

## **THE UNITED NATIONS DECLARATION ON CRIME VICTIMS: PRIORITIES FOR POLICY MAKERS**

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### **Introductory Remarks**

Politicians from all over the world publicly admit that the victimological critique of current criminal and social policies is justified. The criminal justice system does not treat crime victims with respect, and more must be done to alleviate the plight of victims of serious crime. Such victim-related issues are highly featured on the crime and justice programs of political parties of the right and the left.

If the victims' movement had attained its present popularity two decades ago large sums of public money would have been channeled toward programs for victims. In the present situation of financial crisis, however, even highly popular types of programs must pass a critical test of cost effectiveness. Eventually this requirement may prove to be a blessing in disguise for the victims' movement. In this period of austerity the movement must, of necessity, grow deeper roots. Its achievements may therefore last longer than some of the extravagancies of the welfare state.

Considering the tight budgets of most governments, eloquent pleas for the establishment of extensive networks of legal and social provisions for crime victims are of little use.

Victimological activists have to do better. In order to be effective agents of change they must come forward with a selection of proposals the benefits of which clearly outweigh their costs. Policymakers who are sincerely concerned with the victims issue must be provided with a list of victimological priorities.

The adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power marks the political success of the victims' movement. For that reason the Declaration has great symbolic significance. Its contents

can also be read as an agenda for political action. In this paper, which draws heavily on the presentations and discussions at the Second International Workshop on Victims' Rights, held in Dubrovnik, the Declaration will be read in this way. We will present the Declaration as a victimological "shopping list" for policymakers. A distinction will be made between five different categories of proposals, dealing with guidelines, law reform, social assistance and mediation programs, research, and international cooperation. We do not expect policymakers to accept the whole list. However, any politician who sincerely supports our cause should find ways to implement at least some items from each of these categories. Politicians who are not ready to commit themselves to such a minimum program can no longer be recognized as allies.

### **1. Guidelines for Police Officers, Prosecutors, and Judges**

In most countries, the preparation and adoption of new legislation takes several years. Law reform cannot offer short term solutions to the problems of victims in their dealings with the system for the administration of justice. Fortunately, the statutory *status quo* usually provides sufficient scope for better treatment of crime victims. Existing opportunities to assist and protect victims are often not fully exploited. In many jurisdictions special provisions for crime victims have not been utilized and are hardly known by the legal profession. A policy initiative on behalf of crime victims should therefore stay with the commissioning of an exhaustive inventory of existing provisions for crime victims by an independent committee of experts. In many countries the cause of crime victims can be advanced more effectively by the adoption of guidelines on the treatment of victims by the system than by legislative change (van Dijk, 1986).

The United Nations Declaration urges governments to ensure access to justice, fair treatment, and redress for crime victims. In most jurisdictions, these goals can largely be met by the adoption of detailed guidelines for police officers, prosecutors, and judges.

#### **Police**

Police officers can be instructed to treat crime victims with

optimal consideration for their emotional problems. A female victim of sexual violence might be given the option of being interviewed by a female officer and to be accompanied by a friend during the interview. Restrictions can be imposed on the liberty of police officers to give information to the press that might disclose the identity of the victim or hurt his or her reputation. Police officers can also be instructed to inform all victims who have contacted them about their legal rights and about the legal aid, state compensation, and social assistance available to them. Leaflets can be distributed to this end. Police officers should naturally keep the victim informed about the progress and results of the investigation. Finally, police officers can be instructed to add a detailed description of the harm sustained by the victim in their reports. In the Netherlands police reports also inform the prosecutor and the judge whether the victim wishes to be notified about any criminal proceedings and/or wishes the matter of restitution to be dealt with therein. In this model the police are supposed to prepare the basis for action to be taken by the prosecutor.

### **Prosecutor and Judges**

In many countries prosecutors are responsible to a minister of state or an attorney general. These prosecuting authorities can adopt guidelines for prosecutors regarding the proper treatment of crime victims. Prosecutors can be instructed to notify the victims of all important decisions concerning their case, such as waivers and the date and place of the trial, sentencing, appeal, and release. Prosecutors can also be urged to invite certain categories of crime victims for a personal interview in order to inform them about the way that the offender will be dealt with. In appropriate cases prosecutors should make an effort to protect the victim from being cross-examined in public. This can be arranged either by examination in a semi-private setting or a trial *in camera*.

