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Masaki Sasaki  
Director

United Nations  
Asia and Far East Institute  
for the Prevention of Crime and  
the Treatment of Offenders  
(UNAFEI)

1-26 Harumi-cho, Fuchu, Tokyo 183-0057, Japan  
<http://www.unafei.or.jp>  
[unafei@moj.go.jp](mailto:unafei@moj.go.jp)

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## INTRODUCTORY NOTE

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It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 81.

This volume contains the Annual Report for 2009 and the work produced in the 144<sup>th</sup> International Senior Seminar, conducted from 12 January to 9 February 2010. The main theme of the 144<sup>th</sup> Seminar was “The Enhancement of Measures for Victims of Crime at Each Stage of the Criminal Justice Process”.

Compared with the substantial effort devoted to ensuring the rights of the criminally accused, relatively little attention has been paid to various needs, interests and the rights of the victims of crime. However, since the 1960s, a common understanding regarding the necessity of responding to their needs and interests has grown.

This development led to the adoption of “The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of the Offenders, held in Milan, Italy in September 1985. The Declaration was subsequently adopted by the United Nations General Assembly on 29 November 1985 (Assembly Resolution 40/34 annex), and remains to date the most fundamental United Nations document addressing the rights of the victims of crime.

Measures taken by various countries in order to promote the interests of the victims of crime include (i) direct financial support by the State; (ii) direct support and protection within the criminal justice system, especially measures designed to reduce the hardship experienced when assisting in the prosecution of offenders; and (iii) enactment of statutes designed to improve their legal status and establish “the rights of the victims of crime.” How these measures have been implemented, and the degree of practical implementation, however, vary substantially from state to state.


As 2010 marks the twenty-fifth anniversary of The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, it should be worthwhile for criminal justice practitioners of Member States to review their criminal justice systems in the light of the Declaration. Accordingly, UNAFEI, as an institute of the UN Crime Prevention and Criminal Justice Programme network, decided to hold this Seminar.

In this issue, in regard to the 144<sup>th</sup> International Senior Seminar, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the Reports of the Seminar are published. I regret that not all the papers submitted by the participants of the Seminar could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI’s international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No. 81, Ms. Grace Lord.

August 2010



Masaki Sasaki  
Director, UNAFEI

**PART ONE**  
**ANNUAL REPORT  
FOR 2009**

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**UNAFEI**

## **MAIN ACTIVITIES OF UNAFEI (1 January 2009 - 31 December 2009)**

### **I. ROLE AND MANDATE**

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional co-operation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

### **II. TRAINING**

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). One hundred and forty nine government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

During its 48 years of existence, UNAFEI has conducted a total of 143 international training courses and seminars, in which approximately 3,438 criminal justice personnel have participated, representing 117 different countries. UNAFEI has also conducted a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

#### **A. The 141<sup>st</sup> International Senior Seminar**

##### **1. Introduction**

The 141<sup>st</sup> International Senior Seminar was held from 13 January to 13 February 2009. The main theme was "The Improvement of the Treatment of Offenders Through the Enhancement of Community-Based Alternatives to Incarceration". In this Seminar, 16 overseas participants and nine Japanese participants attended.

##### **2. Methodology**

Firstly, the Seminar participants respectively introduced the current position regarding the role and function of criminal justice agencies in their country in regard to the main theme. The participants were then divided into two group workshops as follows:



Group 1: The Use of Community-Based Alternatives at Pre-Trial and Trial Stages to Reduce Overcrowding in Prisons

Group 2: Effective Measures to Improve the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration at the Post-Sentencing Stage

Each Group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion the group members studied the designated topics and exchanged views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Later, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the Reports of the Seminar. The full texts of these Reports are published in UNAFEI Resource Material Series No 79.

3. Outcome Summary

(i) *The Use of Community-Based Alternatives at Pre-Trial and Trial Stages to Reduce Overcrowding in Prisons*

Group One discussed the availability of bail in each represented country, along with the discretionary powers of the police and prosecution services and interventions at the adjudication stage.

On the topic of bail, the group heard that where it is available, the number of suspects or defendants who benefit from it is not very high. Lengthy procedures, stringent requirements, and conservative and reluctant judges were cited as some reasons for this. The participants later discussed police discretion in granting bail. In many of the participating countries, the police play a very important role in the criminal justice system and have the authority to grant bail in minor cases.

On the topic of discretionary powers of the police, the participants discussed the role of the police, not only in arrest, bail-release and disposition of cases, but also in restorative justice, mediation and alternative dispute resolution. Regarding police discretion, the group recommended that any discretion should be exercised within clear guidelines; that police, as the first point of contact in that criminal justice system should play a role in mediating settlements or minor disputes, subject to legal supervision; and that police investigations should be completed without delay.

Following further discussions and comparisons of prosecutorial and adjudicative practices relevant to the topic, the group agreed that each country should promote community-based alternatives to incarceration as much as possible under its own legal system and the following recommendations were made.

1. That stringent efforts be made to ensure that Alternative Dispute Resolution, Diversion, Settlement, and Restorative Justice Practices are used at the pre-trial, mid-trial and trial stages;
2. That alternative 'court systems' such as Traffic Courts, Family Courts, Small Claims Court, etc. be implemented where applicable, which could free the judiciary to address indictable matters in a more speedy manner;
3. That all phases of the process - investigation, prosecution and trial - be conducted and concluded in a more efficient manner;
4. That the discretionary powers exercised by the police and prosecution services, with respect to closing and suspending criminal cases, should be overseen by appropriate bodies to ensure accountability and transparency to prevent corruption;
5. That creative public awareness campaigns be undertaken to sensitize the public about the benefits of community-based alternatives to custodial sentencing;

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6. That wider use of community-based alternatives, such as probation, suspension of execution of sentences, community service, compensation to the victim, etc. be made by judges at the adjudication stage without prejudice to each country's judicial system;
7. That strategies (training, increased sensitization, awareness) be developed to encourage every sphere of the judiciary to make greater use of the legally provided mechanisms permitting the use of community-based alternatives to custodial sentencing in their sentencing practices;
8. That international co-operation for the provision of technical assistance and capacity building ought to be pursued.

### *(ii) Effective Measures to Improve the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration at the Post-Sentencing Stage*

Group Two discussed the above subject according to the following agenda: 1. Current mechanisms of community-based alternatives to incarceration employed by each represented country; 2. Current situations and problems facing existing legal systems and/or practice of the above-mentioned mechanisms; 3. Countermeasures under current legal systems and/or practice of the above-mentioned mechanisms; 4. Identification of other effective intervention models; 5. Measures to monitor and evaluate all mechanisms discussed.

The following recommendations were made.

1. That non-custodial options be considered as effective rehabilitation strategies;
2. That sentencing officers who utilize alternative sentencing options should be cognizant of the human rights of the sentenced offenders;
3. That recidivism rates be continuously monitored;
4. That risk assessments be used as efficient supervision or monitoring systems for community-based non-custodial options;
5. That inmates be evaluated during incarceration and post-release, to follow up on their progress or otherwise;
6. That reliable procedures be established to evaluate the effectiveness of all measures to prepare for the acceptance and reintegration of released offenders by society, including the availability of adequate shelter and sustenance, and community attitudes;
7. That effective public education programmes be implemented in order to sensitize and inform the public about community-based alternatives to incarceration;
8. That human and financial resources be increased to enhance the administration of community-based alternatives to incarceration;
9. That there is continuous research in these areas through public education forums, conferences, seminars and networking at the national, regional and international levels.

## **B. The 142<sup>nd</sup> International Training Course**

### **1. Introduction**

The 142<sup>nd</sup> International Training Course was held from 11 May to 29 June 2009. The main theme was "Effective Countermeasures against Overcrowding of Correctional Facilities". In this Course, 14 overseas participants, two international observers and eight Japanese participants attended.

### **2. Methodology**

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future

prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Effective Countermeasures against Overcrowding of Correctional Facilities

Group 2: Sentencing and Alternative Punishment

Group 3: Post-Sentencing Disposition and Treatment Measures

The three groups elected a chairperson, co-chairperson(s), rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meeting the drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The full texts of the reports are published in full in Resource Material Series No. 80.

### 3. Outcome Summary

#### (i) *Effective Countermeasures against Overcrowding of Correctional Facilities*

The group discussed the above subject by dividing the matter into three subtopics: (i) alternatives to pre-trial detention; (ii) diversion from criminal justice procedure; and (iii) speedy trial measures.

With regard to alternatives to pre-trial detention, the group discussed police power to release suspects on bail; house arrest or police detention; placing a suspect under the supervision of a person or institution; electronic monitoring; prohibiting a suspect from leaving a particular area; investigation without arrest; prohibiting a suspect/accused from going to particular places or meeting named individuals; confiscation of the suspect's passport; and release with an order to pledge financial or other property, such as bail.

Regarding diversion from criminal justice procedure, the group discussed absolute or conditional discharge; decriminalization; and restorative justice. Regarding absolute or conditional discharge, it was argued that victims should be able to request independent review of such decisions. Regarding decriminalization, the group agreed that while it can be effective, public opinion must be obtained and considered before any decision is made. Regarding restorative justice, the group identified its merits (alleviates overcrowding; saves time and money; lessens the workload of criminal justice personnel; satisfies victims; and avoids stigmatizing offenders) and demerits (lack of specific and general deterrence; does not halt recidivism; risk of injustice to some offenders; and public insecurity). The group agreed that while the definition of what constitutes a minor offence differs from country to country, restorative justice should only be used for minor cases, according to the jurisdiction in which the offence was committed. The group recommended that the establishment of an independent and neutral mediating body in the process is fundamental.

Regarding speedy trial measures, the group discussed (i) summary proceedings and speedy trial and (ii) pre-trial preparation systems, which the group agreed were effective in reducing overcrowding. The group identified some factors in a slow trial process:

- No fixed timeframe for investigation and prosecution;
- Minimum number of judges in some countries;
- Unclear and lengthy legal processes;
- Behaviour of stakeholders such as defence lawyers.

The group made the following recommendations:

1. There is a need to set fixed timeframes for investigation and prosecution; however, there should be a provision to allow for extensions of the timeframe depending on the nature of each case;

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2. There should be flexibility in the recruitment procedure or policies and appointment of sufficient numbers of judges;
3. The use of summary proceedings is recommended to avoid wasting time and resources;
4. There is a need to utilize pre-trial preparation/arrangement.

### *(ii) Sentencing and Alternative Punishment*

The group carefully considered the theme according to the following agenda: (i) alternative punishments to custodial sanction, including their functions and dysfunctions, sentencing policy, and difficulties in implementing non-custodial measures; (ii) alternative punishments and other interests; (iii) other issues relative to justice policy.

The group discussed the above topic with consideration for the diverse cultural, political and socio-economic background of each participant's country, and its recommendations also take into consideration each country's readiness for change. At the outset, the group recommended that the Tokyo Rules 8.1 and 8.2 give a sample of the alternative sentences which could be implemented by countries according to need.

The group agreed that overcrowding exists in the correctional facilities of each of the represented countries, and that measures to reduce overcrowding should begin even at the sentencing stage. Utilizing alternatives to imprisonment is a sustainable way of effecting behavioural change within the community, and serves the interest of both the offender and society.

Regarding topic (i), alternative punishments to custodial sanctions, the group considered types of non-custodial sanctions and how these ought to be prioritized to increase effectiveness and best reduce overcrowding. They also discussed the functions and dysfunctions of non-custodial sanctions and administrative or other structures that can support alternative punishments. The final matter for discussion under this topic was sentencing policy, such as how to apply the scale of existing penal value, and difficulties and possible solutions in utilizing non-custodial sanctions.

Regarding topic (ii), alternative punishments and other interests, the group discussed the importance of upholding victims' rights; upholding social security; penal function and alternative punishments; and the offender's human rights.

Under the final topic, other issues relative to justice policy, the group highlighted the importance of speedy trial. It also addressed the complex topic of decriminalization. Finally, the group addressed the system of restorative justice. The group agreed that it is an interesting concept with some merit in cases of minor crimes, but that there may be difficulties in implementing the model in cultures which favour a retributive model of justice.

Having carefully considered the situation and practices in each participating country, the group agreed upon the following recommendations.

1. Each non-custodial sentence has its own merits and demerits; the most appropriate sentence should be imposed on a case-by-case basis with due regard for all circumstances of the case;
2. All agencies in the criminal justice system, including NGOs, should collaborate to ensure that the system works smoothly and seamlessly when implementing and utilizing non-custodial measures;
3. Open dialogue in a public forum is required to increase the public's understanding of the functions/dysfunctions and pros and cons of custodial and non-custodial sentences;
4. The public should be informed of the respective costs of imprisonment and non-custodial sanctions;
5. Countries which cannot immediately establish a large probation service should utilize the skills of reputable members of the community who are willing to serve as voluntary probation officers, under a core team of professional advisers;

6. An offender's ability to pay a fine should be assessed at the sentencing stage. The offender should be permitted to make the payment in instalments if unable to pay the total amount at once;
7. Social enquiry reports can be an important tool for deciding an appropriate sentence;
8. Certain offences should be decriminalized; thus, persons who commit such offences would be directed to undergo rehabilitation rather than imprisoned;
9. Speedy trial should be implemented as a feature of the law as it is the most important step to prevent unnecessary detention;
10. To facilitate the introduction of alternative sanctions, many legal systems must make administrative changes and amend their laws.

*(iii) Post-Sentencing Disposition and Treatment Measures*

The group divided its discussion into two parts: (i) post-sentencing dispositions (which lower prison populations); and (ii) effective treatment programmes (which lower recidivism). The group also addressed evaluation of treatment programmes.

Under "post-sentencing dispositions" the group addressed parole; halfway houses; work/study release; remission; pardon; other measures related to early release; and other forms of early release. Participants agreed on the effectiveness of all schemes in reducing prison populations. Concerns were raised about victims' negative attitude to early release and the risk of releasing dangerous offenders, the latter requiring accurate scientific identification of offenders. The group considered the administrative measures necessary for remission and made the following recommendations: computerization of records and the creation of a sufficient database; monitoring; public education; and the setting of conditions of eligibility.

Under "effective treatment programmes" the group addressed assessment and classification of inmates, in which the seriousness of the crime committed, types of offences, length of sentence and security risk to staff and other prisoners must be considered. They also addressed evidence-based treatment programmes, which they defined to mean programmes whose effectiveness in reducing recidivism has been proved through rigorous statistical reviews. The group further considered "other effective programmes". They considered the following such programmes: family visits, sports, educational/vocational training, mental health services, religious or spiritual services, aftercare supervision of discharged offenders, social service treatment programmes for discharged inmates, offenders' criminal records, and public education, campaign and awareness-raising for the prevention of crime and the treatment of offenders.

On the subject of evaluation of treatment programmes, the group discussed items necessary for evaluation and listed possible items thus: recidivism, cost-effectiveness, and success rate. Evaluation can be macro or micro in focus, and timing of the evaluation is another important variable. The group debated whom should conduct an evaluation and agreed that third party evaluation is a good option. The group noted that evaluation: informs authorities of the effectiveness of their programmes; maintains the quality of programmes; and verifies for the taxpayer the effectiveness of programmes. The weaknesses of evaluation are that "success" can be defined ambiguously and that standards of evaluations are not easily set. Using third parties and widely accepted standards could help to address these weaknesses.

The group agreed that all post-sentencing dispositions and treatment programmes discussed were effective in tackling overcrowding and recommended development and endeavour in the following areas:

1. Acquisition of support from government authorities;
2. Exploration of resources;
3. Soliciting of public acceptance of and support for rehabilitation of offenders;
4. Comprehensive, complementary, and aligned strategies to ensure that post-sentencing dispositions, treatment programmes and publicity campaigns are mutually reinforcing and reflect the aims of reducing overcrowding and rehabilitating offenders.

### **C. The 143<sup>rd</sup> International Training Course**

#### **1. Introduction**

The 143<sup>rd</sup> International Training Course was held from 28 September to 5 November 2009. The main theme was “Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials”. Ten overseas participants and five Japanese participants attended.

#### **2. Methodology**

The participants of the 143<sup>rd</sup> Course endeavoured to explore the investigation, prosecution and trial of cybercrime. This was accomplished primarily through a comparative analysis of the current situation and the problems encountered. The participants’ in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into two groups.

Each Group elected a chairperson, co-chairperson, rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

Group 1: Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials

Group 2: Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials

Plenary Meetings were later held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports will be published in full in UNAFEI Resource Material Series No. 80.

#### **3. Outcome Summary**

##### *(i) Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials*

The group discussed the above topic according to the following agenda: 1. Current situation and issues concerning corruption or misconduct in the judiciary and prosecutorial/law enforcement authorities; 2. Legal ethics, professional responsibilities and codes of conduct in the judiciary and prosecutorial/law enforcement authorities; 3. Other measures to prevent corruption and misconduct in the judiciary and prosecutorial/law enforcement authorities; 4. Appointment, education and training; 5. Procedural regulations; and 6. Recommendations.

Regarding misconduct and misconduct in the judiciary, most participants stated that significant problems exist in the respective countries, and that inefficiency and bribery are a major obstacle to accessing justice. All agreed that poor remuneration, absence of effective monitoring systems and weak implementation of existing codes of conduct are major contributing factors to this situation.

Regarding codes of conduct, most countries have such codes for civil servants generally, but they do not apply to the justices of the highest courts. All members agreed that codes are necessary and that careful attention should be given to their implementation. For the exercise of discretionary power, effective guidelines are also considered necessary by the group members.

In terms of other measures to prevent corruption and misconduct, the group agreed that a separate independent oversight committee could be effective; they likewise agreed on this point in terms of overseeing that procedural regulations were adhered to. On the matter of training, the group agreed that initial training must be of sufficient length and must be supplemented by periodic refresher in-service training.

The group emphasized the 3Rs essential in fighting corruption:

REFRAIN: Do not participate in corruption;  
RESIST: Resist corruption whenever and wherever detected;  
REPORT: If all fails, report to the authorities.

The group formulated the following recommendations.

1. The appropriate authorities should adopt codes of conduct and codify other relevant matters;
2. The codes should accommodate core values like independence, impartiality, integrity, propriety, equality, competence and diligence;
3. Judges, prosecutors and law enforcement officials should have their own specific codes depending on the legal system and job concerned;
4. Discretionary power should be exercised with reference to transparent guidelines. Those who exercise such power should be held accountable to a proper authority. Judges and prosecutors should make clear the reasons for their final dispositions;
5. An internal independent oversight committee should monitor adherence to the codes of conduct. This body may include members from outside the jurisdiction, and its membership should not change frequently. An outside oversight body, like the Inspector General's Office in the USA, may look after serious violations;
6. Review of performance evaluation systems is required, and job rotation and asset declarations should be considered;
7. Effective complaint reporting systems should be developed and public officers who discover misconduct should be obliged to report it;
8. Codes of conduct should be disseminated inside and outside the relevant professional organizations;
9. Selection/recruitment should be transparent, effective and merit-based, and should apply equally to all. A basic legal training system, such as Japan's, may be adopted;
10. The career and professional and personal moral and ethical behaviour of candidates for judicial appointment may be examined;
11. Periodical on-the-job training should supplement initial training;
12. Moral and ethical education should be incorporated into the education system from elementary level;
13. Disciplinary procedures should be clearly delineated and violations should be dealt with severely;
14. Proceedings, violations and disciplinary measures should be transparent;
15. Judicial independence, job security and adequate remuneration should be assured;
16. Strong political will is required to curb corruption, as is co-operation from NGOs and the media.

*(ii) Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials*

Group Two discussed the above topic according to an agenda similar to that of Group One. The group first defined the term "corruption" to mean "the abuse of entrusted power for private gain by a public official". The group identified low remuneration as a cause of corruption but differed as to the degree to which it is a cause. As a basis for its later discussions the group assumed that it had the duty to design a code of conduct for criminal justice officials of a newly established country. While such a code should incorporate the Bangalore Principles, the group agreed that the code should also be "localized" and that prior to establishing a code a country should assess the capacity of its judiciary, prosecution and police. The group agreed that

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implementation of any code is vital and that an independent authority should be established to monitor compliance.

For judges, the group members listed the following principles as important: some members felt that the principles could be prioritized, while others felt that only a person exhibiting all of the principles would be a good judge:

- (i) Independence;
- (ii) Impartiality and Integrity;
- (iii) Propriety;
- (iv) Equality, Competence and Diligence

For prosecutors, the group identified the following minimum standards of behaviour:

- (i) Professional Conduct and Competency: prosecutors must be at all times well-informed of changes to the law;
- (ii) Independence;
- (iii) Impartiality;
- (iv) Role in Criminal Proceedings: prosecutors must treat the defendant fairly, and consider the rights of the victim and the greater community too;
- (v) Co-operation (with other law enforcement officials).

For law enforcement officials, the group listed the following principles to be included in a code of conduct:

- (i) Honesty, Integrity, Confidentiality and Spirit of Sacrifice;
- (ii) Fairness, Tolerance, Appearance and Impairment: police officers must remain calm at all times, maintain good conduct and appearance and must not be under the influence of drugs or alcohol while on duty;
- (iii) Use of Force, Abuse of Authority and Lawful Order: the police must only exert force to the extent that it is absolutely necessary;
- (iv) Co-operation and Partnership: police must establish good working relationships with their international counterparts.

Regarding appointment, education and training, the group agreed that selection of judges, prosecutors and law enforcement officials should be based on merit, with consideration for the applicant's integrity. Education should not merely be lecture-based, but should include adult learning methods.

Following its discussions, the group observed that international covenants and instruments that relate to codes of conduct and ethical behaviour of judges, prosecutors and law enforcement officials are minimum standards only. The group further observed that there are certain values common to all criminal justice officials but that the aspects and missions of the organizations vary and will therefore have different impacts.

The group agreed that a written code of conduct for judges, prosecutors and law enforcement officials was indeed important to fight corruption and unethical conduct. Such a code should reflect the citizens' aspirations for their justice system and should incorporate the traditional and social and cultural values of the people. It should also address historical events that might have led to the establishment of the code. The code of conduct must be coupled with efforts to train officials on a continuous basis on the required behaviour and ethics. Constant advisory support should be provided and harsh punishment should be implemented in the event of violations.

The work of judges, prosecutors and law enforcement officials and the decisions made by them affect the daily life of the citizenry. A high level of ethical behaviour and equality and fairness in the performance of the duties of judges, prosecutors and law enforcement officials are not only favourable, but can be considered a right of all citizens.



#### **D. Special Seminars and Courses**

##### **1. The Fifth Seminar on Criminal Justice for Central Asia**

The Fifth Seminar on Criminal Justice for Central Asia was held from 23 February to 6 March 2009. The main theme was “Countermeasures for Drug Offences and Related Crimes and Enhancement of International Co-operation in the Criminal Justice Process”. Eleven criminal justice officials from Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan) attended.

##### **2. The 14<sup>th</sup> Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China**

The 14<sup>th</sup> Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China was held from 2 to 19 March 2009. The main theme was “Enhancement of Community-Based Alternatives to Incarceration at All Stages of the Criminal Justice Process”. Ten participants and three course counsellors attended.

##### **3. The Fourth Country Specific Training Course on the Community-Based Treatment of Offenders through the Holistic Approach to Volunteer Resource Development for the Philippines**

The Fourth Country Specific Training Course on the Community-Based Treatment of Offenders through the Holistic Approach to Volunteer Resource Development for the Philippines was held from 29 June to 9 July 2009. One administrator from the Parole and Probation Administration, 12 Parole and Probation Officers and one Volunteer Probation Aide from the Philippines discussed measures to improve communication and feedback, and measures to promote Volunteer Probation Aide Associations.

##### **4. The Twelfth International Training Course on the Criminal Justice Response to Corruption**

The Twelfth International Training Course on the Criminal Justice Response to Corruption was held from 13 July to 2 August 2009. In this Course, 17 overseas participants and six Japanese participants, all of whom were officials engaged in corruption control, comparatively analysed the current situation of corruption, methods of combating corruption, and measures to enhance international co-operation.

##### **5. The 15<sup>th</sup> Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China**

The 15<sup>th</sup> Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China was held from 16 November to 3 December 2009. Fifteen participants attended.

##### **6. The Third Regional Seminar on Good Governance for Southeast Asian Countries**

The Third Regional Seminar on Good Governance for Southeast Asian Countries, jointly hosted by UNAFEI, the Department of Justice of the Republic of the Philippines and the UNODC Regional Centre, Bangkok was held from 9 to 12 December 2009 in Manila, the Philippines. The main theme was “Measures to Freeze, Confiscate and Recover Proceeds of Corruption, Including Prevention of Money Laundering”. Approximately 23 participants from seven countries, comprising judges, prosecutors and other law enforcement officials attended.

### **III. TECHNICAL CO-OPERATION**

#### **A. Regional Training Programmes**

##### **1. Short-Term Experts in Kenya**

Two UNAFEI professors were dispatched to Kenya, from 25 July to 8 August 2009, to carry out research for the next phase of the Project for Capacity Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya. One professor returned to Kenya from 5 October to 12 December 2009 to assist in the next phase of the Project.

##### **2. Short-Term Experts in Latin America**

Two UNAFEI faculty members visited Costa Rica and Nicaragua from 10 to 24 August 2009. In Costa Rica they jointly hosted, with ILANUD, a course on Criminal Justice Reform in Latin America in which seven countries were represented. In Nicaragua, they held a follow-up seminar on the specific situation in that country.

##### **3. Short-Term Expert in the Philippines**

A UNAFEI professor was dispatched from 31 August to 7 September 2009 as a Short-Term Expert to participate in the Training Course for Professional Probation Officers.

## MAIN ACTIVITIES OF UNAFEI

### **B. Third Regional Seminar on Good Governance for Southeast Asian Countries**

UNAFEI, the Department of Justice of the Republic of the Philippines and the UNODC Regional Centre for Asia and the Pacific held the Third Regional Seminar on Good Governance for Southeast Asian Countries in Manila, the Philippines from 9 to 12 December 2009. Approximately 23 participants from seven countries, Cambodia, Indonesia, the Lao PDR, Malaysia, Myanmar, the Philippines, and Thailand, attended the Seminar. The main theme of the Seminar was “Measures to Freeze, Confiscate and Recover Proceeds of Corruption, Including Prevention of Money Laundering”.

## **IV. INFORMATION AND DOCUMENTATION SERVICES**

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

## **V. PUBLICATIONS**

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2009, the 77<sup>th</sup>, 78<sup>th</sup> and 79<sup>th</sup> editions of the Resource Material Series were published. Additionally, issues 128 to 130 (from the 141<sup>st</sup> Seminar to the 143<sup>rd</sup> Course respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's web site <http://www.unafei.or.jp/english>.

## **VI. OTHER ACTIVITIES**

### **A. Public Lecture Programme**

On 30 January 2009, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 141st International Senior Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Dr. Kittipong Kittayarak, Permanent Secretary for Justice, Ministry of Justice, Thailand, and Ms. Christine Glenn, Chief Executive of the Parole Board of England and Wales, were invited as speakers. They presented papers entitled “The Probation Service in Thailand: 30 Years in Fostering Reintegration” and “Tilting the Scales”, respectively.

### **B. Assisting UNAFEI Alumni Activities**

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

### **C. Overseas Missions**

Former Professor Tae Sugiyama, Professor Tetsuya Sugano, and Mr. Yuichi Kitada (Staff) visited Manila, the Philippines, from 12 to 17 January 2009 to attend the “In-country Training Programme on Revitalization of the Volunteer Probation Aide System”.

Former Professor Junichiro Otani and Mr. Hitoshi Nakasuga (former Co-Deputy Chief of the Secretariat) visited Singapore from 15 to 20 February to undertake research on community-based treatment alternatives to incarceration in preparation for the United Nations Congress on Crime Prevention and Criminal Justice, held in Brazil in April 2010.

Former Director Keiichi Aizawa visited Korea from 11 to 13 March to attend the International Seminar and Ceremony to Commemorate the 20th Anniversary of the Korean Institute of Criminology. Mr. Aizawa

made a speech to the Seminar on the topic of “Criminal Justice Policy and International Co-operation”.

Former Deputy Director Takeshi Seto, Professor Naoyuki Harada and Mr. Ikuo Kosaka (Staff) visited Manila, the Philippines from 24 to 28 March to prepare for the Third Regional Seminar on Good Governance for Southeast Asian Countries, held in Manila in December 2009, co-hosted by The National Prosecution Service, Department of Justice of the Philippines, the United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific, and UNAFEI.

Former Director Keiichi Aizawa, Professor Naoyuki Harada, former Professor Tae Sugiyama and former Professor Junichiro Otani visited Vienna, Austria from 16 to 24 April to attend the 18th Session of the Commission on Crime Prevention and Criminal Justice. The Director made a statement to the Commission and Ms. Sugiyama sat as a panellist in the Plenary Discussion Session on “Penal Reform and the Reduction of Prison Overcrowding”.

Former Director Keiichi Aizawa, Professor Junichi Watanabe and Mr. Hideo Takahashi (Staff) visited Bangkok, Thailand from 30 June to 5 July 2009 to attend the Regional Preparatory Meeting for the Twelfth Congress on Crime Prevention and Criminal Justice, held in Brazil in April 2010.

Professor Tetsuya Sugano and Professor Toru Kawaharada were dispatched to Nairobi, Kenya from 25 July to 8 August 2009 to carry out research for the next phase of the Project for Capacity Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya.

Director Masaki Sasaki, Professor Ayako Sakonji and Mr. Masato Fujiwara (Co-Deputy Chief of the Secretariat) visited China from 10 to 19 August 2009 to meet Chinese criminal justice officials in preparation for the 15<sup>th</sup> Seminar on Crime Prevention and Criminal Justice for the People’s Republic of China, held at UNAFEI in November 2009.

Former Deputy Director Takeshi Seto and Professor Jun Oshino visited Costa Rica and Nicaragua from 10 to 24 August 2009. In Costa Rica, they jointly hosted, with ILANUD, a course on Criminal Justice Reform in Latin America in which seven countries were represented. In Nicaragua, they held a follow-up seminar on the specific situation in that country.

Director Masaki Sasaki visited Cambridge, England from 29 to 31 August 2009 to attend the 27th International Symposium on Economic Crime. Director Sasaki made a keynote address at the Symposium. The Director also visited Stockholm, Sweden, from 1 to 3 September 2009, to attend a meeting at the Ministry of Justice.

Professor Ayako Sakonji was dispatched to the Philippines from 31 August to 7 September 2009 as a Short-Term Expert to participate in the Training Course for Professional Probation Officers.

Professor Naoyuki Harada and Mr. Ikuo Kosaka (Staff) visited Manila, the Philippines from 7 to 11 September 2009 to make preparations for the Third Regional Seminar on Good Governance for Southeast Asian Countries, held in Manila from 9 to 12 December 2009.

Professor Ayako Sakonji returned to the Philippines from 27 September to 10 October 2009 to participate in the Monitoring and Evaluation Programme for Volunteer Probation Aide Activity.

Professor Tetsuya Sugano returned to Kenya on 5 October to 12 December 2009 to assist in the next phase of the Project for Capacity Building of Child Care and Protection Officers in the Juvenile Justice System of Kenya.

Professor Junichi Watanabe went to Barbados from 24 October to 2 November 2009 to attend the 11th Annual General Meeting and Conference of the International Corrections and Prisons Association.

Professor Junichi Watanabe and Mr. Kazuyuki Nagata (Staff) visited Perth, Australia from 14 to 21 November 2009 to attend the 29th Asian and Pacific Conference of Correctional Administrators.

## MAIN ACTIVITIES OF UNAFEI

Director Masaki Sasaki, Deputy Director Haruhiko Ukawa, Professor Naoyuki Harada, Ms. Yoshiko Kawashima (Staff) and Mr. Ikuo Kosaka (Staff) went to Manila, the Philippines, to attend the Third Regional Seminar on Good Governance for Southeast Asian Countries, which was held from 9 to 12 December 2009. The topic of the Seminar was “Measures to Freeze, Confiscate and Recover Proceeds of Corruption, including Prevention of Money-Laundering”. UNAFEI, the Department of Justice of the Republic of the Philippines and the UNODC Regional Centre for East Asia and the Pacific co-hosted the Seminar.

Professor Naoyuki Harada visited Hong Kong, China from 14 to 17 December 2009 to attend the Fourth ICAC Symposium co-hosted by the Independent Commission against Corruption (ICAC) and the European Anti-Fraud Office (OLAF).

Professor Jun Oshino visited Courmayeur, Italy, from 9 to 14 December 2009 to attend the annual Co-ordination Meeting of the Programme Network Institutes.

### **D. Assisting ACPF Activities**

UNAFEI co-operates and corroborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF’s membership consists of UNAFEI alumni, the relationship between the two is very strong.

### **E. Courtesy Visit of Her Royal Highness Princess Bajrakitiyabha of Thailand**

Her Royal Highness Princess Bajrakitiyabha of Thailand paid a courtesy visit to UNAFEI on 25 August 2009. HRH Princess Bajrakitiyabha was accompanied by senior officials of the Office of the Attorney General of Thailand. The Royal delegation toured the UNAFEI facilities and attended a briefing on UNAFEI’s activities with Director Masaki Sasaki and UNAFEI faculty. HRH Princess Bajrakitiyabha is herself a public prosecutor and a goodwill ambassador for UNIFEM and has a particular interest in the treatment of female offenders in the criminal justice system. Her Royal Highness previously met a UNAFEI delegation headed by Director Keiichi Aizawa at the 18th Session of the Commission on Crime Prevention and Criminal Justice in Vienna in April 2009.

## VII. HUMAN RESOURCES

### **A. Staff**

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

### **B. Faculty Changes**

Ms. Tae Sugiyama, formerly a Professor of UNAFEI, was transferred and appointed a Senior Probation Officer of Tokyo Probation Office on 1 April 2009.

Mr. Junichiro Otani, formerly a Professor of UNAFEI, was transferred and appointed an attorney of the Criminal Affairs Bureau of the Ministry of Justice on 1 April 2009.

Mr. Ryuji Tatsuya, formerly a Professor of UNAFEI, was transferred and appointed Chief of the International Affairs Division of Fukushima Prison on 1 April 2009.

Mr. Koji Yamada, formerly a Professor of UNAFEI, was transferred and appointed a Senior Probation Officer of Matsuyama Probation Office on 1 April 2009.

Ms. Fumiko Akahane, formerly a public prosecutor of Tokyo District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2009.

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Mr. Toru Kawaharada, formerly a Senior Probation Officer of Utsunomiya Probation Office, joined UNAFEI as a Professor on 1 April 2009.

Ms. Ayako Sakonji, formerly a probation officer of Osaka Probation Office, joined UNAFEI as a Professor on 1 April 2009.

Mr. Junichi Watanabe, formerly a specialist of the Legal Affairs Section of the Correction Bureau of the Ministry of Justice, joined UNAFEI as a Professor on 1 April 2009.

Mr. Keiichi Aizawa, Director of UNAFEI, was appointed to the Supreme Prosecutors Office on 17 July 2009.

Mr. Masaki Sasaki, formerly the Chief of Naha District Public Prosecutors Office, was appointed Director of UNAFEI on 21 July 2009.

Mr. Takeshi Seto, Deputy Director of UNAFEI, was transferred and appointed to Tokyo High Prosecutors Office on 24 September 2009.

Mr. Haruhiko Ukawa, formerly a public prosecutor of Tokyo High Public Prosecutors Office, was appointed Deputy Director of UNAFEI on 24 September 2009.

### VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥101 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

# UNAFEI WORK PROGRAMME FOR 2010

## I. TRAINING

### A. The 144<sup>th</sup> International Senior Seminar

The 144<sup>th</sup> International Senior Seminar was held from 12 January to 9 February 2010. The main theme of the Seminar was “The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process”. Fourteen overseas participants, seven Japanese participants and two Japanese observers attended.

### B. 145<sup>th</sup> International Training Course

The 145<sup>th</sup> International Training Course was held from 12 May to 18 June 2010. The main theme of the Course was “Effective Resettlement of Offenders by Strengthening ‘Community Reintegration Factors’”. Ten overseas participants, two overseas course counsellors and eight Japanese participants attended.

### C. 146<sup>th</sup> International Training Course

The 146<sup>th</sup> International Training Course is scheduled for 25 August to 1 October 2010. The main theme of the Course is “Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures”. Ten overseas participants and nine Japanese participants will attend.

### D. The Tenth Training Course on the Juvenile Delinquent Treatment System for Kenya

The Tenth Training Course on the Juvenile Delinquent Treatment System for Kenya was held from 15 February to 11 March 2010. Participants from Kenya reviewed their progress in regard to improving the treatment of juveniles in correctional institutions and in the community and the progress they have made in establishing a Volunteer Children’s Officers programme.

### E. The Sixth Seminar on Criminal Justice for Central Asia

The Sixth Seminar on Criminal Justice for Central Asia was held from 3 to 18 March 2010. The main theme of the Seminar was “Effective Criminal Justice Measures against Drug Offences and Prevention of International Drug Trafficking”. Nine government officials from four Central Asian countries, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, attended.

### F. The Fifth Country Specific Training Course on the Community-Based Treatment of Offenders through the Holistic Approach to Volunteer Resource Development for the Philippines

The Fifth Country Specific Training Course on the Community-Based Treatment of Offenders through the Holistic Approach to Volunteer Resource Development for the Philippines was held from 22 June to 2 July 2010. The number of participants, who were Parole and Probation Officers and Volunteer Probation Aides, was ten. They discussed measures to improve the probation system and the promotion of Volunteer Probation Aides.

### G. The 13<sup>th</sup> International Training Course on the Criminal Justice Response to Corruption

The 13<sup>th</sup> International Training Course on the Criminal Justice Response to Corruption will be held from 18 October to 12 November 2010. In this Course, Japanese and overseas officials engaged in corruption control will comparatively analyse the current situation of corruption, methods of combating corruption and measures to enhance international co-operation.

## II. TECHNICAL CO-OPERATION

### Regional Training Programmes

#### 1. Short-Term Experts in Latin America

Two faculty members visited Costa Rica and Honduras in August 2010. In Costa Rica they jointly hosted, with ILANUD, a course on Criminal Justice Reform in Latin America in which several countries were represented. In Honduras, they held a follow-up seminar on the specific situation in that country.

#### 2. Short-Term Experts in Kenya

Two UNAFEI professors will be dispatched to Kenya between 31 July and 12 September 2010. The professors will assist the Children’s Services Department of the Ministry of Gender, Children and Social

Development, and other juvenile justice agencies, in capacity building for child care and protection officers in the juvenile justice system.

**B. Fourth Regional Seminar on Good Governance for Southeast Asian Countries**

The Fourth Regional Seminar on Good Governance will be held from 7 to 9 December 2010, in Manila, the Philippines. The main theme of the Seminar will be “Securing Protection and Co-operation of Witnesses and Whistle-blowers”. Approximately 25 participants from Southeast Asian countries will attend.

## APPENDIX

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### MAIN STAFF OF UNAFEI

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Mr. Masaki Sasaki  
Mr. Haruhiko Ukawa

Director  
Deputy Director

#### Faculty

Mr. Motoo Noguchi  
Mr. Haruhiko Higuchi  
Mr. Naoyuki Harada  
Ms. Fumiko Akahane  
Mr. Jun Oshino  
Mr. Tetsuya Sugano  
Mr. Toru Kawaharada  
Ms. Ayako Sakonji  
Mr. Junichi Watanabe  
Ms. Grace Lord

Professor  
Professor  
Professor  
Professor  
Chief of Training Division, Professor  
Chief of Research Division, Professor  
Chief of Information & Library Service Division, Professor  
Professor  
Professor  
Linguistic Adviser

#### Secretariat

Mr. Masahiro Iida  
Mr. Masato Fujiwara  
Mr. Koji Kobayashi  
Mr. Masaaki Kojitani  
Mr. Kenichiro Koiwa  
Ms. Yoshiko Kawashima  
Mr. Hideo Takahashi

Chief of Secretariat  
Co-Deputy Chief of Secretariat  
Co-Deputy Chief of Secretariat  
Chief of General and Financial Affairs Section  
Co-Chief of Training and Hostel Management Affairs Section  
Co-Chief of Training and Hostel Management Affairs Section  
Chief of International Research Affairs Section

AS OF 31 DECEMBER 2009



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**2009 VISITING EXPERTS**

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**THE 141<sup>ST</sup> INTERNATIONAL SENIOR SEMINAR**

Mr. Kittipong Kittayarak	Permanent Secretary for Justice Ministry of Justice Thailand
Ms. Christine Glenn	Chief Executive Parole Board of England and Wales United Kingdom
Mr. Ismael Juanga Herradura	Administrator Parole and Probation Division Department of Justice Philippines
Mr. Bala Reddy	Principal Senior State Counsel Head, State Prosecution Division Attorney-General's Chambers Singapore

**THE 142<sup>ND</sup> INTERNATIONAL TRAINING COURSE**

Mr. Rob Allen	Director International Centre for Prison Studies King's College, University of London United Kingdom
Mr. Peter Ng Joo Hee	Director of Prisons Singapore Prison Service Ministry of Home Affairs Singapore
Prof. Dr. Dr. h.c. Hans-Jörg Albrecht	Director Department of Criminal Law Max-Planck Institute for Foreign and International Criminal Law, Freiburg Germany

**THE 143<sup>RD</sup> INTERNATIONAL TRAINING COURSE**

Mr. Sung-hoon Park	Associate Expert UNODC Vienna
Monsieur Eric Maitrepierre	Director of the International and European Department, Ministry of Justice Paris France
Ms. Judith B. Wish	Deputy Counsel Office of Professional Responsibility Department of Justice USA

APPENDIX

**THE FIFTH SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA**

Ms. Olga Zudova

Senior Regional Legal Adviser  
United Nations Office on Drugs and Crime  
Regional Office for Central Asia

**THE TWELFTH INTERNATIONAL TRAINING COURSE  
ON THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION**

Mr. Soh Kee-hean

Director  
Corrupt Practices Investigation Bureau  
Singapore

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**2009 UNAFEI PARTICIPANTS**

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**THE 141<sup>ST</sup> INTERNATIONAL SENIOR SEMINAR**

**Overseas Participants**

Mr. Joydeb Kumar Bhadra	Additional Superintendent of Police (Training) Police Headquarters Bangladesh
Ms. Boitumelo Makunga	Alternative Sentencing Initiative/ Wellness Centre Attorney General's Chambers Botswana
Mr. Antonio Carlos Welter	Chief Prosecutor Rio Grande do Sul Region Prosecutor's Office Federal Public Prosecution Brazil
Ms. Fay Ingrid Clarke	Superintendent Guyana Prison Service Ministry of Home Affairs Guyana
Ms. Renny Ariyanny	Head of Legal Drafting Division Legal Bureau Attorney General's Office Indonesia
Mr. Sutrisno	Lecturer Police Science College Indonesia
Ms. Janet Juanita Davey	Regional Director Department of Correctional Services Jamaica
Mr. Jihad Abdelrahim H. Majali	General Attorney and Human Rights Officer Metropolitan Regional Command Public Security Directorate Jordan
Mr. Asghar Ali	Superintendent Faisalabad Police Office Punjab Police Pakistan
Ms. Sylvia Vaka Reu	Senior Research Officer Research and Development Directorate Royal Papua New Guinea Constabulary Papua New Guinea

## APPENDIX

Mr. Victor Manuel Esteche Mendez	Director of Legal Affairs Legal Advisory General Department Ministry of Justice and Labor Paraguay
Mr. Carlos Vargas Merida	Investigative Officer Counter Terrorism Division Peruvian National Police Peru
Mr. Leo Sarte Carrillo	Regional Director Region IX Parole and Probation Administration Department of Justice Philippines
Mr. Jagath Abeysirigunawardena	Deputy Inspector General Southern Range Sri Lanka Police Sri Lanka
Mr. Jose Enrique Colman	Executive Coordinator Executive Coordination Department National Bureau of Jails, Penitentiaries and Rehabilitation Centres, Uruguay
Mr. Viet Quoc Nguyen	Legal Expert Institute for Prosecutorial Science Supreme People's Prosecution Office Vietnam
<b>Japanese Participants</b>	
Mr. Yasuhiro Date	Director General Affairs Division Chugoku Regional Parole Board
Mr. Katsuo Higuchi	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. Futoshi Ichikawa	Judge Tokyo District Court
Mr. Manubu Nakajima	Senior Planning Officer for Rehabilitation Support Mine Rehabilitation Program Center
Mr. Hiroshi Nakashima	Assistant Director International Affairs Division Commissioner General's Secretariat National Police Agency
Mr. Akihiro Nosaka	Director General Affairs Division Chubu Regional Parole Board
Mr. Atsushi Ogata	Public Prosecutor Tokyo District Public Prosecutors Office Hachioji Branch

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Mr. Toru Suzuki	Deputy Director Research Department Research and Training Institute of the Ministry of Justice
Mr. Shigeru Takenaka	Deputy Warden Classification Division Kurobane Prison

**THE 142<sup>ND</sup> INTERNATIONAL TRAINING COURSE**

**Overseas Participants**

Ms. Marialda Lima Justino Cruz	Police Chief Civil Police of the Federal District Brasília Brazil
Ms. Aurea Francisca Rodrigues de Moraes	Police Officer (Correctional Officer) Material Resource Division General Administration Department Civil Police of the Federal District Brazil
Mr. Oleskyenio Enrique Florez Rincon	Teacher National Police Academy Colombia National Police Colombia
Mr. Jean Claude Ngoie Mutombo	Assistant Prosecutor Deputy Parquet de Grande Instance Kinshasa/Gombe Democratic Republic of the Congo
Ms. Marta Raquel Flores Ramirez	Third Officer Guatemala Police Academy Ministerio de Gobernacion Guatemala
Ms. Vanna Ladavia Lawrence	Director of Training Human Resource Development Department of Correctional Services Jamaica
Mr. Ben Siambango Buchane	Senior Superintendent Oluno Rehabilitation Centre Prisons and Correctional Services Ministry of Safety and Security Namibia
Mr. Ritendra Thapa	Under Secretary Special Court of Kathmandu Supreme Court of Nepal Nepal
Mr. Mahendra Nath Upadhyaya	Under Secretary (Registrar) Parsa District Court, Birgunj Supreme Court of Nepal Nepal

## APPENDIX

Mr. Salim M.A. Qawariq	Director Department of Social Defence Ministry of Social Affairs Palestine
Mr. Allen Maliki	Correctional Officer Rove Central Prison Correctional Services Solomon Islands
Mr. Ricky Iomea	Principal Legal Officer, Public Prosecutor Director of Public Prosecutions Office Ministry of Justice and Legal Affairs Solomon Islands
Ms. Sumithra Rahubaddhe	Additional Secretary Ministry of Justice and Law Reform Sri Lanka
Mr. Henele Telefoni	Probation Officer Youth Justice and Probation Division Ministry of Justice Tonga

### **Observers**

Mr. Andy Che Leung Lam	Principal Officer Rehabilitation Unit Hei Ling Chau Addiction Treatment Centre Hong Kong
Mr. Kyuyeon Park	Senior Inspector Pohang Correctional Institution Republic of Korea

### **Japanese Participants**

Mr. Masami Goda	Probation Officer Kobe Probation Office
Mr. Hiroyuki Hayashi	Probation Officer Tokyo Probation Office
Mr. Kentaro Hirate	Assistant Judge Tokyo District Court
Ms. Misae Kato	Probation Officer Tokyo Family Court
Mr. Hiroshi Suda	Public Prosecutor Chiba Public Prosecutors Office
Mr. Takahiro Sumikawa	Public Prosecutor Kobe Public Prosecutors Office, Himeji Branch
Mr. Yuichiro Wakimoto	Chief Specialist Hiroshima Juvenile Classification Home
Mr. Masaya Yamamoto	Chief Treatment Supervisor Osaka Prison

**THE 143<sup>RD</sup> INTERNATIONAL TRAINING COURSE**

**Overseas Participants**

Mr. Md. Shah Abid Hossain	Additional Superintendent of Police Police Headquarters Bangladesh Police Bangladesh
Mr. Kangkolongo Sylvain Muamba	President Appeal Court Democratic Republic of the Congo
Mr. Shameem Hussain	Deputy Prosecutor General Prosecutor General's Office Maldives
Ms. Gereltuya Gombojav	Senior Inspection Prosecutor Inspection Department for Special Crimes Capital Prosecutor Office Mongolia
Mr. Thok Prasad Shiwakoti	Joint Attorney Administration & Criminal and Land Related Cases Division, Office of the Attorney General of Nepal
Mr. Bishnu Prasad Upadhyaya	Under Secretary Legal and Judicial Reform Program Supreme Court of Nepal Nepal
Mr. Khalid Salim Fadhil	Officer Investigation Royal Oman Police Oman
Mr. Maher Tahseen Abederaoof Faris	Chief Prosecutor International Crime, Anti-Corruption Tubas City Public Prosecution Office Palestinian National Authority
Mr. Long Ta Cuu Doan	Leader Prosecution Office of District 4 Ho Chi Min City Procuracy Vietnam
Mr. Minh Van Le	Legal Expert Department for Criminal and Administrative Legislation Ministry of Justice Vietnam

**Japanese Participants**

Mr. Kazuhiro Hosoya	Public Prosecutor Tokyo District Public Prosecutors Office
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APPENDIX

