

**REVISED COMMONWEALTH STATEMENT OF BASIC PRINCIPLES OF JUSTICE  
FOR VICTIMS OF CRIME**

**Paper by the Commonwealth Secretariat**

1. At their last Meeting in Kingstown in 2002, Law Ministers considered a draft Commonwealth Statement presented to them by the Commonwealth Secretariat, and referred it to Senior Officials for further consideration and refinement. In preparation for the Senior Officials Meeting (London 2004) the Secretariat wrote to all Commonwealth Law Ministries requesting comments on the draft. Based on the responses received, the Secretariat prepared a number of possible amendments to the Kingstown Draft which it presented to Senior Officials for their consideration.

2. In considering the proposed amendments to the draft Statement, Senior Officials discussed *inter alia*, the following issues:

- the need to strike an appropriate balance between the need to protect the interests of victims and the need to ensure that the rights of accused persons are not overridden;
- the need to ensure that the role of the prosecutor remains impartial;
- in respect of parole hearings, the need to allow for flexibility in the wording such that victims have a choice as to whether or not they want to make representations and also to take into account the fact that not all countries have provisions for parole hearings;
- the need to limit the scope of the Statement to cover serious crime only and not all crimes;
- in respect of Restitution Orders, the issue of the time that this could take and the need perhaps to limit such orders to uncontroversial cases or uncontested quantum of damages;
- the possibility of making specific reference to the rights or interests of vulnerable victims, for example children, and in particular children who have been the subject of abuse or victims of sexual crime;
- the need for sensitisation of judicial officers on the issues covered by the Statement.

3. Senior Officials decided to constitute a small working group to consider in detail the Statement and agree on the detail and wording of the amendments to be made to the Statement. The Working Group produced a re-drafted Statement which was then agreed to by the plenary of the Senior Officials Meeting.

4. Senior Officials then decided to recommend to Law Ministers a revised Draft Statement as annexed to this paper. Law Ministers are asked to consider and adopt the Draft Statement in its revised form.

## DRAFT COMMONWEALTH STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIMES

Commonwealth Law Ministers recall the adoption by the United Nations General Assembly of Resolution 40/34 which recognised “that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders”, and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles);

Commonwealth Law Ministers reaffirm the principle that victims must be treated with courtesy, compassion and respect for personal dignity.

To express their commitment to the Basic Principles, Ministers agree that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles, in particular for serious crime. They believe that:-

1. Guidelines and training programmes should be developed to ensure that Police:
  - are sensitive to the needs of victims;
  - are informed, knowledgeable, and supportive of existing social services and programmes for victims;
  - introduce, to the extent possible, procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs; and
  - establish procedures to ensure that, to the extent possible, victims of crime requiring information are periodically informed of the general status of investigations, taking into consideration the need to ensure the proper administration of justice.
  
2. Prosecutors, in the exercise of their powers and performance of their duties as officers of the court, should:
  - be sensitised to the fact that public interest should specifically take into consideration the views of victims, including consideration of pre-trial sessions with victims for this purpose, if possible and appropriate;
  - endeavour to provide information to victims – either directly or through another authority - about the status of the case such as scheduling, progress, final outcomes and general reasons for those outcomes;
  - to the extent possible and appropriate taking into account all of the relevant fair trial interests, bring to the attention of the court the views, if any, of victims of serious, in particular violent crime, on bail decisions, postponements, sentencing and restitution;
  - take appropriate action with respect to any persons who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses, including referring the matter to the police or considering seeking the withdrawal of bail or the revocation of parole;
  - use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;
  - to the extent possible, introduce procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of

alternative methods of retaining and introducing evidence such as the use of photographs;

- establish and maintain liaison with victim support structures; and
- be sensitised to the trauma and well being of victims of serious crimes.

3. Parole Boards and other similar mechanisms, in the performance of their functions, should, to the extent possible and appropriate, give consideration to allowing victims of crime, their families, or their representatives to make known the effect of the offender's crime on them.

4. Law Ministers may propose for the consideration of the Chief Justices and other members of the Judiciary of their respective jurisdictions, the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:

- encouraging participation in a training programme sensitising judges to the needs and interests of victims of crime in relation to the judicial process;
- allowing victims and witnesses to be on-call for court proceedings where practicable;
- in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;
- means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;
- to allow, to the extent possible and appropriate taking into account all of the relevant fair trial interests, the views, if any, of victims to be made known to the court at bail hearings, postponements, sentencing and restitution hearings;
- sensitising judges, where applicable, to consider ordering restitution to the victim in appropriate cases where such orders are possible;
- ensuring that, after having given any evidence, the victim's attendance at the trial is facilitated if he or she so wishes and, as requested, a member of the victim's family as well; and
- giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

5. Ministers also agree that they will give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision, taking into account economic, social and cultural norms of each member country.