). This cannot be done in an ad hoc manner, but requires a strategic and organised approach. Civil society must learn to reflect on its actions, and engage in processes to evaluate and revise its strategy and impact (Holtmann 2006).

Current weaknesses and strengths in the provision of services

It is difficult to differentiate the services provided to victims in terms of the different policy documents under review given the overlap that exists. It is also true that many of the services provided to victims by civil society organisations have historically been provided in the absence of a policy framework, and it may be inaccurate to suggest that these are necessarily being undertaken in the context of a programme such as the VEP. The discussion below provides a brief overview of the state of service delivery,

noting some of the primary strengths and weaknesses that have been identified up to now.

Weaknesses in service provision

Overall, respondents to this study and documented sources are in agreement that there are patches of good service provision to victims, but that these have been the result of specific efforts by particular individuals in government or civil society organisations (Holtmann 2006; Padayachee 2006; Van Zyl 2003). Other weaknesses in relation to current implementation are noted below:

- Respondents were in agreement that one of the primary weaknesses in implementation was the absence of a managed process of inter-sectoral cooperation, both between government departments and between government and civil society organisations. This current arrangement was described as 'personality driven rather than systems driven' (Holtmann 2006; Padayachee 2006; Bower 2006; Pretorius and Green-Thompson 2006). The lack of clarity about the roles of different government departments was believed to be complicated by the fact that some departments are national functions (e.g. policing), while others are provincial functions (e.g. health and social development). As a result there is no 'seamless' service delivery (Padayachee 2006).
- Respondents noted that the implementation of victim policy in South Africa lacks visionary leadership, political will and a political champion to drive the issue (Padayachee 2006; Pretorius and Green-Thompson 2006).
- As has been noted earlier in this monograph, respondents were of the opinion that many of those who provide services at ground level have a weak understanding of victim policy and its intentions (Padayachee 2006; Bower 2006). For example, one respondent noted that most government service providers have a limited idea of the concept of children as 'rightsholders' (Bower 2006).
- Management is considered to be weak, and this has resulted in the failure to establish a clear implementation cycle that includes: the development of clear minimum standards in support of policy, the development of practical guidelines that emerge from minimum standards, the provision of ongoing (and not once-off) training, and the provision of ongoing supervision and support to service providers (Padayachee 2006;

Pretorius and Green-Thompson 2006). Some respondents commented that it will take more than management training to remedy this situation (Pretorius and Green-Thompson 2006).

- A shortage of some kinds of services (such as longer term, in depth counselling and therapy services) was noted (Bower 2006).
- The need for specialised services for specific groups, such as children, is dealt with in only very limited ways (Bower 2006).
- The funding of services continues to be a problem. This has been addressed in detail elsewhere in this monograph.
- Respondents noted that funds and energy are often expended in programme activities that have not been proven to have an impact (Holtmann 2006; Bower 2006). This absence of an evidence based approach to programme interventions results in weak programmes with limited impact (Bower 2006). The government's 16 Days of Activism programme was raised by respondents as an example of such programming (Bower 2006). Such public awareness strategies alone have limited impact, and need to be supported, sustained and deepened through ongoing programme interventions (Bower 2006; Pretorius and Green-Thompson 2006).
- Limitations relating to physical infrastructure (ranging from phones and photocopiers to shelters) particularly in the rural areas (Progetti 2005; Holtmann 2006).
- A European Union report noted the shortage of appropriately skilled human resources as having an impact on services to victims (Progetti 2005). Several respondents supported this finding (Bower 2006; Holtmann 2006; Padayachee 2006; Pretorius and Green-Thompson 2006).
- There are no systems and procedures for the monitoring and evaluation of the services that are being provided (Padayachee 2006; Pretorius and Green-Thompson 2006).
- Citizens' awareness of their rights remains limited, and few efforts are being made to provide this information to crime victims (Padayachee 2006).