Mr. Manabu Imai

Senior Assistant Judge  
Sapporo District Court

Mr. Yuki Mori

Public Prosecutor  
Morioka District Public Prosecutors Office

Ms. Miho Otake

Public Prosecutor  
Sendai District Public Prosecutors Office

Mr. Masayuki Takahashi

Senior Assistant Judge  
Tokyo District Court



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**FIFTH SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA**

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Mr. Yerbol Ismailov	Judge Collegium for Criminal Cases Kazakhstan
Mr. Yeshimov Maralbek	Senior Prosecutor Department of Supervision of Law-Making General Prosecutor's Office Kazakhstan
Ms. Assemgul Sabyrkhanova Zhaxylykova	Head of Division Department of Legislation Ministry of Justice Kazakhstan
Ms. Maria Charabaeva	Investigator Investigation Department Ministry of Internal Affairs Kyrgyzstan
Mr. Ernis Ustabaevich Chotkaraev	Judge Oktybr Court, Bishek City Kyrgyzstan
Ms. Damira Toktonaliyeva Orozova	Judge Pervomaiskyi District Court, Bishek City Kyrgyzstan
Mr. Azizbek Sharipovich Shukurbekov	Senior Prosecutor Department of Overseeing of Criminal Procession Kyrgyzstan
Mr. Saifulloev Zafar Dorandaevich	Chief of Department Drug Control Agency Tajikistan
Mr. Habibulo Saiduloevich Vokidov	Head Human Resources and Office Administration Department General Prosecutor's Office Tajikistan
Mr. Mansur Mahmudjanovich Ahmedjanov	Judge Criminal Cases Supreme Court Uzbekistan
Mr. Fidel Ismailovich Naberaev	Vice-Head Investigation Department Ministry of Internal Affairs Uzbekistan

APPENDIX

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**14<sup>TH</sup> SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE OFFICIALS OF  
THE PEOPLE'S REPUBLIC OF CHINA**

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Mr. Jiang Jin-Fang	Deputy Director-General Department of Legal Publicity Ministry of Justice
Ms. Xue Xin-Li	Division Director Division of the Guidance of Grass-Roots Work Ministry of Justice
Mr. Teng Wei	Deputy Director-General Criminal Legislating Department Legislative Affairs Commission Standing Committee of NPC China
Mr. Tang Wei-Ping	Director Criminal Legislating Department Legislative Affairs Commission Standing Committee of NPC China
Mr. Ma Dong	Director Criminal Division Research Department Supreme People's Court of PRC
Ms. Song Ying	Chief Judge Fourth Criminal Chamber Supreme People's Court of PRC
Mr. Xu Cheng-Lei	Deputy Director Law Enforcement Division Public Order Bureau Ministry of Public Security
Mr. Zhang Fei-Long	Deputy Section Chief Legal Affairs Bureau Ministry of Public Security
Mr. Lei Xiu-Hua	Deputy Chief Public Prosecution Division People's Procuratorate of Sichuan Province
Mr. Liu Xiang-Dong	Division Chief Division of Duty-Crime Prevention Higher People's Procuratorate of Shaanxi Province
<b>Course Counsellors</b>	
Mr. Wang Jinyi	President Central Institute for Correctional Police
Ms. Zhao Linna	Division Director Department of Judicial Assistance and Foreign Affairs Ministry of Justice
Ms. Ge Xiangwei	Assistant Researcher Institute of Crime Prevention Ministry of Justice

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**15<sup>TH</sup> SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE OFFICIALS OF  
THE PEOPLE'S REPUBLIC OF CHINA**

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Mr. Jiang Jing	Deputy Director-General Department of National Judicial Examination Ministry of Justice
Mr. Kang Yu	Deputy Director-General Department of Judicial Assistance and Foreign Affairs, Ministry of Justice
Mr. Zhang Zhao-Xin	Deputy Director-General Bureau of Re-Education through Labor Administration, Ministry of Justice
Mr. Liang Ran	Division Director Bureau of Prison Administration Ministry of Justice
Mr. Jiang Hai-Tao	Division Director Department of National Judicial Examination Ministry of Justice
Mr. Li Nai-Bao	Deputy Division Director Department of Finance Ministry of Justice
Ms. Wang Rui-Guang	Personnel Department Ministry of Justice
Mr. Zhang Gui-Long	Deputy Director Regulations Filing and Review Department Legislative Affairs Commission Standing Committee of the National People's Congress of the PRC
Ms. Liu Zuo-Jun	Deputy Director-General Legislation Planning Department Legislative Affairs Commission Standing Committee of the National People's Congress of the PRC
Mr. Guo Li-Ran	Assistant Judge The Third Criminal Tribunal Supreme People's Court of the PRC
Mr. Nie Hong-Yong	Senior Judge The Judicial Supervision Court Supreme People's Court of the PRC
Mr. Deng Yun	Division Director Educating and Training Division of Political Department, The Supreme People's Procuratorate of the PRC

APPENDIX

Mr. Lu Jia-Yi

Director  
General Office of National Prosecutors College  
of the PRC

Mr. Yu Lin-Tao

Deputy Chief of Division  
Criminal Investigation Department  
Ministry of Public Security

Mr. Niu Yong

Director Clerk  
Criminal Investigation Department  
Forensic Science Division  
Ministry of Public Security

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**THE FOURTH COUNTRY SPECIFIC TRAINING COURSE ON  
THE COMMUNITY-BASED TREATMENT OF OFFENDERS THROUGH  
THE HOLISTIC APPROACH TO VOLUNTEER RESOURCE  
DEVELOPMENT FOR THE PHILIPPINES**

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Mr. Rodolfo Pastor Pascua	Assistant Regional Director Special Assistant to the Administrator Parole and Probation Administration Department of Justice
Ms. Cecilia Gaddi Dela Cruz	Chief Administrative Officer Parole and Probation Administration Department of Justice
Ms. Liberty Dagomboy Fabrigas	Chief Probation and Parole Officer Palawan Province No. 2 Parole and Probation Office Region 4 Parole and Probation Administration Department of Justice
Mr. Jose Alan Balbosa Santillana	Chief Probation and Parole Officer Dapitan City Parole and Probation Office Region 9 Parole and Probation Administration Department of Justice
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Mr. Angelito Aviguetero Ilano	Chief Probation and Parole Officer Manila No. 6 Parole and Probation Office National Capital Region Parole and Probation Administration Department of Justice
Mr. Rene Saldon Remollo	Supervising Probation and Parole Officer Tanjay City Parole and Probation Office Region 7 Parole and Probation Administration Department of Justice
Mr. Pol Vincent Quimpo Perocho	Administrative Officer V Training Division Parole and Probation Administration Department of Justice
Ms. Maria Isabel Baldo Castillo	Probation and Parole Officer II National Field Training Laboratory Parole and Probation Administration Department of Justice

APPENDIX

Mr. Paul Patrick Señoren Blanco	Probation and Parole Officer I National Field Training Laboratory Parole and Probation Administration Department of Justice
Mr. Edgardo Geronimo Acuña, Jr.	Probation and Parole Officer II Bulacan No. 2 Parole and Probation Office, Region 3 Parole and Probation Administration Department of Justice
Mr. Pedro Tagapulot Teodoro	Human Resource Management Assistant Training Division Parole and Probation Administration Department of Justice
Mr. Gregorio Aguilar Pacson	VPA President San Pedro VPA Association San Pedro, Laguna

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**TWELFTH INTERNATIONAL TRAINING COURSE  
ON THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION**

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Mr. Ruffin Ikie-Iyuya	Adviser Ministry of Justice Democratic Republic of the Congo
Mr. Haider Akram Abdulmohsir Al-Zaidi	Legal Assistant Commission of Integrity Iraq
Ms. Chemen Saeed Kafa Bajalan	Public Prosecutor Public Prosecution Directorate Ministry of Justice Iraq
Mr. Tsend-Ayush Dorjgotov	Officer Prevention and Public Awareness Department Independent Authority against Corruption of Mongolia, Mongolia
Ms. Marija Novkovic	Head Department for Promotional and Preventive Activities, Directorate for Anti-Corruption Initiative Montenegro
Mr. Man Bahadur Aryal	Under Secretary Judicial Administration Division Ministry of Law, Justice and Constituent Assembly Affairs Nepal
Mr. Surya Prasad Parajuli	Under Secretary Secretary to the Chief Justice Supreme Court of Nepal Nepal
Mr. Wa'el Mahmoud Mohammed Lafee	Chief Prosecutor General Prosecution Ramallah General Prosecution Palestinian National Authority

## APPENDIX

Mr. Joel Noble Done	State Prosecutor Office of the Public Prosecutor Department of Justice and Attorney General Papua New Guinea
Mr. Camillo Afele	Deputy Controller and Chief Auditor Management Division Samoa Audit Office Samoa
Ms. KH. Iresha Subashini Siriwardena	Assistant Director-Legal Legal Division Commission to Investigate Allegations of Bribery or Corruption Sri Lanka
Ms. Vorayanee Vudthithornnatirak	Divisional Public Prosecutor International Affairs Department Office of the Attorney General Thailand
Mr. Thanh Tien Le	Officer Administrative Department Supreme People's Prosecution Department Vietnam
Ms. Tai Thi Ta	Inspector Inspection Department Ministry of Justice Vietnam
Mr. Tareq Ahmed Abdo Al Gumaei	Director of Budgets Administrative Units sector of the State Supreme National Authority for Combating Corruption, Yemen
<b>Japanese Participants</b>	
Mr. Hiroki Ito	Judge Osaka District Court
Mr. Yukio Matsui	Superintendent Drug and National Firearms Control Division, National Police Agency
Mr. Masayuki Miyazaki	Public Prosecutor Saga District Public Prosecutors Office
Mr. Shintaro Uchida	Public Prosecutor Gifu District Public Prosecutors Office
Mr. Makoto Wada	Inspector for Market Surveillance Market Surveillance Division, Executive Bureau, Securities and Exchange Surveillance Commission
Ms. Yoko Watanabe	Professor International Co-operation Department Research and Training Institute of the Ministry of Justice



## DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUND AND COUNTRY

*(1<sup>st</sup> International Training Course/Seminar - 143<sup>rd</sup> International Training Course/Seminar)*

	Judicial and Other Admin- istration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investi- gation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Afghanistan	7	9	6	4									26
Bangladesh	21	13		16	5		4			5		2	66
Bhutan				9									9
Brunei	4				2								6
Cambodia	1	2	1	7	1								12
China	13	5	5	10							8		41
Georgia				1									1
Hong Kong	16			12	28	3	9		1	3	1		73
India	15	10		53	7	1	1			2	6	4	99
Indonesia	23	22	33	26	14		3			6		2	129
Iran	5	12	8	8	6						2	1	42
Iraq	6	3	3	5	5	5					2		29
Jordan		1	1	5									7
Korea	13	3	53	6	27	4					3		109
Kyrgyzstan	1			1									2
Laos	10	6	7	10									33
Malaysia	21	2	7	46	35	8	3		1	5	3	1	132
Maldives	1	3	2	1									7
Mongolia	1		1	2									4
Myanmar	7	1	1	4	1								14
Nepal	32	13	12	32								3	92
Oman			1	4									5
Pakistan	20	10	2	39	8	1	2				2	2	86
Palestine	2		1	1			1			1			6
Philippines	18	9	24	39	9	3	12	3	1	7	5	6	136
Saudi Arabia	5			7	3						1	1	17
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	22	20	16	21	20	1	11		1	3		1	116
Taiwan	12	4	2	2	1								21
Tajikistan	1												1
Thailand	24	40	39	17	18	9	12	1		8	5	1	174
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Vietnam	14	5	3	7	1					4	1		35
Yemen	1			1									2
<b>A S I A</b>	<b>329</b>	<b>212</b>	<b>234</b>	<b>410</b>	<b>201</b>	<b>38</b>	<b>68</b>	<b>4</b>	<b>4</b>	<b>47</b>	<b>41</b>	<b>27</b>	<b>1,615</b>
Algeria		4	2										6
Botswana	2		1	5	1					1			10
Cameroon	4		1										5
Cote d'Ivoire		2		1									3
Democratic Republic of the Congo	1	1	1	1									4
Egypt	1	3		3							3	1	11
Ethiopia	3			2									5
Gambia				2									2
Ghana	1		1	5	1								8
Guinea			1	3									4
Kenya	6	4	1	12	7		7				2		39
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Malawi			1										1
Mauritius		1											1
Morocco			1	4								1	6
Mozambique	1			1	1								3
Namibia			1		1								2
Niger	1			5	5							1	12
Nigeria			1										1
Seychelles				4	3					1	1		9
South Africa				3			1						4
Sudan	2		1	13	1						2		19
Swaziland				2									2
Tanzania	4	3	4	7	2								20
Tunisia		1		1									2
Uganda			1	5								1	7
Zambia		1		6									7
Zimbabwe	1		3	8									12
<b>A F R I C A</b>	<b>27</b>	<b>20</b>	<b>21</b>	<b>95</b>	<b>22</b>		<b>10</b>			<b>2</b>	<b>9</b>	<b>4</b>	<b>210</b>

APPENDIX

	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Australia			1				1			1			3
Fiji	6	1	9	21	17					1			55
Kiribati	1												1
Marshall Island	1			4									5
Micronesia				1			1						2
Nauru				1									1
New Zealand	1			1									2
Palau				1	1								2
Papua New Guinea	10	1	4	17	10		4			1		2	49
Samoa	1			2			1					1	5
Solomon Islands	3		2	2	1								8
Tonga	2	1		7	3		3				1		17
Vanuatu				3									3
<b>THE PACIFIC</b>	<b>25</b>	<b>3</b>	<b>16</b>	<b>60</b>	<b>32</b>		<b>10</b>			<b>3</b>	<b>1</b>	<b>3</b>	<b>153</b>
Antigua and Barbuda				1			1						2
Argentina	2	2		2								1	7
Barbados				1			1						2
Belize	1			2									3
Bolivia		1										1	2
Brazil	2		5	23	2				1	1			34
Chile	1		1	4	2								8
Colombia	3	1	2	4					1			1	12
Costa Rica	3	5	4								1	2	15
Dominican Republic				1									1
Ecuador			1	4		1							6
El Salvador	1	1		2	1							1	6
Grenada				1									1
Guatemala				1	1							1	3
Guyana				1	1								2
Haiti				1									1
Honduras			1	8									9
Jamaica	3			1	3	1							8
Mexico	1			2									3
Nicaragua		1											1
Panama			4	3								1	8
Paraguay	1		1	9		1							12
Peru	4	10	4	3	1						1	2	25
Saint Christopher and Nevis			1	1									2
Saint Lucia	1				1								2
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
U.S.A.								1					1
Uruguay				3									3
Venezuela	1		1	12							1		15
<b>NORTH &amp; SOUTH AMERICA</b>	<b>25</b>	<b>21</b>	<b>25</b>	<b>92</b>	<b>13</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>10</b>	<b>198</b>
Albania	1			2									3
Bulgaria				1									1
Estonia			1										1
Former Yugoslav Republic of Macedonia	2												2
Hungary	1												1
Lithuania				1									1
Poland				1									1
<b>EUROPE</b>	<b>4</b>		<b>1</b>	<b>5</b>									<b>10</b>
United Nations Office on Drugs and Crime												1	1
<b>JAPAN</b>	<b>115</b>	<b>177</b>	<b>280</b>	<b>97</b>	<b>94</b>	<b>86</b>	<b>199</b>	<b>65</b>	<b>38</b>	<b>2</b>	<b>48</b>	<b>70</b>	<b>1,271</b>
<b>TOTAL</b>	<b>525</b>	<b>433</b>	<b>577</b>	<b>759</b>	<b>362</b>	<b>127</b>	<b>289</b>	<b>70</b>	<b>44</b>	<b>55</b>	<b>102</b>	<b>115</b>	<b>3,458</b>

**PART TWO**  
**RESOURCE MATERIAL SERIES**  
**No. 81**

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**Work Product of the 144<sup>th</sup> International Senior Seminar**

**“The Enhancement of Measures for Victims of Crime  
at Each Stage of the Criminal Justice Process”**

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## VISITING EXPERTS' PAPERS

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### THE CHALLENGES OF VICTIMOLOGY PAST, PRESENT AND FUTURE

*John P.J. Dussich\**



#### I. INTRODUCTION

##### A. Prologue

- Every year about 1 billion persons are *victimized* and close to 1.6 million of those are killed prematurely and violently.
- Close to 1 million women and children are *trafficked* every year (US Department of Justice); about half of those are between the ages of 13-18.
- Behind each one of these numbers is a mother and a father, and likely also an aunt, a sister, a brother, perhaps even a wife, a son, and a daughter. Each victim comes with a family and friends who also suffer greatly.
- If we were to grieve for one or two murdered persons, we could relate to what it would be like, but how can we imagine grieving for 1.6 million souls every year?

##### B. Brief Highlights (for more details see Appendix I – Key Dates):

- 1924 – Edwin Sutherland writes the first American text on Criminology and includes a chapter on Crime Victims; however, in subsequent editions, this chapter is dropped.
- 1937 – Benjamin Mendelsohn begins to research the offender/victim relationship in rape cases.
- 1947 – Benjamin Mendelsohn presents his concept of Victimology as a new science in Romania.
- 1957 – Margery Fry publishes her ideas about victim compensation in the London Times.
- 1958 – Benjamin Mendelsohn publishes his ideas in an article about his new science, Victimology, in France.
- 1968 – Stephen Schafer publishes the first English language textbook on victimology in the US, *The Victim and His Criminal*.
- 1973 – the First Symposium on Victimology is held in Jerusalem, Israel.
- 1976 – in the US the National Organization for Victim Assistance is launched in Fresno, California.
- 1979 – the World Society of Victimology is launched in Munster, Germany.
- 1985 – the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is passed by the General Assembly in New York.
- 2003 – the Tokiwa International Victimology Institute is opened in Mito, Japan.

##### C. Victimization

The term “victimization” refers to a process whereby an external force comes in contact with a person, rendering that person to feel pain, sometimes causing injury, either of which can be short-lived or which might cause extended suffering and sometimes death. That force can be legal or illegal, natural or manmade, biological or chemical, expected or unexpected, social or individual, civil or uncivil, intended or unintended; the list of possibilities is endless.

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\*Director, Tokiwa International Victimology Institute, Tokiwa University, Japan.

Those persons who are the direct recipients of the external force are the primary victims, the ones who suffer first, feel pain the most severely, and are usually injured the worst. Other persons who are related to or acquainted with the primary victims and are negatively affected (usually emotionally) are the secondary victims. This group can feel an intense sense of sympathetic suffering in proportion to the severity of the injury and the nature of their relationship to the primary victim. Both primary and secondary victims can become traumatized by the original victimization and consequently need some degree of psychological treatment to diminish their pain and to recover.

Persons familiar with the original victimization but not related or acquainted to the primary victim, usually neighbours or members of the same community or in the broader social audience, are tertiary victims. They can be influenced emotionally, financially, or socially. These persons can be those who received news of the original victimization via conversations, the news media or as witnesses to the event. In some cases even these tertiary victims will become traumatized and will need treatment.

The study of victimization and its victims is part of a relatively new science. A Romanian lawyer, Benjamin Mendelsohn, first coined the word *victimology* in 1947, and promoted its concept as the science of “victimity,” the study of all victims. He referred to his concept as “general victimology” to distinguish it from “crime victimology,” which is only concerned with crime victimization. He also proposed the establishment of a society of general victimology, the establishment of victimological research institutes, victim departments in all national governments, a journal of general victimology, the creation of victim clinics and national societies in each country. Consequently, it is understandable that Benjamin Mendelsohn is called the “Father of Victimology.”

All of these proposals came to fruition. The World Society of Victimology, founded in 1979, is open to all forms of victimization (although most of its activities focus on crime victimization). At least six victimology institutes exist worldwide, some limited to crime victimization and others to general victimization. Many governments have established special offices dedicated to victims of crime and concern themselves with distributing information about victims, and monitoring a wide range of victim support activities. In the United States, this office is the Office for Victims of Crime (OVC) located within the Department of Justice. At least five international journals dedicated to victims actively publish works about all aspects of victimology. Tens of thousands of victim assistance centres function across the globe, especially in most of the developed countries, and in many of the developing countries as well. Finally, there are about twenty national victim societies across the globe.

In the United States, the first official measurement tool on the extent of crime and victimization was the Uniform Crime Report (UCR), created by the International Association of Chiefs of Police in 1927. Compiled by the Federal Bureau of Investigation with data submitted voluntarily by police departments from all over the United States, these statistics unfortunately mostly gave information about the offenders, focusing on eight index crimes, but had little information about victims.

Because of the growing evidence of a sizable “dark figure” of victims (those who did not report their victimization) and the recognition that the UCR gave insufficient information about victims, a new national survey on victims appeared in 1966. This survey, now known as the National Crime Victimization Survey (NCVS), confirmed that actual victimization rates exceeded UCR data, roughly double the number reported to the police. They provided a wealth of new information about victims and victimizations which has, for almost the past four decades, given victimologists details about victims and their behaviours never before available. In recent years, both surveys have become more expansive and sophisticated sources of statistics and information about victimization.

Beyond collecting survey data about crime victims, victimologists also conduct research to measure the cause and effect relationships that surround victimizations. These studies explore such topics as victim vulnerability, victim/offender interactions, victim impacts, victim trauma, victim blaming, victim needs, victim recovery and many other topics that help victimologists better understand victim behaviours.

The last general category of research used in conjunction with victims is evaluative research used to measure the efficiency and efficacy of victim service programmes. These studies primarily focus on victim services for such programmes as those dealing with: child abuse, sexual assault, elder abuse, victim

advocacy, victim witnesses, spouse abuse, burglary victims, accident victims, victims of drunk drivers, etc. The results of these studies help determine what aspects of services are valuable to keep, so as to better reduce victim suffering and facilitate their recovery.

The main concerns of contemporary victimology are: crime victims (persons injured as a result of an illegal act), disaster victims (persons injured as a result of either natural or manmade catastrophes) and a special category referred to as abuses of power victims (persons injured as a result of genocide, apartheid, racketeering, inquisitions, torture, or ethnic cleansing).

The response to victimization has become a permanent part of our 21<sup>st</sup> century culture. Currently, there are: victims' rights in all states; service programmes that help all types of victims; victimization research studies which are major components of many scientific endeavours; universities that offer academic degrees at the bachelors, masters and doctorate levels; professional victim advocates; and major parts of national and states' budgets dedicated to providing assistance to a wide range of victims. Today, the concept of victimization, victim rights and victim assistance are familiar to most international victimologists and these changes have made a significant contribution to the improvement of the human condition.

The words "comparative victimology" mean the analysis of victimological sub-themes like victim behaviours, victimizations, victim rights, and victim services, which are the same or unique in different cultures, societies and nations. This perspective helps victimologists understand to what extent the victim behaviours of individuals or groups are universal and common to all humans and to what extent they are by-products of different physical and social environments.

#### **D. Victimology**

Linguistically the word victimology is a combination of two parts, *victim* and *ology*. The word *victim* comes from the Latin word *victima* which referred to a person or animal sacrificed in a religious ceremony. The *ology* comes from the Greek word *logos* which meant speech, word, or reason and was especially associated with divine wisdom, reason, doctrine, theory, and science. Today the word victimology is defined from the victim's perspective as the discipline which scientifically studies, as objects of investigation, all types of victims, especially crime victims.<sup>2</sup> It includes the theories and research used to explain all aspects of victimization, victim behaviours prior to, during and after the victimization; and, the analysis of laws, policies, psychological interventions and programmes used to help victims co-operate with government systems and recover from their physical, psychical, social, economical, and legal injuries. Since victimology comes from the word "victim", logically victimology should be about victim characteristics rather than being qualified by the many forces that cause victimization. It is the status, condition, and plight of victims that form the essence of what victimology studies.

The very early origins of victimology can be found in somewhat unrelated writings of a few insightful persons in: a novel about murder victims by Franz Werfel in 1920; a small chapter on victims in an American criminology textbook by Edwin Sutherland in 1924; a Cuban book about protecting crime victims by J. R. Figueroa, D. Tejera and F. Plá in 1929; a major chapter about victims in a criminology book by Hans von Hentig in 1948; a sentence about the need for "a science of victimology" in a book on violence by an American psychiatrist, Fredric Wertham, in 1948; and, a speech on victimology in Romania by Benjamin Mendelsohn in 1958. Then came the first full book on victim restitution in the English language by a Hungarian criminologist, Stephen Schafer, in 1960; a dissertation on victimology published as a Japanese book by Koichi Miyazawa in 1965; and, finally, the first victimology textbook, also by Stephen Schafer, in 1968.

The conceptualization of victimology as a formal discipline was born in the mind of the Romanian defence attorney Benjamin Mendelsohn. His interest in victims and their relationships with offenders began when he was trying to defend persons accused of crimes. He became aware of how important it was to understand the victim/offender interaction to determine degrees of offender blame. Eventually going beyond victim and offender interaction, Mendelsohn recognized that victims were largely ignored, disrespected and even abused by the system. Thus, he began to seek ways to protect and help victims by proposing the creation of victim assistance clinics, international organizations, and special research institutes. Like most of his contemporaries, Mendelsohn's early work with victimology was mostly about crime victims and their

relationship with their offenders; however, as he began to develop his ideas, his focus centered more on just the victim. This orientation reached its peak with the realization that victimology logically should be about the concern for all types of victims, from crimes, traffic accidents, disasters, etc. He referred to this broader type of victimology as “general victimology.”<sup>8</sup> Today there are roughly three types of victimologists: those whose focus is limited to crime victims (specific); those whose focus is on human rights victims (which includes crime victims); and those who focus in on all victims regardless of the cause (general). Victimology today is an interdisciplinary field drawing especially from law, criminology, psychology, sociology, anthropology, and political science.

## II. BASIC CONCEPTS AND THEORY OF VICTIMOLOGY

### A. Basic Concepts

The essential elements of victimology include the following:

- “Victim” has its roots in the early religious notions of suffering, sacrifice and death. This concept of “victim” was well known in the ancient civilizations, especially in Babylonia, Palestine, Greece, and Rome. In each of these civilizations the law mandated that the victim should be recognized as a person who deserved to be made whole again by the offender.
- “Crime victim” is a person who has been physically, financially or emotionally injured and/or had their property taken or damaged by someone committing a crime.
- “Victimogenesis” refers to the origin or cause of a victimization; the constellation of variables which caused a victimization to occur.
- “Victim Precipitation” a victimization where the victim causes, in part or totally, their own victimization.
- “Vulnerability” is a physical, psychological, social, material or financial condition whereby a person or an object has a weakness which could render them a victim if another person or persons recognized these weaknesses and took advantage of them.
- “General Victim” is a person who has been physically, financially or emotionally injured and/or had their property taken or damaged by someone, an event, an organization or a natural phenomenon.
- “Victimization” refers to an event where persons, communities and institutions are damaged or injured in a significant way. Those who are impacted by persons or events suffer a violation of their rights or significant disruption to their well-being.
- “Victimology” is an academic scientific discipline which studies data that describes phenomena and causal relationships related to victimizations. This includes events leading to the victimization, the victim’s experience, its aftermath and the actions taken by society in response to these victimizations. Therefore, victimology includes the study of the precursors, vulnerabilities, events, impacts, recoveries, and responses by people, organizations and cultures related to victimizations.
- “Abuse of Power” is the violation of a national or international standard in the use of organized powerful forces such that persons are injured physically, mentally, emotionally, economically, or in their rights, as a direct and intentional result of the misapplication of these forces.
- “Victim Assistance, Support or Services” are those activities which are applied in response to victimizations with the intention of relieving suffering and facilitating recovery. This includes offering information, assessments, individual interventions, case advocacy, system advocacy, public policy and programme development.
- “Victim Recovery” is the resumption of the same or better level of functionality as was enjoyed prior to victimization. Persons who have been victimized vary in their level of mental health and well-being prior to their victimization. Consequently, victimization affects each person in a different way and causes differing degrees of injury or trauma. In their recovery it is necessary for victims to first try to regain their previous level of functioning plus learn from their misfortune and hopefully exceed their previous level of functionality. To be recovered suggests that a person has at least regained their prior level of well-being and at best, has exceeded it. This state may be measured by identifying their previous mental condition and determining if they have at least regained that prior status using the



criteria of: trust in others; autonomy of self; individual initiative; competency in daily activities; self-identity; interpersonal intimacy; control over personal situations; successful relationships; safety in daily activities; acknowledgment of memory; trauma symptoms have become manageable; self esteem is restored; resourcefulness is achieved; and there is an improved ability to ward off potential threats.

- “Child Abuse” is the intentional application of sexual, physical, emotional or psychological injury to a child, to include neglect at the hands of her or his parents or care-provider, within the confines of their family or place of care.
- “Victim Offender Mediation” (VOM) is a formal process for face-to-face meetings in the presence of a trained mediator between a victim of a crime and the offender who committed that crime. This is also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice. Often the victim and the offender are joined by their respective families and community members or other persons related to the crime event. In these meetings, the offender and the victim talk to each other about the victimization, the effects it had on their lives, and their feelings about it. The aim is to create a mutually agreeable plan to repair any damage or injury that occurred as a result of the crime in the hopes of permanently eliminating the conflict that caused the crime in the first place.
- “Restorative Justice” is a systematic formal legal response to crime victimization that emphasizes healing the injuries that resulted from the crime and affected the victims, offenders and communities. This process is a departure from the traditional retributive form of dealing with criminals and victims which traditionally have generally perpetuated the conflict which resulted in the original crime.
- “Victim Trauma” includes emotional and physical experiences that produce pain and injuries. Emotional injury is a normal response to an extremely abnormal event. It results from the pairing of a painful or frightening emotional experience with a specific memory which emerges and has a long-lasting effect on the life of a person. The more direct the exposure to the traumatic event, the higher the risk for emotional harm and prolonged effects.
- “Crisis Intervention” is the provision of emergency psychological care to traumatized victims so as to help them return to an adaptive level of functioning and to prevent or mitigate the negative impact of psychological and emotional trauma.
- “Compensation” is a formal administrative procedure provided by law which provides only money to victims for “out of pocket” real expenses directly resulting from the victimization, to be paid by the state after the victim is found to qualify according to specific criteria determined by the respective state or federal law.
- “Restitution” is a formal judicial procedure used by a judge after guilt is determined as part of a sentence which can provide money and/or services to the victim for damages or suffering which resulted from the victimization to be paid or performed by the offender.
- “Victim Survey” is a periodic data collection and analysis process conducted usually by a government entity within the general population to study information about crime victims regardless of whether they reported their victimization to the police or not. It typically uses a face-to-face or telephone interview (or sent questionnaire) and covers demographics, attitudes about crime and details about the victimizations experienced over the previous six months.
- “Victim Rights” are privileges and procedures required by written law which guarantee victims specific considerations and treatments by the criminal justice system, the government and the community at large.

## **B. Theory**

Usually, a theory is a statement that explains a given phenomena based on causal relationships. In this case, what is needed is a statement that explains how and why victimizations occur.

### **1. Benjamin Mendelsohn**

The first person to begin the development of theoretical writings about victimology was the Romanian defence attorney Benjamin Mendelsohn, who needed to understand victims to improve his ability to defend offenders. To do this, in 1956 he created a short taxonomy of six categories that centered on the

relative guilt of victims. These categories were designed to facilitate the degree to which a victim shared the responsibility for a crime with the offender; however, they do not explain the causes of victimization. Mendelsohn was intrigued with the relationship between the offender and the victim. He referred to this relationship phenomenon as the penal couple.

1. The completely innocent victim.
2. The victim with minor guilt.
3. The victim who is as guilty as the offender.
4. The victim who is more guilty than the offender.
5. The most guilty victim.
6. The imaginary victim.

## 2. Hans von Hentig

With the publication of his book, *The Criminal and His Victim*, von Hentig created a taxonomy that described how victims were responsible for their harms. His schema was based on psychological, social and biological factors. He was also interested in relationship between offender and victim, in what he called the criminal-victim dyad. In 1948, he developed three broad categorizations of victims.

1. General: age, gender, vulnerabilities.
2. Psychological: depressed, acquisitive, loneliness.
3. Activating: victim turned offender.

Ultimately, Von Hentig, expanded his categories to 13:

1. The Young
2. The Female
3. The Old
4. The Mentally Defective and Deranged
5. The Immigrants
6. The Minorities
7. The Dull Normals
8. The Depressed
9. The Acquisitive
10. Wanton
11. The Lonesome and the Heartbroken
12. The Tormentor
13. The Blocked, Exempted, or Fighting

## 3. Stephen Schafer

Extending the work of von Hentig, Stephen Schafer used an ironic change of titles with his book, *The Victim and His Criminal*. He was also focused on the offender victim interaction and developed a taxonomy based on the victim's functional responsibility for the crime:

1. Unrelated Victims (no victim responsibility)
2. Provocative Victims (victim shares responsibility)
3. Precipitative Victims (some degree of victim responsibility)
4. Biologically Weak Victims (no victim responsibility)
5. Socially Weak Victims (no victim responsibility)
6. Self-Victimizing (total victim responsibility)
7. Political Victim (no victim responsibility)

These three pioneer victimologists, strangely enough, were not focused on the injury caused to the victim by the offender. Their main concern was with the victim's role in contributing to the crime and in the co-operation of the victim with the criminal justice system. Mendelsohn, in 1976, proposed a different view of victims with his concept of general victimology which considered the source of the victimization. Based on this notion, he listed five types of victimizers:

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1. A criminal
2. One's self
3. The social environment
4. Technology
5. The natural environment
6. Most crime victimologists are also criminologists.

4. Dietrich L. Smith and Kurt Weis

In 1976, Dietrich L. Smith and Kurt Weis created a rudimentary model of the General Victimology perspective which considered the university of situations, events and processes that likely lead to victimization.

1. The study of the creation of definitions of victims by legal processes, everyday processes and scientific processes.
2. The study of applications of the above definitions by control agents, significant others, community, behavioural and social scientists, and the victim him or herself.
3. The study of societal response systems with victims such as crisis intervention, social services, police, prevention, medical services and civil courts.
4. The study of the victim's reaction in the post-victimization behaviour such as seeking help, complaints, and reactions to the response of others.

5. John Dussich

The most recent attempt to create a unified comprehensive theory of victimization within the scope of general victimology was created by John Dussich in 1985 with the presentation of his Social Copy Theory. This has recently (2004) been revised to the Psycho Social Coping Theory. The essential ingredients of this model are to consider the existence of personal resources in the victim's environment that exist at the time of the victimization. Persons who have an adequate number or type of resources are able to thwart their victimization; if the victimization is not thwarted, the injury can be diminished, and the victim is able to recover sooner. Those with fewer personal resources in their environment will be more vulnerable to victimization, greater injury, and less recovery. The unique aspect of this theory is that it serves to both explain victimizations for all sources and it is useful to assist victims in their recovery process.

### III. GATHERING DATA ON VICTIMIZATION AND KEY FINDINGS

#### A. Questions

Victimologists want basic questions answered to get a larger scope of the problem. They want to know where and when the majority of crimes occur; what are the weapons used by offenders; the nature of the victim/offender relationships; how victims react; do they fight back or try to escape; are they hospitalized; and how much loss do they experience in terms of time and money.

#### B. The Use and Abuse of Statistics

Statistics are meaningful numbers that reveal important information.

Criminologists and victimologists can either gather their own data and make calculations or use official statistics (compiled and published by government agencies).

#### C. What can We get from Statistics?

- Realistic assessments;
- Counts (such as body counts) and rates (per 100,000 people per year);
- Trends: revealing how situations change as time goes on;
- Costs and losses;
- Project a rough or "ballpark" figure;
- Information to evaluate the effectiveness of recovery efforts and prevention strategies;
- Profiles of what is usual or typical about the average victim.

#### D. Two Official Sources of Data in the USA

The FBI's *Uniform Crime Report: Crime in the United States* (UCR) is based on reports of eight major and 23 lesser crimes, most of which do not have victims, made to the police and then sent to the FBI.

The BJS's *National Crime Victimization Survey: Criminal Victizations in the United States* is based on biannual data collection. The first victim related survey was in 1966. This gave proof of the "Dark Figure" of crime, and undercut confidence in the accuracy of the UCR for all offences except murder.

### **E. The International Crime Victim Survey**

In 1989 a group of European researchers started a standardized survey on crime which covered 16 countries and one city. This led to the further development of a more refined survey for developing countries and was primarily led by the United Nations Interregional Crime and Justice Research Institute (UNICRI) in Turin, Italy. This work has recently included the involvement of the United Nations Office on Drugs and Crime (UNODC) and has served to expand knowledge on victims throughout the world.

### **F. Key Findings**

#### **1. International Crime Victim Surveys (ICVS)**

On average, an estimated 16% of the population in the 30 nations participating in the country level surveys was the victim of at least one of any of ten common crimes in 2003 or 2004. On average, 1% of the population was victimized by robbery in the participating countries and 2.4% in the main cities. A comparison was made between the level of victimization by crime according to the ICVS and the numbers of police-recorded crimes taken from the European Sourcebook on Crime Statistics. Compared to the police data, crime victim surveys seem a better source of information on levels of crime across countries. The reporting rates vary from almost 100% for car thefts and thefts which focused on the reporting of five types of crime: theft from cars; theft of bicycles; theft of personal property; completed burglary; and attempted burglary; on average, one in four of these crimes are reported. The highest reporting rates (about 60% or more) can be found in Austria, Belgium, Sweden, Switzerland, Germany, England & Wales, Scotland and Denmark. In Istanbul, Bulgaria and Hong Kong reporting rates are less than 40%. The developing countries show the lowest reporting rates for these five crimes. In half of them less than 20% of such crimes are reported.

About half of the victims who reported a crime were satisfied with the way the police treated their case, varying from over 70% in Denmark, Switzerland, Finland, Australia, Scotland and New Zealand to less than 30% in Estonia, Lima, Maputo, Greece, and Mexico.

#### **2. National Victim Surveys from the USA**

Teens and young adults experience the highest rates of violent crime. Considering fear of crime, respondents were asked how likely they think it is that a burglary will take place in their house in the coming year. Levels of concern were correlated to actual burglary rates. Concern is most common among the public in Japan, Greece and Italy, and least common in Finland, Denmark, USA, Sweden and the Netherlands. Persons in older age groups experienced lower violent victimization than persons in younger age groups.

Nearly half of all violent crimes and 40% of all property crimes were reported to police in 2008. Of the violent offences measured by the NCVS, robbery (61%) and aggravated assault (62%) were more likely than rape/sexual assault and simple assault (each 41%) to be reported to the police (text table 4). Of the property crimes measured, motor vehicle theft (80%) was the crime most frequently reported to the police in 2008.

Violent crimes against females were somewhat more likely to be reported to the police in 2008 than violent crimes against males. Violent crimes against black females were reported to a greater extent than those against white females or against males of any race, and to a slightly greater extent than those against females of other races.

#### **3. Police Reports**

The USA's FBI's Uniform Crime Reports show that in 2006, 87% of murder victims were aged 18 or older. Of all murder victims, 44% were 20 to 34 years old. The elderly, persons age 65 or older, generally experienced less violence and fewer property crimes than younger persons. Serious violent crime rates declined in recent years for both blacks and whites. In 2006 about 50% of murder victims were black, 47% were white, and 3% were Asians, Pacific Islanders, and Native Americans. Blacks were more likely than whites to be victimized by a carjacking (3 versus 1 per 10,000 respectively) from 1993-2002. Males experienced higher victimization rates than females for all types of violent crime except rape/sexual assault.

According to the FBI's Uniform Crime Reports, most murder victims were male: 78% in 2007. Men were more likely than women to be the victim of a carjacking (2 men and 1 woman per 10,000 persons). In general, violent victimization rates were inversely related to household income; persons living in households with lower incomes generally had higher rates of violent crime.

In 2006 divorced or separated persons experienced somewhat higher rates of overall violence than persons of other marital status categories. When compared with other age groups, persons aged 65 or older were disproportionately affected by property crimes.

The property crime rate for Hispanics was 187 per 1,000 households, and for non-Hispanics was 128 per 1,000 households. Hispanic households had a motor vehicle theft rate of 12 per 1,000 compared to 6 per 1,000 for non-Hispanic households.

#### **IV. THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM**

##### **A. The Criminal Justice System**

The criminal justice process is initiated by the action of victims and witnesses in reporting crimes. Without a reported crime the criminal justice system could not begin and would not function. Victims and witnesses also play critical roles in the police investigations and in the prosecution process through their co-operation with the agents of the system. In fact the ideal relationship between the victims and the system is critical in assuring the achievement of justice, for victims, offenders, the system and the community at large.

##### **B. The Work of Victimologists**

Victimologists explore how the CJS handles victims; how the police respond to complainants; how the police help victims report crimes; how prosecutors, defence attorneys and judges treat witnesses for the state; and how corrections, probation, and parole officials react to special requests from victims. It is critical to understand exactly what victims want and expect:

1. Punishment of the offender - punishment is what comes first to most people's minds when considering what justice entails;
2. Retaliation, *lex talionis* - an eye for an eye;
3. Treatment and rehabilitation of the offender - victims are more likely to endorse offenders' treatment if they are not complete strangers;
4. Restitution – rather than retaliation or rehabilitation, for victims and from offenders – money, service or a symbolic gesture.

##### **C. Unacceptable Responses**

Victims do not want inaction, lack of interest, neglect, abuse, disrespect, empty promises, or attempts at manipulation.

##### **D. Conflict**

Two areas of conflict can arise between victims and the police when officers unwittingly make them feel worse and cause a second wound:

1. Law enforcement officials might seem remote, uninvolved, or unconcerned;
2. Police may conclude that the complainants' charges lack credibility.

#### **V. THE UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER AND THE DRAFT UN CONVENTION**

##### **A. The Declaration**

The United Nations General Assembly unanimously passed the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985 (25 years ago). This was the first legal instrument to be totally dedicated to victims of crime and abuse of power! It was a rallying cry heard around the world. Its promise and impact was so great that it is known as "*Magna Carta* for Victims' Rights". This Declaration

has been the primary reference document for victim reforms and was the theme of the 2005 UNAFEI course on victims. The early promoters and supporters of this dramatic initiative were mainly the World Society of Victimology; the United States of America, Finland, Canada and the Netherlands. This declaration for victims has ten essential principles for victims (see Appendix II):

1. To be treated with *compassion and respect*;
2. To receive *information* about the progress of *their proceedings and their role*;
3. To allow their concerns to be *presented and considered*;
4. To provide *support for all victims* during the entire legal process;
5. To minimize *inconvenience*, maintain *privacy* and ensure *safety*;
6. To also use *informal* ways for mediation, dispute resolution, arbitration, and customary or indigenous justice;
7. To receive material, medical, social and psychological *assistance*;
8. To always have *restitution* from the offender considered;
9. To also have *compensation* from the state available; and,
10. To expect *partnerships* with government agencies, NGOs and civil organizations.

### **B. The Draft Convention**

The United Nations draft Convention on Justice and Support for Victims of Crime and Abuse of Power is a new initiative by the World Society of Victimology to recognize that over the past 25 years, the UN Declaration for victims has provided governments and organizations with a constant source of information and guidance concerning victims of crime and abuse of power. Some countries have adopted the Declaration. However, and sadly for victims, many others have not. This means that many, many victims are ignored. To honour the noble intents of that same Declaration, so that all victims can be helped, and to renew our efforts on behalf of these forgotten victims (who, for the most part, still remain silent and unseen), and, to strengthen the resolve of our community of nations, it is time to expand the global standards for victims. This effort must go beyond just recommending principles, and instead must require real reforms to take place. The next logical step up is a UN *Convention*, which could make the same noble principles a living reality so that all governments would treat all victims with “compassion and respect” (see Appendix III). The text of this proposal has a Preamble and 25 articles divided into four parts. The Preamble recalls the UN General Assembly declaration of 1985 which called upon Member States, “to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”.

## **VI. FUTURE PROSPECTS OF VICTIMOLOGY**

The scientific study of victims, victimology, will continue to evolve in numerous directions. The research used to collect and analyse information about victims will become more sophisticated, more reliable and more available in support of keener understandings about victims. Theories based entirely on victim behaviour and empirical findings will emerge and help explain the complexities of why people are victimized, how and why they are differentially impacted and also help to identify what types of treatments are most effective in facilitating victim recovery. In partnership with theory, the multitude of practices used to prevent, protect and treat victims will prove the wisdom of evidence-based decisions such that all responses to victims will be first tested prior to being used. This will lead to universal standards of professional conduct supported by legal controls and strict educational requirements. Ultimately, policy will shift away from unsubstantiated opinions and move toward rational processes that will produce safer societies, result in more efficient responses and help victims recover sooner.

## **VII. RECOMMENDATIONS FOR CRIMINAL JUSTICE OFFICIALS**

### **A. Toward More Formal Victim Rights for Victims within the CJS**

#### **1. Five Basic Rights**

1. To be handled with fairness, respect, and dignity;
2. To be notified, heard, or be present for important judicial proceedings;

3. Promptly get stolen property returned;
  4. To be protected from intimidation and harassment;
  5. To receive restitution and/or compensation.
2. Compensation
1. To be reimbursed for out-of-pocket expenses for medical bills and lost wages arising from injuries inflicted during a violent crime.
3. Victim Influence
- Two forms in which victims can influence the outcome of sentencing decisions:
1. Victim impact statements;
  2. Allocution.
4. Restorative Justice (Conciliation; Mediation; and Arbitration)
1. Empowerment;
  2. Notification;
  3. Direct involvement;
  4. Offender accountability;
  5. Receiving restitution;
  6. Informal justice (retaliatory justice).
5. Summary
- In sum: In the 21st century victims will pursue three different courses:
1. Seek to exercise their recently granted rights;
  2. Explore the possibilities that are opening up in a new approach;
  3. Retaliatory violence.

#### **B. Police**

Toward a victim-oriented police department. A victim-oriented department would undertake outreach efforts to:

- Handle the victims with care;
- Build confidence of citizens;
- Provide sensitive and timely death notifications;
- Meet the special needs for all victimized children and women, rape victims, disabled persons and elder victims;
- Dispatch officers quickly to the scene of a crime;
- Recover stolen property and return it to the rightful owner as soon as possible.

#### **C. Prosecutors**

Toward a victim-oriented prosecution

- Offer protection and safety to all victims and witnesses and their families;
- Establish victim witness programmes to render assistance;
- At all times victims will be treated with dignity and respect, especially during trials and hearings;
- Keep the victim informed about decisions in their cases from the initial charging to the determination of parole and involve victims in all hearings, especially victims of violent crimes;
- Permit all victims allocution;
- Charge and pursue conviction of defendants who harass, threaten, injure, or attempt to intimidate or retaliate against victims or witnesses.

#### **D. The Future of the International Crime Victim Surveys**

Repeats of the ICVS in 2007 and 2008 are under preparation in several countries. It is hoped that plans made in the framework of the European Union for a standardized EU crime survey will allow for a continuation of the ICVS-based series by using elements of the ICVS methodology, including its core set of questions.

## APPENDIX I

### A. Key Dates in Victimology

- **1924:** Edwin Sutherlands' Chapter III, "The Victims of Crime" appeared in his first *Criminology* textbook.
- **1937:** Benjamin Mendelsohn wrote about the personality of victims and lectured in Romania and in the Belgium journal *Revue de Droit Penal et de Criminologie*, Bruxelles.
- **1940:** Benjamin Mendelsohn published his first work, "*Rape in criminology*" in the Italian journal, *Giustizia Penale*, Rome.
- **1946:** Benjamin Mendelsohn circulated his work "New bio-psycho-social horizons: victimology", among medico-legal experts in Bucharest, Romania.
- **1947:** Benjamin Mendelsohn gave his famous speech at the Colzea State Hospital in Bucharest, Romania about his new science, "Victimology."
- **1948:** Hans von Hentig, *The Criminal and his Victim*. Yale University Press.
- **1957:** Margery Fry published an article in the *London Times* on Victim Compensation.
- **1958:** Benjamin Mendelsohn published his major explanation "*La Victimologie*" in the French journal *Revue Francaise de Psychanalyse*. January-February.
- **1963:** New Zealand passed the world's first Victim Compensation Law.
- **1965:** California was the first US state to pass a Victim Compensation Law.
- **1966:** The US government conducted its first crime victimization survey.
- **1968:** Stephen Schafer published the first victimology book, *The Victim and His Criminal*.
- **1972:** The first three victim assistance programmes were created:
  - (i) Aid for Victims of Crime in St. Louis, Missouri;
  - (ii) Bay Area Women Against Rape in Berkeley, California;
  - (iii) Rape Crisis Center in Washington, D.C.
- **1973:** First International Symposium on Victimology was hosted by Israel Drapkin, in Jerusalem, Israel.
- **1974:**
  - The Federal Law Enforcement Assistance Administration (LEAA) funds the first victim-witness programmes in the Brooklyn and Milwaukee District Attorneys' offices, plus seven others through a grant to the National District Attorneys Association, to "create model programmes of assistance for victims, encourage victim co-operation, and improve prosecution".
  - The first law enforcement-based victim advocate programmes are established in Fort Lauderdale, Florida, and Indianapolis, Indiana.
  - The U.S. Congress passes the Child Abuse Prevention and Treatment Act which establishes the National Center on Child Abuse and Neglect (NCCAN). The new Center creates an information clearinghouse and provides technical assistance and model programmes.
  - The first national meeting of victim assistance persons met in Ft. Lauderdale, Florida with support from LEAA at the initiative of and co-ordinated by John Dussich.
- **1975:**
  - The first "Victims' Rights Week" is organized by the Philadelphia District Attorney.
  - International Study Institute on Victimology held in Bellagio, Italy, co-ordinated by Emilio Viano and attended by many of the pioneers in victimology of that time.



