

6. The Victim Charter

YOUR RIGHTS AS A VICTIM OF CRIME

1. The right to be treated with fairness and with respect for your dignity and privacy
2. The right to offer information
3. The right to receive information
4. The right to protection
5. The right to assistance
6. The right to compensation
7. The right to restitution

FOREWORD BY THE MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The Service Charter for Victims of Crime in South Africa (the "Victims' Charter") is an important instrument for promoting justice for all. The Victims' Charter is compliant with the spirit of the South African Constitution, 1996, Act 108 of 1996, and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34). Since 1994, and 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. Central to the concept of Restorative Justice is the recognition of crime as more than an offence against the state, but also as an injury or wrong done to another person. This is in line with the National Crime Prevention Strategy's victim-centred vision for the criminal justice system. The ultimate goal is victim empowerment through meeting victims' needs, be they material or emotional. The Victims' Charter and the attached minimum standards document are important instruments elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in South Africa. The Victims' Charter is consonant with the provisions of section 234 of the Constitution. I am confident that with the commitment and dedication of all role players in the criminal justice process, this Victims' Charter will assist in the implementation of the applicable laws in such a way that it serves its purpose - making justice a reality for all!

Mrs BS Mabandla, MP Minister for Justice and Constitutional Development

PREAMBLE

The Government of South Africa generally and agencies involved in the criminal justice system specifically:

Affirming

Government's commitment to implement measures aimed at continuous reform of the criminal justice system to protect and promote the rights of victims in compliance with international obligations under international human rights instruments, such as the UN 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 1997 SADC Declaration on Gender and Development;

Believing

That it is part of the responsibility of the state to promote the equal enjoyment of all the rights and freedoms that are guaranteed in the Constitution by all and that an equitable criminal justice system can only be achieved if the rights of both victims and accused persons are recognised, protected and balanced;

Recognising

The serious impact of crime on victims, and its potential for undermining a victim's human rights;

Noting

The significant progress made since the onset of democracy, with regard to transforming the criminal justice system to ensure access to justice and responsiveness of processes to all, regardless of race, gender, culture and class. That various measures have been implemented as part of the transformation of the justice system, with a view to ensuring the centrality of victims, balancing their rights with those of accused persons and minimising secondary victimisation in the various stages of the criminal justice process;

Hereby adopt this Victims' Charter

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; and
- make provision for victims' recourse when standards are not met.

YOUR RIGHTS AS A VICTIM OF CRIME

If you have been a victim of crime the following rights, as contained in the Constitution and relevant legislation, will be upheld in your contact with the criminal justice system:

1. The right to be treated with fairness and with respect for dignity and privacy:

- You have the right to be attended to promptly and courteously, treated with respect for your dignity and privacy by all members of any department, institution, agency or organisation dealing with or providing a service to you (hereafter referred to as a service provider).
- The police, during the investigations; the prosecutors and court officials during preparation for and during the trial proceedings; as well as all other service providers, will take measures to minimise any inconvenience to you by, among others, conducting interviews with you in your language of choice and in private, if necessary.
- These measures will prevent you from being subjected to secondary victimisation.

2. The right to offer information:

- You have the right to offer information during the criminal investigation and trial.
- The police, prosecutor and correctional services official will take measures to ensure that any contribution that you wish to make to the investigation, prosecution and parole hearing is heard and considered when deciding on whether to proceed with the investigation, or in the course of the prosecution or Parole Board hearing.
- This right means that you can participate (if necessary and where possible) in criminal justice proceedings, by attending the bail hearing, the trial, sentencing proceedings and/or Parole Board hearing.
- It means that you will have the opportunity to make a further statement to the police if you realise that your first statement is incomplete; you may also, where appropriate, make a statement to the court or give evidence during the sentencing proceedings to bring the impact of the crime to the court's attention.
- Furthermore, you may make a written application to the Chairperson of the Parole Board to attend the parole hearing and submit a written input.

