

**SOUTH AFRICAN LAW COMMISSION**

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**PROJECT 82**

**SENTENCING**

**(A COMPENSATION SCHEME FOR VICTIMS OF CRIME IN SOUTH AFRICA )**

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## INTRODUCTION

The South African Law Commission was established by the South African Law Commission Act, 1973 (Act 19 of 1973).

The members of the Commission are -

The Honourable Madam Justice Y Mokgoro (Chairperson)  
The Honourable Mr Justice CT Howie  
The Honourable Madam Justice L Mailula  
Professor IP Maithufi  
Adv J J Gauntlett SC  
Ms Z Seedat  
Mr P Mojapelo  
Professor CE Hoexter

The Secretary is Mr W Henegan. The Commission's offices are on the 12th floor, Sanlam Centre C/o Andries and Pretorius Street, Pretoria. Correspondence should be addressed to:

The Secretary  
South African Law Commission  
Private Bag X 668  
PRETORIA  
0001

Telephone : (012) 322-6440

Telefax : (012) 320-0936

E-mail : [wvuuren@salawcom.org.za](mailto:wvuuren@salawcom.org.za)

Internet site : <http://www.law.wits.ac.za/salc/salc.html>

A subcommittee (Victim Focus Group) of the project committee on sentencing was responsible for this project. The project leader of the subcommittee responsible for this project is Mr V Petersen. The members of the subcommittee are -

Ms L Camerer  
Mr JD Kollapen  
Professor RT Nhlapo (Commissioner)  
Ms ME Ramagoshi  
Professor D Van Zyl Smit  
Dr HF Snyman (co-opted by the subcommittee)

## PREFACE

This discussion paper (which reflects information gathered up to the end of February 2001) was prepared by the Centre for the Study of Violence and Reconciliation on behalf of the subcommittee of the project committee on sentencing (Victim Focus Group) to elicit responses and to serve as a basis for the Commission's deliberations, taking into account any responses received. The views, conclusions and recommendations in this paper are accordingly not to be regarded as the Commission's final views. The discussion paper is published in full so as to provide persons and bodies wishing to comment or to make suggestions for the reform of this particular branch of the law with sufficient background information to enable them to place focussed submissions before the Commission.

Respondents are requested to submit written comments, representations or requests to the Commission by **31 July 2001** at the address appearing on the previous page. The researcher will endeavour to assist you with particular difficulties you may have. Comment already forwarded to the Commission should not be repeated; in such event respondents should merely indicate that they abide by their previous comment, if this is the position. The researcher allocated to this project, who may be contacted for further information, is Mr W van Vuuren.

The Commission will assume that respondents agree to the Commission quoting from or referring to comments and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the Commission may in any event be required to release information contained in representations under the Constitution of the Republic of South Africa, Act 108 of 1996.

The Commission would like to express its appreciation to the Legislative Drafting Project of the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) and its project manager, Mr R Pfaff, for the technical and financial assistance. With the assistance of the GTZ, the research was conducted by the Centre for the Study of Violence and Reconciliation. The research was commissioned to assist the Commission in acquiring data and other information on the feasibility of establishing a compensation fund for victims of crime in South Africa.

**gtz**

German Technical Cooperation



# **A Compensation Scheme for Victims of Crime in South Africa**

Research Commissioned by German Technical Co-operation (GTZ)  
and the South African Law Commission. Report produced by the  
Centre for the Study of Violence and Reconciliation.

15 February 2001

This report was compiled by the Centre for the Study of Violence and Reconciliation, South Africa. It was commissioned by German Technical Co-operation (GTZ) and the South African Law Commission. Thanks to Rainer Pfaff (GTZ), the members of the South African Law Commission and the Victim Focus Group sub-committee of the Project Committee on Sentencing headed by Verne Petersen.

**Staff at the Centre for the Study of Violence and Reconciliation who contributed or assisted with this report include:**

Brandon Hamber (Project coordinator and final edit)  
David Bruce  
Polly Dewhirst  
Amanda Dissel  
Helen Hajjiannis  
Gloria Hlope  
Caron Kgomo  
Mosley Lebeloane  
Xoliswa Ntintili  
Sibusiso Ntuli  
Janine Rauch  
Mary Robertson  
Graeme Simpson  
Lisa Vetten

**Senior Consultants:**

Anthony Altbeker (Economics)  
Kate Savage (Legal)

Thanks to Barbara English from *Wordsmiths* for her outstanding editorial assistance and Mark Isserow for his statistical assistance and co-authoring of *Chapter Five*.

**Contact Details:**

Centre for the Study of Violence and Reconciliation, PO Box 30778,  
Braamfontein, 2017. Tel: +27 11 4035650 Fax: +27 11 3396785  
Email: [bhamber@csvr.org.za](mailto:bhamber@csvr.org.za)

German Technical Assistance, GTZ Office, PO Box 13732, Hatfield Pretoria,  
0028, Tel: +27 12 3226440 Fax: +27 12 3227559  
Email: [pfaff@salawcom.org.za](mailto:pfaff@salawcom.org.za)

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## **Executive Summary**

This report considers the feasibility of establishing a Victim Compensation Scheme (VCS) in South Africa. It begins by providing an overview of the nature and extent of violent crime in the country. This is considered critical to understanding the foundation for such a compensation scheme and for realistically costing such an endeavour. The report also briefly documents the economic, physical and psychological impacts of violent crime on its victims and discusses the services currently available to them.

Thereafter, debates concerning compensation are raised and an analysis of the motivations for and against the establishment of a VCS are provided. Strong arguments from a victim-centred and moral perspective are made for establishing a VCS. Some potential benefits for the criminal justice system as a whole are also described. Arguments against establishing a VCS are then outlined. These mainly focus on whether providing compensation, in a context of limited resources, should be prioritised over and above other aspects of victim support. The debates conclude that compensation, either partial or full, should be seen as a complementary component of victim support, which is vital to the ensuring the efficacy of the whole criminal justice system. This makes prioritisation difficult.

An overview of the South African law of damages and existing schemes that offer compensation (i.e. compensation to victims of road accidents, occupational injuries and diseases, and political traumas) are then provided. The international experience in compensating victims of crime specifically is also considered and the recovery of compensation from the offender is discussed.

The eligibility criteria for compensation from the State, based on comparative international data, are then elucidated. Specific parameters applied to foreign compensation schemes, which may be appropriate for inclusion in a South African scheme, are highlighted, including the mandate of these schemes, the type of crimes eligible for compensation, as well as who may qualify to apply to the scheme for compensation. This analysis of the parameters of different compensation schemes

is considered the skeleton upon which any legislative framework for a South African compensation scheme would be based.

The findings of an analysis of selected police dockets are then reported. This is done in order to verify information about certain types of violent crimes and their impact on victims. This information is used to make assumptions when costing a VCS later in the report, and for shaping possible policy scenarios. In addition, the docket analysis focuses on the usefulness of police information in adjudicating possible claims for victim compensation. It reveals, amongst other findings, that current police recording practices provide inadequate data on which to base an assessment of compensability, such as may be required in a VCS. Of particular concern is the fact that a medical report was not completed in over 80% of the cases studied.

The envisaged costs associated with establishing a compensation scheme in South Africa are then discussed on the basis of certain assumptions. The variables that would determine the overall cost of the scheme are pointed out, with the estimated financial impact of various policy permutations and applied eligibility parameters considered. The report also considers the estimated administrative costs that would be incurred in running a compensation scheme. These, and the cost of different models, vary a great deal (i.e. from incredibly costly to potentially viable in the South African context) depending on the policy parameters used.

The report highlights possible sources of funding to finance the establishment of a VCS. Attention is given to the potential of state funding, voluntary sources and the imposition of dedicated taxes. Obstacles that may be encountered in attempting to secure such funding are considered, as are alternative expenditure choices, including the provision of limited and targeted assistance to crime victims *in lieu* of extensive compensatory support.

The mechanics of administering a victim compensation scheme are briefly delineated and some of the administrative processes that would need to be in place if such a scheme was established in South Africa examined. In particular, steps are detailed which aim to minimise the risks, while maximising the benefits to victims.

The report concludes by recommending that a fully-fledged compensation scheme is not possible in the short-term and details the pre-conditions (e.g. reliable police record keeping, sufficient funds, **etc.**) that would need to exist for such a scheme to be established in South Africa. It is, however, recommended that pilot targeted compensatory assistance be established for certain categories of victims of crime, i.e. disabled crime victims, rape survivors and the dependents of murder victims. In addition, it is recommended that a Victims of Crime Fund be set up and that dedicated taxes on firearm ownership and ammunition purchase, as well as alcohol, be considered as mechanisms for funding pilot targeted compensatory schemes.

Recommendations are also made concerning issues such as witness fees, restitution from offenders, the role of the victim empowerment programme and the Charter of Victims Rights. Finally, it is recommended that the development of a compensation scheme not be dismissed out of hand simply because a full-scale scheme is not feasible in the short-term. It is recommended that the feasibility of the scheme itself should be periodically assessed against a number of suggested criteria and that a VCS in South Africa should be developed incrementally.

## Definitions

- **Compensation**

‘Compensation’ refers to goods, services or monies transferred from one party to another to offset the losses sustained by the recipient of compensation through the acts or omissions of either the party giving compensation or another party. In general, full compensation seeks to restore recipients to the *status quo ante*, such that the effects of the wrong done to them is offset by the compensation received. In effect, the act of fully compensating the victim of a wrong seeks to make the effects of the wrong done ‘unhappen’. Partial compensation seeks to undo part of the wrong inflicted, but is insufficient to recompense victims for more than part of the negative impact of the wrong done to them. Compensation is different from restitution. Compensation, for the purposes of this report, relates to the procedures established by the State that aim to compensate victims from a state fund, while restitution relates to the legal remedies available to the victim to claim restitution from the offender by means of a court order, either in a civil suit or a criminal action (South African Law Commission ‘Empirical Study of Sentencing Practices in South Africa’ (Research Paper) The South African Law Commission & German Technical Co-operation 2000).

- **Restitution**

Restitution relates to the legal remedies available to the victim to claim restitution (a particular benefit or service to a particular person which is generally money but could include other benefits or services) from the offender by means of a court order, either in a civil suit or a criminal action. A distinction is drawn between compensation and restitution in this report and as defined by the SALC’s terms of reference for the research (see *Appendix One*).

- **Victim Compensation Scheme**

For the purposes of this report, a Victim Compensation Scheme is a state-provided fund of monies to be paid to some or all victims of some or all crimes, depending on the policy parameters chosen and a range of eligibility criteria.

- **Offender**

An offender is a biological person who has committed a criminal offence against a victim, regardless of whether this person has been identified, apprehended, charged, prosecuted or convicted in the criminal justice system. A person can be deemed to be an offender regardless of the familial relationship to the victim.

- **Restorative Justice**

Restorative justice is a process that seeks to redefine crime, interpreting it not only as breaking the law, or offending against the State, but also as an injury or wrongdoing against another person. It encourages the victim and offender to be directly involved in resolving conflict and, thereby, to become central to the criminal justice process. In such a process the State and legal professionals play the role of facilitators, supporting a criminal justice system which aims at offender accountability and full participation of the victim, the offender and the community in making good or putting right (South African Law Commission, Discussion Paper, Project 82, p.3).

- **Victim**

For the purposes of this report, a victim is defined as a biological person who has suffered harm at the hands of another person in the course of a crime of violence. According to the South African government's Victim Empowerment Programme, a victim is defined as a person who, individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their rights, through acts or omissions that are violations of national criminal laws or of internationally recognised norms relating to human rights. For the purposes of this report, harm or suffering, which can be physical or psychological or both, must have resulted in a material loss to the victim and/or had a negative, quantifiable impact on her or his current and/or future capacity to earn an income.

Furthermore, a person may be considered a victim regardless of whether the offender has been identified, apprehended, charged, prosecuted or convicted. People can be deemed to be victims regardless of the familial relationship between the offender and themselves, and the category can include people who were injured

whilst intervening or assisting other victims, or the police during activities aimed at law enforcement.

- **Violent crime**

For the purposes of this report, violent crime is defined as an intentional crime involving an act of violence committed by one or more persons against an individual, with or without a weapon. Such a crime could be associated with inter-personal violence between strangers or people who know each other, or predatory property crimes committed with the intention of obtaining goods or money. In terms of police recording practices, violent crimes include murder, attempted murder, assault, rape, indecent assault and robbery.

- **Blameless victim**

This term refers to people who have sustained an injury (for the purposes of this report, through a violent crime) through no wrongful, negligent (or intentional) conduct on their part

- **Pain and suffering**

This term refers to compensation awarded as a result of the wrongful and negligent (or intentional) impairment of the physical or mental integrity of a person, in the past and future.

- **Loss of amenities of life**

'Loss of amenities of life' refers to compensation awarded for any disability, whether physical or mental, temporary or permanent, which diminishes the victim's enjoyment of life.

- **Shortened expectation of life**

Compensation awarded under this heading is granted as a result of the reduction of a person's normal life expectancy because of an injury

- **Damage**

Damage is the loss or harm suffered by a person as a result of a delict (*see Section 3.2.1.1 of this report*) committed against him/her, whereas damages are the restoration of impaired interests through money.

- **Heads of damages**

These are the various grounds on which damages for impaired interests can be claimed and which the law seeks to restore through money.



# CHAPTER ONE

## Introduction and Structure of the Report

**This chapter provides an overview of the mandate of the project and introduces some key issues with regard to compensation for victims of crime. Definitions of words and concepts used in the report are also provided. Finally, the chapter outlines the structure of the document by briefly describing the focus of the nine chapters of the report.**

### 1.1 Overview of the Mandate of the Project

The Republic of South Africa is far behind other countries when it comes to victim support and compensation of victims of crime. The South African Law Commission (SALC), through its project committee on Victim Empowerment, is consequently conducting an investigation into the viability of establishing a State Compensation Fund for victims of crime.

The SALC understands victim compensation broadly in terms of a 'reward'. A distinction is drawn between compensation and restitution. Compensation and restitution are both components of the umbrella term 'reward', which may be defined as providing a particular benefit or service to a particular person in the form of a restitution order or compensation by the State. Compensation should, however, be distinguished from restitution. Compensation relates to the procedures established by the State with the aim of compensating victims from a central State fund, whereas restitution relates to the legal remedies available to the victim to claim restitution from the offender by means of a court order, either in a civil suit or a criminal action.

The SALC's broad investigation includes a review of the legal position relating to both compensation and restitution with the aim of making recommendations on law reform in this regard. To assist with this process, the SALC put to tender research that would assist in furthering the debate and provide it with various practical options for consideration. The tender was awarded to the Centre for the Study of Violence and Reconciliation (CSV) in Johannesburg, South Africa.

Specifically, the broad mandate of the study was to make recommendations with regard to the establishment of a compensation scheme that would ensure compensation and restitution for victims of crime. The purpose of the study was, therefore, to assist the SALC in furthering its own internal discussions about the feasibility and nature of a compensation scheme, if one were to be set up in the future. In this regard, the mandate of the research was to assist in enriching the SALC's discussion through providing information on the key debates, risks and policy issues to consider (based on international comparative analysis) when developing a compensation scheme for victims of crime. The research also provided the SALC with various models of compensation schemes (including estimated resource implications) for the Commission's consideration.

The principles of restorative justice were considered by all concerned to be an integral part of the research and mandate. The SALC, therefore, also requested that the researchers consider, if a compensation scheme based on monetary compensation appeared not to be viable or sufficient to stand on its own, how restorative justice approaches to victims could be integrated into the research. As such, the researchers were to point to alternative strategies and approaches to complement the models outlined in the research. However, the mandate did not require the researchers to elaborate on these issues in detail, but rather to point out where they would be of relevance and what alternative options may exist. It was agreed that the final report presented here should include an analysis of key policy issues and debates regarding compensation, a number of models for costing the scheme, as well as a set of recommendations for taking the process forward by the Law Commission in the future. See the full terms of reference in *Appendix One*.

## **1.2 Introduction to Key Issues**

It is generally recognised that crime in South Africa (SA), and especially violent crime, is at exceedingly high levels and that the risk of victimisation of citizens, residents and visitors is inordinately high. This fact, which is confirmed by all available crime statistics and victim surveys (see *Chapter Two*), explains the extent to which crime, as well as the nature and efficacy of the state's response to it, has become one of the main foci for policy and political debate in SA. It could be argued that, with the possible exception of job creation and the economy, no single issue of

governance comes close to the levels of attention and concern associated with the problems of crime, criminality and victimisation.

The extent of public concern about crime has led to numerous proposals, of varying practicability, for improving the safety and security of members of the public. These proposals have ranged from endorsements of violent vigilantism to carefully costed proposals for the implementation of technological solutions to problems of inefficiency in the criminal justice system. They have covered the spectrum of possibilities from calls to reinstate the death penalty to campaigns calling on people not to 'do' crime. They have also included such imperatives as increasing the accessibility of the criminal justice system to previously under-serviced communities, to the fencing-off of neighbourhoods.

On the basis of the sheer variety of proposals made for addressing the problems of crime, criminality and victimisation in SA, one could conclude that almost all areas which can or do impact on the nature and level of crime could be improved. Three basic formulae for improving levels of safety and security in SA have been developed. These are:

- 'Devote more resources to alleviating socio-economic problems and unemployment, and crime will take care of itself';
- 'Improve the functioning of the criminal justice system, employ more police officers and prosecutors and get the prisons in shape, and crime will be dealt with directly'; and
- 'People are victimised because of the failure of the state to properly police society and to create appropriate conditions for improving safety and security. It is these people to whom the state owes its greatest duty of care, and, if their needs are prioritised, the state can reduce revictimisation and can break the cycle of violence. Moreover, dealing with the needs of victims reduces the likelihood of vigilantism emerging.'

In general terms, one might term these approaches to be 'social crime prevention', 'law enforcement' and 'victim-centred'. The underlying premises and goals of each approach differ from those of the others, yet there need not be too great a degree of contradiction between the various approaches and they should be complementary. That said, it is apparent that in recent years the victim-centred approach to dealing

with the impact of crime on the lives of victims has gained currency and is now part of the cutting edge of policy debates in the field of safety and security.

Victim-centred approaches to the issue of crime comprise a number of components and concerns about which there is a great deal of political, policy and academic debate. These issues include concerns relating to victims in general, such as:

- the accessibility of the police and courts;
- the nature and quality of services provided at and by those institutions;
- an under-emphasis on concerns relating to the plight of specific classes of victims, such as the specific needs of rape and child abuse survivors as well as those of victims of domestic violence.

Particular emphasis is beginning to be placed on the need to restore victims to a position comparable to that which they occupied prior to their victimisation. This is part of a more general need to empower and support victims and to recognise and address their particular needs. Proposals to restore victims to their prior positions often include reference to the payment of compensation as a way to compensate them for the wrong done to them both materially and symbolically. Such proposals, which are based on similar programmes in other parts of the world, include references to the need to establish a Victim Compensation Scheme (VCS) in SA, through which the state would offer financial compensation to victims or their dependants for the harm done by offenders.

Proposals for the establishment of a VCS are based on the undeniable premise that victims of violent crime and their dependants suffer material and psychological costs as a result of their victimisation. The circumstances under which these costs are incurred are deemed intolerable and it is felt, therefore, that the victim should be compensated in some way for such costs.

Generally, legal systems recognise this and create an unfettered right to receive compensation from the perpetrator of the wrong for the damages associated with the commission of those wrongs. These rights are deeply rooted in the law of SA, and have evolved through legislation and judicial interpretation over time. More recently, however, governments in many countries around the world have adopted policies that extend the right to access compensation for victims of violent crime beyond the

civil liability of the wrong-doer. These policies include the creation of mechanisms through which some or all victims of violent crimes can access funds made available through the state, irrespective of whether the wrong-doers are, themselves, ever identified or if they are unable to compensate the victims of the original crime.

These schemes amount, therefore, to a transfer of funds from taxpayers to the victims of crime and are motivated by a philosophy that construes society as having a responsibility to the victim of crime. By providing compensation, it is hoped that further victimisation and hardship experienced by the victim is prevented or limited. These schemes do not create a legal right to compensation from the state, rather they provide mechanisms through which the victim can access funds on the basis of an accepted social responsibility by the state towards the victim.

The fact that there is no legally recognised right to compensation except from the offender means that compensation schemes operate in the context of the political and fiscal vicissitudes of government. Compensation schemes, therefore, frequently differ in their interpretations as to who qualifies for compensation, what exemptions and exclusions apply, and the extent of the compensation provided. These differences make it impossible to speak in more than the most general terms of the practical and legal requirements for the establishment of a VCS in SA. Nonetheless, given the broad political and public support for the idea of establishing a VCS, it has become necessary to develop a framework for thinking through the implications and prerequisites for such a scheme in SA and it is this task that this report seeks to begin to address.

### **1.3 Structure of the Report**

This report is made up of nine chapters. These are:

- *Chapter One:* A broad introduction to the report and the issue of compensation for victims of crime.
- *Chapter Two:* An overview of the violent crime situation in South Africa, which is considered essential to help provide the data for costing and assessing any compensation model.
- *Chapter Three:* An overview of the debates concerning compensation. This Chapter analyses the motivations for and against establishing a

compensation scheme for victims of crime, drawing heavily on international comparisons and experience.

- *Chapter Four:* An outline of the parameters usually applied in victim compensation schemes, which will need to be considered if a VCS were to be established in South Africa. This Chapter highlights the eligibility and ineligibility criteria that would need to be considered for any compensation scheme. These are based on various international approaches and best practice.
- *Chapter Five:* The results of two case studies of selected police dockets. The purpose of these docket analyses was to provide detailed information about certain types of violent crimes, and to assess the usefulness of police information in adjudicating possible claims for victim compensation.
- *Chapter Six:* Postulates various models and costings associated with establishing a compensation scheme in South Africa. A number of models ranging from full compensation, through to more minimal or targeted schemes are discussed and costed.
- *Chapter Seven:* Outlines the type of administrative structures that could be used to run and manage a victim compensation scheme.
- *Chapter Eight:* Provides various options for funding a compensation scheme and the financing systems that may be involved if a compensation scheme were to be established.
- *Chapter Nine:* Provides a list of recommendations emanating from the research.

An appendix made up of several components, and a reference list is attached.

## CHAPTER TWO

### Summary of the Violent Crime Situation in South Africa

This chapter lays a foundation for the rest of the report. It summarises the nature and extent of violent crime in South Africa. This information is critical to costing a VCS (see *Chapter Six*). The chapter also briefly documents the economic, physical and psychological impact of violent crime on its victims. Thereafter, the types of services currently available to victims are described. The Victim Empowerment Programme is discussed and evaluated, and the role of the Victims' Charter and its relevance to compensation highlighted.

#### 2.1 Introduction

Whilst violent crime in South Africa is widespread, a fact borne out by the anecdotal and the statistical evidence that exists, data on rates of crime and victimisation in SA are inadequate. In particular:

- Police crime statistics<sup>1</sup> are generally regarded as unreliable because they reflect only those crimes which are (a) reported to the police and (b) recorded by them. This means that a large number of crimes go either unreported or unrecorded;
- In SA the problem of the size of the 'dark number' of unreported and of the 'grey number' of unrecorded crimes is accentuated by the fact that much of SA is under-policed and that, until recently, many policing jurisdictions lacked any significant infrastructure for the gathering and compilation of crime statistics. For that reason, reliable police crime statistics do not exist for any time prior to 1994;
- The under-policing of SA and the related problem of historical police illegitimacy imply that, apart from very serious violent crime and property crimes against people who are insured, reporting rates are thought to be quite low. Moreover, skewed results are likely to produce a relatively larger under-count of crimes committed against the poor, especially those who live in rural areas;
- Assessments of the South African Police Services (SAPS) systems continue to reflect concerns that the systems used by the SAPS for the gathering of

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<sup>1</sup> Whilst writing this report National Police Commissioner, Jackie Selebi, ordered his communications officials countrywide not to publish police crime statistics until further notice. The moratorium on the statistics is said to be about giving the SAPS 'breathing space' while taking stock and redesigning its entire approach to the way it counts and assesses crime in South Africa. Only the national quarterly statistics will be made public during the period the moratorium is in force, and only by SAPS headquarters in Pretoria (Business Day, 14 July 2000).

crime statistics are either not properly understood or not properly utilised by police officers; and

- Victimisation surveys, which seek to assess levels of crime and to capture the extent of under-reporting, are relatively recent initiatives. As such, they cannot be used to measure trends over time. In addition, some disturbing anomalies in their findings cast some doubt on the validity of some of the data collected.

Given these problems, assessing the levels and distribution of victimisation is exceedingly difficult. This fact complicates the calculation of the appropriate size and coverage of a Victim Compensation Scheme (VCS) if such a scheme is to meet the needs of victims of crime and violence. At the same time, it is important to base any assessment of the desirability and feasibility of a VCS on an as accurate as possible appreciation of the scale of the problems with which it will have to deal. It is, therefore, important to reflect on what we do know about levels of crime and victimisation in SA.

## **2.2 Nature and Extent of Violent Crime**

Police crime statistics for the years 1994 to 1998, which should capture all crimes reported to the police, are reflected in the table below.



<b>Crime in the RSA for the period January to December 1994-1998</b>						
<b>Crime category</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>Ave. annual growth</b>
Murder	26,832	26,637	25,782	24,588	24,875	-2%
Attempted murder	27,300	26,512	28,516	28,148	29,418	2%
Robbery with aggravated circumstances	84,900	80,071	67,249	69,691	88,319	1%
Common robbery	32,423	40,881	51,506	52,678	62,111	18%
Public violence	1,223	992	907	1,043	1,093	-3%
Illegal strikes	347	394	113	51	64	-34%
Rape and attempted rape	42,429	47,506	50,481	52,159	49,280	4%
Intercourse with a girl under the prescribed age and/or female imbecile	787	666	580	537	474	-12%
Indecent assault	3,874	4,873	5,220	5,053	4,851	6%
Cruelty and ill-treatment of children (excluding sexual offences, assault and murder)	2,723	2,905	2,315	2,368	2,083	-6%
Kidnapping	3,984	4,167	4,156	4,036	4,196	1%
Abduction	2,808	2,299	2,019	2,705	3,090	2%
Assault with the intend to inflict grievous bodily harm	210,250	220,990	230,425	234,554	234,056	3%
Common assault	193,764	205,101	205,333	201,863	199,313	1%
Burglary - business premises (including attempts)	89,058	86,379	87,863	88,610	94,102	1%
Burglary - residential premises (including attempts)	228,021	244,063	246,438	249,375	266,817	4%
Stock-theft	45,137	44,629	41,818	42,908	40,490	-3%
Shoplifting	67,059	63,037	62,198	63,795	63,001	-2%
Theft of motor vehicles and motorcycles	104,302	101,056	96,715	100,637	107,513	1%
Theft out of or from motor vehicles and motorcycles	182,624	189,811	180,229	176,254	188,438	1%
Theft not mentioned elsewhere	382,407	388,252	380,197	387,836	427,132	3%
Arson	11,357	9,761	10,064	9,830	10,130	-3%
Malicious damage to property	122,598	128,393	130,313	127,004	127,590	1%
All fraud, forgeries, malappropriations, embezzlements, etc.	62,581	61,016	62,186	63,632	62,086	0%
Drug related crime	47,323	40,782	39,241	42,805	39,830	-4%
Driving under the influence of alcohol or drugs	26,771	23,174	23,979	27,806	25,606	-1%
Illegal possession of firearms and ammunition	11,136	11,886	12,886	12,877	14,463	7%
Explosives act	571	336	371	204	132	-31%
<b>Total</b>	<b>2,014,589</b>	<b>2,056,569</b>	<b>2,049,100</b>	<b>2,073,046</b>	<b>2,170,553</b>	<b>2%</b>
Carjacking*	-	-	12,860	13,011	15,111	8%
Hijacking of trucks*	-	-	3,694	4,296	5,773	25%
Robbery of cash in transit*	-	-	410	230	214	-28%
Bank robbery*	-	-	642	497	476	-14%

\* These crimes have already been accounted for under robbery with aggravating circumstances

Source: 'The incidence of serious crime in SA between January and December 1998' 1/99 **SAPS Semester Report** Pretoria: SAPS

In the above table, and in much of the rest of the report, attention is focused on violent crime (*shaded blocks*) because that category of crimes is most likely to become the source of eligible claims from any VCS that may be established in SA, for reasons that will be explained in *Chapter Three* below.

As is readily apparent, levels of recorded crime have changed at very different rates over the past five years. Thus, while recorded murders have diminished by approximately 2% per year, attempted murders and assaults with intent to do grievous bodily harm have increased at a similar rate. In addition, the trends are not stable: recorded aggravated robbery incidents declined by 21% between 1994 and 1996 but increased by 31% between 1996 and 1998.

The fact that approximately 24,000 murders are recorded each year in SA is, in itself, no real indication of the extent of victimisation. This can only be reflected if crime statistics are reflected on a per capita basis. The next table reflects crime levels in SA per 100,000 of the population. These statistics for 1996 are then compared to similar statistics for other countries.

<b>Crime per 100,000 people in the RSA for the period January to December 1994-1998</b>						
<b>Crime category</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>Ave. annual growth</b>
Murder	69.28	67.19	63.53	59.18	58.47	-4%
Attempted murder	70.49	66.88	70.26	67.75	69.15	0%
Robbery with aggravated circumstances	219.22	201.98	165.70	167.73	207.61	-1%
Common robbery	83.72	103.12	126.91	126.79	146.01	15%
Public violence	3.16	2.60	2.23	2.51	2.57	-5%
Illegal strikes	0.90	0.99	0.28	0.12	0.15	-36%
Rape and attempted rape	109.55	119.83	124.39	125.54	115.84	1%
Intercourse with a girl under the prescribed age and/or female imbecile	2.03	1.68	1.43	1.29	1.11	-14%
Indecent assault	10.00	12.29	12.86	12.16	11.40	3%
Cruelty and ill-treatment of children (excluding sexual offences, assault and murder)	7.03	7.33	5.70	5.70	4.90	-9%
Kidnapping	10.29	10.51	10.24	9.71	9.86	-1%
Abduction	7.25	5.80	4.97	6.51	7.26	0%
Assault with the intend to inflict grievous bodily harm	542.87	557.44	567.78	564.53	550.20	0%
Common assault	500.31	517.36	505.95	485.85	468.53	-2%
Burglary - business premises (including attempts)	229.95	217.89	216.50	213.27	221.21	-1%
Burglary - residential premises (including attempts)	588.76	615.64	607.24	600.20	627.21	2%
Stock-theft	116.55	112.57	103.04	103.27	95.18	-5%
Shoplifting	173.15	159.01	153.26	153.54	148.10	-4%
Theft of motor vehicles and motorcycles	269.31	254.91	238.31	242.21	252.73	-2%
Theft out of or from motor vehicles and motorcycles	471.54	478.79	444.09	424.21	442.97	-2%
Theft not mentioned elsewhere	987.39	979.35	936.82	933.45	1004.07	0%
Arson	29.32	24.62	24.80	23.66	23.81	-5%
Malicious damage to property	316.55	323.87	321.10	305.67	299.93	-1%
malappropriations, embezzlements, etc.	161.59	153.91	153.23	153.15	145.95	-3%
Drug related crime	122.19	102.87	96.69	103.02	93.63	-6%
Driving under the influence of alcohol or drugs	69.12	58.46	59.09	66.92	60.19	-3%
Illegal possession of firearms and ammunition	28.75	29.98	31.75	30.99	34.00	4%
Explosives act	1.47	0.85	0.91	0.49	0.31	-32%
<b>Total</b>	<b>5201.75</b>	<b>5187.60</b>	<b>5049.09</b>	<b>4989.43</b>	<b>5102.37</b>	<b>0%</b>
Carjacking*			31.69	31.32	35.52	6%
Hijacking of trucks*			9.10	10.34	13.57	22%
Robbery of cash in transit*			1.01	0.55	0.50	-29%
Bank robbery*			1.58	1.20	1.12	-16%
<b>POPULATION</b>	<b>38,729,085</b>	<b>39,643,934</b>	<b>40,583,573</b>	<b>41,548,719</b>	<b>42,540,106</b>	<b>2%</b>

\* These crimes have already been accounted for under robbery with aggravating circumstances

Source: SAPS Semester Report 1/99

As can be seen, overall recorded crime levels per capita have been largely stable over the past 5 years, ignoring for the moment the inexplicable fluctuations in the aggravated robbery and common robbery statistics. There has been a fairly stable distribution of crimes between the various categories of crime to which South

Africans are exposed. However, the level of crime is exceedingly high. Indeed, the total risk of being a victim of crime per person per year is in the order of about 5 per cent even before unrecorded crimes are considered.

International victimisation rates							
Country	Murder	Rape	Serious assault	Robbery and violent theft	Breaking and entering	Theft of motor vehicles	All crimes in national crime statistics
<b>South Africa</b>	<b>61.05</b>	<b>119.54</b>	<b>545.64</b>	<b>281.21</b>	<b>791.61</b>	<b>244.97</b>	<b>6388.35</b>
Argentina	43.48	21.67	58.18	32.09	0	641	4709.76
Australia	3.5	0	618.76	33.88	2178.55	669.97	6476.63
Botswana	12.87	68.46	369.3	72.88	7.65	111.87	7815.04
Brazil	9.7	0	0	0	0	12.51	120.14
Bulgaria	8.83	9.12	13.94	69.95	834.23	143.25	2334.49
Cameroon	0.36	0.18	0.15	0.87	2.32	0.2	23.13
Canada	4.94	0	157.14	104.27	1321.89	595.99	9079.74
Chile	3.86	10.84	117.54	57.07	0	15.97	1309.38
France	4.11	12.39	129.99	136.95	752.16	595.68	6134.97
Gabon	0	105.07	134.95	123.56	148.38	113.56	1451.31
Germany	4.32	7.61	123.85	82.6	1768.83	208.93	8124.91
Ghana	2.23	4.04	404.51	1.12	4.42	0	929.16
Japan	0.97	1.18	14.2	1.96	177.65	26.79	1504.34
Jordan	6.86	1.42	34.06	0.25	45.12	33.32	263.76
Mauritius	3.45	3.54	48.17	91.11	100.32	0	3220.75
Namibia, (Republic of)	52.1	50.46	498.97	67.05	502.43	68.21	4090.94
Netherlands	23.02	11.23	236.04	119.16	3491.97	289.46	9315.28
New Zealand	3.23	34.96	512.07	53.7	2296.32	871.89	14025.87
Swaziland	15.44	59.38	444.28	194.73	682.84	62.8	3619.63
Sweden	10.31	18.18	38.44	75.07	1665.05	750.38	13520.87
Tanzania	7.61	1.63	1.62	2.44	85.6	0.98	1691.69
Thailand	7.36	5.87	25.18	1.67	2.71	4.84	694.54
Tunisia	0.88	4.84	154.16	12.84	137.26	9.94	1413.46
Uganda	9.13	1.24	12.09	13.37	14.8	4.11	153.33
UK (England and Wales)	2.6	8.83	17.43	142.23	2239.23	933.67	7205.5
USA	7.41	36.1	388.19	202.44	942.96	525.92	5078.94
Zimbabwe	10.65	23.27	170.37	71.43	411.57	9.84	4959.62

Source: SAPS Semester Report 1/99

Figures in the table above, which reflect recorded crime levels in a variety of countries for 1996, show that, with the exception of property crimes in the first world, which are well policed and (importantly) enjoy wide insurance coverage, SA has the highest rates of violent crime in the world (*shaded blocks indicate higher levels than South Africa*).

There are, of course, exceptions to the finding that SA has the highest levels of crime in the world. For instance, in 1997, the homicide rate for South Africa was estimated at about 59 per 100 000 inhabitants. This is compared to approximately 9

per 100 000 in the United States and 2.5 per 100 000 in the United Kingdom. In Colombia, however, when the Medellin drug cartel was operating in 1993, the homicide rate was an alarming 450 per 100 000 (Z Roelefse-Campbell and K Campbell 'States In The Labyrinth: Insecurity, Crime And Cartels In Columbia And Peru' (1996a) Vol 9 No 2 *Acta Criminologica* 16-25).

In general, however, South African crime rates are exceptionally high by international standards. Countries such as Brazil, which have more comparable histories to South Africa's, show similar yet less dramatic trends in violent crime (Z Roelefse-Campbell & K Campbell 'State And Society In The Fight Against Crime In Brazil' (1996b) Vol 9 No 1 *Acta Criminologica* 20-25). Brazil witnesses on average 39,000 murders a year,<sup>2</sup> compared to the approximate 24,000 in South Africa, which has about one third of Brazil's population (Roelefse-Campbell & Campbell, 1996a).

As the table above shows, these levels of overall crime are high in comparison to crime rates around the world. More importantly, the weight of violent crime in the basket of crimes to which South Africans are exposed is much greater than is the case in those countries – notably in the first world – whose overall levels of crime exceed those of SA. This obviously has important implications for the desirability and feasibility of a VCS in SA since the overall levels of victimisation, as well as the high rates of violent crimes, will generate much greater volumes of eligible claims.

### **2.3 Under-reporting of Crime in SA**

There is a great deal of evidence that the rate of reporting crime in SA is a good deal lower than 100%. Statistics South Africa (1998, p.53-61) reports that for some serious crimes, reporting levels are below 50%. In this category fall such crimes as theft (28%), assault (38%), robbery with force (41%) and sexual offences (47%). Indeed, crimes which are generally very well reported in other jurisdictions were surprisingly under-reported in South Africa, with murder having a recorded reporting level of only 83%. These findings are broadly in line with a number of similar victimisation surveys in South Africa.

The fact that crime is under-reported in South Africa is no surprise. The history of the relationship between the police and the community under apartheid was hardly conducive to the creation of trust and legitimacy, which are the prerequisites for high levels of reporting. Moreover, although there is some evidence that the black South Africans' impression of the criminal justice system has improved (M Schönreich *Justice Versus Retribution: Attitudes To Punishment In The Eastern Cape* Pretoria: Institute for Security Studies 2000, p.32), the perception that the police have, through their actions and lack of action, failed to curb the growth in crime has continued to fuel low levels of reporting. In this regard, it is also worth bearing in mind that the relative inaccessibility of policing services exacerbates under-reporting by making it logistically more difficult to report crimes.

## **2.4 Interpreting the Statistics**

Although the statistics used in this chapter can be useful in making broad comparisons, the figures need to be understood in context. Broad statistics can convey the mistaken impression that crime rates are uniform. South African crime, like much else in this society, does not impact equally on all individuals. In general terms, black South Africans are far more exposed to the risk of violent victimisation than are White South Africans, while police crime statistics suggest that White South Africans are more likely to be victimised in property crimes than are black South Africans.<sup>3</sup>

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<sup>2</sup> The table outlining international crime rates indicates that the homicide rate in Brazil is 9.7 per 100 000. This seems to be incorrect. The government of Brazil's Datasus web site ([www.datasus.gov.br](http://www.datasus.gov.br)) puts the figure in 1998 closer to 26 per 100 000. In 1998 there were 41 916 reported homicides.

<sup>3</sup> This statement needs to be qualified by the fact that black South Africans tend to be much less likely to have insurance and much more likely to mistrust the police, potentially increasing the rate of under-reporting property crime.

<b>Distribution of crime in Pretoria (1997)</b>								
<b>STATIONS</b>	<b>All violence</b>	<b>Murder</b>	<b>Rape</b>	<b>Robbery (agg)</b>	<b>Burglary (homes)</b>	<b>Burglary (business)</b>	<b>Theft: MV</b>	<b>Theft out MV</b>
Lyttleton	2.1%	1.8%	1.6%	4.2%	8.2%	5.2%	8.3%	5.2%
Atteridgeville	11.4%	10.5%	11.3%	5.7%	3.1%	1.4%	1.1%	1.7%
Brooklyn	2.3%	1.8%	1.2%	3.9%	8.8%	8.6%	12.9%	13.5%
Eesterust	4.8%	5.5%	2.3%	1.1%	2.2%	1.3%	0.5%	0.9%
Erasmia	2.3%	3.8%	3.7%	3.0%	2.0%	1.1%	0.6%	0.6%
Garsfontein	1.4%	1.8%	0.8%	1.5%	11.6%	2.2%	6.0%	6.8%
Hercules	3.3%	2.3%	2.6%	2.2%	2.8%	3.1%	3.4%	1.3%
Laudium	1.9%	2.0%	1.0%	2.1%	1.0%	1.9%	1.2%	1.9%
Mamelodi	19.8%	19.9%	26.2%	17.5%	5.6%	1.0%	1.6%	2.1%
PTA Moot	1.4%	0.9%	0.6%	0.9%	1.8%	1.9%	3.6%	2.3%
PTA North	2.2%	1.6%	2.5%	2.0%	2.0%	2.8%	2.4%	2.7%
PTA West	4.4%	3.4%	5.3%	3.9%	3.5%	6.8%	4.9%	5.5%
PTA Central	10.8%	6.3%	5.1%	11.2%	2.3%	22.7%	15.3%	14.6%
Rietgat	9.3%	14.5%	13.5%	11.2%	4.0%	1.6%	0.8%	0.8%
Rosslyn	3.4%	4.0%	4.5%	5.4%	5.4%	3.9%	3.3%	1.7%
Silverton	2.0%	1.6%	1.5%	3.2%	4.2%	6.5%	4.2%	5.1%
Sinoville	1.6%	1.1%	1.4%	1.4%	5.0%	1.5%	2.3%	1.8%
Soshanguve	5.9%	8.8%	8.5%	7.1%	2.5%	2.6%	1.0%	1.1%
Sunnyside	4.4%	2.6%	2.2%	4.4%	5.3%	9.9%	16.4%	22.3%
Villiera	1.6%	1.1%	1.2%	1.9%	3.9%	4.8%	2.9%	2.5%
Wierdabrug	2.5%	3.8%	2.2%	5.6%	12.7%	6.8%	5.3%	4.3%
Wonderboompoort	1.3%	0.8%	0.7%	0.6%	2.0%	2.5%	2.1%	1.4%
<b>Townships</b>	<b>51.1%</b>	<b>59.2%</b>	<b>61.9%</b>	<b>42.6%</b>	<b>17.4%</b>	<b>7.8%</b>	<b>5.0%</b>	<b>6.6%</b>

Source: Altbeker (*Crime in Pretoria: A Quantitative Analysis* Pretoria: Idasa 1998)

The table above makes this point explicitly: whereas property crime in Pretoria was concentrated in the suburban police precincts, recorded violent crime was overwhelmingly concentrated in township areas and the inner city – precisely the places where black South Africans are most likely to make their homes. This is evidenced by the fact that the stations reporting the largest proportion of violent crimes are invariably Mamelodi, Atteridgeville, Rietgat, Shoshanguve and Pretoria Central, while the stations reporting the largest proportions of property crime are Lyttleton, Brooklyn, Garsfontein, Pretoria West, Pretoria Central, Sunnyside and Wierdabrug. Moreover, while about 60% of all violent crimes are recorded in township police stations, often less than 10% of property crimes are recorded in the same stations. If crime were evenly distributed, the bulk of all crimes would occur in the most populous station areas. As this is not the case, we can conclude that crime affects different people differently.

The perception (largely held by White South Africans) that the wealthy are more affected by crime than the poor is, therefore, at best, only partly true. The rich are

twice as likely to be victims of property crime than the poor,<sup>4</sup> but the poor are nearly 80 times more likely to die or get physically hurt by crime than the well-off (J Steinberg 'Crime: Beyond 2000' (1999) Issue 4 (Autumn) *Siyaya* 47-49). Furthermore, the annual incidence of violence experienced by African women is more than ten times that of their White counterparts (Trauma Review, 1996). These figures are in line with the increasing international evidence that poor people bear most of the brunt of violence in society (*cf.* J A Mercy, M L Rosenberg, K E Powell, C V Broome and W L Roper 'Public Health Policy For Preventing Violence: New Vision For Prevention' (1993) 12 *Health Affairs (Millwood)*); A Louw and M Shaw *Stolen Opportunities: The Impact Of Crime On South Africa's Poor* (Monograph No 14) Pretoria: Institute for Security Studies 1997; HSRC survey cited in Louw & Shaw, 1997).

In addition to these differences in the level of risk borne by different people in different socio-economic circumstances, there are also fairly large differences in the regional spread of crime, as the table below demonstrates.

<b>Recorded 1998 crime per 100,000 (Above/below the national average)</b>						
<b>Province</b>	<b>Murder</b>	<b>Attempted murder</b>	<b>Rape</b>	<b>Assault GBH</b>	<b>Indecent assault</b>	<b>Aggravated robbery</b>
Eastern Cape	1%	-18%	-12%	12%	-29%	-51%
Free State	-28%	-30%	10%	15%	-11%	-59%
Gauteng	<b>31%</b>	<b>37%</b>	<b>32%</b>	10%	1%	<b>156%</b>
KwaZulu-Natal	<b>24%</b>	<b>21%</b>	-17%	-44%	-20%	8%
Mpumalanga	-33%	-18%	-12%	0%	-46%	-36%
North West Province	-34%	-20%	8%	11%	-38%	-43%
Northern Cape	<b>22%</b>	-22%	<b>46%</b>	<b>185%</b>	<b>72%</b>	-78%
Northern Province	-70%	-58%	-38%	-30%	-76%	-76%
Western Cape	<b>46%</b>	<b>43%</b>	<b>29%</b>	<b>36%</b>	<b>239%</b>	-13%
RSA	0%	0%	0%	0%	0%	0%

Source: SAPS Semester Report 1/99

<sup>4</sup> This figure could be distorted because the rich are also more insured than the poor and consequently may report crime more.

In the table, provinces where the average per capita level of crime varies by more than 20% from the national average have been highlighted. It appears from this that Gauteng has a far higher level of violent crime, especially murders, attempted murders, rapes and aggravated robberies, than would be predicted purely on the basis of its population alone. Similarly, the Northern Cape and Western Cape have much higher per capita levels of rape, assault and indecent assault. By contrast the Northern Province has crime levels well below those of the national average.

That said, there should be some caution exercised in reading these figures as it is widely acknowledged that the distribution of policing resources is also heavily skewed in SA, and it is likely that some of the apparently lower levels of crime in places like the Eastern Cape may simply reflect the difficulties associated with reporting crime and recording it accurately in those areas.

## **2.5 The Impact of Violent Crime**

### **2.5.1 Economic and medical cost of violent crime**

There is very little written in South Africa specifically about the physical impact of violent crime. Most studies that look at the impact of violence tend to focus more broadly on what can be termed medical-related trauma. Trauma in this sense of the word, which can include violent crime, motor vehicle accidents and accidental injury, is considered the single largest cause of productivity loss in South Africa and is unparalleled by any other disease as a cause of potential years of life lost.<sup>5</sup> More than 16 per cent of all deaths are due to trauma and this is significantly higher than the World Health Organisation's global figure of 5,2 per cent (J W van der Spuy and B de Wet 'Trauma - Today and Tomorrow' (1991) 79 ***South African Medical Journal*** 61-62). Trauma is the second largest cause of overall deaths (after circulatory diseases) in South Africa, whereas in the United States trauma is ranked in fourth place (Trauma Review, 1993, cited in Louw & Shaw, 1997).

As was noted, not all trauma-related injury and death can be attributed to violence or violent crime. However, it does seem that much of the trauma seen in South Africa is related to violence. In 1990, of the trauma cases recorded in the Cape



Metropolitan area, 34 per cent of injuries and 53,2 per cent of deaths were caused by violence (Trauma Review, 1993 cited in Louw & Shaw, 1997).

Violence-related deaths and injuries place a significant burden on the health care systems and, for individuals, result in disability, pain and suffering (Marais, 1998). Trauma has a major impact on the financial situation of families, as well as on the national fiscus and economy (J W van der Spuy 'The economic impact of trauma' (1996) 6(2) **S.A. Bone and Joint Surgery** 5-11). A study done at the Trauma Unit at Groote Schuur Hospital on a sample of 969 patients who had sustained gun shot injuries in 1993 showed a cost of R3 858 331 to the hospital (J W van der Spuy and M Peden 'The Cost of Treating Firearm Victims' (1998) August **Trauma Review** at <http://www.mrc.ac.za>). However, medical costs account for only 13% of the total cost of firearm injuries to society according to economists in the USA. The intangible 87% is due to lost productivity as a result of temporary and/or permanent disability or premature death (Peden & van der Spuy, 1996).

Clearly, therefore, the sheer volume of crime, as well as the proportion of violent crime, ensures that crime in South Africa is inordinately expensive to the society and individuals. Violent crime affects all people who are victimised by it, but some argue that it takes its toll on the health and lives of the poor in particular (Louw & Shaw, 1997). In the most extreme cases, the death of income-generating family members appears to be one of the most severe shocks, and causes vulnerable households rapidly to become poverty-stricken (cited in Louw & Shaw, 1997).

A list of the headings under which the economic costs of crime might be summed up might include a range of items. It is important to note that while all of these represent costs to individual victims, some are not losses to the economy, reflecting, instead, a transfer of income from one person to another. Examples of this include expenditure on private security: Although this represents an expense to the potential victim who pays for the service, it represents income for security companies' shareholders and staff. That said, victims might consider the following set of costs

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<sup>5</sup> MRC Trauma Research Programme at <http://www.mrc.ac.za>

as reflecting the sorts of losses they incur both in trying to prevent their own victimisation, and in recovering from their victimisation:

- productive years lost by victims who are killed or seriously injured, as well as those who emigrate to reduce their exposure to the risk of violence;
- working days lost during convalescence (which can take many years, especially in the case of violent crimes, rape and, especially, child abuse);
- reduced productivity following violent victimisation, resulting from post-traumatic stress and damaged morale (especially in the case of violent robberies committed in the workplace);
- working days lost assisting the investigating officer and attending court;
- working days lost replacing lost and damaged property; and,
- Taxes used to pay for the provision of the services of the criminal justice system which go elsewhere;
- Insurance premiums and payments for private security;
- Lost and damaged property;
- Medical costs;
- Lost investments and economic opportunities flowing from the increased costs of doing business in a high crime environment and from the reduced levels of business confidence, as well as the lost opportunities attendant on the closure of otherwise solvent businesses in the face of criminal victimisation; and
- Reductions in the pleasure derived when activities are avoided as a result of a fear of crime.

These costs cannot be and have not all been calculated in South Africa, but it is clear that they constitute a drain on the economy of significant proportions. Moreover, while all South Africans incur these losses, victims of crime incur a disproportionate share of many of them. Lost productivity, for instance, while being a loss to the economy as a whole, is a particularly severe loss to the individuals who would otherwise have earned income from their work.

### **2.5.2 The psychological effects of violence**

Empirical and clinical research shows that suffering of victims is not only in the area of physical and economical loss, but that psychological trauma is a major factor as well (Erex & Tontodonato, 1990, cited in South African Law Commission, Discussion Paper, Project 82, p.3). According to current literature, beliefs, expectations and assumptions about the world play a pivotal role in determining the effects of victimisation (McCann & Pearlman, 1990). Janoff-Bulman (1985) asserts that the experience of trauma shatters three basic healthy assumptions about the self and the world. These are: the belief in personal invulnerability (it won't happen to me); the view of the self as positive; and the belief that the world is a meaningful and

orderly place and that events happen for a reason. Violence, or trauma that is inflicted by a fellow human being, shatters a fourth belief: the belief that other human beings are fundamentally benign. These four assumptions allow people to function effectively in the world and to relate to others. After an experience of violence, the individual is left feeling vulnerable, helpless, and out of control in a world that is no longer predictable.