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- **1976:**
  - Activists from across the USA united to expand victim services and increase recognition of victims' rights at the 2nd National Conference on Victim Assistance in Fresno, California and on that occasion John Dussich created and co-ordinated the formation of the National Organization for Victim Assistance (NOVA).
  - The National Organization for Women forms a task force to examine the problem of battering. It demands research into the problem, along with money for battered women's shelters.
  - Nebraska becomes the first state to abolish the marital rape exemption.
  - The first national conference on battered women is sponsored by the Milwaukee Task Force on Women in Milwaukee, Wisconsin.
  - In Fresno County, California, Chief Probation Officer James Rowland creates the first victim impact statement to provide the judiciary with an objective inventory of victim injuries and losses prior to sentencing.
  - Second International Symposium on Victimology held in Boston, Massachusetts organized by Stephen Schafer.
  - Women's advocates in St. Paul, Minnesota start the first hotline for battered women.
  - Women's Advocates and Haven House in Pasadena, California establish the first shelters for battered women.
  - First scholarly journal published by Emilio Vianno, *Victimology: An International Journal*.
- **1977:** Oregon becomes the first state to enact mandatory arrest in domestic violence cases.
- **1978:**
  - The National Coalition Against Sexual Assault (NCASA) is formed to combat sexual violence and promote services for rape victims.
  - The National Coalition Against Domestic Violence (NCADV) is organized as a voice for the battered women's movement on a national level. NCADV initiates the introduction of the Family Violence Prevention and Services Act in the U.S. Congress.
  - Parents of the Murdered Children (POMC), a self-help support group, is founded in Cincinnati, Ohio.
  - Minnesota becomes the first state to allow probable cause (warrantless) arrest in cases of domestic assault, regardless of whether a protection order had been issued.
- **1979:**
  - Third International Symposium on Victimology in Munster, Germany. At this event the World Society of Victimology was established with Hans Schneider as its president and John Dussich as its Secretary General.
  - Frank G. Carrington, considered by many to be "the father of the victims' rights movement", founds the Crime Victims' Legal Advocacy Institute, Inc., to promote the rights of crime victims in the civil and criminal justice systems. The nonprofit organization was named VALOR, the Victims' Assistance Legal Organization, Inc., in 1981.
  - The Office on Domestic Violence is established in the U.S. Department of Health and Human Services, but is later closed in 1981.
  - The U.S. Congress fails to enact the Federal Law Enforcement Assistance Administration (LBAA) and federal funding for victims' programmes is phased out. Many grassroots and "system-based" programmes close.
- **1980:**
  - Mothers Against Drunk Driving (MADD) is founded after the death of thirteen-year-old Cari Lightner, who was killed by a repeat offender drunk driver. The first two MADD chapters are

created in Sacramento, California and Annapolis, Maryland.

- The U.S. Congress passes the Parental Kidnapping Prevention Act of 1980.
  - Wisconsin passes the first “Crime Victims’ Bill of Rights”.
  - The first National Day of Unity in October is established by NCADV to mourn battered women who have died; celebrate women who have survived such violence; and honour all who have worked to defeat domestic violence. This day becomes Domestic Violence Awareness Week and, in 1987, expands to a month of awareness activities each October.
  - NCADV holds its first national conference on Washington D.C., which gains federal recognition of critical issues facing battered women, and sees the birth of several state coalitions.
  - The first Victim Impact Panel is sponsored by Remove Intoxicated Drivers (RID) in Oswego County, New York.
- **1981:**
    - Ronald Reagan becomes the first President to proclaim “Crime Victims’ Rights Week” in April.
    - The disappearance and murder of Adam Walsh prompts a national campaign to raise public awareness about child abduction and enact laws to better protect children.
    - The Attorney General’s Task Force on Violent Crime recommends that a separate Task Force be created to consider victims’ issues.
- **1982:**
    - In a Rose Garden ceremony, President Reagan appoints the Task Force on Victims of Crime, which holds public hearings in six cities across the nation to create a greatly needed national focus on the needs of crime victims. The Task Force *Final Report* offers 68 recommendations that become the framework for the advancement of new programmes and policies.
    - The Federal Victim and Witness Protection Act of 1982 brings “fair treatment standards” to victims and witnesses in the federal criminal justice system.
    - California voters overwhelmingly pass Proposition 8, which guarantees restitution and other statutory reforms to crime victims.
    - The passage of the Missing Children’s Act of 1982 helps parents guarantee that identifying information of then-missing children is promptly entered into the FBI National Crime Information Center (NCIC) computer system.
    - The first Victim Impact Panel sponsored by MADD, which educates drunk drivers about the devastating impact of their criminal acts, is organized in Rutland, Massachusetts.
- **1983:**
    - The first victim advocate certificate programme is launched by John Dussich at CSU Fresno, offering standardized victim assistance training for practitioners.
    - The U.S. Attorney General establishes a Task Force on Family Violence, which holds six public hearings across the United States.
    - The U.S. Attorney General issues guidelines for federal victim and witness assistance.
    - In April, President Reagan honours crime victims in a White House Rose Garden ceremony.
    - The First National Conference of the Judiciary on Victims of Crime is held at the National Judicial College in Reno, Nevada.
    - President Reagan proclaims the first National Missing Children’s Day in observance of the disappearance of missing child Etan Patz.
    - The International Association of Chiefs of Police Board of Governors adopts a Crime Victims’ Bill of Rights and establishes a victims’ rights committee to bring about renewed emphasis on the needs of crime victims by law enforcement officials nationwide.

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- **1984:**

- The Office for Victims of Crime (OVC) is created by the U.S. Department of Justice within the Office of Justice Programs to implement recommendations from the President's Task Force on Victims of Crime.
- The passage of the Victims Of Crime Act (VOCA) establishes the Crime Victims' Fund, made up of federal criminal fines, penalties and bond forfeitures, to support state victim compensation and local victim service programmes.
- President Reagan signs the Justice Assistance Act, which establishes a financial assistance programme for state and local government and funds 200 new victim service programmes.
- The National Minimum Drinking Age Act of 1984 is enacted, providing strong incentives to states without "21" laws to raise the minimum age for drinking, saving thousands of young lives in years to come.
- The National Center for Missing and Exploited Children (NCMEC) is created as the national resource for missing children. Passage of the Missing Children's Assistance Act provides a Congressional mandate for the Center.
- The Spiritual Dimension in Victim Services is founded to involve the religious community in violence prevention and victim assistance.
- The U.S. Congress passes the Family Violence Prevention and Services Act, which earmarks federal funding for programmes serving victims of domestic violence.
- Concerns of Police Survivors (COPS) is organized at the first police survivors' seminar held in Washington, D.C. by 100 relatives of officers killed in the line of duty.
- The first National Symposium on Sexual Assault is co-sponsored by the Office of Justice Programs and the Federal Bureau of Investigation.
- A victim-witness notification system is established within the Federal Bureau of Prisons.
- The Office for Victims of Crime hosts the first national symposium on child molestation.
- Victim-Witness Coordinator positions are established in the U.S. Attorneys' offices within the U.S. Department of Justice.
- California State University, Fresno, initiates the first Victim Services Certificate Program offered for academic credit by a university.
- Remove Intoxicated Drivers (RID) calls for a comprehensive Sane National Alcohol Policy (SNAP) to curb aggressive promotions aimed at youth.

- **1985:**

- The Federal Crime Victims' Fund deposits total \$68 million.
- The National Victim Center is founded in honour of Sunny von Bulow to promote the rights and needs of crime victims, and to educate Americans about the devastating effect of crime on their society.
- 29 November: The United Nations General Assembly passes The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- President Reagan announces a Child Safety Partnership with 26 members. Its mission is to enhance private sector efforts to promote child safety, to clarify information about child victimization, and to increase public awareness of child abuse.
- The U.S. Surgeon General issues a report identifying domestic violence as a major public health problem.

- **1986:**

- The Office for Victims of Crime awards the first grants to support state victim compensation and assistance programmes.

- Rhode Island passes a constitutional amendment granting victims the right to restitution, to submit victim impact statements, and to be treated with dignity and respect.
- MADD's "Red Ribbon Campaign" enlists motorists to display a red ribbon on their automobiles, pledging to drive safe and sober during the November-December holiday period. This national public awareness effort has since become an annual campaign.
- **1987:**
  - The Victims' Constitutional Amendment Network (VCAN) and Steering Committee is formed at a meeting hosted by the National Victim Center.
  - Security on Campus, Inc. (SOC) is established by Howard and Connie Clery, following the tragic robbery, rape, and murder of their daughter Jeanne at Lehigh University in Pennsylvania. SOC raises national awareness about the hidden epidemic of violence on America's campuses.
  - The American Correctional Association establishes a Task Force on Victims of Crime.
  - NCADV establishes the first national toll-free domestic violence hotline.
- **1988:**
  - The National Aging Resource Center on Elder Abuse (NARCEA) is established in a co-operative agreement among the American Public Welfare Association, the National Association of State Units on Aging, and the University of Delaware. Renamed the National Center on Elder Abuse, it continues to provide information and statistics.
  - *State v. Ciskie* is the first case to allow the use of expert testimony to explain the behaviour and mental state of an adult rape victim. The testimony is used to show why a victim of repeated physical and sexual assaults by her intimate partner would not immediately call the police or take action. The jury convicts the defendant on four counts of rape.
  - The Federal Drunk Driving Prevention Act is passed, and states raise the minimum drinking age to 21.
  - Constitutional amendments are introduced in Arizona, California, Connecticut, Delaware, Michigan, South Carolina and Washington. Florida's amendment is placed on the November ballot where it passes with 90 percent of the vote. Michigan's constitutional amendment passes with over 80 percent of the vote.
  - The first "Indian Nations: Justice for Victims of Crime" conference is sponsored by the Office for Victims of Crime in Rapid City, South Dakota.
  - VOCA amendments legislatively establish the Office for Victims of Crime, elevate the position of Director by making Senate confirmation necessary for appointment, and induce state compensation programmes to cover victims of homicide and drunk driving.
- **1989:** The legislatures in Texas and Washington pass their respective constitutional amendments, which are both ratified by voters in November.
- **1990:**
  - The Federal Crime Victims' Fund deposits total over \$146 million.
  - The U.S. Congress passes the Hate Crime Statistics Act requiring the U.S. Attorney General to collect data of incidence of certain crimes motivated by prejudice based on race, religion, sexual orientation, or ethnicity.
  - The Student Right-to-Know and Campus Security Act, requiring institutions of higher education to disclose murder, rape, robbery, and other crimes on campus, is signed into law by President Bush.
  - The Child Protection Act of 1990, which features reforms to make the federal criminal justice system less traumatic for child victims and witnesses, is passed by the U.S. Congress.
  - The first National Incidence Study on Missing, Abducted, Runaway, and Throwaway Children in America shows that over one million children fall victim to abduction annually.

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- The National Child Search Assistance Act requires law enforcement to enter reports of missing children and unidentified persons in the NCIC computer.
- **1991:**
  - U.S. Representative Ilena Ros-Lehtinen (Republican Party, Florida) files the first Congressional Joint Resolution to place victims' rights in the U.S. Constitution. The Violence Against Women Act of 1991 is considered by the U.S. Congress.
  - California State University, Fresno, approves the first Bachelors Degree Program in Victimology in the nation.
  - The Campus Sexual Assault Victims' Bill of Rights Act is introduced in the U.S. Congress.
  - The results of the first national public opinion poll to examine citizens' attitudes about violence and victimization, *America Speaks Out*, are released by the National Victim Center during National Crime Victims' Rights Week.
  - The U.S. Attorney General issues new comprehensive guidelines that establish procedures for the federal criminal justice system to respond to the needs of crime victims.
  - The first national conference that addresses crime victims' rights and needs in corrections is sponsored by the Office for Victims of Crime in California.
  - The first International Conference on Campus Sexual Assault is held in Orlando, Florida.
  - The American Probation and Parole Association (APPA) establishes a Victim Issues Committee to examine victims' issues and concerns related to community corrections.
  - The International Parental Child Kidnapping Act makes the act of unlawfully removing a child outside the United States a federal felony.
  - The Spiritual Dimension in Victim Services facilitates a conference of leaders of thirteen religious denominations to plan ways in which these large religious bodies can increase awareness of crime victims' needs and provide appropriate services.
  - The New Jersey legislature passes a victims' rights constitutional amendment, which is ratified by voters in November.
  - Colorado legislators introduce a constitutional amendment on the first day of National Crime Victims' Rights Week. Fifteen years later, the bill is unanimously passed by both Houses to be placed on the ballot in 1992.
  - In an 8-0 decision, the U.S. Supreme Court ruled in *Simon & Schuster v. New York Crime Victims Board* that New York's notoriety-for-profit statute was overly broad and, in the final analysis, unconstitutional.
- **1992:**
  - *Rape in America: A Report to the Nation* clarifies the scope and devastating effect of rape in America, indicating the fact that 683,000 women are raped annually in the United States.
  - The Association of Paroling Authorities, International establishes a Victim Issues Committee to examine victims' needs, rights, and services in parole processes.
  - The U.S. Congress reauthorizes the Higher Education Bill which includes the Campus Sexual Assault Victims' Bill of Rights.
  - The Battered Women's Testimony Act, which urges states to accept expert testimony in criminal cases involving battered women, is passed by Congress and signed into law by President Bush.
  - In a unanimous decision, the U.S. Supreme Court-in *R.A.V. vs. City of St. Paul* struck down a local hate crimes ordinance in Minnesota.
  - Five states: Colorado, Kansas, Illinois, Missouri, and New Mexico, ratify constitutional amendments for victims' rights.
  - Twenty-eight states pass anti-stalking legislation.

- Massachusetts passes a landmark bill creating a statewide computerized domestic violence registry and requires judges to check the registry when handling such cases.
- **1993:**
  - Wisconsin ratifies its constitutional amendment for victims' rights, bringing the total number of states with these amendments to 14.
  - President Clinton signs the "Brady Bill" requiring a waiting period for the purchase of handguns.
  - Congress passes the Child Sexual Abuse Registry Act establishing a national repository for information on child sex offenders.
  - Twenty-two states pass stalking statutes, bringing the total number of states with stalking laws to 50, plus the District of Columbia.
- **1994:**
  - The American Correctional Association Victims Committee publishes the landmark *Report and Recommendations on Victims of Juvenile Crime*, which offers guidelines for improving victims' rights and services when the offender is a juvenile.
  - Six additional states pass constitutional amendments for victims' rights-the largest number ever in a single year - bringing the total number of states with amendments to 20. States with new amendments include: Alabama, Alaska, Idaho, Maryland, Ohio, and Utah.
  - President Clinton signs a comprehensive package of federal victims' rights legislation as part of the Violent Crime Control and Law Enforcement Act. The Act includes:
    - The Violence Against Women Act, which authorizes more than \$1 billion in funding for programmes to combat violence against women.
    - Enhanced VOCA funding provisions.
    - Establishment of a National Child Sex Offender Registry.
    - Enhanced sentences for drunk drivers with child passengers.
- **1995:**
  - The Federal Crime Victims' Fund deposits total \$233,907,256.
  - The Crime Victims' Rights Act of 1995 is introduced in the U.S. Congress.
  - Legislatures in three states, Indiana, Nebraska, and North Carolina, pass constitutional amendments which will be placed on the ballot.
  - The National Victims' Constitutional Amendment Network proposes the first draft of language for a federal constitutional amendment for victims' rights.
  - The U.S. Department of Justice convenes a national conference to encourage implementation of the Violence Against Women Act.
  - The first class graduates from the National Victim Assistance Academy in Washington, D.C. Supported by the Office for Victims of Crime, the university-based Academy provides an academically credited 45-hour curriculum on victimology, victims' rights, and a myriad other topics.
- **1996:**
  - Federal Victims' Rights Constitutional Amendments are introduced in both houses of Congress with bipartisan support.
  - Both presidential candidates and the Attorney General endorse the concept of a Victims' Rights Constitutional Amendment.
  - The Federal Crime Victims' Fund reaches an historic high with deposits totalling over \$500 million.

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- Eight states ratify the passage of constitutional amendments for victims' rights, raising the total number of state constitutional amendments to 29 nationwide.
- The Community Notification Act, known as "Megan's Law," provides for notifying communities of the location of convicted sex offenders by amendment to the national Child Sexual Abuse Registry legislation.
- President Clinton signs the Antiterrorism Act, providing one million dollars in funding to strengthen antiterrorism efforts, making restitution mandatory in violent crime cases, and expanding the compensation and assistance services for victims of terrorism both at home and abroad, including victims in the military.
- The National Domestic Violence Hotline is established to provide crisis intervention information and referrals to victims of domestic violence and their friends and family.
- To fully recognize the sovereignty of Indian Nations, the OVC for the first time provides all grants in Indian Country directly to the tribes.
- OVC launches a number of international crime victim initiatives, including working to foster worldwide implementation of a United Nations Declaration on victims' rights and working to better assist Americans who are victimized abroad.
- The American Society of Victimology is launched in Topeka, Kansas by holding its first annual national symposium.
- **1999:** The United Nations and the US Office for Victims of Crime publish the *Guide for Policymakers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *Handbook on Justice for Victims: On the use and application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.
- **2002:** On 11 April the Rome Statute was ratified and went into force on 1 July, at which time the International Criminal Court became effective and it included the creation of a Victim and Witness Unit.
- **2003:** On 2 October the Tokiwa International Victimology Institute, in Mito, Japan, opened its doors to promote victim rights, to conduct seminars, courses, publish an international journal, host annual symposia and lectures and research victimology.
- **2004:** The World Society of Victimology at its annual Executive Committee meeting in Orlando, Florida adopted a dramatic new strategic plan to commit itself to the ideals and promises of the UN Declaration (see Appendix II).
- **2005:** Japan puts the UN Basic Principles of Justice for Victims of Crime and Abuse of Power into its national legislation by adopting a new fundamental law for crime victims. To ensure that the principles would be initiated, the Prime Minister established a cabinet level committee. The new law includes services for victims, restitution from the offender, information about criminal justice and a right to formally participate in the criminal justice process.
- **2009:** The World Society of Victimology held its 13 International Symposium in Mito, Japan, bringing together 483 participants from 51 countries.

**APPENDIX II**  
**UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF  
CRIME AND ABUSE OF POWER**

A/RES/40/34  
29 November 1985  
96th plenary meeting

**Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power,

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses 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,

1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;
2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;
3. Adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;
4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavor:
  - (a) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;
  - (b) To promote community efforts and public participation in crime prevention;
  - (c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;
  - (d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;
  - (e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;
  - (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;
  - (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;



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- (h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;
5. Recommends that, at the international and regional levels, all appropriate measures should be taken:
- (a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;
  - (b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;
  - (c) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims;
  - (d) To develop ways and means of providing recourse for victims where national channels may be insufficient;
6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;
7. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;
8. Further requests the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;
9. Urges the specialized agencies and other entities and bodies of the United Nations system, other relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

**ANNEX**

**Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

**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 victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, color, 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 utilized where appropriate to facilitate conciliation and redress for victims.

#### Restitution

8. Offenders or third parties responsible for their behavior 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 victimization, 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 victimizing 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 endeavor 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 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 recognized 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 III

Draft Convention – 5 December 2009

### UN Convention on Justice and Support for Victims of Crime and Abuse of Power

#### PREAMBLE

*The State Parties to this Convention:*

Recalling the resolution of the UN General Assembly (GA/RES/50/34) in 1985 which called upon Member State to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Recognizing that millions of people, including many women and children, throughout the world still suffer harm as a result of crime, abuse of power and terrorism, and that the rights of these victims still have not been adequately recognized, and that they may, in addition, suffer hardship when assisting in the prosecution of perpetrators,

Noting the partial progress achieved by some Member State in

- legislating the basic principles of justice into domestic laws combined with a high level office to implement policies and programs to provide comprehensive measures for victims of crime;
- providing victims of crime with better information, support services, reparation from offenders, compensation from the state and a role in criminal proceedings;
- establishing programmes to protect victims of crime who are vulnerable, for instance because of gender or age;
- launching permanent boards and legislation to promote the use of effective and proven prevention of victimization at all levels of government.

Noting the initiatives at the UN to implement the Declaration, including:

- UN Commission endorsement of the website [Victimology.nl](http://Victimology.nl) in 1998;
- UN Commission approval of *The Guide for Policy Makers and the Handbook on Justice for Victims* in 1999;
- Statute of Rome in 1998 (and later the Rules of Procedure and Evidence) to establish the International Criminal Court;
- Convention on Trans-national Organized Crime in 2000 and its optional protocol in 2002 on trafficking that include specific sections for victims;
- ECOSOC adoption in 2002 of the Guidelines on Restorative Justice;
- UN Commission funding in 2003 for 19 pilot projects;
- ECOSOC adoption in 2005 of the Guidelines for Child Victims and Witnesses;
- ECOSOC acceptance in 2002 of crime prevention guidelines;
- UN General Assembly adoption of the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005.

Recognizing that some issues relating to justice and support for victims are handled increasingly through a variety of processes often referred to as restorative justice. This includes systems found in indigenous societies and incorporates principles of community involvement in dispute reconciliation; perpetrator accountability; victim empowerment; and restoration of harmony in relationships and community. Some examples include mediation, family group conferencing and indigenous community justice systems.

Noting in 2005 the inclusion in the Declaration of the UN Crime Congress in Bangkok by the Member State of the following paragraph:

“17. We recognize the importance of giving special attention to the need to protect witnesses and victims

of crime and terrorism, and we commit ourselves to strengthening, where needed, the legal and financial framework for providing support to such victims, taking into account, inter alia, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.”

Recognizing the importance of promoting full use and application of the UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power.

*Have agreed as follows:*

## **PART I GENERAL CONSIDERATIONS**

### **Article 1**

#### *Definitions*

- (1) ‘Victims’ means natural persons who, individually or collectively, have suffered harm including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under ‘scope’.
- (2) A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victims’ also includes, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.
- (3) A ‘witness’ is a person who could be called to a court or other appropriate forum to provide testimony.
- (4) An ‘expert’ is a person who by virtue of specialized training, particular knowledge or experience assists the legal system.

### **Article 2**

#### *Scope*

This convention covers natural persons who are victimized by acts or omissions that:

- (a) are violations of criminal laws of State Parties or;
- (b) are abuses of power; defined as acts or omissions that are not violations of national criminal laws but are violations of internationally recognized *jus cogens* norms, and/or are violations by person(s) in a position of power within a political structure, who misapply that power against vulnerable persons and suffer harm or death as a result.
- (c) are acts of terrorism, as defined in international instruments relevant to terrorism, intended to cause death or serious bodily harm to civilians or noncombatants, or damage to property, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
- (d) are acts of human trafficking, which includes persons who have been kidnapped, coerced or deceived away from their homes and communities with the promise of legitimate employment but in actual fact is sexual exploitation, forced prostitution, bonded labor, debt bondage or slavery.

### **Article 3**

#### *General application*

- (1) Nothing in this Convention shall diminish any provisions which protect the rights and interests of victims which are contained in the law and practice of a State Party or international law in force in that State.
- (2) State Parties shall undertake to implement these provisions to the maximum extent of their available

resources. For planning purposes, State Parties shall set priorities for implementing the provisions and seek to provide them over time through progressive realization of goals.

(3) State Parties shall ensure that the provisions contained herein shall be applicable to all, without discrimination of any kind, such as race, color, gender, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. This will be without prejudice to providing special justice and support best suited to victims who are particularly vulnerable because of age, gender, disability or other characteristics.

(4) State Parties shall ensure that all officials and other persons dealing with victims treat them with courtesy, compassion, cultural sensitivity, and respect for their rights and dignity.

#### **Article 4**

##### *Commitment to reduce victimization*

State Parties shall commit to provide both justice and support for victims and to reduce victimization consistent with international guidelines by, *inter alia*, developing:

- (a) more effective detection, prosecution, sentencing and corrections of perpetrators, consistent with internationally recognized norms;
- (b) measures to reduce the risk of occurrence of victimization by considering vulnerable groups and identifying resource deficiencies and vulnerability factors; and, creating ways to neutralize these weaknesses;
- (c) strategies to reduce the opportunity for repeat victimization by improving services and support for those already victimized;
- (d) international cooperation to exchange proven and promising practices and seek trans-national solutions.

## **PART II RIGHTS AND DUTIES**

#### **Article 5**

##### *Access to justice and fair treatment*

(1) State Parties shall provide victims with access to the mechanisms of justice and redress which is expeditious, fair, inexpensive and accessible, as provided for by domestic legislation, through:

- (a) judicial and administrative mechanisms which will enable victims to obtain redress;
- (b) informal mechanisms for the resolution of disputes, including mediation, arbitration, and customary justice processes or indigenous practices, where appropriate, to facilitate conciliation and redress for victims;
- (c) information about their rights in seeking redress through all these mechanisms.

(2) State Parties shall ensure that the judicial, administrative and informal processes are responsive to the needs of victims. This should be facilitated by:

- (a) giving the victim a fair hearing within a reasonable time in the determination of their entitlement to a remedy for the injury, loss or damage suffered by them as a result of their victimization without prejudice to the accused;
- (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant domestic criminal justice system;
- (c) allowing victims to present their views and concerns themselves or through legal or other representatives without prejudice to the discretion of the court, tribunal or other appropriate authority, and in consonance with the relevant domestic criminal justice system;

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- (d) the prompt return to victims of their property, taken or recovered by the police or any other agency for the purpose of the investigation, when no longer needed;
  - (e) providing to victims, where appropriate, the right of appeal against decisions of the prosecutorial authority not to prosecute in cases where they were victimized.
  - (f) providing proper assistance to victims throughout informal, administrative, investigative and judicial processes;
  - (g) taking measures to minimize inconvenience to victims and protect their privacy wherever appropriate;
  - (h) ensuring the safety of victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - (i) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims;
  - (j) ensuring the enforcement of any order or decree granting awards to victims.
- (3) State Parties shall reimburse victims and witnesses for their reasonable expenses related to the procedure incurred as a result of their legitimate participation in criminal proceedings.

## Article 6

### *Protection of victims, witnesses and experts*

- (1) State Parties shall take appropriate measures in accordance with their domestic legal systems to protect the safety, physical, psychological, and social well-being, dignity and privacy of victims, witnesses and experts from potential retaliation or intimidation and, as appropriate, for their relatives and other persons close to them.
- (2) The measures envisaged in paragraph 1 of this article may include:
- (a) establishing procedures for the physical protection of such persons, such as, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; and/or to the extent necessary and feasible, relocating them, changing their identity and any other measures needed for their protection;
  - (b) providing evidentiary rules to permit victims, witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other appropriate means;
  - (c) agreements or arrangements with other State Parties for the relocation of persons.

## Article 7

### *Information*

- (1) State Parties shall ensure that victims have a right to information, and must be informed of this, from their first contact with law enforcement or other agencies. State Parties shall ensure that victims receive general information in the most expeditious and efficient method appropriate to the culture such as through oral or written communication with concern for literacy and literary traditions. Specific information should be given person to person. Such information should facilitate an informed understanding for victims and shall be at least as follows:
- (a) the type of services or organizations to which they can turn for support;
  - (b) the type of support which they can obtain, including the availability of health and social services and other relevant assistance;
  - (c) where and how they can report an offence;
  - (d) procedures following such a report and their role in connection with such procedures;
  - (e) 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;
- (f) how and under what conditions they can obtain protection;
  - (g) to what extent and on what terms they have access to legal advice or legal aid;
  - (h) requirements for them to be entitled to compensation;
  - (i) if they are resident in another State, any special arrangements available to them in order to protect their interests;
  - (j) where and how victims could obtain more information.
- (2) State Parties shall ensure that victims who have expressed a wish to this effect are kept informed of:
- (a) the outcome of their complaint;
  - (b) relevant factors enabling them, in the event of prosecution, to know the conduct of the proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;
  - (c) the court's sentence.
- (3) State Parties shall take the necessary measures to ensure that the victim is notified, at least in cases where there might be danger to the victim, when the person prosecuted or sentenced for an offence is released.
- (4) In so far as State Parties take forward on their own initiative the information referred to in paragraphs 2 and 3, they shall ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.

## Article 8

### *Assistance*

- (1) State Parties shall ensure that the necessary material, medical, psychological and social assistance to victims is provided through government, voluntary, community-based and indigenous means. Such assistance may be provided through any agencies or comprehensive programs that are appropriate under domestic laws or norms.
- (2) State Parties should be encouraged to develop networks of criminal justice, social services, health and mental health services, victim assistance services and other relevant groups or institutions in order to facilitate referrals, coordination and planning among those providing assistance.
- (3) State Parties should be encouraged to establish local and regional victim assistance centers to coordinate networks, develop and make referrals, and provide outreach to victims and direct services where appropriate.
- (4) State Parties shall facilitate the referral of victims by the police and other relevant agencies to victim assistance centers or other service institutions.
- (5) Language understood by victims should be encouraged. If translators are needed, they should be trained in the subject matter that they are addressing and victim support personnel should be familiar with common terms that will be used.
- (6) State Parties shall seek to establish the following kinds of assistance to victims:
- A. Immediate Assistance:
- (a) medical attention and accompaniment to medical exams, including first aid, emergency medical attention and medical transport. Support services should be provided to victims when forensic examinations are called for or in the aftermath of death;
  - (b) material support such as shelter, housing, transportation, or property repair;
  - (c) crisis intervention, involving crisis counseling and problem solving;
  - (d) information and notification about what happened to the extent that such information does not



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interfere with investigation, including notification of any immediate responsibilities to the criminal justice system. Assistance should be offered in notifying family or friends of what happened;

(e) protection from repeat victimization should be provided through the development of safety and security plans. This may include information on police surveillance, relocation, emergency communication and the like. It may also involve assistance with obtaining protection orders through the judicial system;

(f) victims should be protected from media intrusion;

(g) general support and advocacy should be offered when victims interact with social, justice and medical institutions as well as appropriate referrals for urgent needs;

(h) confidentiality and privacy should be guaranteed to the extent allowable under current law and policy.

B. Medium term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance';

(b) psycho/social health and spiritual interventions that may include post-trauma counseling, mental health therapy, family counseling, pastoral counseling, or traditional healing intercessions;

(c) assistance with financial needs or claims including filing and advocacy for compensation claims, restitution, insurance, or emergency funds.

(d) legal referrals should be provided for legal assistance in the criminal or civil justice systems. To the extent possible such legal assistance should be free.

(e) Information, support and assistance concerning options for participation in alternative justice forums should be provided.

C. Long term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance' and B 'Medium Assistance';

(b) assurances and re-establishment of the victim's place in the family, community, education and in the workplace should be encouraged;

## Article 9

### *Restorative justice*

(1) State Parties shall endeavor, where appropriate, to establish or enhance systems of restorative justice, that seek to represent victims' interests as a priority. State shall emphasize the need for acceptance by the offender of his or her responsibility for the offence and the acknowledgement of the adverse consequences of the offence for the victim.

(2) State Parties shall ensure that victims shall have the opportunity to choose or to not choose restorative justice forums under domestic laws, and if they do decide to choose such forums, these mechanisms must accord with victims' dignity, compassion and similar rights and services to those described in this Convention.

## Article 10

### *Restitution including reparation*

(1) State Parties shall legislate to make offenders responsible for paying 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 victimization, provide the opportunity for a sincere apology where appropriate place in 9 above, the provision of services and the restoration of rights.

(a) State Parties shall review their practices, regulations, laws and their constitution to ensure that

restitution is an available sentencing option in criminal cases.

(b) In cases of environmental crime, State Parties shall legislate to include restitution to restore 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 the community.

(c) Where public officials or other agents acting in an official or quasi-official capacity have violated domestic criminal laws, State Parties shall legislate to provide restitution to victims from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurs is no longer in existence, the State or Government successor in title shall provide restitution to the victims.

(d) When there is a court order for restitution, the State Party shall be responsible for enforcing the order.

(e) In cases where the offender is under a legal obligation to pay restitution as well as other pecuniary sanctions, the former shall have precedence over the latter.

(f) In cases where the victim seeks restitution through civil remedies, State shall endeavor to expedite these proceedings and minimize expenses.

## Article 11

### *Compensation*

(1) When restitution is not fully available from the offender or other sources, State Parties shall endeavor to provide financial compensation to:

(a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;

(b) the victims' family, in particular dependants of persons who have died (or become physically or mentally incapacitated) as a result of such victimization.

(2) Compensation shall be provided for:

(a) treatment and rehabilitation for physical injuries;

(b) pain and suffering and other psychological injuries caused to victims;

(3) State should also consider compensation for loss of income, funeral expenses and loss of maintenance for dependants.

(4) The establishment, strengthening and expansion of national, regional or local funds for compensation to victims should be encouraged. State Parties may consider providing funds through general revenue, special taxes, fines, private contributions, and other sources.

(5) These funds shall guarantee fair, appropriate and timely compensation. They should also allow for emergency and/or interim payments. Special care should be taken to make the funds accessible. This requires, *inter alia*, extensive dissemination of information on the eligibility criteria and the procedure to be followed. State should also consider other means to raise public awareness of the existence of these funds.

(6) 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.

(7) In cases of cross border victimization, the State where the crime has occurred should pay compensation to the foreign national, subject to the principle of reciprocity.

## **PART III IMPLEMENTATION, MONITORING AND COOPERATION**

### **Article 12**

#### *Implementation*

- (1) State Parties shall take appropriate measures to:
  - (a) bring into force the laws, regulations and administrative provisions necessary for the implementation of this Convention;
  - (b) establish and enhance such institutions and mechanisms as may be necessary for the achievement of the objectives of this Convention;
  - (c) ensure the establishment and/or enhancement of appropriate procedures, which are victim-friendly and which must be adhered to.
- (2) State Parties shall ensure that personnel dealing with victims and witnesses make every effort to adopt an interdisciplinary and cooperative approach in aiding them. This approach may include protocols for the different stages of the justice process to encourage cooperation among bodies that provide services to victims and witnesses.
- (3) State Parties shall ensure the building of partnerships among local, national and international stakeholders, including intergovernmental and non-governmental organizations, civil society as well as the private sector in the implementation process. To this end, all stakeholders shall be encouraged to contribute to the resources required for implementation.
- (4) State Parties shall foster, develop and improve international cooperation in order to:
  - (a) facilitate the more effective protection of victims' interests in informal, administrative or judicial proceedings;
  - (b) promote mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of crimes.
- (5) State Parties shall provide adequate training, education and information to all persons working with victims and witnesses with a view to improving and sustaining particular methods, approaches and attitudes that protect and deal effectively and sensitively with victims and witnesses. This training should particularly be aimed at avoiding secondary victimization.
- (6) State Parties shall ensure that sufficient information, advice and assistance be provided to:
  - (a) victims in order to enable them to be empowered to seek assistance from appropriate quarters so as to be able to receive justice, support and assistance in respect of their victimization;
  - (b) members of the public in order to enable them to understand the reasons for provision of justice, support and assistance to victims.
- (7) State Parties shall foster, develop and improve cooperation between State in order to facilitate the more effective implementation of the provisions contained in this Convention and the more effective protection of victims' interests in criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between organizations which provide support to victims.

### **Article 13**

#### *Monitoring*

- (1) State Parties shall take appropriate measures to monitor the efficiency and effectiveness of policies and measures designed for the implementation of this Convention. In particular, they shall undertake periodical review and evaluation of their legislation, regulations and procedures, including the use of research.
- (2) State Parties shall ensure that the various agencies, organs or bodies dealing with victims shall submit periodic reports to an appropriate authority within their domestic jurisdiction designated for this purpose.

(3) State Parties undertake to make the principles and provisions of this Convention widely known by appropriate and active means.

#### **Article 14**

##### *Committee on Justice and Support for Victims of Crime and Abuse of Power*

(1) For the purpose of examining the progress made by State Parties in achieving the realization of the obligations undertaken in the Convention, there shall be established a Committee on Justice and Support of Victims of Crime and Abuse of Power, which shall carry out the functions hereinafter provided.

(a) The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by State Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

(b) The members of the Committee shall be elected by secret ballot from a list of persons nominated by State Parties. Each State Party may nominate one person from among its own nationals.

(c) The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to State Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating State Parties which have nominated them, and shall submit it to the State Parties to the present Convention.

(d) The elections shall be held at meetings of State Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of State Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of State Parties present and voting.

(e) The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

(f) If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

(g) The Committee shall establish its own rules of procedure.

(h) The Committee shall elect its officers for a period of two years.

(i) The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the State Parties to the present Convention, subject to the approval of the General Assembly.

(j) The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

(k) With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

## Article 15

(1) State Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned;

(b) thereafter every five years.

(2) Reports made under the present Article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

(3) A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

(4) The Committee may request from State Parties further information relevant to the implementation of the Convention.

(5) The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

(6) State Parties shall make their reports widely available to the public in their own countries.

(7) The Committee is entitled, where appropriate, to make on-site visits to assess progress made in the implementation of the Convention.

## Article 16

### *Cooperation*

(1) In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The United Nations Office on Drugs and Crime, the specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the United Nations Office on Drugs and Crime, the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the United Nations Office for Drugs and Crime, the specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including national human rights institutions, governments, relevant United Nations bodies, specialized agencies and programs, in particular with the United Nations Office on Drugs and Crime, the Counter- Terrorism Committee of the Security Council and the Office of the United Nations High Commissioner for Human Rights.

(c) The Committee shall transmit, as it may consider appropriate, to the United Nations Office for Drugs and Crime, specialized agencies and other competent bodies, any reports from State Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(d) The Committee may recommend to the General Assembly to request the Secretary- General to undertake on its behalf studies on specific issues relating to the matters covered under this Convention.

## **PART IV CONCLUDING PROVISIONS**

### **Article 17**

The present Convention shall be open for signature by all State.

### **Article 18**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article 19**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### **Article 20**

(1) The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

(2) For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

### **Article 21**

(1) Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to State Parties, with a request that they indicate whether they favor a conference of State Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the State Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of State Parties present and voting at the conference shall be submitted to the General Assembly for approval.

(2) An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of State Parties.

(3) When an amendment enters into force, it shall be binding on those State Parties which have accepted it, other State Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

### **Article 22**

(1) The Secretary-General of the United Nations shall receive and circulate to all State the text of reservations made by State at the time of ratification or accession.

(2) A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

(3) Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all State. Such notification shall take effect on the date on which it is received by the Secretary-General

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**Article 23**

A State Party may denounce the present Convention by written notification to the Secretary General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 24**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 25**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary- General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

# THE CURRENT SITUATION AND CHALLENGES OF MEASURES FOR VICTIMS OF CRIME IN THE KOREAN CRIMINAL JUSTICE SYSTEM

Cho Kyoon Seok\*



## I. HISTORY AND DEVELOPMENT OF MEASURES FOR VICTIMS OF CRIME

In the Korean criminal justice system, prosecutors hold exclusive authority in investigating and indicting criminal cases. Victims of crime may report the damage done by offences or file a complaint to an investigation agency, but they have no authority to directly indict criminals, nor to initiate formal criminal procedures.<sup>1</sup> Furthermore, the structure of the Korean criminal procedure is such that factors from both the adversarial system of common law countries and the inquisitorial system of civil law countries are combined. However, victims of crime have not been acknowledged as direct parties in their own criminal cases. Rather, they have been treated as either a method of evidence or the object for obtaining evidence. Thus, victims of crime basically become “complainant” in the investigation phase and “witness” in the trial phase, and are otherwise totally excluded from the criminal procedures.

The first special system for protection of, and assistance to, victims of crime (hereafter, measures for victims of crime) introduced in the Korean criminal justice system is the compensation order system. This system allows victims of certain crimes, such as bodily injury, death resulting from bodily injury, crimes inflicting bodily injury and death through negligence, crimes concerning rape and infamous conduct, larceny and robbery, fraud and extortion, and embezzlement and breach of trust, to receive compensation for damages occurring from the defendant’s criminal behaviour as defined by the criminal justice procedure. This compensation order system is stipulated expressly in the text of the *Act on Special Cases concerning Expedition, etc. of Legal Proceedings*, which was enacted on 29 January 1981.

Afterwards, the newly amended *Constitution* of 29 October 1987 guarantees both the right of the victim to testify in court, in Paragraph 5 of Article 27, as a fundamental right, and also the right of the victim to aid, in Article 30, in which a person who has been personally injured by acts of crime may get aid from the State according to what the law provides thereon. In this fashion, the authority of the crime victim’s rights was laid out in the Constitution as influenced by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations on 29 November 1985. In accordance with the provision of Article 30, the *Crime Victim Aid Act* was adopted on 28 November 1987 and was implemented on 1 July 1988. Following the requirement of Paragraph 5 of Article 28, the *Criminal Procedure Act* (CPA) was also amended. The revised CPA defines the right of the victims of crime to testify in court in Article 294-2. Unfortunately, in spite of the constitutional amendment, the rights of victims of crime have not been properly respected nor protected, and in some cases have even been neglected because the criminal justice system places more emphasis on the protection and human rights of offenders.

In the 1990s, non-profit organizations started to support female victims in sexual violence and domestic violence cases. For example, the Korea Sexual Violence Relief Center was established on 13 April 1991 and drew public attention to the protection of human rights for female victims of sexual violence and domestic violence. On 25 April 1992, the Korean Association of Victimology, which initiated active academic research concerning the topic of victimology, was also founded. Consequently, the need for special measures for the victims of certain crimes related to sexual violence and domestic violence became more widely and socially acknowledged. And these needs resulted in the following legislative Acts:

\* Professor of Law, School of Law, Ewha Woman’s University, Seoul, Korea.

<sup>1</sup> On the Korean justice system, See [www.moj.go.kr/HP/ENG/eng\\_02/eng\\_2040.jsp](http://www.moj.go.kr/HP/ENG/eng_02/eng_2040.jsp) ; UNAFEI(1995), *Criminal Justice Profiles of Asia-Investigation, Prosecution, And Trial*.



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- *Act on Special Cases concerning the Punishment of Specific Violent Crimes* (adopted on 31 December 1990);
- *Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* (adopted on 5 January 1994);
- *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence* (adopted on 13 December 1997);
- *Act on the Prevention of Domestic Violence and Protection of Victims* (adopted on 31 December 1997);
- *Protection of Informants, etc. of Specific Crimes Act* (adopted on 31 August 1999);
- *Act on the Prevention of Juveniles from Sexual Abuse* (adopted on 3 February);
- *Act on Prevention of Sexual Traffic and Protection of Victims Thereof* (adopted on 22 March 2004);
- *Act on Punishment of Acts of Arranging Sexual Traffic* (adopted on 22 March 2004).

Although the level of protections from this legislation is not yet very thorough, these Acts, nonetheless, guarantee some level of procedural rights to certain groups of crime victims in the criminal justice process. On the other hand, there was rare assistance to victims of violent crimes such as murder and robbery, crimes related to traffic violations, and safety accidents caused by criminal acts.

In this situation, for the first time in Korea, the “Victim Support Center” was established as a civic organization for crime victim assistance in the region of Gimcheon and Gumi on 5 September 2003. The establishment of this centre was sponsored by the Gimcheon Branch of the Daegu District Public Prosecutors’ Office (*author of this article was Chief Prosecutor of the branch at that time*). The founding of this centre led to increased social interest in victims of crime. Consequently, the Ministry of Justice, the Supreme Prosecutors’ Office, and the National Police Agency, respectively, developed their own measures for victims of crime. The Committee on Judicial Reform, led by the Korean Supreme Court, also discussed assistance provided to victims in the legal system and made recommendations in a final report submitted to the President in December 2004.

More than two decades after the initial institutionalization of crime victim assistance, a basic law for victim protections, the *Crime Victim Protection Act*, was finally enacted on 23 December 2005. The *Criminal Procedure Act* was also amended on 1 June 2007, as one part of the Judicial Reform Plan, and enforced from 1 January 2008. The Revised CPA contains new provisions regarding:

- (1) presence of persons with reliable relationship (CPA §163-2, §221y③, §276);
- (2) interrogation of witness through video or other transmission (CPA §165-2);
- (3) notice to victims (CPA §259-2);
- (4) non-disclosure of victim’s statements (CPA §294-3); and
- (5) victims’ inspection and copying of litigation record (CPA §294-4).

The Revised Act also strengthens the victim’s right to make statements in court (CPA §294-2) and extends the purview of the victim’s petition for adjudication (CPA §260). As such, the status of victims of crime in the criminal procedures is strikingly enhanced under the Revised Act. Based on such a recent introduction and re-organization of provisions regarding victim support, it is not an overstatement to say that Korea is now witnessing a renaissance in providing support to victims of crime.

**Table 1: History and Development of Measures for Victims of Crime**

Date	Contents	Misc
29 January 1981	Compensation Order( <i>Act on Special Cases concerning Expedition, etc. of Legal Proceedings</i> )	
29 October 1987	Amendment of <i>Constitution</i> (§30 right of crime victim aid, §27 right of the victim to testify in court )	
28 November 1987	<i>Crime Victim Aid Act</i>	Enforced 1 July 1988

Date	Contents	Misc
28 November 1987	Amendment of CPA(\$297-2 right of the victim to testify in court )	
5 January 1994	<i>Act on the Punishment of Sexual Crimes and Protection of Victims Thereof.</i>	
13 December 1977	<i>Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence.</i>	
31 December 1997	<i>Act on the Prevention of Domestic Violence and Protection of Victims</i>	
5 September 2003	Establishment of the Gimcheon-Gumi Victim Support Center	
7 June 2004	Establishment of the Office Crime Victim Assistance	National Police Agency
1 September 2004	Announcement of The Comprehensive Plan to Reinforce Protection of, and Assistance to, Victims of Crime	MOJ
1 October 2004	Measures for the Protection of, and Assistance to, Victims of Crime	SPO
14 December 2005	Amendment of <i>Act on Special Cases concerning Expedition, etc. of Legal Proceedings</i> (Expansion of scope of Compensation Order; Reconciliation in Criminal Proceeding)	
23 December 2005	<i>Crime Victims Protection Act</i>	Enforced 24 March 2006
4 December 2006	Confirming The Basic Plan for Protection of, and Assistance to, Victims of Crime (2007 - 2011)	
1 June 2007	Amendment of CPA (Extending the boundaries for victim protection)	Enforced 1 January 2008
3 September 2008	Establishment of the Korean Crime Victim Supporting Association (57 branches nationwide)	
19 November 2008	The First National Meeting for the Human Rights of Korean Crime Victims.	

## II. BACKGROUND TO THE DISCUSSION ON MEASURES FOR VICTIMS OF CRIME

### A. Increased Sense of Insecurity about Crime

As explained so far, various procedures have been implemented for the protection of, and assistance to, victims of crime in Korea. Several factors have contributed to this recent trend of increased interest in crime victim assistance. Of these factors, a general sense of public insecurity and an increase in the public's fear of crime are the most poignant.

In 2007, the total number of reported crimes was 1,965,977, a 7.5 % increase over 2006 and 3.8 times higher than that of 1978, in which 513,165 crimes were reported. The number of reported criminal offences per 100,000 citizens was 3,987.7, which is 2.9 times higher than that of 1978,<sup>2</sup> in which 1,388.1 offences per 100,000 citizens were reported. In particular, during the last ten years, the number of criminal offences causing substantial damage to life, body, or property has steadily increased. For example:

- homicide has increased by 16.4% (966 cases → 1,124 cases);
- rape by 72.9% (7,886 cases → 13,634 cases);
- arson by 46.4% (1,157 cases → 1,694 cases); and

<sup>2</sup> Legal Research and Training Institute of Ministry of Justice. *White Paper on Crime* (2008), p.44, table -2.

- larceny by 141.9% (87,860 cases → 212,530 cases).

Only robbery has somewhat decreased (5,407 cases → 4,470 cases), but the number of robbery cases is still high. As these numbers indicate, Koreans have become aware of a significant level of insecurity in their everyday lives. Another concern of Korean society is a series of terrible disasters caused by criminal acts. For instance, a person who had suffered from a mental disorder and lost all interest in his life deliberately set a fire in the subway in the Daegu area on 18 February 2003. This fire killed 192 innocent persons and injured 147 persons.

This increase in the occurrence of crime and the frequency of large scale accidents has brought about an overall increase in the level of fear of crime throughout Korean society. Furthermore, this increase has also provided Korean society with an opportunity to share in the sorrow, pain, and agony suffered by those victims, their bereaved families and to seriously consider the need to assist them.