3. The right to receive information:

- You have the right to be informed of your rights and of how to exercise them.
- You can, as part of this right, ask for explanations in your own language of anything you do not understand.
- You have the right to receive information and to be informed of all relevant services available to you by service providers.
- You will be informed of your role in the case and of the approximate duration of the case. You can request information regarding court dates, witness fees and the witness protection programme.
- You can request to be informed of the status of the case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted, or sentenced.
- You may request reasons for a decision that has been taken in your case on whether to prosecute or not.
- You are entitled to receive documents that the law entitles you to have access to.
- You can request to receive notification of proceedings which you may attend.
- You can request the prosecutor to notify your employer of any proceedings which necessitate your absence from work.

4. The right to protection:

- You have the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse. If you are a witness, you must report any such threats to the police or senior state prosecutor.
- The police will, if you comply with certain requirements, apply for you to be placed in a witness protection programme.
- If such an application is successful, you will be placed in a witness protection programme where you will be protected, as far as possible, from all forms of undue influence, harassment or intimidation.
- This will ensure your safety as a witness and the availability of your testimony, and prevent you from withdrawing from giving evidence as a result of undue influence.
- This right includes that in certain circumstances the court may prohibit the publication of any information (including your identity), or it may order that the trial be held behind closed doors (*in camera*).
- You can request Correctional Services to inform you if the offender has escaped or has been transferred.

5. The right to assistance:

- You have the right to request assistance and, where relevant, have access to available social, health and counseling services, as well as legal assistance which is responsive to your needs.
- The police will assist you by explaining police procedures, informing you of your rights and making the appropriate referral to other relevant service providers.
- The office manager or head of office at the court will provide for the services of an interpreter.
- The prosecutor will ensure that special measures are employed in relation to sexual offences, domestic violence and child support or maintenance matters and that, where available, such cases are heard in specialized courts.
- If you have special needs, all service providers will, within the scope of their functions, take all reasonable steps to accommodate you and ensure that you are treated in a sensitive manner.

6. The right to compensation:

- You have the right to compensation for loss of or damage to property suffered as a result of a crime being committed against you.
- You can request to be present at court on the date of sentencing of the accused and request the prosecutor to apply to court for a compensation order in terms of section 297 and 300 of the Criminal Procedure Act, Act 51 of 1977.
- "Compensation" refers to 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.
- The prosecutor will inform you if a compensation order has been granted, explain its contents and how to enforce it. You can institute a civil action against the accused where the criminal court did not grant a compensation order. This will usually happen where the damages are not easily quantifiable in financial terms, for example, in the case of psychological damages or pain and suffering.
- The clerk of the court will assist you with the enforcement of a compensation order granted by the court.

7. The right to restitution:

- You have the right to restitution in cases where you have been unlawfully dispossessed of goods or property, or where your goods or property have been damaged unlawfully.
- "Restitution" refers to 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 prosecutor will inform you what restitution involves and the clerk of the court will assist you in enforcing this right.

COMPLAINTS

Keeping in mind that you have the right to complain, you can contact the particular government department or service provider if you have any complaints with regard to the service you are receiving, or if your rights are not being observed. If you are not satisfied with the way in which your complaint is handled, you can also contact organisations such as:

- a. The Office of the Public Protector
- b. The South African Human Rights Commission
- c. The Commission on Gender Equality
- d. The Independent Complaints Directorate
- e. Metropolitan Police Offices
- f. The Health Professions Council of South Africa
- g. A lawyer of your own choice and at your own expense

For more detailed information relating to any aspect of the Victims' Charter, please refer to the Minimum Standards on Services for Victims of Crime. This document is available at the offices of role-playing government departments.

The role-players in the criminal justice system will ensure that copies of the Victims' Charter are available at the following offices:

- Courts
- Offices of the Department of Correctional Services
- Offices of Directors of Public Prosecutions
- Prisons
- Police Stations and Investigation Units
- Offices of Social Services or agencies
- Offices of the Metropolitan Police Service
- Public Health Facilities

MORE INFORMATION

If you require more information on any issue contained in this document, you can contact the Department of Justice and Constitutional Development's Gender Directorate at the following numbers:

Tel: (012) 315 1670

Fax: (012) 315 1960

Email: VictimCharter@justice.gov.za

Toll-free number: 0800 011 022

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Implementation of Victims Charter - http://www.doj.gov.za/VC/VCdocs_implplan.htm
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http://www.doj.gov.za/VC/docs/2007VCIMPL/2007%20Impl%20Plan%2015%20Nov_CHP_07.pdf