In many jurisdictions prosecutors and judges have several penal means at their disposal to prompt the offender to pay restitution to his victim, such as conditional waivers or partially or wholly suspended sentences with the payment of restitution as a special requirement. Prosecutors can be encouraged to apply all available legal provisions to satisfy justified claims for restitution to the

victim. In cases in which victims present their civil claims to the judge at the criminal trial - an option that is available in most European jurisdictions - prosecutors should not feel discharged from their obligation to assist victims. The claims of the so called *partie civile* can often be sustained by means of a partially suspended fine with the condition that full restitution be paid to the victim.

In some countries senior judges or special committees of judges can adopt sentencing guidelines for the judiciary. Most of our recommendations for prosecutorial guidelines apply similarly to these sentencing guidelines.

### **Supportive Measures**

Obviously, the simple adoption of victim-oriented guidelines for police officers, prosecutors, and judges will not suffice. The introduction of innovative guidelines must be accompanied by a set of measures that support their implementation. Both the public at large and relevant professional groups must be informed about the goals and content of the new guidelines. Training courses for practitioners will often be indispensable. Police officers and criminal lawyers need to be sensitized to the emotional need of crime victims. They must also be made aware of their unique professional potential to reassure victims about the validity of basic social rules.

If necessary, police forces, prosecutors, and judges need to be given additional staff to accomplish their new tasks. Special computer software packages can be developed to monitor the processing of cases through the system. Such systems can also produce the necessary letters to be sent to victims at the various stages of the proceedings.

Police officers and prosecutors must be held accountable for noncompliance with victim-oriented guidelines. To this end, prosecutors can be encouraged to return to the police any report of a crime with a personal victim that does not contain a statement about the victim's claim for restitution. In some countries the office of the public prosecutor - or the minister involved - can be held financially liable for damages resulting from noncompliance with guidelines, for example, in cases in which the *partie civile* has not been informed in due time about the trial by the prosecutor dealing with the case and is thus prevented from inexpensively presenting his or her claim to a judge.

In some cases crime victims must be provided with free legal aid in order to protect their interests. Generally speaking, the need for free legal aid for crime victims is greater to the extent that the criminal justice system is less accessible and less service oriented. If police officers and prosecutors can be prompted to act as effective victim advocates the provision of free legal aid to crime victims can be kept at a minimum. On balance a service oriented criminal justice system is often less costly than a system that requires victims to pursue their interests with the help of an attorney.

## **2. Law Reform**

In some jurisdictions - notably those with the common law tradition - law reform must be set in motion in order to shield vulnerable categories of victims from being cross-examined during public trials. Elsewhere, the legal provisions concerning the payment of restitution by the offender need to be modified. It will often be desirable to enact legislation requiring that criminal court judges take into account any claim for restitution presented to them by the victim and give reasons for not awarding such restitution.

The Achilles' Heel of most existing demands for restitution by the offender is the enforcement of the order.

In many cases the offenders never make restitution although they are capable of doing so. Remedying this shortcoming must be given a high priority since it is an important source of annoyance and resentment for victims. A promising legislative model is the British "compensation order" (Shapland, 1986). These orders to provide restitution to the victim have the status of a penal sanction. They are enforced in the same way as fines. Their enforcement rate is quite high (Softley, 1977).

Compensation orders can be imposed as the sole penalty and also in conjunction with other sanctions. Their introduction will be most cost effective if they partly replace short custodial sentences.

## **State Compensation**

Ideally all States should establish statutorily based compensation funds for victims of violent crimes. Advances on restitution by the offender can be paid from such funds. Compensation funds also

provide a useful back-up system for cases in which no offender can be found. The establishment of a compensation fund requires the provision of a relatively large structural budget by the State. According to some experts the cost effectiveness of such monetary provisions for crime victims is somewhat dubious (Elias, 1983). Especially in societies with free medical aid systems and good social insurance schemes a compensation fund may not be a first priority. In other countries, however, the provision of free medical aid for crime victims should definitely be a priority of the greatest importance since it is not otherwise available.

In some countries State compensation programs are financed by the imposition of small surtaxes on all fines. Another option is the imposition of a surtax on the excise tax on liquor.

### **3. Social Assistance and Mediation Programs**

In many countries the budgets for professional social work and counseling have recently been cut back severely.

Victimologists advocating social assistance or support programs for crime victims seem to be swimming against the tide. Social assistance for crime victims, however, should primarily be seen as an expression of solidarity by fellow citizens. Crime victims need first of all to be treated with optimal consideration and respect by the police. Many victims also need to be given moral support and practical assistance during the immediate aftermath of the crime. Such assistance can be given quite adequately by local voluntary associations that work with the police. Victims with more serious problems can be referred to agencies for professional treatment and help.