### **B. Recognizing of Victims of Crime and Judicial Authorities' Effort to Regain Public Trust**

Although victims of crime commonly suffer great physical, mental, and financial damage—either directly or indirectly—from crime, there has been a general lack of recognition about the extent to which they suffer. In 2006, the Korean Institute of Criminology conducted a survey study of 484 crime victims (243 males and 241 females). According to the results of this study,<sup>3</sup> victims indicated very negative emotional conditions immediately after the criminal offence; they reported anger (reported by 80.7% of victims), anxiety (74%), depression (68.8%), and emotional instability (64.3%). Victims also addressed questions regarding the level of victimization they felt. These answers can be summarized in the order of mental damages (reported by 62.1% of victims), property losses (43%), and physical injuries (40.1%). When categorizing victims according to basic personal information (sex, level of education), surrounding life information (marriage, home-owning), and socio-economic information (type of job, amount of income), victims of relatively low social status tended to report a higher level of impact on their lives by the crime, regardless of the type of damages. Other than these direct damages, victims also reported secondary victimization conditions such as insomnia and a feeling of emptiness (87.7%). After the crime, victims also indicated an inconvenience and generally unpleasant experiences in their relationships with employers and colleagues (75.1%), family members (64.5%), friends (58.5%), police officers (42.7%), and media (11.2%).

In particular, victims of crime were not notified of any information while their cases proceeded from the beginning of the investigation to the final verdict, nor of any notice about the release of the alleged offenders. Victims of crime were not given sufficient rights to access and collect information regarding the cases or to participate in the criminal justice proceedings against their offenders. Furthermore, during the investigation or trial phase, the victims' reputations and privacy were often infringed.

As a result, victims of crime generally have negative perceptions of the criminal justice system. For example, many believe that it is useless to report a crime; they may humiliate themselves and be victimized again during the investigation or trial; and recovery of damages in any way is almost impossible. The accumulation of such distrust in judicial authorities has even led to a refusal to co-operate during investigation or at the trial of the offenders. Recently, the judicial authorities have recognized a need to regain the trust of the public. Various policies and measures have therefore been implemented, one of which is to have greater consideration for victims of crime and to have compassion and understanding for their needs. The judicial authorities have now come to the conclusion that the protection of, and assistance to, victims of crime not only serves to enhance public trust, but is also the morally right response to take, especially in view of the fact that anyone can be a victim of crime.

### **C. Change of Social Conditions which Emphasize Human Rights and Social Welfare**

Since the late 1990s, there has been a new atmosphere in Korean society which puts more emphasis on democracy, human rights, and social welfare. While implementing new public programmes, the Korean government has presented policies to meet these goals. As one of new programmes reflecting this policy, the Korean government has developed measures for victims of crime. In other words, the changes in social conditions inevitably provided an opportunity to review human rights and welfare for aliens or minority groups. Following this trend, those issues which affect victims of crime, and which have traditionally been

<sup>3</sup> Cho, Kyoong-seok; Choi, Insub; Lee, Soonrae, *Study of Crime Victim in Korea*, 2006.

ignored in the criminal justice system, are now also under review.

**D. Capacity Expansion of Civil Organizations Involved with Victims of Crime and Accumulation of Study on Victimology**

Another factor that has contributed to the recent active discussion of victims of crime is the capacity of civic, non-profit organizations which conduct public activities for the protection of, and assistance to, victims of crime. The enhanced capacity of scholars to continue their academic research has also led to the recent focus on crime victims. The activities of such scholars and civic organizations have provided a theoretical background to develop new laws and systems which are now in place. In addition, their activities have contributed to the practical execution of these laws and systems.

**III. CONTENTS OF THE CRIME VICTIM PROTECTION ACT AS A BASIC LAW**

In general, the rights enumerated in the following list are considered the rights of victims of crime:

1. The right to fair treatment;
2. The right to access information;
3. The right to recovery;
4. The right to express their opinions;
5. The right to receive support;
6. The right to be free from re-victimization; and
7. The right to safe and secure living.

The protection of, and assistance to, victims of crime generally indicate the fulfillment of the rights mentioned above. Historically, there has been a progression in the types of assistance rendered to crime victims. In the 1960s, financial assistance to victims of crime started; in the 1970s, the provision of assistance offered by civic organizations flourished; and, in the 1980s and 1990s, systematic and legal assistance began. Currently, the focus has moved towards the social welfare approach, one step forward from criminal justice assistance.

Following the international trend of guaranteeing victims' rights, the *Crime Victim Protection Act* (CVPA) was adopted in Korea on 1 December 2005. This statute was promulgated on 23 December 2005 and came into force on 24 March 2006. The CVPA contains 27 Articles in 5 Chapters.

**A. General Provisions (Chapter 1)**

Chapter 1 contains Articles on the purpose of the Act, its basic principles, the definition of victims of crime, and the duties of the central and local governments. The basic principles of the Act expressly stipulate:

1. The human right of dignity to recover from damages occurring from a crime;
2. The right to protection of dignity and privacy; and
3. The right to participate in legal procedures.

The Act also reflects the following three elements of protection of, and assistance to victims of crime: efficient recovery from the aftermath of the crime, victims' active participation in the criminal justice system, and the prevention of secondary victimization. The Act extends the boundary of the definition of crime victims as previously provided in various laws. The concept of crime victims in this Act includes a person who has been injured by a criminal act, his or her spouse (including a *de facto* marital relationship), lineal ascendants and descendants, brothers and sisters, as well as a person who was injured while conducting an act of crime prevention or providing aid to the victims.

**B. Basic Measures for Protection of, and Assistance to, Victims of Crime (Chapter 2)**

In Chapter 2 of the Act, various support measures for recovery are prescribed, such as counselling, medical help, financial assistance, legal assistance and employment support. Victims of crime have the right to consult with investigators or participate in their trial. They also have the right to be informed about results of investigation of their offenders, the trial date, trial result, and sentence imposed on their offenders, etc. In addition, there are provisions regarding the protection of the honour and privacy of crime victims; training and education of personnel working for the protection of and assistance to crime victims; and, the investigation of actual situations of crime victims and the basis for increasing public awareness of the necessity of crime victim support.

Followed by the enforcement of the Act, the Ministry of Justice has implemented the programme of educating persons who work in the area of victim protection and support. In 2009, two education programmes were executed: mentoring education for volunteers and professional education for criminal mediators. In order to bring public awareness to victim support, the Ministry of Justice created the First Crime Victims' Week in November 2007 and held the First Human Rights of Korean Crime Victims Competition on 29 November 2008. The Ministry also appointed a publicity ambassador for crime victims as one way of increasing public awareness of crime victims.

### **C. The Basic Plan for Protection of, and Assistance to, Victims of Crime (Chapter 3)**

Chapter 3 prescribes that the Minister of Justice must develop a basic plan for a systematic national protection and assistance programme every five years. The basic plan is to be discussed by the Crime Victims Protection Committee, which is made up of representatives from the Prosecutors' Office, National Police, Ministry of Gender Equality, Ministry of Education and Human Resources Development, as well as some other experts from non-governmental organizations. Upon the Minister of Justice's adoption of the basic plan decided by the Crime Victims Protection Committee, the Minister and heads of other relevant central and local governmental agencies must prepare and enforce an annual plan for the implementation of the basic plan.

Following the enforcement of the Act, the Ministry of Justice organized the Crime Victim Protection Committee on 30 November 2006 and adopted the Basic Plan for Protection of, and Assistance to, Crime Victims (2007-2011) on 4 December 2006. The Ministry of Justice also continued to try to develop a One-stop System for Victims of Crime with the collaboration of central administrative agencies, local governments, and civic organizations.

### **D. Corporations by Those Rendering Assistance to Victims of Crime (Chapter 4)**

Chapter 4 contains provisions for the establishment of corporations for the specific purpose of protecting and assisting crime victims. According to this chapter, in order to set up such corporations, the fulfillment of several requirements and registration with the Ministry of Justice are necessary. The registered corporations can be supported by subsidies from central and local governments but, in exchange, they must accept certain levels of responsibility and supervision from the government. Crime Victim Support Centers, which have already been established, may register themselves pursuant to this chapter and can receive a subsidy. Currently, 57 Crime Victim Support Centers (CVSC) are registered throughout the country. These centres actively provide a variety of services. In September 2008, the Korean Crime Victim Supporting Association (KCVA) was also established.

## **IV. CURRENT SITUATION AND ISSUES OF MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS**

Except for the general measures for victims of crime in the criminal justice process (e.g., complaint, measures of objection to non-prosecution, and the right to testify in court), special measures were initially developed for groups of victims in certain categories of crime and then applied to general victims. This chapter reviews mainly general measures for victims of crime in criminal proceedings, and also refers partially to special support systems for: (1) victims of specific violent crimes,<sup>4</sup> sexual crimes,<sup>5</sup> and domestic

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<sup>4</sup> A victim or eyewitness involved in specific violent crimes such as homicide and robbery may receive personal safety measures (§7 of the *Act on Special Cases concerning the Punishment of Specific Violent Crimes*) and his or her identity is also protected from public disclosure (§8).

<sup>5</sup> For victims of sexual crimes, personal safety measures (§20), prohibition of divulgence of identity and the privacy of the victim (§21), and assistance by a counselling centre and protective facilities (Chapter 3) are provided according to the *Act on the Punishment of Sexual Crimes and Protection of Victims Thereof*. Moreover, the following special provisions are included in the Act:

- a) taking and keeping of videos, etc. (§21-2);
- b) presence of persons having a reliable relationship with the victim during the questioning of the victim as a witness;
- c) questioning of a witness by means of video and relay devices (§§22-4);
- d) closing of the trial to the public (§22); and
- e) getting professional opinions from experts such as a psychiatrist about the mental and psychological state of a victim and his or her statement (§22-2).

violence;<sup>6</sup> (2) victims as informants of specific crimes;<sup>7</sup> (3) victims of sexual trafficking;<sup>8</sup> and (4) juvenile victims of sexual exploitation and maltreatment.

**Table 2: Measures for Victims of Crime in Criminal Proceedings**

	CPA	SCPSVC	PSCPV	SCPCD	PISCA	PAAST
Presence of persons having a reliable relationship	§163-2 §221 <sup>③</sup>		§22-3			§8
Taking and keeping of videos			§21-2		§10	§6 <sup>③</sup>
Video link	§165-2		§22-4			
Notice to victim	§259-2				§15	
Seeking professional opinions	§294		§22-2			
Victim statement	§294-2			§33 <sup>②</sup>		
Trial and witness not to open to public	§294-3		§22	§32	§11	§9
Identity management					§7, §11	
Inspection and copying of record	§294-4					
Guardian					§6	
Emergent and temporary measures				§29		
Personal safety measures		§7	§20		§13	§6 <sup>③</sup>
Protection from publication, etc.		§8	§20	§18 <sup>②</sup>		
Prohibition of divulgence of identity and privacy			§21	§18 <sup>①</sup>	§8	§6 <sup>③</sup>

*Act on Special Cases concerning the Punishment of Specific Violent Crimes (SCPSVC)*

*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (PSCPV)*

*Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence. (SCPCD)*

*Protection of Informants, etc. of Specific Crime Act (PISCA)*

*Act on the Punishment of Acts of Arranging Sexual Traffic (PAAST)*

<sup>6</sup> For the victims of domestic violence, emergency measures such as evacuation and denial of access (§ 29), a victim’s right to make a statement (§33), the compensation order (§ 57), and the closing of the trial to the public (§32) are available according to the *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence*. Furthermore, assistance by a counselling centre and protective facilities are available according to the *Act on the Prevention of Domestic Violence and Protection of Victims*.

<sup>7</sup> For the informant of specific violent crimes, narcotics crimes and organized crimes, a ‘criminal case guardian’ can be appointed to support the informant during the investigation and trial process (§6) and personal safety measures can be taken (§13) under the *Protection of Informants, etc. of Specific Crime Act*.

<sup>8</sup> For the victims of sexual trafficking, such as persons who are coerced to be engaged in sexual activities by means of deception, force or other similar means, the presence of a person having reliable relation with the victim (§8), closing of the trial to the public (§9), and assistance by a counselling centre and protective facilities are available according to the *Act on the Punishment of Acts of Arranging Sexual Traffic*.

## A. Investigation Stage

### 1. Complaint

Since private prosecution is not allowed in the Korean criminal justice system, victims of crime can only report their damages from the crime or file a complaint against the alleged criminal offenders. The complaint is defined as a victim's formal expression of reporting the alleged offenders' criminal behaviour to the investigation agency and demanding the punishment of the offenders (CPA §223). The complaint can be filed either in written or oral statements (CPA §237). On the death of the victim, his or her spouse, any of his or her lineal relatives, or his or her siblings may file a complaint, if such complaint is not against the expressed intent of the demised victim (CPA §225).

According to the *Criminal Procedure Act*, as for general offences, victims shall not file a complaint against his or her spouse's lineal ascendants (CPA §224). As for the offences, prosecution of which are subject to victims' complaints, victims must file a complaint within the period of six months from the date on which the identity of the offenders becomes known to the victims (CPA §230①). However, especially as for the sexual crimes and domestic violence cases, victims can file a complaint against her or her spouse's lineal ascendants, because these types of crimes are often committed by persons in special relationships such as family or relatives (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* §18, *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence* §6②). Furthermore, because victims of sexual crimes frequently hesitate to file a complaint, the statute allows a one year period for filing a complaint in these cases. In other words, as for the sexual offences, victims must file a complaint within a period of one year from the date on which the identity of the offenders becomes known to the victims (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* §19).

### 2. Ensuring Victims' Safety and Privacy

The following are systems for ensuring victims' safety and privacy:

1. Permitting the presence of persons with whom the victim has certain reliable relationships;
2. Personal safety measures such as prohibition of access by the offender;
3. Intentional omission of victims' identity in written records;
4. Taking and keeping of videos;
5. Preparing a friendly environment for investigation;
6. Limiting the number of investigations;
7. Prohibition on divulging victims' identity and privacy.

The first measure is applied to victims in general, but the others are applied to specific victims.

Permitting the presence of persons with whom the victim has certain reliable relationships is a measure intended to minimize the psychological burden of victims during criminal proceedings. This measure was initially applied to the victims of sexual crimes, but its application boundaries were extended to victims in general in the Revised *Criminal Procedure Act* on 1 June 2007. A prosecutor or a judicial police officer may, if deemed that the victim is likely to feel severe uneasiness or tension in light of his or her age, physical and mental state, or any other circumstances, allow a person who has a reliable relationship with the victim to sit in company with the victim, *ex officio* or upon a motion of the victim or his or her legal representative (CPA §221③, §163-2①). If a victim of a crime is less than 13 years of age, or incompetent to discern right from wrong or make a decision due to physical or mental disability, a prosecutor or a judicial police officer shall allow a person who has a reliable relationship with the victim to sit in company with the victim, unless such company is likely to cause trouble in the proceeding or there is any inevitable reason otherwise (CPA §230①), §163-2②).

In addition, since 31 August 2005, the police have established One-stop Support Centers throughout the country in collaboration with police hospitals and hospitals annexed to universities. The One-stop Support Centers provide 24-hour-services in medical support, consultation, legal assistance to victims of sexual crimes, school violence, domestic violence, and sexual trafficking. The CARE (Crisis-Intervention, Assistance & Response) team, composed of key agencies trained for psychiatric counselling, was also established. The CARE team provides support services to victims of violent crimes immediately after the occurrence of the crimes. Lastly, the prosecutors' offices and the police set up special video recording investigation rooms in order to protect victims' privacy.

3. Provision of Information for Victims of Crime

In the process of investigation, the police provide information to victims about the general overview of the criminal justice procedure and available measures of assistance (Regulation on Crime Investigation §203). The police also inform victims about the process of the case and the disposition of the case. In order to protect the privacy of victims, the notice of such information is offered to victims in any communications mode that the victims request (e.g., oral statement, telephone communication, surface mail, e-mail, cell phone text message) (Regulation on Crime Investigation §204).

The prosecutors also should send interim notice to the victim if they (the prosecutors) fail to dispose of the complaint and accusations within three months from the date on which the case is filed, or if they fail to transmit the cases taken under direct cognizance within three months from the date on which the cases are cognized by the prosecutors (Ordinance on the Interim Notice in Case of Complaint and Accusation of the SPO, No. 427 adopted February 1, 1981 §3③). Prosecutors may deliver this notice in written statements or cell phone text message (Ordinance of the SPO, No.427 §4). In addition, victims of crime have a right to inspect and make copies of some official documents such as investigation records (Ordinance on the Inspection and Copy of the Case Records of the SPO, No.427 adopted 9 January 2008).

**B. Prosecution Stage**

1. Measures of Objection to Non-prosecution

(i) *Appeal and Repeal*

Any complainant or accuser who is dissatisfied with the non-prosecution disposition given by a prosecutor may file an appeal with the chief prosecutor of the competent High Public Prosecutors' Office (*Prosecutors' Office Act* §10①). Any appellant (excluding those who are eligible to apply for a ruling under Article 260 of the *Criminal Procedure Act*) may, if he or she is dissatisfied with a disposition of his or her appeal, re-appeal to the Prosecutor General (*Prosecutors' Office Act* §10(2)). According to these rules, victims who file a complaint or make an accusation against the alleged offenders, or victims who officially present their willingness to punish the alleged offenders following Paragraph 4 of Article 27 of the Regulation on the Prosecution Case Work, can appeal and re-appeal within the criminal justice procedure.

(ii) *Petition for Adjudication*

A person who lodged a complaint with a right to such complaint (including those who filed an accusation of crimes under Article 123 (abuse of authority); 124 (unlawful arrest and unlawful confinement); 125 (violence and cruel acts) of the Criminal Act)) may, if he or she receives a notice of non-prosecution from the public prosecutor, file a petition for adjudication, to find whether such disposition is properly made, with the High Court having jurisdiction over the District Public Prosecutors' Office to which the public prosecutor belongs (CPA §260①). The petition for adjudication shall be filed subsequent to an appeal (CPA §260②). Since the Korean criminal justice system is founded on both principles of exclusive indictment by public prosecutors and principles of discretionary indictment, the victim's petition for adjudication is the most important method of controlling prosecutors' unfair exercise of their exclusive indictment power. The victim's petition for adjudication is also very meaningful in terms of guaranteeing the victim's participation in the process of initiating public prosecutions.

In 2007, the revision of *Criminal Procedure Act* allowed victims of all sorts of crimes to file the petition for adjudication. As a result, the relationship between petition for adjudication, re-appeal, and constitutional complaint has become controversial. Some professionals argue that all victims can only file the petition for adjudication and cannot re-appeal to the Prosecutor General. They also claim that victims cannot file a constitutional complaint. The others argue that victims can choose either to petition for adjudication or re-appeal to the Prosecutor General by themselves. Paragraph 3 of Article 10 of the *Prosecutors' Office Act* states that the person who is eligible to apply for the re-appeal is any appellant but excludes those who are eligible to apply for a petition for adjudication pursuant to Article 260 of the *Criminal Procedure Act*. Thus, many can interpret the statute to mean that victims can only file a petition for adjudication. However, I believe that the opportunity to select an appropriate method of appeal should be given to victims. Consequently, I would argue that victims should be allowed to choose from among petitions for adjudication, re-appeal, or even constitutional complaint, as a way of objecting to a prosecutor's decision.

(iii) *Constitutional Complaint*

Any person who claims that his or her basic right, guaranteed by the Constitution, has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint to the Constitutional



Court, except in the judgments of ordinary courts (*Constitutional Court Act* §68①). Therefore, the following group of victims can file a constitutional complaint: (1) victims who do not file a complaint or make an accusation of alleged offenders; (2) victims who make an accusation against offenders but are not eligible to apply for the petition for adjudication; and, (3) victims who officially present their willingness to punish the offenders. However, these victims are eligible only after they apply for other relief processes provided in other laws. In other words, no one may file a constitutional complaint without having exhausted all other processes (*Constitutional Court Act* §68①). The eligibility of other victims who can file a petition for adjudication to apply a constitutional relief has already been discussed above.

## 2. Criminal Mediation between Victim and Offender

Criminal mediation is a system of calling for reconciliation between victims of crime and offenders, with the assistance of a neutral third-party or trained mediator. Criminal mediation is a relatively new approach to victims of crime and offenders and can be viewed as an alternative to the informal arbitration practices which frequently occur in real criminal justice practice.

In April 2006, by way of example, criminal mediation was implemented in Seoul Southern District Prosecutors' Office and three other local prosecutors' offices. From August 2007, all prosecutors' offices throughout Korea have provided criminal mediation services. Initially, the Criminal Mediation Committee within the Crime Victim Support Center was in charge of criminal mediation. However, some professionals raised questions about the fairness of the results of criminal mediation, since criminal mediation was conducted under the guidance of Victim Support Centers. Therefore, on 10 November 2009, the authority to provide criminal mediation services was given to the District Prosecutors' Offices.

The types of crimes eligible for criminal mediation are virtually limitless, but the representative ones are: (1) property crimes occurring from disputes based on cash transactions between victims and offenders, such as fraud, embezzlement, and breach of trust; and (2) crimes related to private disputes where victims file complaints, such as libel, medical disputes, and employers' delayed payment of wages.

Prosecutors decide whether a case can be referred to criminal mediation by considering the seriousness of the alleged offences and the level of suspicion given to the alleged offenders. Only when both parties - victims and offenders - agree to participate in criminal mediation, can prosecutors transfer the cases to criminal mediation (Ordinance on the Practice of Criminal Mediation of the SPO, No.427 adopted 30 October 2009 §2). Once a case is referred to criminal mediation, three mediators are selected from among the members of the criminal medication committee. The actual practice of criminal mediation is conducted on the mediation date with the presence of both parties. Once both parties reach an agreement through the mediation process, a written decision of the mediation is signed, and the outcome of mediation is informed to the prosecutor who referred the case to criminal mediation. The prosecutor who received the notice of criminal mediation can make a final indictment decision. Even if a victim withdraws his or her complaint as a result of the criminal mediation, the prosecutor can still indict an offender if he or she finds a reasonable evidence to indict. Even in this case, the prosecutor can reduce the degree of penalty against the offender or suspend the indictment by considering the results of the criminal mediation.

### **Example 1**

In November 2006, while complainant A was playing an instrument on a tavern stage, B stepped onto the stage, provoked a quarrel, threw the instrument down, and destroyed the instrument.

As a result of criminal mediation, B agreed to pay A compensation, and A withdrew his complaint.

### **Example 2**

Three brothers - C, D, and E - came into conflict with each other about an inheritance of 58 million won. C and D filed a complaint against E and charged him with fraud and embezzlement.

The three brothers reconciled with each other within the criminal mediation procedure. They even cried when they reached an agreement. They decided to divide both property taxes and rents. The three brothers also agreed that E would continue to manage the contested building and that when the building was sold, they would share the proceeds from the sale.

In 2007, 7,862 cases were referred to criminal mediation and 7,212 cases were completed. Among the 7,212 cases, 3,680 cases were settled, a 51.0% success rate. In 2008, 11,486 cases were referred to criminal mediation, and 10,925 cases were completed. Among the 10,925 cases, 5,632 cases were settled, a 51.6% success rate. From January to July 2009, 8,282 cases were referred to criminal mediation, and 6,614 cases were completed. Of the 6,614 cases, 3,660 cases were settled, representing a 55.3% success rate.

**Table 3: Statistics for Criminal Mediation**

	Number of cases referred	Number of cases completed	Number of cases settled	Number of cases in process	Successful mediation rate (%)
Period: from January to December 2008	11,496	7,212	5,632	571	51.6
Period: from January to July 2009	8,382	6,614	3,660	1,765	55.3

Criminal mediation is a system developed by the application of restorative justice principles within the criminal phase of prosecution. Some criticize the criminal mediation programme by pointing out its lack of full consideration of restorative justice principles in establishing procedures for criminal mediation. However, the criminal mediation system is generally graded very positively because it provides a timely opportunity to restore the damages caused by the crime. The criminal mediation system also enhances the protection of offenders’ human rights by putting offenders outside of investigation institutions, while at the same time contributing to both the reintegration of offenders into society and the prevention of recidivism. Finally, criminal mediation empowers the community members by promoting private autonomy in resolving criminal cases and, eventually, reducing the number of cases burdening our investigation and judicial institutions. Consequently, the investigation institutions can put more resources towards other criminal cases. As a result, the Ministry of Justice presented the Revised Crime Victim Protection Act, which includes specific procedures for criminal mediation. This Act is currently under the deliberation of the National Assembly.

**3. Provision of Information for Victims of Crime**

If, in a case in which a complaint or accusation has been lodged, the public prosecutor has decided to or not to institute prosecution, withdrawn prosecution or sent the case to a public prosecutor of another public prosecutor’s office, the public prosecutor shall inform the complaint or accuser in writing, within seven days after such disposition has been made (CPA §258①). In addition, if a disposition not to institute a public prosecution has been made, the public prosecutor shall, upon request of the complainant or accuser, promptly inform them of the reason thereof in writing within seven days (CPA §259). A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim’s spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of the trial, and the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2).

Enforcement Decree of the Crime Victims Protection Act requires notice to the applicant of the result of case dispositions, such as the prosecutor’s decision of indictment, non-prosecution, stay of indictment, stay by person for reference, and transferring the case (Enforcement Decree §2①i). The Prosecutors’ Offices ensured the process of delivering this notice to victims by enacting the Ordinance on the Protection of, and the Assistance to, the Victims of Crime of SPO, No. 432 on 1 May 2008.

**C. Trial Stage**

**1. Victim’s Right to Express Opinion**

The right to express opinion or make a statement allows the victim an opportunity to express an opinion in the court as a witness if he or she requests (CPA §294-2). The previous system of the victim’s right to express opinions in court was not efficient in that there were many grounds on which such right could be rejected. Moreover, while courts allow victims the opportunity to address the issue of proving an alleged criminal act, there have been few cases in the past where victims were allowed to express their opinions about the issue of the penalties handed down by the court.

In order to increase the application of this right, the Revised *Criminal Procedure Act* extends the boundary of persons who can exercise this right, from the victim to his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead). In case the victim has already given a sufficient statement in the investigation process, he or she can still request this right and make a statement in court, whereas his or her request to exercise this right was rejected in the former system. Furthermore, the category of issues upon which the victim can express opinions becomes clear - statements on the degree and result of damage, opinions concerning punishment of the defendant, and other matters relating to the case at bar (CPA §294-2). Despite these revisions, the victim still remains a witness and can not be a direct party to the criminal procedure. As a result, it is hard to conclude that the victim's right to express an opinion or make a statement is a sufficient application of the Constitutional spirit to the criminal justice process.

## 2. Ensuring Victim's Safety and Privacy as a Witness

### (i) Trial not Open to the Public

The court may, when it examines a victim of crime as a witness, decide by a ruling to proceed the examination behind closed doors, if it is deemed necessary for the victim's privacy and personal safety, upon a request from the victim or his or her legal representative or the public prosecutor (CPA §294-3①).

### (ii) Witness Protection Program for Informants, etc. of Specific Crime

In the case where the witness is the victim of or is an informant of a specific group of criminals, and where there is apprehension that a witness or his or her relatives may be retaliated against, matters relating to the identity of the witness can be concealed in the process of confirmation of the witness's identity, witness oath, and the witness's court testimony (*Protection of Informants, etc. of Specific Crimes Act* §11②,③). A public prosecutor or the head of the competent police station may implement personal safety measures for the witness, such as a police officer's escort for the witness when coming to and returning from the court or the police station (*Protection of Informants, etc. of Specific Crimes Act* §13).

### **Example 3**

In May 2005, A was summoned as a witness in a case where the defendants were the members of a very organized street gang. Since there was considerable concern for A's safety (i.e., retaliation from other members of the gang), a staff member of the prosecutor's office, assisted by a staff member and a volunteer of the Victim Support Center, escorted A to court. This escort service was provided to A from his home to the court and back home again.

## 3. Minimizing the Burden on Victims in Testifying as a Witness

### (i) Presence of Persons having a Reliable Relationship

The court may, if it deems that the victim<sup>9</sup> as a witness is likely to feel severe uneasiness or tension in light of the age of the victim, his or her physical and mental state, or any other circumstances, allow a person who has a reliable relationship with the victim to sit in company with the victim, *ex officio* or upon a motion of the victim, his or her legal representative, or the prosecutor (CPA §163-2①). If a victim of a crime is less than 13 years of age, or incompetent to discern right from wrong or make a decision due to his or her physical or mental disability, a prosecutor or a judicial police officer shall allow a person who has a reliable relationship with the victim to sit in company with the victim, unless such company is likely to cause a trouble in the proceeding or there is any unavoidable reason otherwise (CPA §163-2 ②).

### (ii) Interrogation of Witness through Video or Other Transmission System

A court may, if deemed proper when it examines any of the following persons as witness, examine the person through a video or other transmission system or install a partitioning facility to place the person behind the facility for examination after hearing the opinions of the public prosecutor and the defendant or his or her defence counsel:

<sup>9</sup> And also for the victims of sexual violence (on application), victims of sexual trafficking (on application as well as *ex officio*), victims of elder and child abuse (on application pursuant to Article 39 of the *Welfare of the Aged Act*, introduced by an amendment on 29 January 2004, and Article 28 of the *Child Welfare Act*), presence of persons having a reliable relationship with the victim is possible during the investigation or questioning in court as a witness.

- (a) a victim of a crime under any provision of subparagraphs 1 through 3 of Article 40 of the Child Welfare Act;
- (b) a juvenile or a victim who shall be protected from a crime under any provision of Articles 6 through 10 of the Act on the Prevention of Juveniles from Sexual Abuse; and
- (c) a person who is deemed likely to seriously lose peace of mind due to psychological burdens when the person testifies in confrontation with a defendant or any other person, in light of the nature of the crime involved, the age of the witness, his or her physical and mental state, the relationship with the defendant, or any other circumstances (CPA §165-2).

The interrogation of a witness through video or other transmission system is provided for in legislation with the goal of preventing the secondary victimization of the victim and guaranteeing the defendant's right to cross-examination. This technology allows the interrogation to be implemented. This type of interrogation was already available to the victims of sexual crimes, but has now been extended to the victims of all other crimes. Some criticize this type of interrogation by pointing out that the defendant cannot exercise his or her right to defend him or herself fully in this interrogation. However, even though the defendant cannot confront the witness directly, the defendant still can exercise his or her right to cross-examination in this interrogation. Therefore, I believe that this type of interrogation does not violate defendants' rights in criminal proceedings.

*(iii) Submission of Evidence of Video-recorded Product*

In the event that the victim of a sexual crime is under the age of 16 or has feeble ability in discerning matters or making decisions due to physical or mental impediments, the contents of the statements made by the victim and the process of investigation shall be videotaped and kept with the consent of the victim. In the event that the statement made by the victim, which is recorded in the videotape, is authenticated for its formation by a statement of the victim or any person who was present in the process of investigation and has a reliable relationship, on the date when a trial is prepared to be held or a trial is held, such videotape may be made evidence (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof*. §21-3③, ④).

In the present criminal procedure, the video-recorded product does not have the independent probative value of evidence, but can be employed as a supporting document that proves the authenticity of the formation of a protocol.

4. Provision Information for Victims of Crime

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of the trial, and facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). The matters of which the prosecutor should notify the applicant are: the date of trial, the specific court where the trial proceeds, main sentencing in the judgment, the date of sentencing, the court's finalization of the judgment, and whether the defendant appeals the judgment (*Enforcement Decree of the Crime Victim Protection Act* §2①ii).

A victim of a case pending in court (including a victim's spouse, lineal relative, or sibling, if the victim is dead or suffers from a severe mental or physical disorder), the legal representative of the victim, or the spouse, lineal relative, sibling, or attorney at law with the power of attorney granted by the victim or his or her legal representative, may file an application for inspection or copying the litigation record with the presiding judge (CPA § 294-4 ①).

5. Compensation Order System

The compensation order system requires that a victim and his or her successor may receive a civil compensation order for direct physical damages, medical expenses, and solatium that occurred due to the criminal acts of the accused case, either *ex officio* or upon application from the victim or his or her successor, when a conviction is to be declared in a criminal trial procedure of the first instance and second instance against the crimes such as bodily injury, death resulting from bodily injury, crimes of inflicting bodily injury and death through negligence, crimes concerning rape and infamous conduct (except sexual intercourse under pretence of marriage), larceny and robbery, fraud and extortion, embezzlement and breach

of trust, destruction and damage (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §25①). The court may order compensation also for the amount of compensation for damages agreed upon between the accused and the injured party (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §25②). An authentic copy of the written conviction wherein a compensation order is finalized shall have the same effect as an authentic copy of a civil judgment with executive force, with regard to a compulsory execution.

In the future, the compensation order system should be revised by including provisions that a victim should be informed of the availability of a compensation order and that the indirect costs of the victim of participating in the investigation and the trial may be reimbursed to the victim.

**Table 4: Current Data on the Compensation Order System (Judicial Year Book (2000-2008))**

Year	Section	Request (case)	Management				Percentage of Acceptance (%)	Amount of Compensation (won)
			Total	Accept	Reject	Withdraw, etc.		
2000		1,521	1,416	493	686	237	34.8	22,623,778,079
2001		1,726	1,510	391	674	445	25.9	23,284,854,700
2002		1,930	2,226	433	418	1,375	19.5	37,633,017,681
2003		3,480	3,053	660	758	1,635	21.6	27,402,781,689
2004		3,151	3,732	756	1,550	1,426	20.3	55,621,107,364
2005		3,743	3,279	802	705	1,772	24.5	60,084,592,946
2006		4,258	4,087	858	1,963	1,266	21.0	55,437,494,842
2007		6,263	5,951	1,082	459	4,410	18.2	94,371,444,688
2008		4,904	4,824	1,075	3,363	386	22.3	83,326,196,213

#### 6. Reconciliation in Criminal Proceedings with Regard to Civil Controversy

Where an agreement is reached concerning a civil controversy between the accused and the injured party in an accused criminal case (limited to a case where a controversy over damage is related to a relevant accused case), the accused and the injured party may in collaboration apply to the court of the first instance or the second instance whereas the relevant accused case is pending to have the agreement entered in the protocol of the trial (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §36①). When the court in charge of the case records the agreement in the protocol of the trial, it will be given the competence of civil procedural execution as like the judicial reconciliation (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §36⑤).

This system of reconciliation in criminal proceedings with regard to civil controversy looks similar to the compensation order system. However, from the aspect that the reconciliation system allows the victim to exercise the right to request civil compensation in the criminal justice proceeding, the reconciliation system goes one step farther than the compensation order system in protecting the victim's right.

Unfortunately, however, the actual use of this reconciliation system is very low. From 2006 (the time of enactment) to August 2009, only 75 criminal cases took advantage of this reconciliation system. Several factors contribute to the low level of the utilization of this system. First of all, this system has not yet acquired public awareness, thus, many victims and criminal defendants did not understand that they could use this system at trial. Second, the defendant may prefer not to use this system because the defendant's reconciliation with the victim would be understood as an admission of guilt on the merits even before the end of the criminal trial. Finally, judges may be reluctant to recommend this system. The judge's recommendation can be misinterpreted by the defendant as a persistent demand to reconcile with the victim in exchange for reducing the sentence.

#### 7. Measures for Victims of Crime in the Treatment Proceedings for Juvenile Delinquents

On 21 December 2007, the *Juvenile Act* was revised, and the major features of this revision were to guarantee the victim's right to make a statement in the trial of a juvenile protection case and to introduce the new system of the recommendation of compromise. A judge of the Juvenile Department shall, when

a victim or his or her legal representative, a counsel, a spouse, a lineal relative, or a sibling apply for statement of opinion, give the victim an opportunity to state an opinion, etc. on the date of a trial (*Juvenile Act* §25-2). A judge of the Juvenile Department may, if deemed necessary for character correction of a juvenile and protection for a victim, recommend that a juvenile compromise with a victim, such as give compensation for the victim's loss or another form of compromise (*Juvenile Act* §25-3①). In cases where a juvenile has compromised with a victim according to the recommendation, a judge of the Juvenile Department may take this into consideration when deciding the protective disposition (*Juvenile Act* §25-3③).

The system of recommendation of compromise was installed based on the consideration of its efficiency in protecting victims, as well as the correction of a juvenile through a reconciliation or mediation process between the victim and the juvenile. However, some criticize this system by asserting that it is not a true adoption of restorative justice since it can only be recommended in the hearing stage. This system also compels a juvenile to participate in the compromise procedure.

During a three-month-period starting in July 2008, a conferencing programme (victim-offender mediation and dialogue) was implemented in 10 juvenile cases in order to apply the recommendation of compromise in the investigation stage of juvenile protection cases. This conferencing programme was organized through collaboration between the Seoul Family Court, the Seoul Juvenile Classification Review Board, the Korean Institute of Criminology, and the Center for Resolution of Conflict in Women Making Peace (WMP). Unfortunately, however, this programme is no longer provided because of the difficulty in selecting appropriate cases.

**Example 4**

In March 2008, A (a second-year student of X middle school) and B (a second-year student of Y middle school) fought each other twice because each criticized the other's school. B and his friends as a group beat A seriously, and B, consequently, was brought into the juvenile court.

A, B, and their parents participated in the above-described conferencing programme, had five-hour-conversations, and finally reached an agreement.

**D. Execution of Sentence Stage**

1. Probationary Supervision

(i) *Probationary Supervision Program Considering Victims of Crime*

In the process of executing probation orders, community service orders, or attendance service orders on a criminal, some programmes have been implemented in order to enhance the criminal's accountability to the victim. For example, in 2005, Seoul Probation and Parole Office developed the victim-offender meeting programme with the purpose of preventing school violence. The details of services provided by this victim-offender meeting programme are: (1) giving an opportunity to the offender to write a letter to the victim; (2) arranging and facilitating a meeting between the offender, the victim, and their family members; and, (3) inviting the Director of the Association for Victims of School Violence and allowing him or her to give a special lecture to the offenders. In addition, attendance service orders for sex offenders encourage apologies from offenders to their victims and further attempts by offenders to reconcile with their victims by informing the offenders of the victims' feelings during and after the crime. Furthermore, since December 2009, the homes of victims have been included as locations where convicted criminals can complete their community service orders. Thus, criminals visit victims' houses and do household chores for victims' families, or renovations such as wallpapering or other tasks.

**Example 5**

In 2007, victim A, who was the owner of a bar, was knifed by an offender who tried to use a stolen credit card. The offender was sentenced to four years in prison, while A suffered bodily injury and the after-effects of the injuries, such as acute respiratory problems. A lived in a small efficiency apartment with her husband, who could not get a job because of his liver problem, and with her teenage son, who was mentally handicapped.

In December 2009, the Minister of Justice hung wallpaper in A's apartment, with offenders, as one way of completing their community service.

*(ii) Imposition of Special Matters of Observation Considering Victims of Crime*

When the court orders probation by conferring either suspended execution of sentence (*Criminal Act* §62①) or suspension of sentence on probation (*Criminal Act* §59①) and the Parole Examination Board makes a decision on probation or parole, the court and the Parole Examination Board can impose special matters of observation upon the criminal, i.e., prohibiting his or her access to a victim or certain group of people who would then become the subject of his or her recommission of a similar crime and recovering damages occurring from his or her criminal act (*Protection and Surveillance, etc. Act.* §32③iv,v). This provision was introduced through the revision of the *Protection and Surveillance, etc. Act* on 28 May 2009. This provision provides the basis for intimating the idea of restorative justice in the probation stage.

*(iii) Provision of Information for Victims of Crime*

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, and the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). In particular, regarding the process of executing probation, the prosecutor should notify a victim about the specific location of the Probation and Parole Office, the commencement and expiration date of the defendant's probation orders, community service orders, or attendance service orders, the date of the suspension of the defendant's parole, and the date of the withdrawal of suspension of the defendant's parole (*Enforcement Decree of the Crime Victim Protection Act* §2①iv). The Crime Prevention Policy Bureau of the Ministry of Justice developed the "Specific Report for Supporting Crime Victims in Relation to Probationers and Parolees" in January 2008 and has provided information to victims.

2. Correctional Service

*(i) Edification Program Considering Victims of Crime*

The Ministry of Justice has implemented the Edification Program for inmates in order to educate inmates about the impact of crime on a victim's life or the victim's emotions after the crime. In February 2006, the Ministry of Justice announced "The Ministry of Justice's Strategic Plan for Change — Promise for Opening Hope" and officially declared its step-by-step plan for implementing restorative justice programmes. As a short-term plan, the Ministry of Justice will establish procedures for reconciliation meetings and letter mailing, which initially applies to minor offenders such as offenders of plain acts of violence or traffic offences and offenders inflicting bodily injury on lineal ascendants and will be gradually extended to other offenders. As a long-term goal, the Ministry of Justice will examine the possibility of adopting the defendant's compromise with the victim or the defendant's compensation to the victim as important factors to consider in making decisions on the defendant's leave or parole. The Ministry of Justice will also review ways of sending a part of the defendant's in-prison wages to the victim each month.

In practice, the Seoul Regional Correction Headquarters actually implemented a programme of sending an apology letter to victims in 2007. Unfortunately, only a few defendants participated in this programme, which became an initial obstruction in implementing the Strategic Plan for Changes. As a result, the Strategic Plan has not been implemented as initially planned.

*(ii) Consideration of the Opinion of Victims of Crime in Parole*

The warden of the correctional institution shall investigate whether the victim has recovered or not before reviewing parole (*Enforcement Rule of the Act on Execution of the Sentence and Treatment of Prisoners* §246). The warden of the correctional institution must take into account the feelings of the victims of crime, the possibility that the criminal will commit a retaliatory crime when released, and whether conciliation has been made or not, etc. (*Enforcement Rule of the Act on Execution of the Sentence and Treatment of Prisoners* §247).

*(iii) Provision of Information for Victims of Crime*

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). In regard to the process of executing the sentence of the defendant, a prosecutor should inform the victim of the defendant's parole, release, transfer, death, or flight (*Enforcement Decree of the Crime Victim Protection Act* §2①iii). The Correctional Service of the Ministry of Justice published

“Instructions for Providing the Inmate Information to the Crime Victims” in March 2007 and has actually provided information to crime victims.

## V. OTHER MEASURES FOR VICTIMS OF CRIME

### A. Crime Victim Aid

According to the *Crime Victim Aid Act*, the bereaved family of a person who has died, or a person who suffers a serious disability due to a criminal act injuring human life or body, can receive a limited amount of criminal injury aid money. In other words, if a person who suffers a criminal injury cannot be compensated for the whole or part of the injury due to an obscurity or insolvency of the offender, or a person becomes a victim in connection with furnishing any clue to the criminal investigation, such as complaint, accusation, etc., as well as any statement, evidence or presentation of materials, for an investigation or judgment of his or her or another person’s criminal case, the State shall pay criminal injury aid money to the victim or his or her bereaved family (*Crime Victim Aid Act* §3①).

However, where the victim and offender are related to each other (including a *de facto* marital relationship), where the victim provokes a criminal act, or the occurrence of the criminal injury is attributable to the victim, or even where it is deemed proper in a socially-accepted view, the whole or part of criminal injury aid money may not be paid (*Crime Victim Aid Act* §6). The range of criminal injury that can be applied is limited to death and serious disability, which is graded 1 through 6. In the case of a death, 30,000,000 won (about USD 24,000), 20,000,000 won, or 15,000,000 won of the criminal injury aid money is given to the family members of the dead victim. The exact amount is based on considerations regarding the victim’s family, such as the number of surviving family members and their respective ages. 30,000,000 won is paid to the victim in the case of a grade 1 injury, and 6,000,000 won in the case of a grade 6 injury (*Enforcement Decree of the Crime Victim Aid Act* §12, §13). Any person who desires to receive criminal injury aid money shall apply for it within two years after the occurrence of the criminal injury is known, or five years after the criminal injury occurs (*Crime Victim Aid Act* §12). The Criminal Injury Aid Council established in the respective district public prosecutors’ office shall deliberate and decide matters concerning payment of criminal injury aid money (*Crime Victim Aid Act* §11).

On 20 April 2009, the amount of criminal injury aid money was raised and the range of disability grades was extended for the current system of the criminal injury aid. However, since the application of the criminal injury aid is still limited, it is necessary that the amount should be increased, and also those who suffer disability from grade 7 to grade 13 should also be eligible for criminal injury aid money.

### B. Other Financial Assistance

#### 1. Bounty for Reporting Crimes

The informant (and his or her family) of particular crimes such as violent or narcotics crimes who are in fear of retaliation, suffer from financial loss, or pay for moving expenses or a job change, may get a bounty of up to 1 million won, according to Article 14 of the *Protection of Informants, etc. of Specific Crimes Act*. A person who has tipped any investigation agency off about any crimes of trafficking of women and girls for sexual purposes may also be paid a bounty, according to Article 28 of the *Act on Punishment of Acts of Arranging Sexual Traffic*.

#### 2. Compensation for Traffic Accidents Caused by Uninsured Cars or Hit-and-Run Accidents

Victims of traffic accidents which were caused by unknown drivers, uninsured cars, stolen cars or drivers without licenses who have no other compensation, are entitled to 80 million won in a case of death, 15 million won in case of injury and 80 million won for the aftermath, according to Article 5 of the *Guarantee of Automobile Accident Compensation Act*. When recipients under the *Basic Livelihood Security Act* suffer from severe complications and disability caused by automobile accidents, the Victims and Family Support Project of the Korea Transportation Safety Authority provides assistance for rehabilitation, living expenses, scholarship, and dependents.

#### 3. Compensation Money for a Person Killed or Wounded for a Righteous Cause

A person who is killed or injured while trying to save another person’s life, body or property from imminent danger may be paid a similar amount of compensation as that which would have been given to a



person for distinguished services to the State under the *Honorable Treatment of Persons Wounded or Killed for a Righteous Cause Act*.

4. Assistance from the Korean Legal Aid Corporation

The Korean Legal Aid Corporation has been providing victims of domestic violence, sexual violence and sexual trafficking with legal aid such as legal representation, free advocacy and legal counselling since January 2003. By an amendment to the *Legal Aid Act* on 29 March 2007, the Corporation may legally protect and support victims of crime in order to properly guarantee the rights of the victims of crime and help them speedily rescover from the damage suffered.

5. Other Assistance

Besides the assistance listed above, there is a financial support system for the victims of sexual crimes and domestic violence cases for their medical treatments. Emergency assistance can also be provided to the victims of sexual crimes, domestic violence, and cruel treatment if the victims are temporarily unable to earn a living due to the result of the crime.

**C. Civil Assistance**

The Crime Victim Support Center (CVSC) was created on 5 September 2003 in Gimcheon and Gumi. It was the first civic organization from a local community to support the recovery of crime victims from criminal damages and to help them to live normal everyday lives as survivors. From the establishment of Gimcheon and Gumi CVSC until December 2007, 57 CVSCs were established throughout the country, one in every district of the Prosecutor's Office. These CVSCs actively provide their services to crime victims. In addition, on 3 September 2008, the Nationwide Association for the Korean Crime Victim Support was established.

In order to differentiate themselves from the sexual violence clinics or domestic violence clinic services, the CVSCs have focused on direct legal assistance to the victims and spontaneous medical support immediately after the incident, rather than providing mere counselling. The sorts of services provided by the CVSCs can be divided into several categories. First, they provide consultation services via telephone, Internet, and face-to-face conversations. Second, groups of services can be identified as direct assistance to victims, including:

1. Crisis intervention immediately after the occurrence of a crime;
2. Provision of information concerning a criminal proceedings; and
3. Accompaniment to the investigation institutions and the court.

The examples of crisis intervention immediately after the occurrence of a crime are as follows:

1. Assisting a victim with calming down at the actual scene of a crime;
2. Cleaning up a crime scene;<sup>10</sup>
3. Helping to reset a victim's everyday life, such as taking care of the victim's children;
4. Finding a proper hospital in case a victim needs emergency treatments;
5. Accompanying a victim to a hospital; and
6. Searching for ways to secure a victim's safety when retaliation or re-victimization can possibly occur.

Third, the CVSCs provide medical care services in collaboration with certain hospitals in the surrounding area. Fourth, the CVSCs also support victims financially by giving them living subsidies. Fifth, in addition to these individual support services, CVSCs promote secondary services for crime victims, too. CVSCs conduct studies on crime victims in order to both ensure the substantiality of victim support systems and to foster public awareness of the necessity of the victim support systems. CVSCs also develop education programmes to cultivate human resources in crime victim support and to enhance their qualifications. CVSCs actively inform communities about the availability of their services. Finally, CVSCs do not limit the

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<sup>10</sup> The Korean Central Victim Support Center, established in Seoul on 1 December 2004, aims to prevent re-victimization. Re-victimization can be prevented partially by cleaning the scene of the crime. Thus, the Center has provided cleaning services at the scene of a murder or other violent crimes through co-operation with cleaning business companies.

boundary of their services to Korean citizens, but also provide their services to foreigners.<sup>11</sup>

Despite such vigorous activities, the CVSCs still have difficulties in obtaining appropriate funding. Furthermore, critics of CVSCs cite a lack of distinguishable or special skills in their personnel. CVSCs also suffer from insufficient advertising of their services. A third challenge is the low level of co-operation the CVSCs receive from other institutions. Thus, ways of improving the CVSCs' quality of services must be addressed in order to respond to these criticisms.

**Example 6**

In the case of serial killing that happened in the southwestern area of Kyunggi Province, the Ansan CVSC conducted individual face-to-face interviews with bereaved family members. The Ansan CVSC provided eight bereaved family members a total of 53,000,000 won for their living expenses, provided free medical services (e.g., psychiatric treatment) to 16 victims who had suffered serious emotional problems, and provided legal assistance. In total, the victims received a 1,300,000,000 won compensation order from the court.