There is always a significant subjective component in an individual's response to a traumatic event. This can be seen most clearly in disasters, where although a broad cross-section of the population is exposed to the same traumatic experience, individual psychological reactions are markedly different. Some of these individual differences in susceptibility may stem from pre-existing social, cultural and psychological factors. Individuals' reactions are as much about the actual traumatic incident as they are about their pre-traumatic personality structure and their available personal resources, coping strategies and extended support structure.

Post-Traumatic Stress Disorder (PTSD) is the most commonly documented impact of violence and is a diagnostic category used to describe symptoms arising from emotionally traumatic experience(s) (*cf.* H Hajjiannis and M Robertson 'Counsellors' Appraisals of the Wits Trauma Counselling Model: Strengths and limitations' (Paper presented at the Traumatic Stress in South Africa Conference, Johannesburg, South Africa) 27-29 January 1999). However, PTSD is not the sole response to traumatic experiences. Other psychological issues may confront the individual after exposure to a trauma (B Hamber and S Lewis 'An Overview of the Consequences of Violence and Trauma in South Africa' (Occasional paper) Johannesburg: Centre for the Study of Violence and Reconciliation 1997). For example, bereavement-related issues are often paramount if, for example, a person close to the victim was killed. Or, in the aftermath of a disfiguring trauma such as a burn, an individual would have to deal with psychological issues around body-image. In addition, it has also been shown that the exposure to traumatic events can be associated with the onset of psychiatric disorders (Z Solomon, M Mukilincer and H Flum (1988). 'Negative Life Events, Coping Responses And Combat-Related Psychopathology: A Prospective Study' Vol 97 No 3 *Journal of Abnormal Psychology* 302-307).

Dire social circumstances have made it difficult for individuals to deal with or prioritise past psychological traumas. At times, so-called present difficulties (i.e. occupational problems, substance abuse, relationship breakdowns, *etc.*) are symptoms of long-term traumatisation, which may have been compounded by impoverished living conditions. However, at other times, impoverished living conditions (e.g. over-crowding, hunger, being forced to work away from home, *etc.*) have heightened the primary trauma and have also in themselves caused a range of new psychological difficulties and problems.

## **2.6 Services Available to Victims of Crime in South Africa**

On the whole, services available to victims of crime in South Africa are generally inadequate and limited in their accessibility. Historically, victim support services in South Africa have been provided by community-based organisations (CBOs) and non-governmental organisations (NGOs), but these are limited in their scope and reach. The mainstay of the government's attempts at victim support was the establishment of the Victim Empowerment Programme (VEP Status Report 'Status Report With Regard To The Victim Empowerment Programme Covering The Period 1 January 2000 To 31 March 2000' Department of Welfare 2000) in 1996.

### **2.6.1 The Victim Empowerment Programme<sup>6</sup>**

The VEP is one of the key components of the National Crime Prevention Strategy (NCPS National Crime Prevention Strategy (Document produced by an Inter-Departmental Strategy Team consisting of the Departments of Correctional Services, Defence, Intelligence, Safety and Security Justice and Welfare May 1996)). The NCPS advocates a victim-centred approach to combating and preventing crime and violence. Within this broadly restorative justice strategy it is argued that victim empowerment and support can make an important contribution to crime prevention. VEP emphasises crime as a social issue rather than a security issue. The ultimate purpose of the programme, as captured in the VEP mission statement, is ***to provide a caring and supportive service to victims of crime that is accessible, timeous***

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<sup>6</sup> Thanks to Suzette Kotze from the Department of Welfare, Victim Empowerment Programme, for her comments on this section.

***and thorough, thus contributing to a sense of empowerment and an environment conducive to peaceful communities.***

Effective victim empowerment would mean that services for victims of crime would be:

- available, accessible, thorough and professional;
- rendered in an empowering, respectful and supportive manner;
- co-ordinated and integrated effectively;
- efficient in providing all the necessary information on available services to victims; and
- efficient in providing information on the progress of relevant criminal investigation and information on procedures and processes to victims;

Currently, the programme is co-ordinated and implemented by the Department of Welfare together with an inter-departmental and inter-sectoral Victim Empowerment Management Team, which consists of the Departments of Welfare, Health, Correctional Services, Justice, Education and the South African Police Service, relevant NGOs and provincial coordinators.

Since the inception of the VEP, the number of available services for victims has increased. The Department of Welfare has developed national projects aimed at achieving the objectives of the VEP. These include the following:

- guidelines for voluntarism in victim empowerment;
- expansion and/or duplication of a one-stop services project including domestic violence projects;
- research and co-ordination;
- undertaking victim of crime surveys;
- programmes which prevent and respond to violence against women;
- programmes for perpetrators of violence;
- programmes for establishing shelters for abused women and children;
- training social workers and lay-counsellors in the implementation of the Domestic Violence Act;
- developing a resource directory on domestic violence for referral purposes;
- programmes which prevent and respond to rape and sexual offences;
- integration of victim-empowerment, economic and HIV/Aids programme; and
- establishing trauma response units

At provincial level, the Department of Welfare is partially funding various NGOs and CBOs that are implementing the VEP. In some provinces they have appointed

Project Managers to oversee the functioning of these funded projects. Furthermore, the Department of Safety and Security has been involved in training its police in trauma management and victim-empowerment. A number of police stations have opened Trauma Centres to assist victims of various crimes. The Department of Health has also taken an initiative in training the primary health care practitioners in victim empowerment and trauma management in different provinces. In addition, the Department of Justice has made legal provisions to counteract domestic violence in rural communities.

Besides these government-driven initiatives, there are various NGOs and CBOs which are providing services to victims of various crimes and some of these have been involved in training and providing expertise to the projects initiated by the government. A number of trauma clinics exist across the country and various primary level health care professionals have been trained by NGOs to provide frontline assistance. Research has shown that partnerships, between NGOs, community stakeholders, community police forums, government departments and others, are considered crucial to improved support for victims (Independent Projects Trust 'No Excuses: Implementing the Victim Empowerment Programme' (2000) No 20 (Winter) *Crime and Conflict* 12-15).

### **2.6.2 The Charter of Victim Rights<sup>7</sup>**

There have also been some developments regarding the establishment of a Victims' Charter in South Africa. In 1998, the Department of Justice developed the first draft of the Victim Charter. This was based on international standards of victims' rights. This draft will be developed into a more comprehensive charter once the comment of a variety of stakeholders has been gathered. The types of rights focused on in the draft charter include:

- the right to be treated with respect and dignity;
- the right to offer information and to be heard;
- the right to receive information;
- the right to legal advice and timely processing of criminal proceedings following the arrest of an accused, within reasonable bounds;
- the right to protection;

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<sup>7</sup> Information on the Victims' Charter was extracted from a progress report issued by the Department of Justice and Constitutional Development, Subject: South African Victim Charter of Rights, August, 2000. Thanks to Marie Swart for supplying this information.

- the right to restitution; and
- the right to reasonable accommodation and assistance.

It is hoped that the Victims' Charter will educate victims about their rights and improve the accountability of service providers who interface with victims (e.g. hospital staff, police, *etc*). The Victims' Charter will be considered to be part of a holistic policy on victim empowerment, which will play a role in reducing incidents of secondary victimisation, experienced by victims within the criminal justice system. The draft charter also aims to ensure that the justice system strikes a balance between the rights and dignity of victims and the rights of accused persons.

Specifically, in terms of the right to compensation and restitution, it is important to note that the draft charter does not include a broad right to compensation, i.e., a unilateral right to compensation from the state if one is a victim of crime. At this stage the right to compensation (restitution) only exists in so far as the victim has a right to receive restitution from the offender, with the court having discretion about whether or not to grant a compensation order to this effect. The right to redress for damages through normal civil law channels is also stipulated.

### **2.6.3 Evaluating the Victim Empowerment Programme**

A number of successes have been achieved thus far, including the building of partnerships that have resulted in the participation of various role players in co-ordinated projects based on a shared concern for victims. An integrated business plan has been developed and approved, which consists of inter-sectoral and departmental objectives with detailed action steps and performance indicators for each step. A victim survey was conducted by Statistics South Africa (Statistics South Africa, 1998), which has provided information on the nature and prevalence of victimisation in the country.

A total of 66 VEP projects have been established at a provincial level. The majority of these aim to operate on the basis of '24 hour one-stop service centres'. Victims receive a range of services rendered by trained professional and/or volunteer staff. Each project reaches at least 20 victims per month, which means that 1 320 victims per month have access to services that did not exist in the past. A resource directory

on domestic violence has been compiled. A number of VEP training programmes for primary health care practitioners, police and social workers have been conducted. (VEP Status Report, 2000).

However, there are a number of gaps in the implementation of the VEP. Service delivery for certain groups and in certain areas remains limited. The majority of the projects funded by the government are concentrated in the urban, peri-urban and semi-rural areas; the rural areas still remain under-resourced.

In terms of broad successes, there has been a general increase in victim support services at a level of basic psychological first aid. This may be sufficient for many victims. However, research suggests that a percentage of people exposed to violence may develop post-traumatic stress disorder, which requires more specialised intervention (M J Scott and S G Stradling ***Counselling for Post-Traumatic Stress Disorder***. London: Sage 1992). There is a serious gap in the provision of professional services and those that do exist are based in major cities. Rural and outlying areas do not have access to such services.

Another shortcoming of existing victim support services is the failure to evaluate levels of service delivery and an absence of defined standards. This makes it difficult to determine whether existing services are adequate. In certain provinces, provincial VEP managers and a national VEP manager have not yet been appointed. This has resulted in ineffective co-ordination of VEP strategies in certain areas. A further obstacle is that state service providers such as police, social workers and primary health care practitioners are expected to include victim empowerment as part of their day-to-day job function, in addition to their other responsibilities. Most frontline workers are already overstretched and under-resourced without this additional responsibility. This impacts on their ability to dedicate the necessary time and energy to the delivery of effective victim empowerment services.

A further gap in the delivery of effective victim empowerment relates to a shortage of resources within the various sectors, which leads to increased levels of secondary victimisation. Examples of this include shortages of cars to investigate crimes, a lack



of private interviewing rooms for police and social workers in certain areas and unavailability of district surgeons, to name but a few.

In conclusion, it is evident that victim empowerment as a philosophy and approach has, to some degree, been entrenched in several government departments. A number of new programmes have also been set up to service victims of crime and improvement is evident in some areas, but few of these have been evaluated in detail. However, a significant gap persists between policy-making and implementation. Inter-sectoral co-operation remains an ongoing problem and an imbalance exists between various departments in their engagement with providing victim support and services. The provision of services to victims is undermined across the board by a general lack of resources, resulting in on-going inconsistencies in the number of services available to victims of crime in the urban areas relative to those in the rural areas. Overall, psychosocial services for victims of crime remain underdeveloped.

# CHAPTER THREE

## A Compensation Scheme for Victims of Crime in South Africa

This chapter debates the issue of compensation for victims of crime in the South African context. It provides information on the South African law of damages and how currently victims of occupational injuries and diseases, road accidents and political traumas are compensated. The strengths and weaknesses of these schemes are highlighted. Thereafter, the chapter focuses on international experience and best practice with regard to compensating victims of crime specifically. The merits and demerits of setting up a compensation scheme for victims of crime in South Africa are then discussed.

### 3.1 Introduction

Victims of violent crime in South Africa, and, in fact, across the world, generally feel alienated and frustrated with the criminal justice system (South African Law Commission, Discussion Paper, Project 82, p.8). This is demonstrated by a finding by a Statistics South Africa report (1998, p.65-67) which found that over half of the victims who reported serious crimes to the police were dissatisfied with their interactions with them, with those who experienced more serious and violent crimes being the most likely to be dissatisfied.

Consequently, the status and treatment of victims of crime has received increasing attention in recent years. The South African government is attempting to transform and improve the criminal justice system across the board. It has also developed a Victim Empowerment Programme (VEP) to assist the victimised (see *Chapter Two*).

Victim empowerment, potentially including systems of compensation, aims to address the negative effects of crime on victims through providing a meaningful role for victims in the criminal justice system. The philosophy of victim empowerment endorses the need for victim-orientated services that are easily accessible within the criminal justice system. Apart from reducing the negative effects of crime, compensation could provide an important symbolic recognition of a victim's suffering and loss and is consistent with the VEP principle of viewing the victims' needs as

central. However, no compensation exists for victims of crime in South Africa outside the courts' prerogative to enforce a restitution order on the offender if convicted and the proposed right to restitution as outlined in the draft Victim's Charter.

The present support systems for victims of crime and violence in South Africa seem to be limited, fragmented, unco-ordinated, reactive in nature and, therefore, ineffective (South African Law Commission, Project 82, p.3). This finding is mirrored by the final report of the Truth and Reconciliation Commission, which notes that 'victims of crime are the most neglected and disempowered of the role-players in the legal system. They are not being adequately served by the criminal justice system for a number of reasons' (TRC ***Truth and Reconciliation Commission Report of South Africa*** Cape Town: Juta 1998). These reasons, according to the TRC Final Report, are:

- the absence of a professional, motivated and appropriately staffed national police service;
- the inability of the prosecutorial system to prosecute effectively and ensure criminal convictions in a manner that will change the current perception of criminals and potential criminals that their wrongdoing is unlikely to be detected and punished;
- the inability of the Department of Correctional Services to carry out its role of effectively incarcerating awaiting-trial and convicted prisoners.

Furthermore, the TRC, in its recommendations, proposes that the feasibility of establishing a serious crimes compensation fund, as exists in countries like Australia, be examined (TRC Final Report, Volume 5, Chapter 8, 50). It goes on to recommend that a code of conduct for prosecutors be established. This code should facilitate the assisting and empowering of victims by, amongst other things, informing them of their rights to compensation under section 300 of the Criminal Procedure Act (*see Chapter 4, Section 4.2 of this report for a detailed explanation*).

The need to develop victim services in South Africa clearly remains a priority. International research (D Bruce, G Newham and S Reddy ***The Police, Victims and the Criminal Justice Process***. Johannesburg: Centre for the Study of Violence and Reconciliation 1999; L Camerer and S Kotze ***Special Report on Victim Empowerment in South Africa***. Pretoria: Institute of Security Studies & Department

of Welfare 1998) has indicated that the proper management of victims and witnesses leads to increased success in police investigations and enhanced public confidence in the criminal justice system. It is believed (NCPS, 1996, p.19) that empowering victims may contribute to reducing secondary victimisation, repeat victimisation and vigilante violence. It may also help to break the cycle of violence. Compensation for victims of crime, although not a service in the true sense of the word, at least in the developed world, is considered a vital component of the overall package offered to victims.

Within the South African context, however, the extent to which compensation, in a context of limited resources, should be emphasised over and above the need for other victim support measures is a complex and fraught debate. Often the rationale behind the setting up of a compensation scheme is, in itself, weak and unsubstantiated. Even in the United Kingdom, a country with a long-standing compensation programme, the discussions which led up to the establishment of a compensation scheme revealed an extraordinary amount of intellectual confusion (P Cane 'Compensation for Criminal Injuries' in *Atiyah's Accidents, Compensation and the Law* 250 – 269 edited by P Cane. London: Butterworths 1993). This gap means that developing a motivation for the establishment of a VCS in SA remains incomplete, and must be completed if legislation is to be drafted, since no law should be passed without its objectives being clearly defined and costed (SALC, Discussion Paper, Project 82).

While there are potentially numerous motivations for the introduction of a system of victim compensation, the most common underlying motivation appears to be that it would be a means of doing justice to victims. Most developed nations consider compensation a morally justifiable practice, and a vital component of their criminal justice system and victim assistance services.

However, on reviewing the implementation of victim compensation systems in other countries, it is immediately evident that most are extremely expensive and complex undertakings. Given the high levels of criminal victimisation in South Africa, any system aimed at financially compensating victims of crime could prove to be an unaffordable endeavour. For example, the compensation scheme in the United

Kingdom (which provides compensation to about 80 000 people a year) costs the government roughly £200 million (about R2000 million) per annum.

Efficient administration is also central to most compensation schemes around the world which rely on large government or quasi-government units or departments, as well as the co-operation of the police and health services. Given the current infrastructural situation in South Africa's public service, it is likely that the establishment of a compensation scheme in South Africa could be hampered by the lack of effective inter-sectoral co-operation and co-ordination, as well as by the underdeveloped administrative systems in some government departments.

Furthermore, the establishment of a compensation scheme in South Africa could depend on creating a substantially new administrative infrastructure and staff complement. To date, for example, the processing of some 18 000 Truth and Reconciliation Commission urgent interim reparations claims has proved to be an incredibly difficult and protracted process (*see 3.2.5 of this report*). Such inefficiencies, which have also been seen in the government's processing of pension claims, suggest that there may be little realistic prospect for setting up a new bureaucracy with the purpose of compensating thousands of potential victims.

Compensation schemes also rely on effective co-operation with the police, with the reporting and recording of crime as prerequisites to any compensation process. Crime reporting rates in South Africa are low and police efficiency to verify the exact nature of a crime (this is essential to deciding who gets compensation and the degree to which the person was victimised) is questionable in many areas.

Fraud is also an area requiring careful consideration. The problem of the potential abuse of a compensation scheme by those applying for compensation, as well as by officials working in the scheme, is a concern. These problems are common in countries that have compensation schemes. The risk of abuse of the system, however, can be minimised by legislation that bases the eligibility for compensation on strict criteria and by providing checks and balances in the administrative system.

In contemplating a victim compensation scheme in South Africa, careful thought

needs to go into explaining why victims of crime should be given priority over other people in need. Financial pay outs for suffering and financial losses resulting from a rape or violent robbery make moral sense, but these become difficult to justify in a context of limited resources, where poverty alleviation, combating Aids and providing employment all demand increased resourcing.

Thus, in order to consider adequately whether South Africa should set up a compensation scheme, a number of related arguments will need to be expanded and explored. A robust motivation will need to be developed to offset the affordability and practical concerns that have been briefly outlined above. Such a motivation, in the South African context, will also need to show that a compensation scheme will bolster the criminal justice process through improving victims' interaction with the system, rather than undermining it by introducing a new set of burdensome operational procedures.

It is imperative, however, that any new scheme be integrated with current victim empowerment initiatives. It would be a mistake to presume that compensation, even if the motivations are substantiated significantly, could meet the needs of victims. A compensation scheme should be seen as an additional component of a comprehensive victim empowerment programme.

This chapter will focus on the complex debates surrounding the establishment of a compensation scheme for victims of crime in South Africa. It will begin by providing an overview of the South African law and allied schemes of reference relevant to compensation and the making of civil claims. The chapter will also point to some of the key international experiences in relation to granting compensation to victims of crime. Thereafter, the moral, legal and practical underpinnings of setting up a compensation scheme for victims of crime in South Africa, as well as the arguments which mitigate against such an approach, will be debated.

### **3.2 Overview of South African Law and Allied Schemes of Relevance**

Before the arguments for and against the setting up of a compensation scheme in South Africa are explored, it is important to first review what related systems exist for

providing compensation, including a brief outline of the law of damages and the current legal remedies for providing compensation to victims.

### **3.2.1 Damages in South African law**

The law of damages deals with the content of the right to compensation. Damages can only be awarded when there is a recognised cause of action on which the recovery of monetary compensation is based.

#### **3.2.1.1 Delictual actions**

A delict in South African law is the act of a person which, in a wrongful and culpable way, causes harm to another (J Neethling, J M Potgieter and P J Visser *Law of Delict*. Durban: Butterworths, 1990, p.4). The notion of the wrongfulness of the causing of harm to another is an obvious and essential component of all legal systems, and is a basic premise of South Africa's common law. This premise has also been recognised by the Bill of Rights in the South African Constitution (Act 108 of 1996) which provides that everyone has the right to human dignity (s. 10), the right to life (s. 11) and the right to security of her/his person (s. 12).

There are five elements of a delict: namely an act, wrongfulness, fault, harm and causation.<sup>8</sup> If one of these elements is missing, no delict exists and, accordingly, no liability. In South African law, a distinction is made between delicts that cause patrimonial financial damage and those of an intentional nature, which cause injury to personality.<sup>9</sup> The South African law of delict allows a third action for pain and suffering in terms of which compensation for injury of personality is allowed as a result of the wrongful and negligent (or intentional) impairment of the bodily or physical-mental integrity (Neethling *et al.*, 1990, p. 5).

Delictual actions are private law actions. The principal difference between private law and public law is that private law is directed at the protection of the individual or private interest, whilst public law aims to preserve the public interest. Delictual remedies are compensatory in nature, compensating the prejudiced person for the

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<sup>8</sup> Causation is the causing of damage through an act.

harm the wrongdoer has caused. Criminal sanctions are distinguishable from this in that they aim to punish the offender for the transgression committed against the public interest (Neethling *et al.*, 1990, p. 7). It is important to note, however, that one act may have both delictual and criminal consequences.

The law of delict allows compensation for damage. This compensation takes the form of a monetary award for the impairment or loss suffered by a person. The object of an award of damages is to place a party whose rights have been violated in the same position, as far as money can do so, as if his/her rights had been observed (H J Erasmus and J J Gauntlett **7 LAWSA 10**. Durban: Butterworths 1995). In certain circumstances, damage or loss cannot be compensated, in which case damages aim at compensating injury by effecting retribution for the wrong and by satisfying the victim and the community's sense of justice (Neethling *et al.*, 1990, p. 178).

There is an obligation on victims to take all reasonable steps to mitigate the loss they have suffered. Damages are awarded for pain and suffering, shock, disfigurement, loss of amenities of life and shortened expectation of life where physical and mental injury has occurred. This is additional to damages arising, for example, from pecuniary or financial losses, such as loss of income, and to damages awarded for intentional injury to personality, such as defamation. The amount of damages awarded in cases of physical or mental injury must bear a relation to the loss suffered. This involves a consideration of the intensity of the injury, its nature and duration determined in conjunction with considerations of fairness.

A delictual debt usually prescribes three years after it originated.<sup>10</sup> The dependants of a breadwinner killed or injured in a wrongful and culpable manner may claim damages for loss of maintenance arising out of their personal right to maintenance from the breadwinner. For such a claim to be successful, a legal duty of support must be proved.

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<sup>9</sup> The *actio legis Aquiliae* allows for damages to be claimed for wrongful and culpable (intentional or negligent) causing of patrimonial damage. The *actio iniuriarum* is directed at granting satisfaction for a wrongful and intentional injury to personality (see Neethling *et al.*, 1990, p. 5).

<sup>10</sup> Prescription Act No. 68 of 1969.



### **3.2.1.2 Liability without fault and by virtue of legislation**

Liability without fault is created in certain instances by legislation. In addition, the courts have also developed the concept of liability without fault over time.<sup>11</sup> In the case of legislation, the extent of liability is often limited by the law fixing maximum amounts of compensation payable. Legislation will also usually detail the period within which a claim must be lodged, after which they will prescribe.

Compensation schemes are examples of statutory payment schemes that accept liability without the scheme (or the State) itself being at fault. These schemes apply the principles of damages law outlined above to varying extents in their work and in the finalisation of claims. Specific examples of compensation schemes in South Africa created by legislation include compensation for occupational injuries or diseases and for injuries or deaths arising out of road accidents. In the case of occupational injuries or diseases, maximum compensation awards are provided by legislation, with specific amounts attached to specified injuries. This scheme is similar in this regard to Great Britain's tariff system on which compensation awards for victims of crime are based. In South Africa, legislation also provides for maximum compensation awards in cases of road accidents, and in certain circumstances, according to whether the claimant was travelling in the negligent vehicle or not. However, there exists no statutory cap on the maximum compensation payable by the scheme in cases in which the claimant was not travelling in the negligent vehicle.

Claims made against compensation schemes in practice are usually settled administratively before any court action is taken by a claimant. Where a statutory cap or limit on compensation does not exist, common law principles and legal precedent by way of previous court decisions are used to determine the amount of compensation offered to the claimant. Where a dispute arises between the claimant and the scheme, the claimant is entitled to approach the court for assistance.

Various examples of South African compensation schemes exist. These provide important insights into the structure, functioning, successes and potential pitfalls that

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<sup>11</sup> For example, in claims against the owner of an animal for damages caused by such animal.

could be experienced in the event that a compensation fund for victims of crime were to be established. Such funds have often been plagued by administrative inefficiencies and have been exposed to fraudulent claims. The Road Accident Fund has experienced difficulties with the involvement of lawyers in the application process, and has been required to pay extensive legal costs.<sup>12</sup> The Compensation Commission has experienced its own administrative inefficiencies and delays in the settlement of claims. The experience of such statutory compensation schemes, it is recommended, should be carefully considered in the event of the establishment of a compensation scheme for victims of crime.

### **3.2.2 Compensation for Occupational Injuries and Diseases**

The 1993 Compensation for Occupational Injuries and Diseases Act (*see Appendix Two for full parameters*) requires that certain categories of employers contribute to a fund that covers claims lodged by employees for occupational injuries and diseases. Claims can be made to this fund by an employee injured during the course and scope of duty, or if an occupational disease is contracted. A deceased employee's dependants may also, under specified circumstances, lodge claims.<sup>13</sup> Employers pay into the fund on a monthly basis, with certain exclusions. Employees do not contribute to the fund. A Compensation Commissioner is appointed in terms of the Act to administer the fund and employees are compensated by the fund.

For compensation to be paid, a claim must be made within 12 months of the accident, death or disease, and an employee must have been off work for 3 days or more. No compensation is payable if an employee's own misconduct caused the accident, unless death or serious disability resulted, or if medical treatment is unreasonably refused by an employee.

Compensation is payable at a percentage of an employee's wage at the time of injury, death or disease for permanent or temporary disability, death, medical expenses (for a maximum of two years from date of accident, including medicine)

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<sup>12</sup> Recently, lawyers have been accused of professional misconduct regarding over-charging of accident victims on whose behalf they have claimed from the fund.

<sup>13</sup> Employees excluded from the ambit of the Act are domestic workers, members of the South African National Defense Force (SANDF) and South African Police Service (SAPS), independent contractors

and additional compensation. The fund does not provide compensation for pain and suffering. In cases of permanent disability, degrees of disability are set out in the Act and compensation for permanent disability is paid either as a lump sum or as a pension. A widow/er, common law spouse or dependants may submit a claim for death benefits. Death benefits are paid as a lump sum and a monthly pension.

An objection to the decision of the Commissioner may be lodged within 90 days from the date on which the employee became aware of the decision. The Commissioner is required to convene a formal hearing to review the decision. At this hearing the applicant is entitled to representation by a legal representative or trade union official or family member. The applicant is entitled to call expert evidence. After representations, the Commissioner will make a final decision. This decision is reviewable in the High Court.

It was reported recently that difficulties seem to be plaguing the compensation scheme for occupational injuries and diseases. According to the Senior Deputy Compensation Commissioner, Kefilwe Tselane, R637,4m in compensation and R716,9m in medical bills will be paid out for the year 1999/2000 (Business Day, 15 March, 2000). Approximately 290,000 new claims are reported each year. There are also about 100 000 files from previous years, which are still open, largely owing to outstanding or incomplete documentation from employers and doctors. In the claims environment, the backlog is 15 000 and 10 000 respectively to be handled by the compensation and medical sections.

A review of the records at the Workers Occupational Health Clinic in Woodstock, Cape Town, from 1991 to 1997 shows that 17% of successful claimants, most of them suffering from cancer, died before their compensation was paid out. Of the 22% of claims that were rejected at first submission, 15% were successful on appeal (Business Day, 15 March, 2000). Other major flaws in the system are said to include the facts that pay outs are calculated according to income, and as a result, the system is biased in favour of those in higher income brackets. Lack of compliance

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or employees who work outside of South Africa for more than 12 months at a time. Farm workers and casual workers are included.

with the system by employees has also been highlighted as problematic. Employers do not complete injury-on-duty forms because they want to keep injuries out of the records to keep up their accident-free hours (Business Day, 15 March, 2000).

### **3.2.3 The Road Accident Fund Act**

The Road Accident Fund Act<sup>14</sup> established the Road Accident Fund (*see Appendix Three for full parameters*), which pays compensation for physical injury or death (as opposed to proprietary loss or damage) wrongfully caused by the driving of motor vehicles, whether the identity of the owner or the driver thereof, or both, has been established or not.

The fund is obliged to compensate any person (the third party) for any loss or damage suffered as a result of any bodily injury or death caused by the driving of a motor vehicle in South Africa. Compensation is awarded only if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.

The Act prescribes a limit of R25 000 in respect of the payment of compensation in specified circumstances, including where the injured person was a passenger in or on the negligent vehicle.<sup>15</sup> An injured party has three years within which to claim compensation, after which the claim will prescribe. Prescription of a claim for compensation does not, however, run against a minor, a person detained as a patient in terms of any mental health legislation, or a person under curatorship. The Act prescribes that any compensation award shall be reduced by the amount of compensation paid in terms of the Occupational Injuries and Diseases Act, Defence Act or any other legislation, should this apply.

Currently, the Road Accident fund seems to be beset by administrative difficulties. A commission of inquiry has been proposed to try and set the system on a sound financial footing. The Road Accident Fund currently has a deficit of about R10bn

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<sup>14</sup> Act No. 56 of 1996.

<sup>15</sup> It also denies the payment of compensation to certain other persons under specified circumstances.

and had a reported operating loss of R771m in the 1998-99 financial year. (Business Day, August 29, 2000).

### **3.2.4 Other state compensation funds**

The Fund Raising Act<sup>16</sup> provides for the establishment of the Disaster Relief Fund, the South African Defence Force Fund, the Refugee Relief Fund, the State President's Fund and the Social Relief Fund. Each fund is, in terms of the Act, to be managed by a board of not more than fifteen members appointed by the Minister. According to the mandate of the fund, the board of each fund is tasked with providing assistance to those in need, which is 'fair and reasonable'. The board may collect contributions, in addition to government funding received, and is tasked with distributing monies in accordance with its mandate. A fund may therefore receive donations from third parties in addition to government funding.

### **3.2.5 Reparations through the Truth and Reconciliation Commission<sup>17</sup>**

Based on the findings of the Truth and Reconciliation Commission's<sup>18</sup> (TRC) Amnesty Committee and the Human Rights Violations Committee, the Reparations and Rehabilitations Committee (R&R Committee) was mandated to design a policy of how best to assist those found to be victims. In this sense, the term 'victims' includes the direct survivors, family members and/or dependants of someone who has suffered a politically motivated gross violation of human rights associated with a killing, abduction, torture or severe ill-treatment between 1960 and May 1994 in South Africa. The R&R Committee was obligated to make recommendations to 'reparate' these victims for the damages they had undergone in the conflicts of the past. To this end, and according to the Promotion of National Unity and Reconciliation Act (hereafter the TRC Act), the TRC had to make recommendations to the President with regard to:

Policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other

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<sup>16</sup> Act No 107 of 1978

<sup>17</sup> See Hamber (2000) for a detailed discussion on the TRC's reparation process, as well as selected articles at ReconciliationNet (<http://www.reconciliation.org.za>).

<sup>18</sup> Although not directly relevant to victims of crime (without a political motive) the work of the Truth and Reconciliation Commission is worth briefly mentioning, as it is South Africa's newest process focusing on compensation and some important questions of relevance are raised by the scheme.

measures aimed at rehabilitating and restoring the human and civil dignity of victims.<sup>19</sup>

The R&R Committee made such recommendations in the final report of the TRC that was handed over to President Mandela on 29 October 1998.<sup>20</sup> According to the TRC Act the policy could recommend any reparation measures in the form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition. The TRC final report makes a number of suggestions that utilised most of these measures. The President and Parliament have to decide whether or how the policy will be implemented.

The TRC opted for an approach that did not utilise a means test for each victim. Seemingly, this was dismissed because of cost, and the resources necessary for grading the psychological and physical injuries of the approximately 18 000 to 20 000 victims. The policy states that relatively equitable urgent and individual financial grants for each person 'found to be a victim' should be made available through the government. A range of other strategies (e.g. symbolic measures and offering more services) to assist victims was also recommended.

In line with the demands of the TRC Act, the TRC also had to consider the granting of urgent interim reparations. To this end, the R&R Committee has proposed that the financial component of reparation be distributed in two phases. First, those found to be victims will be given an urgent one-off payment ranging from a baseline of approximately R2 000 up to R6 000 in exceptional circumstances.<sup>21</sup> Urgent payments began in June 1998 some 18 months after the TRC began operating. In 1998, R600 million was allocated to a three-year cycle for reparations. To date, R32 million has been spent (Tutu, Sunday Independent, 21 May 2000) compensating about 12,000 victims approximately R3 500 each, as part of the urgent interim-reparations process.

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<sup>19</sup> *Promotion of National Unity and Reconciliation Act*, (Section 40-f).

<sup>20</sup> See the TRC Final Report, Volume 5, Chapter 5 for the full Reparation and Rehabilitation Policy.

<sup>21</sup> The grants vary as the TRC has factored in variance related to the number of people living in the 'victims' house or whether the survivor or family member of a victim lives in a rural or urban area. This was done because services in rural areas, for example, are more costly than in urban areas. No victim, however, will, if government implements the policy, receive more than R23 023 per annum.

After this initial grant, a longer-term individual financial grant scheme is proposed by the TRC. If the government accepts this proposal, it will mean the government will be paying out approximately R2 864 400 000 over a six-year period to some 22 000 survivors. This would work out to roughly R17 000 to R24 000 per victim<sup>22</sup> for each year over a six-year period, i.e., roughly R 480 million per year. However, government has still not debated this policy substantially in Parliament, despite the fact that it is nearly two years since the recommendations were made.<sup>23</sup>

The reparation process, although incomplete, raises a number of important issues in the South African context. Firstly, it is important to note that payouts like those proposed by the TRC are not uncommon following political violence and, as a result, governments have had to carry heavy fiscal burdens. The most well known case is that of the Holocaust. Fifty years after the liberation of the Nazi concentration camps, the Federal Republic of Germany has paid out more than \$50 billion in the form of reparations to the State of Israel and indemnification to Holocaust survivors (M Wise 'Reparations' (1993) October *The Atlantic Monthly*). The German Finance Ministry estimates that it will pay out almost \$20 billion more by the year 2030 (Wise, 1993).

In Chile - a country with a GDP per capita not very much higher than ours - about R120 million per year is still spent by the state on compensation for victims whose rights were violated during the military dictatorship of General Pinochet. Children of those killed during the Pinochet regime have a right to a monthly pension until they reach 25 years of age. For the rest of the beneficiaries, the pension is for life. The monthly pension is between R1 400 and R2 000 for the family of the deceased, depending on the number of dependants. About 800 scholarships a year are also granted to the families of victims. Victims also get free medical and psychological care.

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<sup>22</sup> In 1997 the average annual household income was R21 700. This was used as a benchmark by the TRC in the design of the monetary package. The Final Reparations Policy notes that, 'The poverty line of R15 600 per annum was rejected as a benchmark, as this would be condemning victims to a life of near poverty, rather than one of minimum dignity' (TRC final Report, Volume 5, Chapter 5, 69). These amounts are not comparable to what a survivor might have received in a civil claim, which would be substantially greater. A civil claim, however, would not be guaranteed in most cases.

<sup>23</sup> See ReconciliationNet at <http://www.reconciliation.org.za> or updates on reparations process.

Second, other schemes aside, the TRC opted for an option that did not utilise a means test as they thought it too expensive. Average incomes were used as benchmarks for calculating potential payments. Furthermore, where there were variations in payments (urgent interim payments), these were slight and based on factors like household size and location (urban versus rural).

Third, the TRC was forced, as would be any compensation scheme, to define its criteria for eligibility. It used the categorisation of 'victim' as defined by the TRC to do this. Fourth, the TRC adopted a broader notion of compensation (reparation), which included financial and other recommendations aimed at assisting victims. Fifth, like all the schemes outlined in this section, it is clear that the administration of the schemes has hampered the progress of the TRC. As was noted above, the urgent payments of the TRC took nearly two years to be realised. Clearly, the costs of processes of reparation are also incredibly high if the TRC's proposals (for about 18 000 to 20 000 people) is anything to go by.

Finally, political will clearly has an influence on processes involving matters such as compensation. The lack of government movement on the TRC's proposals is indicative of the fact the TRC process is no longer at the centre of government strategy, and, no doubt, the potential cost of the scheme remains a governmental concern which is currently overriding the principle of a right to claim reparation.

### **3.3 Compensating Victims of Crime**

The above section helped draw attention to some of the legal and practical implications of compensation schemes (in their various forms) in the South African context. Whilst South Africa has experience in the sphere of awarding compensation to victims, none of this experience focuses directly on compensating victims of crime. International experience is, therefore, instructive in understanding different approaches to the basis for, and consequences of, providing compensation to crime victims specifically.

The next section, therefore, turns attention much more directly towards compensation schemes for victims of crime. It begins by briefly sketching an



overview of some compensation schemes for victims of crime and then debates the merits (and demerits) of such schemes for South Africa.

### **3.3.1 Overview of international comparison and experience**

Compensation schemes for victims of crime are now to be found throughout the western world (D Greer *Compensating Crime Victims : A European Survey* Freiburg: Max-Planck Institut 1996) and in Japan. In 1998/1999 the Office for Victims of Crime within the United States Department of Justice contacted victim assistance programmes throughout the world to see if compensation to victims of crime was offered in their country. They received 115 responses. Of these, 29 countries, including the United States, were identified as providing some form of compensation to victims of crime. These were compiled into the International Crime Victim Compensation Program Directory (US Department of Justice *International Crime Victim Compensation Program Directory* (1998-1999 Resource Directory) Washington D.C: US Department of Justice Office for Victims of Crime 1999), which outlines the parameters of the various schemes (i.e. eligibility requirements, who can claim, procedures, size and type of benefit, 'compensatory' costs and funding sources, *etc*).

In reviewing the directory, it is apparent that few compensation schemes are to be found in the developing world. No African countries have compensation schemes. No evidence of compensation schemes for victims of crime in Latin America was found. In Brazil, there is also no financial compensation provided by the state for the victims of common crime. In some Brazilian states, the government has created services to give assistance (i.e. legal, social and/or psychological) to victims of crime, but no financial compensation is offered.<sup>24</sup>

There are few compensation schemes in Eastern European and poorer East Asian countries (for example Thailand, Indonesia and so on). Exceptions to this include the Philippines where victims of crime and dependants of homicide victims (including foreign citizens) can receive up to 10 000 pesos (about US\$400) in compensation (US Department of Justice, 1999). In both the Czech Republic and in Poland,

compensation programmes to provide financial compensation to victims of violent crime are also in operation.

Where compensation schemes do exist in developing countries, or at least in countries with some structural and economic similarity to South Africa, the purpose is generally geared towards acts of political violence related to ongoing civil and political unrest, not to crime. In Israel, although there is no comprehensive scheme of support for the victims of what may be termed 'ordinary criminal violence', priority is given to victims of hostile acts reflecting the wider geo-political situation (K Bloomfield, M Gibson and D Greer ***A Report Of The Review Of Criminal Injuries Compensation In Northern Ireland: A report to the Secretary of State for Northern Ireland*** June 1999). Similarly, Colombia, offers a programme to provide financial compensation to civilians if they are victimised by acts of 'terrorist' activities, guerilla attacks, combat or massacres (US Department of Justice, 1999). The United States, Spain and France offer compensation benefits to victims of terrorism as well as victims of other crimes.

However, merely listing the countries which have compensation schemes and outlining their broad terms of reference provides little insight into the exact provisions available for victims of crime in each country. The purposes, goals and objectives of various national State compensation schemes differ a great deal. After surveying the compensation schemes of the thirteen European countries that ratified the European Convention on the Compensation of Victims of Crime, Greer (D Greer 'Concluding Observations' in ***The European Convention on the Compensation of Victims of Violent Crime*** edited by D Greer, 1996) concludes that even between European countries, 'it is difficult - and even invidious - to compare one with another in any qualitative sense' (p. 682).

Greer (1996) adds that most state compensation schemes tend to be governed by pragmatic considerations, of which the most important is a State's willingness to prioritise and allocate public funds to compensation. In other words, it is often the size of the State fiscus that defines the nature and extent of many compensation

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<sup>24</sup> Personal communication, Paulo De Mesquita Neto, Senior Researcher, Centre For The Study of

schemes, rather than any underlying or broadly accepted international principles. As a result, most countries, which have compensation schemes (although not all) run the scheme based on a finite budgetary allocation each year.

There is a myriad of different international approaches to compensation. Therefore, to unpack in detail the parameters of each compensation scheme that currently exists around the world would be an enormous task. Information available on different compensation schemes has, therefore, been summarised in the table below

Nonetheless, there is value in reviewing the differing approaches used in other societies with specific reference to how they have integrated pragmatic considerations with the needs of victims of crime. Throughout the report, therefore, reference will be made to relevant comparative approaches and international experience.

Despite the diversity of victim compensation schemes (*see summary table below*), it is important to emphasise that international compensation schemes are generally complementary to broader programmes aimed at assisting victims of crime, such as victim support services or State attempts to ensure some form of restorative justice. The essence of this was captured in a recent report on compensation for criminal injuries in Northern Ireland where it was noted:

Statutory compensation for criminal injuries does not represent the sole actual or potential source of support for victims...we have to bear in mind the very important part played by individuals and families, by the State and other employers, by the social security system, by private insurance, by voluntary agencies and charitable bodies and by the international funds (Bloomfield, Gibson & Greer, 1999, p.28).

This highlights the importance of locating any compensation scheme within the broader victim-empowerment and criminal justice process. It also highlights the importance of compensation being defined as part of a process that is wider than simply paying out a sum of money.

## Summary of the Parameters of Current Compensation Schemes<sup>25</sup>

Country <sup>26</sup>	Claimants A = Victims of crime B = Dependants of homicide victims C = Relatives of victims of crime D = Foreign Citizens E = Citizens of the relevant country if victimized abroad and there is no compensation scheme in that country F = Victims of terrorist acts	Benefits Awards	Compensable Costs (see key below)	Emergency Awards	Funding Source Tax = Tax revenue / state appropriations NA = info not available Sur = Surcharge revenue
Australia	A B C D	Max varies per state from \$AUS 15 000 to 60 000 (about R59 000 to R236 000)	1,2,3,5,6,18,19	YES	Tax
Austria	A B D E	No maximum limit	1,2,3,4,5,6,7,15 20,21	YES	Tax
Belgium	A D	No maximum limit	1,3,15	NO	Tax
Bermuda	A B D	Max \$B 200 000 (about R 1.4m)	1,2,3,4,5,6,7,8	YES	Tax
Canada	A B D	Max varies per state from \$Can 5 000 to 25 000 (about 24 000 to R120 000)	1,2,3,4,5,7,8	YES	Tax
Cyprus	A B D	No maximum limit	1,3,4,5,15	Not known	NA
Czech Rep.	A B C D	No maximum limit	1, 4,5	Not known	NA
Denmark	A B D E	No maximum limit	1,2,3,4,5,6,7,9	NO	Tax
Finland	A B D E	Personal injury max Finnish Mark 270 000 (about R280 000); Loss income FM660 per day (about R685); Property loss FM 135 000 (about R140 000)	1,2,3,4,5,9,10,22	NO	Tax
France	A B D E F	No maximum limit	1,2,3,4,5,7,8,9, 11,12,13	YES	Tax
Germany	A B D G	No max	1,2,4,5,8,11,13	NO	NA

<sup>25</sup> Information from the US Department of Justice (1999). International Crime Victim Compensation Program Directory, 1998-1999 Resource Directory. Washington D.C: US Department of Justice (Office for Victims of Crime Office for Victims of Crime (1996). Report to Congress at <http://www.ojp.usdoj.gov/ovc/welcovc/archives/repcong/chp1.htm> accessed August 2000). For more detail in each case, and for greater sensitivity not reflected above (e.g. some schemes will vary slightly between states) see the full directory.

<sup>26</sup> Colombia, Israel and Italy were excluded from the list as they only have compensation for victims of 'terrorism'.

<b>Country</b> <sup>26</sup>	<b>Claimants</b> A = Victims of crime B = Dependants of homicide victims C = Relatives of victims of crime D = Foreign Citizens E = Citizens of the relevant country if victimized abroad and there is no compensation scheme in that country F = Victims of terrorist acts	<b>Benefits Awards</b>	<b>Compensable Costs</b> (see key below)	<b>Emergency Awards</b>	<b>Funding Source</b> Tax = Tax revenue / state appropriations NA = info not available Sur = Surcharge revenue
Hong Kong-SAR	A B	Burial max \$10 700 (about R9 800); death max \$119 000 (about R108 000); disability max \$100 800 (about R91 700); injury max \$41 700 (about R38 000); interim max \$7 000 (about R6 300)	Lump sum (as left)	YES	NA
Irish Republic	A D	No maximum limit	1,3,4,5,6,7,8	N	NA
Japan	A B D	Incapacity max Y1 273 000 (about R84 250); bereaved family max Y10 790 000 (about R715 000)	Lump sum (as left)	YES	Tax
Luxembourg	B E H	Lux frs 2.000.000	1,2,3,5 20	YES	Tax
Netherlands	A B D	Material damage max-Gds 50 000 (about R200 000); immaterial max Gds 20,000 (about R 80 000)	1,2,3,4,5,6,7,8, 10,17	YES	Tax
Norway	A B D E	Max K 200 000 (about R153 200)	1,2,3,4,5,6,7,8	YES	Tax
Philippines	A B D	Max Ps 10 000 (about R1 500)	1,2,3,4	NO	Tax
Poland	A B D	No maximum limit	1,2,3,4	YES	Sur
Portugal	A B D E	Max Escudos 400 000 000 (about R12 260 000)	1,3,4,5,7	YES	NA
Spain	A B G	No maximum limit	1,2,3,4,5	YES	NA
Sweden	A B D E	Max SEK 704 000 (about R510 300)	1,2,3,4,5,6,7,8, 14,16, 17	YES	Tax
Switzerland	A B D E	No maximum limit	1,2,3,4	YES	NA
UAE	A D	No maximum limit	Info N/A	NO	Tax
UK	A B D	£500 000 (about R5m)	1,2,3,4,5,6,7,14,20	YES	Tax
US	A B C D F	\$15 000 to \$ 25 000 (about R96 000 to R	1,2,3,4,5,6,7,8,9	YES	Tax & Sur

<b>Country</b> <sup>26</sup>	<b>Claimants</b> A = Victims of crime B = Dependants of homicide victims C = Relatives of victims of crime D = Foreign Citizens E = Citizens of the relevant country if victimized abroad and there is no compensation scheme in that country F = Victims of terrorist acts	<b>Benefits Awards</b>	<b>Compensable Costs</b> (see key below)	<b>Emergency Awards</b>	<b>Funding Source</b> Tax = Tax revenue / state appropriations NA = info not available Sur = Surcharge revenue
		160 000)			

### Key

<b>Compensable Costs</b>	<b>Compensable Costs</b>
1 = Medical Expenses	12 = Disfigurement
2 =Mental Health and Psychological Care	13 = Vocational rehabilitation
3 = Lost wages of disabled victims	14 = Pain and Suffering
4 = Lost support for dependants of deceased victims	15 = Pensions for disabled victims if victim's earning capacity is reduced by at least 25% for 6 months or more
5 = Funeral costs	16 =Violation of personal integrity
6 = Travel costs	17 = Inconveniences resulting from injury
7 = Rehabilitation for disabled victims	18 =Loss of enjoyment of life
8 = Services to replace work in the home previously performed by the victim	19 =Incidental
9 = Clothing / articles for daily use (e.g. spectacles, dental plates) damaged in crime	20 =Assistance to family of victims
10 = Litigation expenses to recover compensation from the offender	21= General social aid to citizens
11 = Physical therapy	22=Damage to property

### 3.3.2 Arguments for implementing a compensation scheme

#### 3.3.2.1 Theoretical approaches

Convincing arguments for the establishment of a compensation scheme for victims of crime were developed in two discussion documents (South African Law Commission, Discussion Paper, Project 82; South African Law Commission, Issue Paper 7, Project 82) produced by the South African Law Commission. Both argue for the introduction of a compensation scheme for victims of crime from a number of perspectives or theoretical approaches. These can be summarised as:

- *Legal liability theory*: this approach is based on the assumption that the State has a legal duty to compensate victims for all damages and losses suffered as a result of the commission of an offence because the State is considered responsible for allowing the crime to be committed.
- *Social contract theory*: this theory is founded on the philosophy of moral duty and in terms of this approach victims of violent crime have the privilege to receive compensation as opposed to the right. Compensation is granted on the grounds of sympathy, goodwill and humanitarian reasons because the State cannot be held liable for all crimes.
- *Accountability theory*: this theory would argue that the State makes contributions available to victims of crime and, in so doing, a partnership is formed with the State in combating crime. The best analogy for understanding this approach is that of an insurance scheme whereby the population pay taxes as their assurance and the state offers compensation in return. To try and reduce pay outs the State attempts to maintain a society with minimal crime and the citizens, in turn, act responsibly to keep their tax payments to a minimum.
- *Utilitarian theory*: this theory argues that the successes of a compensation scheme will benefit the judicial system and, therefore, assist in restoring relationships within the community. The victims know compensation is available and will, therefore, co-operate with the criminal justice system and may even get involved in combating crime.

If one explores the motivations for a compensation scheme, then aspects of each of these theories can apply. However, a sound motivation with a solid theoretical base was not evident in the literature. The next section, therefore, provides a motivation for a compensation scheme based on an eclectic use of the theories outlined above, whilst providing additional considerations that strengthen the argument to set up a compensation scheme in South Africa.

### 3.3.2.2 Victim empowerment

By far the most convincing reason for the existence of a compensation scheme in the international literature is the compassionate and moral arguments, which are most akin to social contract theory. These arguments, broadly speaking, acknowledge that victims of crime (particularly violent crime) need to be assisted in some way, especially in contexts where the State does little directly to assist them or where the perpetrators remain at large. Such arguments are commensurate with the victim empowerment approach, which stresses that those victimised by violent crime should be treated with dignity and assisted in whatever way possible. In this respect, comprehensive victim empowerment would include not only assistance through the provision of service and assistance, but, in some cases, financial compensation for losses endured.

There is evidence to show that crime has been increasing in South Africa over the last thirty years. The number of offenders apprehended, however, has not necessarily increased at the same rate. It is estimated in South Africa, for example, that one in seven murders, one in 13 reported rapes, one in 34 armed robberies, one in 50 car thefts and one in 55 car hijackings results in a conviction (H C Cawthra with G Kraak 'Annual Review: The Voluntary Sector and Development in South Africa 1997/1998' (1999) **Development Update** Johannesburg: South African National NGO Coalition & INTERFUND; Steinberg, 1999). On the whole, only 5.4% of crimes reported to the police result in conviction (South African Law Commission, 2000, p.18). One of the results of this is that 41% of South Africans would either 'never' or 'hardly ever' trust the police to investigate a crime or catch criminals (Reality Check 'Reality Check Survey of the Attitudes of South Africans' **Cape Times, The Star, The Mercury, Pretoria News, Diamond Fields Advertiser** and **Sunday Independent** April 28 1999).

This highlights the importance of improving the rates of arrest and conviction; a process which the South African government is exploring on a number of fronts (NCPS, 1996; SALC Sentencing Qualitative Research Report, 2000). However, it also highlights the importance of putting mechanisms in place to assist the victims whose cases will not get to court and for whom redress directly from the perpetrator is impossible.