- There is limited investment in crime prevention strategies (Bower 2006; Padayachee 2006; Pretorius and Green-Thompson 2006).
- There is not enough effort directed at understanding certain substantive issues, i.e. poverty as this relates to vulnerability and victimisation (Bower 2006), the cycle of violence (Holtmann 2006; Pretorius and Green-Thompson 2006), dealing with men as victims and perpetrators (Pretorius and Green-Thompson 2006), etc.
- There has been no attempt to formalise the conditions and standards of services provided by volunteers (Padayachee 2006).
- Services for the protection of witnesses are limited (Padayachee 2006).
- There has been limited investment in changing the attitudes, mindsets and behaviour of service providers that interact directly with victims (Padayachee 2006).

Strengths in service provision

Respondents interviewed for this study noted the following strengths in current service provision:

- The development of the various policies is a positive and important step, as they provide some framework for action (Padayachee 2006; Holtmann 2006).
- There are examples of good service delivery, and these represent an important achievement (Bower 2006; Holtmann 2006).
- Some units in government such as some of the Family Violence, Child Protection and Sexual Offence Units (FCS) in the police are doing good work, and their cooperation with civil society organisations results in a far better service (Bower 2006).
- Some training has been undertaken, but much more is needed (Padayachee 2006).
- There have been several efforts to develop standards for service delivery, including minimum standards for shelters for victims of domestic violence (Padayachee 2006; Bower 2006).

- The new VEP project cycle seeks to actively address some of the problems that were experienced previously.

Planning for implementation

At this stage, neither the Victims' Charter nor the VEP can demonstrate clear implementation plans that state time frames, activities and indicators. It has been noted that, in relation to the Victims' Charter, individual departments have been asked to develop plans for internal implementation.

The SAPS has clearly identified its set of responsibilities in terms of both the Charter and the VEP, and its document, Victim Empowerment Policy Framework and Guidelines, provides a guide for police stations as to how these responsibilities may be fulfilled.

The NPA has noted that the development of an implementation plan relating to the Victims' Charter has been difficult due to the fact that almost all of its activities may relate to victim issues. The NPA has therefore narrowed down its implementation plan to focus on three areas: training, developing a complaints mechanism for victims, and the monitoring and evaluation of service delivery. The Department of Social Development is responsible for the overall implementation of the VEP, and has developed a plan for its implementation from 2006 to 2008. Beyond these three departments, no information has been forthcoming as regards implementation plans.

As has been noted earlier, it is the responsibility of the Department of Justice and Constitutional Development to lead the implementation of the Victims' Charter. It was not possible, in the course of this research, to gather information from this Department in relation to the question of implementation, due to the unavailability of its staff.

The challenge of intersectoral cooperation

With regard to victim policy, significant questions remain as to the effectiveness of interdepartmental cooperation. At the national level, this is evidenced in the inconsistency of victim policy provisions (as discussed above), as well as the duplication of efforts in relation to standards-setting. There is no doubt that matching the efforts of the different departments at all three levels of government is a significant task.

Government departments are currently able to involve each other and civil society organisations in policy efforts, and this should be recognised as an important achievement. But departments appear unable to collaborate at an earlier stage – when establishing their key objectives. The result is that each department pursues its individually established objectives, as has been the case with the Victims' Charter and the VEP, but these efforts do not directly complement each other. In the case of victim policy this has resulted in different sets of policy that are inconsistent, and the duplication of efforts relating to the setting of standards.

Intergovernmental relations also emerge as an important factor. Many of these services may have to be provided through the provincial Departments of Social Development. This raises questions about how the national Department may influence resource allocation, the systems that relate to the transfer of funding to civil society service providers, and the standards that are used to monitor and measure their performance.

The tools for managing victim policy effectively

There is a great deal of evidence to indicate that, if victim policy is to be successful, several basic requirements must be met at the level of management systems. Victim policy processes (especially the VEP) have recognised the importance of many of these and have already built several into current programmes. These are:

- Clear and coherent policy (Bullock 2001).
- Services that are oriented towards the needs of crime victims (Victim Support 2002).
- Systems for the provision of ongoing information and education to the intended beneficiaries regarding their rights in relation to services (Victim Support 2002; Padayachee 2006).
- Systems to anticipate what services are required in which areas (Pienaar 2006), and the development of plans and agreements with provincial departments and service providers as to the provision of services.
- Clear standards and protocols that indicate the nature of services to be provided and the expected outcomes of those services (Frank 2006; Padayachee 2006; Pretorius and Green-Thompson 2006).