**Example 7**

A, a 31-year-old female, was knifed by the robber B, who originally entered into A's apartment disguised as a prospective tenant. Because of this incident, A sustained a 7.5-centimeter scar to her face, but the cost of cosmetic surgery was prohibitive. The Korean Central Victim Support Center placed her with a specialist in plastic surgery, who is a member of the medical support team, who performed successful cosmetic surgery on her face at no cost.

**Table 6: Activities of the CVSCs**

	Consultation	Financial & Medical Assistance	Personal Protection	Publicity & Education	Scene Assistance	Total
2008	19,260	3,400	277	3,558	40	27,535
2009 (Jan.-Aug.)	15,481	2,274	201	1,741	30	19,727
Comparison with that of same period of 2008						+7.4%

There are two organizational features of the Victim Support Centers in Korea. The most significant one is that they work with a direct connection with the Prosecutor's Office. The Centers were established with the initial support of each District Prosecutor's Office and are supervised by the Ministry of Justice. Second, the Centers have maintained a very close co-operative relationship with the Crime Prevention Committee in the establishment, organization, and actual provision of services. This alliance is desirable because the relationship between crime prevention and victim support is like that of the front and back wheels of a car. However, it is necessary for the victim support centers to develop and maintain their own respective working scope before they work closely with the Crime Prevention Committee.

<sup>11</sup> The Western Seoul Victim Support Center, established on 10 December 2004, was successful on this point. For example, two Thais who came to Korea after being defrauded by an employment agency received assistance in this Center. In co-operation with the victim assistance office of the Western Seoul Prosecutors' Office, the Center helped them get documents from Thailand in order to file a complaint with the investigation office. The Center then provided them financial support for accommodation and travel.

## VI. CHALLENGES OF MEASURES FOR VICTIMS OF CRIME

### A. Preparation and Enforcement of the Substantial Basic Plan for Protection of, and Assistance to, Victims of Crime

I believe that the measures for victims of crime must consist of an overall provision of services relevant to victims' recovery from the crime. Therefore, the support to victims should not be limited to the boundaries of the criminal justice policy, but should include aspects of social welfare - providing various social welfare services for the victims' residence, health, education, and employment, etc. For these reasons, I would argue that for effective assistance to victims, it is necessary to draw the government's special attention to this issue and to develop an integrated policy for victim support.

In 2007, the Korean government set up and implemented the Basic Plan for Protection of, and Assistance to, Victims of Crime (2007-2011). Up to now, it was expected that this plan would be implemented very specifically and would achieve real goals, but it has not yet achieved all it was designed to accomplish. One of the main reasons for its shortcomings is that many departments of the government, except for the Ministry of Justice, have not given their full attention to this issue. Above all, however, the key problem is the lack of attention from local governments which influence the everyday lives of ordinary Koreans most directly in providing their administrative services.

One way of increasing general awareness of crime victims is that the Korean President can make an official statement concerning the protection of crime victims during Crime Victim's Week as the American President did. He can also attend the Human Rights of Korean Crime Victims Competition annually. The President's attention to this issue can be the most effective driving force for promoting new and better measures for crime victims. Along with increased attention from the government, the Basic Plan should be designed to include an array of feasible sub-plans and strategies from various perspectives.

Recently, the Ministry of Justice sought to establish the Welfare Center for Victims of Crime (Smile Welfare Center) and to develop a strong network among institutions supporting crime victims. The Welfare Center for Victims of Crime is a place for providing psychological and mental care services to victims of violent crimes and their family members. This Center will also run a shelter for those victims who are unable to get appropriate care in their own homes. The Ministry of Justice has a plan to implement all services of the Welfare Center for Victims of Crime, beginning this year, by contracting with a civic professional institute.

The Ministry of Justice's work for developing a strong network is to create a systematic collaborative relationship among individual victim support institutions, which only covers one or two specific groups of crime victims separately. For example, some institutions focus only on victims of sexual violence crime cases and domestic violence cases. Others aim to help victims of school violence. As such, victims of child molestation cases and sexual traffic cases are also assisted separately through different institutions. Thus, with the goal of providing proper assistance to a victim in a right time period, the Ministry of Justice is attempting to develop a total telephone network among these institutions and a source internet homepage connecting all these institutions. In particular, it is necessary to include the police, prosecutors, and emergency call 119 into this total network of victim support in order to help victims from the very first stage of the criminal investigation.

### B. Strength of Measures for Victims of Crime in Criminal Proceedings

The revision of the *Criminal Procedure Act* allows the petition for adjudication for all crimes, and since 2008, lay Koreans have participated in the criminal justice process as a revised form of a jury trial. Along with these recent changes in the criminal justice system, I believe that it is necessary to enhance the status of crime victims in the criminal justice procedure. Thus, a system should be adopted in which the crime victim can participate in a criminal case as a direct party to the proceeding, not as a witness, and exercise his or her rights. For instance, the victim or his or her bereaved family may be allowed to conduct his or her own action by producing evidence, by calling and questioning witnesses, by stating his or her opinion about the sentencing, and by being involved in the appeal process. Or, at least, the system should allow the victim or his or her bereaved family to appear in court as a direct party and to ask his or her own questions of the defendant.

Recently, there has been a very desirable movement toward the strong support of victims of crime in criminal proceedings. The Ministry of Justice has considered the adoption of systems strengthening the status of victims in the criminal procedure very positively. Such systems include: (1) the victim participation system, where a victim can present his or her opinion in court - not as a witness, but as a participant; (2) the victim counsel system; and, (3) the witness protection programme, which substantially guarantees the protection of a witness, including the relocation of a witness or even the creation of a new identity for a witness, when necessary.

### **C. Creation of the Crime Victim Fund**

Sufficient financial support is an essential prerequisite for the stable and successful implementation of any viable measures for crime victims. Since the current budget for these measures is very tight, the establishment of the Crime Victim Fund is urgent and crucial. Recently, one defendant who committed a child sexual crime was given a relatively very short prison sentence, especially compared to the degree of the cruelty of his criminal act. This case was reported in the Korean news media, which eventually led to a national awareness of the necessity for victim support. As a result, on 21 October 2009, a *Draft of the Crime Victim Fund Act* was submitted to the Korean National Assembly and is now being deliberated.

The *Draft of the Crime Victim Fund Act* considers fines paid for criminal acts to be a major source of money for the Crime Victim Fund. This plan would require the allocation of approximately 5% of the total amount of executed fines to this fund. For instance, in 2008, the total amount of executed fines was 1.5 trillion won. Thus, 5% of this total, or 75 billion won, would be paid to this fund according to the draft of this Act. The draft specifies:

1. The usage of this fund for the various types of financial subsidies for victims;
2. The payment of government subsidies to the co-operatives for assisting victims of crime; and
3. Other measures to support crime victims.

It is presumed that the National Assembly will reduce the amount of the fund when it passes the draft of this Act. Nevertheless, if the draft is passed, irrelevant to the actual amount, the Crime Victim Fund will make a great turning-point in Korean measures for victims of crime.

If the fund is secured, it should be first employed to support and foster the Crime Victim Support Centers. The Crime Victim Support Centers then will be well-equipped from every organizational aspect: personnel, material, and financial management. As a consequence, it is expected that the Crime Victim Support Centers will provide “services of searching for victims to support (rather than waiting until victims come to the centers)” and “services according to the demand of victims.” In addition, based on the creation of the Korean Crime Victim Supporting Association in September 2008, more attention should then be given to international co-operation for victim support.

# MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

*Kumaravelu Chockalingam\**



## I. INTRODUCTION

### A. Impact of Crime on Victims

Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. The Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents, the disruption lasted for two to three days (Aucoin & Beauchamp, 2007). In 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victims felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts.

### B. Extent of Crime

In most countries, officially reported crimes are only the tip of the iceberg as many crimes go unreported due to a variety of factors. Crimes such as family violence are hardly reported, for obvious reasons. Even in the case of crimes committed outside the home, offences relating to sexual assault or sexual harassment are also grossly under reported. The recent UN sponsored International Crime Victimization Surveys (ICVS) estimates showed that one in five of all adults will be victimized by a common crime each year, with some of them re-victimized. Violence against women is more prevalent than against men. About twice as many women will be victims of violence in Africa and Latin America as in Europe and Asia. In Africa, Latin America and Asia, victimization of women through violence is more prevalent than that of men. In large cities in Latin America and Africa, 10-15% of adult populations will become victims of violence each year - a rate 50% higher than that of affluent countries (Waller, 2003, p.13). The ICVS (2004) reports an interesting result: the 10 countries with the highest crime rates comprise both very affluent countries such as Switzerland, Ireland and Iceland, and less affluent nations (Estonia, Mexico). This goes against the common belief that poverty is the root cause of crime. Most of the high crime countries are relatively highly urbanized, excepting Ireland (van Dijk, Manchin, van Kesteren, Hideg, 2007 as cited in van Dijk, van Kesteren & Smit, 2007, p. 43).

### C. Some Indications of Crime Statistics in India

The Code of Criminal Procedure of India divides offences as cognizable and non-cognizable. Cognizable offences are those for which a police officer can arrest a suspect without a court warrant. Non-cognizable offences are those for which a police officer cannot arrest a suspect without a court warrant. The recent "Crime in India" publication (Government of India, 2007) states that about 1.99 million cognizable offences were registered under the Indian Penal Code (IPC), whereas under the Special and Local Laws (SLL), 3.74 million cognizable offences were registered. In total, 5.7 million offences were registered under both the IPC and SLL. The rate of total cognizable crimes per 100,000 persons during 2007 was 504.5, which rose from 455.7 in 2006.

The percentage share of violent crimes reported was 10.8% of the total number of IPC crimes. Violent crimes have been classified under four categories: those affecting life, those affecting property, those

\* Professor of Criminology and Victimology, Deputy Director, Tokiwa International Victimology Institute, Tokiwa University, Mito, Ibaraki, Japan.

affecting public safety, and those affecting women. Significantly, though the share of violent crimes of the total IPC crimes has been showing a declining trend, the share of violent crimes affecting women alone has increased continually from 2003 to 2007. A total of 185,312 incidents of crimes against women, both under IPC and SLL, were reported during 2007 as compared to 164,765 during 2006, recording an increase of 12.5% during 2007. For the total number of crimes under the IPC, the share of crimes against women was 8.8% in 2007. Of the total number of crimes against women, rape offences constituted 7.6%. The actual number of victims of rape was 20,771 out of 20,737 reported rape cases in 2007. Reported rape offences increased by 7.2% in 2007 over 2006. The number of dowry death offences (8,093) in 2007 also increased by 6.2% over the previous year.

## **II. OVERVIEW OF THE INDIAN CRIMINAL JUSTICE SYSTEM**

India derived its criminal justice system from the British model. There is a clear demarcation of the role and powers and functions of the Legislature, Executive, and Judiciary. The judiciary is independent and there is a free press. The penal philosophy in India has accepted the concepts of prevention of crime and treatment and rehabilitation of criminals, which have been reiterated by many judgments of the Supreme Court. Victims have no rights under the criminal justice system, and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses.

### **A. Constitution, Criminal Law and Procedure:**

The Indian criminal justice system is governed overall by four laws:

- (i) The Constitution of India
- (ii) The Indian Penal Code
- (iii) The Code of Criminal Procedure of India
- (iv) The Indian Evidence Act

The legislative power is vested with the Union Parliament and the state legislatures and the law-making functions are divided into the Union List, State List and Concurrent List in the Indian Constitution. The Union Parliament alone can make laws under the Union list and the state legislatures alone can make laws under the State list, whereas both the Parliament and the State Legislatures are empowered to make laws on the subjects mentioned in the Concurrent List of the Constitution.

The Constitution of India guarantees certain fundamental rights to all citizens. Under the Constitution, criminal jurisdiction belongs concurrently to the central government and the governments of all the states. At the national level, two major criminal codes, the Indian Penal Code, 1861 and the Code of Criminal Procedure, 1973, deal with all substantive crimes and their punishments, and the criminal procedure respectively to be followed by the criminal justice agencies, i.e. the police, prosecution and judiciary during the process of investigation, prosecution and trial of an offence. These two criminal laws are applicable throughout India and take precedence over any state legislation. All major offences are defined in the Indian Penal Code and these apply to resident foreigners and citizens alike. Besides the Indian Penal Code, many special laws have also been enacted to tackle new crimes. The Indian criminal justice system has four sub-systems which include: Legislature, (Union Parliament and State Legislatures), Law enforcement (Police), Adjudication (Courts), and Corrections (adult and juvenile correctional institutions, Probation and other non-institutional treatment). The legal system in India is adversarial.

## **III. HISTORY AND DEVELOPMENT OF VICTIMOLOGY IN INDIA**

### **A. Evolution of Victimology in India**

At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer: victims suffer injustice silently and in extreme cases, take the law into their own hands and seek revenge on the offender.

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for

a victims' law. Studies on crime victims by researchers started in India only during the late 1970s. Early studies were on victims of *dacoit* gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide (Rajan & Krishna, 1981); and victims of motor vehicles accidents (Khan & Krishna, 1981). Singh and Jatar (1980) studied whether compensation paid to victims of *dacoits* in Chambal Valley was satisfactory or not. Since the 1980s, many scholars have conducted studies in Victimology, which have been published.\*

### **B. Initiatives in Victimology in South India**

In 1984, for the first time in India, an exclusive three day Seminar on Victimology was organized involving researchers, academics and practitioners from the CJS. I organized the Seminar when I was Head of the Department of Criminology of the University of Madras (Chockalingam, 1985b).

After 1990, the Department began to offer Victimology as one of the courses or electives for its Master's degree in Criminology and many students took interest and opted to study the subject of Victimology. Many students who joined for doctoral research under my supervision worked on victim related topics such as Fear of Crime Victimization, Rape Victims, Sexual Harassment of Women Victims, Victims of Human Rights Violations etc. to mention a few, and earned their doctoral degrees from the University of Madras. Besides, many Master's degree students in Criminology also did projects on victimological topics and made empirical investigations and added to the victimological literature. Some research projects I conducted under the grants sanctioned by the Indian Council of Social Science Research (Chockalingam, 1993b), Thiruvalluvar Criminology Research Foundation (Chockalingam, 1997) and the University Grants Commission (Chockalingam, 2001) etc. include Psycho-social and Legal Study of Rape Victims; Crime Victimization Survey in four major cities in the State of Tamil Nadu; and Victims of Corruption. Reports of each of these projects were produced.

### **C. Establishment of the Indian Society of Victimology (ISV)**

In August 1992, with my initiative, a forum was founded to discuss the problems of victims, to disseminate knowledge and awareness of the plight of crime victims and to mobilize support for creating a new law for victims. The name of the organization was the Indian Society of Victimology, and it was located in the University of Madras. I was the Founder President and two other senior high ranking police officers, Dr. R. K. Raghavan and Mr. Venkatesan, were Vice Presidents. The ISV organized many seminars and symposia and biennial conferences in Chennai and other capital cities on subjects of topical interest in the field of Victimology. The major contribution of the ISV to the advancement of victimology in India was the organization of a workshop to draft a Victim Assistance Bill. This occurred in September 1996 with the support of the National Law School of India University, Bangalore under the leadership of Professor N. R. Madhava Menon and the National Human Rights Commission (NHRC) under the Chairmanship of the champion of human rights and victim justice, and former justice of the Indian Supreme Court, V. R. Krishna Iyer. The draft bill on Victim Assistance (Indian Society of Victimology, 1996) prepared by the ISV was sent to relevant Ministries, such as the Ministry of Law and Justice and the Ministry of Home Affairs and the Law Commission of India, NHRC, to consider enacting a national law on victim compensation/assistance in India. The UN Commission on Crime Prevention and Criminal Justice, Vienna also supported the initiative of the ISV by writing to the Home and Law Ministries of the Government of India to encourage it to consider enacting a victim law, treating the draft bill on Victim Assistance prepared by the ISV as a model.

Simultaneously, efforts were taken by the ISV to impress upon the State Government of Tamil Nadu the advantages of creating a Victim Assistance Fund for the benefit of crime victims within the state of Tamil Nadu. In consequence, the then Chief Minister of Tamil Nadu announced in the Legislative Assembly in April 1995 the introduction of a new scheme to provide monetary assistance to certain categories of victims of violent crime and allocated ten million rupees as a first step for the scheme (Government of Tamil Nadu, 1995; Government of Tamil Nadu, 1997). Under the scheme, victims of homicide or their bereaved relatives, victims of serious physical injuries including rape, and victims of grievous hurt were eligible for monetary

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<sup>1</sup> Bajpai, 1988; Bajpai, 1997; Bajpai, 2006; Chockalingam, 1985a; Chockalingam, 1985b; Chockalingam, 1988; Chockalingam, 1992; Chockalingam, 1993a; Chockalingam, 1995; Chockalingam, 1999; Chockalingam, 2000; Chockalingam, 2003a; Chockalingam, 2003b; Chockalingam, 2005; Chockalingam, 2007; Chockalingam, 2008; Chockalingam & Srinivasan, 1993; Chockalingam & Srinivasan, 1995; Chockalingam & Srinivasan, 2007; Chockalingam & Srinivasan, 2008; Chockalingam & Srinivasan, 2009; Chockalingam & Vijaya, 2008; Jaishankar, 2007; Rajan, 1981; Senthilathiban & Chockalingam, 1984.

assistance from the government, though it is not a right of the victim as it is not a law but only an Executive order of the Government (Chockalingam, 2003a).

#### IV. BASIC CONCEPTS AND THEORY OF VICTIMOLOGY

##### A. Basic Concepts

Diverse views exist on the focus and place of the discipline of Victimology. While some believe that Victimology should function as an independent area of enquiry, others view it as a subfield of Criminology. A second issue concerns the breadth of victim related issues to be covered in the field of Victimology. Some scholars advocate that Victimology should limit itself to the study of victim-offender interaction. Others argue that the needs of crime victims, functioning of the organizations and institutions which respond to these needs, and the emerging roles and responsibility for crime victims within the CJS are important areas of inquiry for Victimology. A third issue is the breadth of the definition of the term 'victim'. One approach is to limit the concept to victims of traditional crimes such as murder, rape, robbery, burglary etc. However, it has also been proposed to include a broader definition of the concept by covering groups such as prisoners, immigrants, subjects of medical experimentation, and persons charged with crime but not proved guilty (Doerner & Lab, 2005; Karmen, 2005).

Victim-offender study was the central focus of early pioneers in the field of Victimology, like Hans von Hentig. Hentig explained the concepts of 'victim vulnerability' and 'victim culpability' and gave a typology of victims. 'Victim vulnerability' refers to susceptibility of certain groups of people to victimization, through no fault of their own, but based on certain demographic or other characteristics (e.g. children, elders, women), as these people are more vulnerable to becoming victims. 'Victim culpability' refers to actions on the part of victims that may either invite or precipitate victimization. Deriving from the concept of victim culpability, Wolfgang (1958, p. 254) proposed the concept of 'Victim Precipitation', and in his classic study of homicide victims in Philadelphia, he found that in 26% of homicides, victim precipitation occurred. Although some behaviour of victims may be partially responsible for their victimization, Victimologists are also talking of the danger of '*victim blaming*'. Besides, in Penal or Criminal Victimology, where only the crime victims were included, Benjamin Mendelsohn proposed a new approach called 'General Victimology', to include a wide variety of victims, as he felt that human beings suffer from many causal factors and focusing on the criminal victimization alone under Victimology is too narrow a perspective. According to Mendelsohn (1976:21), "Just as medicine treats all patients and all diseases, just as criminology concerns itself with all criminals and all forms of crime, so Victimology must concern itself with all victims and all aspects of victimity in which society takes an interest".

Victimology institutionalized by the World Society of Victimology could be defined as "the scientific study of the extent, nature and causes of criminal victimization, its consequences for the persons involved and the reactions thereto by society, in particular, the police and the criminal justice system as well as voluntary workers and professional helpers" (van Dijk, 1999). This is a comprehensive definition encompassing both penal or interactionist, and general or assistance oriented Victimology. The UN Declaration (UN General Assembly 1985) on victims describes victims thus: "*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, including those proscribing abuse of power." In the recent decades, many scholars also express the view that while the General Victimology of Mendelsohn is too broad an approach, criminal victimology is too narrow a perspective and suggest that Victimology should evolve as a science of victims of human rights violations, including crime.

##### B. Theories in Victimology

Victimology does not have many theories exclusively from the perspective of victims. However, some of the theoretical explanations from Criminology of crime causation are borrowed by Victimologists to understand crime victimization. One such theory is the Routine Activities Theory (Cohen & Felson, 1979).

##### C. The Routine Activities Theory

This theory says that crime occurs whenever three conditions come together: (i) suitable targets; (ii) motivated offenders; and (iii) absence of guardians.



#### **D. Psycho-social Coping Theory**

Psycho-social coping is a general theoretical model from which any form of victimological phenomena can be explained. The model uses behavioural versus legal concepts. Phenomenology, Control Theory, Stress Theory, Symbolic Interactionism and Behaviourism are the primary roots of this theoretical model. Most part of the literature on coping has evolved from psychology, dealing with just cognitive responses to various forms of stress (Dussich, 1988). According to Pearlin and Schooler (1978), coping refers to “things that people do to avoid being harmed by life-strains”. To understand how and why some victims are able to overcome life’s problems and some others not, a psycho-social coping model was developed in order to comprehensively deal with psychic, social and physical variables.

A psycho-social coping model is an attempt to explain the dynamics of how people deal with problems in their environment. The term “environment” used in this model is referred to as ‘Coping Milieu’. The main term in the Coping Milieu is the Coping Repertoire, which is made up of a person’s coping skills and supported by four other interacting resources: (i) time; (ii) social assets; (iii) psychic assets; and (iii) physical assets. The coping process is the dynamic component of the model and is made up of four sequential phases:

- Prevention
- Preparation
- Action, and
- Reappraisal

The result component of the coping model is concerned with: (i) either the elimination, (ii) reduction, or (iii) retention of stress. The information obtained from the coping process is fed back to the coping repertoire and in turn the original coping repertoire is altered. The repertoire, problems, coping processes and the products are the key elements of coping (Dussich, 1988; Dussich, 2006). Both social and physical resources help the individuals to deal with stress in specific situations.

#### **V. CURRENT SITUATION OF VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS IN INDIA IN COMPARISON TO INTERNATIONAL STANDARDS**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), considered the ‘*magna carta*’ for victims, provides the basic framework of principles which in the last two decades have been vociferously debated and converted as victims’ rights by some of the developed countries. The international standards expected of the countries in the treatment of victims by the CJS agencies at different stages of the criminal process have been elaborately detailed in the UN Handbook on Justice for Victims (United Nations Office for Drugs and Crimes, 1999, chapter III, pp.56-76). The police play a pivotal role in victim assistance as it is the first agency victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire CJS will be based on the kind of treatment the victims get from the police whom they first encounter. Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims. The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police. The treatment of victims by the police also forms the basis for a negative perception of the CJS, more particularly, the police, because the “treatment with compassion and respect for their dignity”, emphasized by the UN Declaration, is missing completely. Because of the police behaviour and their attitude in general, the legal community opposes any criminal law reforms which bestow trust on the police and enhance their powers. Even today, Section 25 of the Indian Evidence Act, “No confession made to a police officer shall be proved as against a person accused of any offence”, remains in force. But the Government and the Police Academies pursue a policy of sensitizing the police to a better treatment of victims. The Handbook says that “victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings”. In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims’ interest. Excepting that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims (p.66-68) are not practiced in the criminal courts in India. In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when summoned by the court. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings,

special services and support, ordering of restitution to victims, victim participation, victim protection etc. (p.69-72) we have a long way to go to realize victim justice in India.

However, in the last decade, there is greater awareness on the part of the higher judiciary of the need for a better treatment of crime victims by the criminal justice agencies at different stages in India and this is reflected in the recommendations of the different committees and commissions calling for reforms in the criminal justice system to improve the existing conditions and situations of victims during the criminal justice process and some of the landmark judgments of the apex court in India.

## **A. Affirmative Action by the Higher Judiciary**

### **1. Restitution to Victims**

Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s. (*Sukhdev Singh vs. State of Punjab* (1982 SCC (Cr) 467), *Balraj vs. State of U. P.* (1994 SCC (Cr) 823), *Giani Ram vs. State of Haryana* (AIR 1995 SC 2452), *Baldev Singh vs. State of Punjab* (AIR 1996 SC 372).

### **2. Justice for Rape Victims - Guidelines for Victim Assistance**

In *Bodhisattwa Gautam vs. Subhra Chakraborty* (AIR 1996 SC 922), the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the *prima facie* culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

- (i) The complainants of sexual assault cases should be provided with a victim's Advocate who is well-acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
- (ii) Legal assistance at the police station while she is being questioned;
- (iii) The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- (iv) A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
- (v) The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- (vi) In all rape trials, anonymity of the victims must be maintained;
- (vii) It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- (viii) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

### **3. State Compensation for Victims of Abuse of Power**

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Sah vs. State of Bihar* (AIR 1983 SC 1086), the Supreme Court ordered the Government of Bihar to pay to Rudul Sah a further sum of Rs.30,000 as compensation, which according to the court was of a "palliative nature", in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years. Similarly in *Saheli, a Women's Resources Centre through Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police* (AIR 1990 SC 513), the Court

awarded a sum of Rs.75, 000 as state compensation to the victim's mother, holding that the victim died due to beating by the police. In another landmark case of *D. K. Basu vs. State of West Bengal* (AIR 1997 SC 610), the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that "To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience".

## **B. Recommendations of Commissions and Committees on Justice to Victims in India**

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

### 1. The Law Commission of India, 1996

The Law Commission, in its report in 1996, stated that, "The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases when the offence is proved" (Law Commission of India Report, 1996).

### 2. The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation. Some of the significant recommendations include:

- The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more;
- In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments;
- The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;
- Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization;
- Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration;
- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).

### 3. The National Commission to Review the Working of the Constitution

The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

## **VI. RECENT LAWS TO CARE FOR AND PROTECT SPECIAL CATEGORIES OF VICTIMS**

There are also significant developments in the form of new laws to promote the cause of victims and to mitigate the sufferings of potential victims of vulnerable sections of the population such as women, children

and elders. The recent enactments passed by the Parliament have a significant bearing on preventing victimization and giving relief to victims:

**A. The Protection of Women from Domestic Violence Act, 2005**

“The Protection of Women from Domestic Violence Act, 2005” is a major achievement of the women’s movement towards protection of domestic violence victims after a struggle of 16 years. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resources or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household”. A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a residence order, a compensation order or more than one such order and the availability of the services of service providers, protection officers, and the right to free legal services under this Act. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs.20,000 or both. If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.

**B. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

This is also an innovative law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in many countries, including India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

**C. Prevention of Child Abuse and Victim Protection**

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right as per the decision of the Supreme Court of India in *Unnikrishnan’s Case* (1993). Article 21-A of the Constitution states that “The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine”. The proposal also will have a positive impact on eradication of child labour. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women’s development as well as enhancement of productivity of the economy and reduction in unemployment.

1. The National Commission for Protection of Child Rights (NCPCR)

This Commission was set up in March 2007 and its mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (see at Government of India, 2009). India ratified the United Nations Convention on the Rights of the Child in 1992 and this Act was passed as one of the necessary steps to protect the rights of children in the country. The National Commission for Protection of Child Rights has been taking up various issues brought forth in the area of child abuse. After inquiry, the National Commission can recommend initiation of proceedings for prosecution or any other action it may deem fit.

**D. Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

This is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.

## VII. CONCLUSION:

### CHALLENGES AND PROPOSAL FOR MEASURES FOR VICTIMS IN INDIA

In the process of prevention of victimization and the protection of victims, there are many challenges faced in India which are being tackled through some positive measures. Some of the challenges and the countermeasures include:

#### A. No Separate Law for Crime Victims Yet

But continuous efforts are going on to enact a national law for victims. The ISV's Victim Bill is a model draft Bill.

#### B. Corruption in the Indian Criminal Justice System

Corruption by public officials erodes the entire health of the society and victimizes people in all sections of the population. Many steps to reduce the level of corruption and accumulation of illegal wealth have been taken by the Government. Declaration of assets and wealth by judges of the higher judiciary and ministers of the government is a recently introduced example.

#### C. Empowerment of Women to Prevent Victimization of Women

Serious efforts to change the traditional submissive and victimized role of women have been taken up by NGOs and the Government. One attempt is the consistent struggle and active efforts by women's organizations to get more political power for women in the form of representation in the Parliament, state legislatures and local bodies through a 33% reservation of seats for women in these bodies. Women have already succeeded in getting representation in local self-government but the struggle continues to get reservations for women in Parliament and state legislatures. Many concessions, special privileges and tax rebates are provided for female students to encourage them in higher education and employment, and to encourage senior women citizens in economic self-reliance. The Cradle Baby scheme of the Tamil Nadu State Government is a step towards protecting female babies and preventing female infanticide.

#### D. Empowerment of Children

Making primary education a fundamental right under the Constitution is a leaping step to empower children as education is the tool for development. The implementation of this right will have a bearing on other kinds of victimization such as child labour. Strengthening the Noon Meal scheme in the schools for the children in Tamil Nadu and the introduction of this scheme in other states will attract more children from the disadvantaged sections of the society to schools to pursue study.

#### E. Major Challenge is Implementation

Transparency and honesty among the politicians who make policies and the commitment of government officials who are charged with the responsibility for implementation are the big challenge. Whereas the situation of victims has not been satisfactory in India, developed countries, including the United Kingdom, have gone far ahead to render victim justice, but the expectations and aspirations of victims remain high even in those countries which do not match the accomplishments made elsewhere. The UK enacted the Criminal Injuries Compensation Act in 1995. The Home Office in the UK, in its report "Criminal Justice: The Way Ahead", in 2001, found that "many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings". During the long proceedings of investigation and trial, victims are not kept informed or provided with a sense of security. Very often, victims are expected to appear in courts for cases, which are adjourned even without their notice, or they are subjected to unnecessarily stressful courtroom experiences. The agencies meant to help victims do not always understand and respond effectively to their needs. This revelation has made the UK recommend some measures to balance its system of justice. Hence, victim justice has not been achieved in full even in countries where lots of developments have been made. We have to pursue the matter vigorously with the governments and with civil society to realize the basic provisions envisioned in the UN Declaration of Victims in the majority of developing countries.

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# HISTORY AND OVERVIEW OF RIGHTS AND SERVICES FOR FEDERAL CRIME VICTIMS WITHIN THE UNITED STATES

*Kim Herd\**



## I. INTRODUCTION

As a nation, we are often humbled by the remarkable bravery and courage shown by crime victims in the aftermath of devastating crimes. Often at great personal sacrifice, victims of crime press forward with the criminal justice process and encourage others to do the same in search of a just and fair outcome. Through their contributions, and the assistance of thousands of dedicated victim advocates and supporters, the United States has been able to build a strong network of government and community-based victim assistance programmes at all levels of the criminal justice system.

This paper will provide a brief history of the victims' movement and discuss the rights and services available to victims in the United States, focusing primarily on the federal criminal justice system.

## II. BRIEF OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES

Criminal cases in the United States are prosecuted by neutral public officials acting on behalf of the government, representing "the interests of society as a whole" as opposed to only the interest of the victim.<sup>1</sup> The United States Constitution grants public officials within the Executive Branch the power to bring criminal prosecutions.<sup>2</sup> Moreover, "the United States and its attorneys have the sole power to prosecute criminal cases in the federal courts."<sup>3</sup>

Today, violations of federal law, such as terrorism, distribution of child pornography, bank robbery and human trafficking crimes, are prosecuted primarily by the United States Department of Justice (DOJ) through its litigating divisions and 93 United States Attorneys' Offices. Federal judges preside over criminal trials, which are decided by a jury of twelve. Violations of state criminal laws, such as homicides, sexual assaults, and child abuse offences, are prosecuted mostly by local prosecutors' offices (often called district attorney's offices), and in some cases, by State Attorneys General Offices (depending on the type of crime involved).<sup>4</sup> Federal, state, and local prosecutors' offices and law enforcement agencies employ victim-witness support personnel, who collectively assist victims and witnesses during all stages of the criminal justice process.

## III. HISTORY OF THE VICTIMS' RIGHTS MOVEMENT IN THE UNITED STATES

In the modern era, beginning primarily in the 1960s, crime victims sought more involvement and recognition in the criminal justice process. Increasing crime rates prompted President Lyndon Johnson to establish the President's Commission on Law Enforcement and the Administration of Justice, which conducted the first national victimization surveys. Survey results showed that "victimization rates were far higher than shown in law enforcement figures – and that many non-reporting victims acted out of distrust of

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\* Chief, Victim Witness Assistance Unit, United States Attorney's Office for the District of Columbia, United States Department of Justice. The views expressed in this article do not necessarily represent the views of the United States Department of Justice or the United States.

<sup>1</sup> See *Ferri v. Ackerman*, 444 U.S. 193, 202-203 (1979); see also *Kelly v. Robinson*, 479 U.S. 36, 52 (1986).

<sup>2</sup> See U.S. Const. Art. II, § 3; *United States v. Armstrong*, 517 U.S. 456, 467 (1996).

<sup>3</sup> *Maine v. Taylor*, 477 U.S. 131, 136 (1986); see also, e.g., 28 U.S.C. 515(a) (authorizing the Attorney General to conduct all litigation, "civil or criminal," on behalf of the United States).

<sup>4</sup> In some states, local prosecutors are called "Commonwealth's Attorneys," "County Attorneys," or "State's Attorneys."

the criminal justice system.”<sup>5</sup>

Also in the 1960s, in recognition of the often devastating financial impact of crime, states began to establish crime victim compensation programmes. These programmes provided reimbursement to crime victims for out-of-pocket expenses incurred as a result of the crime. California established the first programme in 1965, followed soon after by New York.<sup>6</sup> Twenty-eight states had established compensation programmes by the late 1970s, reimbursing crime victims for medical bills, lost wages, and other expenses. The creation of these programmes spurred increased victim participation in the criminal justice system, in part because victims were required to file police reports and co-operate with the prosecution to be eligible for compensation.<sup>7</sup> Today, every state and the District of Columbia has a victim compensation programme.

Feminists concerned about the criminal justice system's treatment of rape and sexual assault victims also played an important role in developing direct assistance programmes for crime victims.<sup>8</sup> Two of the first victim assistance programmes were rape crisis centres (in Washington, D.C., and in the San Francisco Bay area), both established in 1972.<sup>9</sup> These programmes contributed significantly to the victims' movement, in part because they recognized “emotional crisis” as part of the injury suffered by victims and attracted volunteers to provide support for victims.<sup>10</sup>

Many courageous victim-survivors also spearheaded new programmes, recognizing the need for additional services in their communities. For example, battered women established shelters and hotlines for other victims. In 1974, survivors of homicide victims formed “Families and Friends of Missing Persons” in Washington state.<sup>11</sup> Four years later, parents of a young murder victim founded “Parents of Murdered Children” to provide support for homicide survivors.<sup>12</sup> And in 1980, Mothers Against Drunk Driving (MADD) was co-founded by two women whose children had been killed or injured by drunk drivers.<sup>13</sup>

By the mid-1970s, victim issues were attracting national attention. In 1975, the first national victims' assistance programme, the National Organization for Victim Assistance (NOVA), was formed to help “consolidate the purposes and goals of the victim's movement.”<sup>14</sup> NOVA promoted networking opportunities and sponsored training programmes for those working with victims. Similar organizations continued to grow in strength and number, providing crisis intervention, counselling, and compensation for victims.

Also in the 1970's, prosecutors' offices and law enforcement agencies began hiring victim-support personnel, who assisted with referrals to social service agencies and provided victims with notification of case-related events.<sup>15</sup> With increasing frequency, prosecutors sought victims' views about court-related events such as bail determinations, plea bargains and sentencing matters.<sup>16</sup>

Victims' issues captured the attention of the White House in 1981, with President Ronald Reagan announcing the first “National Crime Victims Rights Week,” to honour victims and their surviving family members. A year later, President Reagan established a Task Force on Victims of Crime.<sup>17</sup> The Task Force held six hearings nationwide and made numerous recommendations for improving the treatment of victims

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<sup>5</sup> See Dr. Marlene Young and John Stein, *The History of the Crime Victims' Movement in the United States*, April 2005, at 2-3, <http://www.ojp.usdoj.gov/ovc/ncvrw/2005/pg4c.html>.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> See Exec. Order No. 12,360, 47 Fed. Reg. 17,975 (Apr. 23, 1982).

and witnesses within the criminal justice system.<sup>18</sup> For example, it recommended passage of legislation to require victim impact statements at sentencing; protection for victims and witnesses from intimidation; restitution in all cases absent special circumstances; and the development of guidelines for the “fair treatment of crime victims and witnesses.”<sup>19</sup> The task force also recommended that Congress provide funding for state crime victims’ compensation programmes.<sup>20</sup>

Shortly after the Task Force issued its report, Congress passed the first major federal victims’ rights law, entitled the “Victim and Witness Protection Act of 1982” (“VWPA”).<sup>21</sup> Among other things, the VWPA prohibited victim or witness intimidation and strengthened restitution options for victims in certain types of offences.<sup>22</sup> In enacting the VWPA, Congress declared that “without the co-operation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.”<sup>23</sup>

Congress also directed the Attorney General to develop and implement guidelines consistent with the purposes of the VWPA. Accordingly, the Attorney General created the “Attorney General Guidelines for Victim and Witness Assistance” in 1985. Revised approximately every five years, the guidelines are “to be followed by officers and employees of Department of Justice investigative, prosecutorial, and correctional components in the treatment of victims of and witnesses to crime.”<sup>24</sup>

Two years after the passage of the VWPA, Congress enacted the “Victims of Crime Act of 1984” (“VOCA”).<sup>25</sup> This landmark legislation established the “Crime Victims Fund,” thereby providing a stable funding source for federal, state, local, tribal, and non-profit victim assistance programmes. Receiving no tax dollars, the fund is made up of criminal fines, fees, bond forfeitures, and assessments collected from convicted federal offenders. The first VOCA funds were distributed in 1986. State and local governments also received financial assistance from Congress through passage of the Justice Assistance Act in 1984.<sup>26</sup> In 1990, Congress passed the Crime Control Act, and included within it the Victim Rights and Restitution Act, which provided victims with a list of rights and defined a group of mandatory services.<sup>27</sup> Although the rights delineated in § 10606 were subsequently repealed by the Crime Victims’ Rights Act (18 U.S.C. § 3771), the mandatory service provisions of § 10607 remain in effect. Pursuant to § 10607, at the earliest opportunity after the detection of a crime, employees must provide information to victims on the status of the case, address their safety concerns, and refer them to services, such as emergency medical assistance and counselling.<sup>28</sup>

Subsequent legislation continued to expand victims’ rights. For example, Congress began to include mandatory victim restitution provisions in the federal criminal code.<sup>29</sup> In 1994, Congress established mandatory restitution provisions for the crimes of sexual abuse, sexual exploitation and other abuse of children, domestic violence, and telemarketing fraud, in the Violence Against Women Act (“VAWA”).<sup>30</sup> Twelve years later, Congress enacted the Mandatory Victim Restitution Act (MVRA), Title II of the Antiterrorism and Effective Death Penalty Act of 1996<sup>31</sup>, which made restitution mandatory for many federal crimes, and enhanced measures for enforcing and collecting restitution.

<sup>18</sup> See President’s Task Force on Victims of Crime, Final Report (1982).

<sup>19</sup> *Id.* at 33. (1982).

<sup>20</sup> *Id.* at 37.

<sup>21</sup> Pub. L. No. 97-291, 96 Stat. 1248.

<sup>22</sup> See 18 U.S.C. §§ 1512-1515; see also 18 U.S.C. 3579(a)(1) (1982 ed., Supp. IV). Effective November 1, 1987, the VWPA was recodified pursuant to the Sentencing Reform Act of 1984, 98 Stat. 1987 and as a result, 18 U.S.C. 3579 became 18 U.S.C. 3663.

<sup>23</sup> *Id.* Section 2 (a) (1).

<sup>24</sup> See Attorney General Guidelines for Victim and Witness Assistance, Art. III, A. at 7.

<sup>25</sup> 42 U.S.C. § 10601 *et. seq.*

<sup>26</sup> P.L. 98-473.

<sup>27</sup> See 42 U.S.C. §§ 10606 and 10607.

<sup>28</sup> 42 U.S.C. § 10607 (c)(1)-(3).

<sup>29</sup> See e.g. 18 U.S.C. § 228 (“Child Support Recovery Act of 1992”) (imposing mandatory restitution for those convicted of willfully failing to pay child support).

<sup>30</sup> See 18 U.S.C. Section 2248, 2259, 2264, 2327.

<sup>31</sup> Pub. L. No. 104-32, 110 Stat. 1214 (Apr. 24, 1996).

Laws providing protection for specific categories of victims were enacted with increasing frequency. For example, the Violence Against Women Act ("VAWA"), created numerous grant programmes to assist domestic violence victims, initially authorizing \$1 billion over five years.<sup>32</sup> Subsequent amendments to VAWA in 1996 and 2000 made domestic violence and stalking federal offences.<sup>33</sup> In 2000, Congress legislated protections for immigrant victims of domestic violence, human trafficking and other violent crimes in the Victims of Trafficking and Violence Protection Act,<sup>34</sup> creating "T visas" for victims of severe forms of trafficking and "U" visas for victims of violent crime who co-operate with the investigation and prosecution. After the Oklahoma City bombing, Congress passed the Justice for Victims of Terrorism Act, establishing specific programmes for immediate crisis response to victims, and *inter alia*, providing terrorism victims the right to participate in criminal trials.<sup>35</sup>

Congress also enacted specialized provisions to protect child victims and witnesses during the court process, such as creating alternatives for live, in-court testimony in appropriate circumstances and requiring documents containing children's names to be filed under seal.<sup>36</sup> Laws to protect children from sexual predators were passed as well.<sup>37</sup> Elderly victims also received protections through the Older Americans Act Reauthorization of 2006, requiring the United States Department of Health and Human Services to develop a long-term national response plan for elder abuse prevention, intervention, and treatment.

Despite the significant number of laws protecting victims, many victims' rights advocates were concerned that existing statutory provisions were inadequate and thus began to "push for a constitutional amendment."<sup>38</sup> The first proposal to create a Crime Victims' Rights amendment to the United States Constitution was introduced in 1996 by Senators Dianne Feinstein (Democratic Party-California), and John Kyl (Republican Party-Arizona). The proposal was ultimately withdrawn due to a lack of support. Eight years later, the amendment was re-introduced in Congress, but withdrawn again due to insufficient support. A few months later, however, Congress passed a comprehensive rights bill for federal crime victims, calling it the "Scott Campbell, Stephanie Roper, Wendy Preston, Loarna Gillis, and Nila Lynn Crime Victims' Rights Act," in honour of five homicide victims. Known simply as the "Crime Victims Rights Act," or the "CVRA," the law codifies eight rights for federal crime victims, and includes provisions enabling victims to enforce their rights both at the trial and appellate levels.<sup>39</sup> Under the CVRA, a "victim," is defined as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."<sup>40</sup> The rights afforded to federal crime victims by the CVRA are as follows:

1. The right to be reasonably protected from the accused;
2. The right to reasonable, accurate, and timely notice of any public court proceeding, any parole proceeding, involving the crime or of any release or escape of the accused;
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim could be materially altered if the victim heard other testimony at that proceeding;
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
5. The reasonable right to confer with the attorney for the Government in the case;

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<sup>32</sup> See Pub. L. No.103-322 (1994).

<sup>33</sup> See 18 U.S.C. § 2261A.

<sup>34</sup> See 22 U.S.C. §§ 7101-7110; 8 U.S.C. § 1101(a)(15)(U).

<sup>35</sup> Pub.L. No. 104-132 (1996).

<sup>36</sup> 18 U.S.C. § 3509.

<sup>37</sup> See e.g. PROTECT Act of 2003, Pub. L. No. 108-21 (2003) (establishing a national Amber Alert coordinator and prohibiting foreign child sex tourism); see also "Adam Walsh Child Protection and Safety Act," Pub. L. 109-248 (2006) (establishing sex offender registration requirements and making failure to register a felony).

<sup>38</sup> See e.g., Cassell, Paul G., *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U.L. Rev. 835, 848-850 (2005).

<sup>39</sup> See 18 U.S.C. § 3771.

<sup>40</sup> "In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victims' rights under this chapter, but in no event shall the defendant be named as such guardian or representative." 18 U.S.C. § 3771 (e).

6. The right to full and timely restitution as provided in law;
7. The right to proceedings free from unreasonable delay;
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.

Additionally, the CVRA directed the Department of Justice to designate an authority to receive and investigate complaints from federal crime victims alleging violations of their rights.<sup>41</sup> Accordingly, DOJ established the Office of the Victims' Rights Ombudsman (VRO) in January 2006, within the Executive Office for United States Attorneys. Victims of federal crimes can file complaints with the VRO against any employee located in a United States Attorney's Office, or in one of thirteen DOJ components. The VRO maintains a public website providing information about the programme and the CVRA, and detailing procedures for filing complaints.<sup>42</sup>

#### **IV. VICTIM ASSISTANCE IN FEDERAL PROSECUTORS' OFFICES AND LAW ENFORCEMENT AGENCIES**

Victim assistance personnel in the United States can generally be divided into two categories: "system-based" advocates, who work in prosecutors' offices or law enforcement agencies and "community-based" advocates, who work for non-profit or community organizations. The role of "system-based" advocates is to provide victims with information and support during the various stages of the criminal justice system - i.e. investigation, prosecution, and post-conviction. The following is a brief description of some of the system-based programmes operating in federal prosecutors' offices and law enforcement agencies in the United States.

##### **A. United States Attorneys' Offices**

Every United States Attorney's Office ("USAO") has a Victim-Witness Program, usually led by a Victim Witness Coordinator ("VWC") and staffed with additional victim witness personnel. The Executive Office for United States Attorneys, through its Law Enforcement Coordinator/Victim Witness Staff, provides support and guidance to victim witness personnel in the USAOs. Providing information, support and assistance to federal crime victims and witnesses, these highly-skilled professionals are often a source of great comfort for victims. Examples of federal crimes in which victim support is often provided include bank robberies, child pornography, financial crimes, identity theft, hate crimes, terrorism, or violent crimes that occur on federal or Native lands such as homicide, sexual assault, domestic violence, or child abuse.

Victim witness personnel assist victims in numerous ways, including notifying them of court proceedings and significant case developments, providing counselling referrals, locating temporary housing, and assisting with victim impact statements. VWCs are available to explain the court process, including the reasons for any delay, and often attend court proceedings with victims, providing a comforting presence while victims testify or listen to difficult testimony about their loved ones. Prior to sentencing hearings, victim witness personnel are available to answer victims' questions about victim impact statements.

Victim witness personnel also address witness security concerns, make travel arrangements and ensure reimbursement for required court appearances. Working closely with fellow law enforcement advocates and community victim service providers, Victim Witness personnel often serve on task forces or multi-disciplinary teams and often develop innovative programmes designed to enhance rights and services for specific victim populations. By way of example, the Victim Witness Program in the United States Attorney's Office for the Western District of Wisconsin, with funding and support from the Office for Victims of Crime, provided community training and developed an educational video that addressed the devastating problem that methamphetamine addiction can have on children.

##### **B. Federal Bureau of Investigation (FBI) - Office for Victim Assistance (OVA)**

The Office for Victim Assistance (OVA) within the Federal Bureau of Investigation (FBI), is located at FBI headquarters in Washington, D.C., and is responsible for assisting victims of crimes investigated by the

<sup>41</sup> See 18 U.S.C. § 3771(f)(1) and (2).

<sup>42</sup> See [www.justice.gov/usao/eousa/vr/index.html](http://www.justice.gov/usao/eousa/vr/index.html).

FBI.<sup>43</sup> OVA manages the daily operational aspects of its Victim Assistance Program (VAP) in 56 FBI field offices and international offices. Among its other responsibilities, OVA provides emergency assistance to victims of terrorist attacks; co-ordinates victim notification in child pornography cases; oversees the forensic child interviewing programme; and provides specialized assistance to Native American victims of crime.

OVA also manages and supports 122 Victim Specialists located within the FBI field offices, who provide direct assistance to federal crime victims. The FBI requires that Victim Specialists have extensive knowledge and experience in crisis intervention, social services, and victim assistance. These professionals also provide notification of case events to victims and refer them to services within their communities such as compensation programmes, rape crisis centres, and homicide bereavement groups.

Victim Specialists are often a crucial support system for victims and family members, helping them at some of their most vulnerable moments. In the aftermath of the Mumbai terrorist attacks, for example, Victim Specialists quickly assisted in the identification of American victims, arranged for repatriation of those who had died, and helped evacuate those who were injured.<sup>44</sup>

### **C. United States Immigration and Customs Enforcement Agency (ICE)**

ICE investigates a significant number of federal crimes involving human trafficking, child exploitation, child sex tourism, genocide, identity theft, and telemarketing fraud. ICE's Victim Assistance Program, consisting of fifteen full-time Victim Assistance Coordinators in the field, 350 collateral duty Victim Assistance Coordinators and five headquarters staff, address the physical, psychological, and financial harms that victims often suffer. ICE works often with human trafficking victims and child sex tourism victims, providing them shelter, food, interpreter services, and other basic services in the immediate aftermath of these horrific crimes.