Even where a conviction takes place, international experience suggests that emphasising compensation from the perpetrator will produce poor results. In South Africa, it has been shown that the majority of accused persons do not have the means to compensate their victims (South African Law Commission, 2000, p.74). Moreover, it has been argued that it is particularly difficult or inappropriate for accused people to be expected to pay compensation when they are imprisoned for an extended period and, consequently, have no earnings (South African Law Commission, 2000, p.74).

Even in Europe, where criminal justice systems are significantly better resourced than in South Africa, payments made by offenders to victims occur in relatively few cases (Greer, 1996). This is because offenders, when apprehended, are generally poor and unable to make payments to the victim. Even in cases where victim-offender mediation has taken place, it is difficult to believe that compensation will represent more than a small proportion of the losses suffered by the injured victims or their dependants (Greer, 1996). In South Africa, it seems that compensation is more applicable where the court can suspend a sentence, but this is not possible under the current Act that defines the application of compensation orders (South African Law Commission, 2000, p.74). In any event the suspended sentences does nothing to foster the capacity to pay if the offender is unemployed.

Therefore, a compensation scheme for victims of crime, along with a comprehensive victim empowerment programme, could meet some of the needs of victims whose cases do not reach court or where compensation from the perpetrator seems unlikely. Simultaneously, a compensation scheme could build confidence in the criminal justice system by demonstrating that it is a system that is sensitive to the needs of victims. This could encourage victims to form a partnership with the State to combat crime and would clearly enhance reporting rates.

### **3.3.2.3 State responsibility**

One response to the arguments made above could be that the State already provides a range of social welfare benefits to victims of crime in the form of State medical facilities and legal aid (in some cases, although, mainly to offenders). Why,

therefore, should crime victims be given direct financial support over and above what is offered?

Firstly, the support services available to victims of crime in South Africa are minimal (Camerer & Kotze, 1998; B Hamber 'Have No Doubt There Is Fear In The Land. An Exploration Of The Continuing Cycles Of Violence In South Africa' (1999) Jg 7, Nr 1+2 *Zeitschrift für Politische Psychologie* 113-128; NCPS, 1996; G Simpson 'Crime and Violence: The Need for Victim Support in South Africa' (1996) in ***Putting Victims on the Agenda, Proceedings of a National Workshop on Victim Empowerment and Support*** (Monograph Series No 7) edited by L Camerer and J Nel Pretoria: Institute for Security Studies). Secondly, the criminal justice system is beleaguered with inefficiencies and the support that victims get at police stations and in some health facilities are ineffective (South African Law Commission, Project 82, p.3). Thirdly, state legal aid services are in disarray. Although the agency is slowly being hauled back onto a sound financial footing, the board is reportedly plagued by maladministration and owes lawyers more than R80m for work done during the past three years, resulting in many lawyers refusing to take on more cases (Business Day, 20 July 2000).

Finally, the costs of crime, as was shown in *Chapter Two*, can far exceed the type of services offered by the State, such as repairs to a home following a crime, loss of income over an extended period of time, vocational retraining and so on. Given this, it would make sense, if a State had the resources, to assist victims of crime practically with some sort of compensation.

One of the key premises on which state-funded compensation is based is that the State is under an obligation to maintain law and order, and that the commission of the crime is a result of the failure of the State to do so effectively (legal liability theory). If one approaches the argument from the point of view of State liability, the argument rapidly moves beyond the parameters of merely practical social security assistance to the victim. In this respect, compensation to the victim becomes effused by legal notions of the victim's right to embark on civil litigation against the State. Compensation for the victim of a criminal offence becomes, in the context of a State compensation scheme, a claim against the State for personal injury caused.

However, although such a claim rightfully exists against the offender, when it is the State against which the claim lies, this becomes more complex and brings the social liability theory into question. No countries that grant compensation to victims of crime accept that the reason for granting compensation is based purely on a notion of the legal liability of the State. As was recently stated by the team reviewing the criminal compensation scheme in Northern Ireland:

Neither in the United Kingdom, nor in any other jurisdiction of which we have knowledge, does the State regard itself as a kind of surrogate offender (Bloomfield, Gibson & Greer, 1999, p.27).

Greer (1996) concludes that State compensation is not in general a matter of 'right' governed by recognised and entrenched legal principles - a situation very different to the rights that govern the right to claim from the offender or for the right to a social benefit.<sup>27</sup>

As early as the 1960s in Great Britain, the Home Office working party, which looked into the establishment of a compensation scheme, had begun to cast doubt on the state accepting liability for injuries. The rejection of the idea of state liability in Great Britain is captured by Cane (1993) when he summarises the 1961 findings:

*[The idea that the State is liable]* was a fallacious and dangerous doctrine', because the state could not possibly protect its citizens from attack at all times and all places, and because, in any event, if there was such a duty it would be impossible to confine it to personal injury as opposed to damage to property (cited in Cane, 1993, p.253).

In a recent consultation paper produced by the British Home Office this position was reiterated:

Ever since the scheme started successive Governments have made it clear their view that the State is not liable for injuries caused to people by the acts of others. The guilty party is the offender and, in an ideal world, it should be the offender who compensates the victim' (Home Office 'Compensation for Victims of Crime: Possible Changes to the Criminal Injuries Compensation Scheme' (Consultation Paper) UK: Stationery Office Group 1999 p. 4, Section 11).

Apart from the legal issues, it is understandable from a financial perspective why the State is reluctant to admit liability and it appears that this has become the

international norm. Therefore, most compensation schemes, as was noted briefly above, view compensation as a social benefit, or an act of State benevolence. As social contract theory notes, there is a moral duty on States to compensate and, in this regard, victims of violent crime receive compensation as a privilege as opposed to a right.

State compensation schemes are 'essentially a symbolic act to show their concern for victims'.(Miers cited in L Meintjies-Van der Walt 'Towards victims' empowerment strategies in the criminal justice process' (1998) Vol 11 No 2 ***South African Journal of Criminal Justice*** p. 163). Other examples of compensation schemes have been motivated on grounds of being about 'a social motive to ensure the pain and suffering of victims and distress to relatives is not increased' (Bloomfield, Gibson & Greer, 1999, 27). But, in essence, state compensation is a form of ***ex gratia*** payment made as a result of State benevolence (Greer, 1996).<sup>28</sup> An expression of public sympathy (Cane, 1993; L Zedner 'Victims' ***The Oxford Handbook of Criminology*** edited by M Maguire, R Morgan and R Reiner Oxford: Clarendon Press 1997603-605), or that 'governments recognise that the public feel a sense of responsibility for, and sympathy with, the innocent victims of a crime of violence (Home Office, 1999) are also frequently cited motivations. In this sense, compensation is an expression of public sympathy rather than obligation.

Furthermore, in the international context, compensation can be understood as existing on a continuum. On the one end is the so-called minimalist approach (which in reality could total up to cost the state a substantial amount of money), which is geared towards providing a basic amount to cover financial losses related to the crime. This can be called social security compensation (Greer, 1996). As was noted in *Chapter Two*, violent crime is associated with a number of costs both for the individual, as well as for the society as a whole. Using the social security argument, compensation could be considered to be an additional practical component of victim assistance with its primary function being to assist with costs associated directly with a crime, such as loss of earnings or medical expenses that extend over and above

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<sup>27</sup> This was also confirmed by Desmond Greer in an interview, Belfast, 18 April 2000, as well as by Sir Kenneth Bloomfield, Northern Ireland Compensation Review Team, Interview 27 April 2000.

State care or welfare (such as corrective surgery or vocational retraining).

On the other end of the continuum is compensation that can be understood to be closer in nature to that of a general damages award which aims to place victims in the position they would have been in prior to the offence, to the extent that money can achieve this (see 3.2.1.1). This could be described as full compensation. Such an approach may extend further than a social security benefit to include other 'costs' associated with the crime. For example, pecuniary loss, physical and psychological injury, loss of amenities, pain and suffering, and moral damages. This end of the spectrum is far more difficult to implement, particularly within the context of limited state funds.

#### **3.3.2.4 Restorative justice**

Providing compensation is also consistent with the restorative justice approach to criminal justice. In this sense, compensation is based on the recognition that crime is not only a wrong against society, and the State, but is more fundamentally a wrong against the victim. In the restorative justice paradigm, crime is seen as a violation of people and relationships. Crime, which can be a violation of the physical self or of property, creates the obligation to make things right and, as such, justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance (H Zehr **Changing Lenses: A New Focus for Crime and Justice** Ontario: Herald Press 1990 180).

Restorative justice further implies mechanisms within the society that can ensure greater participation in the criminal justice system by victims, as well as ensure greater structured and facilitated contact between victim and offender. This allows for greater information between the victim and offender and an opening of the door to restitution (a way of making amends to the victim). Some theorists (Christie, Wright, Ashworth, in Zedner, 1997) have argued that one of the primary aims of the criminal justice system should be to compensate victims for the wrong done to them. Barnett (Barnett, 1977 in Zedner, 1997, p.287-8) writes:

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<sup>28</sup> Also the opinion of Sir Kenneth Bloomfield, Northern Ireland Compensation Review Team, Interview 27 April 2000.

Justice consists of the culpable offender making good the loss he has caused... Where we once saw an offence against the State, we now see an offence against the individual.

In this sense, restorative justice demands consideration of approaches such as that of offering compensation - where appropriate to victims - whilst empowering them through ensuring their participation in the criminal justice system (South African Law Commission, Project 82, p.3). There are two mechanisms to ensure that compensation is made to the offender, as have been touched upon earlier in this report. One is to obtain compensation directly from the offender (restitution). The other is for the state to compensate the victim. Each mechanism is premised on a different understanding of who is responsible to the victim of crime because of the practical concerns about recovering funds directly from the offender.

In general, most developed countries seek a balance between the social security approach and full compensation. Operational compensation schemes generally attempt to make payments in a manner which is broadly proportionate to the injury, or at least takes the injury into account, but few offer full and complete compensation including the acknowledgement of moral damage.

However, having said that the right to compensation is not established internationally and that, as a result, most countries favour the payment of partial rather than full compensation, it is important to acknowledge that recently some new moves and principles are being established internationally with regards to the issue of the right to compensation and the parameters of obligation with regards to granting compensation.

### **3.3.2.5 Developments in international law**

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>29</sup> (*see Appendix Four for full outline*) calls for a greater responsiveness of judicial processes to the needs of victims, and for victims to be treated with compassion and respect for their dignity. This declaration provides that when

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<sup>29</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted by General Assembly Resolution 40/34 of 29 November 1985).

compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation.<sup>30</sup>

The declaration encourages the establishment, strengthening and expansion of national funds for compensation to victims to ensure that they receive the necessary material, medical, psychological and social assistance 'through governmental, voluntary, community-based and indigenous means'.<sup>31</sup>

Although this declaration could in no way be evidence that a full and unqualified right to compensation exists, it does start to move the debate towards trying to establish international norms with regards to compensation. Governments, such as South Africa, that would see them themselves as trying to maintain such declarations are, therefore, being encouraged to establish victim compensation schemes and adequate victim empowerment services.

Furthermore, the right to compensation is currently being built into the legislation aimed at establishing the International Criminal Court (ICC). Although this process is aimed largely at extensive human rights violations, generally associated with political conflict and genocide, commentaries on the ICC hold much similarity with the needs of individual victims of violence. Furthermore, the issue of rights to reparation are being entrenched within the ICC statutes.

A commentator recently argued that:

Victims have a wide range of needs which must be met if the process of healing and reconciliation is to take place. They need to have the opportunity to speak the truth: to receive answers, and official acknowledgement concerning the violations. They need to be protected from further harm. They need to be involved in the judicial process. And they need compensation, restitution and rehabilitation. All these needs, now largely recognized in international law, have been

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<sup>30</sup> Article 12.

<sup>31</sup> Article 14.

translated into rights...and in order to do justice for victims, the ICC (International Criminal Court) must be empowered to address their rights and needs.<sup>32</sup>

The Rome Statute of the International Criminal Court<sup>33</sup> provides in Article 79 for the establishment of a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. It allows the Court to order that money and other property collected through fines or forfeiture be transferred, by order of the Court, to the trust fund.

Article 2(3) of the International Covenant on Civil and Political Rights<sup>34</sup> provides that each state party to the Covenant undertakes to ensure that any person whose rights or freedoms recognised in the Covenant are violated, shall have an effective remedy and shall have such right determined by competent judicial, administrative or legislative authority. The rights to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, to security of person, and not to be subjected to arbitrary or unlawful interference with his/her privacy, family or home could all be argued to be the applicable rights. The African Charter on Human and People's Rights<sup>35</sup> provides for the right to security of person, to respect for life and integrity of person.<sup>36</sup> These rights could be argued to extend to the rights of victims of crime.

### **3.3.2.6 Difficulties in enforcing offender accountability**

But can compensation serve other ends outside of the rights and benevolence or social contract theory debates outlined above? Specifically, can compensation as a mechanism strengthen the criminal justice system? And, furthermore, can compensation actually build the restorative justice approach to criminal justice?

In recent years, research about victims has raised questions of the purpose of the criminal justice system and the place of victims within the system. Some victim

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<sup>32</sup> McKay, Fiona The Rome Treaty Conference Monitor, Issue 5, June 19, 1998

<sup>33</sup> Doc. A/CONF. 183/9. In terms of article 126, the Rome Statute of the International Criminal Court will enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession.

<sup>34</sup> Entered into force on 23 March, 1976.

<sup>35</sup> Entered into force on 21 October 1986.

<sup>36</sup> Articles 4, 5 and 6.



surveys indicate that victims do not always want offenders to be punished. Furthermore, the more information available to people about an individual crime, the less punitive they tend to become in their view about the punishment of the offender (Schonteich, 2000, p.70). Many would welcome the opportunity for reparations (Zedner, 1997, p.603).

Where the offender makes reparation, the responsibility for 'making right the wrong' is born by the offender. Reparation (restitution) in this sense is part of a positive restoration of the relationships between victim and offender which, in the restorative justice framework, is seen as crucial to the process of healing (Zehr, 1990). The offender is also held accountable to the victim for the offending behaviour. However, as was noted earlier, ensuring that offenders make restitution to offenders is not always possible. Therefore, most compensation schemes do not operate on a mutually exclusive basis, but look to a combination of obtaining restitution from the offender, with restitution being the preferable option.

The South African Law Commission is presently considering the possibility of increasing the capacity of a criminal court to order the offender to pay compensation to the victim in cases of pecuniary loss, or where damage is easily ascertainable (Draft Sentencing Framework Bill, 2000, Section 28). The draft bill provides that where the amount of actual damage or loss exceeds the amount of an award, the additional amount can be claimed in civil action (Section 28(3)). However, this process can only begin once the offender has been convicted of the crime. This is problematic, as was indicated earlier, because studies indicate that only 5.4% of crimes reported to the police result in successful convictions.

Thus, most victims would be excluded from the possibility of receiving compensation. Potentially a State-funded compensation scheme could make up for this deficit to help deal with the fact that, in reality, 'offenders are not always caught or even identified, and many lack the means or will to compensate their victims' (Home Office, 1999, p.4, Section 11). The development of compensation schemes can ensure that the initial funds are always sought from the perpetrator before other compensation benefits come into play. If this is tied to a comprehensive victim-offender mediation process (voluntary for victims), this further increases the

likelihood of such restorative mechanisms being introduced. This can have the benefit of agreed restitution from the offender.

A compensation scheme, if the parameters are drawn correctly, can make provision for getting funds back from the offender and bringing them into the process, even if this initially only includes a small number of offenders. Such an approach could, at least at the level of broad principle, strengthen the development of a restorative justice approach to dealing with crime. Such an approach is also commensurate with building a human rights culture.

### **3.3.2.7 Compensation claims could benefit criminal justice system**

Provisions stipulated within most compensation schemes demand that the crime is reported timeously and that the victim co-operates with the police. This could result in greater reporting of crime and co-operation with the police as compensation is not generally available within the international context without such basic conditions being met. In essence, it is in the victim's financial interest to co-operate with the police in much the same way that those who are insured are required to report crime to get the benefits of their insurance since crimes for which insurance exists are reported more frequently than uninsured crimes. It should follow that if the likelihood of compensation exists, victims will be encouraged to report crime.

These arguments can broadly be considered to be part of utilitarian theory and doing justice after the commission of crimes, which argues that the successes of a compensation scheme will benefit the judicial system and, therefore, assist in restoring relationships within the community. Furthermore, because victims know compensation is available if they co-operate with the criminal justice system, they may even get involved in combating crime.

Zedner (1997) indicates that some have suggested that compensation essentially constitutes a 'sweetener' in relation to the State's reliance on victims. In those countries where it is provided, compensation is usually made conditional on victims giving their full co-operation to the process of investigation and prosecution (where this occurs) of the alleged offender.

For example, by offering compensation, the state can increase the legitimacy of the criminal justice system as a whole. Greater legitimacy will, in turn, result in more co-operation and reporting, strengthening the criminal justice system by keeping victims involved, and so on. Convictions may also increase in number as more cases will be finalised in court. Furthermore, it also can create a greater sense of citizen and state cohesion (accountability theory), generating feelings that a partnership with the state exists between the state and its citizens in combating crime.

In this sense, it could be argued that a compensation system could substantially contribute to the transformation of South African society. Such a system could draw people whose lives are lived outside of the net cast by the modern criminal justice system into the system - a system which is built on respect for due process and other's rights. If this is correct, such a compensation scheme could become an important tool in the democratisation of South African society and in the expansion of the sphere of rights to encompass the numerous victims of crime who today live without the protections afforded by the Bill of Rights.

#### **3.3.2.8 Role of compensation in reducing the impacts of crime**

As was shown in *Chapter Two*, crime, and particularly violent crime, has a range of negative impacts and costs for the victim. A compensation scheme could provide individuals with some funds to offset the initial impact of the crime through providing them with a 'safety net'. As such, compensation serves a social function by preventing a gross decline in the economic circumstances of individuals and their immediate families (Bloomfield, Gibson & Greer, 1999, p.27). This ensures that the individual is not disadvantaged by the crime, which can cause incremental disadvantage over time, creating additional burdens on the State, family and individual.

Compensation, in this sense, should not be understood as a reward, but rather monetary assistance which can aid people in dealing with the impact of a violent crime, and with some of the costs associated with a crime (from the social security perspective). Any compensation would be seen as the last resort once other avenues have been exhausted, such as private insurance, i.e., the principle of subsidiarity. It is arguable that early intervention by way of compensation and

assistance to victims of crime could save the State money in the long run. Similarly, citizens who are assisted regain their status as active members of society more quickly and can begin contributing to their own well-being and that of others sooner than would otherwise be the case.

### **3.3.2.9 Dealing with trauma**

Compensation can also help, amongst other strategies, to address the trauma following violent victimisation. Psychologically speaking, paying compensation can play an important role in processes of opening space for bereavement, addressing trauma and ritualising symbolic closure (B Hamber and R Wilson, R 'Symbolic Closure through Memory, Reparation and Revenge in Post-conflict Societies (Paper presented at the Traumatic Stress in South Africa Conference, Parktonian Hotel, Johannesburg, South Africa) 27-29 January 1999). Compensation can acknowledge and recognise the individuals' suffering and tell them that their society takes their suffering seriously. Self-blame, although generally unfounded, is also common among survivors of violence and can be debilitating for many individuals as they feel that they were to blame for what happened to them. Compensation can serve as a symbolic but important way of saying that the victim was not responsible for what happened. Compensation can make it clear that others were to blame and that the victim was innocent.

Compensation can serve as a focal point in the grieving process, and this can aid recovery by allowing individuals to focus exclusively on their grief symbolically through compensation. Victims of crime generally turn to the criminal justice system or community/traditional justice processes as a context in which they externalise their grief, loss and anger, and seek to come to terms with it. Compensation, not merely as a practical help, but as a symbol can mark the point of moving onto a new phase and represent individuals' mastery over the past crime. What is more, a compensation scheme raises the public consciousness about the difficulties faced by victims of crime and the moral responsibility of assisting those in need. It also gives the victims a practical sense of community support and recognition of the plight of victims of violence.

### **3.3.2.10 Breaking the cycle of violence against women**

Compensation can also contribute to breaking the cycles of violence that ravage South Africa. In the domestic situation, for example, women often cannot leave an abusive home owing to financial dependence. A compensation scheme for women who are victimised violently can assist them by making some funds available allowing them not only to treat their injuries, but also to leave the home. The idea of making some funds available could be said to be consistent with the idea that women who are encouraged to put money aside whilst in abusive relationships have more likelihood of getting out of such relationships (J Campbell *Identification and Intervention with Women Victims of Aggression in the Health Care System* Paper presented at Prevention and Control of Aggression and the Impact on its Victims Conference, University Of Valencia, Spain July 9 – 14 2000). A compensation scheme could provide such money, albeit on a limited scale.

Furthermore, most compensation schemes will only compensate people in the domestic situation if they are prepared to press charges against the offender. This, with the support of the money one could gain through compensation, could assist women to get out of abusive relationships. It could also increase the prosecution rate of offenders for domestic violence, which is currently very low.

However, this in no way suggests that providing compensation would be a miraculous solution to the ubiquitous problem of domestic violence. Many women withdraw charges against their abusive partners not merely because they remain financially dependent. Some will not prosecute out of fear of the partner's reactions to an investigation and trial. Other reasons can include pressure from family members, withdrawal of long-term financial resources in the event of the partner's imprisonment, or hope that the partner will fulfil promises to reform. In the face of these complexities, victim compensation may provide only a limited incentive for leaving abusive relationships, pressing charges and going to court. Therefore, like most arguments in the victim empowerment arena, compensation is likely to work well only in so far as such a scheme exists within a context of a broader victim empowerment programme and recognises the special needs of women victims of violence.

### 3.3.2.11 Breaking the cycle of revenge violence

Morris (1987) asserts that victims of criminal violence, if untreated, are at risk of perpetrating acts of retributive violence, or for displacing their aggression within the familial context. Some victims of violence in South Africa have begun committing violent acts themselves. These actions are often associated with vigilantism and self-administered 'justice' (NCPS, 1996). Summary justice carried out by community members is a frequently preferred alternative to the criminal justice system (. It appears, at least on the surface, to be quicker and a more direct method of dealing with crime (**cf** D Bruce and J Komane 'Taxis, Cops and Vigilantes: Police Attitudes towards Street Justice' 1999 No 17 Spring **Crime and Conflict** also at website: <http://www.wits.ac.za/csvr/papdb&jk.htm>; Hamber, 1999; M Shaw 'Dangerous Years: Whites Perceive Crime As The Greatest Threat To SA, And There Is Evidence That Blacks Are Coming Round To This View' **Finance Week** 9 January 1997).

Increasing reports of this type of community and individual action against suspected criminals has been reported (**Cape Times** 'Crowd Demolish Alleged Rapists' Shack' January 30 1997; **Citizen** 'Witnesses Silent On Lynch-Mob Killings' January 12 1999; **Sowetan** 'Man Stoned to Death' January 15 1999; **Weekly Mail & Guardian** 'Police Worried About The Rise In Mob Action' February 14-20 1997a; **Weekly Mail & Guardian** '2000 Take Mob Action Over Crime' February 14-20 1997b). A nationwide survey by Market Research Africa in 1997 indicated considerable support for vigilantism among South Africans; one fifth of black respondents believe that it was 'sometimes right for a vigilante group to physically hurt a suspected criminal' (M Schönsteich 'Vigilantes: When The Judicial System Fails...' 1999 No 20 **Frontiers of Freedom, Second Quarter** 18-23). It is likely that these results would not differ fundamentally in the White community - particularly given the widespread support for the reintroduction of capital punishment.

The National Crime Prevention Strategy (1996) argues that victim empowerment can result in decreased crime if victims are treated and supported. Compensation can add to the support of victims, thus decreasing their general sense of dissatisfaction with the criminal justice that may lead victims to be involved in

vigilante action. At very least it would help prevent the public perception that the criminal justice system does little for victims of crime.

In addition to these arguments, the compensation of victims is a means of obtaining the co-operation of victims in the criminal justice process, which is vital to an effective criminal justice system. Without the co-operation of the victim in reporting crime, in furnishing evidence, in identifying the offender, and in acting as witness in court, most crime and criminals would remain unknown and go unpunished (Zedner, 1997).

### **3.3.3 Arguments against implementing a compensation scheme**

#### **3.3.3.1 State responsibility and cost-benefit analysis**

It is difficult to dispute the moral and compassionate arguments for the establishment of a compensation scheme for victims of crime. Seemingly, people have been innocently wronged and where this has had enormous personal implications, it would, on humanitarian grounds, make sense to try to compensate these individuals in one way or another.

However, according to Cane (1993, p.253), the real question is not whether these individuals should be compensated or not, but rather why the State should compensate them over and above the benefits available to other citizens. Cane (1993) asks why government should select yet another group of unfortunates for special treatment? Is the justification that the State does little for victims of crime sufficient to argue for increased benefits for a minority of crime victims at the expense of the generality? The answer is not simple, especially in a context where there are competing needs for such basic services as water, sanitation and electrification.

Clearly, as was argued above, crime (and particularly violent crime) has a range of personal impacts on the individual that would not be addressed by social security benefits. Further, the cost implications of violent crime to the state, certainly in South Africa, are enormous in terms of the loss of productive human resources and other costs such as providing health care for victims.

However, this argument could also be made to motivate or justify other issues urgently requiring funding and could be taken as an imperative to limiting the extent of State responsibility in this regard. Even within the field of victim empowerment, it could be argued that, with limited resources, other aspects of improving the lot of victims, or perhaps the criminal justice system as a whole, should be prioritised over and above compensation. The debate then becomes one about what issues need to be prioritised and how State responsibility can be prioritised and strategically limited. The decision whether a compensation scheme is set up instead of another social service programme becomes one based on a cost-benefit analysis to the society and the State.

### **3.3.3.3 Competing priorities**

Another way of looking at such arguments is to say that there are other parts of the criminal justice system that could be prioritised and bolstered *in lieu* of compensation. A good example of this is the issue of witness fees. As Zedner (1997) indicates, participation by the victim in the criminal justice process entails further costs in terms of the 'time, energy and stress of assisting the police with their investigation, and for a few at least, the trauma of giving evidence as a witness in court' (p. 604). This applies not only to victims but also to witnesses generally (*cf.* Bruce, Newham & Reddy, 1999). In particular, it applies to the minority of witnesses (and victims) who are required to give evidence in court.

Some system of offering financial assistance to witnesses does exist in South Africa in that there is provision for the payment of witness fees. However, there appears to be little attention given to policy development on this issue. There have been no analyses conducted on questions concerning how effectively the system for payment of witness fees is operating or how it is structured. It may, for example, be a more appropriate area to consider, at least in the short term, than establishing an extensive victim compensation scheme.

It could be argued that the issue of witness fees (in a country with limited resources) could be considered part of the issue of compensation, even though it applies to witnesses, and not just victims who are witnesses. Here the compensation is not intended to off-set the costs for the victim of the act of victimisation, but rather to off-



set the costs to the victim, or other witnesses, of lending their assistance to the criminal justice process.

Following this argument, witness fees could be used as an incentive for co-operation with the criminal justice system where it extends to attending court and giving evidence. Rather, the proposal is that witness fees should be optimised so as to minimise financial and other disincentives to participation as a witness in the criminal justice process. Witness fees can be used not only to motivate, but also to compensate witnesses for losses associated with providing assistance to the criminal justice process.

Of course, like most arguments in the difficult area of criminal compensation, there are complexities. As suggested in a recent Law Commission discussion paper (No. 90, *The Application of the Bill of Rights to Criminal Procedure, etc*), one implication of the Constitution for the system of witness fees would appear to be that witness fees should be paid equally to prosecution and defense witnesses. Also, would witnesses found to be untrustworthy be compensated for their time and co-operation with the courts? Furthermore, there is a wide disparity between levels of income in South Africa. It is debatable whether it is realistic to aim to compensate persons for time spent, or loss of income relating to, co-operation with the criminal justice process at anything other than a minimal rate.

Seeking to improve the system of paying witness fees is also not likely to be free from complexities of an administrative nature, then again nor would a compensation scheme or any other system of providing state funds. Another difficulty is that the central issue that motivates many other compensation schemes, namely that offenders are not always caught or identified, and, therefore, very few victims benefit from the potential of a civil claim could apply equally to witnesses, who will come to court only if a trial is held.

Witnesses make up a minority of those interacting with the criminal justice system; witnesses who are also victims make up an even smaller number. To expect that bringing them into the system will significantly alter the face of the criminal justice system and reduce victimisation is unrealistic. However, what is being suggested is

that if one accepts the limited resource arguments mitigating against a compensation scheme, there may be other ways that minimal funds can be used to bolster aspects of the criminal justice system or victim empowerment.

There are other potential areas where resources could be directed apart from or in addition to a compensation scheme. For example, additional financial support to trauma units to ensure that victims of crime receive adequate medical attention could be provided. The Disability Grant Programme could be supplemented so that those disabled by crime are sufficiently supported. Finally, emergency medical care for rape survivors, including the provision of anti-retroviral medication, could be considered. Each of these suggestions are discussed in detail in *Chapter 8, section 8.5* of this report.

Clearly, therefore, the decision in a country such as South Africa to set up a compensation scheme would need to be seen in a context of competing needs and priorities. Even if we accepted, in principle, that the harm and losses that people suffer as a result of crime are unfair and that victims therefore have a 'right' to compensation, this right itself would need to be balanced against others in a context of limited resources. If this is accepted, then a 'right' that needs to be recognised to be of greater standing than the right to compensation is the right of South Africans not to be exposed to victimisation. Using this line of reasoning, it would follow that without prioritising the latter we can never hope to begin to engage effectively with the former issue of compensation.

Therefore, it is clear, that above all else, the major arguments against a compensation scheme are of a pragmatic and fiscal nature. It is such a fact that Greer (1996) concludes, after reviewing the compensation schemes across Europe, that: 'State compensation tends to be governed by pragmatic considerations, of which the most important appears to be the priority which the States are prepared to give victim compensation in terms of the allocation of public funds' (p.682).

#### **3.3.3.4 Impacts on criminal justice system debatable**

The arguments made earlier about the impact of a compensation scheme in developing a more effective criminal justice system are also debatable. There are

claims that compensation schemes do not improve the reporting of crime (*cf.* Doerner *et al.*, 1976, Doerner, 1978 & Shapland, 1981, cited in South African Law Commission, undated). This research was generated over twenty years ago and in contexts fundamentally different to that of South Africa, which may suggest that it is not applicable. However, there is also no current research that specifically suggests that compensation schemes succeed in encouraging people to participate in the criminal justice system, or that reporting rates rise substantially after their introduction.

What we do know, however, is that countries that have relatively effective criminal justice systems, also tend to be the countries with compensation schemes and a reasonable supply of resources. Whether countries with relatively effective criminal justice systems (and resources to make them such) create conditions conducive to developing compensation schemes, or whether having active compensation schemes has steadily helped build the criminal justice system, or both, remains a moot point which is unsubstantiated in the international literature or research.

Other arguments raised in the previous section focused on the ability of a compensation scheme to help improve the legitimacy of the criminal justice system. Or put in another way, one of the key motivations for the introduction of victim compensation in South Africa is a concern (sometimes identified primarily as a public 'perception') that the current South African constitution effectively upholds the rights of offenders (arrested, accused and convicted persons), but has nothing to say about rights of victims of crime. Victim compensation could, or so the argument goes, be seen as a way of affirming victims' 'rights' and offsetting this situation.

A counter argument to this would be that in the South African context, any victim compensation scheme that is introduced is unlikely to be able holistically to redress the negative perceptions of the criminal justice system. It is unlikely that a compensation scheme alone will contribute substantially to building the legitimacy of the criminal justice system or the Constitution. Clearly, compensation alone would not be enough and could easily add to frustrations and disappointments. Equally, though, it would be absurd to think that providing compensation would have no

positive impact on victims' perceptions of the State's willingness to take care of their needs.

Improving the effectiveness of the criminal justice process and other crime prevention measures holds out the potential for reducing levels of victimisation. The alternative is that levels of criminality remain high and may rise. Thus the potential demand for compensation would remain at current levels (or increase) and our society would remain with limited capacity to make compensatory payments. This approach would say that what is paramount in our society is the optimum prevention of criminality and thus of victimisation. If this can be achieved, one of the benefits may be that whatever measures are developed to support and empower victims need to be provided to a smaller number of people.

Thus, in relation to compensation, improving the effectiveness of the criminal justice process and other societal mechanisms that contribute to reducing crime holds out the potential that, at some point in the future where levels of victimisation are far lower, a compensation system of greater scope and significance might become more viable.

### **3.4 Conclusion**

There has been a gap between the making of policy and its implementation in South Africa. This has been specifically observed in the victim empowerment arena and in the implementation of the NCPS (G Simpson and J Rauch 'Reflections on the First Year of the National Crime Prevention Strategy' in ***Between Unity and Diversity: Essays in Nation Building in Post Apartheid South Africa*** edited by G Maharaj Cape Town: David Philip 1999). As such, the idea of setting up compensation schemes in line with international practice will need to be guided by the pragmatics of the exercise, as much as by the principles. In this sense, compensation should be understood as an additional and complementary programme to broader victim empowerment in South Africa.

There will be an inevitable balancing and prioritising between the establishment of a compensation scheme and the funding of additional victim empowerment services. Given competing needs and priorities in the context of limited financial resources, the

likelihood of developing a compensation scheme may seem remote in South Africa. However, it would be inappropriate to overlook the possible positive effects that the institution of such a scheme may have. It is, therefore, necessary to reflect on different options for a compensation scheme and consider how these could be implemented, in part, in full, or incrementally. Policy is generally developed incrementally and is a process rather than a specific outcome. In fact, it is usually 'messy and evolutionary' (C Juma and N Clark 'Policy Research In Sub-Saharan Africa: An Exploration' (1995) *Public Administration and Development* ,Vol. 15, 121-137).<sup>37</sup>

The particular difficulty that is faced in the South African context is that there exist multiple priorities and demands on the State. Extreme pressure to deliver can often override the incremental steps that may be needed to develop an extensive compensation scheme. None of the competing demands on the State will disappear in the short-term. It makes sense that the highest priorities within the criminal justice system should be attended to first, but exactly what these are remains a matter of interpretation and debate. What is clear, however, is that the criminal justice system will remain dependent on the co-operation of victims in order to secure its on-going efficacy and legitimacy. On the other hand, the needs of victims are not going to disappear in the short-term, no matter what criminal justice reforms are undertaken. Priorities in respect of reforming the criminal justice system and adequately addressing the status of victims within such a system will, therefore, remain inter-linked and mutually dependent.

Criminal justice reform takes place in an integrated context. The persistence of victims' negative perceptions and experiences of the criminal justice system, as well as the fact that their needs are not met, will undermine the legitimacy of the system and, in so doing, erode strides made in other areas of reform. Paying compensation will not bring back the loved ones of murder victims, but equally, catching and apprehending the criminals will not offset the costs associated with the loss of a breadwinner - without either, trust in the criminal justice system remains undermined. In this context, the idea of compensating victims of crime can easily hold its own next

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<sup>37</sup> Some of the thoughts on policy making in countries in transition are extracted from Brocklehurst,

to a range of other needs in the criminal justice arena. At the very least, compensation has to be seen as a complementary component of victim support that is vital to the ensuring the efficacy of the whole criminal justice system.

## CHAPTER FOUR

### The Parameters of a Victim Compensation Scheme

This chapter begins with a discussion on recovering compensation from the offender in the South African context. Thereafter, it summarises the main parameters applied by most international compensation schemes, i.e., the mandate of the scheme, the type of crimes eligible for compensation, as well as who would qualify to apply to the scheme for compensation. Each of these is discussed using international comparative data. The information provided in this chapter is considered the skeleton upon which any legislative framework for a South African compensation scheme would have to be based.

#### 4.1 Introduction

In contemplating the establishment of a compensation scheme, it is important to consider the broad parameters that would be used to define the functioning of the scheme. If South Africa were to set up a compensation scheme, agreement would have to be reached concerning the specifics of each of the parameters outlined below. These would include who would be disqualified from the scheme, what types of crimes would be eligible for compensation, the basis on which the value of compensation would be decided and so on. The chapter begins with an initial discussion on recovering compensation from the offender, thereafter the key areas deemed relevant to developing a state compensation scheme framework are unpacked and discussed.

A right to compensation for damages arising from a criminal act generally exists only against the perpetrator or offender. The South African State has, to date, not assumed a legal obligation to compensate, or contribute to the compensation of, the victim. State-funded victim compensation schemes are based on welfare or social solidarity notions, and are generally dealt with pragmatically. Such schemes are, therefore, subject to economic and political vicissitudes. Most foreign jurisdictions appear to be shying away from increasing the entitlements of victims of crime to state compensation. This is done through encouraging compensation claims

against the offender, as well as fostering the development of broader victim empowerment strategies to service victims of crime.

Where state compensation schemes exist around the world, they generally do not pay full compensation, or compensation which is on a par with what would be paid by the offender in a civil case. Many schemes aim rather to contribute towards the compensation of a blameless victim, acting as a social safety net and compensating actual loss as opposed to claims in respect of pain and suffering. In practice therefore, state compensation is usually well below comparable awards arising from civil claims. Yet, the benefits of a State victim compensation scheme include the fact that it enables the victim to avoid the risks of failure, cost implications and trauma inherent in civil litigation, particularly litigation against an offender.

For most countries, compensation should ideally be claimed from the offender and paid directly to the victim before any state compensation or intervention is considered. The next section, therefore, outlines some of the debates concerning compensation from the offender and links these directly to the current legal position in South Africa. Thereafter, the parameters of a state compensation scheme are discussed.

#### **4.2 Compensation from the Offender**

The first recourse that victims have following a crime - and assuming that the offender is arrested and is liable for prosecution - is directly from the offender via a civil claim, or in some countries, through a compensation order made in the sentencing of the offender. In most foreign jurisdictions, a victim is usually entitled to lodge a civil claim against the perpetrator or obtain compensation from the perpetrator during the course of criminal proceedings. Both methods usually have limited success and, even when successful, will only assist victims whose cases have actually reached court, and who can afford to pay.

The methods used to increase the levels of compensation recovered from offenders differ between jurisdictions, with these often being more complex in common law than in civil law jurisdictions. However, few international efforts in this regard have been overly successful due to the complexity and expense, as well as the existence



of some levels of resistance in the criminal justice system. In some jurisdictions it is a prerequisite that the victim has sought, or is willing to seek compensation from the offender before the state scheme will even consider the victim's application. State victim compensation is therefore generally treated as a secondary source of compensation (the principle of subsidiarity).

In South Africa, sections 297 and 300 of the Criminal Procedure Act 51 of 1977 make provision for the court, after finding an accused person guilty, to order the convicted person to pay compensation to the complainant. Section 300 is expressly limited to compensation for 'damage to or loss of property (including money) belonging to some other person' limited to R300 000 in the regional court and R60 000 in the magistrate's court.<sup>38</sup> This provision requires that an application be made by the injured person or the prosecutor acting on the instruction of the injured person. The effect of an award in terms of this section is the same as that of a civil judgement. However, it is not deemed punishment. For such an order to be made, there must have been a conviction. Courts have held that a compensatory order is not a form of correctional supervision and that a failure to comply with such an order does not entitle a court to reconsider or impose any other punishment.<sup>39</sup>

Section 297, which deals with the conditional or unconditional postponement or suspension of sentence, allows the presiding officer to make the payment of compensation to a victim a condition of the suspension or postponement of sentence.<sup>40</sup> It has been held by South African courts that compensation is an important part of the criminal process and that where it is possible to compensate the victim for damages sustained through criminal conduct, this should be done.<sup>41</sup> Orders for compensation are, however, usually not considered 'unless the complainant requests the public prosecutor to apply to the court for an order and complainants seldom make use of the provisions because they are either not present

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<sup>38</sup> Maximum compensation is determined from time to time by the Minister in the Government Gazette. Current figures are gazetted in Government Notice R1410 of 30 October 1998 (Government Gazette 19435).

<sup>39</sup> In this regard see the case of *S v Medell* 1997 (1) SACR 682 (C).

<sup>40</sup> A sentence may be suspended for a period not exceeding five years, apart from cases in which a minimum punishment is prescribed by law. Unlike suspension, in which part of a sentence may be suspended, only the whole of a sentence may be postponed. The postponement of part of a sentence is not permitted.

<sup>41</sup> *S v Charlie* 1976 (2) SA 596 (A)

or they don't know about the provisions of the act' (South African Law Commission, 1997, p. 13). Compensation orders are, therefore, usually only granted in circumstances in which an offender is not sentenced to a period of imprisonment.

Sections 297 and 300 have several limitations, particularly in relation to offences involving violence against the person (N van Dokkum 'Compensation For Victims Of Sexual Crimes' (1997) Vol 10 No 2 *South African Journal of Criminal Justice* 285-6). Postponement of sentence on condition of the payment of compensation has generally been held to be suitable only for trivial offences and, therefore, would not be an option for sexual offences and offences of violence other than some assaults. Proper enforcement within the criminal justice system of this legislative provision remains an overriding difficulty.

According to Van Dokkum (1997), it would, however, be competent for the presiding officer to suspend (for no longer than five years) a whole or a part of the sentence on condition that the convicted person pays a stipulated amount of compensation to the victim. Thus, if Section 297 were properly enforced, the convicted person would have an interest in raising the money, consequently pursuing that option more vigorously (van Dokkum, 1997).

Where a period of imprisonment is handed down, it is unlikely that the offender would be able to pay compensation to a victim, unless such offender has available assets or is able to raise the money. Similarly, where an offender receives a fine in addition to a compensation order in terms of section 297, this will reduce the likelihood that compensation can be paid.

In South Africa, it is, therefore, only when the entire sentence is suspended on condition of payment of compensation that it is likely that an offender could be induced to pay compensation to the victim. However, the suspension of a sentence in cases of serious criminal transgressions may well be contrary to considerations of public interest and safety. The Criminal Procedure Act's provisions pertaining to compensation, therefore, appear to have little relevance, particularly in relation to serious offences involving violence against the person, which tend to be the main focus of most of the existing systems of compensation in developed countries.

Recently, the South African Law Commission has proposed the amendment of legislation to facilitate greater access to compensation by victims through the process of sentencing following conviction of an accused person. There is value in law reform initiatives to improve the capacity of the criminal justice system to make reparative orders. However, even an improved system is likely to be affected by the problems outlined above. Furthermore, the efficacy of such amendments will strongly depend on the ability of the criminal justice system to arrest and convict offenders.

There are no available examples of effective systems of compensation in other jurisdictions which rely primarily on payments made by the offender. Furthermore just as there is often little point in a court order for compensation in terms of section 297, in most cases of violent crime there is little that the victim can gain from a civil action as the offender is more often than not unlikely to be able to fulfil any civil judgement against him or her.

#### **4.3 Eligibility to apply for State Compensation**

##### **4.3.1 Violent crime versus other crime**

Certain foreign compensation schemes limit the payment of compensation to crimes of violence, though other schemes include the injuries associated with crimes that are not always violent. Generally, however, foreign compensation schemes, rather than base compensation on the nature of the crime, seek to compensate only death or serious injuries – usually defined as being either some form of permanent disability or incapacity to work for a significant period, with a minimum period often set in this regard.

Denmark provides compensation in circumstances in which personal injury resulted from serious criminal offences stipulated in its criminal code (D Lerche 'Denmark' in ***Compensating Crime Victims : A European Survey***. Freiburg: Max-Planck Institut 1996). Finland does not require that the crime be of a deliberate or violent nature before compensation can be awarded and, for example, exemption from criminal liability by reason of insanity is not taken into consideration (A Söderholm 'Finland' in ***Compensating Crime Victims : A European Survey*** edited by D Greer Freiburg: Max-Planck Institut 1996 p.170). In Norway, the state awards

compensation for personal injury caused by 'wilful assault' or 'other criminal acts characterised by violence or force' (G Brottweit 'Norway' in ***Compensating Crime Victims: A European Survey*** edited by D Greer Freiburg: Max-Planck Institut 1996).

#### **4.3.2 Intentional versus non-intentional violence**

In most foreign schemes, it is only those persons who are blameless victims of crimes of violence, or those injured while attempting to apprehend offenders or prevent crime, who may apply for compensation. Many state compensation schemes compensate for damages only from intentional violent crimes – though the level of intent required varies. Some schemes, therefore, exclude claims in which injury was caused by negligence (often because the effects of accidental injury and death are well covered by other forms of social insurance).

Belgium, for example, compensates only intentional acts of violence against persons. In Denmark, if there exists an objective ground for exemption from criminal liability (such as self-defence, necessity or consent), there is no punishable offence and thus no basis for compensation (Lerche, 1996, p.135). Similarly, if an accused in Denmark is acquitted of an offence, no compensation is payable. Under the German Victim Compensation Act of 1976, the injury must be serious or have caused lasting damage to the victim's health and have resulted from an intentional and unlawful violent assault (M Kaiser and M Kilchling 'Germany' in ***Compensating Crime Victims : A European Survey*** edited by D Greer Freiburg: Max-Planck Institut 1996 p.268). The Netherlands adopts a narrow view of 'victim', allowing compensation to be granted by the state to victims of deliberate violent crime who have suffered serious bodily or mental injuries (J Wemmers and P de Beer 'The Netherlands' in ***Compensating Crime Victims : A European Survey*** edited by D Greer Freiburg: Max-Planck Institut 1996 412).

It should be noted that the application of the notion of intentional crime should involve a wide definition of intentionality. It would be unjust if, for instance, a claim were turned down because the injury suffered was the result of being injured by a stray bullet fired negligently by the offender without the offender's having formed the specific intention to kill or injure the actual (or any) victim. The reasonable possibility

of injury/death to some person must merely have been foreseeable to qualify the victim for making a claim. It is not, in general, necessary for the victim to have been the intended victim of the act of the offender. In some cases, therefore, even the dependants of a victim of a culpable homicide might well qualify for compensation.

#### **4.3.3 Damages for injury or death versus damage to property**

Most schemes do not permit claims for damage to property, although limited claims for personal effects such as spectacles and hearing aids are usually permitted. Denmark, for example, allows compensation to be claimed where a victim has been injured under the heads of medical expenses, loss of earnings, pain and suffering, permanent injury, loss of capacity to work or compensation awarded for loss of a breadwinner and for funeral expenses. No compensation is normally awarded for loss of or damage to property (Lerche, 1996, p.136-137). An exception is Northern Ireland,<sup>42</sup> which allows claims for damage to property under certain circumstances. France allows compensatory payments associated with the loss of sexual function.

#### **4.3.4 'Good Samaritans'**

Compensation is generally paid to 'Good Samaritans' who are injured in the course of trying to prevent a crime or to apprehend a criminal. For example, compensation is awarded in Denmark in circumstances in which personal injury was sustained from giving assistance to the police in relation to an arrest, preventing an offence or with a view to making a citizen's arrest (Lerche, 1996, p.135). A similar approach is adopted in most other jurisdictions. In Northern Ireland, compensation may be payable even where no violent offence has occurred, but not where such injury was accidental unless an exceptional risk was taken by the victim when injured (Bloomfield *et al.*, 1999, p.41).

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<sup>42</sup> At the time of going to print, it was announced by the Northern Ireland Secretary of State that a British-style tariff scheme will be introduced in Northern Ireland in 2002. The tariff will be based on Northern Ireland awards and the compensation levels are therefore expected to be somewhat higher than that in Great Britain. It is also likely that Northern Ireland will do away with the right of appeal to the courts and replace it with review by a Compensation Review Authority, as in Great Britain. Other recommendations are also under consideration and draft legislation is to be published early in 2001 (Personal communication, Desmond Greer, 12 September 2000). This report outlines the details of the Northern Ireland scheme as it stands and before any of the proposed changes.

#### **4.3.5 Location of crime**

Most schemes require that the injury occurred within the territory of the state, although there are exceptions to this general rule. Austria, for example, allows claims if the offence occurred abroad and the applicant has permanent residence in Austria. The District of Columbia in the United States permits claims by its residents injured outside the United States in a 'terrorist act or act of mass violence'. In Denmark, the offence must have been committed in the territory of Denmark (Lerche, 1996, p.135). Finland allows claims to be made by permanent residents or citizens of Finland even where the offence occurred abroad (Söderholm, 1996, p.170).

#### **4.3.6 Claims limited by citizenship**

Often schemes limit beneficiaries to nationals, permanent residents, those legally present in the country and people from countries with which the relevant reciprocal agreements exist. Denmark permits claims by its citizens and foreign nationals even where such persons were injured during a temporary stay in Denmark (Lerche, 1996, p.135). French law provides that compensation is payable to any national of a member state of the European Union injured by a criminal act committed in France (F Lombard 'France' in *Compensating Crime Victims : A European Survey* edited by D Greer Freiburg: Max-Planck Institute 1996). Compensation is payable to French nationals injured as a result of an offence committed in a foreign country. Germany grants compensation to all European Union citizens or foreigners permanently resident in Germany injured in Germany or on a German ship or aircraft (Kaiser & Kilchling, 1996, p.274). Norway allows compensation to be awarded in circumstances in which the offender and victim are Norwegian even if the injury were sustained abroad (Brottveit, 1996, p.453).

#### **4.3.7 Prescription of claim**

Most foreign compensation schemes require the applicant to report the crime to the police and to lodge a claim within a specified period. Failure to meet these deadlines can result in reduced awards, or in some cases rejection, as can failure to get proper police verification of the incident or medical records.

Belgium requires that claims be lodged within one year of the conclusion of criminal court proceedings. In Great Britain, a claim must be lodged within two years of date of the commission of the offence. The District of Columbia requires that the crime be reported within seven days and a claim lodged within one year. In Northern Ireland, the injury must be reported to the police within 48 hours, a notice of intention to apply for compensation be lodged within 48 hours and an application filed within three months. Denmark requires that a crime be reported to the police 'without undue delay' which is commonly interpreted as being within 24 hours, with compensation claims sometimes being refused where reports occur after this period has expired (Lerche, 1996, p.139).

Finland requires that the application for compensation be made two years from the date on which the victim became aware of the crime and five years from the date on which the crime was committed. In Finland, the offence must be reported to the police unless there exist 'special grounds' which justify not doing so or the police have become aware of the offence in some other way (Söderholm, 1996, p.171). In Finland, prior to 1985, a victim had ten days within which to report a crime to the police but experience showed this to be insufficient time and currently there is no time period specified in the law (Söderholm, 1996, p.171). A victim is not required to press charges against the offender and may even withdraw charges. However, victims are required to give all reasonable assistance to the State Treasury with regards to their application for compensation (Söderholm, 1996, p.171-2). In France, an applicant has three years within which to claim compensation from the date of the offence. Compensation schemes in the United States vary in the time limit prescribed for the making of a claim from six months to five years, with only one state having no set limit (Bloomfield *et al.*, 1999, p. 163).

Legislative provisions in South Africa limit the time period within which civil claims must be made, and the time period within which civil claims against the police must be lodged is even more restrictive. For administrative purposes, it is recommended that a compensation claim be lodged within a specified time period so as to enable an investigation of a claim to occur timeously and without unnecessary difficulties arising due to lengthy delays.

#### **4.3.8 Beneficiaries of the scheme**

In most schemes, it is only the actual victims or their dependants who are entitled to claim compensation. Dependants include spouses and common law spouses<sup>43</sup>, children and other *bona fide* dependants. Employers and insurance companies are not permitted to claim from most compensation schemes. In Northern Ireland the funds cannot be claimed by debtors or be transferred to an estate if a person dies (for example, of natural causes) sometime after the injury.