- Skilled personnel that understand and accept the purpose and value of services to victims (Padayachee 2006).
- Systems for monitoring and evaluating the quality of services (Frank 2006; Padayachee 2006).
- Systems for users of services to lodge complaints, and systems for investigating and responding to complaints (Padayachee 2006).
- The recognition of specialised needs of specific categories of people, and the appropriate targeting and creation of specialised services (Bower 2006).

In addition, there are other activities that may provide value in this regard that should be undertaken at specific intervals to strengthen service provision. These include:

- Victimisation surveys should be undertaken at regular intervals (at maximum, every three years) in order to assess the nature and distribution of victimisation in the country.
- Victimisation surveys may not assist in the understanding of certain kinds of crimes (e.g. crimes against children, or traditionally underreported crimes such as domestic violence and rape). Engaging service providers (such as rape crisis and child welfare organisations) in sharing information relating to the demand for services may assist in developing a better picture of service requirements.
- It may also be useful to invest in detailed, longer term evaluation of specific services (e.g. the Thuthuzela Care Centres, school safety interventions, therapeutic interventions).
- Short term projects could also be established to examine the services provided at specific sites. Such studies could include victim satisfaction studies at police stations and courts.

CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS

This chapter summarises the conclusions and recommendations emerging from this study.

Rationalise victim policy and clearly articulate its importance

This monograph has identified clear issues regarding the substance of policy that require attention. These relate to the need for the rationalisation of the various policy frameworks into an integrated strategy that articulates (i) rights, (ii) services and (iii) standards for service provision for all victims of crime, and not just those that engage with the criminal justice process. It has also been noted that government should articulate a rationale for victim policy and indicate the reasons for its importance in South Africa. This monograph has noted that victim policies currently articulate a range of different reasons for their existence, including crime prevention, human rights, criminal justice efficiency, and restorative justice.

This may be an ideal time to consider the question of rationalisation, given the current interest of the National Prosecuting Authority in legislating for victim services.

Orientate services towards the needs of victims

This study has demonstrated that victim services ought to be oriented towards responding to the needs of victims. It has also shown, through specific examples, that current policy may not be sufficiently oriented towards needs. The monograph especially pointed to the weaknesses of the Victims' Charter in this regard.

It is recommended that all provisions within current policies be reconsidered carefully in relation to this question. This should be done with due consideration to the issues of targeting and specialisation of services noted in the monograph.

Improve government and civil society relations and government funding to civil society

Several problems have been noted in relation to government efforts to partner with civil society organisations in the provision of victim services. Relationships were found to be varied, and depend on the specific efforts made by individuals. Moreover, government agencies rarely act in a proactive manner, both in terms of relationship-building and in terms of addressing the question of funding.

The question of government funding to civil society organisations for providing services in support of government policy is a challenge affecting a range of policy areas:

- Firstly, the overall budget available for social services (of which victim services are just one aspect) is far too small to respond to the many demands.
- Secondly, there is a need for a more scientific and proactive approach in relation to the projection of the need for services in different areas, and relationships with other service providers to be based on this information.
- Thirdly, there is a need to provide realistic, fair and equitable subsidies to civil society organisations that provide ongoing services on government's behalf.
- Fourthly, government needs to create the mechanisms through which to communicate with civil society organisations, and encourage relations based on mutual respect.

The current financing policy of the Department of Social Development does not respond to many of these concerns, and this is an area that requires serious attention. The fact that this issue cuts across many government departments may justify the involvement of the National Treasury in building a more appropriate and sustainable model.

Addressing voluntarism

Given the high levels of volunteer involvement in the provision of services to victims, their importance cannot be ignored nor should this remain an

unregulated sphere of activity. It is incumbent on both government and civil society organisations to address the gaps that exist.

Ensuring the quality of services

It is recommended that all efforts be made to ensure that the quality of services be improved. This includes:

- Ensuring, through research and wide consultation, that the substance of the services that are delivered is consonant with current views of 'good practice', and are evidence based in nature.
- Building the skills of service providers.
- Establishing effective sets of minimum standards (also based on research and consultation) through which services may be regulated.
- Establishing effective structures through which services may be measured and regulated.

