



POLICY BRIEF

Victim-centred prosecutions Lessons for South Africa

Miché Roberts

The Service Charter for Victims of Crime in South Africa and the Victim Support Services Bill outline the rights of victims. When it comes to prosecutions, global good practice should inform and strengthen the National Prosecuting Authority's approach to victims. This policy brief suggests how victim-centred prosecutions in South Africa could be strengthened by using the precedent set by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and methods used in other countries.

Key findings

- ▶ Legislation that gives effect to the rights and needs of victims is crucial to strengthening victim services. The Victim Support Services Bill, when enacted, will be a positive step in this direction and will signify valuable advances for victims served by the National Prosecuting Authority (NPA).
- ▶ Internationally, an important way of reducing the risks of secondary victimisation in the criminal justice system has been to centralise multiple services in the same location. The Thuthuzela Care Centre and the Khusuleka One-stop Centre offer a basket of health, counselling, prosecutorial and police services at a single location. The lessons learnt from these models are important if the South African criminal justice system is to become more victim centred.
- ▶ Globally, CSOs and academic institutions continue to play a vital role in advancing victims' rights through research, advocacy and service delivery. Engaging in structured relationships with these institutions will increase the ability of the prosecution service to understand and meet the needs of the victims it serves.

Recommendations

For the NPA

- ▶ Ensure that when the Victim Support Services Bill is enacted relevant services are provided and effective delivery monitored.
- ▶ Adopt a 'one-door' approach to victims of serious crime.
- ▶ Along with other government structures, create facilities at which relevant departments can be co-located to deliver services jointly. TCC service points could be expanded to include victims of other serious crimes.
- ▶ The relationship between the NPA, civil society, academic institutions and NGOs should be strengthened.
- ▶ The NPA should be enabled to gather evidence from organisations working on victims' challenges and seek expert advice. It should also actively seek out partners to support service delivery to victims.

- ▶ Enable structured communications to victims, in anticipation of section 18(b) of the Victim Support Services Bill.

For government – general

- ▶ Victim-centred legislation should be enacted that provides for the rights of victims and for attendant services.
- ▶ Funding to CSOs that support government efforts to meet the needs of crime victims should be prioritised.
- ▶ Victims should be notified about the status of their cases, for example, via text messages.

For civil society

- ▶ CSOs that work in prosecutorial reform should expand their mandate beyond sexual crime and consider dedicating resources to advocating for all victims' rights.
- ▶ Advocacy should be through research, public education campaigns, consultation and offering professional training to the NPA.

Introduction

Since the 1960s there has been a worldwide effort to focus the attention of criminal justice system more directly on the needs of the victims of crime.¹ The move has been a response to historically retributive and adversarial systems in which the emphasis was placed on the adjudication of accused persons as opposed to the concerns of the victims.²

These efforts to focus on victims have been informed by academic developments in victimology, advocacy by civil society organisations (CSOs) and recognition of this concern by global institutions, including the United Nations.

In South Africa efforts have been made since the transition to democracy to establish victim-centred policies and practices. Pillar 1 of the National Crime Prevention Strategy of 1996 gave impetus to this move by paying substantial attention to victims.³ Several efforts have been made since then to address the needs of victims in both the criminal justice process and the prosecution of crimes.

The NPA has already adopted several practices that align with international instruments

Statistics reveal that more than three million people in South Africa were affected by crime in 2018/19.⁴ Incidents included 70 000 cases of deliberate damage to property and arson, 1.2 million cases of theft of personal property, 1.3 million house break-ins and 32 000 murders.⁵

The country is notorious for high levels of sexual and gender-based violence (SGBV). In 2018/19, 179 683 SGBV crimes were reported to the South African Police Service (SAPS).⁶ In the circumstances, concerted action to address the needs of crime victims should be a priority for the country.

This policy brief considers international approaches to dealing with adult victims of crime, particularly with regard to prosecution. It considers the extent to which South Africa's prosecutorial approach currently accommodates victims of crime in order to inform further consideration of victims by the National Prosecuting Authority (NPA).

The NPA has already adopted several practices that align with international instruments such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power to support the high numbers of crime victims in the country.⁷

These practices are informed by the South African Service Charter for Victims of Crime.⁸ Although it is not legally binding, the charter places responsibility on the NPA to uphold crime victims' rights to fair treatment, information, assistance, protection, compensation and restitution.⁹

The recently gazetted Victim Support Services Bill, once passed into law, will provide the legal framework for the treatment of crime victims by the NPA and other government departments.¹⁰

The NPA has made significant moves towards meeting the needs of crime victims, most notably, the Thuthuzela Care Centres (TCC), which focus on victims of gender-based violence. However, international practice indicates several possible avenues for a further enhanced and strengthened approach to the treatment of crime victims.

Methodology

This policy brief is framed around the United Nations Office for Drugs and Crime's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ('the declaration'). This sets guidelines for crime victims' access to justice, fair treatment, restitution, compensation and assistance.¹¹

Further evidence for the research was gathered through a review of academic journals dating from 2015. Good practice in other countries was also reviewed to determine which practices South Africa might consider to strengthen victim-centred approaches to prosecutions.