Whilst few schemes legislate as to the manner in which compensation awarded to minor dependants is to be handled, it appears that the majority make provision for lump sum payments which are then managed in accordance with law. Some jurisdictions require that such funds are preserved in a trust, from which payments are made in favour of the children. It is of interest to note that children of deceased victims can receive additional compensation in the Northern Ireland and Great Britain schemes for the loss of parental services.

#### **4.3.9 Victim and offender living together**

Some countries reject claims if the victim and offender are part of the same household or family in order to avoid creating perverse incentives or the abuser benefiting from the compensation. More recent trends in foreign schemes move away from co-habitation to an insistence that the victim be ready to assist in the prosecution of the offender as a fraud protection mechanism. However, if compensation is made dependent on women pursuing court cases or co-operating with the criminal justice system, a substantial number may be excluded from compensation. As was noted above (see 3.3.2.10), the reasons for not pressing charges in an abusive relationship can be deep-rooted, and include a fear of the partner's reactions to an investigation and trial, pressure from family members, withdrawal of long-term financial resources if the partner is imprisoned and so on. Conversely, if the willingness to enforce prosecution is not used as a criterion, as is done in most countries, the probability of fraud through falsified domestic violence claims is increased dramatically.

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<sup>43</sup> In Great Britain and Northern Ireland common law spouses are deemed to be a man and a woman who have lived together as man and wife for at least two years. In Ireland, the requirement is three years.



## **4.4 Issues Impacting on Eligibility**

Various issues can impact on whether compensation is granted at all or result in the reduction of the amount awarded.

### **4.4.1 Retrospective nature of the scheme**

The establishment of a compensation scheme can take some time. Most countries, however, will only entertain claims after the scheme is fully operational as this allows for proper verification of the claims and injuries. Trying to ascertain reliable information for cases retrospectively can be difficult,<sup>44</sup> thus most countries do not allow for retrospective claims and the only leeway provided is within the parameters of the prescription of the claim from the time that the scheme is operational, unless the offender will not be able to compensate the victim.

### **4.4.2 Knowledge of the offender**

Compensation is payable in most jurisdictions, both where the offender is known, as well as where the offender is not identified. In the case of the unidentified offender, this is important in that the compensation scheme assists victims of crime, particularly those who have no recourse to the offender directly. Generally, however, where a victim is able to obtain compensation from the offender, the state compensation scheme will not apply and no state compensation will be granted.

### **4.4.3 Means test and the principle of subsidiarity**

Some schemes limit payments to persons in financial need and apply a means test to assess this, while others simply set a maximum limit on awards for particular injuries, loss of earnings and medical care. In many schemes it is only actual losses which are compensated and any losses compensated by other sources such as by the offender, though insurance policies will reduce the amount paid to the applicant. In all jurisdictions, private insurance will therefore be deducted from any state compensation award. In Belgium, for example, the applicant must have no effective and sufficient compensation available from another source before being entitled to compensation from the state. In Northern Ireland, a victim who receives

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<sup>44</sup> Interview with Denis Stanley, Head of Northern Ireland Compensation Agency, 18 April 2000.

compensation from the State and then from the offender is required to reimburse the State that portion of compensation received from the offender (Bloomfield *et al.*, 1999, p.64).

Spain does not deduct additional compensation such as pension or private insurance payments from the lump sum paid to victims of acts deemed to be terrorism, but does distinguish between such victims and victims of ordinary crime, from whom private insurance payments will be deducted (Bloomfield *et al.*, 1999, p.169-171). In general, therefore, State compensation programmes internationally are 'payers of last resort' in the sense that compensation will not be paid in respect of any loss or expense covered by a collateral source such as medical insurance, pension schemes, insurance arrangements, payments made by the offender, employer wage-continuation programmes, social security and so on (Bloomfield *et al.*, 1999, p.57 & p.164).

#### **4.4.4 Character of the applicant**

Previous involvement in crime and/or criminal organisations and/or organisations involved in political violence is used to exclude or restrict the payment of compensation to applicants in some countries - even where the offence giving rise to the claim was not related to such involvement. Some countries reduce or reject compensation if the award is contrary to public policy or the public's sense of justice, such as where the applicant is a known criminal. This can also be used to limit an award of compensation to applicants whose injuries were sustained after they initiated the criminal conduct in question, e.g., injuries in a gang fight whilst a member of a criminal gang.

However, the obvious question is whether people who have committed an offence in the past can ever qualify for compensation. This is important as supposedly, even those who have committed severe offences in the past, should maintain the personal right to rehabilitation, following convictions in respect of which offenders can be said to have done their time and paid their dues. Unlike in Finland, in Great Britain, the applicant's criminal record cannot be used to refuse compensation. The system in Great Britain is the most creative in this regard. In this system, compensation will normally be refused or reduced where applicants have engaged in misconduct

before, during or after the incident in which they suffered injuries. Examples in the Criminal Injuries Compensation Authority (CICA) Guide include taking part in a fight voluntarily, striking the first blow without reasonable cause, seeking revenge and provocation.

Great Britain also uses a points system to withhold or reduce an award 'on the basis of a applicant's character, as shown by his or her criminal convictions, even where these are unrelated to the incident for which the claim is made' (Criminal Injuries Compensation Authority, 1996, p.14). Penalty points are based on the type and/or length of any sentence imposed by the courts together with the time between the date of sentence and the receipt of the application. Sentences imposed after an application has been made are also taken into account. Ten or more points result in a 100% reduction of the claim, whilst 0–2 points results in a 0% reduction. Imprisonment, whether suspended or not, includes the sentence of juvenile offenders to an institution or other custodial sentence. Mitigating factors, such as whether the injury resulted from the applicant's assistance to the police, are also considered after the points system has been used to assess whether an award should be reduced or withheld.

No other examples could be found of jurisdictions in which the criminal record is used as a basis to reduce or reject compensation.

#### **4.4.5 Applicant's actions and conduct**

The victim's conduct before, during and after the offence can be grounds for reducing or rejecting compensation. The applicants, in most schemes, must take steps to mitigate the injury they have suffered and are required to have reported the crime. In countries such as Finland and Germany, compensation may be reduced or withheld if the victim contributed to the incident which caused the injury (Söderholm, 1996, p.171 and Kaiser & Kilchling in Greer (ed), p.275). The Dutch compensation scheme requires that the victim is completely innocent and is in no way responsible for the offence (Wemmers & De Beer, 1996, p.412).

When considering the reporting of crime, it seems rational that only crimes that are reported need to be considered for compensation. Furthermore, establishing the

criterion that crimes have to be reported timeously and that full co-operation with the police is a prerequisite for receiving compensation, suggests that a compensation scheme could actually be used to strengthen the criminal justice system. Reporting rates, through the 'incentive' of compensation, could therefore increase.

In some schemes it must be clear that applicants have not contributed to their own misfortune by the use, for example, of alcohol or drugs. This could result in a reduction or the withholding of a claim as it does in Great Britain.

Applicants in most schemes must not have renounced a claim against the offender if they wish to be eligible for compensation from the state. Applicants must also be prepared to co-operate with the police or prosecutorial services.

#### **4.5 Mechanisms for Claiming State Compensation**

The process for applying for State compensation, in most countries, can be summarised as follows:

1. Within a prescribed time limit the crime has to be reported and full co-operation with the police must take place.
2. An application for state compensation, within a prescribed time limit, then needs to be made to the body administering the compensation scheme.
3. The claim is assessed. This usually involves verification by the compensation body that administers the compensation scheme. Verification takes place generally through contacting the police where the crime was reported, as well as with medical facilities and practitioners who treated the victim.
4. A claim is accepted or rejected and a monetary value for purposes of compensation determined.
5. The victim accepts the decision and if not, the victim then has a prescribed period within which to appeal the decision if it is felt that the amount is inappropriate or if the claim was rejected.
6. The appeal is heard either through the compensation body or court and the process is finalised.

The process itself has a multitude of variations in different countries and is also discussed in more detail in *Chapter 7* of this report. In Northern Ireland, the entire process is generally dealt with by lawyers on behalf of the victim. The victim's lawyer makes the application and then 'negotiates' with the compensation agency's (a quasi-independent executive government agency) lawyers or case workers until a

figure is agreed upon. If agreement cannot be reached, the process can go to court.<sup>45</sup>

In Denmark the victim of crime who seeks compensation files a claim with the police. The Victim Compensation Board determines applications. The Board is appointed by the Minister of Justice and consists of three members (Lerche, 1996, p.149). In terms of section 10 of the Danish Victim Compensation Act, if the victim fails to file a claim for damages in the course of criminal proceedings against the offender, compensation may not be awarded (Lerche, 1996, p.140).

In Finland, a person injured as the result of a crime makes a written application to the State Treasury, a procedure for which the assistance of a lawyer is not necessary (Söderholm, 1996, p.166). In France, a claim for compensation is made by delivering a petition to the Crime Victims' Compensation Commission. In Germany, a claim is made against the state and usually administered by the Länder.

## **4.6 Types of Compensation**

### **4.6.1 Tariff scheme versus common law scheme**

Schemes vary between those that deal with cases on an individualised basis where awards are based on the specific injuries sustained by a specific applicant, and those that set out a relatively fixed tariff structure with awards set by the nature of the injury. Generally, the former conforms more with the general principles of restitution, while the latter is often swifter, more predictable, transparent and (usually) cheaper.

Countries such as Great Britain have moved towards a tariff-based compensation scheme, providing for 330 injury descriptions to which specified monetary compensation awards are attached for amounts ranging between £1,000 and £250,000 pounds. Such awards are for pain and suffering and include a small unquantified element for financial loss or expenses. Separate payments are made in addition for loss of earnings and earning capacity, as well as for costs of special care and reasonable funeral expenses. Compensation in the British scheme is also

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<sup>45</sup> Interview with Denis Stanley, Head of Northern Ireland Compensation Agency, 18 April 2000.

awarded to dependants for the cost of replacing a deceased parent's parental services. No award may, however, exceed £500,000.

Northern Ireland, on the other hand, currently uses common law compensation principles such as those used in civil damages proceedings in the assessment of compensation claims. It has not adopted a tariff-based scheme in the awarding of compensation. The objective of the common law approach to the assessment of compensation is to place the victim in the position he or she would have been had there been no injury, insofar as this can be done by the payment of money. Each case is therefore dealt with on an individual basis. The 'once and for all' rule applies, preventing further consideration of the case once compensation has been determined and paid. Where uncertainty arises as to whether a victim can claim, or the amount that should be awarded, this is referred to the court for decision (Bloomfield *et al.*, 1999, p.36 & p52).

Jurisdictions such as Finland provide minimum and maximum compensation awards for various types of injuries and a maximum award in respect of loss of earnings and maintenance.

#### **4.6.2 Compensation for actual financial losses**

A victim can be compensated following injury for loss of earnings (both past and future), all reasonable expenses (including medical expenses), any other pecuniary or financial loss resulting from the injury (such as the cost of care, loss of free medical and life insurance, loss of private use of a company car), and for pain and suffering, as well as loss of amenities caused by the injury. Many schemes do not allow claims in respect of each of these heads, providing more limited compensation. For example, there is no general award for pain and suffering based on the nature of the injury sustained. Such schemes limit compensation to actual financial losses sustained, including loss of earnings or maintenance, the cost of medical care or treatment and the reimbursement of medical expenses to a maximum amount. Examples of such schemes include Austria, which limits compensation to actual financial losses incurred as a result of injury.

### **4.6.3 Mental health costs**

Many schemes compensate for losses attributable to psychological effects of the crime, although the criteria for determining the extent of psychological suffering is often based on medical and psychiatric models. In this sense, a specific diagnosis (e.g. post-traumatic stress disorder, see 2.5.2 above) is often necessary, or significant mental stress and consequent impacts will need to be shown, i.e., loss of job due to psychological trauma.

In Israel (for victims of what is deemed terrorist violence), great emphasis is placed on financial support or benefits in kind within the framework of regular contact, counselling and support (Bloomfield *et al.*, 1999, p.173). Germany provides compensation for medical treatment, recuperation and physical rehabilitation but its compensation scheme makes no express reference to the payment of compensation in respect of psychological injury or for mental health costs (Kaiser & Kilchling, 1996, p. 279).

The Netherlands awards compensation for pecuniary losses, which expressly includes the cost of seeing a psychiatrist (Wemmers & De Beer, 1996, p.412). Norway, too, provides compensation for the psychological effects of a violent act that caused personal injury, but not where the injury constitutes an insult (Brottveit, 1996, p.452). Compensation schemes in the United States vary in their approach to payment for mental health counselling, with some states such as Florida providing greater benefits to children but with most capping the amount that can be claimed (Bloomfield *et al.*, 1999, p. 164-5).

## **4.7 Amounts Awarded for Compensation**

### **4.71 Maximum and minimum awards**

Most schemes set upper and lower limits for compensation. Small claims are often excluded by setting reasonably high lower limits for claims. This is used as a cost-saving technique, although such an approach may disadvantage those who have suffered a relatively small amount of damage but where the cost is a substantial proportion of their low income. Both Northern Ireland and Great Britain provide compensation to claims of a minimum of £1 000 pounds (about R10 000), with Great Britain limiting compensation awards to a maximum of £500 000 pounds. Ireland on

the other hand considers compensation claims from as little as £50 pounds (about R500). The majority of state compensation programmes in the United States have a maximum compensation limit equivalent to £25 000 pounds (about R250 000), with separate caps on different heads of compensation (Bloomfield *et al.*, 1999, p. 164). In Norway, state compensation is limited to Kr 200 000 (£20 000 pounds or about R200 000), while in the Netherlands it is limited to the equivalent of £23 000 (about R23 000) and in Portugal to £17 000 (about R17 000).

#### **4.7.2 Emergency and interim awards**

Most schemes have provision to make some funds available if individuals have urgent needs and cannot wait on the longer process of processing claims. In practice these are usually limited to cases of extreme financial hardship, such as the death of a breadwinner, crisis intervention, temporary shelter and food. In compensation programmes in the United States these awards are often limited to \$500 or \$1,000. Such payments have given rise to debates on the basis that many believe that these are the responsibility of victim assistance programmes rather than compensation schemes (Bloomfield *et al.*, 1999, p. 165).

#### **4.7.3 Lump sum versus periodic payment regimes**

Most claims are paid out in a lump sum, rather than using periodic payments (though there are examples of using the claims as a basis for a state pension/welfare payment). Lump sum payments can be problematic as they fail to help the victim over time, but they are easier to administer. Pension payments can create more of a sense of stability and financial security (especially following the death of a breadwinner, which can affect some dependants over their whole lives). However, pension schemes can cause the individual to remain psychologically dependent on the compensation scheme leading to a state of 'compensation neurosis'<sup>46</sup> where victims never move beyond their victim status. In Spain, whilst compensation is normally paid in a lump sum, extraordinary pensions are paid to victims of terrorism in respect of injury and death at twice the normal pension payable (Bloomfield *et al.*, 1999, p. 169). Austria, Italy and Sweden are further examples of countries that make provision for the periodical payment of compensation. Austria normally pays

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<sup>46</sup> Interview with Desmond Greer, Queens University, Belfast, 18 April 2000.



damages for loss of earnings by way of a periodical pension, although payment by way of a lump sum is not excluded (W Raschka 'Austria' in ***Compensating Crime Victims : A European Survey*** edited by D Greer Freiburg: Max-Planck Institut 1996 p.25). Germany and other countries make provision for the payment of pensions for the disabled.

#### **4.8 Appeals and Reconsideration of Compensation Grants**

All schemes allow the applicant to appeal against a decision of the body granting compensation. Appeals are permitted against the refusal of an award or the amount awarded. Often an internal appeal procedure precedes an appeal by the courts. In some schemes, a review is undertaken by a review panel. It has been proposed in jurisdictions such as Northern Ireland that cases should be allowed to be re-opened if an injustice would otherwise occur, such as if injuries persist. Such provisions are however rare. In Finland, lawyers within the State Treasury make a decision regarding a claim. If applicants are dissatisfied, they may appeal to the Insurance Court within 30 days of being notified of the decision but have no right to an oral hearing, as, for example, in Britain (Söderholm, 1996, p.167).

#### **4.9 Other Key Issues to Consider**

##### **4.9.1 Schemes should not benefit professionals**

The creation of a compensation scheme can open new markets, particularly for lawyers and doctors whose services are needed either to lodge or prove claims. It is important to find mechanisms that ensure that victims are the major beneficiaries, rather than the professionals, and that the costs of running the scheme do not exceed the benefits payable to victims. This has been raised as a problem in Northern Ireland where the scheme involves many lawyers, as it is based on a 'common law' approach to compensation.<sup>47</sup>

##### **4.9.2 Marketing of the scheme**

Several of the schemes have clauses in their founding legislation which aim to ensure that the scheme is adequately publicised. Schemes in Great Britain, Northern Ireland and the District of Columbia have developed supporting explanatory

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<sup>47</sup> Interview with Sir Kenneth Bloomfield, Stormont, Belfast, 27 April 2000.

documentation, which provides a basis for applicants to understand their rights to compensation with relative ease in terms of the relevant scheme.

#### **4.9.3 Victim support and an integrated compensation scheme**

As previously argued, compensation schemes work best when run parallel to other victim support services. Having victim support services that can assist victims with claims dramatically reduces the incidence of false claims and the costs of lawyers' fees. Compensation should not stand alone, but rather be seen as a component of a comprehensive victim empowerment programme. In Great Britain, for example, victim support is seen as integrally linked to the compensation scheme; support workers help victims fill out forms for compensation and hook them up to other services.<sup>48</sup> It has been found that the more victims get from the other services, the less the need for compensation. The best course of action is for victims to receive the adequate services and compensation for the costs incurred because of the crime. Currently, in Great Britain £18 million is made available a year to victim support agencies, which are seen as critical to a proper victim compensation scheme. Senior policy-makers, and the victim support programme, feel even more should be allocated.<sup>49</sup>

#### **4.9.4 Fraud<sup>50</sup>**

Fraud is a problem within the South African context. Medical insurance fraud in South Africa (in the private sector) is estimated to amount to about R750 million a year.<sup>51</sup> Recently, high levels of fraud have also been detected in the Road Accident Fund (Business Day, August 29, 2000) and the Department of Welfare (Business Day, September 15, 2000).

The compensation schemes in Great Britain and Northern Ireland report low levels of fraud.<sup>52</sup> Fraud is kept to a minimum because of the many checks and balances in

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<sup>48</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office Justice and Victims Unit , 19 April, 2000.

<sup>49</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office Justice and Victims Unit , 19 April, 2000.

<sup>50</sup> Also see *Chapter 7, 7.10* for more discussion.

<sup>51</sup> Figure published in **Discovery**, Issue Number 5, Winter 2000, p.48.

<sup>52</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office

the system, such as the proof of medical records and police reports required. The record keeping by these agencies, unlike in South Africa, is also efficient and reliable. Large numbers of staff also allow caseworkers to follow and track cases carefully. However, in the South African context, the incidence of fraud could be considerably higher. Police and hospital staff could be paid to falsify records, and the likelihood of a high staff to applicant ratio is small given limited resources.

The issue of internal fraud will also need consideration. People working for the compensation body could falsify claims, working with outside accomplices. This has occurred in Great Britain in relation to their compensation fund.<sup>53</sup> Recently in South Africa, employees of the Road Accident Fund working with outsiders were responsible for extensive fraud. Typically this occurred when one of the fund's claims handlers decided on a higher than justifiable level of compensation and split the difference with the attorney who lodged the claim (Business Day, August 29, 2000).

Appropriate precautions would have to be implemented in order to avoid such incidences of fraud. Prosecution of offenders is also key to discouraging potential fraud, and this is instituted immediately in Great Britain and Northern Ireland if any irregularities are discovered. However, above all, a well-resourced system, with levels of checks and verifications of claims, as well as reliable police officers, is the best mechanism for the prevention of fraud.

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Justice and Victims Unit , 19 April, 2000.; Interview with Desmond Greer, Queens University, Belfast, 18 April 2000; Interview with Sir Kenneth Bloomfield, Stormont, Belfast, 27 April 2000; Interview with Denis Stanley, Head of Northern Ireland Compensation Agency, 18 April 2000.

<sup>53</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office Justice and Victims Unit , 19 April, 2000.

# CHAPTER FIVE

## Case Study Analysis of Police Dockets

This chapter contains the results of an analysis of selected police dockets at Randburg and Mamelodi police stations in Gauteng, South Africa. The analysis provides information about certain types of violent crimes and their impact on victims. This information is useful for making assumptions when costing a VCS (see *Chapter Six*) and for shaping possible policy scenarios. The docket analysis undertaken in this chapter also focuses on the usefulness of police information in adjudicating possible claims for victim compensation.

### 5.1 Introduction

Police dockets are the case files containing all relevant information about a recorded criminal case. Police dockets generally include basic facts and demographic information about the incident, statements by victims and witnesses, details of the activities undertaken by the police officers dealing with the case, and progress of the case through the criminal justice system.

Docket analysis can provide some useful information about the nature of violent crime (and the responses of the criminal justice system to it), although, as will be shown below, the quality of the information contained in the dockets fundamentally influences the usefulness of the analysis. The purpose of the docket analysis undertaken for this report, however, was to provide detailed information about certain types of violent crimes; and to assess the usefulness of police information in adjudicating possible claims for victim compensation. This information was required to assist in quantifying the financial impact of a potential victim compensation scheme in terms of possible policy scenarios.

### 5.2 Methodology

#### 5.2.1 Scope of the study

Police dockets were analysed at two SAPS stations in Gauteng province, namely Randburg and Mamelodi.

Mamelodi is a former African township on the eastern side of Pretoria. It encompasses densely populated urban township areas, as well as some peri-urban areas. Randburg is a suburb in the north of Greater Johannesburg. It contains a new central business district (CBD), a number of large retail and entertainment precincts, informal settlements and formerly White suburban residential neighbourhoods.

The rationale for selecting these two stations was that:

- both cover large station areas (jurisdictions) and would therefore provide us with a substantial number of cases to analyse;
- they cover a range of different types of locales, i.e. suburban residential neighbourhoods, small CBDs, informal settlements, business and light industrial precincts, township residential neighbourhoods, and peri-urban areas;
- urban areas have the highest rates of violent victimisation – approximately 4% of households in urban formal areas, and 3% of households in urban informal areas experienced at least one violent crime in 1997, as opposed to 2% of households in non-urban and traditional areas (Statistics South Africa ***Victims of Crime Survey*** Pretoria 1998), which makes it prudent, then, when estimating volume and cost of criminal injury and compensation, to base such estimates on data gathered in urban areas;
- these two stations were easily accessible to researchers within the budget of the project.

While the rate of victimisation of residents of Gauteng is roughly similar to the average rate of victimisation in the country as a whole, (Statistics South Africa, 1998, p38); the sample of crime trends in Mamelodi and Randburg should not be taken as representative of South Africa as a whole, because they are largely urban areas and reflect only trends in the metropolitan heartland of the country. However, the analysis is suggestive of trends elsewhere. Our assessment of police treatment of the cases, and the quality of dockets, however, is probably fairly representative of national standards.

The following four crime types were studied:

- Murder
- Attempted Murder
- Assault GBH (with intent to do grievous bodily harm): this generally refers to serious assault, involving knives or firearms
- Aggravated Robbery: this generally refers to robberies involving knives or firearms, such as armed robberies and hijackings of motor vehicles.

These four crime types represent the most serious violent crimes to which the researchers could obtain access (there are legal problems and police concerns about allowing researchers access to rape and indecent assault dockets, which is why these cases were not examined). The selection of these crime categories for analysis was based on the assumption that these represent the most likely type of cases in which victim compensation would be sought, as they are generally considered the most serious crimes.

Closed police dockets concerning crimes that had been reported in the three months April-June 1998 were studied<sup>54</sup>. The selection of this period was based on three main reasons.

First, police docket management practice in 1998 was similar to present docket management practice, and is, therefore, a reliable basis for analysis and projections concerning police dockets and their usefulness in a victim compensation scheme.

Second, if we had selected a more recent period, there would probably have been access to very few 'closed' dockets; as it takes the police many months (sometimes years) to close an investigation, particularly in cases of serious violent crime.

Third, there are well-known patterns in the reporting of violent crime (Nedcor/Institute for Security Studies *Crime Index* Vol 3 No 4 Number 4 Pretoria: Institute for Security Studies 1999). For instance, significant increases are visible at month-end and over holiday periods. We did not want the data to be too skewed by this; and also we wanted to capture a sense of the impact of holiday periods on levels of victimisation. We chose a period, therefore, which includes the April holiday season as well as the beginning of winter, i.e., holiday periods and some 'ordinary' weeks. We found that most of the incidents studied took place over weekends, i.e., 26% on Saturdays and 19% on Sundays. Most incidents studied took place in the early part of the evening, largely between 19h00 and 21h00.

### **5.2.2 Method of data collection**

A data-gathering form was designed to enable capturing of relevant information. This form contained 26 fields of information, which could possibly be captured (see *Appendix Five*).

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<sup>54</sup> Some dockets concerning cases of family violence, child abuse and sexual offences (FCS) were not accessed because they were held at the specialised SAPS FCS Unit for the Area, and not at the local Police Station.

Permission to access the dockets was granted by the Research Component of the SAPS at Head Office and the office of the Provincial Commissioner of the SAPS (Gauteng),<sup>55</sup> who instructed the officials at the Randburg and Mamelodi stations to assist the researchers.

Data capture at the stations consisted of the researchers<sup>56</sup> sitting in the stations' docket stores and reading through the relevant dockets. At Mamelodi,<sup>57</sup> the docket clerks assisted by drawing the specific cases (murder, attempted murder, assault GBH and aggravated robbery) and handing them to researchers.<sup>58</sup> At Randburg,<sup>59</sup> the docket clerk handed the full set of dockets for the months of April-June 1998 to the researchers, who then drew out the specific cases for analysis.

The data captured on the forms were cleaned and entered into a statistical programme for analysis.

### **5.2.3 Problems with the data**

Various problems were experienced in the course of the data capture at the police stations. They included:

- illegible handwriting by the police officers who completed the various forms and statements in the docket;
- incomplete forms, sometimes with entire sections not completed;
- the lack of data on injury.

The last point above relates to the fact that the SAPS forms and statements often do not contain any information about the nature of injuries sustained by the victim of the crime. Also, only a small proportion of dockets contained a J88 form completed by a medical doctor attesting to injuries sustained.

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<sup>55</sup> Thanks to Dr J. Schnetler of the Research Component and Director Andre Venter of SAPS Management Services Gauteng for facilitating this.

<sup>56</sup> Mosely Lebeloane, Janine Rauch, Sibusiso Ntuli and Mike Rautenbach.

<sup>57</sup> Thanks to Sgt Mahlangu and Sgt Seema at SAPS Mamelodi.

<sup>58</sup> This may have resulted in some cases not being drawn and studied. For instance, where the officers made errors in their selection of cases to draw from the store (such as leaving behind a case) or where charges were incorrectly formulated e.g. a case labelled 'Motor Vehicle Theft' would not have been drawn because it was not labelled 'Hijacking', but it may, in fact, have been a hijacking incident involving use of a firearm, resulting in an injury to the victim.

<sup>59</sup> Thanks to Sgt Makola at SAPS Randburg.

It needs to be borne in mind that many violent crimes are not reported to the police and, therefore, that any sample of police dockets cannot be taken to represent trends in the overall crime pattern in South Africa. The National Victim Survey found that only 60% of hijackings and attempted hijackings were reported, and only 83% of murders (Statistics South Africa, 1998, at 53). It also found that most individuals were unlikely to report assault (38% of cases were reported, 62% not) or armed robbery cases (41% of cases were reported to the police, 59% not - Statistics South Africa, 1998, at 57). This means that our sample of reported cases is unlikely to represent the total picture of victimisation in these four types of crime. If compensation for such cases was available, levels of reporting might increase if victims saw reporting as a method of obtaining access to compensation.

### 5.3 Findings<sup>60, 61</sup>

#### 5.3.1 Number of cases analysed

<b>Number of dockets available for crimes reported April, May and June 1998</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Murder	1	1	2
Attempted Murder	14	50	64
Assault GBH	51	190	241
Aggravated Robbery	131	84	215
Total	197	325	522

- A total of 522 dockets were analysed, representing all the available closed dockets at the two sites for crimes recorded in the months of April, May and June 1998.
- The low number of murder cases is due primarily to the fact that murder dockets are not generally closed until some years after their opening, thus making fewer available for research purposes.

#### 5.3.2 Categorisation of cases constituting the study sample

This reflects the description of the cases according to the SAPS's system for categorising crime incidents, in line with the Criminal Procedure Act and the Crime Code. The SAPS's crime code categories are not very useful, in that they do not disaggregate between different types of incidents. For example, 'assault GBH' may describe a domestic violence incident or a bar brawl or a racist attack. These are all very different types of crimes.

<sup>60</sup> Mark Isserow was a co-author of this chapter with CSVr team members.

<sup>61</sup> Due to rounding, some percentages may exceed, or not add up to 100%



Type of crime by SAPS categories	Randburg	Mamelodi	Total
Murder	1%	0%	0%
Attempted murder	7%	15%	12%
Assault GBH	26%	59%	46%
Aggravated robbery	67%	26%	41%
Total	100%	100%	100%

- Two thirds of dockets received from Randburg related to aggravated robbery, while the greatest proportion (59%) of reported incidents at Mamelodi, were assault GBH.
- Overall, assault GBH constituted almost half of the cases analysed.

### 5.3.3 Description of the crime incidents studied

This reflects the description of the cases according to categories constructed for purposes of the analysis required in this study, based on our experience and analysis of violence in South Africa in general. The categories are labelled and described below.

- ‘Domestic or family violence’ refers to any intentional violence between members of the same *immediate* family, which includes only parents, children, spouses and intimate partners.<sup>62</sup>
- ‘Violence between people who know each other’ refers to all violence between people who know each other, extended family members, friends or acquaintances.
- ‘Hijacking’ refers to actual or attempted hijacking of a motor vehicle.
- ‘Robbery’ refers to all robberies other than hijackings, including armed robberies at homes or businesses, street robberies and bank robberies.
- ‘Attack by stranger’ refers to any attacks where there is no apparent knowledge of the attacker and where robbery is not the motive.
- ‘Other’ refers to any other situations not described in one of the above categories, or where information was not available in the docket.

Nature of crime incident	Randburg	Mamelodi	Total
Other & unknown	1%	2%	1%
Domestic/family violence	4%	9%	7%
Attack by a stranger	12%	18%	16%
Violence where assailant/victim knew each other	20%	49%	38%
Hijacking	24%	3%	11%
Robbery	39%	18%	26%
Total	100%	100%	100%

<sup>62</sup> For discussion on the use of these terms, see Levinson **Family Violence in Cross-Cultural Perspective** (London: Sage 1989).

- Of the dockets studied at Mamelodi, half were violent crimes where the victim knew the assailant. This is as opposed to one in five such cases in Randburg.
- Aggravated robbery was the most frequently found violent crime in Randburg, as opposed to assaults (by strangers or by known persons) in Mamelodi<sup>63</sup>. Our findings are consistent with the National Victim Survey which found that Africans were more likely to be victims of violent crime than property crime, and, conversely, that Whites were more than twice as likely to be victims of property crime than of violent crime (Statistics South Africa, 1998, at 39).

#### 5.3.4 Gender profile of victims

Sex of victim overall (all cases)	Randburg	Mamelodi	Total
Female	26%	33%	30%
Male	74%	67%	70%
Total	100%	100%	100%

- At both Randburg and Mamelodi, men were the majority of the victims of the violent crimes studied, with this being the case for 3 in 4 cases studied in Randburg, and 2 in 3 for Mamelodi.

Type of crime (according to police categories) and sex of victim						
Police station		Murder	Attempted murder	Assault GBH	Aggravated robbery	Total
<b>Randburg</b>	Male	1%	7%	22%	70%	100%
	Female		8%	37%	55%	100%
	Total	1%	8%	26%	66%	100%
<b>Mamelodi</b>	Male	1%	17%	48%	35%	100%
	Female		14%	79%	8%	100%
	Total	0%	16%	58%	26%	100%

- In Randburg, both men (70%) and women (55%) were more commonly the victims of aggravated robbery than of any other of the violent crime categories studied.
- By contrast, in Mamelodi, both men (48%) and women (79%) were more commonly the victims of assault GBH than of any of the other violent crime categories studied.
- In both sites, women were more likely than men to be the victims of assault GBH as reported to the police and contained in our sample. This is probably due to increases in reporting levels of violence against women in the post-1994 period, as a result of new government policies, as most forms of domestic violence are classified by the SAPS as 'assault'. This is borne out by the analysis in the following table:

Type of crime incident (our categories) & sex of victim							
Police station	Sex of victim	Domestic/family	Violence among	Hijacking	Robbery	Attack by stranger	Other

<sup>63</sup> Because of the demographics and the history of the two areas studied, we can roughly describe Randburg as a 'Predominantly/formerly White' area and Mamelodi as an 'African' area.

		<b>violence</b>	<b>knowns</b>				
<b>Randburg</b>	Male	25%	67%	89%	72%	75%	
	Female	75%	33%	11%	28%	25%	
	Total	100%	100%	100%	100%	100%	100%
<b>Mamelodi</b>	Male	32%	58%	100%	86%	85%	60%
	Female	68%	42%	0	14%	16%	40%
	Total	100%	100%	100%	100%	100%	100%

- In the Mamelodi cases, 68% of victims of domestic/family violence were women, while 75% of victims of domestic violence in Randburg were women. At both sites, domestic or family violence was the most common type of victimisation reported by the female victims in our sample.
- In both sites, men were the majority victims of the other types of crime, i.e., violence among acquaintances, hijacking, robbery and attacks by strangers.

### 5.3.5 Racial Profiles of Victims

<b>Race and Sex of victims</b>					
<b>Police station</b>		<b>African</b>	<b>Indian</b>	<b>Coloured</b>	<b>White</b>
<b>Randburg</b>	Male	53%	1%	3%	41%
	Female	48%	2%	2%	46%
	Total	52%	2%	3%	43%
<b>Mamelodi</b>	Male	91%	1%		8%
	Female	98%	1%		1%
	Total	93%	1%		6%
<b>Overall sample</b>	Combined	77%	1%	1%	20%

- In both Mamelodi and Randburg, Africans were the majority of victims. African victims accounted for nearly 80% of all cases in our sample.
- Of all the victims of crime in our Randburg sample, more than half were African, and 43% White. The figures were similar for both men and women<sup>64</sup>. Unsurprisingly, given the demographics of Mamelodi, nearly all the victims in that sample, both men and women, were African.

<b>Type of crime (by SAPS category) and race of victims overall</b>				
<b>Type of crime (SAPS)</b>	<b>African</b>	<b>Indian</b>	<b>Coloured</b>	<b>White</b>
<b>Murder</b>	100%			
<b>Attempted murder</b>	83%	2%		16%
<b>Assault GBH</b>	95%			4%
<b>Aggravated Robbery</b>	55%	1%	2%	40%
<b>Total</b>	77%	1%	1%	20%

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<sup>64</sup> While this might contrast somewhat with the traditional view of Randburg as a 'predominantly White' area, 1996 census data lists the totals for Randburg and Randburg 'Other' as being 2006 for Africans (men and women), and 3610 for whites (men and women). A ratio of 2:3.6. So, in terms of residential status, Randburg is a predominantly white area, but this doesn't account for Africans who might commute into Randburg for work purposes. Forty three percent of incidences of crime amongst Africans in Randburg took place on the street, as opposed to 13% in their own home.

- African victims in our sample were more likely to be the victims of assault GBH than of any other type of crime, while White victims were more likely to be victims of aggravated robbery than any other crime.

Type of crime/race of victim					
Type of crime (SAPS)	African	Indian	Coloured	White	Total
murder	1%				0%
attempted murder	13%	20%		10%	12%
aggravated robbery	29%	60%	83%	82%	41%
assault/GBH	57%	20%	17%	9%	46%
<b>Total</b>	100%	100%	100%	100%	100%

- Assault GBH constituted 46% of all the cases studied, and the majority of all assaults were committed on African victims.

### 5.3.6 Age of victims

Age of victim overall (all cases)	Randburg	Mamelodi	Total
< 18	1%	3%	3%
18-24	11%	17%	15%
25-34	37%	39%	38%
35-44	24%	27%	26%
45-54	18%	9%	12%
55-64	6%	3%	4%
65-74	1%		0%
Age unknown	3%	2%	2%
<b>Total</b>	100%	100%	100%

- People between the ages of 25-34 were the most common victims (38%) in our sample at both sites, while those over the age of 55 and under 18 were least likely to be victims of the violent crimes studied. This is in line with the findings of the National Victim Survey, which found that 'of all individuals who had experienced at least one violent crime in 1997, almost a third (31.5%) were aged 16-35 (Nedcor / ISS, 1999, at 26 – 27). For both violent and property crime, the level of victimisation consistently declines with age.
- These findings correlate with the Pretoria<sup>65</sup> Victim Survey (A Louw *Crime in Pretoria: Results of a City Victim Survey* Pretoria: Institute for Security Studies 1998, at 36) which found that just under half of the victims of violence (46%) in the city were aged between 26-40 years. In Johannesburg<sup>66</sup>, the equivalent data (ISS, 1997, at 15) suggest that most crime happens to men between the ages of 25-60 years
- The next most common age range of victims in our sample is between 35-44 years (26%).

<sup>65</sup> Mamelodi falls within the boundaries of Greater Pretoria.

<sup>66</sup> Randburg falls within the boundaries of Greater Johannesburg.

A cross-tabulation of types of crimes with age and race of victims found the following:

#### **5.3.6.1 Victims younger than 18 years**

- The largest proportion (77%) of victims younger than 18 years old were the victims of assault GBH.
- This age group accounts for 3% of all victims studied.
- Of the two recorded cases where children under 18 were victims of an attempted murder, one was White, the other African.
- Of the 10 recorded cases where the child was the victim of assault GBH, all the victims were African. In the solitary case of aggravated robbery within this age category, the victim was also African.

#### **5.3.6.2 Victims between 18-24 years**

- The largest proportion (58%) of victims within this age category, were the victims of assault GBH.
- This age group accounts for 15% of all victims studied.
- 32% of aggravated robbery victims in this age group were White.

#### **5.3.6.3 Victims between 25-34 years**

- The largest proportion (48%) of victims within this age category were the victims of assault GBH.
- This age group accounts for 38% of all victims studied.
- 34% of people in this group were victims of aggravated robbery.
- 71% of the victims were African, and 26% White.
- Of the 32 cases of attempted murder within this age group, 90% of victims were African, and 7% were White.

#### **5.3.6.4 Victims between 35-44 years**

- Half the victims within this age category (49%) were the victims of aggravated robbery.
- This age group accounts for 26% of all victims studied..
- 61% of aggravated robbery victims studied were African, and 36% were White.

#### **5.3.6.5 Victims between 45-54 years**

- The largest proportion (44%) of victims within this age category were the victims of aggravated robbery.
- This age group accounts for 12% of all victims studied.
- 52% of all aggravated robbery cases within this age group occurred among White victims, with 44% of victims of this crime being Black.
- 75% of all attempted murder victims within this age group were African.

### 5.3.6.6 Victims between 55-64 years

- The largest proportion (63%) of victims within this age category were the victims of aggravated robbery.
- This age group accounts for 4% of all victims studied.
- 75% of aggravated robbery victims studied were White, and 25% Black.
- Of the 5 cases of assault GBH reported within this age group, all victims were African.

### 5.3.6.7 Victims older than 65 years

- Only two cases fell within this age group.

### 5.3.6.8 Age unknown/not recorded.

- In 3% of the cases, the age of the victim was either not known, or not recorded. Four of these were victims of attempted murder, 6 of assault GBH, and 4 of aggravated robbery.

### 5.3.7 Employment status of victims

The employment status of victims is relevant to the assessment of potential loss of earnings for compensation. The exact details of employment are not captured in the police docket, so researchers were required to make deductions from the available information in the docket<sup>67</sup>. The categories used are listed in the left-hand column below.

<b>Employment</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Student	2%	8%	6%
Unknown or information not available	7%	8%	8%
Self employed	10%	7%	8%
Unemployed	11%	34%	25%
White collar	27%	8%	16%
Blue collar	44%	34%	38%
Total	100%	100%	100%

- Unemployed people and blue-collar workers were the most likely to be victims of crime in the Mamelodi sample, while the most common victims in the Randburg sample were blue-collar workers.
- These findings are borne out by the findings of the National Victim Survey, which found that those in the lowest income category (household income of under R3000 per annum) were the most susceptible to violent crime in 1997 (Statistics South Africa, 1998, at 41).

<sup>67</sup> It was particularly difficult to distinguish between white-collar and blue-collar workers. Researchers were instructed to use 'common sense' in estimating the employment status from the available information. These may have led to some inaccuracies.

When cross-tabulating the race of victims with their employment status, the following was found:

#### 5.3.7.1 African victims

- Amongst African victims, 75% of those younger than 18 were students/scholars.
- Almost half the African victims aged between 18-24 were unemployed.
- Half the African victims aged between 25-34 were blue-collar workers, while this employment category contained half the African victims aged between 35-44, and 44% of the African victims aged between 45-54.
- The greatest percentage (60%) of the victims aged between 55-64 were unemployed.

#### 5.3.7.2 White victims

- Half the White victims aged 18-24 were white-collar workers, while this category contained 45% of those aged between 25-34.
- 38% of White victims aged between 35-44 were white-collar workers and this was the employment category of 66% of the White victims aged between 45-54.
- 3 in 10 White victims aged between 55-64 were blue-collar workers.

#### 5.3.7.3 'Coloured' and Indian Victims

The cell sizes for these two groups were too small to be analysed.

#### 5.3.8 Place where crime took place

Type of place where the crime took place	Randburg	Mamelodi	Total
Other	1%	4%	3%
Unknown or information not available	2%	1%	1%
Vehicle	5%	2%	3%
Venue serving alcohol	5%	3%	4%
Other home	10%	17%	14%
Own home	17%	31%	25%
Business	20%	5%	11%
Street	42%	38%	39%
Total	100%	100%	100%

- In both the Mamelodi and Randburg samples, victims were more commonly (39%) attacked in the street than anywhere else. This is probably related to the types of crimes that are reported to the police. As we know from the National Victim Survey, domestic and family violence is less likely to be reported to the police than most property crimes.
- Overall, a quarter of crimes studied took place in the victim's own home.
- Incidents of crime took place for one in five people in Randburg at their place of business, while this was the case for only one in twenty in Mamelodi.

### 5.3.9 Relationship between victim and perpetrator

Relationship of victim to perpetrator	Randburg	Mamelodi	Total
Extended family		3%	2%
Other	2%		1%
Immediate family	4%	8%	7%
Friend/acquaintance	20%	48%	38%
Stranger (no relationship)	74%	40%	53%
Total	100%	100%	100%

- In the Randburg cases, three in four (74%) victims did not know their assailant, while for Mamelodi, this applied to 40% of reported cases.
- In the Mamelodi sample, the majority of victims (59%) said their assailant was known to them as a friend, acquaintance or member of their extended or immediate family. This applied to 24% of cases in Randburg.
- In 45% of the cases studied overall, victims knew their attackers as friend, acquaintance or member of their immediate family.
- Attacks by unknown assailant/s took place in half the total cases studied.

Relationship of victim to perpetrator by sex of victim					
Police station	Sex of victim	Immediate family	Friend/acquaintance/extended family	Stranger	Other
Randburg	Male	2%	19%	78%	1%
	Female	10%	28%	60%	2%
	Total	4%	21%	73%	2%
Mamelodi	Male	5%	45%	51%	
	Female	16%	67%	18%	
	Total	8%	52%	40%	

- In Randburg, most victims, both men (78%) and women (60%), were victims of a crime committed by a stranger, while this applied to one in two men in Mamelodi, but only 18% of women
- Women in both Mamelodi and Randburg were more often than men the victims of crimes committed by their friends, acquaintances, immediate and extended family members.

### 5.3.10 Gender of perpetrator

Gender of perpetrator					
Police station	Sex of victim	Male perpetrator	Female perpetrator	Sex of perp'r n/a	Total
Randburg	Male	95%	3%	2%	100%
	Female	94%	4%	2%	100%
	Total	94%	4%	2%	100%
Mamelodi	Male	90%	7%	2%	100%
	Female	80%	17%	3%	100%
	Total	87%	10%	3%	100%



- Men were, by far, the most common perpetrators of the violent crimes we studied. In Randburg, more than 90% of both male and female victims were victims of crime committed by men, while in Mamelodi, in 90% of all recorded dockets where a man was the victim of a crime, the perpetrator was also a man.
- In Mamelodi, 17% of the violent crimes against female victims were committed by women.
- One in ten of the crimes studied in Mamelodi were committed by women.

### 5.3.11 Victims' role in their own injury

The police do not routinely collect information on the state of sobriety of victims of crime; so this aspect of a victim's possible contribution to their own injury due to substance abuse is very hard to assess. Researchers were instructed to look for evidence in the statements in the docket as to whether drugs or alcohol had been consumed by the victim in the period immediately prior to the incident.

<b>Is there evidence that the victim had used drugs or alcohol?</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Yes	2%	5%	4%
No	80%	54%	64%
Unknown	18%	41%	33%
Total	100%	100%	100%

- In 64% of all cases studied, there was no evidence in the docket to suggest that the victim had used drugs or alcohol.
- In 33% of cases studied, it was not known whether the victim had used drugs or alcohol. There was no evidence to suggest that the victim had or had not taken any drugs or alcohol. This however, does not mean that there was no alcohol or drugs in the incident, only that it was undetermined whether any substances were used by the victim.
- This finding shows that police records (in their current form) would be an insufficient source of information on victim sobriety. More accurate records on this aspect may be available from hospitals and district surgeons, in cases where victims seek medical treatment.

<b>Victims' role in their own injury</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Involved in a crime	1%	2%	1%
Provoked or involved in fight	20%	44%	35%
No role	36%	43%	40%
Unknown or information not available	44%	12%	24%
Total	100%	100%	100%

- Incidents where the victim was provoked or involved in a fight were greater in Mamelodi (44%) than in Randburg (20%).
- A negligible percentage (1%) of victims were involved in a crime when they sustained their injuries.

### 5.3.12 Weapons used by perpetrator/s

		Weapon used							
Police station		gun	knife	blunt object	hands	none	other	multiple	Total
Randburg	male	59%	4%	3%	9%	4%	14%	8%	100%
	female	54%	8%	4%	22%		6%	6%	100%
	<b>Total</b>	<b>58%</b>	<b>5%</b>	<b>3%</b>	<b>12%</b>	<b>3%</b>	<b>12%</b>	<b>7%</b>	<b>100%</b>
Mamelodi	male	49%	12%	4%	4%		28%	2%	100%
	female	18%	22%	3%	10%	1%	44%	3%	100%
	<b>Total</b>	<b>39%</b>	<b>15%</b>	<b>4%</b>	<b>6%</b>	<b>0%</b>	<b>33%</b>	<b>3%</b>	<b>100%</b>

- In Randburg, the primary weapon used against both men and women was a gun.
- The gun was also the main weapon used against men in Mamelodi, while for 44% of women, the actual weapon/s used was not recorded or established.

Use of weapon by sex of perpetrator and sex of victim				
Weapon used in	Male perp	Female perp	Male victim	Female victim
<b>Weapon used in Randburg</b>				
Gun	58%	17%	59%	54%
Knife	5%	33%	4%	8%
Blunt object	2%	33%	3%	4%
Hands	14%	0%	9%	22%
None	3%	0%	4%	
Other weapon	11%	17%	14%	6%
Multiple weapons	7%	0%	8%	6%
Total for Randburg	100%	100%	100%	100%
<b>Weapon used in Mamelodi</b>				
Gun	41%	6%	49%	18%
Knife	15%	18%	12%	22%
Blunt Object	5%	3%	4%	3%
Hands	7%	3%	4%	10%
None	0%	0%		1%
Other weapons	29%	70%	28%	44%
Multiple weapons	3%	0%	2%	3%
Total for Mamelodi	100%	100%	100%	100%

- Male perpetrators of violence in our sample were more likely to use a gun than any other type of weapon.
- Female perpetrators were more likely to employ knives and blunt or other objects.
- Crime victims in Randburg (and male victims in Mamelodi) were more likely to be subject to gun violence than to have any other weapon used against them.

Type of crime and weapon used	Gun	Knife	Blunt object	Hands	None	Other	Multiple	Total
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Murder				2%				0%
Attempted murder	23%	2%	5%	4%	17%	4%	4%	12%
Assault GBH	4%	75%	95%	78%	33%	91%	44%	46%
Aggravated robbery	73%	23%		15%	50%	5%	52%	41%
Total	100%	100%	100%	100%	100%	100%	100%	100%

- In the 236 cases where a gun was used, 23% were used during an attempted murder, and 73% during an aggravated robbery.
- In the 61 reported cases where a knife was used, 75% of all these cases related to a case of assault GBH.
- Blunt objects were employed in 20 recorded cases, largely assault cases.
- 23 cases were reported where multiple (more than one) weapons were used, the majority of them during aggravated robbery incidents.

### 5.3.13 Type of injuries sustained by victims

Injury sustained									
Police station	Victim	Bullet wound	Stab	Burn	Cuts and bruises	None	Other	Info NA	Total
Randburg	Male	1%	4%	4%	18%	71%	2%	2%	100%
	Female	2%	2%		31%	63%		2%	100%
	Total	1%	3%	3%	21%	71%	1%	2%	100%
Mamelodi	Male	10%	15%	3%	26%	42%	4%		100%
	Female	7%	27%	3%	40%	16%	7%	1%	100%
	Total	9%	19%	3%	31%	33%	5%		100%
<b>Overall</b>		6%	13%	3%	27%	46%	5%	1%	100%

- In 46% of cases, the available information suggests that the victims sustained no injuries.
- Where injuries were sustained, the most common injuries sustained were cuts and bruises, and minor injuries<sup>68</sup>.
- Although guns were the most common weapon used in both Mamelodi and Randburg, bullet wounds constituted only 6% of all injuries. This is probably related, in part, to the fact that firearms were brandished or pointed in 48% of incidents, but not necessarily used to inflict injury.
- There was a marked difference in the injuries sustained by victims in Randburg and those in Mamelodi. While 71% of male victims studied in Randburg did not sustain any injuries, the same applied to only 42% of male victims studied in Mamelodi. Six in ten women victims (63%) were unscathed in the Randburg sample, while this applied to only 16% of female victims in Mamelodi sample.
- The greatest proportion of female victims (who were injured) studied in both Mamelodi and Randburg sustained cuts and bruises as opposed to any other

<sup>68</sup> While injuries of this nature could become more serious if repeated regularly over time, there is no way to test as to whether these victims have been assaulted more than once, or will be assaulted in the future.

injury. These types of injuries are fairly common in cases of violence against women.<sup>69</sup>

- In both Mamelodi and Randburg, women were more likely to sustain some degree of injury than men. Women in Mamelodi were also more likely to sustain an injury than women in Randburg. This is an important finding for the discussion of the victim compensation scheme.

<b>Nature of most serious injuries</b>	<b>African</b>	<b>Indian</b>	<b>Coloured</b>	<b>White</b>	<b>Total</b>
Bullet wound	7%			2%	6%
Stab	17%	20%		1%	13%
Burn	4%				4%
Cuts and bruises	32%		17%	10%	27%
No injuries	35%	80%	67%	86%	46%
Other/not specified	5%		17%	1%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

- There are marked racial variations in the injury patterns in our sample. In only 14% of incidents where the victim was White, did the victim sustain an injury. However, where the victims were African, 65% of these victims sustained an injury.