### **D. Additional Victim Assistance Programmes within DOJ and Federal Government Agencies**

In addition to the agencies described above, many other DOJ components and federal agencies have programmes to support victims of federal crimes, including but not limited to the Criminal Division, the Civil Rights Division (Criminal Section), the Drug Enforcement Agency, the U.S. Parole Commission, the Bureau of Prisons, the Bureau of Alcohol Tobacco and Firearms, the Office of Justice for Victims of Overseas Terrorism, the United States Postal Inspection Service, the Department of State, the Bureau of Indian Affairs and the U.S. Military.

## **V. DOJ COMPONENTS THAT PROVIDE LEADERSHIP ON VICTIM ISSUES AND GRANTS FOR VICTIM ASSISTANCE PROGRAMMES**

Assisting crime victims and protecting their rights, is a "high priority for Attorney General Eric Holder and the Department of Justice". DOJ personnel work hard every day to provide victims with the rights and services to which they are entitled, notifying them of court proceedings, ensuring that their voices are heard in court, and being available to listen to their concerns. DOJ components and offices that work on matters assisting crime victims are too numerous to mention. Accordingly, this paper will focus on three offices that support a nationwide effort to assist victims of crime in all levels of the criminal justice system.

### **A. Office of Justice Programmes**

Within the Department of Justice, the Office for Justice Programs (OJP) provides leadership and develops programmes to increase public safety and improve the fair administration of justice. OJP is comprised of five bureaus and two programme offices: the Bureau of Justice Assistance, the Bureau of Justice Statistics; the National Institute of Justice; the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, the Community Capacity Development Office, and the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART).<sup>45</sup> All of OJP's bureaus and components develop programmes and strategies to assist victims and prevent victimization; however this

<sup>43</sup> See [www.fbi.gov/hq/cid/victimassist/resources.htm](http://www.fbi.gov/hq/cid/victimassist/resources.htm).

<sup>44</sup> See Transcript of testimony of Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice, before the House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security ( 29 September, 2009).

<sup>45</sup> See [www.ojp.gov](http://www.ojp.gov).

paper will highlight the work of the Office for Victims of Crime.

### **B. Office for Victims of Crime**

The Office for Victims of Crime (OVC) was established within OJP through an amendment to the Victims of Crime Act of 1984. OVC's primary mission is to "enhance the nation's capacity to assist crime victims" and to "be a leader in transforming attitudes, policies, and practices that encourage justice and healing for victims."<sup>46</sup> OVC also provides training and technical assistance to victim service providers, prosecutors, law enforcement officers, and other professionals, and also "works to raise awareness of victims issues" and "to promote compliance with victims' rights laws."<sup>47</sup> OVC also offers a wealth of information on its website, such as a comprehensive directory of victim assistance resources. Sponsoring national and state victim assistance academies that provide academic instruction for victim service providers, OVC also offers web forums on such topics as vicarious trauma, working with survivors of traumatic events, and serving victims of stalking.

Perhaps OVC's most recognizable role is its administration of the Crime Victims Fund ("the fund"). Notably, no taxpayer dollars are used to support the fund, as it is comprised entirely of criminal fines, bail bond forfeiture, penalties, fees, and special assessments collected from federal convicted offenders, as well as private donations. Congress imposed a cap on distributions from the fund in 2000, to control large fluctuations in deposits.<sup>48</sup> In fiscal 2010, the cap was set at \$705 million.<sup>49</sup>

Monies in the fund are disbursed pursuant to a carefully established allocation process. Earmarks are deducted from the fund first as follows: (1) Children's Justice Act grants, including formula grants to states through the United States Department of Health and Human Services, and discretionary grants to tribes for services and programmes to improve the investigation and prosecution of child abuse and neglect cases in American Indian and Alaska Native communities; (2) Victim Witness Coordinators in U.S. Attorneys Offices; (3) Victim Specialists in the FBI, and (4) the federal Victim Notification System.

Funds are disbursed to state victim compensation programmes through formula grants. The Director of OVC is required to make an annual grant to eligible crime victim compensation programmes that is equal to 60 percent of the amount awarded by the state programme to victims of crime from state revenues during the fiscal year preceding the year of deposits in the Fund (two years prior to the grant year), other than amounts awarded for property damage. If the amount in the Fund is insufficient to award each state 60 percent of its prior year's compensation payout from state revenues, all states will be awarded the same reduced percentage of their prior year payout from the available funds other than amounts awarded for property damage. The distributions may not exceed 47.5 percent of the remaining Crime Victim Fund balance (available after earmarks and discretionary funds). VOCA requires all state compensation programmes to offer, at a minimum, "reimbursement for expenses related to medical and dental care, counselling, funeral and burial services, and lost wages."<sup>50</sup> However, these programmes may reimburse victims for additional expenses such as "travel, temporary lodging, crime scene cleanup, and dependent care."<sup>51</sup>

State Victim Assistance grants receive 47.5 percent of the amount remaining after earmarks, plus any amounts not used for victim compensation grants. States often award sub-grants to victim service providers in criminal justice agencies, noncriminal justice government agencies, (including hospitals, public housing offices, and social service and mental health agencies); private, non-profit organizations, including rape crisis centres, shelters, mental health organizations, religious organizations, hospitals and others; and American Indian tribes or organizations. During fiscal 2007 to 2008, victim assistance funding supported over 33.7 million specific services to more than 7.89 million victims of crime.<sup>52</sup>

<sup>46</sup> See [www.ovc.gov/about/offices/ovc.htm](http://www.ovc.gov/about/offices/ovc.htm).

<sup>47</sup> See OVC Report to the Nation, Fiscal Years 2007 - 2008, at ix.

<sup>48</sup> See OVC Report to the Nation (2009), at 4.

<sup>49</sup> Id.

<sup>50</sup> Id. at 17.

<sup>51</sup> Id. Maximum reimbursement amounts for these categories must be established by each state and territory receiving these funds. OVC Report to the Nation (2009) at 17.

<sup>52</sup> See OVC Report to the Nation (2009), at 23.



OVC discretionary grant amounts are calculated after all programme area allocations are determined, except for formula grants, and may total 5 percent of the remaining balance.<sup>53</sup> Discretionary grants serve a vital purpose, helping to meet “emerging needs” and filling “gaps in existing services” as well as support for “model programs to help strengthen the skills and abilities” of victim service providers.<sup>54</sup> Examples of innovative discretionary grants include the development of Sexual Assault Nurse Examiner (SANE) programmes and Sexual Assault Response Teams (SART); promoting cultural change in law enforcement’s response to victims; assisting victims with disabilities; and supporting resource centres that provide counselling and legal assistance for identity theft victims.<sup>55</sup> Additionally, OVC receives specially designated funds that are not part of the Crime Victims Fund, to support “the development or enhancement of emergency services to assist victims of severe forms of trafficking.”<sup>56</sup>

OVC is also authorized to set aside \$50 million in an Antiterrorism Emergency Reserve account to support programmes to assist victims of terrorism and mass violence, including the International Terrorism Victims Compensation Program. In recent years, these funds have supported crisis response and victim compensation in the aftermath of several mass shooting incidents in the United States in which several people were killed.

### **C. The Office on Violence Against Women (OVW)**

Created in 1995, the Office on Violence Against Women (OVW) assists in developing the nation’s capacity to reduce violence against women through the implementation of the Violence Against Women Act. Through financial and technical assistance to communities across the U.S., OVW supports programmes, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking.<sup>57</sup> Currently, OVW administers two formula grant programmes and 17 discretionary grant programmes, and to-date has awarded over \$4 billion in grants and co-operative agreements.<sup>58</sup>

OVW has also developed a number of special initiatives through its grant programmes and collaborative projects. One such initiative is the “National Domestic Violence Hotline,” which is administered by the United States Department of Health and Human Services. Hotline advocates take an average of 21,000 calls per month nationwide, from domestic violence victims and their friends and family members. The advocates provide immediate crisis counselling and connect victims with services in their local communities.<sup>59</sup>

OVW has also co-ordinated a series of projects to encourage communities to develop sexual assault forensic medical exams that are designed to minimize trauma to victims and to increase the chances of successful prosecution of these cases.<sup>60</sup> Toward this end, OVW assisted in developing a national protocol for Sexual Assault Medical Forensic Examinations (the SAFE Protocol), as well as national training standards for sexual assault nurse examiners (SANE).<sup>61</sup> It currently funds the SAFE Technical Assistance Project, an ongoing collaboration with the International Association of Forensic Nurses, to assist communities in implementing the SAFE Protocol.<sup>62</sup> OVW also supports initiatives to prevent elder abuse, stalking, and teen dating violence. Recently, OVW partnered with the Vera Institute of Justice in an effort to meet the needs of deaf victims of domestic violence.<sup>63</sup>

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<sup>53</sup> Id. at 8.

<sup>54</sup> Id. at 47.

<sup>55</sup> Id. at 48-49, 52-53, 57-58.

<sup>56</sup> Id. at 51.

<sup>57</sup> See [www.ovw.usdoj.gov/overview.htm](http://www.ovw.usdoj.gov/overview.htm)

<sup>58</sup> Id. <http://www.ovw.usdoj.gov/overview.htm>.

<sup>59</sup> See Statement of Catherine Pierce, Acting Director, Office on Violence Against Women, United States Department of Justice, before the United States Senate Committee on the Judiciary, at 2 (10 June 2009).

<sup>60</sup> Id. at 5.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id. at 7.

## VI. NON-GOVERNMENTAL VICTIM SUPPORT GROUPS AND ORGANIZATIONS

### A. Advocates

Many community-based advocates provide local support to victims, regardless of whether these victims report the crimes to law enforcement agencies. For example, sexual assault advocates often answer victims' questions about the law enforcement reporting process, explaining medical exams and evidence collection procedures, and help them to understand their options for treatment of sexually transmitted diseases. Community-based advocates also provide support to domestic violence victims through free counselling, safety planning assistance, and shelter referrals. Many community-based advocates help domestic violence and stalking victims obtain protection orders as well.

### B. National Victim Assistance Organizations

Grassroots and other community organizations have been essential to establishing a strong victim assistance infrastructure in the United States. Many national programmes began as small collections of victims and survivors, passionate about helping fellow victims. Below is a brief description of just a few of the organizations that provide assistance to victims, family members, service providers, and allied professionals.

#### 1. National Center for Victims of Crime (NCVC)

Organized in 1985, NCVC is a non-profit organization that works with community groups and criminal justice agencies throughout the United States. NCVC provides direct services and resources to victims of crime, advocates for resources and for victims' rights' laws and public policies; and provides training and technical assistance to victim service organizations, counsellors, criminal justice professionals, and others.<sup>64</sup> NCVC also maintains "Victim Law," a comprehensive, online database of victims' rights laws and case summaries.

#### 2. National Center for Missing and Exploited Children (NCMEC)

Founded in 1984, NCMEC was established as a private, nonprofit organization to assist in the prevention of child abduction, endangerment and sexual exploitation. NCMEC operates a 24-hour toll-free hotline that takes reports of missing children and receives leads in ongoing investigations. It also provides training, technical assistance and public outreach on the prevention, investigation, and prosecution of cases involving missing and exploited children.

#### 3. RAINN (Rape Abuse and Incest National Network)

The largest anti-sexual assault organization in the United States, RAINN sponsors numerous programmes to assist victims of sexual assault, rape and incest. RAINN operates a 24-hour National Sexual Assault Hotline (both a telephone and on-line version) involving a collaboration of more than 1,100 local rape crisis centres. The organization partners with celebrities to deliver sexual assault prevention awareness programmes.<sup>65</sup>

#### 4. National Crime Victims' Law Institute (NCVLI)

NCVLI was founded in 1997 as a national resource for crime victims and their lawyers, and to assist them in asserting victims' rights in criminal and civil matters.<sup>66</sup> Since 2002, NCVLI has received funding from DOJ, through the Office for Victims of Crime, to support a comprehensive, national effort to advance the rights of victims. The centerpiece of this effort is a network of *pro bono* legal clinics that NCVLI supports across the country which provide direct legal assistance to crime victims in criminal court proceedings in the enforcement of their statutory rights at the state, federal, and tribal levels. In federal court cases, the clinics represent victims in the enforcement of their rights under the Crime Victims Rights Act. Along with the funding to the clinics, NCVLI provides them with intensive technical assistance in furtherance of their work. Additionally, as part of its overall initiative to advance crime victims' rights, NCVLI provides education and training on victims' rights, offers legal technical assistance to attorneys around the country who represent victims in the enforcement of their rights, files *amicus curiae* briefs in cases nationally, convenes a national victims' rights training conference, publishes a bi-annual newsletter on victims' rights litigation and issues,

<sup>64</sup> See [www.ncvc.org](http://www.ncvc.org).

<sup>65</sup> See [www.rainn.org](http://www.rainn.org).

<sup>66</sup> See [www.ncvli.org/history.html](http://www.ncvli.org/history.html).

and facilitates a national network of attorneys and others interested in the enforcement of victims' rights.<sup>67</sup>

5. National Crime Victim Bar Association (NCVBA)

Affiliated with NCVC, the NCVBA provides technical support to attorneys who represent crime victims in civil actions and promotes awareness of the availability of civil remedies for victims.

## VII. VICTIM ASSISTANCE DURING EACH STAGE OF THE FEDERAL CRIMINAL JUSTICE PROCESS

Prosecutors, investigators, victim advocates, and others who work in federal agencies "engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded the rights" set forth in the Crime Victim Rights Act.<sup>68</sup> Federal employees are also required, pursuant to 42 U.S.C. § 10607, to provide victims with notice, information and services, and with all other applicable rights as provided for in other statutes or the rules of criminal procedure. Department of Justice employees also must adhere to the guidance set forth in the Attorney General Guidelines for Victim and Witness Assistance ("AG Guidelines").

Article IV of the AG Guidelines provides detailed steps for addressing victims' needs and concerns at the investigative, prosecution, and corrections stages of the criminal justice process. In addition, the AG Guidelines provide instructions and discuss considerations for working with specific categories of victims, including children and victims of domestic violence, sexual assault, stalking, identity theft, human trafficking, terrorism and other mass casualties.<sup>69</sup> As an overarching principle, victims must be treated with fairness, dignity, and respect and the AG Guidelines provide that a strong presumption exists in favour of providing rather than withholding assistance and services to victims and witnesses of crime.<sup>70</sup>

### A. Investigative Stage

#### 1. Information, Notice, and Referrals to Services

During the investigative stage of a case, responsible officials (ordinarily case agents), must identify victims "at the earliest opportunity after the detection of a crime at which it might be done without interfering with the investigation."<sup>71</sup> Responsible officials must also provide identified victims with a list of rights and available services, along with the name and contact information of a person who is available to answer the victims' questions.<sup>72</sup> In addition, victims must be provided information about where to receive emergency medical or social services; the availability of restitution or other relief (including crime victim compensation programmes); counselling programmes; the right to make a statement about pretrial release of a defendant in cases involving interstate domestic violence, violation of a protection order, or stalking and the availability of services for victims of these crimes; the availability of payment for medical testing in sexual assault cases, the option for being included in the automated Victim Notification System, and available protections from intimidation or harassment.<sup>73</sup>

Information about the status of the investigation shall be provided to the victim, "to the extent that it is appropriate and will not interfere with the investigation;" and the victim shall be notified of the suspect's arrest.<sup>74</sup> Responsible officials shall also ensure that any property of the victim that is being held for evidence is maintained in good condition and ultimately returned to the victim.<sup>75</sup> Further, if requested by a victim, responsible officials shall assist in notifying the victim's employer if the crime causes the victim to miss work, or the victim's creditor, if the crime results in the victim's inability to make timely payments.<sup>76</sup>

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<sup>67</sup> Id.

<sup>68</sup> See 18 U.S.C. § 3771(c)(1).

<sup>69</sup> See AG Guidelines, Art. VI - X, pp. 48-74.

<sup>70</sup> Id. Art. II. B., a t p. 7; see also 18 U.S.C. § 3771(a)(8).

<sup>71</sup> Id. Art.IV.A.2., at p. 22.

<sup>72</sup> Id. Art.IV.A.3.a.(1), at p. 23.

<sup>73</sup> Id. Art. IV.A.3.a.(1)(a)-(k), and e, pp. 23-26.

<sup>74</sup> Id. Art. IV.A.3.a.(3)(a)-(b), at p. 25.

<sup>75</sup> Id. Art. IV.A.3.c., at p. 25.

<sup>76</sup> Id. Art. IV.A.3.d.(1)-(2), at p. 25-26.

## 2. Protection from Intimidation and Harassment

During a criminal investigation, victims and witnesses often express concerns for their safety. Although witness security and intimidation are common in drug trafficking, homicide, and organized crime cases, threats can arise in any case at any time during the investigation or prosecution. Law enforcement agencies and federal prosecutors' offices have several tools to address the security concerns of victims and witnesses, although law enforcement officers should be involved in the determination of how to assist the victim or witness.

Once a defendant has been charged, the prosecutor may, if appropriate, move for pretrial detention of the defendant.<sup>77</sup> The prosecutor also may ask the court to order the defendant to have no contact with the victim or witnesses.<sup>78</sup> As yet another measure, prosecutors may seek a temporary restraining order prohibiting the defendant from harassing the victim or witness.<sup>79</sup> During court proceedings, a prosecutor or victim witness advocate should ensure that a separate waiting area is made available to a victim or witness so that he or she does not have to come into contact with the defendant or his or her associates.<sup>80</sup> In addition, the programmes described below may also assist in addressing victim or witness security concerns.

### (i) *Emergency Witness Assistance Program*

Relocation can be one of the most effective tools available to prosecutors in assisting threatened and intimidated witnesses. In recognition of this fact, the United States Department of Justice created the Emergency Witness Assistance Program ("EWAP") in 1977. The purpose of this programme is to provide United States Attorneys Offices ("USAOs") a critical tool in assisting witnesses on an emergency basis "to ensure their well-being and that they will be available for trial, other court proceedings, or activities related to an ongoing case."<sup>81</sup> The EWAP also addresses the "physical, mental, or emotional reservations" of a witness or prospective witness regarding their co-operation with the investigation and prosecution.<sup>82</sup>

Each USAO has its own protocol outlining permissible uses of EWAP funds. Decisions as to how, when, and whether to use the funding are left to the discretion of individual USAOs. Examples of expenses that may be requested through the EWAP include, but are not limited to: transportation to permit a witness to leave his or her neighbourhood in order to get away from the danger area; temporary housing or moving expenses; temporary subsistence (consisting of a reasonable portion of the permissible federal per diem amount for the location); emergency telephone service to permit the witness to remain in touch with the USAO; and transportation costs for school or immediate medical or counselling needs.<sup>83</sup>

EWAP's purpose is not to provide physical protection for a witness, and EWAP services do not include protective services or a law enforcement presence.<sup>84</sup> Additionally, a person's participation in the EWAP does not relieve him or her of any responsibilities with regard to debt, custody, child support, court, or other obligations. EWAP is considered "a fund of last resort" and is limited to those witnesses who are frightened and in danger.<sup>85</sup>

### (ii) *The Federal Witness Security Program*

Another useful tool in assisting threatened or intimidated witnesses is the Federal Witness Security Program, created by Attorney General Robert Kennedy in the 1960s to protect witnesses willing to testify against organized crime defendants.<sup>86</sup> Since the programme's inception, more than 8,000 protected witnesses

<sup>77</sup> See 18 U.S.C. § 3142.

<sup>78</sup> See 18 U.S.C. § 3142(C) (1)(B)(v).

<sup>79</sup> See 18 U.S.C. § 1514; see also AG Guidelines, Art. VII.B.4.

<sup>80</sup> 42 U.S.C. § 10607 (c)(4).

<sup>81</sup> See Gaines, Crystal, "Witness Intimidation," United States Attorney's Bulletin, January 2003 at 9.

<sup>82</sup> Id.

<sup>83</sup> Id. at 9.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> See Ruleman, Eileen, "Witness Security and Special Operations Unit," United States Attorneys' Bulletin, January 2007, Vol. 55, No. 1, at 7.

have testified against members of major organized criminal groups, resulting in numerous convictions.<sup>87</sup> Further, no participant who has followed the programme's rules has been killed or seriously injured due to his or her co-operation with the government.<sup>88</sup>

The current programme is administered pursuant to 18 U.S.C. §§ 3521-3528, the "Witness Security Reform Act of 1984" as well as guidelines established by the Attorney General pertaining to the programme.<sup>89</sup> The Office of Enforcement Operations (OEO) within DOJ is in charge of administering the programme, with the United States Marshals Service (USMS) responsible for the relocation components of the programme.<sup>90</sup>

The Witness Security Program is a programme of "last resort," and applicants must meet strict criteria before they are approved for the programme.<sup>91</sup> Applications on behalf of witnesses must be submitted and signed by the United States Attorney in the federal jurisdiction where the investigation or case involving the witness is pending. Applications must contain the following information, to enable OEO to evaluate whether acceptance into the programme is necessary: the significance of the case must be clearly demonstrated; the importance of the testimony that the witness will provide, and the lack of alternative sources for it, must be shown; the existence of a *bona fide* threat against the life of the witness must be demonstrated; and assurance must be given - if the witness is to be relocated rather than incarcerated - that any danger the witness might pose to a new community is outweighed by the benefits to be gained by his or her testimony.

Additionally, the investigating agency sponsoring the applicant must submit a threat assessment signed by management personnel from the investigating agency's headquarters that details the believed threat to the witness based on his or her co-operation. If a witness (and/or any family members of the witness) will be relocated to a new community, the threat assessment also must contain information about any risk the witness, as well as the adult family member, may pose to the new community.<sup>92</sup> Moreover, USMS inspectors must conduct an interview of non-prisoner applicants as well as any adult family member of the witness who will be relocated, to assess whether they are appropriate candidates for the programme.<sup>93</sup> Finally, a psychologist conducts an evaluation of each witness and family member of the witness who is being sponsored for relocation through the programme.<sup>94</sup>

A majority of the programme's participants are prisoner-witnesses who must serve their prison time before being given a new identity and placed in the programme. While they are still in prison, the witnesses are separated from other prisoners who may represent a threat to them. To address the security needs of prisoner-witnesses who cannot safely be placed in a general inmate population, the Bureau of Prisons maintains "Protective Custody Units," which are like "prisons within prisons."<sup>95</sup> Prisoner-witnesses whose families may be at risk as a result of the witness's co-operation, may also be eligible for protection through the USMS relocation programme.

## **B. Prosecution Stage**

Beginning with the filing of charges and continuing through the appeals and post-conviction process, responsible officials in prosecutors' offices (usually prosecutors or victim witness personnel), shall ensure that victims receive notice and information regarding case events and available services, and shall address any security concerns victims may have.<sup>96</sup> Once charges are filed, prosecutors must advise victims of their rights and that they can seek the advice of an attorney with respect to their CVRA rights.<sup>97</sup>

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<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> See USAM 9-21.000.

<sup>90</sup> Ruleman at 7-9.

<sup>91</sup> Id. at 7.

<sup>92</sup> Id. at 8.

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Id. at 8.

<sup>96</sup> AG Guidelines, Art. IV.B.2., at 27.

<sup>97</sup> Id. Art. IV.B.2.b. (1) - (2), at 27.

1. Right to Notice

Once charges have been filed, prosecutors' offices are responsible for notifying victims of the role of the victim in the criminal justice process, their right to attend trial, and for providing information on services and case events, including the scheduling of public court proceedings, the filing of charges, the release or escape of the accused, the entry and acceptance of guilty pleas, trial verdicts, and sentencing proceedings.<sup>98</sup> To assist with notification requirements, DOJ supports an automated, nationwide Victim Notification System (VNS) in federal cases. VNS is also used by the FBI, the United States Postal Inspection Service, and the Bureau of Prisons to assist them in meeting their notification obligations. Federal crime victims may elect to receive notice through VNS via mail or e-mail, and may view case information online through a password-protected Internet site.

2. Right to Consult with a Government Attorney

A federal crime victim has the "reasonable right to confer with the attorney for the government in the case," but this right "shall not be construed to impair prosecutorial discretion."<sup>99</sup> In general, prosecutors should be available to consult with victims regarding "major case decisions such as dismissals, pre-trial release of the defendant (where appropriate), plea negotiations and pretrial diversion."<sup>100</sup> At the request of victims, prosecutors and victim witness co-ordinators often meet with victims by telephone or in person, to address their concerns and questions.

3. Right to be Heard

Under the Crime Victims' Rights Act, federal crime victims have a "right to be reasonably heard" at any public hearing involving the release, plea, sentencing or parole of the defendant.<sup>101</sup> Thus, if victims wish to provide a statement describing their views, for example, on whether a defendant should be released pending trial, or the terms of a plea agreement, the prosecutor shall request that the Court permit the victim to be heard.

Most often, sentencing hearings are where victims seek to provide their views to the court. Prior to sentencing hearings, a responsible official shall notify victims that the United States probation officer is required to prepare a pre-sentence investigation report that includes a section on victim impact, and that official shall provide the victim with contact information for the probation officer.<sup>102</sup> Victim Impact Statements provide a powerful mechanism for victims to express how they feel about what happened to them as a result of the crime, and many victims choose to submit them. Victims may also express their views to the Court in person at the sentencing hearing.<sup>103</sup>

In addition, the CVRA provides victims with the right to "full and timely restitution," and prosecutors, victim-witness co-ordinators, investigators, probation officers, clerks of court, and financial litigation units within USAOs, must work together to ensure that a victim receives the restitution to which he or she is entitled.<sup>104</sup>

4. Attending Court Proceedings

Responsible officials also must inform victims of their right to attend the trial, regardless of whether the victim will testify at trial or present information at sentencing.<sup>105</sup> Recognizing the importance to victims of attending court proceedings involving their victimization, Congress legislated the "right not to be excluded from any such public court proceeding," unless the court determines "by clear and convincing evidence," that a victim-witness's testimony would be materially altered by exposure to the testimony of other witnesses.<sup>106</sup> As noted during the floor debate prior the CVRA's passage, the right to attend hearings and trials is "so important because crime victims share an interest with the government in seeing that justice is

<sup>98</sup> AG Guidelines, Art.IV.B.2.b.(3)-(6).

<sup>99</sup> AG Guidelines, Art.IV.B.2.c(1), at p. 29.

<sup>100</sup> Id.

<sup>101</sup> 18 U.S.C. § 3771(4).

<sup>102</sup> AG Guidelines, Art. IV.B.3.a.(1)-(2), at 30.

<sup>103</sup> See Fed.R.Crim.P. 32(i)(4)(B).

<sup>104</sup> AG Guidelines, Art. V.A., at 37.

<sup>105</sup> AG Guidelines, Art.IV.B.2.b(3).

<sup>106</sup> 18 U.S.C. § 3771 (a)(3).

done in a criminal case.”<sup>107</sup> In at least two reported cases, federal prosecutors have filed motions to ensure that victim-witnesses are not excluded, unless the court finds by clear and convincing evidence that the exclusion is necessary.<sup>108</sup>

### **C. Corrections Phase**

After a defendant is convicted and sentenced, a responsible official (usually a representative from the Bureau of Prisons (BOP)), must provide a victim with notice of (i) the date on which the offender will be eligible for parole, and the scheduling of any such release hearing; (ii) the escape, work release, furlough or any other form of release of the offender; and (iii) the death of the offender, if the offender dies while in custody.<sup>109</sup> BOP maintains on its website, a “federal inmate locator,” which provides information about the location of every federal inmate within the BOP system.<sup>110</sup> If a defendant is being detained pre-trial pending prosecution, notification of the defendant’s custody status is usually provided by the USAO.

### **D. Parole Process**

Victims also have the right be notified of parole hearings, and to be heard at these proceedings.<sup>111</sup> Moreover, within 30 days of an inmate’s release from prison, responsible officials shall provide victims with notice of the date of release, the city and State where the inmate will be released, and contact information for the inmate’s supervising probation officer, if applicable.<sup>112</sup>

## **VIII. THE VICTIM WITNESS ASSISTANCE UNIT IN THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF COLUMBIA**

Located in the Nation’s capital, the United States Attorney’s Office for the District of Columbia (USAO-DC) is unique in that it prosecutes both local and federal crimes, handling well over 20,000 cases per year. Prosecutors, victim witness staff, investigators and other support personnel meet daily with victims and family members of victims of all varieties of crime, such as homicide, domestic violence, identity theft, human trafficking, and terrorism.

Many years ago, the office established a specialized Victim Witness Assistance Unit (“VWAU”) as a stand-alone section. The VWAU has always been central to the work of the USAO-DC, and has always had the strong support of the United States Attorney. The VWAU assists thousands of victims and witnesses each year.

The VWAU is by far the largest victim witness programme in all of the United States Attorneys’ Offices. Comprised of 26 highly trained individuals, the unit is divided into three sections: Witness Security, Victim/Witness Specialists, and Central Services. For the past ten years, the Chief of the VWAU has been either a prosecutor or an attorney. The Chief also provides policy and legal guidance to the office on matters regarding victim and witness rights and services.

The Witness Security Section employs five staff members and a supervisor and addresses security concerns raised by victims and witnesses who are threatened or perceive that they are threatened as a result of their participation in a case. In light of the high rate of homicides, assaults and violent crime in the District, along with a substantial number of criminal organizations operating in the city, witness intimidation is a serious problem. Often, victims and witnesses are eligible for assistance through the Emergency Witness Assistance Program, and in certain cases, the prosecutor may request that the witness be considered for acceptance into the Federal Witness Security Program. The section also addresses prisoner witness security concerns as well, working with the local Department of Corrections and the Bureau of Prisons.

The VWAU’s Central Services Section is responsible for victim notification in both federal and D.C.

<sup>107</sup> 150 CONG. REC. S4268 (Apr. 22 2004)(statement of Sen. Kyl).

<sup>108</sup> See e.g. *In re Mikhel*, 453 F.3d 113, 1139 (9th Cir. 2006); *United States v. Johnson*, 362 F.Supp.2d 1043 (N.D. Iowa 2005).

<sup>109</sup> AG Guidelines, Art. IV.C.2(a)(2), at p. 34.

<sup>110</sup> See [www.bop.gov](http://www.bop.gov).

<sup>111</sup> AG Guidelines, Art. IV.C.2.a.(3), at p. 35.

<sup>112</sup> AG Guidelines, Art.IV.C.2.b.(4), at p. 35.

Superior Court cases, handling tens of thousands of notifications per year. Specialists in this section also arrange for victim and witness travel for court appearances and witness conferences, assisting a significant number of international victims and witnesses. Section members also obtain interpreters and ensure that witnesses receive reimbursement for required court appearances.

The Victim/Witness Specialist Section employs 15 highly experienced victim advocates who are stationed in various trial units within the USAO-DC. The Section is supervised by a doctor of psychology, and several advocates are licensed clinical social workers. Victim advocates have many responsibilities, including intake, safety planning, lethality assessment, referring victims to the crime victims' compensation programme and services, and accompanying them to court. The advocates are specialized, based on their area of expertise. Several advocates work only with domestic violence victims (with one advocate specializing in elder abuse as well), while others work only with sexual assault or child abuse victims. One advocate works with misdemeanour victims, and two other advocates are responsible for assisting victims of violent crimes and general felonies. There is one advocate who assists family members and loved ones of homicide victims, often attending court appearances on their behalf and referring them to grief counselling and other support programmes. Another advocate is assigned to the federal crimes section where she routinely assists victims of trafficking, identity theft, child pornography, bank robbery and terrorism. Several advocates are fluent Spanish speakers, and the office maintains a dedicated telephone line where Spanish-speaking victims can obtain assistance. Often, the unit posts case-updates and other information for victims on its public website.

The VWAU also employs a highly trained child forensic interviewer, who works closely with a non-profit Child Advocacy Center. The forensic interviewer is responsible for conducting the majority of forensic interviews and assessments of victims and witnesses who are between the ages of two and seventeen or are vulnerable adults. In addition, she participates in multi-disciplinary case review sessions to assist law enforcement, prosecution, social service, and mental health professionals in determining appropriate assistance child victims and witnesses.

VWAU staff also collaborate with law enforcement and community partners on projects designed to assist victims, such as the human trafficking task force, the fatality review board, and the Domestic Violence Intake Center.

## **IX. CONCLUSION**

In the nearly thirty years following the Final Report of the President's Task Force on Victims of Crime, the United States has made significant strides in the passage of victims' rights laws, the creation of funding mechanisms for victim services, and the development of programmes to address the specific needs of crime victims. Nonetheless, there is more work to be done. Government and community partners must continue to work together to develop innovative strategies to ease the suffering of crime victims and to make the criminal justice process a more bearable one.



# MEASURES TO PROTECT VICTIMS IN GERMAN CRIMINAL PROCEEDINGS

## A SUMMARY WITH SPECIAL FOCUS ON THE KEY POINTS OF THE SECOND VICTIMS' RIGHTS REFORM ACT

*Martina Peter\**



### I. INTRODUCTION

Germany has already legislated a good standard of victim protection. For the past 25 years, legal academics and policy-makers alike have been devoting increased attention to the victim in criminal proceedings. While the United Nations' *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* of 29 November 1985<sup>1</sup> provided vital momentum at the international level, in the course of these developments important legislation has been adopted in Germany. Reference should initially be made to the "First Act for the Improvement of the Standing of Aggrieved Persons in Criminal Proceedings" or the Victim Protection Act (*Opferschutzgesetz*) of 18 December 1986.<sup>2</sup> This was followed by legislation which included the "Act for the Protection of Witnesses in Examinations in Criminal Proceedings and for the Improvement of Victim Protection" or the Witness Protection Act (*Zeugenschutzgesetz*) of 30 April 1998,<sup>3</sup> and the "Act for the Improvement of the Rights of Aggrieved Persons in Criminal Proceedings" or the Victims' Rights Reform Act (*Opferrechtsreformgesetz*) of 1 September 2004.<sup>4</sup> Vital impetus has also been provided by the Framework Decision of the European Union of 15 March 2001 on the standing of victims in criminal proceedings.<sup>5</sup>

Considering the fact that the legal position of victims in criminal proceedings requires constant scrutiny, and that there should be an ongoing assessment of whether any further measures to improve their situation appear advisable, the German Federal Government has recently taken another initiative to further strengthen the legal position of witnesses and aggrieved persons in criminal proceedings. In February 2009, it submitted the "Draft Bill for an Act to Strengthen the Rights of Aggrieved Persons and Witnesses in Criminal Proceedings", or the Second Victims' Rights Reform Act (*2. Opferrechtsreformgesetz*), to the German Bundestag.<sup>6</sup> After passage by the Bundestag, the Act entered into force on 1 October 2009.<sup>7</sup> In the course of the legislative process, several additional measures were taken to improve victim and witness protection.

### II. LEGISLATIVE MEASURES OF THE SECOND VICTIMS' RIGHTS REFORM ACT

#### A. General Aims of the Second Victims' Rights Reform Act

The measures taken with the Second Victims' Rights Reform Act build on the legislative measures taken to date in Germany to improve the level of protection for victims and witnesses. In doing so, the fundamental allocation of roles stipulated in the system of criminal proceedings remains unaffected. Above all, the aim was to achieve practical improvements for the victims of crime without challenging the right of the accused to a fair trial in accordance with the rule of law.

In order to enhance the rights of victims and witnesses of crime in criminal proceedings as appropriate,

\* Legal Desk Officer, Division for Criminal Procedure (Court Proceedings), Directorate-General for the Judicial System, German Federal Ministry of Justice.

<sup>1</sup> Assembly Resolution 40/43 including Annex.

<sup>2</sup> Federal Law Gazette (BGBl), 1986 Part I, p. 2496.

<sup>3</sup> *Ibid*, 1998 Part I, 820.

<sup>4</sup> *Ibid*, 2004 Part I, 1354.

<sup>5</sup> Framework Decision of the European Union of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Official Journal of the European Communities, L 82/1.

<sup>6</sup> Bundestag Printed Paper 16/12098 (Government Bill).

<sup>7</sup> Federal Law Gazette, 2009 Part I, p. 2280.

and to ensure that their existing rights are enforced more consistently, the Act pursues three central goals:

1. To strengthen the procedural rights of aggrieved persons in criminal proceedings;
2. To strengthen the rights of juvenile victims and witnesses;
3. To strengthen the rights of witnesses.

In the following, referring to the various stages of criminal proceedings, I will examine the current situation in Germany in terms of victim and witness protection, as well as the challenges and problems identified in drawing up the Second Victims' Rights Reform Act and the specific measures taken with this legislation.

## **B. Strengthening the Procedural Rights of Aggrieved Persons in Criminal Proceedings: Measures taken in the Investigation and Prosecution Stage**

### **1. The Standing of Victims as the Complainant Party in Investigation Proceedings**

#### *(i) The Situation before the Second Victims' Rights Reform Act entered into Force*

In accordance with section 158 (1), first sentence of the German Code of Criminal Procedure (*Strafprozessordnung*, StPO), anybody may file information of a criminal offence orally or in writing with the public prosecution office, with authorities and officials in the police force, and with the local courts. In most cases, criminal prosecution is initiated as the result of information filed by the victim.<sup>8</sup> This is followed by the obligation on the part of the public prosecution office, which is the lead investigating agency in German criminal procedural law, to launch investigation proceedings and investigate the factual situation, provided that sufficient actual indications of a crime exist. This principle, which is set forth in section 152 (2) and section 160 (1) StPO, and obligates the public prosecution office to take action, is referred to as the *Legalitätsprinzip*, or the "principle of legality."

After completing its investigations, the public prosecution office considers whether public charges are to be preferred. If it does not prefer public charge, it must inform the complainant of its decision and indicate the reasons therefore. The reasons for not preferring public charges might include:

- No criminal offence has been committed.
- No evidence can be provided that the accused has committed such offence.
- Only a minor offence has been committed and the public prosecution office therefore does not consider it necessary to prefer public charges before a court of law.

Moreover, the public prosecution office must inform the victim of the criminal offence of the possibility of contesting this decision (section 171 StPO). The victim then has the opportunity to lodge a complaint within two weeks with the Office of the Public Prosecutor General against the decision of the public prosecution office (section 172 (1) StPO). If this complaint is dismissed by the Office of the Public Prosecutor General, the victim may move within one month to the Higher Regional Court for a decision on whether to reopen the investigation proceedings (section 172 (2-4) StPO).

These regulations generally apply irrespective of where the criminal offence was committed. This means that even before now, in accordance with section 158 (1) StPO, information of an offence committed abroad could likewise be filed with one of the domestic authorities indicated therein. For example, if the victim files information with the police – as in the overwhelming majority of cases – the latter must forward this to the competent public prosecution office; under its obligation to investigate pursuant to section 160 (1) StPO, the public prosecution office must establish how to proceed with the information, determining in particular whether German criminal law applies to the offence according to the provisions of the General Part of the Criminal Code (*Strafgesetzbuch*, StGB).

#### *(ii) Filing Information of a Criminal Offence committed Abroad under the Second Victims' Rights Reform Act*

Building on the existing legal foundation, lawmakers recognized the additional need for reform in those cases where information is filed in Germany of a criminal offence committed elsewhere in Europe.

A new section 158 (3) StPO makes clear that, for aggrieved persons who have fallen victim to a criminal

<sup>8</sup> Bock, *Kriminologie*, 2nd edition, 2000, p. 134 speaks of over 90% of cases.

offence in another Member State of the European Union, the option exists to file information of this offence in Germany. Furthermore, clear rules are now in place on how to proceed with this information – particularly in which cases it must be forwarded to the competent authorities abroad. There was previously no such regulation in German criminal law. This is significant for the victim particularly in cases where, due to the foreign dimension, criminal proceedings cannot be conducted in Germany.

(a) Duty to forward the information

Section 158 (3) first sentence StPO now stipulates that when an aggrieved person residing in Germany files information with a German law enforcement agency of a criminal offence committed in another Member State of the European Union, which for certain reasons is not prosecuted in Germany, the public prosecution office must forward this information to the agency responsible for criminal prosecution in the other Member State if requested to do so by the person filing the information. This may have a bearing in several scenarios:

- Information must be forwarded in this way when German criminal law does not apply to the offence.

Example: A British citizen residing in Germany files information of a robbery committed against him while on holiday in Spain, and would like this offence to be prosecuted in the United Kingdom. The German authorities are now explicitly obliged to forward the information of this criminal offence to the United Kingdom.

- A need for rules was also seen in cases where a German who has been aggrieved as a result of a criminal offence committed in another Member State wants to file information of this offence, for example, upon his return from holiday. In such cases, according to section 7 (1) StGB, German criminal law applies if the act is a criminal offence at the locality of its commission, or if that locality is not subject to any criminal jurisdiction. With the new rules, the information must also be forwarded if the criminal offence committed in the other Member State is indeed subject to German criminal law, but the public prosecution office has made use of its powers under section 153c (1) first sentence, number 1 StPO to dispense with prosecuting a criminal offence committed exclusively outside the territorial scope of the Code of Criminal Procedure. An obligation to forward information has therefore now been established for this scenario as well.

Example: A German citizen files information of grievous bodily harm committed against his person while on holiday in France. The offence is punishable by both German and French law. However, the German public prosecution office dispenses with prosecution in Germany in accordance with section 153c (1) first sentence, number 1 StPO because the offence has been committed outside the territorial scope of the German Code of Criminal Procedure.

Now the authorities are explicitly obliged to forward the information of this criminal offence to France, if so desired by the person affected.

(b) Requirement of motion

It is stipulated in sentence 1 of the new rules of section 158 (3) StPO that information must be forwarded only if the person filing the information, i.e. the aggrieved person, makes an express motion therefore. This is because, as a rule, it may be assumed that information of a criminal offence will be filed in Germany, and that the intention will be to further pursue prosecution of the offence in Germany itself.

(c) Limitations of the duty to forward

Sentence 2 of section 158 (3) StPO contains limitations of the duty to forward information.

- First of all, limitations apply to the duty to forward events in which both the fact of the offence itself and the circumstances detailed by the aggrieved person when filing information of the offence, which are relevant to its prosecution (e.g. the event of the crime and the evidence available), are already known to the competent law enforcement agencies abroad. In this case, a duty to forward the information nonetheless would entail a wasted effort.

- Furthermore, sentence 2 stipulates that, in the case of minor offences, a duty to forward information exists only if the person filing it was not in the position to file information of the offence in the other state.

Example: If a victim has a piece of costume jewellery with a value of 20 euros stolen abroad, and would have been able to explain the facts of the case to the local police in a comprehensible manner, the German public prosecution office would not be obliged to forward information filed of the offence in Germany to the law enforcement agencies abroad. This is because forwarding this information could entail considerable effort and costs, which in individual cases may not bear any relation to the severity of the offence.

- In the case of serious criminal offences, however, such limitations do not apply. It generally makes sense that in most cases people who have fallen victim to a criminal offence abroad will be somewhat hesitant to file information of this offence in a country where they do not know the language, and are not familiar with the institutions and how they function. It would seem unfair to burden persons who have only just been aggrieved as the result of a serious criminal offence with the additional decision of whether – given their individual case and the scale of the difficulties indicated – they can be expected to file information of the offence on location.

The new rules of section 158 (3) StPO also implement the Framework Decision of the European Union on the standing of victims in criminal proceedings,<sup>9</sup> namely Article 11 (2) thereof.<sup>10</sup>

## 2. Ensuring the Safety and Privacy of Victims and Witnesses

### (i) *The situation before the Second Victims' Rights Reform Act entered into Force*

Many measures have already been taken in Germany to ensure the safety and privacy of victims and witnesses.

#### (a) Witness Protection Harmonization Act

One example is the 2001 Witness Protection Harmonization Act (*Zeugenschutz-Harmonisierungsgesetz, ZSHG*),<sup>11</sup> which for the first time provided a clear legal framework for witness protection arrangements. According to section 1 ZSHG, a witness and his or her family or loved ones, if they are suited to witnesses protection arrangements and they agree to such arrangements, can be protected if, due to their willingness to testify, they are exposed to a threat to life, limb, health, freedom or considerable assets. Section 5 ZSHG stipulates, *inter alia*, that witnesses and their families and loved ones can be provided temporarily with new identities. As a risk-aversion measure, once the protection programme begins persons under protection are regularly removed from their current environment and accommodated elsewhere. Other concomitant measures taken include the provision of psychological care, temporary assistance with living costs, ensuring the security of those subject to protection by keeping them under observation, and the provision of new identity documents.

#### (b) Provision of address details

Privacy protection for victims and witnesses in criminal proceedings is also becoming increasingly important.

Many victims are afraid of giving their personal details when being examined. Especially in cases of serious violent crime, victims fear that the perpetrators might find out their addresses and seek revenge.

Generally, when being examined as witnesses, victims are obliged to state their first name, surname, age, profession and place of residence (section 68 (1) StPO). This serves to avoid mistaken identity. It is also designed to provide a reliable basis to judge credibility and to allow the parties to make inquiries.

<sup>9</sup> Framework Decision of the European Union of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

<sup>10</sup> Article 11 (2), subparagraph 2 of the Framework Decision stipulates in particular that the competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed.

<sup>11</sup> Federal Law Gazette, 2001 Part I, p. 3510.

However, there are exceptions (section 68 (2) and (3) StPO). In order to guard the addresses as well as the personal details of victims and witnesses, the previous law foresaw a range of precautions, providing for a graded system of secrecy options depending on the threat posed. This applied in principle both to witness examinations and the bill of indictment as well as the documents in the files. In practice, however, these rules were rarely followed, above all during investigation proceedings; this led to situations where witness addresses were misused.

Example: While surfing the Internet, an uninvolved witness stumbles upon the websites of right-wing extremist organizations, the content of which is punishable under German criminal law. He reports this to the police. In doing so the witness's address is put on record. The public prosecution office launches investigation proceedings. In being granted access to the files (through a defence attorney), the right-wing extremist organizations learn of the witness's address. The organizations release the address on the Internet with the tip-off: denouncer lives here.

*(ii) Measures to Shield Address Details pursuant to the Second Victims' Rights Reform Act*

The Second Victims' Rights Reform Act maintains the graded system of secrecy options, including the basic obligation for witnesses to provide personal details. However, the system has been better calibrated, and has also been extended as appropriate in order to make it work in practice as well to protect the rights of victims and witnesses.

(a) Witnesses' addresses

Section 68 (2) first sentence StPO preserves the possibility of granting permission to allow witnesses, when being examined, to provide their place of work, or another address at which documents can be served, instead of their "place of residence," i.e. their home address, if there is reason to fear that they or another person will be put in danger by providing the latter. Such a threat may be assumed if a witness or a third party has already been subject to or threatened with attack, or if a threat is perceived based on criminal indications, criminological experience or life experience.<sup>12</sup>

- First of all, the Second Victims' Rights Reform Act has made clear that the legal interests of the witness are at stake.
- The amendment to section 163 (3) StPO has also made clear that the provisions of section 68 StPO, which serve to protect witnesses' address details, must be observed by the police even at the investigation stage. Before now, these provisions applied primarily to the main hearing. In practice, the aim here is to attach greater weight to these provisions, which are in place to protect witnesses but had rarely been followed in practice, as well as to ensure that this information is now protected throughout the entire course of the proceedings.
- Furthermore, the right of witnesses in certain cases not to provide information on their place of residence, as already stipulated in section 68 StPO, has been extended as necessary – also with the aim of protecting witnesses. From now on, this option will also exist when there is reason to fear that the witness will be subjected to improper influence. This has a bearing, for example, in the case outlined above, when a completely uninvolved witness reports offences committed by right-wing extremist organisations that have already engaged in efforts to intimidate.
- These provisions may also have a bearing in stalking cases.

Example: A witness substantiates that testifying as a witness and providing her home address might well result in attempts to influence and harass her if this information is made available during proceedings. The alleged perpetrator, whom she has reported, has previously engaged in stalking and the witness has since moved. Such witnesses will now be given the option of providing e.g. the address of a victim support organization instead of their own. The court can then summon the witness via this address.

- Also, it is now clear that when her or his legal interests are at stake, the victim should be supported in naming an address other than her or his home address at which documents can still be served.

(b) Handling witnesses' data and the right to inspect files

With the second Victims' Rights Reform Act, section 68 (5) StPO now stipulates that when a threat

<sup>12</sup> Meyer-Goßner, *StPO*, 52nd edition, 2009, section 68, margin number 12.

exists, the information provided by witnesses regarding their identity or place of residence may not be made available even following their testimony to those who pose a threat to the witness or victim.

Example: During judicial examination it emerges that the accused has threatened a witness, but does not yet know where she lives. However, she has already provided her address during police questioning. From now on, she is permitted to refrain from providing her address, which means she must be summoned via a victim support organization. Also, the authorities now need to make sure that the accused cannot learn of her home address from inspecting the files. Any enquiries regarding credibility must then follow in the main proceeding.

In cases where there is reason to fear that witnesses will be in danger or improperly influenced, it is therefore justified, considering all concerns worthy of protection, for them not to have to provide their home address. In such cases the justified interest of witnesses in keeping their home addresses secret must generally take precedence over the interests of the other parties in the proceedings in receiving this information.

In addition, it is usually not the witnesses' place of residence that is vital in investigating the veracity of witness testimony, but rather the substance of the testimony itself and the conduct of the witness in testifying.<sup>13</sup> The investigation of the truth is best served when a victim can testify without fear of danger or influence.