Although the study is directed at the NPA, the NPA operates within a broader criminal justice system (CJS). Therefore the discussion is relevant to the broader CJS as well as to related services such as those delivered by the Department of Social Development (DSD), the Department of Health (DoH) and CSOs.

International practice

Prosecutorial practices in countries such as New Zealand, Scotland, Germany and Japan reflect the adoption of the declaration, which establishes the framework for the approach to crime victims.¹² This includes ways of reducing secondary victimisation by the CJS, work done by non-governmental organisations (NGOs) and civil society to create victim-friendly policies and notification services to keep victims informed about the status of a case. The discussion below presents guidelines from the declaration as well as good practice in the countries studied.

Legislation should incorporate victims' rights

Although it is evident from the countries reviewed that legislation plays an important role in supporting victims and holding criminal justice systems accountable, the declaration does not stipulate guidelines for the creation of new legislation.

New Zealand's Victims' Rights Act Amendment Act of 2014¹³ demonstrates the value of dedicated legislation. It requires the criminal justice system to keep victims informed about the progress of the case against the offender in specific ways.¹⁴ It also gives victims the right to make victim-impact statements that can be used in court and considered in the sentencing and bail applications of offenders.¹⁵ Similarly, Scotland's Victims and Witness Act of 2014 makes prosecutors responsible for communicating a decision not to prosecute a case as well as to disclose certain information relating to the offence and the investigation.¹⁶

German legislation gives crime victims a tremendous amount of power.¹⁷ They have the right to act as private accessory prosecutors or to engage in private prosecutions.¹⁸ They are empowered to assist prosecutors in the prosecution of sexual crimes, murder, intentional manslaughter, infliction of bodily harm and human trafficking.¹⁹ As private accessory prosecutors victims can inspect case files, attend the entire trial even if they are witnesses, suggest questions, participate in final arguments and appeal verdicts.²⁰

The Japanese Code of Criminal Procedure of 2008 allows for Victim Statements of Opinion and the active participation of victims throughout the investigation and trial.²¹ During the trial, victims of serious crimes such

as robbery and homicide²² are entitled to inspect and question witnesses, hold prosecutors accountable for a decision not to prosecute a case, question witnesses in court and state non-evidentiary facts about the case and the application of the law.²³

In South Africa a Victims' Charter outlines the rights of victims and sets out the minimum service standards they can expect from various agencies. These include the right to dignity and to receive and offer information, the right to protection and assistance and the right to compensation and restitution.²⁴ The charter is, however, not legally binding and therefore offers no assurance of protection.

The Victim Support Services Bill (2019) seeks to address the lack of accountability of the Victims' Charter. Although the Bill is not as elaborate as the German or Japanese legislation it does provide for the use of Victim-Impact Statements during trial proceedings. It also stipulates that the NPA must notify victims of the status and outcome of their case, and provide reasons for a decision not to prosecute.²⁵

SA's Victims' Charter is not legally binding and therefore offers no assurance of protection

It further requires that the NPA give victims court-support services.²⁶ These include the Ke Bona Lesedi Court Preparation programme, which prepares victims who will be witnesses, 'empowering them to testify, thus enhancing prosecution and customer satisfaction. The component also facilitates Victim-Impact Statements.'²⁷

Section 18(e) of the Bill is particularly weak. It states that 'where there is capacity, assist the victim by providing relevant court preparation services if the victim is to appear as a witness'.²⁸ The language does not make the NPA responsible for ensuring the quality of victim services. Court preparation services should be considered a priority and should not depend on the availability of resources.

Reduce systemic secondary victimisation

According to the declaration, secondary victimisation occurs as a result of the insensitivity of criminal justice

institutions to the needs and trauma of victims.²⁹ Such insensitivity includes inappropriate conduct by officials and traumatising procedures encountered by victims when they seek access to government services.³⁰

The countries reviewed adopted a ‘one-door policy’ approach to mitigate these factors.

The Victims’ Code of Scotland uses a ‘nodal-point’ approach to address overlapping service areas among government departments.³¹ It relies on a streamlined multi-stakeholder approach to crime victims, reducing the need for them to relive their traumatic experiences.³²

Some locations in Scotland have gone as far as establishing teams of stakeholders, experts and NGOs in one building to simplify access to services.

The stakeholders include prosecution services, victim support, police and the criminal injuries compensation fund.³³ The system is intended to ensure that efforts by departments to meet the needs of victims are coordinated.³⁴

In South Africa, at present, the NPA, SAPS, the DoH and the DSD all provide services to crime victims, sometimes in collaboration with each other.

The TCC offers access to counselling, medical care, police and prosecutorial services³⁵ intended to carry out the multi-disciplinary approach to the treatment of crime victims set out in the Victim Support Services Bill. It was also established to reduce the secondary victimisation of rape victims, finalise cases rapidly and improve the conviction rate for sexual offences.³⁶ In 2018/19, 34 558 victims were assisted at 55 TCCs around the country.³⁷

In South Africa the NPA, SAPS, the DoH and the DSD all provide services to crime victims

The DSD, for its part, treats victims of sexual assault, domestic violence, rape, human trafficking, child abuse and violence against the elderly and disabled, at Khuseleka One-Stop Centres.³⁸ It offers victims a basket of services from the NPA, health services, counselling and the SAPS.³⁹

While these efforts are helpful, there are overlaps in areas such as health and counselling that could be

coordinated to ensure a more even spread throughout the country.