It is recommended that the standards documents that are currently in existence be rationalised in order to ensure that only one set of standards applies to each service provider. It is also necessary to ensure that standards are appropriately constructed in order that they state outcomes, and are objective and measurable. All standards should be fully tested prior to their implementation.

It should be noted that there are a number of specialised services (e.g. counselling, witness preparation and support) that need more specific minimum standards. The process of developing standards for such services is quite technical and requires that relevant expertise be engaged to ensure that minimum standards achieve the required outcomes.

Exploring the potential of restorative justice

The study has documented a range of ideas relating to the potential value of restorative justice practices for victims. It has also been noted that there have been few attempts to test approaches such as family group conferences and victim-offender mediation in relation to their benefits for crime victims. It is

therefore recommended that government lead efforts to do this and that the VEP may be an ideal place for such an undertaking.

Victimisation by the state and when in state custody

Those in state custody are particularly vulnerable and efforts should therefore be made to ensure that mechanisms are in place to oversee the custody of those held by the state. It is also necessary to encourage greater vigilance and responsibility by government departments that hold people in custody, or that take care of vulnerable groups such as children, the disabled and elderly people. These are broader government responsibilities and do not relate only to victim policy processes. It is also recommended that efforts be made to ensure that South Africa ratifies the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This will create the obligation for greater oversight of those held in custody.

Be proactive in relation to ‘e-victimisation’

This study has noted that new technology is creating new crimes and new ways to commit old crimes. While new legislation has been developed to regulate this arena, efforts to consider victimisation have yet to be initiated. This will require a more proactive approach given the pace at which technology is changing. It is recommended that efforts be made through processes such as the VEP to start discussions in this regard.

The implementation of policy

A great many issues have been recorded in this monograph in relation to the implementation of policy, and there is no question that this area has experienced some difficulties in the past. In this regard, at the very least, it is important for government departments to make public their implementation plans regarding both the Victims’ Charter and the VEP, in order that they may be held to account in relation to delivery. In addition, there is a need for continued energy to be directed, by both civil society and government, to monitoring the implementation of policy.

In relation to the VEP in particular, the implementation of which is being donor funded between 2006 and 2008, important questions arise as to

whether the Department of Social Development will be making provision for its further funding once the donor has withdrawn its support.

Establishing the tools and systems for managing victim policy

It has been noted that several tools and systems are necessary to ensure that victim services are delivered successfully. While some of these have been listed, it is necessary for those government departments that are involved in the delivery of services to consider how these apply to their internal systems and procedures. Departments tasked with leading the Victims’ Charter and the VEP should also ensure that these systems and tools are built into implementation plans.

It should be noted that some of these tools (such as new research) may require additional investment, and budgets should be adjusted where necessary to allow for this benefit.

In conclusion, it is absolutely certain that the advent of victim policy in South Africa is a critical step towards harnessing both the human rights and crime prevention benefits that services to victims may offer. However, it is equally certain that victim policy may only be as good as the services that it creates; and that it is the quality of services that will result in these benefits and not merely access to these services.

This study has argued that the different pieces of victim policy cannot fulfil their potential unless they can offer one complementary set of provisions that provides an unambiguous message regarding its intentions. The result of these policy provisions should be a set of needs based services, supported by clear, outcomes oriented standards. This monograph has also argued that there are many other requirements to ensure the success of victim policy.

Crime victims will continue to represent one of the most vulnerable sectors of our society. The extent to which we are able to respond to their needs with speed, efficiency and humanity will be the measure of whether we take their interests seriously.

NOTES

1. Names have been removed.
2. The full range of government agencies noted by the Department of Justice as having been involved in the process are: Departments of Social Development, Correctional Services, Education, Health and the National Prosecuting Authority, the South African Police Service, the South African Law Reform Commission, the Office of the Public Protector, the Independent Complaints Directorate, the Magistrates and Judicial Services Commission and the Tshwane Metro Police.
3. The inclusion of this idea was prompted by the discussions at an internal workshop with staff at the Council for Scientific and Industrial Research.

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