#### **Nature of injuries sustained from each type of crime incident**

<b>Police Station</b>	<b>Nature of incident</b>	<b>Bullet wound</b>	<b>Stab</b>	<b>Burn</b>	<b>Cuts &amp; bruises</b>	<b>None</b>	<b>Other/missing</b>	<b>Total</b>
<b>Randburg</b>	Unknown	50%	50%					100%
	Domestic or family violence				100%			100%
	Violence by acquaintances or Extended family		14%	8%	44%	25%	9%	100%
	Hijacking				7%	89%	4%	100%
	Robbery	1%		1%	9%	87%	2%	100%
	Attack by stranger		4%	4%	26%	65%	1%	100%
	<b>Randburg Total</b>		1%	4%	3%	21%	68%	3%
<b>Mamelodi</b>	Domestic or family violence	3%	31%	7%	45%	7%	7%	100%
	Violence by acquaintances or Extended family	5%	29%	5%	45%	10%	6%	100%
	Hijacking					100%		100%
	Robbery	3%				97%		100%
	Attack by stranger	29%	10%		21%	36%	4%	100%
	Other	20%			60%	20%		100%
	<b>Mamelodi Total</b>		9%	19%	3%	31%	33%	5%

<sup>69</sup> See Rasool (S Rasool et al. **National Survey on Women Abuse** Pretoria: Institute for Security Studies (forthcoming)) for survey results, which found that 34% of female respondents who had been injured reported a limb injured or broken, 12% reported bruises or marks on their body, 10% reported that they had been badly beaten, and 6% reported facial scars or disfigurement.

- In Randburg, the all injuries sustained as a result of domestic violence was cuts and bruises. In Mamelodi, 45% of victims of a domestic violence dispute sustained cuts and bruises, with a further 31% being stabbed during the incident.
- Almost 9 in 10 victims of a hijacking in Randburg did not sustain an injury. Of the 11 cases of people who were hijacked in Mamelodi, none of them sustained an injury.
- Hijacking and robbery victims were less likely to sustain an injury than victims of any other crime.

<b>Type of crime (using SAPS categories) and type of injury, when an injury did occur</b>							
<b>Type of violent crime (SAPS crime types)</b>	<b>Bullet wound</b>	<b>Stab</b>	<b>Burn</b>	<b>Cuts &amp; bruises</b>	<b>No injuries</b>	<b>Multiple injuries</b>	<b>Total</b>
Murder	50%	50%					100%
Attempted murder	42%	3%	3%	7%	45%		100%
Assault GBH	1%	28%	5%	53%	6%	6%	100%
Aggravated robbery	1%			6%	92%	1%	100%
<b>Total</b>	<b>6%</b>	<b>13%</b>	<b>3%</b>	<b>27%</b>	<b>46%</b>	<b>4%</b>	<b>100%</b>

- Of the two recorded murders, one was the result of a stab wound, the other, a bullet wound.
- In 42% of attempted murder cases, the victim sustained a bullet wound, but a similar percentage of attempted murder victims sustained no injury.
- 53% of all the assault victims received cuts and bruises, and 28% of them sustained stab wounds.
- More than 9 in 10 aggravated robbery victims were not injured at all.

<b>Location of injuries*</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Legs		6%	5%
Feet		1%	1%
Spine	3%	4%	4%
Superficial		1%	1%
Arms	6%	9%	8%
Hands	3%	5%	4%
Abdomen	6%	11%	10%
Unknown/missing	37%	26%	28%
head/face	46%	38%	39%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*Among victims who sustained at least one injury

- Researchers ascertained this information from the statements of complainants, witnesses and police investigators, and from the J88 form completed by a medical practitioner, where available.
- In the vast majority (81%) of cases studied, a J88 form was not completed. This suggests that there were no serious injuries sustained in these cases (or, possibly, that the police did not refer injured victims to medical practitioners for J88 reports to be completed).

- No data were available on the location of the injuries for 28% of all cases where injuries were sustained.
- Facial/head injuries constituted the greatest proportion of all injuries.

<b>Is there a possibility of a permanent disability?</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Yes	3%	1%	2%
Information unknown or missing	34%	28%	29%
No	63%	71%	70%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Among victims who sustained at least one injury

- Researchers were required to estimate the answer to this question, based on information available in the statements of complainants, witnesses and police investigators, and from the J88 form (where it was completed). This could obviously have led to errors.
- Data were not available in 29% of all cases.
- Of those who sustained an injury, there was a possibility that a permanent disability could result as a consequence of this injury in only 2% of cases.

#### 5.3.14 Hospitalisation of injured victims

<b>Hospitalisation of injured victims*</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
Yes	17%	14%	15%
Unknown or info not available	17%	14%	14%
No	66%	72%	71%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Among victims who sustained at least one injury

- Overall, 15% of those who sustained an injury in the cases studied were hospitalised.
- Data were not available in 14% of all the cases studied.

<b>Number of days the victim was in hospital*</b>	<b>Randburg</b>	<b>Mamelodi</b>	<b>Total</b>
0 (presumably released on this same day)	29%		11%
1	29%	9%	17%
2	14%	9%	11%
3		9%	6%
4		9%	6%
5		9%	6%
6		18%	11%
7	14%	9%	11%
10		18%	11%
16		9%	6%
42	14%		6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*Among injured victims who were hospitalised (31 cases, or 6.4% of total)

The duration of stay in a hospital was cross-tabulated with those who were admitted to hospital (31 cases). No data was available for 41% (or *n*11) cases. As such the cell size is too small to be accurately analysed.

### 5.3.15 Loss and damage to property

Value of property lost or damaged	Randburg	Mamelodi	Total
No loss or damage to property	7%	22%	16%
Information unknown or not available	31%	53%	44%
R1-1000	7%	10%	8%
R1001-5000	15%	10%	12%
R5001-10000	6%	3%	4%
R10001-20000	7%	1%	3%
R20001-50000	10%	2%	5%
R50001-75000	5%	1%	3%
R75001-100000	3%		1%
R100 001 +	8%		3%
Missing	3%	1%	1%
Total	100%	100%	100%

- These data should be captured on the police docket where theft, loss or damage to property has taken place. No data were available in 44% of cases, which suggests that no loss or damage took place in almost half the incidents of violent crime studied. We believe that this would be congruent with high levels of domestic/family/acquaintance violence in our sample, rather than of property-related crime – because of the type of crime categories selected for this study.
- Slightly more than 20% of victims in the Mamelodi sample did not lose property, or have property damaged. This applied to only 7% of cases in the Randburg sample. This is probably because (aggravated) robbery was the most commonly found type of crime in the Randburg sample.
- The most common type of loss/damage was of goods valued at less than R5 000.
- 8% of victims in Randburg claimed to have lost, or suffered damage to property to the value of more than R100 000. These would predominantly have been motor vehicles, owing to the nature of the crimes we studied.
- Consideration needs to be given to the possibility that false claims (for the purposes of insurance fraud) could have inflated some of the information given by the victims (about property crimes, in particular) in our samples<sup>70</sup>.
- If we exclude the cases where no loss or damage was sustained, or where information was not available, it is possible to calculate the value of the average loss of property. The mean loss for Randburg was approximately R44 000, while the mean loss in Mamelodi was approximately R9 000.

<sup>70</sup> Personal communication between Anthony Altbeker and SAPS detectives at the SAPS hijack investigation unit in Johannesburg.

### 5.3.16 Police progress on investigation of cases

Reason for closure of docket	Randburg	Mamelodi	Overall Sample
Suspect acquitted in trial		2%	1%
Other reason for closure (e.g. 'charge unfounded/untrue')	2%	1%	2%
Information unknown or not available	2%		1%
Suspect convicted in trial	3%	3%	3%
Charges withdrawn by complainant	6%	32%	22%
Prosecutor declined to prosecute	8%	9%	9%
Closed undetected (unsolved) by police	79%	54%	63%
Total	100%	100%	100%

- 85% of all dockets were closed either because they were undetected (63%), or withdrawn (22%).
- The majority (63%) of cases overall were closed 'undetected' by the police,<sup>71</sup> i.e., no progress was made in identifying a suspect. This was more common in Randburg<sup>72</sup> than in Mamelodi.

## 5.4 Analysis and Discussion

All compensation schemes require a victim to qualify for compensation. In this section, we examine the various criteria for awarding compensation, and for deciding on the amount of compensation, and compare these to the data provided by our case studies.

### 5.4.1 Defining compensable victims

#### 5.4.1.1 Intentional or deliberate violent crimes

Many compensation schemes are based on the idea that compensation is only payable in respect of 'deliberate' or 'intentional' crimes of violence. Some schemes will compensate for any crime that causes injury (Greer, 1999). Our case studies have only examined serious violent crimes, i.e., murder, attempted murder, serious assault, and aggravated robbery which are all likely to fall within the definition of 'intentional crimes of violence.

<sup>71</sup> Reasons for withdrawal of charges by the complainant are discussed in detail by Bruce, Newham & Reddy (1999).

<sup>72</sup> Which would probably be related to the detective capacity at the station, as well as the nature of the crimes and the nature of the community at each site.



#### **5.4.1.2 Injury sustained**

Our case studies showed that approximately half (46%) of the victims of the crimes studied did not sustain any injuries at all. The J88 form, which must be completed by a medical practitioner in order to document the injuries, was only completed in 19% of the cases studied. Of those who did sustain injuries, the most common injuries were cuts and bruises - relatively minor injuries<sup>73</sup>.

#### **5.4.1.3 Prosecution and punishment of offender**

Most schemes will award compensation to a victim even if it is not possible to prosecute or punish the perpetrator of the violent act. This would be important in South Africa, as it would not be fair to penalise the victim for the failings of the criminal justice process. Our case studies suggest that the majority (63%) of police investigations into violent crimes are closed 'undetected' or unsolved; and that a further 23% of the cases were withdrawn by the complainants some time after the original charge was laid. This suggests that, in principle, a compensation scheme would assist particularly those victims (the majority) who rely on the criminal justice process and would not have recourse to civil law remedies to obtain compensation.

#### **5.4.1.4 Citizen versus foreign nationals**

Most schemes cover only citizens of the country where the violent incident took place. As, in South Africa, information on citizenship or nationality of the victim is not required in the police docket, it was impossible for these case studies to examine the proportions of citizens and foreigners who are victims of violent crime, and who, then, might qualify for compensation.

An additional problem in establishing nationality in the reporting process is that a large proportion of foreign victims may not report that they have been victimised in that they may be in South Africa illegally, and may therefore fear the consequences of their tenuous status being exposed. Alternatively, if they are in South Africa legally, they may fear secondary victimisation at the hands of the police if they report themselves as victims. According to research<sup>74</sup> by Harris, the SAPS often do not

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<sup>73</sup> Although if these 'minor' injuries are repeated often, they could result in serious psychological and physical consequences (see 5.4.1.9.2)

<sup>74</sup> Work in progress by Bronwyn Harris at Centre for the Study of Violence and Reconciliation.

believe foreign victims, tell them to 'go home', refuse to help them, try to extort money from them, tear up any documents that they may have, jail them, or beat them up. Xenophobia, racism and/or corruption at the hands of the police seem to play a significant role in reduced reporting of violent crime by foreign victims (at least by Black foreigners).

While reporting rates may be lower than expected, there is, however, evidence<sup>75</sup> to suggest that foreigners, particularly Black foreigners, do suffer from high levels of violent crime in South Africa. For example, SAMP (1999) explain that:

There is growing evidence to suggest that far from being the perpetrators of crime, migrants are disproportionately the victims of crime and xenophobia, made worse by inadequate redress in the law or lack of protection by the police.

Human Rights Watch (*Prohibited Persons: Abuse Of Undocumented Migrants, Asylum Seekers, And Refugees In South Africa* 4-5 New York: Human Rights Watch 1998) comments that:

Migrants have increasingly become the target of abuse at the hands of South African citizens, as well as members of the police, the army, and the Department of Home Affairs. Refugees and asylum seekers with distinctive features from far-away countries are especially targeted for abuse...Foreign hawkers...have repeatedly been the targets of violent protests and other forms of intimidation...A xenophobic climate in South Africa has resulted in increased harassment of migrants.

#### **5.4.1.5 Financial hardship of victims**

Some schemes take into account the victim's financial status when deciding whether or not to award compensation. The application of some sort of 'means test' can ensure that limited government funds are allocated to those victims who most need assistance (Greer, 1999). Our case studies found that the majority of victims were either unemployed (25%) or blue-collar workers (38%). This is in line with the findings of the national Victim Survey, which found that those in the lowest income bracket (with a household income of under R3 000 per annum) were the most susceptible to violent crimes in 1997 (Statistics South Africa, 1998, at 41). The case studies suggest that the majority of victims would fall into an economically vulnerable group who would require state compensation. This means, for example, that the

system of having a high minimum loss to qualify for compensation may not function adequately in South Africa where losses may be small, but still have a great impact on low-income homes.

The issue of child victims (who cannot be defined as earners) would also need to be considered, even though our sample found very few child victims, probably because cases dealing with violence against children were housed elsewhere. A formula would need to be developed to compensate victims who are not income earners, such as children, pensioners and the unemployed.

#### **5.4.1.6 Conduct before/during/after the incident**

Most schemes will penalise or disqualify victims who provoked the crime incident, who refuse medical help, refuse to co-operate with the police, or who are themselves involved in criminal activity.

Whether or not a victim 'provoked' the crime incident is extremely hard to discern from the information provided by the police docket. If this criterion were to be applied, there would need to be new methods for gathering such information and far greater degrees of thorough and completed police investigation into crimes reported. From the available information in the police dockets, we found that only 1% of victims were involved in a crime when they were injured, although this is hard to ascertain accurately from the dockets. We found that equal numbers were involved in some sort of dispute (35%) at the time, and had no role (40%) whatsoever in the incident. Even where victims were party to a dispute, they may not necessarily provoke or contribute to their own injury. More detailed understanding of the facts of each case is required.

#### **5.4.1.7 Victim's co-operation with the criminal justice process**

Similarly, most schemes will penalise or disqualify victims who fail to co-operate adequately with the police and prosecutors. This is particularly relevant in the (22%) of our sample in which the complainant withdrew the charges against the perpetrator. This trend could be related to the high proportion of victims who knew

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<sup>75</sup>Southern African Migration Project (SAMP) (1999); Human Rights Watch (1998).

the perpetrator (48%), perhaps the degree of familiarity or intimacy between victim and perpetrator increases the likelihood of retaliation or intimidation by the perpetrator. The high number of case withdrawals is a cause of concern to the police, who often feel that they are 'wasting' resources invested in recording and investigating cases that are later withdrawn.<sup>76</sup>

Apart from cases being withdrawn, there remains a problem with getting victims to report violent crimes to the police in South Africa. The national Victim Survey found that less than half of all 'individual crimes' were reported to the police in 1997, i.e., only 38% of assaults were reported, and 41% of aggravated robberies. The reporting rate increases for property-related violent crimes (where reporting is probably required for insurance purposes). For example, the national Victim Survey found that 60% of hijacking and attempted hijacking cases were reported to the police in 1997 (Statistics South Africa, 1998, at 55-57).

#### **5.4.1.8 Victims of domestic violence**

Some foreign compensation schemes used to refuse compensation to victims of domestic violence who remained in the same household as the perpetrator of the violence. This approach may not be appropriate in South Africa, in light of the new Domestic Violence Act and the constitutional guarantee of equality.

Importantly, our case studies show that women were more often the victims of violent crimes committed by their families, friends and acquaintances. Women were also more likely than men to sustain injuries in the incidents. Therefore, patterns of victimisation and injury differ significantly along gender lines; and the incidents most likely to cause injury to women occur mostly in a familial context. It can be argued that if patterns of injury among male victims were to be taken as the 'norm' for the compensation scheme, then female victims would lose out in such a scheme. In addition, in certain cases the victim could be further victimised by being required to leave the household occupied by the perpetrator, in light of serious housing shortages.

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<sup>76</sup> See Bruce, Newham & Reddy (1999).

#### 5.4.1.9 Defining the seriousness of the injury

- **Length of incapacity for work/percentage of permanent incapacity**

One of the methods of assessing the seriousness of the injury sustained in the criminal incident is to calculate the extent of permanent incapacity/disability, or the length of incapacity for work. This would be extremely difficult to do on the available SAPS data, as we have seen above. In very few cases in this study (less than 20%), was the complainant referred to a medical practitioner for completion of a J88 form describing the injuries. New or additional forms of recording and evaluating the extent of injuries would need to be found.

In our case studies, we found the following in respect of injuries sustained:

- 46% of victims sustained no injuries at all;
- most common injuries sustained were cuts and bruises, mostly to the face and head;
- bullet wounds (the most serious injuries) only constituted 6% of all injuries;
- only 15% of those injured were hospitalised at all, and the greatest proportion of these (17%) spent only one day in hospital, suggesting that injuries were not very serious;
- In only 1% of the cases in which victims sustained injuries was there a possibility that permanent disability could result.<sup>77</sup>

- **Cumulative effects of minor injuries**

There are various problems related to the assessment of 'seriousness' of injuries. One of these, which seems particularly relevant to our findings, is how to assess the cumulative impact of repeated minor injuries. We found that the most common injuries were relatively minor (cuts and bruises) and that these were strongly related to domestic and family violence. While these could be dismissed as 'non-serious injuries', if they are repeated over a period of months or years, the cumulative impact could be 'serious'. If the definition of seriousness incorporated some aspects of psychological harm (see below), the occurrence of 'complex post-traumatic stress syndrome', for example, might cause repeated battering to be seen as a crime resulting in 'serious' injury, thereby enabling the victims to qualify for compensation. If this approach were adopted in South Africa, it would have severe financial implications for a compensation scheme.

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<sup>77</sup> Although this was difficult to ascertain from the evidence available in the dockets.

- **Psychological harm**

There is a range of difficulties associated with assessing the seriousness of the psychological harm associated with violent victimisation, including, for example, being threatened with a gun, which was a common crime in our research. There was no information in police dockets surveyed in this study that could assist with this. The cumulative impact of repeated violence, and can result in, amongst other things, 'complex post-traumatic stress disorder' (see *Chapter Two, 2.5.2 of this report*).

## **5.5 Conclusion**

This case study demonstrates some of the trends in reported violent crime in urban South Africa. These were discussed throughout the chapter. The limitations of the available data were also acknowledged, i.e. incomplete dockets and lack of data on injuries. We, however, confirmed relatively low levels of injury following crime in our case study (the number of murder cases was, however, low in our sample). In only 1% of the sample was permanent disability documented. However, it should be noted that victims in 54% of the violent crimes we studied did sustain injuries during the course of the incident.

In addition, we found a high percentage (25%) of crime victims in our sample to be unemployed. We also found that almost half of the respondents knew the perpetrator (48%). A relatively high number (35%) of victims were involved in some sort of dispute at the time of the incident. Women were the most common victims of violence committed by families, friends and acquaintances.

The relevant findings are integrated into *Chapter Six* to assist with the financial costing of a compensation scheme.

A further finding of the case study is that current police recording practices and systems provide inadequate data on which to base an assessment of the compensability such as may be required in a victim compensation scheme. Of particular concern is the fact that a medical report (J88 form) was not completed in over 80% of the cases studied.

The weakness in the police practice of record keeping has also been confirmed in other studies (*cf.* G Newham 'Transformation and the Internal Disciplinary System of the SAPS' Johannesburg: Centre for the Study of Violence and Reconciliation Occasional paper 2000). Some reforms of police statistics systems have been proposed by an internal government committee,<sup>78</sup> but have not yet been implemented. The recording and referral systems used by the police and medical services in South Africa would, therefore, require substantial revision before they could be useful to a possible victim compensation scheme.

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<sup>78</sup> The 'Orkin Committee', made recommendations to the Minister of Safety and Security in 1998 (Committee of Inquiry into the Collection, processing and Publication of Crime Statistics).

## CHAPTER SIX

### Costing a South African Victim Compensation Scheme

This chapter seeks to describe the findings we have made regarding the costs a victim compensation scheme might incur in South Africa were one to be established today. It does this first by defining the variables that would determine the overall cost of the scheme, and then by setting out estimates of the financial impact of various policy permutations and applied eligibility parameters. Finally, the chapter briefly outlines the estimated administrative costs that would be incurred in running a compensation scheme.

#### Authors' note

In assessing the likely costs of establishing a VCS in SA, it has been necessary to try to estimate the costs of crime to its victims and their families. In doing so, it has obviously been necessary to estimate the loss of income a victim or her/his dependents would have suffered as a result of his/her death or injury. In doing this, we are aware of the fact that the history of injustice and inequality which has given rise to high levels of crime in SA, has also meant that victims and their dependents of differing races are, on average, likely to suffer different levels of material loss as a result of their victimisation. This has meant that, when looking at the value of the compensation which victims will receive, it is an unfortunate reality that victims of different races would, on average, receive different levels of compensation. This does not reflect a different valuation of the loss of life, but the objective reality that, as a result of apartheid, the absolute value of the material losses sustained by the formerly disadvantaged will be lower than those of the privileged. In reading the report, readers will become aware that, for a variety of reasons, it is our view that instituting a compensation scheme premised on the full compensation of all losses which would, inter alia, result in the giving effect to these inequalities, is unaffordable and undesirable. Calculating the costs of such a scheme is, however, instructive, and the results are reported below.

#### 6.1 Introduction

As has been stated in the report previously, there exists no pre-existing legal right to compensation from the State for the financial and material effects of a violent or property crime committed by one (natural) person against another. For that reason, a victim compensation scheme (VCS) may be established on the basis of pragmatic policy choices made by a government emerging from the political processes. A VCS, therefore, like many other spending programmes, would be developed on the



basis of policy choices founded on political priorities and fiscal constraints. Discussion concerning the desirability of establishing a VCS in South Africa must, therefore, be premised on a reasonably realistic appreciation of the potential costs of such a scheme. This chapter seeks to address some of these issues.

We have sought to cost the financial implications of the establishment of a VCS in South Africa on the basis of a variety of policy permutations. In general, the necessary data have not been available, and, as a consequence, we have had to rely on assumptions about key variables. We have based our assumptions on relevant data that are available and on the knowledge we have gained in working on issues of crime and violence over the past few years. However, being assumptions, they are made in the full knowledge that they are subject to possible distortions. Therefore, we have tried to make reasonably conservative assumptions about the relevant variables. This means that, to the extent that the costing of this VCS is erroneous, it would tend to understate the likely consequences of various policy permutations. The numbers that follow should, therefore, be read as the minimum financial implications that various policy parameters are likely to imply.

The basic premise of this chapter is that for a VCS to begin to meet the needs of victims it would have to meet the criteria listed below.

- The range of crimes covered by the scheme could vary, but would, in ideal circumstances, cover all forms of violent criminal victimisation.
- Given the impact of violent crime on victims (*see Chapter 2, section 2.5*), the average pay outs of the VCS would have to be reasonable.
- The coverage of the VCS would have to be sufficiently widespread so that it would not discriminate against victims purely on the basis of where they lived and possible differential accessibility of VCS offices.
- Its working procedures would have to be sufficiently speedy so that victims did not experience undue hardships attendant on administrative delays in the payment of compensation.

The method used in this chapter is to evaluate different constructions of these criteria to assess how they might impact on costs. This method flows directly from the basic formula that establishes the cost of the VCS. This formula can be stated simply as:

$$\text{VCS Cost} = (\text{number of claims paid} \times \text{ave. pay out}) + (\text{admin costs})$$

The value of the formula, as well as the value of the variables of which it is composed, includes some variables – such as crime levels – which are determined outside of the VCS and others – such as the value of pay outs – which are, ultimately, determined by policy and financing decisions. This can be seen if the variables in the above formula are broken down further as follows:

$$\text{Number of claims paid} = (\text{number of applicants} - \text{ineligible applicants})$$

Where the number of applicants is a function of:

- the number of violent crimes committed;
- VCS policy on which types of victims are to be considered;
- the number of applicants who want to apply for compensation; and
- the accessibility of VCS application forms/offices;

and, where the number of ineligible applicants is determined by:

- VCS policies on ineligibility; and
- the quality of dockets and medical information supplied by the victim and related to the criminal victimisation for which compensation is claimed.

$$\text{Ave. pay out} = \text{sum of average pay outs of all of the heads of damages used}$$

Where:

- the nature of the heads of damages accepted is determined by policy; and
- the average pay out for each depends on the nature of the formula used to calculate the value to be attached for each payment.

#### **Administration costs**

Administration costs are determined by:

- the character of the scheme used (is it a stand-alone scheme or linked to existing administrative structures;
- the manner in which claims are evaluated, etc); and
- the number of applicants processed through the scheme.

Given the very wide latitude possible between different constructions of the policy variables in the above formula, it is quite possible to develop widely different costings of a VCS in South Africa. For instance, the financial implications for a scheme which paid only destitute dependants of murder victims would be quite different from a scheme which paid all victims of violent crime (as well as the dependants of murder victims) compensation, including unlimited payments for lost income.

The essential trade-off with which policy-makers will have to deal is that between the **coverage** of the VCS and the **generosity** of it.<sup>79</sup> While the basic goal should be to have reasonable coverage and a reasonable level of generosity, it is useful to consider alternative models of a VCS so that the financial implications of various alternative policy scenarios can be tested. This also allows for a more detailed consideration of the costs associated with different trade-offs between coverage and generosity. However, before looking at the calculation of potential costs attached to different scenarios, it is useful to consider the manner in which the various coverage and generosity variables are likely to impact on overall costs.

## 6.2 Coverage Variables

The most important variable for determining the ultimate cost of any possible VCS is the number of victims of crime who might qualify for compensation. The criteria used to determine who qualifies and who does not can, and should, be shaped to ensure that as many people are covered within the constraints of affordability.

In this regard, the primary, non-negotiable criterion for any consideration of the victim's eligibility for compensation is that s/he was the victim of a violent crime. 'Mere' property crimes can and should be excluded from consideration as is the case in most foreign jurisdictions. Given the focus on violent crimes, for the purpose of this report, the following crime categories used by the criminal justice system will be considered for the purposes of costing a VCS:

- Murder;
- Attempted murder;
- Rape;
- Assault with the intention to inflict gross bodily harm;
- Indecent assault; and
- Aggravated robbery.

The reasons for the inclusion of most of these categories are reasonably clear-cut and broadly based on their severity. To expand:

- murder is the deliberate killing of another person with financial and psychological consequences for the victim's survivors and dependants;

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<sup>79</sup> Coverage would include the number of different types of victimisations deemed 'worthy' of compensation (and, hence, the number of victims to be compensated by the scheme). Generosity would include the nature and value of the pay outs associated with their compensation.

- rape, by its nature, amounts to an act of criminal violence with physical and psychological consequences for the victim;
- attempted murder has been included, despite the fact that some victims of this crime do not suffer very severe physical injuries but sustain psychological injury,<sup>80</sup> although data assessing how many victims do suffer severe physical harm are not currently available;<sup>81</sup>
- assaults with intent to cause grievous bodily harm have been included as this category of crime includes the bulk of attacks involving injuries to victims that do not result in fatalities;
- indecent assault may have long-term psychological effects, particularly in younger victims, which may warrant compensation;
- aggravated robberies, the bulk of which involve the use of firearms or other weapons, may result in psychological consequences for the victim and have therefore been included, even though a very violent robbery would, in all likelihood, have been captured as a murder, attempted murder or assault GBH.

A second non-negotiable criterion for the coverage of a VCS in South Africa is that the victim of a violent crime must have experienced real, material losses that can be directly attributed to the crime. Thus, people who are exposed to violent crime, but who are neither injured nor suffer financial losses attributable to the psychological effects of the experience of the actual or threatened violence, are assumed not to qualify for compensation.

These 'bottom-line' criteria aside, however, determining who should be eligible to receive compensation from a VCS in South Africa and where to draw the line between eligibility and ineligibility remains the greatest difficulty. The wider the coverage offered, the more people will be eligible and the greater the costs associated with compensation will be.

It is possible to limit coverage of the scheme, however. Given our data constraints (*see below*) it has not been possible to assess precisely how different definitions of the coverage criteria will affect the number of victims eligible for compensation. Where possible, assumptions and estimates have been used to assess the impact on cost. The criteria suggested for expanding or contracting coverage could include the listed items below, many of which are used in other jurisdictions to control costs.

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<sup>80</sup> Typically, attempted murder dockets are opened by the police when an attacker has fired a gun at a victim irrespective of whether physical harm is caused or not, or when the facts make clear that the assailant intended to try to kill the victim using either another weapon or his/her hands.

- Only victims who suffer physical harm, rather than only psychological harm, might be compensated, and those who suffer physical harm might not be compensated for losses attributable to the psychological consequences of their physical injuries.
- Standards pertaining to the severity and long-term impact of the injury could be set, which would include a wider or narrower range of injuries sustained by victims of violent crimes. Obviously stricter criteria – such as requiring that the injury’s effects last a long time – would tend to reduce the number of victims who would be eligible for compensation. At the extreme, only permanent injuries and deaths may attract compensation.
- Compensation could be limited only to ‘blameless’ victims, whose behaviour in no way contributed to their victimisation. People injured in fights linked to the consumption of alcohol could be regarded as ineligible for compensation. Victims who have been convicted of certain crimes in the past might also be excluded from compensation.
- Particular categories of victims and dependants may be identified and prioritised for the receipt of compensation. These could be victims in one or more of the following categories:
  - woman and/or children;
  - poor victims (by establishing means tests); and/or
  - victims in certain geographically defined areas (rural areas, urban poor, **etc**).
- People who are insured against the financial effects of crimes could be deemed to be ineligible to claim compensation.

### **6.2.1 The use of crime statistics**

One of the more difficult problems encountered in attempting to model the costs of a VCS in South Africa is the absence of data which would guide the approximations used in constructing the model. These data deficits result from a number of factors, three of which are considered below.

- The under-reporting and under-recording of crime in South Africa (*see section 2.3 of this report*) are well-documented phenomena resulting from problems including police legitimacy, fraught police-community relations which prevail in certain areas of the country, inadequate police data management systems, and perverse incentives regarding the allocation of resources, which can tend to discourage the police from recording crimes. The impact of these problems tends to mean that the actual incidence of crime is likely to be higher than the levels of crime captured in police crime statistics. This is also borne out by Medical Research Council research which suggests that a much larger number of victims of violence receive treatment at primary, secondary and tertiary medical facilities every year than would be predicted on the basis of crime statistics alone.

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<sup>81</sup> It has been necessary to make some assumptions in this regard, the import of which will be described further on in this report.

- The recording of crime in police crime statistics is subject to a variety of methodological problems arising from difficulties with the crime codes used. No absolute standards exist to distinguish between assaults, assaults with intent to do grievous bodily harm and attempted murder. In practice, a set of recording conventions is used, which relates to the weapon used (the use of a firearm, irrespective of whether an injury results will tend to be recorded as an attempted murder, while a stabbing would, in general, will be recorded as an assault GBH).<sup>82</sup> There is no basis on which one can determine the character of the injuries sustained as a result of the crime purely on the basis of recorded crime statistics. This was confirmed by our case study in *Chapter 5*.
- The docket, because it is opened soon after the crime, cannot reflect the long-term impact of the injury. This problem can be overcome if a sufficiently large sample of victims of violence is traced through their subsequent medical and psychological treatments in order to assess the range and frequency of injuries resulting from crimes.<sup>83</sup> This was also apparent in our case study reported on in *Chapter 5*.

These problems aside, police crime statistics are generally regarded as about the best – if not the only – source of reasonably consistent data on the incidence of crime in South Africa. One alternative to the use of police crime statistics is the use of data derived from victimisation surveys conducted in South Africa over the past few years. However, the findings of these surveys are themselves relatively inaccurate, with victims often, for example, failing to identify the precise year in which a crime occurred. Such surveys, therefore, are a poor basis on which to build a model of the potential costs of a VCS in South Africa.<sup>84</sup>

### 6.3 Generosity Variables

As described in the basic formula of the costs of a VCS, generosity variables are as important as coverage variables in determining the ultimate costs of a VCS. These variables, like the coverage variables, can be manipulated through VCS policies so that their impact on the final costs of a VCS can be expanded or contracted

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<sup>82</sup> This was confirmed by the results of our case study reported in chapter 5 above. As described at 5.3.12, in only 2% of instances in which a knife was used was the crime coded as an attempted murder. Similarly, in only 4% of the cases in which a gun was used was the crime coded as anything other than an attempted murder or an aggravated robbery.

<sup>83</sup> No such research appears to have been undertaken. As a consequence it has been necessary to make assumptions about the short- and long-term effects of crimes on the victims for purposes of the costing exercise in this study.

<sup>84</sup> One example of this is that a victimisation survey conducted by Statistics SA in 1998 returned the finding that about 45,000 families experienced a 'deliberate killing' during 1997. This figure is roughly twice the number of murders recorded by the SAPS for that period, implying an under-reporting rate of about 50% - a figure which should, we believe, be treated with a good deal of scepticism.

depending on the resources available. These variables should be determined with the coverage variables so that the impact of increasing generosity is offset by decreasing coverage, or vice versa. In this manner, it is ensured that compensation paid is reasonable and will not add insult to the already injured victim.

Policy control over generosity variables arises from two sources: the control of the range of heads of damages paid by the VCS; and the average pay outs associated with each of the heads of damages.

Compensation to victims of violent crimes (or their dependants) can be based on some or all of the following heads of damages:

- loss of income during convalescence;
- loss of potential income over the long-term;
- medical expenses associated with the injuries sustained (including or excluding psychological care);
- costs incurred in assisting victims to adapt to their injuries (such as the purchase of necessary devices such as wheelchair, **etc**);
- compensation for pain and suffering for the victim only;
- compensation for the loss of the amenities of life; and
- funeral expenses.

Definitions of these heads of damages can be used to increase or decrease the average generosity of the pay outs, which would be made by a VCS. Some examples of how this could be done are:<sup>85</sup>

- setting caps on the compensation claims that can be made for lost income in order (a) to reduce the pay outs to more affluent victims of crime; and (b) to focus the compensation pay outs on people who may experience greater relative hardships as a result of crimes committed because of their pre-existing economic vulnerability;
- reducing or prohibiting pay outs made to applicants who are insured against suffering financial losses as a result of crimes committed against them;
- setting limits on medical expenses that can be claimed where the relevant services are available at low or no charge from state hospitals;
- limiting compensation to the direct effects of physical harm and not compensating people for psychological suffering;
- setting limits on or prohibiting compensatory payments for pain and suffering and for the loss of the amenities of life.

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<sup>85</sup> The sheer number of heads of damages, as well as the wide range of policy choices that could be made in relation to each make it impossible to construct a model which deals with all the policy permutations which could be considered and applied. However, it is possible to construct a framework for thinking about the range within which a particular set of policy choices regarding these variables might be considered.

The methods described above to control average payments from any VCS are all premised on a model of compensation evaluation which is individual and case-specific, and where the exact effect of the crime on the applicant must be proved. A simpler, but perhaps controversial method might be the establishment of fixed compensation tariffs based on the nature of the injury suffered by the victim. Such a system, which has recently been introduced in the UK, sets precise amounts for compensation payments in terms of a pre-defined schedule of injuries. A similar approach is adopted in South Africa with regards to compensation for occupational injuries and diseases (see section 3.2.2 of this report).

This method, though a radical departure from the common law methods of individual assessment of compensation claims, has the advantage of being both simpler to administer and more likely to create predictable levels of compensation disbursements.<sup>86</sup> Whether such a system makes the establishment of a VCS affordable, however, depends on the level at which the payments are set in the appropriate schedules.

The above examples demonstrate the numerous methods that exist and, in some cases, are already used in some jurisdictions to reduce the relative generosity of compensation payments. In common law, diversions from these norms could be controversial as they will, inevitably, reduce the amounts which victims might have been awarded had compensation been ordered by a civil court.

#### **6.4 Costing the Scheme: The Contents of the Costing Model**

An accurate costing of the likely claims on a VCS in South Africa is made difficult because of the paucity of data that exists in respect of factors such as the demographics, employment status and income of victims of crime. The absence of data on the medical and psychological impacts of crime – and the effect of these on the income and expenditure of households – makes costing a VCS almost impossible.<sup>87</sup> Nonetheless, a possible model has been developed in this report on

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<sup>86</sup> Indeed, it was for these reasons that this was the system to which the VCS in the UK moved.

<sup>87</sup> This problem is not unique to SA. As Greer notes in commenting on the difficulty of assessing the proposals for reforming the VCS in the UK, 'A major problem with assessing the government



the basis of cost projections that remain dependent on the assumptions made. To the extent that these are inaccurate, the conclusions too are inaccurate. Given improved data, however, it would be possible to improve on the estimates described below.

In light of these difficulties, our starting point was to try to estimate the full cost of crime to victims along various dimensions. This approach was adopted even though it is fairly obvious that its outcome would be unaffordable and, in any event, would include a wide variety of victims who would not, in the ordinary run of a VCS, qualify for compensation. Nonetheless, this was regarded as a sound basis for assessing what a full-blown ‘bells and whistles’ VCS would cost the taxpayer if it were to be fully funded, in order that variations from this norm could be assessed and also help us understand the ‘costs’ of violent crime to victims in our society.

#### **6.4.1 Elements included in the costing of compensation payments**

The following damages payable to victims have been included in the model:

- Lost income;
- A welfare payment for unemployed persons;
- Medical costs;
- Funeral costs; and
- Pain and suffering in the case of surviving victims, and *ex gratia* payments in the case of dependants who have lost a provider.

##### **6.4.1.1 Lost income**

The average amount of lost income associated with violent crimes depends on a number of factors. These include:

- the average income of victims;
- the proportion of victims who were employed at the time of their injury or death;
- the age of victims (as older victims have fewer productive years left than younger victims, but also tend to have higher salaries);
- the victim’s recovery period; and
- the long-term impact of the injury on the victim’s earning potential.

Certain of the variables used to determine the average loss of income of victims of violent crime are common to all victims, such as that the recovery period for an

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proposals ... is the lack of empirical evidence of the *financial* effect of crime on its victims, particularly

assault depends on the nature of the violence. However, some variables differ across age and race since they impact on the likelihood of victims' being unemployed and on the level of their income. While some variables can be estimated off basic demographic data, others require a more in-depth analysis of the profile of victims of violent crime in South Africa, as well as the impact of their injuries on their short- and long-term earnings. Such data remain both relatively unavailable and reasonably unreliable.<sup>88</sup> For the purposes of this report, some of these variables have, therefore, had to be estimated.

The basic demographic data used for the initial run of the model is reflected in the following table:

Income and unemployment (1996)								
Age group	African		Coloured		Indian		White	
	Income	Unempl.	Income	Unempl.	Income	Unempl.	Income	Unempl.
0-19	R 0	100%	R 0	100%	R 0	100%	R 0	100%
20-29	R 14,564	55%	R 18,655	26%	R 30,789	15%	R 46,645	6%
30-39	R 18,490	37%	R 25,002	16%	R 45,876	9%	R 77,887	4%
40-59	R 17,477	32%	R 24,066	14%	R 45,392	9%	R 88,908	4%
60-65	R 14,681	29%	R 18,429	12%	R 41,913	9%	R 93,672	23%

Source: Schutte ( *An Estimate Of The Unit Cost Of Road Traffic Collisions In South Africa In 1998* Pretoria: Department Of Transport 2000).

As can readily be seen in the table, income and employment levels vary across races and age groups. For this reason, the loss of income associated with violent crimes will differ across these groups too.<sup>89</sup> The absence of data on the employment status of victims and on their income levels means that assumptions have had to be made about whether or not the average victims of violent crime are more or less likely to be employed and whether their income is likely to be more or less than the

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in the case of those who are seriously injured' (Greer, 1996, p 620).

<sup>88</sup> The data presented by Statistics SA (1998, p.41) are not much use in this regard because the income categories which they report are of inconsistent sizes, making estimates of the affected population all but impossible.

<sup>89</sup> The above table does not reflect differences between men and women. In general, women earn significantly less than do men and also suffer from higher levels of unemployment. That said, these data reflect the average unemployment and income of men and women in the respective age and race categories. This simplification will tend to reduce the estimated loss of income associated with crime since men are far more likely to be victims of violence than are women if injury profiles do not differ between men and women.

average. Our case study of victims in Gauteng found that 25% of them were unemployed and this was comparable to the provincial average (see *Chapter 5*).

We have, for the purposes of this model, assumed that the employment and income profile of victims matches the demographics of the population as a whole. As this is unlikely in practice, the model has also been re-run on the assumption that the average victim is more likely to be unemployed than is the average South African in her/his age and race category. This latter assumption will reduce the assumed loss of income.

The table below reflects the demographic pattern of murder victims in South Africa.<sup>90</sup>

Murder victims				
Age	African	Coloured	Indian	White
0-19	1.0%	0.3%	0.0%	0.1%
20-29	21.3%	5.5%	0.5%	1.4%
30-39	28.0%	8.2%	0.8%	2.2%
40-59	17.0%	5.0%	0.3%	0.6%
60-65	6.0%	1.8%	0.1%	0.2%
Total	73.3%	20.7%	1.6%	4.4%

Source: M Peden 'A Profile of Fatal and Non-Fatal Injuries in SA' (Unpublished memo summarised from the National Injury Surveillance System, conveyed in personal Communication) May 2000.

As accurate demographic data for victims of the other crimes used in the model were not available, it has been necessary to estimate similar tables for the other crime categories. These are attached in *Appendix Six*. These demographic profiles of victims are empirically verifiable, though a sufficiently large and reliable study has not been undertaken. That the costs of a VCS are estimated off these assumptions means that there is a degree of uncertainty about the extent of lost income arising from crime since people with different demographic backgrounds tend to have different rates of unemployment and income.

In cases of murder, the impact of crime on potential income is reduced to zero immediately. Thus, in order to assess the quantum of lost income, the number of

<sup>90</sup> Data is drawn from the Medical Research Council's study of Victims of Unnatural Deaths based on a sample of mortuaries around the country. The data has been manipulated given that it was initially

working years until 65 that remained must be determined. This figure is modified by the risk of the victim dying before the age of 65 – a risk that is set out in the accompanying table below:

<b>Proportion of population of given age that will live only half the time until 65</b>				
<b>Age</b>	<b>African</b>	<b>Coloured</b>	<b>Indian</b>	<b>White</b>
<b>10</b>	1%	1%	1%	1%
<b>20</b>	41%	40%	31%	20%
<b>25</b>	35%	33%	20%	11%
<b>35</b>	33%	34%	26%	17%
<b>50</b>	28%	29%	27%	17%
<b>63</b>	7%	7%	7%	7%

Source: Schutte (2000, at A2).

Once victims' employment and income data are known, as well as their likely number of lost years of earning, present value of all lost income combined must be calculated and discounted at an appropriate rate of interest. For this purpose, a real rate of interest of 8% has been chosen – a rate that reflects current and likely future interest rate policies in South Africa. (If higher rates were chosen, the present value of future income would fall, if a lower rate were chosen, it would rise.)<sup>91</sup>

The application of these considerations is more complex in the case of non-fatal crimes. In such cases, assumptions must be made about the length of time it takes a victim to recover and about the long-term impact of the injury. Once again, it has been impossible to obtain reliable data in this regard, and assumptions, which are set out in the last table on the previous page and the accompanying table are hoped to be realistic, but they remain assumptions.

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captured in marginally different age group categories – categories that did not match those for which income and employment data were available.

<sup>91</sup> The relatively conservative – but essential for ease of computation – assumption that future income would not grow has been made. This tends to reduce the overall loss of income calculated.

Proportion of victims suffering long-term impact on their earning power (by crime and severity)					
Reduction in earning power	100%	50%	25%	5%	0%
Murder	100%	0%	0%	0%	0%
Attempted murder	0.5%	1.0%	1.5%	15.0%	82.0%
Rape	0%	0.5%	0.5%	5.0%	94.0%
GBH	0.1%	0.5%	1.0%	5.0%	93.4%
Indecent assault	0%	0%	0.0%	5.0%	95.0%
Aggravated Robbery	0%	0%	0.5%	2.0%	97.5%

Proportion of victims <u>not</u> suffering long-term effects but suffering short-term impact on earning power					
Reduction in earning power	1 year	1 month	1 week	None	Total
Murder	0%	0%	0%	0%	0%
Attempted murder	5%	22%	23%	50%	100%
Rape	1%	40%	55%	4%	100%
Assault GBH	3%	15%	36%	46%	100%
Indecent assault	0%	5%	20%	75%	100%
Aggravated Robbery	1%	20%	40%	39%	100%

For purposes of this report, we have assumed that the loss of income for anyone suffering at least a 5% reduction in long-term earnings is sufficient to include all short-term injuries too. Short-term losses in earnings are assumed, therefore, to be additional to long-term losses suffered (thus the total proportion of victims in the table above is equal to the proportion of victims assumed to suffer no long-term earnings losses.) It is assumed that victims who suffer short-term income losses lose their entire income over that period.

The net effect of these two tables can be summarised as follows:

Loss of income (long-term and short-term effects)									
Reduction in earning power	Perm 100%	Perm 50%	Perm 25%	Perm 5%	1 year (100% income)	1 month (100% income)	1 week (100% income)	None	Total
<b>Murder</b>	100%	0%	0%	0%	0%	0%	0%	0%	100%
<b>Attempted murder</b>	0.5%	1.0%	1.5%	15.0%	4.1%	18.0%	18.9%	41.0%	100%
<b>Rape</b>	0%	0.5%	0.5%	5.0%	0.9%	37.6%	51.7%	3.8%	100%
<b>Assault GBH</b>	0.1%	0.5%	1.0%	5.0%	2.8%	14.0%	33.5%	42.8%	100%
<b>Indecent assault</b>	0%	0%	0%	5.0%	0.0%	4.8%	19.0%	71.3%	100%
<b>Aggravated Robbery</b>	0%	0%	0.5%	2.0%	1.0%	19.4%	38.8%	37.8%	100%

The data and assumptions detailed above form the basis for an estimate of the total annual loss of income linked to violent crime in South Africa.<sup>92</sup>

For some injured victims, the loss of income must be offset against the support they are entitled to from the Department of Welfare's Disability Grant. The criteria for qualification are that the applicant be:

- a citizen and resident of South Africa;
- over 18 years of age and whose disability prevents her/him from obtaining employment or who has no other means of support;
- unable to work either permanently (permanent disability grant) or continuously for a period of six or twelve months (temporary grant);
- willing to undergo any medical treatment, unless it may be life-threatening;
- poor and, together with her/his spouse, willing to comply with a means test;
- outside the care of a state institution; and
- unable to receive another social grant in respect of her/himself.

Those victims who are permanently prevented from earning a living would not receive compensation for lost income from the VCS in addition to any welfare grant.

#### 6.4.1.2 Welfare payments for unemployed persons

It is logical that a victim needs to be employed to qualify for compensation for lost income. Whilst this impacts on the unemployed, it can be argued that the poor – who are, after all, the most frequently victimised by criminals (see *Chapter Two*) – should be entitled to at least some financial support to assist their overcoming the consequences of crime.

<sup>92</sup> The data obtained from our case study do not directly assist in confirming or denying the assumptions described here (see 5.3.13), although there was some indication that about 1% of those who were injured sustained injuries to their spines.

For this reason, the total impact of welfare payments has been calculated on the total costs of a VCS. These payments could be made whether or not compensation is paid to employed victims of crime, and the only real variable is the proportion of unemployed persons in the total population of victims. To the extent that the unemployed are over-represented in the population of victims, part of any reduction in the amount paid out to compensate employed victims for the loss of income would be offset by increased payments to unemployed victims qualifying for the income support grant being made available through the VCS. Permanently injured victims who are unable to earn an income as a result of their injuries ought not to receive compensation from the VCS as they will be entitled to obtain assistance from the Department of Welfare.

#### **6.4.1.3 Medical costs**

As a result of the fact that the state provides a reasonable level of medical care to all indigent persons, we have been quite conservative in our estimation of the medical costs associated with criminal victimisation, assuming that a very small number of persons (about 1% of all victims who survive their attack) receive R4 500 for medical care.

For our purposes, it is assumed that all those who are permanently injured to the point where they lose 100% or 50% of their income-earning potential, as well as half of those whose injuries reduce their earning power by 25%, will require medical care to the value of R4 500. This number is based on the cost of a wheelchair, but it need not imply that the only expenses tolerated will be for the purchase of a wheelchair. It is likely that this overestimates the true incidence of the need for a wheelchair and, hence, overestimates the possible costs to the VCS. At the same time, there are reasonable costs related to medical care that have not been considered. These include:

- the ordinary costs of medical care over and above that provided by the state;
- costs associated with making the necessary modifications to the home and/or workplace to accommodate the consequences of injuries;
- costs associated with psychological and occupational therapies which may not be provided by the state;
- costs associated with transport to and from doctors and hospitals (for the victim and her/his family); and

- costs associated with the provision of medication or care that is not adequately provided through state institutions.

It is likely that the average medical cost assumed in this model understates the true cost to victims.<sup>93</sup>

#### **6.4.1.4 Funeral costs**

The average funeral costs about R4 200 in South Africa (cited in Schutte, 2000, at D-3). Since this is an expense that a family would incur in any event, the payment of compensation rests on the time-value of money and only the difference between the net present value of the future cost of the funeral and its current costs should attract compensation.

Since our demographic assumptions result in the conclusion that the average age of a murder victim is 36 years and the average life expectancy in South Africa is about 46 years, the present value of the difference between the current and future costs of a funeral is R2 259 – and that value is paid to all families of murder victims.<sup>94</sup>

#### **6.4.1.5 Pain and suffering**

The amounts paid for pain and suffering are derived from data obtained from the Road Accident Fund by the CSIR for the Department of Transport. Their data suggest that the RAF paid out average claims for pain and suffering of R15 182 for serious injuries and R2 356 for slight injuries.

We have assumed that all people who suffer injuries that reduce their long-term earning potential by 100%, 50% or 25% would qualify to be compensated as if they had sustained serious road injuries (as would the dependants of murder victims), while those who suffer a permanent 5% decline in earnings or a short-term loss of a full year's income would qualify for compensation for the pain and suffering resulting from a slight injury.

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<sup>93</sup> We have avoided stating that the full costs of the injury to society are considered. It is clear that these far exceed the costs to the victim and include costs to medical facilities, insurance companies, friends, families and employers, **etc** It is clear that the victim should not her/himself receive compensation for these costs, but it is equally clear that these are real costs which are really incurred by society following the severe injury of victims of violent crime.

<sup>94</sup> Another way of seeing this is that the state will provide R2 259 as a basic minimum for funeral expenses, and that the victim's dependants can then supplement this amount if they so wish.



## 6.5 Costing the Scheme: Runs of the Costing Model

### 6.5.1 The number of victims

The number of victims used in our model is derived from the number of violent crimes recorded by the SAPS in 1998, modified by an assumed, though reasonably conservative, under-reporting rate.

<b>Number of victims (1998)</b>			
<b>Crimes covered</b>	<b>Recorded crimes</b>	<b>Under-reporting</b>	<b>Total crimes</b>
Murder	24,875	3%	25,644
Attempted murder	29,418	20%	36,773
Rape	49,280	30%	70,400
Assault GBH	234,056	20%	292,570
Indecent assault	4,851	20%	6,064
Aggravated Robbery	88,319	20%	110,399
<b>Total</b>	<b>430,799</b>	<b>26%</b>	<b>541,849</b>

The model is therefore premised on the effect of crimes committed against 540 000 people in South Africa during the course of 1998 (SAPS, 1999). 54% of these were assaults GBH, 20% were aggravated robberies, rapes, attempted murders and murders. Indecent assaults made up a little more than 1% of the cases.