A further concern is that while appropriate attention is focused on victims of domestic violence and sexual offences, victims of other serious violent crime do not receive similar attention.

It is also worth noting that, as the Scottish model demonstrates, the fact that each department has its own victim programme may result in unnecessary expenditure and result in weak collaboration among departments as they seek to achieve the same outcomes. There should be coherence at the Justice, Crime Prevention and Security (JCPS) Director-General cluster level, which should also be held accountable.

Stronger inter-institutional working relationships

According to the declaration, CSOs, NGOs and academic institutions play a critical role in generating evidence and advocating treatment that recognises the needs of victims, including the trauma resulting from victimisation.⁴⁰

The Weisser Ring,⁴¹ a German CSO, and Victim Support Scotland⁴² play important roles in the success of victim services in those countries. Their work begins when a docket is opened at the police station and ends when the case is finalised. In both countries the police are obliged to refer all crime victims to NGOs that can help them.

In similar fashion, a coalition of civil society organisations in South Africa could ensure that the NPA and other departments uphold the Victims’ Charter and the Victim Support Services Bill, when the latter is enacted.

CSOs are well placed to provide support through public education campaigns, research and advocacy to the NPA and other government departments to meet the needs of victims and promote their interests.⁴³ However, much depends on there being sufficient funding to sustain this work.

Adopt a victim notification system

One objective of the UN Declaration is to ‘ensure that all victims have access to the justice system as well as support throughout the justice process and that the justice system minimises the obstacles that victims may face in seeking justice’.⁴⁴

Some of the ways of achieving this are through ‘timely notification of critical events and decisions’ and ‘provision in full of information on the procedures and processes involved [in the criminal justice process]’.⁴⁵ Crime victims should be informed about the status and outcome of a case throughout the process.⁴⁶

Germany, Scotland, New Zealand and Japan use technology to keep victims informed about the status of their cases.

In Scotland victims can register for this notification service at the police station when a case is opened.⁴⁷ Criminal justice agencies and health services use the ‘one-door policy’ approach described above and ensure that victims are notified timeously. The information provided includes the decision to prosecute and post-sentencing updates such as parole hearings and release dates.⁴⁸

The National Crime Prevention Strategy contains important information about the treatment of crime victims

Not all crime victims have access to the same information. For instance, only victims of serious crimes are entitled to receive information after sentencing. However, all victims may be informed about the proceedings up to sentencing.⁴⁹

The New Zealand Victim Notification Scheme, which is similar to that in Scotland, although less comprehensive, empowers victims by informing them of the status of an offender after the trial if the offender has been given a prison sentence of 18 months or more. They may obtain information about the offender’s transfer between prisons and eligibility for temporary release and will be informed if the prisoner escapes, absconds or returns to prison.⁵¹

The Victim Support Services Bill requires the NPA to notify the victim of the case number and charges against the accused.⁵² The Bill also obliges the NPA to tell the victim whether bail has been granted and inform the victim of the first appearance and all court dates, the date of judgement, outcome of the case, sentence hearing and sentence imposed.⁵³

The widespread use of call phones in South Africa facilitates the use of text messaging to communicate with

victims. As at 2020 more than 20 million South Africans had access to smartphones and there are 90 million active cell phone connections.⁵⁴ The country’s national communications during the Coronavirus 2019 pandemic (Covid-19) illustrate that there is the infrastructural capacity to communicate with all citizens.⁵⁵

Lessons for South Africa

The victimisation of victims should be understood within the broader crime environment of the country. The National Crime Prevention Strategy was drafted in 1995 to address increasing levels of crime and its impact on victims.⁵⁶ While the 25-year-old strategy is no longer considered a priority, it contains important information about the treatment of crime victims.

It sets out, inter alia, to ‘improve the access of disempowered groups to the criminal justice process’ and to ‘improve the service delivered by the criminal justice process to victims, through increasing access to victims and sensitivity to their needs’.⁵⁷

Provisions of the Victim Support Services Bill include a statutory framework for promoting and upholding the rights of victims of violent crime and sets out as some of its aims:

To prevent secondary victimisation of people by providing protection, response, care and support and re-integration programmes; To provide a framework for integrated and multi-disciplinary coordination of victim empowerment and support, and to provide for the specific roles and responsibilities of relevant departments and other stakeholders.⁵⁸

Conclusion

South Africa has made important progress in recognising the necessity for the prosecution service to focus on the needs of victims of crime. However, much more action is needed and key revisions should be considered. Some of these are suggested in this policy brief.

Importantly, these include giving legal weight to the rights of victims, focusing on a ‘one-door’ multi-stakeholder approach to engaging with victims, strengthening the relationship between the NPA and NGOs and introducing a victim notification system to communicate with crime

victims. Equally, accountability is required from all relevant departments.

Notes

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