(c) Witness's address in the bill of indictment

Corresponding to the measures already described, and with the aim of better considering the personality rights of all witnesses (and not only those in danger), the Second Victims' Rights Reform Act has now made it clear that witnesses' addresses need not be included in the bill of indictment (section 200 (1) StPO). The previous standard practice in Germany was to provide the full addresses in the bill of indictment of witnesses named therein. Several victim support organizations have complained that this automatically reveals the addresses of all witnesses to the accused in every proceeding, since according to section 201 the bill of indictment is to be communicated to the accused.

With the Second Victims' Rights Reform Act, section 200 (1) third sentence StPO now stipulates that the full address need not be stated when naming witnesses in the bill of indictment.

In the overwhelming majority of cases it is not necessary for the defendant to know witnesses' addresses. However, should this be necessary in specific cases for the purpose of verifying credibility, the defendant can obtain this information from the files upon inspection.

3. Providing Information for Victims of Crime

The right of victims to information in criminal proceedings is of singular importance even at the investigation stage. Indeed, people can exercise their rights only if they are aware of them.

(i) *Information Requirements according to the Previous Law*

The formerly applicable law already contained comprehensive information requirements for victims of crime. According to section 406h StPO, victims were to be made aware in particular of the following rights:

- The possibility according to section 406d StPO of being notified, upon application, not only of the outcome of proceedings, but also whether custodial measures against the defendant or convicted person have been ordered or terminated, and whether relaxation of the conditions of detention or leave from detention has been granted for the first time; this applies if the victim can show a legitimate interest in receiving this information and if there is no overriding interest on the part of the defendant or convicted person which constitutes an obstacle to providing such information.
- The possibility as stipulated in section 406e StPO for an attorney to inspect the court files on behalf of the victim, and/or for the victim to himself receive information and copies from the files, which is required e.g. for asserting civil claims.
- The possibility according to section 406f StPO of availing oneself of the assistance of an attorney or of being represented by such attorney in criminal proceedings; or, if being examined as a witness, the

<sup>13</sup> Decision of the Federal Court of Justice, *Neue Zeitschrift für Strafrecht* (NStZ), 1990, p. 352.

possibility that the witness may bring along a person he trusts to the examination (section 406f (3) first sentence StPO).

- The possibility provided by section 403 et seqq. StPO of asserting a claim for damages against the wrongdoer as early as the criminal proceedings stage by means of a so-called “adhesive procedure” (*Adhäsionsverfahren*).

(ii) *Changes to the Provision of Information to Aggrieved Persons with the Second Victims' Rights Reform Act*

The information requirements described above are maintained by the Second Victims' Rights Reform Act and have been further extended as follows:

(a) Further information requirements:

- In addition, a duty to inform victims of a potential entitlement to benefits pursuant to the Victims' Compensation Act (*Opferentschädigungsgesetz*) was adopted. These can be considered if, as a result of the offence, the aggrieved person has suffered serious health damage. Without the relevant information, aggrieved persons are often not aware that the Victims' Compensation Act exists.
- Similarly, section 406h StPO number 4 creates a duty to provide information on the Act on Civil Law Protection against Violent Acts and Stalking (*Gewaltschutzgesetz*) and the possibilities created by this act, which allow the aggrieved person to move for the issuance of an interim injunction to protect against further aggravement.
- Like all other duties to inform, the duty to inform victims of the possibility of receiving help and support from victim support organizations has also been made mandatory. This is because, apart from some exceptions, there is no discernible reason why information should not be provided, particularly since it is clear that no additional effort is required to employ the standard procedure of distributing informational leaflets.
- Since the amendment to section 80 (3) of the Youth Court Act (*Jugendgerichtsgesetz*, JGG) came into force on 31 December 2006, it is permissible in certain cases for a private accessory prosecutor to join the public prosecution against a juvenile defendant, which means information must now be provided regarding section 80 (3) JGG as well.
- With the addition of the wording "in particular" (*insbesondere*) it has been made clear compared with the previous text that in specific cases it may also be necessary to inform aggrieved persons of other possibilities, e.g. accommodation in a women's shelter or applying to prohibit the residents' registration office (*Einwohnermeldeamt*) from disclosing information.

(b) Providing information at an early stage

In particular, it seemed essential to inform victims of their rights as early as possible. In practice, however, this was already being done. But with the amendments in section 406h first sentence StPO, it is now *explicitly regulated* in law that the information required by section 406h StPO must be provided at the earliest possible stage.

(c) Information in writing

Furthermore, section 406h first sentence StPO stipulates that information must generally be provided *in writing* so that it is available to aggrieved persons at all times. This is also necessary because aggrieved persons are often unable to fully grasp the information provided verbally in their pre-trial appointments with the law enforcement agencies – appointments which they often find disconcerting. Since the overwhelming bulk of information is already provided in special leaflets, no major practical changes were needed here.

(d) Information for the aggrieved person in a language he or she understands

Section 406h first sentence StPO stipulates that, to the extent possible, information must be provided in a language that is understandable to the aggrieved person. This requirement is also consistent with the rights enjoyed by defendants in criminal proceedings. It necessitates the translation of the leaflets generally provided to aggrieved persons at least into all “standard” languages. In practice, this reform did not entail a major overhaul in Germany since those leaflets made available to crime victims had already been translated into a great number of the more commonly used languages, including almost all European languages as well as Arabic and Vietnamese.

### C. Strengthening the Procedural Rights of Aggrieved Persons in Criminal Proceedings: Measures taken in Court Proceedings

#### 1. Joining the Prosecution as a Private Accessory Prosecutor

From the point of view of victim protection, it is important for victims to be able to join the public prosecution as a private accessory prosecutor (*Nebenkläger*). Joining the public prosecution as a private accessory prosecutor gives the aggrieved persons named in section 395 StPO comprehensive powers to participate in the entire proceedings starting with the preferment of public charges.<sup>14</sup> Private accessory prosecutors have the possibility of contributing actively to the proceedings and influencing them by means of statements, questions, motions and even appellate remedies.

##### (i) *The Situation before the Second Victims' Rights Reform Act entered into Force*

The participation of a private accessory prosecutor regulated in sections 395 through 402 StPO was permitted in the case of certain serious crimes, an exhaustive list of which could be found in section 395 (1) and (2) StPO. These included not only serious sexual offences, bodily harm, pimping and human trafficking, for example, but also defamation (cases which must, however, demonstrate a certain severity to even warrant the preferment of public charges). The group of individuals entitled to join the public prosecution as a private accessory prosecutor has been gradually extended since the fundamental reform of this right in 1986. As part of this process, the Sixth Criminal Law Reform Act of 28 January 1998<sup>15</sup> and the Witness Protection Act of 30 April 1998<sup>16</sup> added victims of human trafficking and victims of certain cases of sexual abuse. With the Victims' Rights Reform Act,<sup>17</sup> which entered into force on 1 September 2004, the offences stipulated in the Act on Civil Law Protection Against Violent Acts and Stalking were added to the catalogue under section 395 (1) number 1 StPO, and family members of those killed were also given the power to join the public prosecution as private accessory. With the 37th Criminal Law Amendment Act (37. *Strafrechtsänderungsgesetz*),<sup>18</sup> which entered into force on 19 February 2005, victims of other statutory definitions of human trafficking were added to the group of people entitled to join the public prosecution as private accessory prosecutor, as were victims of stalking with the Act to Criminalize Stalking (*Gesetz zur Strafbarkeit beharrlicher Nachstellung*),<sup>19</sup> which entered into force on 31 March 2007.

##### (ii) *Changes introduced by the Second Victims' Rights Reform Act*

As opposed to a further step-by-step expansion of the group of persons entitled to join the public prosecution as a private accessory prosecutor, the Second Victims' Rights Reform Act strives to provide a coherent overall concept and new direction for section 395 StPO. This overall concept was designed to revolve consistently and recognisably around the criterion of protecting those victims who are particularly vulnerable. With this concept, the Federal Government legislative initiative followed the recommendations of academics and practitioners.

##### (a) Legal policy implications

As early as in the 1984 report for the 55th German Jurists' Forum (*Deutscher Juristentag*), which focused primarily on the rights of aggrieved persons in criminal proceedings, it was stated that particularly vulnerable aggrieved persons – above all the victims of serious crimes of aggression<sup>20</sup> – should have direct, priority access to the institution of private accessory prosecutor without problematic auxiliary arrangements.

This concept also formed the general basis for the creation of the 1986 Victim Protection Act.<sup>21</sup> This was why the entitlement to join the public prosecution as private accessory prosecutor was created primarily for persons aggrieved as the result of a serious criminal offence against their highly personal legal interests and who can be considered particularly vulnerable according to criminological and victimological insights.<sup>22</sup>

<sup>14</sup> cf. Meyer-Goßner, *StPO*, 52nd edition 2009, before section 395, margin number 1.

<sup>15</sup> Federal Law Gazette, 1998 Part I, p. 164.

<sup>16</sup> *Ibid*, p. 820.

<sup>17</sup> Federal Law Gazette, 2004 Part I, p. 1354.

<sup>18</sup> *Ibid*, 2005 Part I, p. 239.

<sup>19</sup> *Ibid*, 2007 Part I, p. 354.

<sup>20</sup> Rieß, *Gutachten* 55. *Deutscher Juristentag*, C 85, margin number 123.

<sup>21</sup> cf. Bundestag Printed Paper, 10/5305, p. 8 f.

<sup>22</sup> *Ibid*, p. 11.



Academic studies also confirm that the institution of private accessory prosecutor should be oriented even more consistently towards the *vulnerability* of the victim – where this vulnerability stems in particular from the gravity of the criminal offence, directed against the victim's highly personal legal interests – as well as towards the *consequences* of the offence for the victim. Here, it has been established that for victims testifying as witnesses, apart from the support provided in dealing with the personal consequences, the more severe the injury the more important it is for the victim to be able to influence the course of events in the criminal proceedings.<sup>23</sup>

Further, for quite some time victim support organizations have been calling for other crimes typically involving a particularly serious impact on the aggrieved person, such as robbery, particularly serious cases of coercion and blackmail, as well as aggravated theft, also be included in the group of crimes subject to joinder.

(b) Qualifying for joinder as private accessory prosecutor according to the Second Victims' Rights Reform Act

With the Second Victims' Rights Reform Act these demands have been met for the most part. The power to join the public prosecution as private accessory prosecutor has now been oriented more towards the need to protect those victims who have been particularly seriously affected – above all, victims of serious acts of aggression and sexual crimes.

- This means that certain offences, which cannot typically be classified as serious and which do not entail serious consequences for the victim (such as defamation), no longer automatically entitle the victim to join the public prosecution as private accessory prosecutor.
- On the other hand, a fall-back clause was created, which was designed to give the victims of *all crimes*, especially those against highly personal legal interests – of which some are listed as examples “in particular” – the right to join the public prosecution as a private accessory prosecutor if it appears expedient to do so, particularly on account of the serious consequences of the offence.
- Whether particular reasons exist depends primarily on how serious the consequences of the offence are for the victim. The wording is thus geared towards the former version of section 395 (3) StPO, which gave victims the power to join the public prosecution as private accessory prosecutor in the case of negligent bodily harm if this was expedient i.e. due to the serious consequences of the offence. With the imprecise legal term “particular reasons” (*besondere Gründe*), the goal of continuing to specify the seriousness of the consequences of the act is to underscore that crimes which inflict no serious consequences on the victim do not entail the right to join the public prosecution as private accessory prosecutor.

Example: In average cases of negligent bodily harm in road traffic, the victim is, as before, not entitled to join the public prosecution as private accessory prosecutor if – as is generally the case – he has not suffered serious consequences as a result.

- Serious consequences will be demonstrated in particular if the aggrieved person has endured or can be expected to endure a certain degree of bodily or psychological harm. This may consist of health damage, traumatization or considerable shock. In addition, “particular reasons” may be established, as has been the case so far, if for example the victim has to defend himself against serious accusations of guilt.<sup>24</sup> The provision more thoroughly addresses the vulnerability of victims who have been affected by the serious consequences of a criminal offence against their highly personal legal interests.

## 2. Assistance for Aggrieved Persons: the Situation before the Entry into Force and Reforms of the Second Victims' Rights Reform Act

Aside from joining the public prosecution as private accessory prosecutor, which as stated above is an option available to certain aggrieved persons only, the legal institution of attorney assistance is also important for victims of criminal acts. Even previously, the law stipulated that all aggrieved persons may avail themselves of the assistance of an attorney in criminal proceedings (sections 406f, 406g StPO). The Second Victims' Rights Reform Act has considerably simplified these provisions and thereby made them easier to apply. For example, the law now states expressly and in detail that the counsel of an aggrieved

<sup>23</sup> cf. Kilchling, *Opferinteresse und Strafverfolgung*, 1995, p. 291.

<sup>24</sup> cf. Hilger in Löwe/Rosenberg, *StPO*, 25th edition, section 395, margin number 18.

person with the right to join the public prosecution as private accessory prosecutor is to be informed of the date of the main hearing. Until now, it was only the private accessory prosecutor him or herself who had to be informed. The choices an aggrieved person has in selecting legal counsel have also been extended (section 138 (3), section 142 (1) StPO).

Example: The victim of a criminal offence may now be represented by a trusted person with knowledge of the law, who does not necessarily need to be admitted as an attorney. This representative must, however, be approved by the court beforehand (section 138 (2) StPO).

### 3. Rules on Legal Aid for Victims

Also of great practical significance, especially for joining the public prosecution as private accessory prosecutor, are the provisions of section 397a StPO. Section 397a (1) StPO stipulates the cases in which an attorney is to be appointed free of charge as counsel to the private accessory prosecutor. Section 397a (2) StPO contains the criteria under which legal aid must be provided to the private accessory prosecutor. The provisions of section 397a StPO also apply for the counsel of aggrieved persons when these persons are entitled to join the public prosecution as private accessory prosecutor, but do not wish to join the proceedings as such.

#### (i) *The Situation before the Second Victims' Rights Reform Act entered into Force*

Until the Second Victims' Rights Reform Act entered into force, the provisions of the former Act were relatively confusing due to the many references; likewise, the Act did not seem entirely consistent.

#### (ii) *Changes introduced by the Second Victims' Rights Reform Act*

With the Second Victims' Rights Reform Act the provisions of section 397a StPO were redrafted. In particular, Paragraphs 1 and 2 are of great practical significance.

##### (a) Redrafting of section 397a (1) StPO

The list of criminal offences under section 397a (1) StPO concerning the appointment of a counsel for particularly vulnerable private accessory prosecutors has been made more understandable and has been extended as appropriate.

- Numbers 1 and 2 list criminal offences for which a so-called "victim's attorney" (*Opferanwalt*) must be appointed for the adult victim or his or her family without further requirements and regardless of the victim's or his or her family's financial condition. These crimes include rape or trafficking in human beings for the purpose of sexual exploitation (number 1) and murder/attempted murder (number 2).
- According to the new section 397a (1) number 3 StPO, if they are already affected or are expected to be affected by the particularly serious consequences of an offence entailing serious bodily or mental harm, the victims of other serious crimes of aggression are now given the option as private accessory prosecutor of being assigned a victim's attorney irrespective of the conditions governing legal aid. This does not only cover serious bodily harm, as was the case previously. The crimes of kidnap, abduction, the abduction of minors, deprivation of liberty, kidnapping for extortion and hostage taking are now included as well.
- In section 397a (1) number 4 StPO, the list of offences has been extended for which it is stipulated that a victim's attorney has to be appointed free of charge for children, youths and victims who cannot themselves safeguard their interests sufficiently, or cannot reasonably be expected to do so. The provision has now been expanded i.e. to include cases of abandonment (section 221 StGB) as well as abuse of a position of trust (section 225 StGB), offences against personal freedom, such as human trafficking or taking hostages and stalking (section 232 through 235 StGB, section 238 through 239 StGB), especially serious cases of using threats or force to cause a person to do, suffer or omit an act (section 240 (4) StGB) – which in particular includes forced marriage and forced sexual activity, robbery and blackmail and use of force or threats against life or limb (sections 249 and 255 StGB). The aim of the expansion is to enable appointment of a victim's lawyer free of charge to that specified group of persons who have already been justifiably recognized as particularly vulnerable. According to the new rules, if one of the offences stipulated in number 4 is committed, a victim's lawyer may be appointed without further requirements and irrespective of the financial condition of the affected youth or helpless victim.

(b) Reform of section 397a (2) StPO

The provisions of section 397a (2) StPO, stipulating the conditions which govern the award of legal aid to private accessory prosecutors, were redrafted as well.

In line with the justified demands of victim support organizations, the criterion “if the legal and factual situation is complex” was removed. This stipulation corresponded to the wording in section 140 (2) StPO, which governs the conditions governing the defence required for the accused. A legal and factual situation is considered complex if, from the point of view of the private accessory prosecutor, the facts of the case are extensive, intricate or difficult to clarify; if it appears necessary to bring in expert opinion; if special knowledge is required to assess the facts; if the private accessory prosecutor needs to submit motions for the admission of evidence, or if complicated/contentious legal issues are to be decided (e.g. measures that affect the personal life of the private accessory prosecutor; excluding the public, or removing the accused). In practice, however, this stipulation led to unfairness.<sup>25</sup>

This is because, even in *straightforward* cases where the private accessory prosecutor is equally unable to safeguard his or her own interests sufficiently, or cannot reasonably be expected to do so – for example, if he or she has to deal with the serious consequences of an offence – a right to legal aid should be granted if needed. The current version of these regulations is now based on nothing other than whether the private accessory prosecutor is in the position to safeguard his or her interests and whether this can reasonably be expected of him or her.

Nevertheless, according to the new legislation, those private accessory prosecutors who need it will as, a general rule, still enjoy a right to legal aid where the legal and factual situation is complex, since without the assistance of an attorney in these cases they would likely be unable to safeguard their interests to a sufficient degree.

#### **D. Strengthening the Rights of Child and Juvenile Victims and Witnesses**

For children and juveniles who have fallen victim to a criminal offence or who must testify as witnesses, the situation in criminal proceedings is often particularly difficult. They are still in their development stage, which means that extra care must be taken to shield them from stress. The StPO therefore contains a catalogue of provisions to protect juvenile victims and witnesses. In contrast to the situation with adults, these include, for example, extended powers to institute audio-visual recordings for witnesses (section 58a (1) second sentence, number 1; section 255a (2) StPO), and the extended right to exclude the accused and the general public (section 247 second sentence StPO; section 172 number 4 of the Courts Constitution Act, GVG). Moreover, a multitude of special provisions that serve to protect children and juveniles are in place in the guidelines to be followed by public prosecutors.<sup>26</sup> Thus, according to number 19, paragraph 1 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*, RiStBV), multiple examinations of children and youths prior to the main hearing are to be avoided wherever possible due to the associated mental strain put upon these witnesses. According to number 135, paragraph 3 RiStBV, children and juveniles are preferably to be examined prior to other witnesses, and are to be supervised and cared for in the waiting rooms to the extent possible. For sex crimes, number 222, paragraph 1 RiStBV stipulates that for the examination of children, an expert is to be brought in with special knowledge and experience in the area of child psychology. In the event that a person accused of a sexual offence who lives in the same household as, or is able to exert a direct influence on the victim is released, number 221 paragraph 2 RiStBV stipulates that the youth welfare office (*Jugendamt*) is to be informed immediately so that the measures necessary to protect the victim can be taken.

Until now, however, this protection was only stipulated in Germany for juveniles under 16. With the Second Victims' Rights Reform Act, the cut-off age in the StPO and GVG has been raised to 18 years in line with those limits specified in various international agreements such as the United Nations Convention on

<sup>25</sup> *Ibid*, section 397a, margin number 9.

<sup>26</sup> Practical suggestions in Blumenstein, *Kindliche Opferzeugen im Strafprozess – unkindgemäße Schicksale und Verfahrensweisen*, Journal of the Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen, 28, 2002; Kilian, *Opferschutz und Wahrheitsfindung – ein Widerspruch?*, Deutsche Richterzeitung, 256, 1999

the Rights of the Child<sup>27</sup> or the EU Charter of Fundamental Rights.<sup>28</sup>

### **E. Strengthening the Rights of Witnesses**

The victims of criminal offences must usually testify as witnesses in criminal proceedings as well. They, like all witnesses in criminal proceedings, attend to their civic duty to appear for examination and to testify truthfully. This testimony is usually indispensable for ascertaining the truth. The Second Victims' Rights Reform Act takes account of the important position that witnesses hold in criminal proceedings by paying even greater attention to their personal rights than has been the case so far.

#### **1. Regulating the Duty to act as Witness**

To start with, for reasons of legal clarity and legal security, the generally recognised duty of a witness to testify in court and before public prosecutors was laid down in the law (section 48 (1) StPO).

#### **2. Legal Counsel**

Section 68b (1) StPO provides a statutory basis for the rule that witnesses may call in the assistance of an attorney in all examinations, so long as this does not jeopardize the purpose of the investigation. Beforehand, this right was already guaranteed in Germany on the basis of a decision of the Federal Constitutional Court.<sup>29</sup> But the statute now explicitly clarifies how the right is to be enforced, as well as specifying the grounds for exclusion, based above all on whether the presence of an attorney during the examination would jeopardise the purpose of the investigation.

##### *(i) Grounds for Exclusion*

An attorney can be excluded from an examination if certain facts justify the assumption that his presence would "not merely insignificantly" jeopardize the orderly taking of evidence.

Example: A witness is examined in a fraud case and wishes to bring in an attorney as counsel during the examination. This attorney is suspected of participation in the underlying offence on the basis of certain facts. He or she now can be excluded as counsel from the witness examination.

##### *(ii) Legal Counsel for Particularly Vulnerable Witnesses*

In section 68b (2) StPO the rules governing the assignment of an attorney to assist particularly vulnerable witnesses have been simplified. The only deciding factor now is whether or not particular circumstances prevent witnesses from being able to exercise their rights themselves during examination. If so, they are assigned an attorney for the duration of the examination.

Example: A young woman is repeatedly beaten and abused by her husband. Because of what has happened she is frightened and under heavy psychological strain. Due to her psychological state, there are concerns that she will not be able to exercise her rights; e.g. the right to refuse to give testimony and the right to object to questions, or that she will not be able to voice her desire to exclude the general public from the court hearing. It might make sense in this case to assign the young woman an attorney just for the examination, in order to help and advise her regarding her rights.

##### *(iii) Court Decisions on Negative Decisions by the Public Prosecution Office*

Concomitant to this, the powers of witnesses to bring about a court decision regarding negative decisions by the public prosecution office pursuant to section 68b (1) StPO have been regulated. (Section 161a (3) StPO alongside various subsequent changes.)

Example: A witness whose counsel has been excluded from the examination by a decision of the public prosecution office can apply for a court decision at the court which is responsible for investigating the facts of the case (so-called examining judge).

<sup>27</sup> Federal Law Gazette, 1992, Part II, p. 990.

<sup>28</sup> Official Journal of the European Communities, 18.12.2000, C 364/1.

<sup>29</sup> See for example the decisions of the Federal Constitutional Court, volume 38, page 105.

### III. CONCLUSION

The constitutional order of the German Basic Law (*Grundgesetz*) also obliges state organs to stand in defence of the victims of criminal offences and to respect their needs. This is particularly relevant when children and juveniles fall victim to crime. As the weakest members of society, they require special protection. It also applies for particularly vulnerable *adult* victims of criminal offences, such as those who are aggrieved as the result of sex crimes or serious violent crime. In providing this protection, lawmakers face the challenge of achieving the best possible protection for the victims of crime without obstructing the justified defence rights of the accused in doing so. Any measures to protect victims must be fundamentally compatible with the purposes of criminal proceedings, since state organs are obliged first and foremost to investigate criminal offences and to establish guilt or innocence on the part of the accused in fair proceedings conducted in compliance with the rule of law. Under this premise the aim should be to take the most concrete measures possible: above all, the victims of criminal offences need the best possible protection in practice. With the Second Victims' Rights Reform Act, lawmakers have faced these challenges once again. Specialists in the field and victim support organizations have already voiced their opinion that these challenges have been successfully met.

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# PARTICIPANTS' PAPERS

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## VICTIMS OF CRIME IN PAKISTAN

*Muhammad Athar Waheed\**

### I. INTRODUCTION

Pakistan is a heterogeneous developing society undergoing a metamorphosis, where the state has still a weak writ of the governance required to ensure rule of law and democratic values. The criminal justice system is contaminated by corruption, political intervention, maladministration and a low level of capacity building. The legal framework available for the rights of victims is deficient and defective. The policies of the justice system are based on a product of a whimsical approach to leadership rather than research.

Victimology is <sup>1</sup>always a neglected field of study in both governmental and scholarly pursuits in the field of criminology. Victims are still forgotten entities throughout the entire criminal justice system. The needs of the victims of crime have not been identified and no forward-looking policy is available to deal with the current issues involved in victimization.

The level of victimization has increased because of a startling rise in heinous crime and terrorism but the countermeasures taken by the state are insufficient and unsatisfactory. In this paper, victim treatment at all stages of the criminal justice system in Pakistan has been assessed in view of available primary and secondary sources of data and in the light of United Nations Declaration on the Basic Principles on Justice for Victims of Crime and Abuse of Power, the UN Handbook on Justice for Victims and the Guide for Policy Makers on the implementation of UN Declaration. The Criminal Justice Assessment Toolkit has been taken as a yardstick for analysis of cross-cutting issues confronted by the victims of crime in the criminal justice system. Although it is difficult to make an accurate assessment because of non-availability of complete data, participant observation has been utilized to draw some conclusions. The data of government institutions is not truly reliable as focus is only on the quantitative aspect of crime. The past and present policies of government to enhance appropriate measures have also been analysed. More focus in this paper is given to the identification of main issues affecting fair treatment for the victims of crime and its possible solutions.

### II. APPRAISAL OF THE CRIMINAL JUSTICE SYSTEM

The criminal justice system in Pakistan is inherited from colonial masters and there remain many inherent contradictions between the colonial enactments and the indigenous culture of the society. The legal system of any society is always an extension of its traditional social control mechanism but importation of foreign laws in any society creates a legal cultural lag which inhibits the creation of a favourable ambience for victim treatment. The interaction of cultural values imported with the legal system has led to many complexities in the multilayered criminal justice process. The traditional justice system, in the form of local arbitration councils called *panchiat* or *jirga*, has been eroded. The parallel application of Islamic laws and English laws created a messy situation where there are many hurdles in providing appropriate measures for victim treatment.

The arrangements of the criminal justice system are deficient but the application of laws, the culture of institutions and the style of management has miserably affected the cause of victims. Moreover, the social fabric is vivisected into different castes, clans, religious sects and social groups where there is more focus on vengeance for the victim and less hope for justice from the state.

Police, prosecution, courts and prison are traditionally the four components of a criminal justice system. The police are subservient to the provincial government and are highly politicized in both policies and administration. It is still a force rather than a service. Prosecution was a part of the police system

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\* Senior Superintendent of Police, Regional Investigation Branch, Rawalpindi Regional Police Force, Pakistan.

but has now been made independent by the new Prosecution Service. The courts are over-burdened but now, after the revival of the defunct judiciary with the restoration of the Chief Justice of Pakistan and the announcement of a new judicial policy, there is a hope for better victim treatment. However, a systemic approach at national level is still lacking.

### III. PATTERNS OF VICTIMIZATION

The crime statistics in Pakistan present a horrible picture of victimization. There are many issues involved in the process of data collection. This data is based on First Information Reports registered at local police stations. There are no independent sources to assess the real depiction of victimization in Pakistan. The annual crime survey is not published in the country. Moreover, there is an element of confidentiality involved in the process of access to data. The National Police Bureau at national level collects the relevant data from the four provinces and the capital territory of Islamabad but it is not more than a single statement about the comparative figures of crime. A glaring flaw in the process of data collection is noticeable as qualitative aspects of data analysis are terribly omitted, which does not allow for a holistic approach towards crime and victimization.

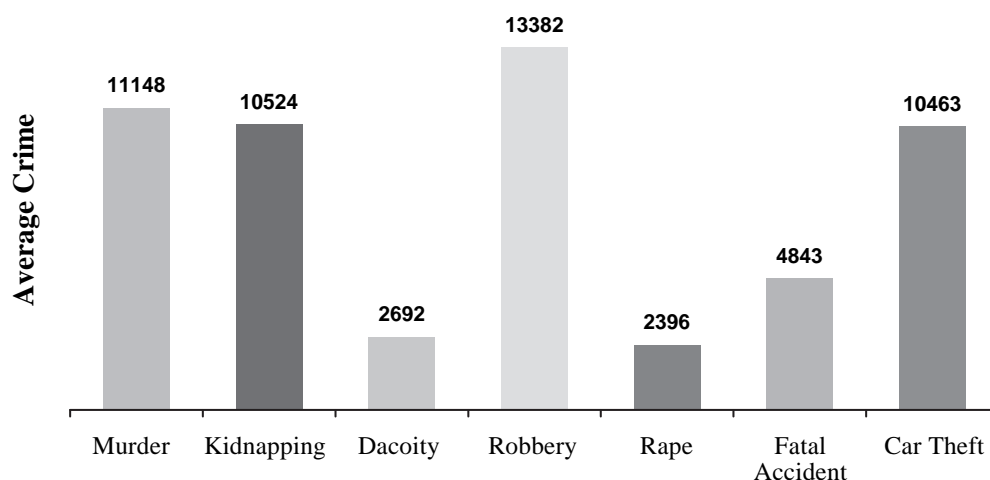
The following table shows crime statistics from 2000 to 2008, with an increased percentage of crime in this time period.

**Table 1: Crime Reported (Yearly) (2000 to 2008)**

Year	All crimes	Murder	Kidnapping	Dacoity	Robbery	Others
2000	<b>388,909</b>	8906	7126	1297	7513	304081
2001	378301	9528	6546	1372	7612	304605
2002	399558	9396	6938	1631	8235	325322
2003	400680	9346	8450	1821	8434	321087
2004	440578	9719	9537	2338	11851	350760
2005	453264	9631	9209	2395	12199	358223
2006	537855	10048	10431	2895	14630	428768
2007	538048	10556	10725	3260	16639	432100
2008	592,503	12059	15135	4529	19943	465908
<b>Increased % (2000 to 2008)</b>	<b>52%</b>	<b>35%</b>	<b>112%</b>	<b>249%</b>	<b>165%</b>	<b>53%</b>

The above data, collected from National Police Bureau of Pakistan, reflects that there is a constant increase in overall victimization. Some categories of crime are missing in this table. The category of 'Others' is used for miscellaneous crime. The average rate of victimization in different categories from 2000 to 2008 is given as in the following table.

**Table 2: Average Rate of Victimization per Year (Per Head)**



The average annual crime per year in Pakistan is 516,212 and the total population of the country is about 180 million which means that one out of 348 citizens in the country is related to one type of crime in one year. This is not an exact victim ratio because crime data also includes cases involving arms and narcotics. But it must be noted that more than one person can be victimized in a single case; for example, one suicide bomb attack in Peshawar city in December 2009 killed more than one hundred people. The alarming increase in homicide is a crucial challenge for law enforcers. The right to life is the first fundamental human right. Land, honour and money disputes are three major factors in murder cases. Moreover, murder is also a compoundable offence and in many cases victims compromise because of social pressures and even out of greed for money.

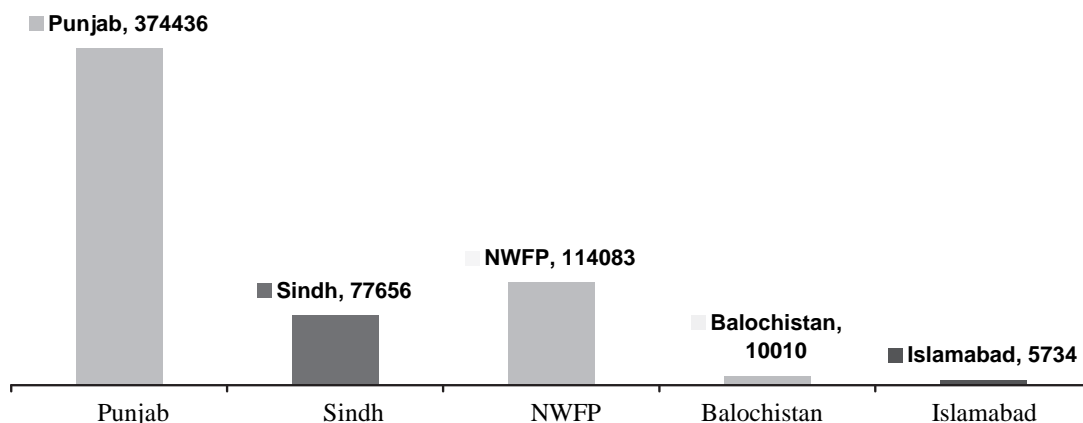
In the above table the average rate of victimization in rape, fatal accidents and car theft is calculated from the available data from 2006 to 2008. The statistics regarding kidnapping/abduction are also distressing. But more disquieting are the increased cases of kidnapping for ransom, up from 285 in 2006, to 420 in 2007, to 619 in 2008. This unprecedented increase in kidnapping for ransom is due to modernized transportation networks (motorways) and cellular technology. The police lack modern equipment like GPS interception systems which are only available with Inter-Services Intelligence, an Army-based agency.

Victimization in fatal road accidents is also startling. The total number of people who died in road accidents in 2008 is 4,494, which is almost 40% of the total average rate of homicide in Pakistan. About 2,750 people, mostly women, were victimized by rape in 2008, which is again an increase from 2,240 and 2,200 in 2006 and 2007 respectively.

The specific data about the victimization of special groups is not available at national level. These vulnerable groups are victimized in different ways. The sex ratio in Pakistan, 105.7 men to every 100 women, differs from most countries. Women constitute almost 49% of the total population and they are subjected to family violence, abduction, rape and female child labour. There are also some cases of acid throwing by family members. Customs like *wani* and *karokari* present the horrible state of female victimization. In *wani*, a woman of one tribe is given in forced marriage to the other party as a matter of compensation for a crime or wrongdoing committed by a member of her tribe or clan. In *karokari*, a woman is sentenced to death if found in a compromising situation with a man or is suspected of involvement with a man. Such customary practices are still prevalent in the far away rural areas of Sindh and Punjab. In some areas of the North West Frontier Province, women are sold in marriage by their relatives. Bounded labour in the feudal system still poses a serious challenge to the state as a guardian of human rights. Children are subjected to kidnapping for ransom and sexual assaults. In most kidnapping cases, a child is killed after taking the ransom amount. Moreover, there are cases of child abuse in religious schools. The rate of crime reporting to police by women and children is much lower than that of male adults. Minorities, who are often financially downtrodden, always face discrimination in the criminal justice process.

Punjab, being most populous province, has the highest number of crimes. The province-wise distribution of crime in 2008 is given below.

**Table 3: Crime per Province**





The victimization of innocent citizens by terrorists in North West Frontier Province, Punjab and Balochistan is again shocking. There were about 115 suicide terrorist attacks in Pakistan in 2009 with 800 fatalities and more than 5,000 injured. The writ of government in the tribal areas is becoming weak. Moreover, the increased number of IDPs (Internally Displaced Persons) presents another bleak picture of victimization in Pakistan. The fight between state and non-state elements has rendered thousands of innocents homeless and penniless. The insufficient arrangement by the state institutions worsened the situation for those persons, most of whom are from Swat Valley and Waziristan.

There is not a single scientific crime victim survey conducted by any institution in the country. As per the results of an unscientific crime victim survey conducted by the Human Development Foundation, about 33.65% of citizens stated that they personally had been victims of crime at some point in their life and 67.31% stated that a relative had been a victim of crime. About 46.15% declared corruption in the justice system as the most important internal reason for lack of security in Pakistan. Only 0.96% of the people had full confidence in the court system.<sup>1</sup>

In summary, patterns of victimization in Pakistan are horrific and require very sincere efforts on the part of the state to initiate a systemic change in the criminal justice system to improve the conditions for better victim treatment.

#### IV. LEGAL AND REGULATORY FRAMEWORK

The legal system in Pakistan is a combination of different elements which are insufficient to meet the current challenges to improve the measures for victim treatment. The supreme law of the land is the Constitution of Pakistan, 1973. It passed through different phases but the fundamental rights specified are to some extent based on the United Nations Universal Declaration of Human Rights, 1948. Fundamental rights are enumerated from Article 8 to Article 28; Article 8 specifically stipulates that any other enactment clashing with fundamental human rights shall be null and void. Moreover, principles of policy are contained in Articles 29 to 40 but these are general guiding principles and lack mandatory implementation.

The Pakistan Penal Code, 1860; the Criminal Procedure Code, 1898 and the Police Rules 1934 are old British Empire enactments which provide the legal framework for the rights of victims. This time lag is not bridged in view of socio-cultural changes, modified patterns of victimization and emerging needs of the victims of crime. Some amendments regarding offences against women have been made and some special laws for the protection of children have been introduced but their effective utilization is still under question.

With regard to religious minorities and women, some provisions of law are discriminatory. Section 295-c of the Penal Code, relating to blasphemy, has been misused by some religious groups and the punishment for the offence is the death penalty. Moreover, Article 17 of The Evidence Act, 1984 treats the evidence of female witnesses as worth half that of male witness in financial matters and in other matters it is at the discretion of the court to take female witnesses as full or half witnesses. These two issues have been highlighted by the human rights commission but there is strong reluctance on the part of government to amend this law in view of expected reaction from extremist religious groups.

It is also noteworthy that laws related to offences against the state and religion are stronger than the laws for the protection of victims, especially special groups like minorities, women and children. The legal framework related to state and religion is misused. There is a long list of missing persons, especially those who disappeared during the regime of President Musharraf. It is very difficult to ensure justice for the victim when the state itself is an offender. The application of laws and societal values affect the role of victim in the criminal justice process.

There is also a tendency of false accusation, which is indirectly a form of victimization through abuse of power. False allegations are reported to the police and it takes a long time for the falsely accused person to establish his or her innocence. Section 182 of Pakistan Penal Code deals with false information given to the police, and does not empower police to take direct action without the approval of the court.

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<sup>1</sup> Yespakistan.com- [http://www.yespakistan.com/security/survey\\_result.asp](http://www.yespakistan.com/security/survey_result.asp)

The bifurcation of offences into cognizable and non-cognizable offence also affects the rights of victim. In cognizable offences, the police take direct action whereas in non-cognizable offences, the permission of the court is necessary. This distinction does not exist in other countries as it causes unnecessary delays in justice process. As per data from the Gujranwala police district, about 44% of the complaints received in the complaint cell of the police chief were related to family and land disputes which are non-cognizable for police and are related to civil litigation. There is a tendency by complainants to convert their civil matters into fictitious criminal matters to ensure an early response.

The issue of abuse of power is primarily addressed by administrative laws like the Efficiency and Discipline Rules. There are excessive complaints of abuse of power by police. The Police Order 2002 introduced Penal Sections (155, 156) which authorized the high-ranking police and the courts to register a criminal case against the police officers who were involved in abuse of power.

The major substantive and procedural laws are deficient in many ways, because of which there is a long list of supplementary special laws, including the Prevention of Corruption Act, 1947, the Anti-Narcotics Act, 1997 and the Pakistan Arms Ordinance, 1965 and others. Family and labour laws, with their special separate courts, are available. In the presence of overlapping legal enactments, it is very difficult for the victim to know exactly their legal rights and the set procedures are very lengthy and cumbersome.

## V. ACCESS TO JUSTICE

The issue of accessibility remained a key concern for researchers in victim studies. The victims of crime in Pakistan suffer secondary victimization at the hands of state institutions. The following aspects of accessibility, where victims of crime face irresponsiveness and discrimination in treatment, require analysis.

### A. Bureaucratic Model

Almost all components of the criminal justice system practice a bureaucratic model of dealing with victims of crime. The office doors are guarded and style of governance is more authoritative than managerial. Victims of crime have to deal with red tape to seek appointments with relevant officials. This can be described as power distance or *bureaupathology*.

### B. Social Compartmentalization

The level of accessibility depends on the social status of the victim. Poorer people have to wait for a long time to see criminal justice practitioners. Feudalism and selective industrialization has added to the class differences and bifurcation of the social fabric.

### C. Culture of Nepotism and Corruption

Like other governmental organizations, components of the criminal justice system are also plagued with a culture of nepotism and corruption. The discrimination of the victims of crime is a glaring violation of the United Nations Declaration. The accused party has more accessibility to legal resources because of nepotism and corruption. The basic reason for nepotism and corruption is lack of good governance and political interference in the justice system.

### D. Irresponsiveness and Unaccountability

The responsiveness of the criminal justice system is not properly gauged at any stage. There is an internal administrative mechanism which takes care of irresponsible behaviour of practitioners but its effectiveness is yet questionable. Now, it is important to analyse the level of accessibility and fair treatment for victims at each stage of the criminal justice system.

## VI. VICTIM AND POLICE

The police are the first component of the criminal justice process which victims encounter. The police in Pakistan are still non-professional and unskilled in many ways. Knowledge, skills and attitude are three ingredients of professionalism in any police service. The cadre compartmentalization within the police system has also affected the relationship between victim and police. This relationship is based on distrust and fear rather than trust and confidence. The trust deficit is the first important issue in bridging this gap

between police and the victims of crime. The other aspects of police treatment of the victims of crime can be discussed under the following headings.

#### **A. Non-Registration of Cases**

There are persistent complaints against the local police of non-registration of cases and doubting the victim's version of the crime. Under Section 54 of Criminal Procedure Code, a police officer is bound to register a case if a cognizable offence is made out. Despite clear directions to the lower ranks, the complaints still occur. Now, the local courts are empowered to order the registration of cases under section 22-A of the Criminal Procedure Code. Police try to present a dark figure of crime because their performance is gauged in quantitative terms, which is always misleading.

#### **B. Delayed Response of Emergency Services**

There are presently two emergency services for victim treatment in Pakistan. The police emergency service is called Rescue-15 where the police has its own Quick Response Teams to reach the place of occurrence. The average time to respond to a call should not be more than five minutes but it is delayed in many cases because of shortage of resources. The other newly established Rescue-1122 service is functional only in the one out of the four provinces which is properly supplied with modern equipment. But it is a medical and rescue service. The delayed response of the police emergency service always helps criminals not victims.

#### **C. Lack of Training and Resources**

The first responders and investigators are not properly trained to deal with the victims of crime. They must be trained to give psychological treatment to the victims as they suffer trauma and mental anguish at the time of occurrence and afterwards. Moreover, victim treatment is not considered a specialized entity because of lack of direction and resources. The etiology of police apathy is deep-rooted in the working environment of the police system. The continuous exposure of police officers to violence, the lack of a shift system and unhealthy living standards make them insensitive and apathetic to the cause of victims. This phenomenon may be called "compassion fatigue". Victim treatment and the needs and concerns of the victims of crime are not included as a specialized field of training.

#### **D. Lack of Research on Victims**

Crime analysis in Pakistan is more accused focused rather than victim oriented. In fact, there is no crime survey at the national level with available information on victims' perception of police. Moreover, no study has been undertaken to assess police interaction with the victim. The research and development wings at the provincial level do not conduct holistic research studies employing qualitative methods of Victim Contact Programmes, interviews, surveys or ethnography.

#### **E. Protection and Assistance**

The victims of crime are given physical protection by the police as per the demand of the victim but for a short time. In some police districts, Help Centers for legal guidance and counselling have been established. But again the quality of guidance and counselling has not been assessed by different surveys. Police officials in most cases accompany the victim for medical treatment because of a legal requirement that a doctor will not treat a victim of crime without a police report. Police posts in main hospitals have been established to assist and help the victims of crime.

#### **F. No Special Arrangements for Victims of Special Groups**

There is lack of specialization in almost all fields of policing in Pakistan. Special squads for victims of special groups, like women and children, are non-existent. Some NGOs are working for these special group victims but their contribution is more theoretical rather than a real practical help. The number of women police officers is very low compared to their proportion of the population. Separate sitting arrangements in police stations and special victim support officers are not provided in the policing system in Pakistan. There is utmost need for establishing victim assistance services for these special groups. There is an increase in cases of kidnapping, rape and acid throwing against women. Being the deprived section of the society, the decision to call the police for help and to pursue their criminal cases depends upon the decision of their kith and kin. In the same manner, children are victimized in kidnapping for ransom, homicide, family violence and even mosque and school torture which creates a long-term post incident trauma but no special squads are available for child victim treatment.

In a nutshell, it is always the quality of policing which can establish a relationship of trust and confidence between police and the victims of crime. The indigenous police culture and maladministration should be addressed to create a victim-friendly police service in Pakistan.

**VII. VICTIM AND PROSECUTION**

The prosecution service in Pakistan has not played any significant role in victim treatment. Previously, it remained a part of police department under the direct control of police high officials but later the Prosecution Services Act, 2005 was promulgated by which a separate independent set-up of the prosecution service was established at provincial and district level. There are divergent views about this shift: one school of thought holds the opinion that the level of accountability has decreased with the separation of prosecution services; while the other is in favour and propounds the concept of professionalism in prosecution services.

The relationship between prosecutor and the victim of crime can be analysed under the following headings.

**A. Restricted Contact with Victims**

Prosecutors are in fact overburdened with cases and they are not in a position to give sufficient time for preparation of each case. Moreover, there is a myth that only the police and judiciary have defining roles in decisions of cases, owing to which the role of prosecution services has not been refined to address the grievances of victims of crime. The prosecutors remain busy in court and have less time for the guidance and counselling of the victim.

**B. Commercial Interest of Attorneys**

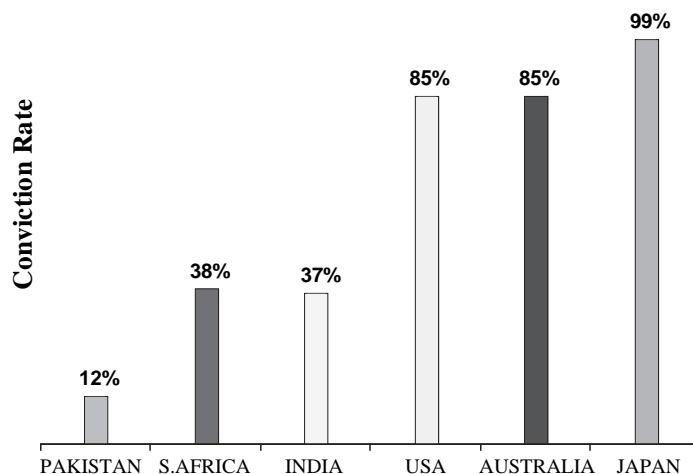
The prosecutors are paid less, being government servants, whereas private attorneys of an accused party get huge fees as a defence counsel. The defence lawyers get access to all secret investigations from the lower-ranking staff of the prosecution service or even from investigators. The performance of public prosecutors is not competitive, which is however the case for private counsel.

**C. Administration and Legal Issues**

The public prosecution service is not independent as their services are controlled and regulated by the law departments of the provincial governments. Moreover, the appointment of the Attorney General is made by the political head of the province. The prosecutors do not have the discretion to decide whether special cases of victims should be prosecuted or not. All cases of different nature are sent to public prosecutors irrespective of area of specialization. It is important to note that in cases against the state, private attorneys are hired for prosecution whereas, in heinous cases where victims face agony and less hope for justice, matters are referred to the public prosecutors who are less motivated and less professional.

**D. Performance of Public Prosecutors**

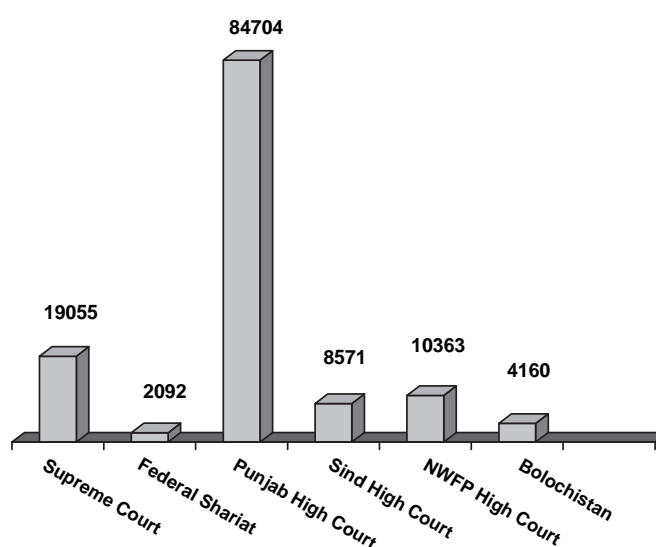
The performance of prosecutors in relation to victim satisfaction can be gauged by analysing the conviction rate. The comparative conviction rate of different countries is given as below.



There are many reasons for bad prosecution performance which primarily include lack of professionalism, training and resources. The training of public prosecutors is primarily related to legal issues whereas it should also be more focused on needs, concerns and rights of victims and there is no prosecutors-based victims/witness assistance programme. However the conviction rate in other provinces is low. The average conviction rate in Pakistan is just 11.66%, which is very low compared to other countries. In India it is 37%, South Africa 38%, Australia 85%, USA 85% and in Japan it is 99%, which is highest in the world. A low conviction rate is one of the indicators of poor performance of any criminal justice system.

### VIII. VICTIM AS WITNESS AND THE JUDICIARY

The judicial system in Pakistan is a multi-faceted system which passed through several eras: the Hindu period, Muslim period, British Colonial period and post-independent period. The judicial system consists of the Supreme Court, High Courts, Federal Shariat Court, Sessions Court and Lower Judiciary of Civil Magistrates. These courts are overburdened. The overall distribution of pending cases in the judicial system as per the annual report of the Law and Justice Commission, 2006 is given as below.