The raw crime statistics as recorded by the SAPS have been used in this report, although approximately 18% of all relevant cases recorded by the SAPS were subsequently withdrawn or closed as unfounded.

<b>Withdrawn and unfounded cases (1998)</b>					
	<b>Crimes</b>	<b>Withdrawn</b>	<b>Percent</b>	<b>Unfounded</b>	<b>Percent</b>
Murder	24,875	2,299	9.2%	664	2.7%
Att. Murder	29,418	6,574	22.3%	693	2.4%
Rape	49,280	8,456	17.2%	862	1.7%
Assault GBH	234,056	46,170	19.7%	3,095	1.3%
Indecent ass.	4,851	1,918	39.5%	101	2.1%
Agg. Robbery	88,319	5,368	6.1%	1,121	1.3%
<b>Total</b>	<b>430,799</b>	<b>70,785</b>	<b>16.4%</b>	<b>6,536</b>	<b>1.5%</b>

There are a number of reasons why it would be inappropriate to treat these cases as not being ineligible for compensation, even though they currently are not taken forward by the SAPS into the criminal justice system. They include cases that are reported to the police but which are subsequently withdrawn after a cooling off period or in favour of an alternative form of dispute resolution, often involving the intervention of both the victim's family and the family of the perpetrator. These cases ought not to be excluded from the appropriate statistics because the establishment of a VCS, by creating a financial incentive to pursue cases through the courts, is likely to significantly reduce the number of cases withdrawn.

The inclusion of cases subsequently deemed unfounded is more controversial than the inclusion of cases subsequently withdrawn by the complainant. There exist very real doubts about the quality of the determination made by investigating officers that a complaint is, indeed, unfounded in law. The control and management of this function has not been properly assessed and a perverse incentive may be found to exist, namely that a case closed is one which does not have to be proceeded with. In addition, there exist real possibilities that cases such as acquittals have been incorrectly recorded on the SAPS database as unfounded.<sup>95</sup>

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<sup>95</sup> Given that these arguments in favour of including both categories of cases for which there is some basis for exclusion are in large measure issues of judgement about which reasonable disagreements could exist, it is possible that some will be unpersuaded by the rationales for inclusion provided. If, indeed, that is the case, the reader is advised merely to reduce the projected cost of compensatory payments to victims of the crimes under consideration by the proportion of cases which are subsequently withdrawn by the complainant or deemed unfounded by the investigating officer.

### 6.5.2 The costs of full compensation

This model seeks to establish, on the basis of the assumptions described above, what the costs of violent crime borne by victims in South Africa are. This model, which is based on providing full compensation, serves as the basis against which subsequent policy modifications might be assessed. It is, therefore, not offered to be implemented in its present form, but as a point of departure to try to assess what a VCS might cost in SA.

There are a number of factors which have not, however, been taken into account in this proposed model. These include:

- the fact that permanently injured persons who cannot obtain any income as a result of their injuries are entitled to a disability; and
- that no provision has been made regarding welfare payments to unemployed persons who would not otherwise qualify for compensation for the loss of income.

These categories and permutations are added later.

The overall cost of a VCS that seeks to compensate victims fully is set out in the table below. As can be seen, the full cost of violent crime to its victims (based on the assumptions described above) is R4.7 billion. This amount can be broken down between different categories of compensation.

<b>Total pay out</b>		
<b>Crime</b>	<b>Total</b>	<b>Ave. per victim</b>
Murder	R 3,898,640,830	R 152,027
Attempted murder	R 144,453,529	R 3,928
Rape	R 112,957,859	R 1,605
Assault GBH	R 484,983,088	R 1,658
Indecent assault	R 2,665,640	R 440
Aggravated Robbery	R 70,810,532	R 641
<b>Total</b>	<b>R 4,714,511,478</b>	<b>R 8,701</b>

<b>Total pay out</b>		
<b>Category</b>	<b>Total</b>	<b>Average</b>
Long-term income	R 4,003,565,855	R 7,389
Short-term income	R 46,628,783	R 86
Pain and suffering	R 584,572,340	R 1,079
Medical	R 21,803,224	R 40
Funeral costs	R 57,941,276	R 107
Income support for unemployed	R 0	R 0
<b>Total</b>	<b>R 4,714,511,478</b>	<b>R 8,701</b>

Long-term loss of income is by far the largest contributor to the size of any compensatory payments, averaging at about 81% of all payments. Pain and suffering constitutes 12%, with the bulk of the remainder made up by medical and funeral costs. Given our assumptions, the loss of short-term income makes up a negligible 0.9% of the total paid out.

The averages here reflect the averages paid to all victims, although not all will receive each category. The average of R107 for all victims is, therefore, not reflective of the payments that a murder victim's family would actually receive for the funeral costs of the victim. Similarly, only a minority would qualify for payments based on the loss or diminishment of their long-term income. Those who did receive such payments would receive considerably more than the R7 389 – which is the amount that recipients would receive when averaged over all victims, irrespective of whether they were entitled to such payments.

#### **6.5.2.1 Long-term income loss averaged over employed victims**

Loss of long-term income per murder victim					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 142,498	R 300,152	R 669,022	R 953,340	R 1,965,012
30-39	R 230,845	R 416,196	R 827,314	R 1,481,767	R 2,956,122
40-59	R 166,870	R 290,607	R 579,995	R 1,198,438	R 2,235,911
60-65	R 28,239	R 43,936	R 103,331	R 195,407	R 370,913
<b>Average</b>	<b>R 89,066</b>	<b>R 166,562</b>	<b>R 357,606</b>	<b>R 661,375</b>	<b>R 134,586</b>

Loss of long-term income of rape victims					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 1,603	R 1,876	R 3,556	R 5,958	R 12,994
30-39	R 2,597	R 2,601	R 5,171	R 9,261	R 19,630
40-59	R 1,877	R 1,816	R 3,625	R 7,490	R 14,809
60-65	R 318	R 275	R 646	R 1,221	R 2,459
<b>Average</b>	<b>R 917</b>	<b>R 1,011</b>	<b>R 2,050</b>	<b>R 4,167</b>	<b>R 1,075</b>

Loss of long-term income of attempted murder victims					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 3,028	R 6,378	R 12,092	R 20,258	R 41,757
30-39	R 4,905	R 8,844	R 17,580	R 31,488	R 62,818
40-59	R 3,546	R 6,175	R 12,325	R 25,467	R 47,513
60-65	R 600	R 934	R 2,196	R 4,152	R 7,882
<b>Average</b>	<b>R 1,893</b>	<b>R 3,618</b>	<b>R 7,599</b>	<b>R 14,054</b>	<b>R 2,872</b>

Loss of long-term income of Assault GBH victims					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 1,211	R 2,551	R 4,837	R 8,103	R 16,703
30-39	R 1,962	R 3,538	R 7,032	R 12,595	R 25,127
40-59	R 1,418	R 2,470	R 4,930	R 10,187	R 19,005
60-65	R 240	R 373	R 878	R 1,661	R 3,153
<b>Average</b>	<b>R 696</b>	<b>R 1,328</b>	<b>R 2,758</b>	<b>R 5,558</b>	<b>R 1,119</b>

Loss of long-term income of indecent assault victims					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 366	R 750	R 1,423	R 2,383	R 4,913
30-39	R 577	R 1,040	R 2,068	R 3,704	R 7,390
40-59	R 417	R 727	R 1,450	R 2,996	R 5,590
60-65	R 71	R 110	R 258	R 489	R 927
<b>Average</b>	<b>R 204</b>	<b>R 404</b>	<b>R 820</b>	<b>R 1,667</b>	<b>R 311</b>

Loss of long-term income of robbery victims					
	African	Coloured	Indian	White	Total
0-19	R 0	R 0	R 0	R 0	R 0
20-29	R 321	R 675	R 1,280	R 2,145	R 4,421
30-39	R 519	R 936	R 1,861	R 3,334	R 6,651
40-59	R 375	R 654	R 1,305	R 2,696	R 5,031
60-65	R 64	R 99	R 232	R 440	R 835
<b>Average</b>	<b>R 180</b>	<b>R 360</b>	<b>R 716</b>	<b>R 1,284</b>	<b>R 382</b>

The averages reflected in the above tables reflect the cost of compensating long-term losses of income averaged across employed victims. In the case of all the crimes other than murder not all employed victims will qualify for all losses. For that reason, this understates what qualifying victims will actually receive. To see this average, see row five of the summary table on page 113.

### 6.5.2.2 Short-term income loss

Payments to persons who suffer short-term income loss of various lengths (irrespective of crime)						
	African			Coloured		
	Year	Month	Week	Year	Month	Week
0-19	R 0	R 0	R 0	R 0	R 0	R 0
20-29	R 14,564	R 1,214	R 280	R 18,655	R 1,555	R 359
30-39	R 18,490	R 1,541	R 356	R 25,002	R 2,084	R 481
40-59	R 17,477	R 1,456	R 336	R 24,066	R 2,006	R 463
60-65	R 14,681	R 1,223	R 282	R 18,429	R 1,536	R 354
	Indian			White		
	Year	Month	Week	Year	Month	Week
0-19	R 0	R 0	R 0	R 0	R 0	R 0
20-29	R 30,789	R 2,566	R 592	R 46,645	R 3,887	R 897
30-39	R 45,876	R 3,823	R 882	R 77,887	R 6,491	R 1,498
40-59	R 45,392	R 3,783	R 873	R 88,908	R 7,409	R 1,710
60-65	R 41,913	R 3,493	R 806	R 93,672	R 7,806	R 1,801

Every victim of a crime who suffers a short-term loss of income will incur losses commensurate with their average income which, as we have stated above, is partly determined by their race and age. Thus, irrespective of by what crime the victim is injured, if she/he is African, employed, aged 25 and loses a year's income, she/he would, on average, receive a pay out of R14 564. Similarly, an employed White male aged 45 would, on average, receive a pay out of R7 409 if he lost a month's income, irrespective of the nature of his criminal victimisation.

### 6.5.2.3 Other payments

In addition to the above, compensation is fixed at R15 182 and R2 356 for victims who suffer serious or slight injuries respectively (see text for definitions), R2 259 for the families of murder victims, and R4 500 if victims need to purchase a wheelchair or some type of device that may assist them in dealing with their injury.

### 6.5.3 Summary

The accompanying tables below set out the average pay out per category for victims of different crimes. The income payments are, of course, made only to employed victims, while all victims are entitled to receive compensation under the other heads of damages.

African victims									
	Number African	Loss of long-term income	Loss of short-term income	Welfare payment for unemployed	Pain and suffering	Medical costs	Funeral costs	Total (average)	Total
Murder	18,797	R 89,066	R 0	R 0	R 15,182	R 0	R 2,259	R 106,507	R 2,002,050,507
Murder	26,954	R 1,893	R 51	R 0	R 905	R 101	R 0	R 2,950	R 79,513,494
Rape	51,181	R 917	R 147	R 0	R 292	R 34	R 0	R 1,389	R 71,110,724
GBH	187,684	R 696	R 40	R 0	R 426	R 50	R 0	R 1,212	R 227,562,129
assault	4,408	R 204	R 8	R 0	R 118	R 0	R 0	R 329	R 1,450,962
Robbery	70,434	R 180	R 52	R 0	R 146	R 11	R 0	R 389	R 27,412,715

Coloured victims									
	Number Coloured	Loss of long-term income	Loss of short-term income	Welfare payment for unemployed	Pain and suffering	Medical costs	Funeral costs	Total (average)	Total
Murder	5,308	R 166,562	R 0	R 0	R 15,182	R 0	R 2,259	R 184,004	R 976,761,824
Att. Murder	7,417	R 3,618	R 93	R 0	R 905	R 101	R 0	R 4,719	R 34,999,311
Rape	15,206	R 1,011	R 301	R 0	R 292	R 34	R 0	R 1,638	R 24,903,437
Assault									
GBH	86,308	R 1,328	R 75	R 0	R 426	R 50	R 0	R 1,879	R 162,209,518
Ind. assault	1,310	R 404	R 16	R 0	R 118	R 0	R 0	R 538	R 704,490
Agg. Robbery	18,768	R 360	R 106	R 0	R 146	R 11	R 0	R 623	R 11,689,351

Indian victims									
	Number Indian	Loss of long-term income	Loss of short-term income	Welfare payment for unemployed	Pain and suffering	Medical costs	Funeral costs	Total (average)	Total
Murder	410	R 357,606	R 0	R 0	R 15,182	R 0	R 2,259	R 375,047	R 153,885,376
Att. Murder	588	R 7,599	R 187	R 0	R 905	R 101	R 0	R 8,792	R 5,173,089
Rape	1,570	R 2,050	R 556	R 0	R 292	R 34	R 0	R 2,932	R 4,602,730
Assault									
GBH	7,548	R 2,758	R 148	R 0	R 426	R 50	R 0	R 3,382	R 25,528,140
Ind. assault	135	R 820	R 29	R 0	R 118	R 0	R 0	R 967	R 130,715
Agg. Robbery	7,838	R 716	R 192	R 0	R 146	R 11	R 0	R 1,065	R 8,348,364

White victims									
	Number White	Loss of long-term income	Loss of short-term income	Welfare payment for unemployed	Pain and suffering	Medical costs	Funeral costs	Total (average)	Total
Murder	1,128	R 661,375	R 0	R 0	R 15,182	R 0	R 2,259	R 678,817	R 765,943,123
Att. Murder	1,618	R 14,054	R 247	R 0	R 905	R 101	R 0	R 15,308	R 24,767,635
Rape	2,429	R 4,167	R 589	R 0	R 292	R 34	R 0	R 5,081	R 12,340,968
Assault									
GBH	11,030	R 5,558	R 284	R 0	R 426	R 50	R 0	R 6,318	R 69,683,301
Ind. assault	209	R 1,667	R 29	R 0	R 118	R 0	R 0	R 1,814	R 379,472
Agg. Robbery	13,358	R 1,284	R 307	R 0	R 146	R 11	R 0	R 1,749	R 23,360,103

As has been explained above, however, these values are averaged across all victims including those who do not qualify (the majority in most cases) and so persons who do qualify will receive substantially more than the averages set out here.

This is reiterated in the following table:

Summary table								
		Murder	Att. murder	Rape	Assault GBH	Ind. ass.	Robbery	Total
	Number of victims	25,644	36,773	70,400	292,570	6,064	110,399	541,849
	Employed victims	16,764	24,062	41,972	180,235	3,615	67,659	334,308
Long-term income losses	Number losing l-t earning capacity	16,818	4,331	2,518	11,895	181	1,691	37,435
	Ave. value of lost l-t income		R 24,257	R 30,032	R 27,526	R 10,441	R 24,936	R 19,532
	Lost l-t income averaged over all victims	R 134,586	R 2,857	R 1,074	R 1,119	R 311	R 382	R 23,388
	<b>Total</b>	<b>R 3,451,367,338</b>	<b>R 105,064,596</b>	<b>R 75,630,022</b>	<b>R 327,438,177</b>	<b>R 1,887,292</b>	<b>R 42,178,430</b>	<b>R 4,003,565,855</b>
Short-term income losses	Number losing s-t income	-	9,866	37,876	90,514	869	40,034	179,148
	Ave. value of lost s-t income	R 0	R 260	R 381	R 202	R 75	R 282	R 200
	Lost s-t income averaged over all victims	R 0	R 36	R 205	R 63	R 11	R 102	R 69
	<b>Total</b>	<b>R 0</b>	<b>R 2,565,885</b>	<b>R 14,416,066</b>	<b>R 18,297,858</b>	<b>R 64,180</b>	<b>R 11,284,793</b>	<b>R 46,628,783</b>
Funeral costs	Victims qualifying for funeral cost compensation	25,644	0	0	0	0	0	25,644
	Value	2259	2259	2259	2259	2259	2259	2259
	<b>Total</b>	<b>R 57,930,541</b>	<b>R 0</b>	<b>R 0</b>	<b>R 0</b>	<b>R 0</b>	<b>R 0</b>	<b>R 57,930,541</b>
Medical costs	wheelchair	-	827	528	3,218	-	276	4,850
	Value	R 4,500	R 4,500	R 4,500	R 4,500	R 4,500	R 4,500	R 4,500
	<b>Total</b>	<b>R 0</b>	<b>R 3,723,216</b>	<b>R 2,376,000</b>	<b>R 14,482,215</b>	<b>R 0</b>	<b>R 1,241,986</b>	<b>R 21,823,417</b>
Pain and suffering (severe)	Victims qualifying for P&S (severe injuries)	25,644	1,103	704	4,681	-	552	32,685
	Ave. per recipient	R 15,182	R 15,182	R 15,182	R 15,182	R 15,182	R 15,182	R 15,182
	<b>Total</b>	<b>R 389,332,216</b>	<b>R 16,748,403</b>	<b>R 10,688,128</b>	<b>R 71,068,764</b>	<b>R 0</b>	<b>R 8,380,369</b>	<b>R 496,217,880</b>
Pain and suffering (minor)	Victims qualifying for P&S (minor injuries)	-	7,024	4,182	22,791	303	3,279	37,579
	Ave. per recipient	R 2,356	R 2,356	R 2,356	R 2,356	R 2,356	R 2,356	R 2,356
	<b>Total</b>	<b>R 0</b>	<b>R 16,547,478</b>	<b>R 9,852,227</b>	<b>R 53,696,074</b>	<b>R 714,310</b>	<b>R 7,724,954</b>	<b>R 88,535,042</b>
	Total averaged across all victims	R 0	R 450	R 140	R 184	R 118	R 70	R 163
	<b>Total</b>	<b>R 3,898,630,095</b>	<b>R 144,649,578</b>	<b>R 112,962,442</b>	<b>R 484,983,088</b>	<b>R 2,665,782</b>	<b>R 70,810,532</b>	<b>R 4,714,701,518</b>

## 6.5.4 Modifications

This initial costing of a full VCS needs to be qualified in a number of respects, including:

- the 'over-compensation' of persons who might qualify for disability grants;



- the fact that many murder victims will not have dependants, and will, therefore, leave no-one who will qualify for compensation;
- considerations regarding the medical costs associated with being raped; and
- the 'over-compensation' of persons who are privately insured for death, disability and loss of income.

#### 6.5.4.1 Disability grants

Disability grants are made to persons who are not able to work at all for periods of 6 or 12 months, or who are permanently unable to work.<sup>96</sup> Those persons who are eligible to receive monthly state disability grants (currently valued at R520 per month), would not attract compensation from the VCS.

The VCS would not compensate victims who receive other State income support. This would however be waived in the case of persons whose loss of income compensation exceeds the value of the disability grant, in which case the VCS will still pay the victim compensation, but at a reduced amount.

The number of persons qualifying for disability grants is set out in Appendix Six. As is apparent from the tables there, victims under the age of 19 who suffer a year's convalescence are assumed not to qualify for the temporary disability grant on the basis of their age.

The net reduction to the costs of the VCS is about R95.2 million as reflected in the following table:

Present Value of Disability Grants								
	African		Coloured		Indian		White	
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm
0-19	R 0	R 1,263,710	R 0	R 484,319	R 0	R 23,863	R 0	R 51,959
20-29	R 15,898,896	R 7,549,418	R 7,081,312	R 2,924,787	R 1,064,367	R 257,223	R 1,754,868	R 457,780
30-39	R 13,234,561	R 6,786,971	R 7,018,171	R 2,868,047	R 1,029,173	R 165,201	R 2,141,513	R 696,888
40-59	R 9,532,142	R 3,468,819	R 3,531,280	R 1,069,680	R 424,165	R 56,438	R 305,065	R 68,316
60-65	R 2,126,827	R 294,392	R 1,325,720	R 125,887	R 67,494	R 3,640	R 63,503	R 7,993
Sub totals	R 40,792,425	R 19,363,311	R 18,956,483	R 7,472,720	R 2,585,199	R 506,365	R 4,264,950	R 1,282,936
Grand total	R 95,224,389							

#### 6.5.4.2 Murder victims with no dependants

Given the fact that not all murder victims will have dependants, it is inappropriate to include all the lost long-term income associated with murder victims as compensable

<sup>96</sup> Since no category of short-term loss of income for 6 months was developed, the off-setting amount for the VCS has not been calculated for this category of victim. We believe that it is fairly safe to assume that this will be somewhat similar to the amount for those who lose a years income.

since there will not be anyone who would be entitled to compensation for the lost support. Moreover, dependant children only qualify for such support for a limited period. For these reasons, it is appropriate to reduce the overall amount, which the VCS would have to pay for the compensation of lost long-term income.

In addition, given that the income that the deceased would have earned would have been partly spent on her/his living expenses, it would be inappropriate to award the full amount of the lost long-term income to his/her spouse and dependants.<sup>97</sup>

The key prerequisites for the payment of compensation to the dependants of murder victims are, as was stated above, that they had dependants in the first place. Were this not the case, then no compensation is payable and no one would be able to apply for it. It is, therefore, important to assess how many murder victims are likely to leave dependants. Unfortunately, this is another area where the absence of reliable data means that we are reduced to having to make assumptions.

We believe that as many as 50% of all murder victims will leave either no dependants, or will leave minor dependants whose right to compensation for the income lost as a result of the breadwinner's death is circumscribed to the period prior to their reaching their majority. This assumption – that 50% of murder victims leave either no dependants or dependants with only relatively small claims – is based on the following rationale:

- most murder victims are young males, and, as such many will not yet be married; and
- although many young male murder victims may have fathered illegitimate children, if they were not, in fact, providing funds for the maintenance of those children, the latter would have no claim for compensation.

It is our opinion that 50% of the potential amount claimable for the loss of income of families of murder victims might be reduced in light of these considerations. This amounts to R 1 949 315 047, which amount needs to be deducted from the total predicted costs of a VCS.

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<sup>97</sup> The data obtained from our case study were not able to cast any light on the question of how many victims had dependants. Indeed, with only two murder victims, any data in this regard would be meaningless.

### **6.5.4.3 The costs of being raped**

In the initial run of the model, the only medical cost considered has been R4 500 based on the cost of a wheelchair for those who may require it. This was based on the assumption that the state provides reasonably accessible health care and that the vast majority of medical costs are already likely to be borne by society, not the victim. This assumption is, of course, controversial since public health care in SA is not free to all for all conditions. Moreover, there is a degree of concern about the accessibility and quality of those services that are available.

In addition to this, there is a reasonable case that might be made that the medical and psychological effects of rape are of such a nature that compensatory payments aimed to assisting survivors' overcoming the impact of rape might be justified. (This payment would be in addition to those few rape victims who would qualify for medical compensation on the basis of our current assumptions.) Such payments might be used for:

- The costs of obtaining counselling and support,
- Obtaining HIV/Aids prophylactic medication, and/or
- Assisting the victim cover the costs of visiting the district surgeon, providing evidence to the police and attending court.

If we assume that such compensation might be valued at R2 000 per survivor, compensation to all survivors of rape would amount to R98 560 000 in 1998 or, assuming an under-reporting rate of 30%, would have amounted to R140 800 000.

### **6.5.4.4 Insured victims**

For purposes of this report, we have assumed that all and only those individuals with an average annual income of more than R60 000 are fully insured. Payments to such persons have, therefore, been excluded given that VCS compensation is subsidiary to all other forms of compensation.

<b>Lost income and P&amp;S of victims earning R60,000pa</b>	
Murder	R 578,375,547
Att. Murder	R 23,276,681
Rape	R 14,397,708
Assault GBH	R 70,804,477
Ind. assault	R 366,354
Agg. Robbery	R 27,581,971
<b>Total</b>	<b>R 714,802,739</b>

In effect, all White victims over the age of 30 except the unemployed would receive no payments from the VCS. If this standard were used, payments from the VCS would be reduced by about R714.8 million.

This is a crude assumption but reveals that the reduction in the pay outs which the VCS would experience as a result of the self-insurance of victims is substantial.

### 6.5.5 Conclusion: Summary of effects of adjustments

The table below reflects a running total as different adjustments are made to the total calculated in terms of the original specification of the model. As is apparent, even after all adjustments have been made, the overall cost of a VCS is considerable.

<b>Adjustments</b>		
	<b>Total: 100% murder victim's have dependants</b>	<b>Total: 50% murder victim's have dependants</b>
<b>Total</b>	R 4,714,701,518	R 4,714,701,518
Less "over-compensation" of those eligible for permanent or 12 month disability grants:	-R 95,224,389	-R 95,224,389
<b>Total</b>	R 4,619,477,130	R 4,619,477,130
Less income compensation for murder victims with no dependants (assume proportion is 50%)	R 0	-R 1,949,315,048
<b>Total</b>	R 4,619,477,130	R 2,670,162,082
Compensation for rape survivors	R 140,800,000	R 140,800,000
<b>Total</b>	R 4,760,277,130	R 2,810,962,082
Less "over-compensation" of insured victims	-R 714,802,739	-R 714,802,739
<b>Total</b>	R 4,045,474,391	R 2,096,159,344

This costing exercise is based on an overly generous set of policy assumptions, all of which will be tightened in the models that follow. Before proceeding, however, there are certain variables that ought to be considered.

## **6.6 Compensation Payments to the Unemployed**

The model described in the previous section was based on actual losses being compensated. Employed victims or their dependants therefore received substantial payments for lost income, while the unemployed received nothing under this category.<sup>98</sup>

The amount of compensation has been calculated at the present value of the Permanent Disability Grant (R520 p.m) that would have been paid over time between the victim's death and the age of 65 for all unemployed murder victims had the victim survived the attack but become permanently disabled.

Given that permanently disabled persons qualify for a Permanent Disability Grant if their disability precludes them from working, no compensation payment is calculated either for them or for those who suffer short-term injuries for one year. For the remainder, compensation is calculated on the basis of the current value of the disability grant and the amount of time spent recuperating.

### **6.6.1 Unemployed murder victims**

Assuming that murder victims are distributed evenly across the population, and using the demographic assumptions described above, there were about 8 880 unemployed murder victims in 1998, or 35% of the total.

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<sup>98</sup> Similarly, the families of child murder victims would not receive compensation beyond funeral, and possibly, medical expenses.

these were distributed through the population in the following way:

<b>Number of unemployed murder victims (1996 unemployment levels)</b>					
	<b>African</b>	<b>Coloured</b>	<b>Indian</b>	<b>White</b>	<b>Total</b>
0-19	256	64	3	13	336
20-29	3,004	367	18	22	3,410
30-39	2,657	336	17	23	3,033
40-59	1,395	180	7	6	1,587
60-65	446	54	2	12	514
<b>Total</b>	<b>7,759</b>	<b>1,001</b>	<b>46</b>	<b>74</b>	<b>8,880</b>

Using the approach described above, the average payment that would be made to the families of murder victims of various ages ranges between R76 951 and R14 422, depending on the age of the victim. Using this approach, the disbursements of the VCS would be raised by R537.3 million, as reflected in the table below.

<b>Payment per murder victim</b>	
<b>Age</b>	<b>Payment</b>
0-19	R 76,951
20-29	R 69,650
30-39	R 65,188
40-59	R 48,037
60-65	R 14,422
<b>Average</b>	<b>R 60,510</b>

Given that these payments aim to create a safety net, rather than to compensate for real losses, the amount could be set per victim at any level instead of being based on the disability grant. To the extent that murder victims are more likely to be unemployed than the national average, the number of unemployed victims would be higher, as would be the costs to the VCS. Naturally, these increased costs would be more than offset by the reduction in compensatory payments made to employed victims since the average payment to employed victims is substantially higher than is this payment. If we assume that only 50% of murder victims leave dependants, the above figures would have to be reduced by 50%.

## 6.6.2 Unemployed victims of other crimes

Given the importance of lost income in the overall level of compensation payments, the unemployed are relatively under-compensated by the assumptions of this model. This is not to say, however, that they are entirely uncompensated given that they receive no compensation for lost income. Like the employed, they would receive pain and suffering compensatory payments, as well as medical expenses where this was appropriate (see 6.5.3 above).

In order to adjust for this, the VCS may be required to compensate unemployed victims of crimes as an expression of social solidarity. This would recognise the onerous impact of injuries and impediments on obtaining employment sustained by victims of violent crime.

Unemployed victims: All races							
	Murder	Attempted murder	Rape	Assault GBH	Indecent assault	Robbery	Total
0-19	336	482	5,139	21,358	443	10,488	38,245
20-29	3,410	4,890	12,383	47,764	1,067	17,277	86,791
30-39	3,033	4,349	6,602	25,097	569	8,909	48,559
40-59	1,587	2,276	3,570	15,070	307	5,001	27,811
60-	514	713	733	3,048	63	1,064	6,135
<b>Total</b>	<b>8,880</b>	<b>12,710</b>	<b>28,428</b>	<b>112,335</b>	<b>2,449</b>	<b>42,740</b>	<b>207,541</b>

Assessing the cost of making a compensatory payment to unemployed victims of violent crimes requires an assessment of the number of unemployed victims of violent crime and the nature of the injuries sustained. It is assumed that violent victimisations are as likely to occur to the employed as to the unemployed, and that the number of victims of violent crime who are unemployed is, therefore, proportional to the rate of unemployment in society generally.<sup>99</sup>

<sup>99</sup> Note that this does not assume that violent crime is distributed evenly throughout the population as a perusal of the assumptions made about the distribution of crime will show (see *Appendix Six*).

As a result of the assumptions we have made about the distribution of crime in the population, of the approximately 542 000 victims of violent crime 207 541(38%) are assumed to have been unemployed. These victims, although they would receive some of the compensation accorded employed victims, would receive, on average, only about one fifth of what they would have received had they been employed.

Compensation for pain and suffering for severe injuries was made payable to victims suffering 100%, 50% or 25% long-term income loss, while more moderate pain and suffering payments were made to victims suffering a permanent 5% loss of income or a loss of income for one full year. As will be recalled, the distribution of victims falling into these categories can be summarised as follows:

Loss of income (long-term and short-term effects)									
Reduction in earning power	Perm 100%	Perm 50%	Perm 25%	Perm 5%	1 year (100% income)	1 month (100% income)	1 week (100% income)	None	Total
Murder	100%	0%	0%	0%	0%	0%	0%	0%	100%
Attempted murder	0.5%	1.0%	1.5%	15.0%	4.1%	18.0%	18.9%	41.0%	100%
Rape	0%	0.5%	0.5%	5.0%	0.9%	37.6%	51.7%	3.8%	100%
Assault GBH	0.1%	0.5%	1.0%	5.0%	2.8%	14.0%	33.5%	42.8%	100%
Indecent assault	0%	0%	0%	5.0%	0.0%	4.8%	19.0%	71.3%	100%
Aggravated Robbery	0%	0%	0.5%	2.0%	1.0%	19.4%	38.8%	37.8%	100%

These proportions reflect the character of the victim's injuries and are, therefore, unaffected by the employment status of the victim.

It is apparent that the vast majority of victims of all crimes except murder will not qualify for compensation for what we have called pain and suffering compensation, though, as was explained above, in the case of murder victims, this payment should really be deemed an *ex gratia* payment as there is no provision for the payment of pain and suffering compensation to the dependants of the deceased in South African law. Given that unemployed victims will also not qualify for compensation for lost income and funeral or medical expenses, they will receive nothing at all.



If, therefore, compensation were based on the principles of our law to victims of violent crime who were both unemployed and did not qualify for compensation for their pain and suffering, 30-40% of all victims (depending on what crime they experienced) would not receive any significant payment, as reflected in the next table.

<b>Unemployed victims not qualifying for P&amp;S</b>						
	<b>Attempted murder</b>	<b>Rape</b>	<b>Assault GBH</b>	<b>Indecent assault</b>	<b>Robbery</b>	<b>Total</b>
0-19	375	4,783	19,267	421	10,072	34,917
20-29	3,809	11,524	43,087	1,013	16,591	76,026
30-39	3,388	6,144	22,640	540	8,555	41,267
40-59	1,773	3,322	13,594	292	4,803	23,784
60-	556	682	2,749	60	1,022	5,069
<b>Total</b>	<b>9,901</b>	<b>26,455</b>	<b>101,338</b>	<b>2,326</b>	<b>41,043</b>	<b>181,063</b>

If these victims were to receive a token payment as an expression of sympathy for their victimisation, 181 063 people might qualify.

That said, there is no reason in principle why all unemployed victims, who do not qualify for compensation for pain and suffering, need to receive an identical payment in recognition of their suffering. Instead, different crimes could be treated differently. Thus, rape and indecent assault might qualify for payment, while attempted murders, assaults and robberies might receive nothing.

If token payments made to victims of rape and indecent assault were equal to the compensation for pain and suffering of victims experiencing severe injuries (i.e. R15 182), then the impact on the VCS would be an additional R436 951 742. Such a payment is, however, much larger than the average pay outs for lost income to employed rape victims. In light of this, a more realistic value to provide for a token sum to be paid to unemployed rape and indecent assault victims. If this were R2 500, then the impact on the VCS would be R71 952 500.

### **6.6.2 Disproportionate victimisation**

All the above costings are premised on the assumption that victims of violent crime are as likely to be employed or unemployed as are all other people in their particular age/race demographic group. Although data in this regard are lacking, there is at least some evidence that victimisation is associated with poverty, which is itself associated with unemployment.<sup>100</sup> If this is the case, then there is good reason to adjust some of the parameters used above to reflect this.

The impact on the costs of the VCS if victims are more likely to be unemployed than other members of their age/race cohort would be:

- significantly to reduce the amount payable to victims for the loss of income (on the basis that fewer victims will have been earning and income); and
- to increase the number of victims who would qualify for **ex gratia** payments.

Since **ex gratia** payments are generally lower than loss of income payments, the net effect of victims being disproportionately drawn from the ranks of the unemployed would be to reduce the overall cost to the VCS. Obviously, if no token payments to the unemployed victim are made, then the reduction in the cost to the VCS would be that much more dramatic.

The effects of victims being 10% more likely to be unemployed than the appropriate demographic average is captured in the following table:

Unemployed victims (change if victims are 10% more likely to be unemployed than pop. ave.)							
	Murder	Attempted murder	Rape	Assault GBH	Indecent assault	Robbery	Total
0-19	-	-	-	-	-	-	-
20-29	735	1,054	2,570	10,986	221	4,085	19,651
30-39	1,004	1,440	2,320	9,157	200	3,478	17,598
40-59	586	840	1,295	5,565	112	1,987	10,385
60-	206	276	340	1,413	29	442	2,706
<b>Total</b>	<b>2,531</b>	<b>3,610</b>	<b>6,525</b>	<b>27,121</b>	<b>562</b>	<b>9,991</b>	<b>50,339</b>

<sup>100</sup> Although Statistics SA (1998: 41) report that persons earning between R0 and R3 000 per annum were slightly more likely to be victims of violent crime than were people in other income categories. There are, however, some doubts about the way these data are presented, so one should not place too much reliance on this statistic.

The reduction in the payments for lost income is captured in the following table.

Impact of victims' being 10% more likely to be unemployed								
		Murder	Att. murder	Rape	Assault GBH	Ind. ass.	Robbery	Total
	Number of victims	25,644	36,773	70,400	292,570	6,064	110,399	541,849
	Employed victims	2,531	3,610	6,525	27,121	562	9,991	50,339
Long-term income losses	Number losing l-t earning capacity	2,531	660	391	1,790	28	250	5,640
	Ave. value of lost l-t income	R 205,219	R 24,257	R 30,032	R 27,526	R 10,441	R 24,936	R 53,735
	<b>Total</b>	<b>R 519,375,358</b>	<b>R 15,760,755</b>	<b>R 11,756,816</b>	<b>R 49,271,994</b>	<b>R 293,383</b>	<b>R 6,228,417</b>	<b>R 602,686,724</b>
Short-term income losses	income	-	1,480	5,888	6,441	133	97	14,040
	Ave. value of lost s-t income	R 0	R 260	R 381	R 202	R 75	R 282	R 200
	<b>Total</b>	<b>R 0</b>	<b>R 384,909</b>	<b>R 2,241,002</b>	<b>R 1,302,141</b>	<b>R 9,977</b>	<b>R 27,482</b>	<b>R 3,965,511</b>
<b>Total</b>	<b>R 519,375,358</b>	<b>R 16,145,664</b>	<b>R 13,997,819</b>	<b>R 50,574,135</b>	<b>R 303,360</b>	<b>R 6,255,900</b>	<b>R 606,652,235</b>	

It appears that the VCS would have to pay over 50 000 fewer people loss of income compensation, saving more than R606 million. At the same time, many of these people would qualify for *ex gratia* payments if these were being made to unemployed victims who did not qualify for compensation for their pain and suffering.

Additional unemployed victims not qualifying for P&S per 10% increase in unemployed as proportion of victims						
	Attempted murder	Rape	Assault GBH	Indecent assault	Robbery	Total
0-19	-	-	-	-	-	-
20-29	313	911	3,776	80	1,495	6,574
30-39	427	822	3,147	72	1,272	5,742
40-59	249	459	1,913	40	727	3,389
60-	82	121	486	11	162	860
<b>Total</b>	<b>1,071</b>	<b>2,313</b>	<b>9,322</b>	<b>203</b>	<b>3,655</b>	<b>16,565</b>

Using the same criteria as above (R2 500 per rape and indecent assault victim), **ex gratia** payments would cost an extra R6 290 000 for every 10% more likely a crime victim is to being unemployed.

### 6.6.3 Summary and conclusion

Adjustments 2		
	Total: 100% murder victim's have dependants	Total: 50% murder victim's have dependants
Running total	R 4,045,474,391	R 2,096,159,344
Plus compensation to families of unemployed murder victims	R 537,332,979	R 268,666,490
<b>Total</b>	<b>R 4,582,807,371</b>	<b>R 2,364,825,833</b>
Impact of a R2,500 payment to all unemployed rape and indecent assault victims who don't qualify for compensation for P&S	R 71,952,500	R 71,952,500
<b>Total</b>	<b>R 4,610,219,871</b>	<b>R 2,436,778,333</b>
Less reduction to compensation for lost income resulting from every 10% more likely victims are to being unemployed	-R 606,652,235	-R 606,652,235
<b>Total</b>	<b>R 4,003,567,636</b>	<b>R 1,830,126,099</b>
Plus increased payments to rape and indecent assault victims	R 6,290,000	R 6,290,000
<b>Total</b>	<b>R 4,009,857,636</b>	<b>R 1,836,416,098.79</b>

The above table adds the adjustments discussed to those listed earlier. If the compensation payable to unemployed murder victims is added (again, the rightmost column reflects the impact of an assumption that only 50% of murder victims leave dependants), then the impact of an **ex gratia** payment to rape and indecent assault victims is added. Finally the impact of a 10% over-representation of the unemployed in the population of victims was included as a negative impact on loss of income compensation and an increase to the **ex gratia** payments.

Since this amount is likely to be well in excess of what is likely to be affordable, it seems likely that policy adjustments will have to be made. A number of alternative policy options are considered below.

### 6.7 Limiting Payments only to 'Blameless Victims'

One of the most obvious ways in which to reduce the number of compensatory payments that need to be made, and keeping in line with international approaches, is

to reduce the pool of eligible recipients by setting disqualifying criteria in terms of which otherwise eligible victims of violent crime might be deemed ineligible to receive compensation. This method could be characterised in the terminology we developed earlier as reflecting a tightening of the coverage criteria of the VCS, reducing the number of claims that would eventually be paid.

The most common form of exclusion used by compensation schemes in other jurisdictions is to target so-called 'deserving victims' whose conduct before, during or after their criminal victimisation is entirely beyond reproach. Such a category could exclude some or all people who:

- have criminal convictions for some or all forms of criminality;
- have a history of gang involvement;
- are engaged in provocative or risky behaviour at the time of the incident such as being involved in a fight; or
- fail to assist the police or prosecution fully in the course of the investigation of the complaint lodged as a result of the incident.

Reducing the coverage of the VCS in this manner could result in dramatic reductions in the amounts that the VCS would be liable to pay, even before other adjustments are made.

### **6.7.1 Prior criminal convictions**

The Criminal Record Centre of the SAPS has approximately 4.5 million files of individuals with records, or about 10.5% of South Africa's population. The 4.5 million files will contain some files on persons who are now deceased, or fragmented files where the records of one person are kept in two or more different files. Quantifying the degree of error is impossible, but one could probably assume that about 4 million files are 'live'.<sup>101</sup> These 4 million files represent 9.3% of all South Africans.

Since by far the majority of criminal records relate to adults, and almost all relate to persons over the age of 15, that would imply that about 30% of the 13.4 million males over the age of 15 have a criminal record.<sup>102</sup> If it is assumed to be more likely

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<sup>101</sup> Personal communication, Snr Sup Pienaar, SAPS Criminal Record Centre, July 2000.

<sup>102</sup> . Even if this estimate is dramatically overstated, it can be safely assumed that at least 15% of all males over the age of 18 have a criminal record.

that males are victimised in violent crimes (with the exception of rape and indecent assault victims, and the possible exception of robbery victims) and given the number with criminal records, this could disqualify them from obtaining compensation from a VCS. The impact on the potential costs of a VCS would therefore be:<sup>103</sup>

<b>Impact of 7.5% of victims over the age of 18 not qualifying for compensation</b>						
	<b>Murder</b> 100% have dependants	<b>Murder</b> 50% have dependants	<b>Att. Murder</b>	<b>Ass. GBH</b>	<b>Total</b> 100% of murder victims have dependants	<b>Total</b> 50% of murder victims have dependants
Long term income	R 258,852,550	R 129,426,275	R 7,879,845	R 24,557,863	R 291,290,258	R 161,863,983
Short-term income	R 0	R 0	R 192,441	R 1,372,339	R 1,564,781	R 1,564,781
Funeral costs	R 4,344,791	R 2,172,395	R 0	R 0	R 4,344,791	R 2,172,395
Medical costs	R 0	R 0	R 279,241	R 1,086,166	R 1,365,407	R 1,365,407
Pain and suffering (severe)	R 29,199,916	R 14,599,958	R 1,256,130	R 5,330,157	R 35,786,204	R 21,186,246
Pain and suffering (minor)	R 0	R 0	R 1,241,061	R 4,027,206	R 5,268,266	R 5,268,266
murder victims	R 40,299,973	R 20,149,987	R 0	R 0	R 40,299,973	R 20,149,987
<b>Total</b>	<b>R 332,697,231</b>	<b>R 166,348,615</b>	<b>R 10,848,718</b>	<b>R 36,373,732</b>	<b>R 379,919,681</b>	<b>R 213,571,065</b>

The net impact of assuming that 7.5% of victims have criminal records which would disqualify them from receiving compensation from a VCS is a reduction of R380m if all murder victims are assumed to have dependants or R213.6 million if 50% of murder, the victims having no dependants, would not have resulted in compensation having to be paid out by the VCS anyway.

### **6.7.2 Prior gang involvement**

In the UK and Northern Ireland a victim's association with a gang or other known criminals (especially violent political groupings) can disqualify that victim from receiving compensation from the VCS.

<sup>103</sup> It should be noted that the assumption that 7.5% of victims of murders, attempted murders and assaults have a criminal record is probably quite conservative, and therefore requiring victims to have a suitably clean criminal record as a prerequisite for qualifying for a VCS compensatory payment may well reduce the cost of a VCS by more than has been estimated here.

In South Africa, it is unlikely that data of sufficient quality would be available to either the police or the VCS to make an assessment of the victim's association with criminals. In addition, there exists no data detailing the number of persons involved with gangs. For these reasons it is proposed that this criterion not be applied by any VCS that might be established in SA, and that the prior criminal conviction criterion be applied in its stead.

### **6.7.3 Risky behaviour at the time of victimisation**

It is impossible to ascertain what proportion of victims can be said to be partially responsible for their own victimisation. There exists little direct evidence as to the proportion of victims of violent crimes who have contributed to their injury, through for example, excessive use of alcohol or other drugs.

Research by officers of the Medical Research Council has revealed that 56.8% of all murder victims sampled had positive levels of alcohol in their blood (no figures for drug usage were available), while only 23.1% of people presenting to trauma clinics at hospitals had neither used alcohol nor used drugs prior to their injury. Whilst every victim who consumed alcohol is not necessarily culpable in their own victimisation, it might be fairly argued that the alcohol content of one's blood at the time of one's injury is relevant to determining a degree of culpability. For the purposes of argument, it is assumed that 75% of victims who had consumed alcohol were in some way culpable.<sup>104</sup> Such victims may either be ineligible or partially ineligible for compensation. If 50% of such victims had their compensation halved and 50% lost all right to compensation, the impact the VCS would be to reduce the cost of compensation by R2.3bn if all murder victims had dependants or by about 45% for murder, attempted murder and assault GBH, as reflected in the following table.

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<sup>104</sup> The case study reported in *Chapter Five* above was unable to provide definitive data in this regard since, as reported in 5.3.11, police dockets contain little evidence about alcoholic consumption on the part of victims. However, there was evidence that in at least 37% of cases, victims were either involved in a crime or a fight at the time of their injury. Given the disincentive to tell the truth in these circumstances, it can be assumed that these proportions ought to be a good deal higher.

<b>Impact of reducing payouts to victims who have alcohol in their blood</b>						
	<b>Murder</b> 100% have dependants	<b>Murder</b> 50% have dependants	<b>Att. Murder</b>	<b>Ass. GBH</b>	<b>Total</b> 100% of murder victims have	<b>Total</b> 50% of murder victims have dependants
Total payout to employed victims without adjustment	R 3,898,630,095	R 1,949,315,048			R 3,898,630,095	R 1,949,315,048
Total payout to unemployed victims without adjustment	R 537,332,979	R 268,666,490			R 537,332,979	R 268,666,490
<b>Total payout</b>	<b>R 4,435,963,075</b>	<b>R 2,217,981,537</b>	<b>R 144,649,578</b>	<b>R 484,983,088</b>	<b>R 5,065,595,741</b>	<b>R 2,847,614,203</b>
Proportion of victims in contact with alcohol	58.6%	58.6%	70.0%	70.0%		
Reduction	-R 1,949,605,771	-R 974,802,886	-R 75,941,028	-R 254,616,121	-R 2,280,162,921	-R 1,305,360,035
<b>Total payout</b>	<b>R 2,486,357,303</b>	<b>R 1,243,178,652</b>	<b>R 68,708,549</b>	<b>R 230,366,967</b>	<b>R 2,785,432,820</b>	<b>R 1,542,254,168</b>
Reduction as a proportion of original cost of payouts	44.0%	44.0%	52.5%	52.5%	45.0%	45.8%

#### **6.7.4 Failure to assist the police or prosecution**

Numerous factors currently inhibit the successful investigation, prosecution and punishment of offenders, with the most frequently identified problems being listed below.

- The lack of resources in policing hinders the effective investigation of crime because of the sheer volume of crime relative to the numbers of police officers and prosecutors. Inadequate attention is therefore paid to each case, with gaps and deficiencies emerging in the quality of the docket that eventually goes to court. This problem is accentuated by the relative absence of technological and forensic investigative support, weakening investigations and making them more labour-intensive.
- The absence of infrastructure in the police and courts and distances between victims, witnesses, police and courts make accessing justice difficult for many people.
- Public reluctance to provide evidence to the police and to testify in court is a heritage of apartheid, which is accentuated by the fact that, for many South Africans, opening a case at a police station is the only contribution they feel they need to make to the successful conclusion of the investigation. This



results in a large proportion of cases being closed undetected or failing in court, as reflected in the following table.<sup>105</sup>

The disposition of cases through the criminal justice system								
	Recorded crimes	Cases closed undetected	% of recorded crimes	Cases referred to court	% of recorded crimes	Cases w/drawn in court	% of recorded crimes	% of cases to court
Murder	24,875	8,474	34%	11,446	46%	2,038	8%	18%
Att. Murder	29,418	12,368	42%	9,009	31%	4,317	15%	48%
Rape	49,280	15,037	31%	22,121	45%	10,103	21%	46%
Assault GBH	234,056	46,170	20%	89,482	38%	40,790	17%	46%
Indecent ass.	4,851	822	17%	2,023	42%	906	19%	45%
Agg. Robbery	88,319	68,085	77%	11,016	12%	4,496	5%	41%
<b>Total</b>	<b>430,799</b>	<b>150,956</b>	<b>35%</b>	<b>145,097</b>	<b>34%</b>	<b>62,650</b>	<b>15%</b>	<b>43%</b>

As is apparent from the above table, 35% of all crimes relevant to the VCS are closed, with robberies having by far the highest proportion of such closures since it is most frequently a crime committed by strangers to the victim. However, a large number of cases (15% of recorded crimes, 43% of crimes that get to court) are withdrawn in court despite there being at least sufficient evidence to make an arrest.

There appears to be no quantified study as to the reasons why cases fail to be successfully investigated and prosecuted in SA. It may be appropriate to assume that one third of those cases, or 5% of all cases recorded by the police, fail because the victim does not co-operate with the criminal justice system. If this were correct, it could amount to a 5% 'saving' to the VCS, with compensation being withheld due to the behaviour of the victim after the reporting of the crime.

<sup>105</sup> Further evidence in this regard is the very high rate at which complainants withdrew cases reported in Randburg and, especially Mamelodi, reported in 5.3.16.

## 6.8 Conclusion and Summary

<b>Summary table</b>		
	<b>Total: 100% murder victim's have dependants</b>	<b>Total: 50% murder victim's have dependants</b>
<b>Total</b>	R 4,714,701,518	R 4,714,701,518
Less "over-compensation" of those eligible for permanent or 12 month disability grants:	-R 95,224,389	-R 95,224,389
<b>Total</b>	<b>R 4,619,477,130</b>	<b>R 4,619,477,130</b>
Less income compensation for murder victims with no dependants (assume proportion is 50%)	R 0	-R 1,949,315,048
<b>Total</b>	<b>R 4,619,477,130</b>	<b>R 2,670,162,082</b>
Plus compensation for rape survivors	R 140,800,000	R 140,800,000
<b>Total</b>	<b>R 4,760,277,130</b>	<b>R 2,810,962,082</b>
Less "over-compensation" of insured victims	-R 714,802,739	-R 714,802,739
<b>Total</b>	<b>R 4,045,474,391</b>	<b>R 2,096,159,344</b>
Plus compensation to families of unemployed murder victims	R 537,332,979	R 268,666,490
<b>Total</b>	<b>R 4,582,807,371</b>	<b>R 2,364,825,833</b>
Impact of a R2,500 payment to all unemployed rape and indecent assault victims who don't qualify for compensation for P&S	R 71,952,500	R 71,952,500
<b>Total</b>	<b>R 4,610,219,871</b>	<b>R 2,436,778,333</b>
Less reduction to compensation for lost income resulting from every 10% more likely victims are to being unemployed	-R 606,652,235	-R 606,652,235
<b>Total</b>	<b>R 4,003,567,636</b>	<b>R 1,830,126,098</b>
Plus increased payments to rape and indecent assault victims	R 6,290,000	R 6,290,000
<b>Total</b>	<b>R 4,009,857,636</b>	<b>R 1,836,416,098</b>

We have covered a great deal of territory in the last 8 sections, outlining estimates of the cost implications of various permutations of VCS policies, which might be applied in South Africa. In summary, these findings are:

These numbers are, self-evidently, large, so the question arises as to whether the assumptions on which they are based exaggerate the amounts that a VCS might have to pay to victims in compensation. Obviously, this is impossible to tell. However, we believe that, in general, the assumptions that we have made are likely to result in our understating of the true costs that a VCS premised on these policies would incur. The following table sets out our reasons for making this conclusion.