Although much of the work for crime victims can be done by volunteers, some expenditures by the State are inevitable. Voluntary associations need modest budgets for the employment of professional coordinators who can recruit and guide volunteers and make referral arrangements with the police (Reeves, 1985).

In some countries, the central government acts with local authorities as a co-sponsor of local victim support schemes. Elsewhere the central government gives grants to a national association of local programs. These national associations usually assist local member programs with such management issues as

fundraising, the training of volunteers, and publicity. They also act as pressure groups for victims' issues. One of the national organizations in the Federal Republic of Germany receives most of its revenues from donations made by offenders at the request of prosecutors or judges.

The United Nations Declaration makes special mention of informal mechanisms for the resolution of disputes. In some parts of the world indigenous practices of conflict resolution and mediation can still be relied on to give redress to crime victims. In some urbanized societies initiatives have recently been taken to implant such informal mechanisms in anonymous communities. The costs and benefits of such programs for the victim need to be assessed carefully before public funding is granted on a permanent basis. Under no circumstances should the State allow a victim to be put under pressure by the offender's counsel or probation officer to accept a diversionary settlement.

#### **4. Research**

Victimization surveys were originally conducted to yield reliable indicators of the levels of crime (Reiss, 1986). They are now commonly used to identify high risk groups of victims (van Dijk, Steinmetz, 1984) and to assess victims' attitudes and needs (Waller, 1985). In order to reduce their costs, victimization surveys are often carried out by telephone or mail. In some countries police forces have recently started to launch their own low-budget victimization surveys.

Psychologists have supplemented these quantitatively oriented surveys with in-depth interviewing of victims about their feelings, needs, and coping mechanisms (Smale, 1984; Fischer, 1984). Empirical research, which could inspire the formation of theories about the immediate and long term needs of various categories of crime victims, should be actively promoted (Maguire, 1984). Special attention should be given to the problems and needs of victims of terrorism and of crimes by government officials.

Services for crime victims need to be evaluated carefully by independent research teams. In several areas special services can be offered to randomly assigned treatment groups in order to allow rigorous comparison with controls (*e.g.*, the effectiveness of various

methods of referral by the police to victim support groups can be tested experimentally).

In the present situation governments are well advised to spend at least ten percent of their total budgets for victim policies on academic and policy oriented victimological research projects.

### **5. International Cooperation**

In the area of applied victimology many practitioners and researchers in different countries are laboring to reinvent the wheel. Solutions often have to be found for quite similar organizational problems in several countries simultaneously. International exchanges on practical matters can therefore be quite fruitful.

The World Society of Victimology regularly organizes international workshops for researchers and practitioners on several topical subjects. On the North American continent the National Organization for Victim Assistance of the United States organizes annual conferences that are attended by many practitioners. In 1987 an international conference was convened by the Dutch National Platform for Victim Support to exchange experiences with its sister organizations elsewhere in Europe.

At the Fachhochschule Niederrhein in Monchengladbach a computerized databank on victims' issues has been established, which can be consulted by members of the World Society of Victimology. Other important sources of information are *Victimology: An International Journal*, edited in the United States by Emilio Viano, and the newly established *International Review of Victimology*, a publication of the World Society of Victimology.

In 1984, the committee of ministers of justice of the Council of Europe unanimously adopted the European Convention on the Compensation of Victims of Violent Crimes. The Convention sets minimum standards for national compensation programs. It seeks in particular to ensure that victims with foreign nationalities can be awarded compensation under such programs. The Convention has thus far been ratified by governments of Luxembourg and The Netherlands. It will enter into force as soon as the government of a third member country accedes to it. Governments of non-member countries will be permitted to ratify the Convention at a later stage. The Convention would be the first international convention on behalf of crime victims.



### **Concluding Remarks**

As has been observed previously, the victims' movement recruits its supporters and allies from different corners of the political arena. The ideological sources of the movement are quite heterogeneous as well (Van Dijk, 1986). It has no clear political identity. This feature can be construed as evidence of its trendiness and opportunism. The all party support for many of the movement's causes can also be interpreted more favorably. Perhaps the neglect of the victim by the modern centralized State should be seen as a deviation from fundamental principles of natural justice, like the obligation of the community to assist victims and the obligation of offenders to make them whole. The current disillusionment with utilitarian goals of criminal justice, such as rehabilitation and general deterrence, may facilitate the rediscovery of these forgotten principles of natural justice.

If the latter interpretation is correct, it is not at all surprising that supporters of quite divergent political ideologies are now equally receptive to victimological arguments. In this view, the United Nations Declaration, far from being the offshoot of a passing trend, marks the rediscovery of a set of principles that belong to the core of human civilization.

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