Assumption	Degree of Conservativeness of estimate	Reason
Use of average income in age/race categories	Very conservative assumption	Since men generally earn more than women, and since most victims of crime are men (see 5.3.4) the use of the average, which includes the salaries of women, will tend to understate the true loss of income associated with crime.
Crime is distributed between employed and unemployed proportionately to their representation in the population as a whole	Not conservative	<p>The greater the proportion of unemployed among the population of victims, the less loss of income compensation is due.</p> <p><i>See section 6.6.</i></p>
Proportion of surviving victims who suffer long-term disabilities	Uncertain, but, on balance, conservative	<p>We have assumed that the proportion of survivors of violent crime who are permanently injured to a high degree is very low (3% for attempted murder, 1.6% for Assault GBH). This implies that only about 2% of all people who survive potentially fatal attacks will suffer long-term serious disability. Thus the gap between a fatal injury and a permanently injurious one is assumed to be very large indeed. In fact, under our assumptions far more people die in violent crime than are permanently and severely injured.</p> <p>We have, however, been slightly less conservative regarding the number of attempted murder victims who suffer a permanent 5% decline in their productive capacity.</p>
Less than 1% of surviving victims require medical beyond that provided by the state AND such care costs R4 500	Very conservative	There are far more victims in need of medical assistance after violent victimisation, and these costs are quite likely to exceed R4 500.

Assumption	Degree of Conservativeness of estimate	Reason
Under-reporting rates in 6.5.1	Uncertain, on balance, conservative	<p>It is not absolutely clear what the rate for under-reporting violent crime is in SA, although there is some evidence that it is quite high. Statistics SA (1998, 57) reports, for instance, that assault, robbery and sexual offences are under-reported by at least 50%, and that even murder is under-reported by 17%.</p> <p>The latter finding, however, seems rather high, hence the reduced under-reporting rates assumed in the report.</p> <p>If under-reporting levels are higher than has been assumed here, it would tend to raise the cost of a VCS.</p>
Inclusion of withdrawn and unfounded cases	Uncertain	<p>The inclusion of these cases might plausibly be seen as inappropriate. However, in the absence of a quantified study on the reasons for the withdrawal of cases by the complainant, it seems that one ought to include these cases since the creation of a VCS would tend to encourage victims to try to proceed with their cases.</p> <p>The unfounded cases are such a small proportion of the total that their inclusion makes little difference to the final results.</p>
Only 50% of murder victims have dependants who can apply for compensation	Uncertain, on balance, conservative	<p>We have no data in this regard, but would assume that this is a reasonably conservative estimate of this variable.</p>

## 6.9 A Victim Compensation Scheme Targeted at the Indigent

### 6.9.1 Introduction

The approach taken thus far in this report has been the construction of a model of the costs of a VCS to compensate victims of crime primarily for the financial losses that they have sustained. As such, the *raison d'être* of the VCS is the fact of economic loss consequent on the suffering of a violent, criminal victimisation. While such an approach is congruent with the approaches of almost all victim compensation schemes elsewhere in the world, there are different precedents to be found in foreign jurisdictions such as Israel, Spain and Northern Ireland.

A VCS need not be designed primarily to deal with the needs of victims of violent crime, but can aim to serve other social ends such as the expression of sympathy to victims of 'terrorism' for example. This could serve as a precedent for designing a VCS that served a goal other than the compensation of victims. One such goal

might be to target those most in need to ensure they are not even further disadvantaged by violent crime.

The impact of violent crimes on poor victims is often disproportionately large relative to the impact of similar crime on the lives of richer victims. The reasons for this are set out below.

- Various social ills – such as alcoholism, limited educational prospects, hopelessness and marginalisation – affect poorer communities more than richer ones.
- Poorer communities, particularly where unemployment is widespread, are often less stable, with the various institutions necessary for a stable social structure – such as families, neighbourhoods, schools and churches – constrained by the lack of resources and the various social ills attendant on poverty.
- In poorer communities the criminal justice system is also often at its weakest.
- Poorer people are often less able to protect themselves and their families from violent crime through improved security.
- The absence of medical schemes and insurance mean that the poor are usually less able to deal with the financial impact of crime on their lives.
- The medical care received by the poor is generally of a lower standard to that of the rich with the medical impact of a violent crime, therefore, tending to be that much greater. This problem is particularly acute for rehabilitative care and psychological support services.

For all these reasons, the impact of crime on the poor in SA would tend to be greater than its impact on the rich. This can reinforce socio-economic factors that prevent the poor from improving their life chances and raising their incomes and standard of living. The VCS could, therefore, be constructed as part of a holistic social safety net, and not simply as an expression of sympathy with the victims, in an attempt to ameliorate the impact of violent crime.

Establishing a VCS based on targeting the poor is quite different from that of a more victim-oriented approach in which the victim's victimisation is the basis for her/his receiving compensation. In this approach, a victim receives compensation only if that victim is poor, and the compensation, instead of being linked to the economic impact of the crime on the victim's life is linked instead to welfare objectives or to provide the most vulnerable victims with a minimal financial 'safety net'. For that reason, the VCS need not base its payment of compensation on the real losses suffered by the victim, but could, instead, adopt a flexible approach, setting the

amount of each payment at affordable levels. Thus, if the VCS has R1bn to distribute it could set compensatory payments at levels quite different from those it would set if only R100m were available.

If this were the rationale for the establishment of a VCS in SA, it would have profound implications for both the coverage and generosity variables of the scheme, with important consequences for the overall cost. This section seeks to assess these costs on the basis of various alternative assumptions.

### 6.9.2 Assumptions and beneficiaries

The basic approach to costing a VCS premised on the need to reduce the impact of victimisation on the life chances of the poor is similar to that used above, with coverage and generosity parameters of the scheme determined, while assessing the value of total compensation to be paid out. In other words, we have to determine how many poor people are victims of violent crime and how much each would receive as compensatory payments.

<b>Unemployed victims and victims earning less than:</b>				
	<b>Unemployed</b>	<b>R15,000 pa</b>	<b>R20,000 pa</b>	<b>R30,000 pa</b>
Murder	8,880	12,430	21,357	24,226
Attempted murder	12,710	17,801	30,430	34,544
Rape	28,428	38,964	59,085	66,888
Assault GBH	112,335	149,541	240,365	276,264
Indecent Assault	2,449	3,356	5,089	5,761
Robbery	42,740	57,354	83,938	93,300
<b>Total</b>	<b>207,541</b>	<b>279,448</b>	<b>440,265</b>	<b>500,984</b>

Using the same assumptions about the level and distribution of crime described above, the number of victims of crime falling into the various income brackets is set out in the accompanying table.

As is apparent, on the assumptions set out above as to the distribution of crime amongst race and age groups, together with unemployment and income data, approximately 207 500 of the 541 800 victims of violent crime were unemployed at the time of the offence, 279 400 were either unemployed or were earning less than

R15 000 per annum, 440 300 were unemployed or earning less than R20 000 per annum and 501 000 were unemployed or earning less than R30 000. Thus, if poverty is defined as having an income of less than R20 000 per year, approximately 440 000 people might qualify for compensation.<sup>106</sup>

Yet, the mere fact of victimisation combined with poverty should not make the victim eligible for compensation since some of the crimes considered (notably attempted murder, assault and robbery) may not result in severe injury, and ought not, therefore, to create a basis for compensation. An argument may, however, be made that compensation ought to be paid to all victims.

For the purposes of this model, we have assumed that all families of poor murder victims and all victims of rape ought to receive compensation, while only those experiencing 100%, 50% or 25% disabilities as a result of their victimisation of other crimes (attempted murder, assault GBH, indecent assault and robbery) will receive compensation. This implies that the number of eligible beneficiaries would be reduced, as per the table below.

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<sup>106</sup> The calculation of the number of poor victims uses the average income of persons in particular age/race groups as its basic data. Strictly speaking, these data are inadequate for this calculation and more data would be required on the distribution of income among different wage earners within each age/race population since some young Africans earn significantly more than R14 000 p.a. average for that group. Using these data would unnecessarily complicate matters since we do not know enough about the distribution of crime between income brackets. We have, therefore, assumed that the errors that result from the approach we have used balance out and that the number of people earning significantly more than the average for their age/race grouping who are victimised by crime is balanced by the number earning less than their average in groups whose average income significantly exceeds the levels we have used to define poverty.

<b>Unemployed victims and victims earning less than:</b>				
	<b>Unemployed</b>	<b>R15,000 pa</b>	<b>R20,000 pa</b>	<b>R30,000 pa</b>
Murder	8,880	12,430	21,357	24,226
Attempted murder	381	534	913	1,036
Rape	28,428	38,964	59,085	66,888
Assault GBH	1,797	2,393	3,846	4,420
Indecent Assault	122	168	254	288
Robbery	214	287	420	467
<b>Total</b>	<b>39,822</b>	<b>54,776</b>	<b>85,875</b>	<b>97,325</b>

Depending on how poverty is defined, therefore, there might be between 40 000 and 100 000 victims of violent crime per year who would qualify for compensation. The next step is to define the generosity variables.

There are two ways in which this might be done:

- a single amount payable to any eligible victim may be set based on the nature of the crime, with such an amount being payable to any victim earning below the qualifying amount;
- alternatively, payments to victims could be made on a sliding scale, with poorer victims receiving larger compensatory payments than richer victims.

For the purposes of this exercise, we have assumed that different crimes would be compensated at different levels and that richer victims who are eligible would be paid less than poorer ones. The relationship between the values of the compensatory payments, as well as the amounts payable are set out in the following tables.



Base amount and ratios						
	% of amount to murder victim	Amount	% of amount to unemployed	% of amount to victims earning between R0 and R15,000	% of amount to victims earning R15,000 to R20,000	% of amount to victims earning R20,000 to R30,000
Murder	100%	R 5,000	100%	80%	50%	25%
Attempted murder	50%	R 2,500	100%	80%	50%	25%
Rape	75%	R 3,750	100%	80%	50%	25%
Assault GBH	50%	R 2,500	100%	80%	50%	25%
Indecent assault	50%	R 2,500	100%	80%	50%	25%
Robbery	0%	R 0	100%	80%	50%	25%

It is therefore assumed that unemployed murder victims' families or dependants would receive R5 000 each, while unemployed rape victims would receive R3 750 each. Victims of the same crimes earning R25 000 per year, however, would qualify for R1 250 and R938 respectively. These amounts, it is submitted, are extremely conservative. Indeed, one might even question whether payments that are this low could be justified, given the administrative and other costs associated with making them.

Payments				
	Unemployed victims	Victims earning from R0 to R15,000 pa	Victims earning from R15,000 to R20,000 pa	Victims earning from R20,000 to R30,000 pa
Murder	R 5,000	R 4,000	R 2,500	R 1,250
Attempted murder	R 2,500	R 2,000	R 1,250	R 625
Rape	R 3,750	R 3,000	R 1,875	R 938
Assault GBH	R 2,500	R 2,000	R 1,250	R 625
Indecent Assault	R 2,500	R 2,000	R 1,250	R 625
Robbery	R 0	R 0	R 0	R 0
Average	R 2,708	R 2,167	R 1,354	R 677

Using these figures, the cost consequences for a VCS are:

Total cost					
	Unemployed	R0 - R15,000pa	R15,000 - R20,000 pa	R20,000 - R30,000 pa	Total
Murder	R 44,400,208	R 14,201,830	R 22,316,978	R 3,586,360	R 84,505,376
Attempted murder	R 953,258	R 305,469	R 473,593	R 77,140	R 1,809,459
Rape	R 106,603,728	R 31,610,304	R 37,725,600	R 7,315,440	R 183,255,072
Assault GBH	R 4,493,407	R 1,190,596	R 1,816,479	R 358,983	R 7,859,466
Indecent Assault	R 306,069	R 90,756	R 108,314	R 21,003	R 526,142
Robbery	R 0	R 0	R 0	R 0	R 0
<b>Total cost</b>	<b>R 156,756,670</b>	<b>R 47,398,955</b>	<b>R 62,440,964</b>	<b>R 11,358,926</b>	<b>R 277,955,515</b>

The consequences of making compensation payments on this basis to unemployed victims of crime would be about R156.8m, with an additional R47.4m payable if victims earning between R0 and R15 000 were included. Paying all victims along the lines described above would cost an estimated R278m. The costs of a VCS, therefore, rapidly approach becoming unaffordable even at relatively low levels.

This problem could be mitigated if the VCS had even narrower coverage. Examples could include compensation payments of R5 000 only to the families of poor murder victims.<sup>107</sup> If one were then to exclude from consideration those cases in which the murder victims had no dependants, this number would be significantly reduced (possibly by up to 50%). If from the remaining victims, only the families of 'blameless' victims' were to obtain compensation, the amounts would again be reduced.

The case of rape victims, who outnumber murder victims, is more difficult since none would be excluded by virtue of not having dependants, or by virtue of having contributed to their own victimisation. If R5 000 were paid to each victim, the total cost would be R335m, whereas if R3 000 was paid this would be reduced to R201m.

### 6.9.3 Conclusion

Although there is merit in the argument that a VCS ought to target poor victims of violent crime in an effort to provide the poor with a 'safety net' following victimisation,

<sup>107</sup> Even if all income earners up to R30 000 pa were included (i.e. 24 200 victims), the total cost would be about R121m.

the scale of the problem of violent crime stands in the way of setting up an affordable mechanism that does not simply make token payments to victims.

If all eligible victims were to obtain compensation, then the amount paid to each may be so low as to render the whole process somewhat counter-productive, creating the possibility of increased frustration and exacerbating the sense of victimisation of victims. The administration of such a system would also cost more than the cost of the payment of compensation, unless potentially administered through an existing body.

### **6.10 Administration costs**

It is, of course, extremely difficult to determine the cost of administering a VCS in South Africa given the absence of any historical data in this regard and the uncertainties about the character and scale of such a scheme.

It is, however, vital for the success of any scheme that there be no illusions that existing administrative structures – be they the police, courts or welfare offices – are equipped to take on the burden of administering a VCS. There is no spare capacity in these structures for accepting such responsibilities without the provision of additional resources. This assessment is confirmed through interviews with relevant departmental senior policy-makers and administrators.

The consequence of this is that infrastructure and personnel will be required to set up and run a VCS. To do so, a sense of the potential scale of the administration will have to be developed, which is impossible without further work being undertaken on the structure and scale of a VCS. Considering a possible administrative process to be followed in applications would assist in this regard.

#### **6.10.1 Costing the administration of the scheme**

On the basis of the assumption that victims or dependants of victims of the crimes of murder, attempted murder, rape, indecent assault, assault GBH and aggravated robbery would have a claim to compensation, the number of applicants would probably equate to the number of crimes (including those we have assumed occur,

but which are currently unreported). This would amount to about 542 000 applications per annum.

<b>Victims of crime</b>	
Murder	25,644
Attempted murder	36,773
Rape	70,400
Assault GBH	292,570
Indecent assault	6,064
Aggravated Robbery	110,399
<b>Total</b>	<b>541,849</b>

A number of the applicants who were victimised in assaults, attempted murders and robberies, may, however, not have been injured at all and would, therefore, not qualify for compensation. A more realistic number of potential applicants would therefore be approximately 279,000.

<b>Injured victims</b>	
Murder	25,644
Attempted murder	14,760
Rape	70,400
Assault GBH	117,438
Indecent assault	6,064
Aggravated Robber	44,314
<b>Total</b>	<b>278,620</b>

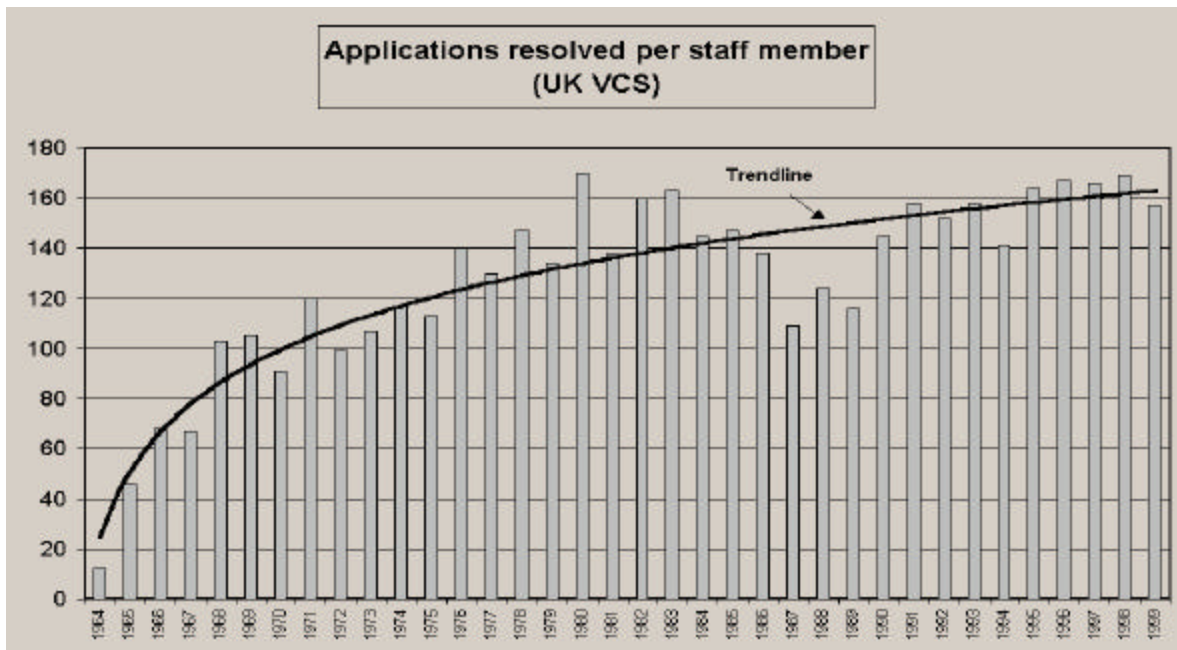
Depending on the criteria used, a very large number of these applications may be rejected on grounds such as that victims have contributed to their own victimisation or have criminal records. Moreover, it is possible, as was suggested earlier, that only a select group of victims will be eligible for compensation if poor victims or only victims of rape and murder are to qualify.

Likely applications					
	Crimes	Percent uninsured	Uninsured	Percent 'chancers'	Applications
Murder	25,644	97%	24,888	0%	24,888
Attempted murder	14,760	93%	13,676	20%	16,411
Rape	70,400	98%	68,816	20%	82,579
Assault GBH	117,438	94%	110,796	20%	132,956
Indecent assault	6,064	98%	5,927	20%	7,113
Aggravated Robbery	44,314	86%	38,132	20%	45,758
<b>Total</b>	<b>278,620</b>	<b>94%</b>	<b>262,235</b>	<b>18%</b>	<b>309,704</b>

If 278 600 cases are referred to the VCS, a number will be eliminated because they are fully insured (which, we assumed above, meant all those earning more than R60 000 per year). A significant number of applicants will also apply either fraudulently or without comprehending the preconditions for eligibility, which may increase the number of applications to 310 000 per year. The number of staff required to process such applications efficiently and without creating backlogs will, therefore, need to be determined. In this regard, much depends on the character and scope of the scheme, with more staff needed the more supporting evidence is required to be followed-up and assessed.

In the UK, over the 35 years of operation of the VCS, it has been determined that one staff member is required for every 127 applications resolved.<sup>108</sup> Using that ratio, a VCS in SA would require 2,439 staff members to resolve the estimated 310,000 applications received annually.

<sup>108</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office Justice and Victims Unit , 19 April, 2000.



It is unlikely that a VCS in SA will achieve such a ratio. It would be wise to assume that, even under the best possible circumstances, we would not achieve a ratio of much more than 1:100 in the first few years of operation. If that is the case, then approximately 3 100 staff would be required to run the VCS.

In the current financial year, South Africa's 1 130 000 civil servants employed by national and provincial governments earn, on average, R81 163 per annum. Thus, with 2,439 staff, salary costs alone can be expected to be about R198 million while with 3100 staff, the VCS will have a wage bill around R252 million per year.

The VCS in the UK resolves about 52% of their 80,000 annual applications with an award of funds. Since there are numerous parameters of the VCS, which, if applied, may reduce the proportion of successful applications in a South African VCS to below 50%, it might be argued that a lower staff-to-applicant ratio could suffice.<sup>109</sup> If the VCS were to have only limited coverage of victims, and decisions on ineligibility could be made with limited room for legal challenge, the number of staff members required, and therefore administration costs, may be reduced.

<sup>109</sup> Tightly defined eligibility criteria, which serve to reduce the number of successful applications, will save costs both in terms of pay out and in terms of the administration of the scheme. At the same time, the tightness of those criteria will tend to 'encourage' applicants to be more litigious, potentially raising any legal costs of defending the scheme's decisions in court.

Administration costs exclude the following operational costs:

- accommodation,
- computer consumables, paper and printing,
- electricity and fuel,
- infrastructural maintenance and replacing equipment,
- legal costs associated with defending decisions of the VCS (if such cannot be prevented); and
- on-going training and development.

In addition to annual administration and operational costs, the following start-up costs can also be anticipated:

- vehicles and furniture,
- computers and data-lines, and
- initial training of staff.

### **6.10.3 Administration costs and the number of successful applicants**

It is not surprising that the administration costs of a large scheme with a large number of applicants will be high, as it will take great deal of organisational capacity to handle the volume of applications. These costs will not, however, vary directly and proportionately with the number of successful applications since there will always be a reasonably large number of applicants who do not understand the eligibility criteria, who seek to test the limits of such criteria, or who apply without much hope of success. All of these applications, no matter how poorly they meet the criteria, will have to be dealt with, and will require personnel and infrastructure dedicated to that end.

## **6.11 Conclusion**

Any VCS that is established in SA will be enormously costly to implement, given this country's high levels of crime, and the consequent high levels of victimisation. This chapter has sought to cost the impact of establishing a VCS by estimating the actual and economic losses incurred by victims and their families. It has sought to do so in spite of much of the necessary data being unavailable. Estimates and assumptions have accordingly been used, where appropriate erring on the side of conservative assumptions. As a result, we expect that any errors would tend to underestimate the full cost of a VCS in SA. Given the range of possible policy permutations, combined with the lack of data, it is impossible to estimate accurately the possible consequences of changes to various policy variables that may be effected in order to assess their financial impact. We have, however, sought to analyse a range of options, which might be packaged in different ways to produce distinct results.

# CHAPTER SEVEN

## Mechanics of a Victim Compensation Scheme

This chapter provides an outline of some of the administration details and processes that would need to be considered if a victim compensation scheme were established in South Africa. Any proposed system will need to minimise the risks and administrative structure, while maximising the benefits to victims of the scheme. This chapter, therefore, provides a summary of different approaches that will need to be taken to achieve this.

### 7.1 Introduction

This chapter does not intend to make highly detailed recommendations on the administration of a victim compensation scheme. In part, this is because the type and structure of a compensation scheme could vary a great deal depending on the model or parameters adopted. This report has outlined a number of different possible permutations and the administrative structures for each would vary dramatically. However, there are a number of administrative issues that would remain relatively similar across any model.

### 7.2 Procedure for Applying for Compensation<sup>110</sup>

It is proposed that the steps listed below would need to be followed in every application for compensation.

- Applications would be submitted to the scheme on forms developed by the scheme. Such application forms would be forwarded to a central office.
- A cut-off date by which applications would have to be made should be provided for so as to prevent victims lodging claims many years after the event, which would pose difficulties for the scheme in considering and investigating such a claim.
- Provision should be made to allow an applicant to apply for the late filing of an application to be condoned, giving reasons for the delay in filing such application. It is envisaged, for example, that the late filing of applications by victims who are minors, have been hospitalised for extensive periods or even imprisoned would be condoned.
- If exclusionary criteria exist – such as contributory behaviour or a previous criminal record – information attesting to the applicant's status in this regard would also have to be provided in the application form.

<sup>110</sup> This procedure is based loosely on the procedure used in the United Kingdom as set out in paragraphs 22 to 27 of the Criminal Injuries Compensation Scheme (Criminal Injuries Compensation Authority **A Guide to the Criminal Injuries Compensation Scheme** No 1 4/96).



- The application would have to include relevant medical information and evidence, with a medical practitioner or district surgeon's report attached.
- An affidavit from the SAPS investigating officer detailing the factual basis and status of the case, together with an assessment as to whether the injuries arose from a criminal attack, would have to be attached.
- The application would have to be processed by administrative staff of the scheme who would assess whether all the relevant documentation was in place, acknowledge receipt of the application and request the applicant to provide whatever additional information or supporting documentation that might be absent or required.
- The content of some portion of the applications would have to be followed up at this stage to assess whether or not fraudulent applications were entering the system.
- The administrative officer would then assess complete applications and make a recommendation to a senior assessment officer.
- If the original application were incomplete and the applicant failed to provide the further particulars requested within 12 months, provided that reasonable efforts had been made to contact the applicant, then the administrative officer would recommend to the senior administrative officer that the case be closed, with the applicant being informed of that decision in writing.
- The senior administrative officer would review all completed applications and either request that further information/evidence be provided, or forward the application to the VCS Board for a decision.
- Uncontroversial applications below a certain amount would be decided by a single board member, with decisions subsequently ratified by the board as a whole.
- More controversial or larger applications would be motivated to the board by the administrative officer handling the matter.
- After the board had made its decision, the applicant would be informed in writing as to the outcome.
- Where the application was successful, the administrative team would complete the necessary requisitions, and would instruct the financial office to make payments. The payments system would require the signatures of at least 3 officials, and be fully auditable.
- If the application was rejected, the applicant would have the right to appeal to the board, and an Appeal Board would review the case. The applicant would be entitled to make verbal submissions to the Appeal Board. If the appeal is founded on new information, or on the basis that the original information used was incorrect, then it will be treated as a new application.
- Decisions of the Appeal Board could not be appealed or reviewed by any other authority or court.

### **7.3 Accessibility**

The claims process needs to be accessible to all South Africans irrespective of income, geographical location, education and other demographic characteristics.

The applicant must be provided with sufficient information as to the existence of a victims' compensation fund and as to where such fund may be found. This would require the fund to advertise itself. So as to spread the coverage of the VCS as widely as possible, and, in particular, to focus on poor victims, it is proposed that the VCS will have to have a wide network of offices in urban and rural parts of the country. Although a great deal of the administrative and executive functions of the VCS can be centralised, these field offices will be responsible for popularising the scheme, and for offering advice and assistance to applicants who wish to apply for compensation. In addition, these offices may be required by the VCS to investigate the authenticity of otherwise of an application.

#### **7.4 Assistance in the Application Process**

Sufficient assistance will have to be provided to enable an applicant to complete and lodge the application form without legal assistance. This would entail a standard application form being developed, with an attached description, in various official languages as to the manner in which the form should be completed. Examples of such forms can be found in, for example, referrals of a labour dispute to the Commission for Conciliation, Mediation and Arbitration. It would be this application form that would then provide the basis of an application for compensation. A medical report and an affidavit from the investigating officer would need to be attached to such form, together with any other necessary information. The form would also have to state that a police officer is not entitled to a fee for providing the affidavit or advice on completing the forms.

#### **7.5 Reporting**

It is proposed that a victim be placed under an obligation to report the commission of the offence and the injuries sustained both to the police and a medical practitioner. A specified time period within which compensation claims would have to be lodged with the VCS should be specified to avoid excessive delays in lodging such claims. This would limit the difficulties that would otherwise be experienced by the VCS in the investigation of delayed claims. Provision should be made for condoning the late filing of a claim under certain specified circumstances and where a reasonable and satisfactory explanation for such delay has been provided by an applicant.

## **7.6 Police Reports**

Most schemes rely on a police report to verify the nature and extent of the incident. Whilst it is acknowledged that this may pose real administrative difficulties in the South African context in that reports may be mislaid and police may be unable to complete such reports satisfactorily, we do not consider this to provide sufficient grounds to avoid providing for such a mechanism. In fact, it is proposed that an affidavit be obtained from the investigating officer to confirm the validity of a claim. Whilst it may be argued that the requirement that complaints be lodged with the police could impact on the reporting of crimes and their investigation, this does not justify the removal of such a requirement from the system in that police verification provides an essential check against fraudulent claims.

In the event that a points system along the lines of the British compensation system were instituted (see 4.4.4), the involvement of the police in compiling reports could be extended to enable a check on the claimant's criminal record. It should be noted, however, that criminal record checks require fingerprints to be taken and compared to records in Pretoria. This process can be very time-consuming and will be traumatic for some applicants.

## **7.7 Medical Reports**

Most similar compensation schemes require reports from medical officers to verify the injuries sustained by an applicant. This necessitates that victims report their injuries to a medical practitioner as soon as possible after such injuries have been sustained. When criminal charges are laid arising from a crime, a J88 report must be completed by the district surgeon. This report verifies the nature and extent of a victim's injuries. Clearly, this is not likely to happen properly in South Africa at present, as is evidenced by the case study undertaken in *Chapter 5*.

It is proposed that provision also be made for a VCS to require that an applicant, under certain circumstances and at the discretion of the scheme, submit to the assessment of an independent medical practitioner, occupational therapist or psychiatrist for evaluation.

Such requirements are in line with other South African compensation schemes such as those in terms of the Road Accidents Act and Occupational Health and Safety Act. Without medical evidence to support a claim it would be close to impossible for an administrative decision to be taken with regards to the awarding of compensation.

### **7.8 Appeal or Review**

It is proposed that provision be made for a claimant to appeal the decision of the compensating authority to an Appeal Board of the VCS. Such a board could be appointed by the Minister. The applicant would be provided with the opportunity to make oral submissions to the Appeal Board and must be provided with full reasons for the Board's decision. The applicant would not be entitled to appeal or review the decision of the VCS or its Appeal Board in any court or before another authority. This would limit unnecessary litigation arising from such appeals, which would ultimately deplete the financial resources of the authority, adding to its administrative and legal costs.

### **7.9 Administration Costs**

It is difficult to determine the cost of administering a VCS in South Africa given the absence of any historical data in this regard and the uncertainties about the character and scale of such schemes. What is clear is that extensive infrastructure and personnel will be required to establish and run a VCS.

There exists limited capacity within existing government departments such as police, justice or welfare to administer a VCS. However, if additional resources were made available, a feasibility study could be undertaken to determine whether such responsibilities could be accepted by any one department. It would be preferable however that funding be made available for an independent administrative structure to be established, such as has been done in the case of the Commission for Conciliation, Mediation and Arbitration (CCMA) which is administratively divorced from the Department of Labour. In this way, no confusion would arise between the functioning of the Department and that of the scheme. Also see *Chapter 6, Section 6.10* for costing estimates of such a structure.

## 7.10 Dealing with Fraud

Any VCS that might be established in South Africa would have to confront the challenges of attacks by fraudsters posed to all agencies involved in disbursing cash, be they in the public or private sector. These attacks, which cost both the Department of Welfare<sup>111</sup> and banking industry millions of rands every year, might involve the active or passive complicity of various people involved in the adjudication and awarding processes of the VCS, and might originate from any one of the following role-players:

- 'victims' of crime, who may invent the crime *in toto* or exaggerate the extent of their injury;
- police officers and medical officials who might assist in the process of defrauding the scheme by falsifying evidence relating to the nature, extent or origin of the injury;
- officials within the VCS, who may either be complicit with a 'victim', or may simply insert false applications into the relevant processes, seeking to secure funds for themselves.

Dealing with these sorts of problems in South Africa is made extremely difficult by the relatively poor record-keeping practices that have developed, the sophistication of printing and copying technology available off the shelf, and the under-training of officials in the detection of falsified documents. These factors make it extremely difficult if not impossible to design systems which prevent fraud, and which would facilitate the reasonably easy investigation of frauds after they had happened.

Given the obvious dangers posed by actual and potential fraudsters, a VCS would have to invest heavily in technological, organisational and human development-based strategies aimed at reducing its exposure to fraud. These would have to seek to make it harder for fraudulent applications to be approved, and to limit the value of pay outs made to fraudulent applications. These solutions to the problems posed by fraud will be costly, and those planning the establishment of a VCS ought not to be complacent about these matters. However, the financial consequences to a system that is vulnerable to fraud may well be catastrophic, and need to be controlled.

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<sup>111</sup> According to Welfare Minister Zola Skweyiya, fraud by its own officials cost the Department of Welfare more than R3.8m over the past three years (Business Day, 15 September 2000).

### **7.11 Establishment of a Victim Compensation Scheme**

In most jurisdictions studied, compensation schemes are established by way of legislation. Examples include the US Victims of Crime Act, Britain's Criminal Injuries Compensation Act and Spain's Act for the Provision of Assistance to the Victims of Violent Crimes and Sexual Offences. Certain civil law jurisdictions in Europe have provided for state compensation by way of presidential decree. In the South African context, it is proposed that a statute would be the preferred mechanism by which to establish a VCS. Such statute should be passed by Parliament and would define the scheme's mandate, determine its powers and detail the appointment and functions of its office bearers.

# CHAPTER EIGHT

## Financing a Victim Compensation Scheme

**This chapter highlights possible sources of funding for the establishment of a victim compensation scheme and the obstacles that may be encountered in attempting to secure such funding. It considers also alternative expenditure choices, including the provision of limited and targeted assistance to crime victims, thereby avoiding the necessity of establishing a victim compensation scheme.**

### 8.1 Introduction

*Chapter Six* of this report estimated the costs of establishing a victim compensation scheme in SA. It attempted to determine the possible number of victims who might qualify for compensation, and the cost of administering such a scheme. These costs, almost irrespective of how the VCS is conceptualised, were great since our violent crime levels are high.

The extensive cost of such a programme need not necessarily lead to the conclusion that it should not be established. Nonetheless, for obvious reasons, the sheer scale of the financial implications of establishing a VCS will create difficulties for those who motivate for the necessity of such a scheme. In seeking to make the case for the establishment of such a VCS, it is, therefore, necessary that possible sources of funding be explored. This chapter looks at the financing of a VCS, exploring the options that may exist in this regard.

### 8.2 Funding sources

#### 8.2.1 Introduction

In general, the bulk of funds for compensation schemes internationally are sourced through the relevant budgetary authority at national, state/provincial or local level. Countries such as the USA have created legislation that directs the revenue generated through the payment of fines or forfeited bail monies towards victim compensation and victim assistance. Such monies must be used for both victim

compensation (as defined in this report) as well as to support other forms of victim assistance, such as counselling, public awareness, and victim advocacy.<sup>112</sup>

The Victims of Crime Act (VOCA), like legislation used in other parts of the world, imposes penalties on convicted criminals, which must be paid into the Crime Victims' Fund, with minor offenders paying as little as \$5 into the Federal Fund (in addition to the monies they are required to pay into state compensation scheme funds) irrespective of the character of their offence or the nature of their sentence (Office for Victims of Crime **OVC Fact Sheet** Washington DC: US Department of Justice 1999).

An alternative mechanism, increasingly used internationally, is to require a larger number of convicted criminals to pay compensation to their victims, thus sparing the VCS the responsibility – and burden – of compensating that victim. This approach has, however, often stumbled in the courts, where judges and prosecutors appear to be unwilling to complicate the purely criminal trial with the difficult process of making compensation orders through the assessment and award of damages. This is so even in jurisdictions in which the law requires that magistrates must issue compensation orders unless there are compelling reasons not to do so, such as the UK (Greer, 1996). In some states in the US, notably California and Iowa, the state compensation scheme has employed people to pursue convicted criminals who have been ordered to pay compensation to their victims but have failed to do so. The expectation is that the cost of employing people to do so is covered by the reduction in claims paid by the VCS.

In addition to fines and surcharges levied on conviction, compensation schemes also sometimes draw on funds confiscated through the application of asset forfeiture legislation. While there is much merit in the use of these funds to compensate

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<sup>112</sup> In the USA, the Victims of Crime Act, passed in 1984, created the Crime Victims Fund, which directs fines and forfeitures in Federal Courts to the states on condition that the states have in place a VCS (conforming to certain criteria laid down in the VOCA) in order to support the work of the Schemes. The VOCA incentivises the states to create and sustain reasonably large schemes by awarding amounts equivalent to 40% of the expenditure of those Schemes in the preceding year (OVC, 1999).



victims, there is often competition from law enforcement agencies that also seek to supplement their funding from such funds.<sup>113</sup>

Offenders can, therefore, be required to contribute to the financing, or reduce the cost of a VCS through:

- fines paid and forfeited bail monies;
- an additional surcharge levied against the offender on any sentence, whether such sentence is custodial, non-custodial or a fine;
- asset forfeiture in terms of which the proceeds of crime are attached and used by the VCS to finance compensation; and
- improved strategies to increase the direct compensation of the victim by the offender.

In addition to ordinary appropriations from the budgetary authority, a second way in which ordinary citizens might contribute to the financing of a VCS is through dedicated taxes that might be levied in respect of the purchase of certain goods and services. In this regard, we know of no such schemes elsewhere, but would submit that there are two legal activities which might reasonably be taxed in order to finance the compensation of victims of crime: the consumption of alcohol; and the purchase of firearms and ammunition.

The links between the consumption of alcohol and the prevalence of violent crime in SA are well support by the data,<sup>114</sup> and, as such, it might be reasonably argued that the consumers of alcohol ought to provide funds for the compensation of victims. Similarly, and even more directly, the accessibility of firearms correlates with the very high levels of violent crime in SA. In the light of this, there is a case to be made that the owning and using of a firearm might be regarded as activities which increase the possibility of crime in South Africa, and which might, therefore, be taxed to enable government to recover some of the costs of crime from the individuals whose activities directly and indirectly contribute to the creation of conditions conducive to high levels of violent crime.

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<sup>113</sup> In SA, section 63 of the Prevention of Organised Crime Act of 1998 provides for the establishment of a Criminal Asset Recovery Fund, to be managed by a committee of ministers, and tasked with advising on the provision of financial assistance to law enforcement agencies and to organisations and institutions providing services to victims of crime (s64). We will have more to say on this Act below.

<sup>114</sup> See 6.7.3 of this report.

In addition to these sources, funds might also be provided to a VCS from individuals, corporations and philanthropic organisations, both foreign and domestic. The flow of these funds, however, is seldom consistent, and excessive reliance on these will create problems of sustainability.

In essence, therefore, there are three sources of funds that might be tapped for the funding of a VCS: taxpayers, donors and criminals themselves. One, two or all of these sources are involved in the financing of all of the compensation schemes at which we have looked, as well as in the proposals that have been made for the financing of a VCS in SA. Each of these sources might be tapped in different ways, and a summarised typology of these approaches is offered in the following table.

Donors	Taxpayers	Criminals
<ul style="list-style-type: none"> <li>• Grants from international and domestic individuals and institutions</li> </ul>	<ul style="list-style-type: none"> <li>• Appropriations from Parliament</li> <li>• Dedicated taxes on goods and services (e.g. the consumption of alcohol or the purchase of firearms or ammunition)</li> </ul>	<ul style="list-style-type: none"> <li>• Fines paid</li> <li>• Bail forfeited</li> <li>• Proceeds of crime</li> <li>• Pursuing compensation orders on criminal conviction</li> </ul>

### 8.2.2 What do victim compensation funds finance?

Aside from the compensation of victims, funds dedicated to improving the lot of victims appear seldom to fund compensation exclusively. Indeed, compensation, while generally making the largest portion of expenditure from the fund, is regarded as only one tool among many in the programme of addressing the needs of victims.

In the USA, for instance, the Crime Victims Fund is used to assist state compensation schemes, but will do so only if those states also provide funding to organisations offering victim assistance such as counselling support and advocacy work. It is a proviso that an amount equal to that granted to states to compensate

victims must be provided for victim assistance. A further portion of the fund must, by law, be used to fund the training and development of public servants involved in victim empowerment programmes. In addition, by law, \$10m is set aside annually from the fund to prosecute child abusers, prevent child abuse and build the capacity of law enforcement agencies to prosecute child abusers.

In the UK, the compensation scheme is also involved in the development and provision of victim assistance services, motivating this on the basis that empowered victims are less in need, or desirous, of compensation from the state.<sup>115</sup>

Thus, victim compensation funds are seldom pure compensation schemes but also provide resources for other forms of victim empowerment.

### **8.3 Estimating the Flow of Funds by Source**

It is impossible to assess the amount of funding which is likely to be secured from each potential source of VCS funding. This section considers the possible flow of funds from some of the sources discussed above.

#### **8.3.1 The National Revenue Fund**

All revenues collected by the national government, with some minor exceptions,<sup>116</sup> are deposited into the National Revenue Account. These are appropriated to government departments and agencies in terms of the Public Finance Management Act. Such appropriation is undertaken through the budget process run by the National and Provincial Treasuries, culminating in the passage of the budget through the relevant legislature.

These funds originate in the taxes levied on companies and individuals, as well as from the taxes and tariffs on particular activities. Included among these sources of revenue are taxes levied on the purchase of alcohol and revenue generated through the imposition of fines as sanctions when offenders are convicted in court (see *below*).

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<sup>115</sup> Interview with Richard Thew, Head of the Victims & Compensation Team of the British Home Office Justice and Victims Unit , 19 April, 2000.

Funds flowing into the National Revenue Account are used to fund the bulk of government's activities, and would, therefore, form the main source of funding for any VCS that might be established in South Africa. These funds are, however, allocated through a complex budgetary process in terms of which all government departments submit their financial needs based on existing departmental practices and new policy initiatives. The outcome of this process is extremely difficult to predict. However, the case for establishing a well-resourced VCS would have to be enormously powerful, and enjoy a very high level of support to be accommodated in the budget process.

It is of interest to note that the special Poverty Relief Fund, which will be allocated to provincial governments in order to run projects aimed at alleviating the plight of the poor, was allocated R450 million in 1999/00, R547 million in 2000/1 and R847 million in 2001/2. The HIV/Aids allocation on the other hand is limited to R75 million in 2000/1, R125 million in 2001/2 and R300 million in 2002/3. (Department of Finance ***The 2000 Budget Review*** Pretoria: Government Printer 2000, statistical appendix, table 3). The relatively small size of these allocations, each of them lower than some of our estimates of what a reasonable VCS would have to pay out, is in spite of overwhelming public and political support for the programmes.

It may, however, be countered that, since government spends between R300m and R400m on the provision of legal defence to persons accused of crimes every year through the Legal Aid Board, the provision of a similar amount to the compensation of victims of crime would be appropriate.

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<sup>116</sup> One of the exceptions is the flow of funds originating in the seizure of the proceeds of crime and the assets from criminals in terms of the Prevention of Organised Crime Act.

### **8.3.2 Fines and forfeitures**

Estimating the revenue that might be generated through fines and forfeitures is somewhat easier than estimating the size of potential appropriations from the National Revenue Account since at least one of these categories is reasonably well accounted for.

Between 1995/6 and 1997/8, fines and forfeitures generated R124.5 million, R165.5 million and R133.9 million in each of the three financial years. Estimated revenue from 1998/9 to 2000/1 has, however, fallen to R79.2 million, R100 million and R110 million, although there is no explanation for this fall (Department of Finance, 2000, statistical appendix, Table 2).

Since the passage of the Prevention of Organised Crime Act of 1998, new tools and a new fund have been created for seizing and depositing assets forfeited from convicts and those who have acquired their riches from criminal activity. This fund – the Criminal Asset Recovery Fund – has been established too recently for any meaningful assessment of the revenue that is likely to pass through it. However, at present it contains approximately R150 000, with a further R120 million in frozen assets which might be deposited into the fund at a later date.

The Act provides that a committee established to manage the Fund will advise on the use of the funds, and that such advice must cover the potential for funding law enforcement agencies and for funding organisations which provide services and assistance to victims. This provides a legal framework for the transmission of assets forfeited by criminals to victims of crime via the appropriate agencies and institutions (the Act does not contemplate the direct provision of compensation to individual victims). The management of the Fund is dominated by representatives of the criminal justice system: the Ministers of Safety and Security and Justice, and the National Director of Public Prosecutions. This, together with the formulation of the objects of the Fund, is likely to result in law enforcement securing the vast bulk of seized assets. It would, therefore, be unrealistic to assume that anything more than a small percentage of funds seized in terms of the Prevention of Organised Crime Act will be dedicated to the compensation of victims.

### 8.3.3 Costing a 'guilt-tax'

In the US, the accused is charged a levy after any conviction, on a sliding scale between small fees for minor misdemeanours and higher levies for persons convicted of more serious charges.

According to police records, in South Africa in 1998, there were 203 071 serious cases<sup>117</sup> which resulted in at least one of the accused person's being found guilty in 1998. Since the minimum number of guilty persons is one, on average, more than one accused person will have been found guilty in each of these cases, thus, we can assume that something like 300 000 to 400 000 people were found guilty of serious crimes in 1998.<sup>118</sup>

It is, however, not possible to ascertain the number of charges on average in respect of which each of these persons was convicted. This number must however be greater than one since one charge is the minimum. This gap in our data arises from the fact that police system from which these data are drawn records only the most serious charge which arises from a crime. Thus, a murder arising from a hijacking will have been recorded as a murder, although the accused person might eventually be found guilty of murder, robbery and possession of an illegal firearm. Conversely, a gang-rape is one case, but has many offenders.

We can assume, however, that there were approximately 400 000 to 500 000 serious charges in respect of which there were guilty findings in 1998. Unfortunately, the precise breakdown of guilty verdicts between the various types of charges is unknown and the number of convictions in respect of particular charges is therefore not known. It is accordingly not possible to develop a reasonably precise estimate of the revenue that might be generated for a VCS if a sliding scale were used to levy convicts based on the seriousness of the charge on which they are found guilty.

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<sup>117</sup> In terms of police record-keeping, serious crimes include: murder, attempted murder, culpable homicide, armed robbery, aggravated robbery, robbery, public violence, illegal strikes, rape, statutory rape, indecent assault, *crimen injuria*, cruelty to children, kidnapping, abduction, assault (common and GBH), housebreaking (residential and business), stock theft, shoplifting, car theft, theft out of cars, theft, arson, malicious damage to property, fraud, driving under the influence, drug (possession and sale), illegal possession of firearms, and illegal possession/use of explosives.

<sup>118</sup> There are, unfortunately, no accurate records of the number of people convicted.

That said, we do know that the 203 071 cases on which at least one conviction was obtained can be broken down as follows:

Convictions in 1998								
Crime	Amount	% of total	Crime	Amount	% of total	Crime	Amount	% of total
Murder	3,897	2%	Crimes injuria	2,680	1%	Car theft	2,511	1%
Att murder	1,886	1%	Cruelty kids	192	0%	Theft from car	3,897	2%
Culp homicide	1,143	1%	Kidnapping	171	0%	Other theft	24,157	12%
Robbery agg	2,317	1%	Abduction	111	0%	Arson	426	0%
Robbery other	2,800	1%	Assault GBH	29,409	14%	Property damage	6,666	3%
Public violence	37	0%	Assault comm.	19,341	10%	Fraud	5,289	3%
Illegal strikes	1	0%	Bus burglary	6,239	3%	Drug related	21,223	10%
Rape	4,382	2%	Res burglary	13,743	7%	Drunk driving	13,704	7%
Rape stat	62	0%	Stock theft	2,587	1%	Poss firearms	3,692	2%
Indecent assault	564	0%	Shoplifting	29,919	15%	Explosives Act	25	0%

Source: SAP 6 data from SAPS (1999)

It is clear from the above table that a fairly large proportion of convictions are for reasonably minor crimes such as shoplifting, theft other and common assault. If it is assumed that such crimes were levied at R50, while all other crimes were levied at R100, the amount that would be raised would be R16 168 950 per year, or between R24 253 425 and R32 337 900 per year if a fine is levied on each person convicted.

One caution to bear in mind with regards to a so-called 'guilt tax' is that the bulk of offenders are probably poor, and may be unable to afford to pay the tax. It may not, however, be a simple matter to determine the consequences of non-payment.

### 8.3.4 Dedicated taxes

There are two possible activities on which a dedicated tax might be levied: the consumption of alcohol and the purchase of guns or ammunition.

A dedicated tax on alcohol would simply be added to the existing taxation of that activity which currently generates the revenue levels indicated in the following table:

Revenue generated from a taxing alcohol (R'000)						
	1995/6	1996/7	1997/8	1998/9	1999/00	2000/1
Beer	R 2,010,441	R 2,232,193	R 2,425,534	R 2,540,601	R 2,750,000	R 2,976,200
Sorghum beer	R 36,258		R 47,935	R 45,938	R 80,000	R 83,000
Wine and spirits	R 190,641	R 227,346	R 309,694	R 361,095	R 400,000	R 463,200
Total	R 2,237,340	R 2,459,539	R 2,783,163	R 2,947,634	R 3,230,000	R 3,522,400

Source: Department of Finance, 2000, Statistical Appendix, Table 2

As is apparent, taxes on alcohol will generate about R3.5bn in this financial year. Were these taxes to be raised by 10% in order to fund a VCS, about R350 million might be generated, although such taxes may either discourage demand or encourage tax avoidance, thereby reducing the amount of revenue generated for the VCS.

The revenue that might be generated by a tax on gun or ammunition purchases is more difficult to estimate as there are no historical data on which to base such an estimation. Nonetheless, it might be possible to give an indication of the revenue that could be generated by looking at the number of licensed firearms owned by South Africans and the number of licenses processed by the Firearms Registry of the SAPS annually.

There are currently 3 554 336 licensed firearms owned by individuals in SA, with a further 95 772 owned by institutions such as security companies and 397 146 owned by firearm dealers (R Chetty *Firearm use and Distribution in South Africa* Pretoria: National Crime Prevention Centre 2000, at 33). If the ownership of each of these 4 047 204 firearms entailed a tax of only R20 per year, R80 944 080 could be raised for a VCS. In addition, in each of the past 6 years, the Firearm Registry has licensed 192 000 firearms (Chetty, 2000, at 35). If each of these licenses were levied at R100, a further R19.2 million could be raised.

### 8.3.5 Donor funding

There is no way to assess the extent of possible donor funding for a VCS as this has not been a source tapped for this purpose. It would, however, be unwise to assume



that there would be a large flow of funds from this source, unless large companies are persuaded to offer a contribution to the VCS on the basis of goods purchased from them. Donor funding levels are also notoriously erratic, making long-term planning next to impossible.

#### **8.4 Obstacles to Public Financing of a Victim Compensation Scheme**

The financing of a VCS, like all other government programmes, is dependent on a number of factors. These include:

- The extent of political commitment to funding such a scheme, over and above other priorities;
- The social benefits to be obtained from funding such a scheme;
- The extent to which the benefits thought to derive from such funding may be obtainable from other social programmes, and the relative cost of delivering those services through other programmes; and
- The costs associated with either redirecting expenditure from one set of services to the provision of funding for the functions of a VCS (including the costs of closing down existing operations, retrenchment or redeployment costs, the political and economic costs of dealing with consumer confusion/complaints, *etc*), or the costs of raising additional revenue for the funding of a VCS (including interest charges on borrowings, administrative charges associated with collecting revenue, the distortionary effect of increased taxes or tariffs and so on).

The basis for the decision to allocate public funds to a VCS is, therefore, whether or not the utilisation of public funds in this way improves the welfare of the community more than would either the retention of those funds by tax-payers or their utilisation for other purposes. The sheer cost of a VCS is not, therefore, a basis for its being rejected out of hand for if the benefits exceed the costs, the spending of public funds in this way is sound. Thus, if the case made for the establishment of a VCS is incontrovertible, it ought to stand a reasonable chance of being funded. This ideal of rational decision-making in public finance is seldom achieved, however, in the real world of the political and bureaucratic contestation for resources. Moreover, there are some issues associated with making the case that the benefits exceed the costs for a VCS and that the VCS, has a better cost-benefit ratio than do other areas of social spending, which may prove all but insurmountable.

Among the most important of these issues is government's commitment to reducing the share of GDP consumed by the state, as articulated in the Growth Employment

and Redistribution Strategy (Gear). This commitment is founded on an assessment that the costs of government's raising revenue and spending a larger share of GDP are greater than would be the benefits associated with any form of increased public expenditure. This commitment to a tight fiscal policy implies that a VCS would essentially have to compete for a share of the existing revenue of the public sector and, therefore, that any commitment of funds to a VCS will require that other areas of public funding will have to be cut.<sup>119</sup>

The upshot of the above is that it would be unrealistic to expect government, at this stage, to relax its fiscal policy and to raise more money in the form of taxes or borrowings in order to increase expenditure for projects such as the implementation of a VCS. If numerous other areas of potential government spending in poverty alleviation or job creation cannot support a claim to relax fiscal policy, it seems unlikely that government will entertain this as an option to facilitate the establishment of a VCS.

Despite the fact that all existing and potential government programmes ought to compete on a level playing field, it is well established that the nature of government budget decision-making is that it tends to favour existing programmes over new ones. This finding that dates back at least to Widavsky (*The Politics of the Budgetary Process* Boston: Little Brown 1969). The case for funding a VCS must therefore be superior to the case made for the funding of any of government's existing programmes.<sup>120</sup>

Thus, despite the fact that there exist compelling arguments for the establishment of a VCS, the fact that it will have to compete with existing policies and services for funding means that the odds are dramatically stacked against the likelihood of

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<sup>119</sup> In practice, government may not cut the budgets of other public services in real or nominal terms, but it may simply cap their growth so that spending on them falls as a share of GDP. Although qualifying the point in this way does imply that there is a somewhat greater chance that government might find the resources for a VCS, one must bear in mind that most public functions ought to grow with the economy or, at least, with population growth. That being the case, the basic arithmetic of the point holds.

<sup>120</sup> The reasons for this a combination of the inertia of government spending policies and the organisational implications of switching programmes, which often require, at best the retraining, and, at worst, the retrenchment of existing workers. Moreover, it is much more politically difficult to cut

government's choosing to fund such a scheme to the full extent outlined in *Chapter Six*. However, a more targeted or limited scheme, which is seen to be running in tandem with the Victim Empowerment Programme, may have a slightly better chance of competing with other priorities.

#### **8.4.1 The role of dedicated taxes**

The use of 'dedicated taxes', which are revenues collected from a particular source, used solely for a particular programme or purpose, could be considered to fund a VCS. Such taxes are not subjected to competition from other actual or potential programmes. An example of this sort of tax is the fuel levy in South Africa which is dedicated to the maintenance and building of roads, and to the funding of the Road Accident Fund. These funds do not go into the National Revenue Fund of government, and cannot be utilised for any purpose other than those defined in law.

Having access to the such proceeds would reduce the size of the hurdle which a VCS would have to clear in order to obtain funding from the state in that a source of funding would be created which might be dedicated to the VCS, and which could, therefore, fund its activities.

There exist, however, a number of reasons for believing that these proposals would not necessarily overcome the difficulty of securing public funds for a VCS. These include objections based on the fiscal policy of the state, objections based on the theory of public finance, objections based in the practice of public financial management, and difficulties associated with the size of the revenue stream that will be created.

Before dealing with these difficulties, it is worth stating the basic principles with which a tax needs to comply. These principles, defined in the theory of public finance are:

- a tax ought to be fairly apportioned between taxpayers without unnecessary arbitrariness in the distribution of the burden;
- a tax ought to not require excessive additional expenditure on the revenue collection agencies for its collection; and

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existing benefits than to refuse to attend to the needs of people who have not yet become used to the receipt of particular services/benefits from government.

- a tax ought to be reasonably simple to understand and administer, without creating too many loopholes and exceptions.

These principles create a basic framework against which any new revenue stream dedicated to the funding of a VCS might be judged, and, in general, there seem to be no insurmountable problems for such dedicated tax when judged against these principles. However, the other difficulties alluded to above still remain.

#### **8.4.2 Difficulties arising from fiscal policy**

The mere fact that a tax is dedicated to a particular expenditure programme of government does not mean that that revenue ceases to be a tax. It is, therefore, important to recognise the difficulties of creating new taxes in the context of a fiscal policy which is explicitly dedicated to reducing the overall tax burden in South Africa. Thus, creating a dedicated tax such as that proposed on the purchase of firearms or ammunition would have to overcome the objection that such a tax, by raising the overall tax burden on South Africans, vitiates from the achievement of government's stated fiscal policy objectives.

This argument can be overcome if it is shown that the additional burden of such a tax can be justified by the benefits to be accrued from the utilisation of the funds. However, there is a strong likelihood that the imposition of additional taxes would meet with fairly strong resistance, if not from within the state, then certainly from the people who would be taxed.

#### **8.4.3 Difficulties arising from the theory and practices of public finance**

A further set of objections to the establishment of a dedicated tax with which to fund the operations of a VCS, or any programme of public expenditure, is that the creation of a dedicated revenue stream creates inefficiencies. In essence, the argument is that programmes which are funded by dedicated revenue do not have to motivate for their continued existence along with every other programme of government: their access to finance protects them from the sort of scrutiny which other programmes must endure, creating an inappropriate set of incentives for maintaining efficiency and effectiveness.

For these reasons, the establishment of a dedicated tax is generally frowned upon by public finance officials, and may create an additional set of difficulties in making the case that the establishment of VCS in South Africa is desirable.

#### **8.4.4 Difficulties associated with the size of the revenue stream**

Although we have sought to estimate the size of the revenue streams which may flow into the VCS from a dedicated tax – and from other sources – the uncertainties described above would make it a very risky basis on which to build the foundations of a VCS as whomever was running the establishment of the Scheme would have very little idea how much she/he had with which to budget. This would obviously make developing policies and appointing staff well nigh impossible.

#### **8.5 Alternatives Expenditure Choices**

This report has raised the great difficulties which a VCS will encounter in seeking to secure adequate funds to make a meaningful contribution to the lives of victims. The question therefore arises as to whether it might be more appropriate to secure funds to provide assistance to victims so as to improve their lot, while not necessarily being used for financial compensation. Such assistance could focus on the provision of victim services, and could run in sync with other programmes of government, rather than being conceptualised as a completely new initiative.

Such an approach has much to recommend it, including that:

- It recognises that financial compensation is often not the most pressing need of victims;
- It seeks to supplement the funding of victim assistance programmes and does not entail arguing *de novo* for the provision of resources for victims;
- Separate or duplicate administrative structures would not need to be established since the existing programme's infrastructure ought to be able to support the additional work made possible by the provision of additional funds; and
- It acknowledges that existing programmes are under-resourced relative both to the demand for their services, as well as relative to their stated objectives, and would not compete with them for funds.

There are several existing programmes of government (amongst others) which either do already, or might with additional resources, be able to spread their focus to the victims of crime.

These are:

### **8.5.1 Trauma units in South African hospitals**

Trauma units in SA treat victims of violent crime as a matter of course after their injury. However, emergency treatment is expensive and places a great deal of pressure on the budgets of hospitals. Treatment is also generally only medically based with no follow up, counselling or crime prevention education taking place at the hospital. In addition, hospitals significantly under-recover the real costs of providing trauma care to patients (van der Spuy & Peden, 1998). Moreover, while there exist many good examples of patients receiving proper emergency treatment in hospitals in South Africa, this is not always the case. In motivating for the state to provide assistance to victims of violent crime, the fact that many of these victims will receive inadequate medical and psychosocial attention in trauma units may, therefore, form the basis for additional allocations to hospitals.

The advantages of this approach are that it:

- provides resources to victims who certainly need it;
- may reduce the long-term impact of the injury by providing better care to the victim at the site of their primary support intervention;
- avoids the risk of fraudulent claims, as there is no direct financial benefit to victims; and
- targets the poor who use state hospitals.

The main disadvantages are:

- the funds would not be used exclusively for victims of crime;
- the long-term impact of injuries is not compensated; and
- only surviving victims benefit, with murdered victims' families receiving no finance to compensate for their loss.

### **8.5.2 Supplementing the Disability Grant Programme**

As pointed out in *Chapter 6, Section 6.6*, the state currently provides a disability grant to persons whose disability prevents them from working either temporarily or permanently. This programme does not however cover all potential recipients due to its limited resources. Currently, 68% of disabled people who are not pensioners are receiving neither a grant nor a private insurance pension, and 78% who are eligible for pensions are not receiving them. (M Schneider, M Claasens, Z Kimmie, R Morgan, S Naicker, A Roberts and P McLaren 'We Also Count! The Extent Of Moderate And Severe Reported Disability And The Nature Of The Disability

Experience In SA' Johannesburg: CASE & the Department of Health 1999). Since we have assumed that some proportion of victims of violent crime become permanently disabled, providing additional funds to this programme might increase coverage, and, therefore, deal with the needs of disabled victims of crime.<sup>121</sup> Moreover, this approach could target addressing the particular needs of victims by providing specialised medical equipment such as wheelchairs.

The main advantages of this approach are:

- the administrative systems, assessment procedures and payment processes already exist; and
- the long-term needs of disabled victims of crime are dealt with.

The main disadvantages are:

- the additional monies would not reach victims of crime alone;
- the level of funding, at R520 pm, is relatively low; and
- only surviving victims who are permanently disabled and unable to work would benefit.

### **8.5.3 Providing emergency medical care for rape survivors**

The prevalence of HIV/Aids has worsened the plight of rape survivors in South Africa. Providing funds for the provision of the necessary drugs to reduce the likelihood of infection would appear to be a very attractive option.

The main advantages of this are:

- it targets a group of victims whose needs are widely regarded as a high priority; and
- the services which would be provided are matters of life and death.

The main disadvantages are:

- it focuses on a small class of victims;
- it might open up the possibility of false claims made by people hoping to secure the medication either for themselves or for subsequent sale.

In addition, to these alternative funding options, the idea of raising funds for witness fees (mooted in *section 3.4.2.4* of this of this report) should be examined.

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<sup>121</sup> 5% of people with disabilities say they were disabled in the course of violence (Schneider, Claasens, Kimmie, Morgan, Naicker, Roberts & McLaren, 1999, p.18).

## 8.6 Conclusion

This chapter has sought to consider the possible sources of funding for the establishment of a VCS and the obstacles that may be encountered in attempting to secure such funding. It has highlighted the difficulties which is envisaged will be encountered in obtaining funding of the magnitude necessary to establish a compensation scheme. Alternative expenditure choices have also been considered, including the provision of limited and targeted assistance to crime victims (e.g. AZT for rape victims, funding trauma units, **etc**). These could be proposed as examples of priorities over and above a full-blown compensation scheme, or perhaps processes complementary to a more limited compensation scheme model. Such options are explored and recommended in *Chapter 9*.



## CHAPTER NINE

### Recommendations

This chapter recommends that a number of preconditions be met before establishing a victim compensation scheme in South Africa, e.g., there must be sufficient funds, improved police record-keeping, etc. However, these are not currently realised in the South African context. Thus, it is recommended that a fully-fledged compensation scheme is not possible or affordable in South Africa in the immediate term.

However, a number of other recommendations emanate from the report. Amongst others, it is recommended that targeted compensatory assistance be established for certain categories of victims of crime, at least on a pilot basis. It is also recommended that a Victims of Crime Fund be set up, and that dedicated taxes on firearm ownership and alcohol be considered, amongst others, as mechanisms for funding these pilot compensatory schemes.

In addition, recommendations concerning issues such as witness fees, restitution by offenders, the role of a victim empowerment programme and the Charter of Victims Rights, are also documented and briefly expanded upon below. Finally, it is recommended that the development of a victim compensation scheme not be dismissed out of hand, merely on the basis that a full-scale scheme is not immediately feasible. It is recommended that the feasibility of such a scheme be assessed periodically against a number of criteria and that a VCS in South Africa should be developed incrementally.

The recommendations documented in this chapter should be read holistically and considered as inter-dependant. It should also be noted that a strategic incremental approach has been adopted in making the recommendations. Thus, although a fully-fledged compensation scheme is not recommended in the short-term, the longer-term goal of having an extensive compensation scheme is not entirely rejected. A number of pilot targeted compensation schemes are recommended *in lieu* of a full-scale scheme. These are considered part of the strategic and evolutionary approach of developing a more far-reaching scheme over time.

The potential of and the preconditions necessary for establishing a compensation scheme in the future are discussed in the final recommendation, 9.17. Each of the recommendations made prior to this (i.e. 9.2 to 9.15) engage with the issues that

would need to be addressed if a fully-fledged compensation scheme were ever to be established in South Africa. Essentially, to develop a victim compensation scheme in SA, we will have to begin to address the administration, informational and infrastructure requirements, to ensure a standard comparable with other countries, which run such schemes effectively. Simultaneously, a national debate on the importance of offering compensation to victims needs to ensue, whilst continuing to provide victims with ongoing support services. Tackling the issues raised in the recommendations in 9.2 to 9.15 is not only seen as necessary to laying the foundation for a full-scale compensation scheme in the future, but they are considered valuable in their own right and are likely to be beneficial to victims of criminal violence more broadly.

### **9.1 Feasibility of a Fully-Fledged Compensation Scheme**

We estimate that by defining the exclusions quite tightly, the amount needed for a fully-fledged compensation scheme for victims of violent crime could be as much as R2.3 billion per year. Thus we recommend that a fully-fledged compensation scheme for victims of crime in South Africa is not financially viable in the short-term. However, the possibility of incrementally developing a compensation scheme needs to be explored further. Recommendation 9.17. deals with this more specifically and the exact criteria necessary for establishing a victim-compensation scheme in the long-term and how to take the process forward strategically.

### **9.2 Pilot Targeted Compensation**

Given the excessive expense of implementing a comprehensive compensation scheme for victims of crime in the short-term, we recommend that a number of targeted areas for compensation be piloted. These should focus on those disabled by violent crime, rape survivors and the dependants of crime victims (particularly orphaned children) as these are considered victim groups of high priority. This was also motivated in *Chapter 8, Section 8.5*.

We further recommend that it would be viable to phase in the pilot targeted compensation schemes over the next three fiscal years. These would not only offer compensation to some victims of crime but allow some of the parameters and mechanics necessary for a full-scale scheme to be tested. In this sense the pilot

schemes will be practical but also be part of a broader strategy aimed at incrementally developing a full compensation scheme at some point in the future.

It is proposed that the following pilot interventions be established:

### **9.2.1 Targeted compensation for rape survivors**

We recommend that by 2002, or sooner if possible, that limited compensation for rape survivors be implemented to assist them medically and to ensure they receive the appropriate social and psychological support . As was stated in the financing sections of this report the initial sum of R2 000 is proposed. This could be used by the survivor at her own discretion for the purchase of services and support not currently available through the State (or their private medical aid), i.e. counselling, medication, and/or to pay for lost time from work, as well as travel costs to see District Surgeons, police, courts officials, **etc** We estimate the cost of this to be in the order of R141 million per year. The appropriate structure needs to be established to set this process up. Funding and administration needs to be a focus of this structure, which should work from the initial financing process and administration costs outlined in this report. The structure should ensure this recommendation is realised and that the legal parameters are established (see 9.3). In addition, they could also, if the programme is successful, consider increasing the amount of compensation to be in line with international standards.

### **9.2.2 Targeted compensation for crime victims disabled due to crime**

We recommend that by 2003 a grant be given to victims who have in some way been disabled as a result of violent crime. Such assistance should be dedicated to helping them purchase mechanical devices (e.g. artificial limbs, wheelchairs, hearing aids, **etc**) or making changes to their home, which may assist them to cope with such resultant disabilities. Small grants should be made available (in the range of R5000) and the allocation of such compensation awards should be based on criteria of financial need. The appropriate structure needs to be established to set this process up. As with the recommendation above, attention will need to be paid to the financial, administrative and legal implications of the scheme. The scheme should only target those without private medical insurance.

### **9.2.3 Compensation for the dependants of indigent murder victims**

We recommend that by 2004 a further pilot victim compensation scheme be established that will initially target the poor (see 6.9 of this report). Specifically, the dependants of indigent murder victims should receive a minimum payment of R5 000 to R15 000 (increased to take account of inflation rates between now and the time of development of the scheme). If indigent murder victims' dependants were paid out, we estimate that this would cost between R44.4 million and R255 million depending on at what level indigence or poverty was defined and the amount granted. We recommend that dependants of murder victims who are orphaned as a result of a violent crime receive special consideration, and additional resources to these victims be considered. An appropriate structure should explore this option and lay the foundation for its establishment in 2004.

### **9.3 Consideration of legal parameters**

The recommendations for the pilot schemes outlined above will need to be supported by legislation. The South African Law Commission should propose the parameters necessary for each targeted or pilot compensation process. The existence and operation of these schemes would also provide an opportunity to assess the extent to which constitutional issues arise through the targeting of compensation schemes in such a manner as to exclude some victims on the basis of a variety of criteria. The parameters outlined in this report should be used to establish the eligibility criteria for each recommendation. Specific attention will need to be given to the questions of how those in financial need and those who are considered 'blameless' victims can be made the primary beneficiaries of the scheme. A means test would need to apply to each recommendation, as well as first trying to ensure that the costs for the targeted compensation outlined are recovered from the perpetrator if convicted (see recommendation 9.13).

### **9.4 Funding a Targeted Pilot Compensation Scheme**

#### **9.4.1 Establishment of a Crime Victims' Fund**

In order to finance the targeted pilot compensation processes outlined in recommendation 9.2, we recommend the immediate establishment of a Crime Victims' Fund. We also recommend that the Crime Victims' Fund – once established

– be utilised for funding other areas of victim service if additional funds are raised. The focusing of this funding should be subject to stakeholder consultation.

In terms of raising the necessary funds we suggest the following:

#### **9.4.2 State allocations**

We recommend that the Crime Victims' Fund obtain resources from the national government, through the budget process over the next four years. The primary aim should be to obtain funds for the establishment of pilot targeted compensation schemes. Additional funds may also be sought for other projects deemed necessary through stakeholder consultation.

#### **9.4.3 Dedicated levies and taxes**

Despite the cogent arguments against the imposition of a dedicated tax predicated on the need to maintain a credible and rational budget process (see 8.4 of this report), we believe that the moral and financial case for getting persons whose activities are correlated with high levels of victimisation to pay for the broader consequences of these activities. A special levy on prosecutions (regardless of crimes punished), payable by all offenders, should be set up to procure funds for the Crime Victims' Fund (see 8.3.3 of this report). In addition, a dedicated tax on firearm ownership and ammunition purchase, as well as alcohol purchase, should be considered so as render more funds available (see 8.3.4 of this report). We propose that a relevant structure be set up to design a set of workable and creative motivations for the levy and dedicated tax approaches outlined.

#### **9.4.4 Third party funding**

We recommend that the Crime Victims' Fund also raise funds from third party or voluntary sources such as corporate donations. This fund should be publicly managed and be complemented by a publicity campaign focusing on the impact of crime on victims. We recommend that a task team consisting of representatives of Business Against Crime, of civil society and government, as well as consultants with insurance and economic expertise, should investigate the possibility of securing additional sources of financing for the fund.

#### **9.4.5 Administration of the Crime Victims' Fund**

We recommend that the task team described above seek to define a management structure for the Crime Victims' Fund and suggest how it assesses competing claims for victim assistance and compensation in consultation with the SALC's focus on the legal parameters of the targeted compensation schemes (see 9.3)

### **9.5 Submission of this Report to Relevant Structures**

#### **9.5.1 Submission to the Treasury**

We recommend that this report, and a brief submission, be forwarded to the Treasury. The purpose of this would be so that the issue of compensation for victims of crime can be considered within the developments currently underway by government into investigating a social safety net in South Africa.

#### **9.5.2 Submission to the Criminal Assets Recovery Fund**

We recommend that this report, and a brief submission, be forwarded to the Ministers responsible for the Criminal Assets Recovery Fund to establish whether there is potential funding available that could assist in the establishment of the pilot, targeted compensation approaches as outlined in 9.2.

#### **9.5.3 Submission to the appropriate Portfolio Committees**

We recommend that this report, and a brief submission, be forwarded to the National Legislature. The purpose of this would be to canvass the views of political parties and the relevant parliamentary committees, whilst beginning to build political commitment for the issue.

### **9.6 Role of the Private Sector**

We recommend that policy development be explored that would see employers take a greater interest in the impact of violent crime on their workforce. We recommend that a study focusing on the current levels (and feasibility) of increasing employer responsibility to ensure that staffs are insured to cover disabilities that could result from crime be undertaken. Recommendations concerning how companies could better protect their staff following a criminal violent act should be drawn up. These could also consider whether employers could provide minimum insurance (*ex gratia*

payment) and/or Employee Assistance Programmes capable of dealing with the effects of violent crime on their employees.

### **9.7 Supplementing Disability Grants**

We recommend that a feasibility study into the supplementing of disability grants for those disabled through crime be undertaken (see 8.5.2 of this report). We recommend that the feasibility study consider the proposal that disability grants be made to blameless victims disabled by crime. This supplement should be targeted at the poor and those without other private insurance cover. This investigation would need to investigate the feasibility of such an approach from an administrative and financial point of view. If such a supplement were possible, the scheme should be operational by 2003 and the interface with implementing recommendation 9.2.1 (i.e. a pilot compensation scheme for those disabled by crime) explored. The eligibility criteria should be discussed and finalised with the South African Law Commission as outlined under 9.3.

### **9.8 Police Record Keeping**

We recommend that an audit be undertaken of police crime recording and statistics gathering processes, with a view to making proposals to improve such systems so as to ensure that they are rendered fully functional in respect of the requirements of a future victim compensation scheme or pilot schemes proposed. This process, which should engage role-players from across the relevant government departments, should be followed by a reform process which would ensure a sustainable and proper record keeping system.

### **9.9 Witness Fees**

We recommend that the issue of witness fees receive immediate attention. As an initial process we recommend that *victims* who are called as witnesses in trials be compensated for their travel and other reasonable costs, and a nominal and standardised rate also be paid for time lost by the victim/witness whilst attending the case. This, we feel, could help reduce secondary victimisation and encourage more active participation in the criminal justice system. An investigation into the feasibility of compensating all witnesses in criminal trials should be undertaken.

## **9.10 Hospital Trauma Unit Record Keeping**

We recommend that a review of record keeping in hospital trauma units be undertaken. The review should focus on what information is needed for injury surveillance purposes (see recommendation 9.11), and be undertaken with a view to making proposals to improve such systems so as to ensure that they are rendered fully functional in respect of the requirements of a future victim compensation scheme or proposed pilot schemes. Specifically, it is recommended that the causes of medical trauma be outlined in greater detail to ascertain if injuries were sustained in the course of criminal violence or other types of violence (i.e. accidental injuries). This process, which should engage role-players from across the relevant government departments, should be followed by a reform process which would ensure a sustainable and proper record keeping system.

## **9.11 Injury Surveillance**

We recommend that an injury surveillance system be set up over the next five years within all public health facilities. The establishment of an injury surveillance system would need to be done in conjunction with current initiatives focusing on injury surveillance and the pilot schemes already underway. In the long-term, this system should ensure that all cases of criminal injury are recorded as such and that records verifying incidents can be extracted with ease. Rural areas should be prioritised for this system. Such a system must be functional to the interim pilot compensation initiatives, and ultimately to the full future implementation of a victim compensation scheme should this become feasible.

## **9.12 Increasing Awareness of the Impact of Crime**

### **9.12.1 The role of VEP and other government bodies**

In compiling this research report it became evident that the precise impact of crime on individuals and society is currently under-researched and inadequately understood in South Africa. It is, therefore, recommended that the South African Law Commission (at least in respect of its concern with the establishment of a victim compensation scheme), and the government's Victim Empowerment Programme, amongst other government agencies, place a greater public emphasis on the economic, psychological and physical impacts of crime. To do this it is recommended that a study be commissioned to research thoroughly the impact of



crime on South Africa and on its victims. The profile of victims needs to be ascertained more precisely and the exact injuries that result from criminal violence need to be examined (specifically the degree to which people are disabled). By publicising the results of such research, it is hoped that support to victim assistance initiatives will be encouraged and advanced both within government and the private sector, as well as the limited areas of compensation proposed in this set of recommendations. This study should also be able to provide reliable information necessary to costing and budgeting for the targeted compensation schemes outlined above.

### **9.13 Restitution from Offenders**

This report has argued that restitution from the offender is not always the most efficient way to compensate victims because many offenders are poor and conviction rates are low. However, restitution from the offender should always be the first priority in the case of convictions for crimes involving violence. A review of the law which provides for restitution and its implementation needs to be under-taken and/or processes already underway to do this supported. The findings of this report need to be integrated into this process. A programme to improve the process of restitution needs to follow, along with the encouragement of greater judicial utilisation of the sentencing vehicle of making compensatory awards to the victims of violent crime. Furthermore, the exact percentage of victims who receive restitution must be quantified and mapped over time. The appropriate structures need to be set up to facilitate such a process.

### **9.14 The Role of the Victim Empowerment Programme**

We recommend that the issue of compensation be placed on the agenda of government's victim empowerment programme. The VEP should:

- interface with the process to establish the pilot compensation schemes and assist in investigating how the victim empowerment programmes could support this process (e.g. make the public aware of the pilot schemes, train police to advise victims of the availability of funds through the pilot compensation schemes, **etc**);
- interface with development of a Crime Victim's Fund;
- Increase public awareness about the precise impact of crime as outlined in recommendation 9.12 above;

- contribute to the recommendations regarding restitution made in recommendation 9.13 above;
- host a number of workshops, with key role players and government departments, on international best practice with regards to the issue of compensation to victims of crime. This report should be distributed to participants prior to such workshops for discussion, and
- Facilitate greater international contact, particularly in Africa, regarding the issue of compensation for victims of crime (see recommendation 9.16.2).

### **9.15 Charter of Victim Rights**

Currently, the draft Charter of Victim Rights only mentions a right to compensation with regards to the issue of restitution ordered by the court. A consultative workshop needs to be set up to discuss whether more far-reaching rights to compensation need to be established in the Charter. This report should form the basis of the discussion with key groups, including groups representing victims of crime. A consultation process should ensue. Stakeholder views should then be collated. Stakeholders should also be encouraged - using the information in this report - to participate in the public process of consultation with regards to the draft Charter of Victim Rights that will be unfolding in the coming months. Currently the draft Charter process is being steered by the Ministry of Justice and this report should be forwarded to the relevant authority.

### **9.16 Stakeholder Consultation on this Report and Distribution**

#### **9.16.1 National debate**

This report needs to be distributed as widely as possible with the purpose of facilitating a national dialogue amongst key stakeholders about the impact of crime on victims, as well as the debate concerning compensation. This will assist with laying an informed foundation for any future developments regarding compensation and ensure public support as the process unfolds – specifically for the strategic importance of the pilot compensation schemes. In addition, the international comparative experiences documented in this report need to be publicised and popularised, as well as their strengths and weaknesses scrutinised in the South African context.

### **9.16.2 International debate with a focus on the developing countries**

This report indicates that compensation schemes within the developing world are virtually non-existent. A concerted effort should be made by South Africa to foster contact and collaboration with other developing countries regarding debates about compensation for victims of crime. A number of structured exchanges on the issue with African countries and countries such as Brazil, Chile and Argentina should be undertaken in the next two to three years. This should be facilitated by the government's VEP programme in consultation with leading non-governmental agencies in the field.

## **9.17 The Feasibility of Compensation Scheme in South Africa in the Future**

### **9.17.1 Ongoing review of the feasibility**

Once the pilot targeted compensation scheme have been established in 2004 (see recommendation 9.2), and the various recommendations carried forward in this report undertaken, a review of whether a larger compensation scheme should be established should be undertaken. The criteria used to consider whether a compensation scheme would be viable have been discussed throughout the report. However, a number of issues would need to be considered in such a review process, which we recommend should take place bi-annually thereafter. The following issues would need to be assessed:

- the financial feasibility of a compensation scheme relative to other government funding;
- the reach of the criminal justice system and whether a compensation scheme would be accessibility to all - especially the poor;
- the administrative services necessary and the capability of the civil service to effectively run the scheme;
- the ability of the police to keep records, verify crimes and interface with a compensation granting body;
- the reliability of medical record-keeping and verification of injuries, as well as the ability of health authorities to interface with a compensation granting body;
- the resources and public service skills available to ensure the necessary checks and balances to minimise fraud;
- the relative strength of the victim empowerment programme, and the victim aid services it provides, which would need to complement any compensation process;
- the legal parameters of eligibility and types of injuries qualifying for compensation.

### 9.17.2 Issues to consider if a compensation scheme were established

This report has recommended that a fully-fledged compensation scheme is not viable in South Africa in the short-term. However, if on review in 2 to 3 years time, and after implementing the pilot schemes, the above criteria can be satisfied, we recommend that this report be used as starting point for establishing a more fully-fledged compensation scheme in South Africa. If a compensation scheme were established in South Africa over the next few years we recommend that:

- the scheme should adopt a 'safety net' approach (see *Chapter Six* of this report) and should ensure that its major beneficiaries are the poor;
- South Africa should adopt a tariff scheme approach to compensation and not use a system based on common law. This is consistent with current international norms, and will be more cost-effective, less administratively burdensome and will not prejudice those who do not have an income, as the compensation rates would be standardised;
- payments for compensation should be made as once-off payments rather than as annuities, or pensions, unless the approach of supplementing the disability grant process is adopted (see recommendation 9.7);
- the eligibility criteria for compensation (the parameters) should be finalised by the SA Law Commission. Pragmatic concerns (e.g. finances) will need to be balanced against ensuring maximum benefit to applicants;
- Any scheme should ensure that those in need, and only those victims considered 'blameless' and those who co-operate with the criminal justice system, are the beneficiaries;
- a public awareness campaign should go hand in hand with the development of the scheme;
- administration costs of the scheme should not exceed the benefits to victims.

### 9.18 Conclusion

In sum, the strategic approach adopted in these recommendations highlights the importance of addressing a number of issues, before a comprehensive compensation scheme could be established. Many of the recommendations are geared towards this, e.g. improved record keeping, placing compensation as an issue more squarely on the national agenda, *etc*. Specifically, however, we motivate for a number of targeted pilot victim compensation schemes to be set up over the medium-term. These should serve to assist the victims targeted by them (i.e. disabled crime victims, rape survivors and the dependants of murder victims) and galvanise a focus on these priority groups. These pilot schemes would also, amongst the other recommendations made, help lay the foundation for the

incremental and strategic development of a more substantial victim compensation scheme in the future.

The recommendations are made in light of an awareness of the multiple needs of victims within the criminal justice system. Ideally, the types of remedies and incremental approach to victim compensation taken here should take place parallel to a process of developing victim support services more broadly. The recommendations made in this report are seen as complementing this process. Additional resources for the approach adopted here should be sought and we have recommended some methods for achieving this. Each recommendation made in this report will not only support the strategic development of a compensation scheme over time, but also simultaneously address some of the needs of victims in their own right.

As is apparent from this report the legal, financial and organisational obstacles confronting government in conceptualising and implementing a victim compensation scheme will be significant. However, we believe that there are substantial social benefits that might be gained through the functioning of an appropriate compensation scheme. These include assisting victims who have suffered material harm, enhancing equity by providing a social safety net for poorer victims and improving the criminal justice system through enhancing its legitimacy. Finding the proper mix of policies will not be easy, but through the incremental development of the programmes, pilot schemes and structures outlined in this report, South Africa should be able to find the optimal framework for compensating victims of violent crime.

# **Appendix One**

## **South African Law Commission's Terms of Reference**

### **COMPENSATION SCHEME FOR VICTIMS OF CRIME**

#### **1. Introduction**

The Republic of South Africa is far behind other countries when it comes to victim support in general and compensation of victims of crime in particular. The South African Law Commission through its project committee on Victim Empowerment is at present conducting an investigation into the viability of establishing a State Compensation Fund for victims of crime. Victim compensation can in general be explained in terms of a reward, while there is a difference between compensation and restitution. Compensation and restitution are both components of the umbrella term 'reward' which may be defined as providing a particular benefit or service to a particular person in the form of a restitution order or compensation by the State. Compensation should, however, be distinguished from restitution in so far as compensation relates to the procedures established by the State with the aim to compensate victims from a central State fund, while restitution relates to the legal remedies available to the victim to claim restitution from the offender by means of a court order, either in a civil suit or a criminal action. The Commission's investigation includes a review of the legal position relating to both compensation and restitution with the aim to make recommendations on law reform in this regard.

#### **2. Goal of the investigation**

The Law Commission is aiming to make recommendations with regard to compensation and restitution for victims of crime. A fair, efficient and viable system shall be established, which will

- meet the needs of victims,
- provide them with access to the criminal justice system,
- ensure greater satisfaction with the criminal justice system,
- ensure that at least a minimum financial compensation shall be provided for those victims.

In order to best meet these objectives consideration should be given to establishing a state compensation fund (which will include alternative options on the financial viability thereof), if such a fund is not a viable option, alternative ways of how the matter can be approached should be considered (for example establishing a fund which would not pay compensation

but which will be used for improving support services to victims) and alternative means to broaden the number of people eligible for compensation should be considered having regard to the financial constraints under which the system is to operate.

Therefore, the research shall be based on such a multifaceted approach to accommodate the needs of victims of crime to ensure maximum benefit based on the idea of restorative justice. Fall back positions shall be built in to keep the proposals viable and flexible.

### **3. Overall Structure of the investigation**

The investigation has three components:

- to conduct research on the current legal position and actual practice in respect of compensation and restitution for victims of crime in South Africa as well as relevant foreign jurisdictions;
- to identify shortcomings in the current South African system; and
- to make recommendations on how the system should be improved to achieve the overall goal. Viable and meaningful options have to be presented and the cost implications elaborated.

Due to the work already done by the Commission, the further research to be farmed out shall pay special attention to developing these options and its financial viability.

### **4. Task of the consultants in general**

The expert(s) shall draft a report and make recommendations to the Commission outlining the options considered as well as motivation for the recommendations accepted, in respect of compensation of and restitution to victims of crime in South Africa based on:

- comparative research with regard to compensation and restitution in foreign jurisdictions, both as far as the legal framework as well as the practical application thereof is concerned and having due regard to their peculiar problems and deficiencies. New international discussions on the issue shall also be reflected;
- consideration and evaluation of the current system in place in South Africa inclusive of the legal framework with particular attention to compensation at sentencing stage and section 300 of the Criminal Procedure Act, its practical application and deficiencies;
- consideration of strengthening or expanding of existing national funds with the aim of paying for compensation to victims of crime, for example, the use of assets confiscated in terms of the Proceeds of Crime Act, payments from the Motor Vehicle Accident Fund, the State Presidents Fund for victims of terrorism, reparation in terms of legislation dealing with the Truth and Reconciliation Commission, or any other existing Fund;
- consideration of alternative means of compensation and restitution which will enhance the position of victims;

- when compensation is not fully available from the offender or other sources, in particular consideration of the establishment of a separate statutory State compensation fund or alternatively a unit within an existing government structure which will provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes or to the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

This research on the establishment of separate statutory State Compensation fund has to elaborate on:

- how the administration of the scheme should be regulated, for example should a new body be created or should it be linked to existing compensation structures;
- the composition of the Executive Board of the scheme and the extent of the administrative support which would be needed;
- consideration of the financial implications of the scheme, including the extent of expenditure on administrative support, payments from the fund and sources of income and the financial viability of establishing such a scheme with alternative options on the operation of the scheme and the financial implications of each option in view of the prevalence of crime in South Africa;
- the procedure to be followed in submitting claims;
- how payments from the scheme could be limited to keep within budgetary constraints;
- the time frames for finalisation of claims;
- the extent to which payments from the scheme would meet the needs of victims;
- eligibility requirements for participation in the scheme as well as the crimes for which claims should be allowed. Of particular importance is the question of influence of a victim's participation in private insurance schemes or membership of a medical aid scheme on the need for payment of compensation or the provision of assistance to the victim;
- the procedure to be followed to determine awards from the scheme;
- legal and practical problem areas to consider when establishing such a scheme and how to avoid these problems.



## **Appendix Two**

### **Compensation for Occupational Injuries and Diseases Act (COIDA)**

The Compensation Fund was established in terms of the 1993 Compensation for Occupational Injuries and Diseases Act (COIDA). A Compensation Commissioner is appointed in terms of the Act to administer the fund and employees are compensated by the fund.

Claims can be made if:

- an employee is injured during the course and scope of duty;
- an occupational disease is contracted; or
- upon death, the deceased employee's dependants may claim.

Excluded from claiming are domestic workers, members of the SANDF and SAPS, independent contractors or employees who work outside of South Africa for more than 12 months at a time. Farmworkers and casual workers are included. Employers pay into the fund on a monthly basis, with certain exclusions. No contribution or deduction for this is made by employees.

#### **Limitations on compensation**

No compensation is payable:

- for claims made more than 12 months after the accident, death or disease;
- if an employee is off work for 3 days or less;
- if an employee's own misconduct caused the accident unless death or serious disability resulted;
- if medical treatment is unreasonably refused by an employee.

#### **Compensation payable**

Compensation is payable at a percentage of an employee's wage at the time of injury, death or disease for permanent or temporary disability, death, medical expenses (for a maximum of two years from date of accident, including medicine) and additional compensation. The fund does not provide compensation for pain and suffering.

#### **Temporary disability**

If an employee is off work for three days or more, the full period from date of injury will be covered by the fund. A doctor must book the employee off work. Temporary disability can be total or partial. In cases of total disability, an employee will be paid 75% of the normal monthly wage. In cases of partial disability, an employee will be paid 75% of the difference between the normal and reduced monthly wage.

Compensation for temporary disability will be paid for up to 12 months. The commissioner may agree to extend this to 24 months, following which a decision regarding permanent disability must be taken. The employer must pay 75% of the employee's wages for three months after an injury, which money is reclaimable from the fund once it starts paying the employee or the employee commences work.

### **Disease**

An employer is required to contribute to the fund for the first three months after an employee is booked off work with an occupational disease. Thereafter, the Compensation Commissioner takes over the monthly payments until a worker is fit for duty.

### **Permanent disability**

A medical report is required and the commissioner, together with a panel of doctors, determines the degree of disability. Degrees of disability are set out in Schedule 2 of the Act and include 100% for loss of two limbs or sight, 50% for loss of hearing in both ears, 30% for loss of sight in one eye, 7% for loss of one whole big toe and 1% for the loss of one other toe.

Compensation for permanent disability is paid as a lump sum if the injury is 30% or less on the following formula:  $(\text{monthly wage} \times 15) \times (\text{percentage disability} \div 100)$ . Compensation is paid on a monthly basis as a pension if the injury is more than 30% on the following formula:  $(\text{monthly} \times (75 \div 100)) \times (\text{percentage disability} \div 100)$ .

### **Death benefits**

A widow/er, common law spouse or dependants may submit a claim for benefits. However the total monthly pension per family cannot be more than the pension the deceased employee would have received if 100% disabled (ie. 75% of the monthly wage). A maximum of R4480 will be paid to the person who covered the funeral expenses.

The spouse receives a lump sum of 1.5 x employee's wage as a once off payment and a monthly pension calculated as 30% X monthly wage of the employee paid once a month.

Children under 18, including illegitimate, adopted and step children, receive 15% x monthly wage of the employee until the child is 18 unless the child is mentally or physically disabled.

Other dependants, including parents and siblings may also claim benefits as full or partial dependants.

### **Additional compensation**

Additional compensation may be applied for within 24 months of the injury, death or disease. This period may be extended by the Commissioner if good reason exists.

### **Steps to claim disability**

1. The employer must be informed verbally or in writing of the injury or disease.
2. The employer has 7 days within which to report this to the Compensation Commissioner on a specified form.
3. A doctor must complete the specified form and provide a First Medical Report to the Commissioner within 14 days of examining the employee.
4. If an employer fails or refuses to advise the Commissioner, the employee or his representative may do so and the employer will be instructed to file the correct form.
5. The doctor is required to provide Progress Medical Reports to the Commissioner while treatment is underway. The employee may also consult other doctors for second opinions, at his/her own cost.
6. The doctor must send a Final Medical Report to the employer, who forwards this to the Commissioner, stating whether the employee is fit to resume work or is permanently disabled.
7. The employer sends a Resumption Report to the Commissioner when the employee commences work or is discharged from hospital.

### **Objections and appeals**

An objection on the specified form to the decision of the Commissioner may be lodged within 90 days from the date on which the employee became aware of the decision. The Commissioner may call a formal hearing to review the decision. At this hearing the employee is entitled to representation by a legal representative or trade union official or family member. The employee is entitled to call expert evidence. After representations, the Commissioner will make a final decision. This decision is reviewable in the High Court.

## **Appendix Three**

### **Road Accident Fund**

The Road Accident Funds Act (No. 56 of 1996) establishes the Road Accident Fund, which pays compensation for loss or damage wrongfully caused by the driving of motor vehicles, whether the identity of the owner or the driver thereof, or both, has been established or not.

#### **Obligation to compensate**

The Fund is obliged to compensate any person (the third party):

- for any loss or damage which the third party has suffered as a result of any bodily injury or the death of or any bodily injury to any other person, caused the driving of a motor vehicle by any person at any place within the Republic;
- if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee

#### **Limits on compensation**

The Fund limits the payment of compensation as follows:

- the sum of no more than R25 000 if the third party was a passenger in or on the negligent vehicle (other than a military vehicle while rendering military service), if they were travelling in such vehicle for reward, were in the course of the lawful business of the owner of that motor vehicle, travelling for the purposes of a lift club
- the necessary actual costs to cremate the deceased or to inter him or her in a grave.

#### **No obligation to compensate**

The fund is not obliged to compensate any person for any loss or damage:

- for which neither the driver nor the owner of the motor vehicle concerned would have been liable;
- suffered as a result of bodily injury to or death of any person who was being conveyed for reward on a motor cycle, or is a member of the household, or responsible in law for the maintenance, of the driver of the motor vehicle concerned, and was being conveyed in or on the motor vehicle concerned;
- if the claim was not instituted by the third party, or on behalf of the third party and if the third party unreasonably refuses or fails to subject himself or herself, at the request and cost of the Fund, to any medical examination by medical practitioners designated by the Fund, refuses or fails to furnish copies of all medical reports in his or her possession that relate to the relevant claim for compensation or refuses or fails to allow the Fund or such agent at its or the agent's request to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner, or to submit an affidavit, statements or documents in which particulars of the accident are fully set out;
- when a third party is entitled to claim compensation from the Fund no compensation may be claimed from the owner, or driver in respect of that loss or damage, unless the Fund or such agent is unable to pay the compensation.

#### **Prescription of claim**

In terms of section 23, the right to claim compensation from the in the case where the identity of either the driver or the owner thereof has been established, shall prescribe after three years from the date upon which the cause of action arose.

Prescription of a claim for compensation does not run against a minor, a person detained as a patient in terms of any mental health legislation, or a person under curatorship.

Notwithstanding subsection (1), no claim that has been lodged in terms of section 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.

A compensation award shall be reduced by the amount of compensation paid in terms of the Occupational Injuries and Diseases Act, Defence Act or any other legislation, should this apply.

### **Procedure**

A claim for compensation, lodged with a medical report completed by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident is lodged on the prescribed form.

Legal proceedings may only be instituted against the Fund 120 days from the date on which the claim was sent or delivered by hand to the Fund, unless the Fund repudiates in writing liability for the claim before the expiry of this period.

If the Fund has paid compensation it may recover the amount of such compensation from the owner (or driver when the vehicle was driven without the owner's permission) of the motor vehicle concerned or from any person whose negligence or other wrongful act caused the loss or damage concerned when:

- the owner and driver was under the influence of intoxicating liquor or of a drug which was the sole cause of the accident and the owner allowed the driver to drive the motor vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug;
- a person without a licence drove the vehicle and the owner allowed the driver to drive the motor vehicle knowing that the driver did not hold such a licence;
- the owner drove the vehicle under the influence of intoxicating liquor or of a drug which was the sole cause of such accident;
- by the owner when he or she provided the Fund with false information relating to the accident and the Fund was materially prejudiced by such failure or by the furnishing of such false information.

**Appendix Four**  
**United Nations Declaration of Basic Principles of Justice for Victims of Crime**  
**and Abuse of Power**

**Adopted by General Assembly resolution 40/34 of 29 November 1985**

**A. Victims of Crime**

1. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
  - (c) providing proper assistance to victims throughout the legal process;
  - (d) taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - (e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilised where appropriate to facilitate conciliation and redress for victims.

### **Restitution**

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights.
9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimising act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

### **Compensation**

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
  - (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
  - (b) the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

### **Assistance**

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

**B. Victims of Abuse of Power**

18. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights.
19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.
20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.
21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts





## Appendix Five

### Data Capture form for Case Studies

Field	Instruction	1	2	3	4	5	6	7	8	9	10
Type of crime	1 = murder; 2 = att. murder; 3 = ass. GBH; 4 = agg. rob.										
CAS Number	Enter the CAS number										
Nature of crime	1 = unknown; 2 = domestic violence; 3 = violence between ppl who know each other; 4 = robbery; 5 = unprovoked attack by stranger; 6 = other (specify)										
Was the case withdrawn by the complainant?	1 = yes; 2 = no										
Age of victim	Enter victim's age										
Race of victim	1 = African; 2 = Indian; 3 = Coloured; 4 = White; 5 = other										
Employment	1 = unemployed; 2 = white collar; 3 = blue collar; 4 = unemployed; 5 = n/a										
How many dependents if any does the victim have?	Enter number of dependents, otherwise leave blank										
Place of crime	1 = own home; 2 = other home; 3 = business (specify type); 4 = street; 5 = venue; 6 = vehicle; 7 = airport; 8 = other (specify)										
Relationship of victim to perpetrator	1 = immediate family; 2 = extended family; 3 = friend/acquaintance; 4 = total stranger										
Is there evidence that the victim had used drugs or alcohol?	1 = yes; 2 = no										
Victim's role in their own injury	1 = no role; 2 = involved in a crime; 3 = provoked or involved in a fight; 4 = n/a										
Weapon used	1 = gun; 2 = knife; 3 = blunt object; 4 = hands; 5 = none										
Complete JBB	1 = yes; 2 = no										
Nature of injuries	1 = bullet wound; 2 = stabbing; 3 = cuts and bruises; 4 = burn wounds; 5 = none										
Number of injuries	Enter number of injuries										
Location of injuries	1 = head/face; 2 = abdomen; 3 = arm; 4 = leg; 5 = hand; 6 = feet; 7 = spine; 8 = skin										
Is the injury likely to be permanent?	1 = yes; 2 = no; 3 = n/a										
Hospitalisation	1 = yes; 2 = no										
How long was the victim in hospital?	Enter minimum days in hospital										
Value of property lost or damaged if any	Enter value of lost/damaged property or 0 for no losses										

**Appendix Six**  
**Data used in costing models**

**Demographic data of victims of violent crimes**

Murder victims				
Age	African	Coloured	Indian	White
0-19	1.0%	0.3%	0.0%	0.1%
20-29	21.3%	5.5%	0.5%	1.4%
30-39	28.0%	8.2%	0.8%	2.2%
40-59	17.0%	5.0%	0.3%	0.6%
60-65	6.0%	1.8%	0.1%	0.2%
Total	73.3%	20.7%	1.6%	4.4%

Assault GBH victims				
Age	African	Coloured	Indian	White
0-19	5.0%	2.0%	0.1%	0.2%
20-29	24.0%	11.0%	1.3%	1.3%
30-39	18.5%	10.0%	0.8%	2.1%
40-59	14.0%	4.5%	0.4%	0.1%
60-65	2.7%	2.0%	0.1%	0.1%
Total	64.2%	29.5%	2.6%	3.8%

Attempted murder victims				
Age	African	Coloured	Indian	White
0-19	1.0%	0.3%	0.0%	0.1%
20-29	21.3%	5.5%	0.5%	1.4%
30-39	28.0%	8.2%	0.8%	2.2%
40-59	17.0%	5.0%	0.3%	0.6%
60-65	6.0%	1.8%	0.1%	0.2%
Total	73.3%	20.7%	1.6%	4.4%

Indecent assault victims				
Age	African	Coloured	Indian	White
0-19	6.0%	1.0%	0.1%	0.2%
20-29	29.0%	5.5%	1.0%	1.0%
30-39	21.0%	9.1%	0.8%	2.1%
40-59	14.0%	4.0%	0.3%	0.1%
60-65	2.7%	2.0%	0.1%	0.1%
Total	72.7%	21.6%	2.2%	3.5%

Rape victims				
Age	African	Coloured	Indian	White
0-19	6.0%	1.0%	0.1%	0.2%
20-29	29.0%	5.5%	1.0%	1.0%
30-39	21.0%	9.1%	0.8%	2.1%
40-59	14.0%	4.0%	0.3%	0.1%
60-65	2.7%	2.0%	0.1%	0.1%
Total	72.7%	21.6%	2.2%	3.5%

Robbery victims				
Age	African	Coloured	Indian	White
0-19	6.0%	1.0%	1.0%	1.5%
20-29	25.0%	5.0%	2.0%	5.0%
30-39	18.0%	6.0%	3.0%	4.5%
40-59	12.0%	4.0%	1.0%	1.0%
60-65	2.8%	1.0%	0.1%	0.1%
Total	63.8%	17.0%	7.1%	12.1%

## Numbers of victims qualifying for Disability Grants

Number of attempted murder victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	15	2	4	0	0	0	1	0	
20-29	321	39	83	10	7	-	21	3	
30-39	422	51	124	15	11	0	33	4	
40-59	256	31	75	9	5	-	8	1	
60-65	90	11	18	2	1	-	3	0	

Number of assault GBH victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	408	15	163	6	8	0	16	1	
20-29	1,959	70	898	32	102	4	106	4	
30-39	1,506	54	816	29	61	2	171	6	
40-59	1,143	41	367	13	33	1	10	0	
60-65	220	8	163	6	7	0	4	0	

Number of assault GBH victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	64	-	31	-	31	-	46	0	
20-29	268	-	154	-	62	-	154	0	
30-39	193	-	185	-	92	-	139	0	
40-59	129	-	123	-	31	-	31	0	
60-65	30	-	31	-	3	-	3	0	

Number of attempted murder victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	-	2	-	0	-	0	-	0	
20-29	321	39	83	10	7	-	21	3	
30-39	422	51	124	15	11	0	33	4	
40-59	256	31	75	9	5	-	8	1	
60-65	90	11	18	2	1	-	3	0	

Number of assault GBH victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	-	15	-	6	-	0	-	1	
20-29	1,959	70	898	32	102	4	106	4	
30-39	1,506	54	816	29	61	2	171	6	
40-59	1,143	41	367	13	33	1	10	0	
60-65	220	8	163	6	7	0	4	0	

Number of assault GBH victims qualifying for Disability Grants									
	African		Coloured		Indian		White		
	12 months	Perm	12 months	Perm	12 months	Perm	12 months	Perm	
0-19	-	-	-	-	-	-	-	-	
20-29	268	-	154	-	62	-	154	-	
30-39	193	-	185	-	92	-	139	-	
40-59	129	-	123	-	31	-	31	-	
60-65	30	-	31	-	3	-	3	-	

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