The total number of cases in the upper judiciary is 138,945 whereas, the total number of cases in the lower judiciary is 1,565,926. The total number of judges in Pakistan from the Supreme Court to the lower judiciary is 1,925. In this way the average number of cases per judge is 885 which is an alarming figure for researchers and policy-makers. Despite this situation, the judiciary is playing its role in providing justice after the restoration of the defunct judiciary and the announcement of new judicial policy.

Currently, Pakistan is going through a phase of judicial activism. A new Human Rights Cell has been established in the Supreme Court of Pakistan and other subordinate courts. The courts take *suo-motto* notice of any glaring violation of fundamental rights. The following issues are to be addressed for establishing a conducive environment for better victim treatment in the judicial system.

#### A. Delayed Justice

The number of hearings of criminal cases by a judge is to be reduced. The victim has to suffer financially and mentally to attend the repeated hearings of the court. The judicial officers accuse the police officers of not presenting the witnesses in time which causes delays.

#### B. Protection of the Victim

In very rare cases, courts issue orders providing for police security of the victims of crime. The accused are guarded in police custody with a threat of escape but victims, especially in cases of kidnapping for ransom and extortion, face physical threats. Mostly, victims make arrangements for their own protection when their lives are at stake.

### **C. Mechanical Approach towards Law**

The judicial procedures in criminal trials are more based on oral evidence, not material evidence. Again, the police investigation is blamed for not collecting and presenting the material evidence. In most cases, victims suffer as their accused is acquitted on the pretext of doubt. Accused persons are still the favourite children of the law but there is also need to take cognizance of circumstantial evidence.

### **D. Lack of Facilities**

In the lower subordinate judiciary, working conditions are very poor. There are no separate sitting rooms for victims, especially women and children. They have to wait their turn without basic facilities. Moreover, the communication system is very traditional in the judicial system, and is based on outdated laws, as the police are considered the major agency responsible for communication of any information and for presenting the witnesses in court.

## **IX. ROLE OF VICTIMS IN THE JUSTICE SYSTEM**

It goes without saying that a victim of crime plays a central role in all proceedings of the criminal justice process. Victims of crime are permitted under the national law to participate in almost all proceedings against the accused. In the entire process of investigation, the victim defines the course of investigation, which is sometimes misleading. More than 70% of the offences in the Pakistan Penal Code are compoundable. The victim is allowed to express his or her views at each stage of the criminal justice process. In the trial stage, the victim faces some problems, especially in the identification parade of criminals.

## **X. ALTERNATIVES TO FORMAL PROCEEDINGS**

The traditional dispute resolution mechanism, in the form of local arbitration councils, had been very successful in ensuring justice. In North West Frontier Province, the local council, called *Jirga*, always played a more effective role than the state institutions. There are many advantages in these traditional mechanisms, which provide justice at a low cost. The honour of the victim is not compromised and moreover, it becomes the responsibility of the community to take care of the victim's safety in future. Unfortunately, with the increase in individualization, Pakistan society is losing such mechanisms. Now, the burden is being shifted to the state institutions. But, it is also important to mention that the quality of justice rendered to the victim is sometimes compromised in the traditional informal mechanism.

Currently, police in Punjab and North West Frontier Province have initiated Arbitration Councils to decide petty issues between the parties as a matter of government policy to increase community involvement in day-to-day policing affairs.

## **XI. PRISON AND VICTIMS**

The prison system in Pakistan is also plagued with maladministration and corruption. There are constant complaints of drugs, prostitution and availability of cell phones within prisons, though these elements vary from prison to prison. In some cases, it has been observed that the victims of crime get threatening messages from accused persons held in jail, threatening consequences if they pursue the cases.

Moreover, there is no system of monitoring after releasing an accused on bail. Though offenders of cases against property are tracked by the Criminal Investigation Agency (CIA) dealing with organized crime, offenders of family violence, child molestation, murder and injury are not properly tracked, which is a source of continuous threat for the victims.

In Pakistan, victims have very little contact with the prison authorities. In some heinous cases, judges hold their courts within the premises of prison where the accused is cross-examined and sometimes placed in an identification parade before the victim.

The laws regulating the rules of business are out-dated as they do not focus on the emerging challenges confronted by the jail administration. The Prisons Act 1900 is a century old legal enactment. The prison culture simply transforms a simple offender into a hardened criminal. In this way, vengeance against the

victim is multiplied. A room designed for ten prisoners is being used by about forty prisoners.

The conditions regarding contact with the victims and payment of monetary obligations to the victim are ordered specifically by the court and the local police ensure compliance with such orders. In case of any unwarranted contact of the accused with the victim, the police take action against the accused in view of the nature of the offence or threat. It is again a lacuna in the criminal justice process practiced in the country.

## **XII. PROTECTION OF THE VICTIM**

To ensure the protection of the victim of crime is the primary duty of police, as stated in the Police Order 2002, but there are many issues involved in the protection of victim/witnesses. There are many cases where the victim or witness retracts their statement before the court given Under Section 164 of Criminal Procedure Code which has much evidentiary value. In cases like kidnapping for ransom, extortion, murder and rape victims are sometimes blackmailed, threatened and even murdered.

The courts and police have powers under the law to order appropriate measures for the protection of victims. In cases of family violence and sectarian cases of terrorism, its compliance is always questionable. In some cases, victims were murdered even in the court premises in the presence of the police. Hired assassins are used to kill victims. The increased number of proclaimed offenders reflects the poor performance of police. More than a thousand hardened criminals who have head money are included in the Black Book of Proclaimed Offenders in four provinces of Pakistan.

The physical protection of victims in terrorism cases is highly questionable. Organized gangs are involved where the state has less power to enhance the level of victimization. In some cases, criminals are associated with local politicians who again put pressure on authorities to remove the security measures taken for the protection of victims. Such tactics are employed by land grabbing mafia.

The Pakistan Human Rights Commission has pointed out all these shortcomings in its different annual reports but no tangible efforts are being made out to enhance the measures for protection of victims of crime.

## **XIII. RESTITUTION, COMPENSATION AND ASSISTANCE**

The system of restitution to the victims of crime also needs overhauling and reform. In Islamic law, the level of restitution and compensation to the victim is higher compared to English common law. The Islamic jurisprudence is based on the concept of retribution, with provision of blood money. Though this amount is not fixed and depends upon the satisfaction of victim, it is sometimes misused as bargaining occurs between the victim and accused party. In the Pakistan Penal Code, the provision of fine to the accused is given in almost all sections, along with imprisonment, but the amount of fine was fixed in 1860 and has not been revised since. At that time the Penal Code was framed by the English rulers. The court imposes restitution under the Penal Code in view of the nature of the case but it is not a mandatory provision to be abided by the court.

In case of disaster victimization and victims of terrorism, special compensation is announced by the Provincial and Federal Governments. An amount from Rs.300, 000 to Rs. 500,000 is given to the victims of suicide terrorism but there are no set criteria. The compensation for the injured person is very meagre. Compensation for victims of terrorism has been announced to satisfy the general public with regard to the government's counter-terrorism strategies. Moreover, it is given in most of the cases where media representation is glamorized with a picture of gross violation of human rights. This restitution or compensation is not a substitute for the socio-psychological agony suffered by the victim. There is no standardized mechanism to calculate the amount incurred by the victim of crime in the entire criminal justice process. A general assessment and then provision in the law should be available, specially directing all practitioners of the justice system to ensure recovery and receipt of restitution and compensation.

Currently there is no victim compensation scheme; rather than a systemic policy for the welfare of the victim, compensation varies from situation to situation. Regarding assistance to the victim, the situation is

also not satisfactory. No victim satisfaction surveys are conducted periodically to assess the real picture but it is alarming to observe that it is always the victim of crime who suffers at the police station, prosecution office and then the court to pursue his or her case.

Legal guidance for the victim is not at his or her doorstep. Access to information about the proceedings is again restricted. There is no system of post-victimization counselling. There are no victim support officers in the local police station. The police must observe a victim day on a weekly basis which should be focused on re-contacting victims of major cases so that a relationship of trust can be cultivated between victims and law enforcers.

#### **XIV. RECOMMENDATIONS**

It is important for the government of Pakistan to establish its National Institution for Victim Support. The institution should be an autonomous body under the supervision of the Ministry of Interior or the Ministry of Law and Justice and will be responsible for devising a victim support policy and other initiatives at the national level.

The provincial governments have more scope for creating a better environment for victims of crime. Each provincial government is encouraged to establish its regional victim support centre which must have a close liaison with all relevant agencies and work under the policy guidelines of the National Victim Support Centre.

The federal and provincial governments of Pakistan must have central and regional victim support funds. These funds should be spent to create better facilities for the victims of crime.

Each component of the criminal justice system in the country should try to create separate infrastructure for facilitating victims' access to their rights regarding counselling, access to information and to know about the procedures for state compensation and restitution.

There is utmost need for modification in the available legal framework for victim treatment. Separate victims' laws are required, stating the rights of the victims of crime, especially of disadvantaged groups like women and children. Moreover, new procedures like a notification scheme for dissemination of relevant information to victims should be introduced in the new law.

A state compensation scheme must be introduced for the victims of violent crime, which may include free medical facilities and other disbursements.

The higher judiciary in Pakistan should encourage the judges to implement the legal provisions regarding restitution. In case the offender is unable to pay, then state compensation should be given out of the victim support fund.

#### **XV. CONCLUSION**

In view of all above stated facts and observations, it is concluded that Pakistan is one of the developing countries where the level of implementation of UN Declaration on the Principles on Justice for the Victims of Crime is deficient and far from being satisfied. The institutional and legal apparatus of the justice system is unable to enhance the appropriate measures for better victim treatment. It is subject to the capacity building of practitioners of the justice system and institutional building at state level. The role of non-governmental organizations is also to be redefined and a comprehensive national policy should be framed after systematic research and analysis in the field of victimology.



# **THE ENHANCEMENT OF APPROPRIATE MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE PHILIPPINE CRIMINAL JUSTICE SYSTEM**

*Manuel G. Co\**

## **I. INTRODUCTION**

In every society, relationships are manifested through interactions among individuals which may eventually lead to social coherence or division. If a society is divided, social problems may arise. A social problem may pertain to human relationships, and to the normative contexts since it represents interruption in the expected or desired scheme of things; violations of the right or the proper way as society defines these qualities; dislocation in the patterns and relationship that society cherishes.

The present Philippine Criminal Justice System (CJS) was a product of various foreign influences and the country's experiences in achieving its aspiration to protect the State and its people against the destructive effects of crime and delinquency. As a State mechanism, the CJS was established as an instrument of social control to coerce people to conform and respect individual spaces, and at the same time teaches them to abide with by the laws and rules established for the common good. Today, all over the world, all states, regardless of the form of governance, utilize mechanisms like group pressure or institutions (like the police, prosecution, courts, correction services) to enforce conformity and adherence to norms, and to control deviance in its members.

Crime and delinquency are potent threats to society's existence. In confronting these social ills, the Philippine CJS is continuously being assessed and evaluated to check its usefulness to meet to the needs of the Filipino people. According to the Production Process model, the CJS is similar to a production process where "raw materials" are screened and refined. In the said process, the raw material is the criminal suspect. The production specialists of this system actively processing the raw materials are the police, prosecution, courts, and corrections services, whether institutional-based or community-based. As the raw material moves along the production line, it changes its character. A suspect becomes an accused, an accused becomes a defendant, a defendant becomes a convicted offender, and a convicted offender becomes a probationer, prisoner or parolee/pardonee. Finally, in almost every case, an inmate becomes an ex-convict with an indelible stigma of criminal conviction. We could conclude that the justice system is offender-based, focusing on past behaviour as basis of establishing guilt, and meting out punishment. Its authority is anchored on the "police power" of the State to define crime, treat its nature, and provide punishment for any social nuisance that affects public welfare, public interest, public health, and the common good. It focuses on three commonly raised issues: Who is the culprit? What law or rules were violated? And what is the appropriate sanction or penalty? The CJS is a punitive-retributive dispensation of justice. It always treats crime as a transgression of state authority, and therefore the full force of the law should be bent forcefully to suppress the danger to the state, protect society and its people, treat and correct violators, deter others, and to vindicate absolute right and moral wrong. The system abandoned the real fact that the crime or wrongful act inflicted harm to the victim and the community, and therefore it violates people and right relationships. It's a kind of winner/loser conflict, which rules and intent outweigh outcome, and the persons with a stake in the offence/crime are in the peripheral position heavily relying on the competence of legal professionals in pursuing "cause of action". In the very words of the late Justice Melecio-Herrera, the idea of retributive justice rests on dubious, interesting and intriguing assumptions: Firstly, justice can be done by making the offender worse off (through imprisonment or execution); secondly, there is a reasonable manner of determining the desserts of criminal conduct in terms of prison sentences; and thirdly is that the issue of justice is addressed by focusing on an event in the past - the crime committed. And now the society realizes that the existing system of justice is flawed, and the need for a new way of exploring alternatives is evolving with the introduction of Restorative Justice.

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\* Regional Director, Parole and Probation Administration, Department of Justice, National Capital Region, Quezon City, the Philippines.

## II. RESTORATIVE JUSTICE (RJ)

Paradigm shifts are beginning to occur, and governments, all over the world, have realized that balancing the administration of justice, through a community justice, where the stakeholders directly affected by the impact of crime are active participants in deciding what is better for them, is an alternative to the present justice system. Restorative justice is a pattern of thinking that state's responsibility in protecting its institutions and people should not just be the responsibility of the justice mechanism, and neither should crime be the sole or even the primary business of the state, if real differences are sought in the well-being of individuals, families, and communities. In the conclusion of Justice Melecio Herrera, the idea of restorative justice is a different way of responding to crime. Its conceptual framework seeks to render justice to victim and offender alike instead of tilting the balance in favour of only one stakeholder to the disadvantage of other. When a crime or wrongdoing is committed in a community, the assumption is that people and relationships are affected, such as: relationship between victim and the offender; relationship between offender and the community; and sometimes relationship between the victim and the community.

### A. Basic Elements of RJ

Unlike in the traditional justice system, a restorative effort is a holistic response to crime or conflict which needs to be attended to in all these relationships to be able to strengthen community fabric. Let me emphasize, repairing relationships of stakeholders does not mean creating a friendly and positive attitude between them. It means restoring appropriate "balance of power" among stakeholders. RJ as a private justice cited in the Source Book "Working for Justice that Heals", Catholic Bishop Conference of the Philippines, EPPC (2006), is anchored on the following:

- Encounter: Create opportunities for victims, offenders and the community members who want to meet and discuss the crime and its aftermath;
- Amends: Expect offenders to take steps to repair harm they have caused to their victims;
- Reintegration: Seek to restore victims and offenders as a whole and help them become contributing members of society; and
- Inclusion: Provide opportunities for parties with a stake in a specific crime to participate in the resolution.

### B. Goals of RJ

The goal of Restorative Justice is to repair the harm; the criminal justice professional applying the philosophy needs to understand the impact of crime on the victims, and the latter's family and future. By helping the victim the system can:

- Exert efforts to appropriately respond to the victim's harm;
- Accordingly hold offenders accountable;
- Reduce the victimization of the victim again;
- Improve active involvement and co-operation of victim; and
- Protect and empower victims.

## III. THE PHILIPPINE CRIMINAL JUSTICE SYSTEM

### A. The Victim and the Criminal Justice System (CJS)

In the present CJS, the victim is subjected to another situation of victimization in the following pressing situations:

1. Victim presence in the courtroom with the Offender;
2. The bothering impact of crime while preparing to testify;
3. Facing the police, prosecutors, judges, advocates, and the public;
4. Lack of understanding of how the Justice System works;
5. Attitude of the community towards the victim; and
6. Personal protection and stability.

In the CJS, the victims are only in the sidelines awaiting any assistance which will alleviate their situation, and can not reveal the physical, psychological, emotional, financial and social impacts of crime on them. In effect they are hindered by the procedures from actively participating in deciding what is better for them in achieving satisfying justice and real healing. In the peripheral, the victim is seemingly placed in a production processing. The raw material is the victim. In the stages of processing the raw material, it moves from one production unit or line to another, and changes its character. A victim of crime becomes a presumptive complainant who has to prove his or her cause(s) of action; a complainant becomes a complaining witness, whose version of the circumstances surrounding the crime, and the evidence adduced to substantiate the accusation and narration, are seemingly add on chemical ingredients in perfecting the material (establishing "probable cause" in filing the criminal information); a complaining witness becomes a state witness to prove the guilt of the accused beyond reasonable doubt, and consequently impose the state's standard legal penalty; after the court proceeding, the state witness with the indelible stigma of victimization becomes a recipient of social help and praise (also social condemnation) for seeking truth and courageously championing the "cause of justice". In all probabilities, the state's standard remedy of attaining the "cause of justice" did not really satisfy the victim's struggle to overcome the impact of victimization, because the court's verdict is anchored on a ready made standard legal prescription that presumptively serves as a "panacea" to the physical, emotional, social, psychological, financial and moral sufferings of the victims and the other indirect victims.

In addition, while the criminal case is in progress, victims have several concerns which are also situations that subject them to further victimization: the bail system, which legally frees the offender to roam on the street; police indecisiveness in arresting offenders who fail to appear in court; a public defender, being paid by the government by the peoples' money, who vigorously works for the accused and through technicality and strategy interferes with the accused getting a deserved punishment; the court's environment, statutorily and procedurally, allows the victim to be placed in a witness stand, and narrate everything and be cross-examined to tell every detail including immaterial and insignificant matters that have no bearing on the case and may be destructive of reputation; and finally, the victim's expectation of how the community perceives them as a person after the commission of the case. These are real and actual concerns which place the victims back to the situation of being victimized again.

The justice system, which is symbolically represented by a blindfolded woman carrying a scale in one hand, and a sword in other, is itself the symbol of peoples' struggle as a civilized nation in the quest for satisfying justice. Behind the machinery are structures which operate in the prevention of crime through the enforcement of laws, the prosecution of offenders, the administration of justice, and ultimately the correction and rehabilitation of offenders caught in the web of the criminal justice system. Unfair criticisms against the enforcement of laws, administration of justice, and treatment of offenders describe the symbol with sarcasm. The blindfold made up of translucent material is falling, the scales are completely tipped and rusting, and the sword could no longer cut and is dropping from her grip. These criticisms convey the message that real and satisfying justice is very difficult to achieve or an "impossible dream". This is the institutional way of achieving justice, in which at the end, one social injury is replaced by another, and therefore, is a never-ending quest for justice.

## **B. Crime and Impact on the Victim**

Victimology is the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system - the police, prosecution, court, and corrections services - and the connections between victims and the other social groups and institutions. In Restorative Justice, no such classification of victimless crime is acceptable, because all crimes have direct or indirect victims, and even the offender is also in broad terms considered a victim.

In reality, the issue of victimization is an encompassing issue that involves not just the direct victims, but likewise the indirect victims who have suffered the effect of victimization. The traditional justice system does not recognize the suffering of these indirect victims like the members of the family of the complainant, and the community that are affected. In restorative justice, discussions on victimization include the effect of the wrongdoing on indirect victims, because it views crime through a different lens, and looks into the issue of the victim in the following ways:

1. What is the extent or degree of the harm? (Analysis/Assessment);

2. What should be done? (Treatment Plan);
3. Who is/are responsible? (Obligatory responsibilities).

Restorative efforts change the definition of a case from an offender-based focus to victims-focus, and likewise change the nature of the intervention to humanize and transform the means by which community safety, accountability, competency development, and healing of victims is achieved. The community, which is a side stream victim, facilitates the process through participative dialogue, and responds to present and future needs and obligations of stakeholders. In the case of the offender, restorative efforts are directed towards “righting the wrong” committed, and voluntarily acknowledging accountability such as: acknowledging causing harm; understanding harm from the other person’s point of view; recognizing the fact that he or she has choices; taking steps to make amends (like apology, repair of harm, etc.); and taking actions to make changes for the better so that it will not happen again. To a victim, the above are his or her possible expectations and will satisfy his or her craving for truth and justice thereby reducing the chronic and catastrophic stressors that traumatized the victim.

### **C. The Victim and Law Enforcers**

Enforcing laws and rules in reality is not just running after criminals, restraining suspects to prevent them from committing acts of violence and disorder, and placing them in manacles. As the first line of social control, the law enforcers are mandated to enforce laws to the fullest. In our country, a host of law enforcement agencies, among others, include the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Bureau of Immigration and Deportation, the Armed Forces of the Philippines, the Philippine Coast Guard, the *Barangay* Units (Village government). They are in the forefront of preventing and controlling acts that disturb the social conditions of people and places.

In the Philippines, the first line of policing is primarily the responsibility of the more than 50,000 *barangay* units (village government) run by the local village councils and the volunteer *Barangay* Security and Development Officers (Village law enforcers). The *Punong Barangay* (Village Chief) is a person of authority. In this level, a *Katarungan Pambarangay* (Village Justice System) is established by virtue of Presidential Decree No. 1508, as amended by Republic Act No. 7160, otherwise known as the Local Government Act of 1991. These village officials, council members, and other responsible members of the village are tapped in the resolution of conflicts and differences among residents. The processes of mediation, conciliation or arbitration are utilized in the settlement of conflicts or differences. The victim’s complaint, either oral or written, is the basis of the dialogue. Its objectives are as follows: to promote speedy administration of justice, develop and preserve Filipino culture and strengthen the family as the basic social unit; to decongest court caseloads, which cause a deterioration in the quality of justice; and to enhance the quality of justice by formally organizing and institutionalizing a system of amicably settling disputes without resorting to the formal justice system. The jurisdictional coverage of the law, however, is limited with respect to criminal cases. In this level, the victims are protected by the village government through its officials and volunteer civilian enforcers. In Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004, passed to protect the family and its members, particularly women and children, against violence and threat to their personal safety and security, guaranteed a layer of protection for complaining victims. The *Punong Barangay* is given by law the authority to issue a *Barangay* Protection Order (BPO) to order the perpetrator to desist from committing acts of violence as defined in the said law. The *Barangay* Protection Order shall be only effective for 15 days. In case the perpetrator-respondent violates the order, a complaint for violation shall be initiated by the Village head, or *Kagawad* (Council member), who issued the Order in the absence of the Village head, and filed it with any Municipal Trial Court, Metropolitan Trial Court or Municipal Circuit Trial Court that has jurisdiction over the Village that issued the *Barangay* Protection Order. Violation of the said order is punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the victims may file for any of the acts committed. In excess of the 15 days, the victims can file a petition for the issuance of Temporary Protection Order (TPO) for 30 days or Permanent Protection Order (PPO), which already require a notice and hearing on the merits of issuing PPO within one day. Where the Court is unable to conduct hearing within one day, and the TPO issued is due to expire, the Court could extend or renew the TPO for a period of 30 days at each particular time until final judgment is issued. A PPO shall be effective until revoked by the Court upon application of the person in whose favour the Order is issued. The Court shall not deny the issuance of the protection order on the basis of lapse of time between the act of violence and the filing of the application. Regardless of the conviction or acquittal of the accused in a criminal prosecution under the said Act, the

Court shall determine whether or not the PPO shall become final. Even in the dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

Pursuant to the *Katarungan Pambarangay* Law, all amicable settlements shall be in writing, in a language or dialect known to the parties, signed by them and attested by the *Punong Barangay* or the Chairman of the Conciliation Panel as the case may be. When the parties to the dispute do not use the language or dialect, the settlement shall be written in a language/dialect known to them. No complaint, petition, action or proceeding involving any matter within the authority of the village justice system shall be instituted in court or in any other government office for adjudication unless it is submitted to mediation, conciliation or arbitration by the Village justice system. The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of 10 days from the date thereof unless repudiation of the settlement or petition for nullification of the award has been filed before appropriate court. In urban *barangays* (Village), the Ronda System through the active participation of organizations of community groups in crime prevention, was implemented by the *barangay* council. The *Barangay* Security and Development Officer (BSDO), better known as Village Police or Guard, or locally coined as *barangay tanod*, are significant civilian volunteers engaged in unarmed assistance that includes intelligence information gathering, neighbourhood watch; medical/traffic/emergency assistance; identification and implementation of community projects, and gathering of relevant information and data as inputs to peace and order research. Volunteerism plays a vital role, and the sustainability depends on the enhancing community support.

The Philippine National Police is a national government agency. In its efforts to reduce the incidence of street crimes, increased police visibility and patrolling vigilance activities in co-operation with the community continuously become its initiative. The police visibility on the streets was launched through its Community Oriented Policing System (COPS) in 1993, and specifically through its project Police Patrol-*Lingkod Bayan*. Proving its effectiveness, it was institutionalized in 1994 through a PNP Memorandum making it one of the key result areas of its National Strategic Action Plan. The passage of Republic Act No. 8551, the PNP Reform and Organization Act of 1998 stabilized more the COPS as it specifically requires the PNP as a community service-oriented agency.

The PNP strictly adheres to promoting the welfare of the marginalized sectors of the Philippine society by establishing the "Women and Children" Protection desk in all police precincts all over the country. This programme is in coordination with the National Commission on the Role of Filipino Women (NCRFW), the National Police Commission, the Department of Social Welfare and Development, and with the support of pertinent non-government organizations like the Soroptimist International and Rotary Clubs. In 2004, 1,700 Women and Children Protection Desks were installed, and a massive training of policewomen and policemen assigned to handle cases of women and children as victims of violence were conducted, and being conducted up this time.

The PNP and other mandated law enforcement agencies have a strong partnership with the Department of Social Welfare and Development (DSWD) in handling cases of victims of crime. In the context of the justice system, the police and other law enforcement agencies are considered not merely law enforcers, but also peace officers duty bound to protect and respect lives, liberties and properties, maintain peace, order and decency, safeguard public interest and morals, and be an integral link in nation building.

#### **D. The Victim and the Prosecution Arm**

The National Prosecution Service of the Department of Justice, in co-ordination with various agencies in government, ensures community participation at this level of the justice system.

The Witness Protection, Security and Benefit Programme (WPSBP) under Republic Act No. 6981 provide witnesses of crime commission vital rights and benefits. These rights and benefits, however, may be given after satisfying the imposed eligibility requirements. In this, witnesses are given any or all of the following benefits: secured housing facilities for high-risk witnesses and their dependents, from 3,000 pesos to about 15,000 pesos in certain cases; travelling and subsistence allowance; medical and hospitalization assistance; housing or rental allowance in case of witnesses with manageable risks.

In its desire to expand its services, and the level of the chance of availing, the National Prosecution Service through the Department of Justice entered into various agreements and arrangements with different agencies in this dispensation like the Department of Foreign Affairs, The Philippine Overseas Employment, the Department of Social Welfare and Development, The Department of Labor and Employment for witnesses and victims. Similarly, Republic Act No. 7309, which created the Board of Claims under the Department of Justice, granted compensation for victims of unjust imprisonment or detention, and victims of violent crimes.

By virtue of Presidential Act 1275, the National Prosecution Service is vested with power to investigate and prosecute all cases involving violation of the revised Penal Code and other special penal laws in the Country. National Prosecution Service is composed of Prosecution staff in the Department of Justice, the national, regional state prosecutors, the city and provincial prosecutors and their respective assistants.

Likewise, by virtue of Executive Order No. 243, which took effect on July 24, 1987, and Republic Act No. 6770, the Ombudsman Act of 1989, the office of the Special Prosecutor as an organic component of the Office of the Ombudsman was created, and placed under the direct supervision and control of the Ombudsman for greater efficiency and effectiveness in undertaking investigation and prosecution functions. Aside from the above, the Judge Advocate General Office (JAGO) of the Armed forces of the Philippines performs the regular functions of prosecuting criminal cases within the jurisdiction of military tribunals.

#### **E. The Victim and the Courts of Law**

The Judiciary is the very core of the Administration of Justice. It is the centerpiece of the Justice System. The Fundamental Law of the Philippines vested judicial power in the Supreme Court, and in such lower Courts as may be established by law (Sec. 1, Article VIII of the 1987 Constitution).

The Philippine Constitution of 1987 defines judicial power as follows: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to Lack or excess of jurisdiction on the part of any branch or instrumentality of government."

The Supreme Court is the highest court of the land, and under its supreme power are the lower courts such as the following: Court of Appeals; The Sandiganbayan, the Regional Trial Courts; the Municipal Trial Courts, Municipal Circuit Trial Courts, and Metropolitan Trial Courts; the *Shari'a* Courts for the Muslim Mindanao, and military courts.

One of the so many problems of the Judiciary is delay in the dispensation of pending controversies, which people turn wary, if not distrustful, of its effectiveness to vindicate rights and redress misdeed committed. In extreme cases, crime victims compromise with the underworld to obtain justice to get even with the perpetrators. In the paper of Professor Alfredo F. Tadiar, entitled "Unclogging the Courts Dockets Various Approaches to Solve the Problem", he classified the causes of delay, namely, those sprouting from the human factor; those that could be attributed to the very nature of the judicial system; and the indiscriminate filing of cases in courts.

According to Professor Tadiar, the first class refers to the human failings and weaknesses of men and women administering the judicial system such as judges, lawyers-advocate, court personnel, prosecutors, sheriffs, defense counsel, process servers, and other important players in the administration of justice. He attributed the delay in resolving cases to plain inefficiency, incompetence, sloth or laziness, corruption or other evil motives of these significant duty-holders. The second class is attributed to constitutional requirements of due process, and the technicalities and adversarial nature of the judicial process; and the third class is the overcrowding of court dockets due to indiscriminate filing of cases. All these greatly affect the victims of these crimes as well as offenders.

The Philippine government in its desire to improve the rule of law introduced the following: Simplification of procedural rules; filling up of vacancies in the judiciary, the prosecution level and the public defender, and increased number of courts; and judicial specialization as a means of increasing efficiency. Hand in hand with these was the introduction of the application of mediation and arbitration to divert cases. The Alternative Dispute Resolution initiative of the Supreme Court resolved to create mediation center and continuously train interested and qualified persons to be appointed as court mediators. Likewise, as part of

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its developmental initiative, Small Claims Courts were established to expeditiously resolve cases filed with the lower courts.

In the case of children as victim and children as an offender, the DSWD, and the Local Social Welfare Development Officer Office (LSWDO) of the City and Provincial governments are in the frontline service providers.

Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection against child abuse, exploitation and discrimination, mandates the DSWD and the Department of Justice to come up with a comprehensive program to protect these children against evil of prostitution and other sexual attack, trafficking, obscene publication, and indecent shows or other acts of abuse, which place these children in a dangerous, predictable and vulnerable conditions. Likewise, the passage of Republic Act No. 9262, the Anti-Violence against Women and Children Act of 2004 seeks to prevent all forms of physical, sexual, psychological and economic violence and abuse against these weak and vulnerable sectors of society. In the Implementation of the foregoing laws and its implementing rules and regulations, the DSWD is in the forefront.

In the case of "children in conflict with the law" (CICL), the Philippines recognizes the vital role of youth in nation-building and promotes their moral, spiritual, intellectual, and social well being. A comprehensive law was passed, known as Republic Act No. 9344, an Act establishing a Comprehensive Juvenile Justice and Welfare System", which defines a CICL as a child who is alleged to, accused of, or adjudged as having committed an offence under Philippine law. This law specifically defines who are criminally exempt from liability, and as provided in Section 6 of the Act, the following shall be exempt: a child 15 years of age or under at the time of the commission of the offence; and a child above 15, but below 18 years of age who acted without discernment at the time of the commission of the offence. RA No. 9344 is anchored on the principle of Restorative Justice utilizing specific and appropriate intervention to redeem a CICL. The law, by its spirit, regarded a CICL as a perpetrator and at the same time a victim. On the same position is RA No. 9165, the Comprehensive Dangerous Drugs Act of 2002. In particular, its social welfare provisions, like Sections 54, 57, 61, 66, 68, 70 and 81, in relation to sections 11 and 15 of the said Acts, provide helping programmes for treatment and rehabilitation of drug dependents. In these sections, drug dependents are considered victims of a drug menace, and are therefore provided effective mechanisms or measures to reintegrate into society individuals who have fallen victims of illicit drugs and substances through a sustainable programme of treatment and rehabilitation. Section 54 pertains to voluntary submission of drug dependents to confinement, treatment and rehabilitation. Section 57 granted probation and community service under a voluntary submission programme for drug dependents discharged as rehabilitated by the Department of Health - Treatment and Rehabilitation Center. Section 61 provides compulsory confinement of a drug dependent who refuses to be rehabilitated. Section 66 and 68 granted privilege of suspended sentence to first-time minor drug offenders (FTMDO) who violated the provisions on illegal use or illegal possession of dangerous drugs. And Section 70 paves the way for FTMDO, who was found guilty for violation of the provisions of illegal use or illegal possession of prohibited drugs, to be sentenced to perform community service or probation regardless of the penalty imposed. In these various sections of RA No. 9165, the Parole and Probation Administration through its City and Provincial PPA-DOJ field offices play a significant role in the investigation and supervision of these victims of drug abuse.

Again as laid down in the paper of Tadiar, one of the pressing problems of the judicial department is delay in the disposition of pending controversies, which make people wary, if not distrustful, of its effectiveness in vindicating rights and redressing misdeeds committed. In extreme, some crime victims compromise with the underworld to obtain speedy justice to get even with the perpetrator. Many factors cause delay, and its impact always suffered by litigants (especially by crime victims), but is financially rewarding to legal professionals and practitioners. Unless a reversal of this trend is made such that judges are enabled to dispose of more case than are filed through a systematic and sustained judicial reform programme, the backlogs will continue to grow rather than decline.

Very recent is the Supreme Court's Rule on Juvenile in Conflict with the Law (CICL), which just took effect 1 December 2009. In that En Banc Resolution, the highest court of the land, through its Rule Making power, established the rule for criminal cases involving CICL, which is anchored on "Balanced and Restorative Justice Principles". This rule requires the process of resolving conflict with the participation

of the victim, the CICL, and the affected community. It seeks to obtain reparation for the victim; reconciliation of the victim and the CICL and the community; and the reassurance that the CICL can be reintegrated into the community. It also enhances public safety by involving the victim, the CICL and the community in prevention strategies. The new Rule is intended to procedurally explain the gray areas in the implementation and interpretation of RA No. 9344 and its Implementing Rules.

The courts are tasked to interpret and apply the laws and rules, and therefore very significant in the administration of justice.

**F. The Victim and the Pillar of Philippine Corrections**

In the Philippines, corrections has two sub-components, the institutional-based and the community-based correction, which are being operated by fragmented agencies in government. As to the institutional-based, the Bureau of Correction (BUCOR), which is under the Department of Justice (DOJ) is in charged of the insular or national prisoners whose sentences are more than three years’ imprisonment. The Bureau of Jail Management and Penology (BJMP), which is under the Department of Interior and Local Government, through its municipal, city and district jails, is tasked to take charge of committed prisoners who are sentenced to three years and less. The Provincial Jails are under the Governor of the province and sub-province. And the DSWD and LSWDO mandated to look into the welfare of CICL. Save the case of DSWD and LSWDO, in all these institutional programmes, the victims of crimes have no roles to be recognized and received appropriate treatment. The jails and prisons are created to confine persons committed or convicted by courts to prevent these persons from further commission of crime, and likewise rehabilitate them to change their pattern of anti-social behaviour. These prisoners, who were convicted and sentenced to imprisonment, are granted released either through parole or grant of executive clemency through the plenary power of the Chief Executive of the Country. The agencies primarily responsible are the Board of Pardons and Parole and the Parole and Probation Administration, which are both under the Department of Justice, and rightfully belonged to the non-institutional or community-based correction. On the other hand, the probation system is a court-directed process utilizing the Parole and Probation Administration as its arms. The grant of parole is within the power of the Board of Pardons and Parole performing quasi-judicial power pursuant to Act 4103, as amended, the Indeterminate Sentence Law. The Parole is granted to those who served the minimum of indeterminate sentence. As to Executive Clemency, the Board of Pardons and Parole is tasked to review case for Executive Clemency, and accordingly recommend the same to the Chief Executive. The Board shall cause the publication in a newspaper of national circulation, the names of persons who are being considered for executive clemency. Any interested party (victim and other stakeholders) may send to the Board a written objections/comments/information relevant to the cases of prisoners who is under consideration not later than 30 days from date of publication.

In the performance of the Board’s tasks, the Parole and Probation Administration, through its City and Provincial PPA-DOJ field offices, conducted the pre-parole/pre-executive clemency investigation and submit reports to Board for its judicious consideration. After the approval of those prisoners’ release, either through parole or pardon, the Parole and Probation Administration is now tasked to provide individualized, community-based treatment programme. In this stage, the Parole and Probation Administration, through its Restorative Justice programme, get in touch with the victims and the community affected by the crime committed.

**G. The Victim and the PPA-DOJ**

The Probation Administration was created by virtue of Presidential Decree No. 968, the Probation Law of 1976, to administer the Probation System. Under Executive Order No. 292, the Administrative Code of 1987, promulgated on 23 November 1989, the Probation Administration was renamed “Parole and Probation Administration”, and added function of supervising prisoners who, after serving part of their sentences in prison/jails are released on parole or granted pardon with parole conditions.

Moreover, the investigation and supervision of First-Time Minor Drug Offenders placed under suspended sentence (FTMDO) have become an added function of the Administration pursuant to Sec. 66, 68 and 81 of RA No. 9165, the Comprehensive Dangerous Drugs Act of 2002, and per Dangerous Drugs Board (DDB) Resolution No. 2, dated 19 July 2005, and DDB Regulation No. 3, series of 2007, which pertains to the Rules Governing voluntary confinement for Treatment and Rehabilitation of Drug Dependents. The Regional Directors, Assistant Regional Directors, and Chief Probation and Parole Officers are designated as DDB



Authorized Representative to assist drug addicts/abusers in their desire to be rehabilitated from the ill effects of prohibited drugs and substances.

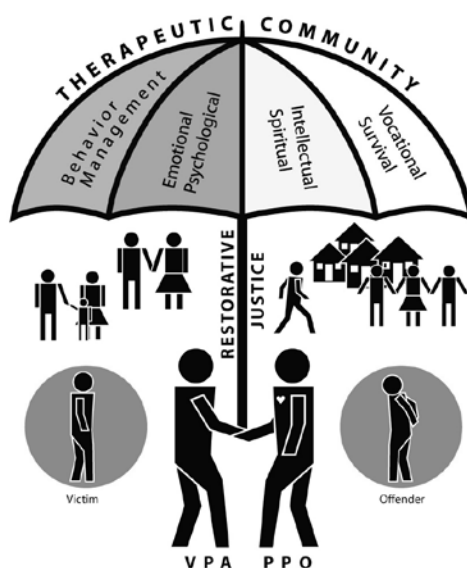
### 1. ICBT Components

The vision of PPA-DOJ is to transform PPA into a model component of the Philippine Correctional System that enhances the quality of life of its clients through multi-disciplinary programmes and resources, an efficient organizations, and a highly professional and committed workforce to promote social justice and development.

With the above vision, and anchored on the Agency core functions, an holistic treatment approach, known as the PPA Harmonized Rehabilitation Program for crime prevention and treatment of offenders was adopted through the implementation of the following components of individualized, community-based treatment (ICBT):

- (i) PPA Restorative Justice (RJ) is a victim-centered response to crime that provides opportunities for those directly or indirectly affected of its impact to meet together, and voluntarily and actively participate in the resolution of their differences. As a process, it may be provided through discussion and negotiation of matters resulting from the offense or conflict, with the help of a fair and impartial third party (mediator, conciliator or facilitator) to resolve their differences and agree to comply with whatever agreement obtained during such dialogue and negotiation. It shall apply to all cases referred to the PPA-DOJ Field Offices for supervised rehabilitation treatment by the courts, Board of Pardons and Parole, the Dangerous Drugs Board, the Chief Executive and other agencies.
- (ii) PPA Therapeutic Community (TC), a modality treatment for drug abusers and those with serious behavioral problems is anchored on four major thrusts: behaviour management and behavior shaping; intellectual and spiritual enrichment; emotional and psychological treatment; and vocational and survival skills. This is the treatment modality which helps the RJ initiative in reintegrating offenders to achieve reconciliation, empowerment and healing of the victims and other indirect victims.
- (iii) Volunteer Probation Aide (VPA), an Agency strategy to draw community involvement and enhance citizens' participation in the overall process of rehabilitation and reintegration of clients-offenders. Those volunteers likewise help in the RJ process as mediator, conciliator, facilitator or strength to achieve the ends and the restorative efforts.

### HARMONIZING PPA INDIVIDUALIZED, COMMUNITY-BASED TREATMENT PROGRAMME



At the helm of RJ implementation are the field probation and parole officers assisted by volunteer Probation Aides (VPAs), community leaders and other responsible and interested members of the community.

VPAs are appointed by the Administrator from among citizens of good repute and probity. The present VPA system is continuously being developed with the help of the JICA and UNAFEI.

The RJ Programme is envisioned to balance the administration of justice to achieve satisfactory justice and empowerment for all.

## 2. PPA RJ

### PPA-DOJ BALANCE AND RESTORATIVE JUSTICE



Crime or conflict hurts people and relationships. The three stakeholders are disturbed by the impact of crime or conflict; therefore, their relationship is affected, and they deserve the end-goals of restorative justice. The client-offender should be accountable to correct his or her mistake, and retribute whatever damages were inflicted (accountability). The victim has to be compensated and be empowered again (competency development). The community and its inhabitants deserve an orderly and peaceful society (public safety).

The PPA-DOJ's role, through its provincial and City Field Offices, is very vital in the implementation of the RJ programme with respect to its clientele who are in the process of supervised rehabilitation and reintegration. The RJ programme, which has implication to the total efforts in the rehabilitation and reintegration of offenders, has vital national consequence on the evolving issues of human rights and social justice. These offenders, if not properly managed, and if the appropriate treatment is not implemented, certainly have impact to national security.

## 3. PPA Objectives in RJ

The adoption of RJ in the PPA-DOJ through Memorandum Order No. 12, dated 16 July 2003, otherwise known as the Implementing Guidelines on Restorative Justice, leads clients-offenders to reconnect them to mainstream of society and reconstruct a meaningful relationship with victim and the community. PPA objectives in the adoption of restorative paradigm are as follows:

- (i) To reintegrate offenders to the social mainstream, and to encourage them to assume active responsibility for the injuries inflicted to victim and the affected community (accountability);
- (ii) To proactively involve the community to support and assist in the rehabilitation of victims and offenders (competency development);
- (iii) To attend to the needs of the victims, survivors and other person impacted by crime as vital

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participating stakeholders in the justice process, rather than a more object or passive recipients of services of intervention that may be unwanted, inappropriate or ineffective (competency development);

- (iv) To ultimately heal the effects of crime and wrongdoing (competency development);
- (v) To prevent further commission of crime or conflict in relationship (public safety).

4. Basis

(i) *Section 5 of PD No. 968 as amended, the Probation Law of 1976*

“Ends of Justice, the best interest of the public as well as that of the defendant will be served thereby”

(ii) *PPA Goal*

“The goal of the government is to establish a more enlightened and human correction system that will promote the reformation of offenders and thereby reduce the incidence of recidivism.”

(iii) *Basic Principles on the Restorative Justice Programmes in Criminal Matters*

The Philippines is a signatory-member country to the draft resolution recommending to Economic and Social Council of the UNO the adoption of the “Basic Principles on the Restorative Justice Programmes in Criminal Matters”. The said document was a formulation of UN Standards in the fields of Mediation and Restorative Justice.

5. PPA RJ Guidelines

RJ, as PPA strategy, came to birth by the aforesaid Memorandum, which is anchored on the following:

1. It promotes and encourages active involvement of stakeholders in a crime situation, who during court trial and by the court procedure are not authorized to have a chance for them to discuss and participate fully in formulating a solution which promotes repair, and reconcile the offender with the victim and the community;
2. It is a balanced approach, primarily motivated by its vision to heal the effects of crime or conflict, and develop a broader vision of an integrated justice system to include victim and the community; and
3. It incorporates into the Agency’s vision and mission the overall thrust of crime prevention through the process of community involvement and social welfare networks with stakeholders, assisted by duty bearers, actively identifying, discussing and solving problems to achieve workable restorative agreement geared to achieve accountability, competency development, and public safety.

(i) *M.O. No. 13 s. 2005*

To strengthen RJ implementation, the PPA-DOJ Administrator issued Memorandum Order No. 13, s. 2006 which expanded the used of RJ process (mediation, conciliation, conferencing, circle of support, etc.) in the following situation :

1. Disturbed relationship as a result of an offence committed by client :

- (a) Client relationship with victim
- (b) Client relationship with community.

2. Disturbed relationship as a result of client’s injurious or destructive acts or omission:

- (a) Client relationship with immediate family or other relatives whether affinity or consanguinity; and
- (b) Client relationship with his or her community; and

3. Disturbed relationship as a result of an injurious or destructive act or omission inflicted against the Agency client by other persons.

(ii) *M.O. No. 18 s. 2005*

Memo Order No. 18 s. 2005 established indicators of rehabilitation success, namely:

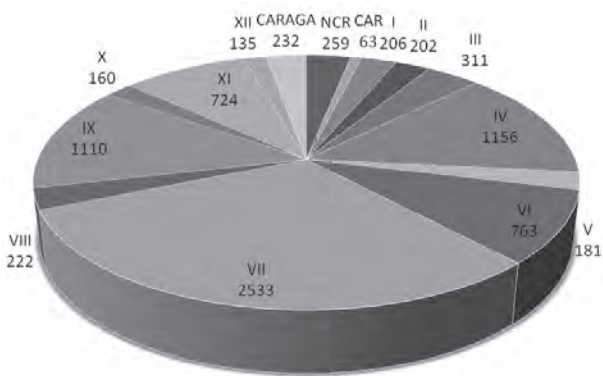
1. First level - minimum level of success (institutional requirements): the client has substantially complied with the condition of probation/parole/pardon; he or she is successfully released from the Agency control, and he/she is crime free.

2. Second level - medium level of success (self-fulfillment and reconciliation): the client gained higher quality of life; he or she is employed or self-employed; he or she has completed his or her education or earned vocational or technical skills, he or she has solved pressing problems in his life such as family problems, personal questions etc.; he or she has resolved conflict with or reconciled with victim; and

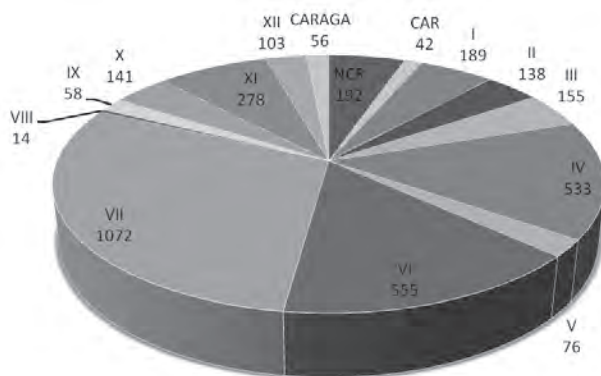
3. Third level - maximum level of success (full restoration to mainstream of the community): the client has gained a certain degree of leadership; he or she has attained a certain degree of recognition in the community; he or she has accomplished something of note for the community. He or she has reconciled with victim and the affected community.

The last two other situations which have significant effects on the overall goal of an individualized, community-based treatment programme as well as on the continuing effort of the community to achieve order and tranquility were included and expanded.

**Total No. of Clients in RJ from 2007 to 3rd Qtr 2009**



**Total No. of Victimss in RJ from 2007-3rd Qtr 2009**

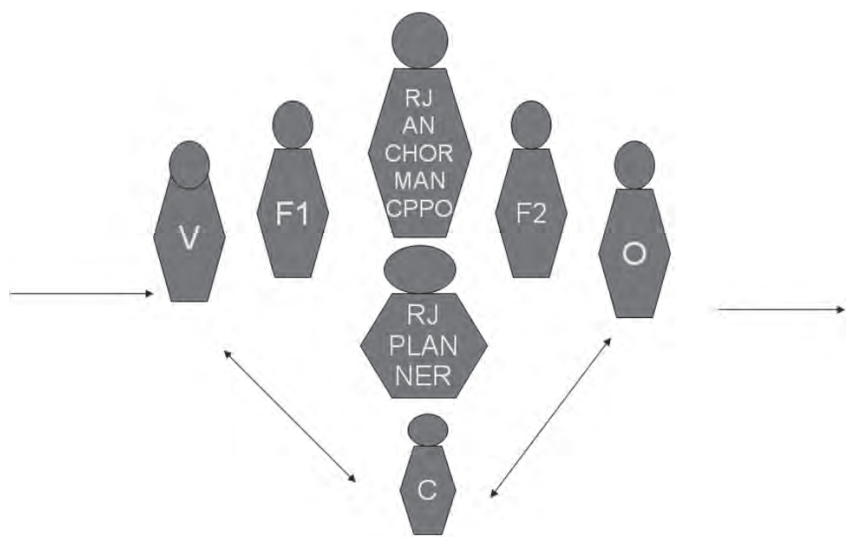


**6. PPA-DOJ RJ Strategy**

*(i) Peacemaking Encounter*

This means a community-based gathering that brings the victim, victimized community and the offender together to inform each other about the effect of crime and victimization; to learn about each other’s background, and to collectively reach a restorative outcome.

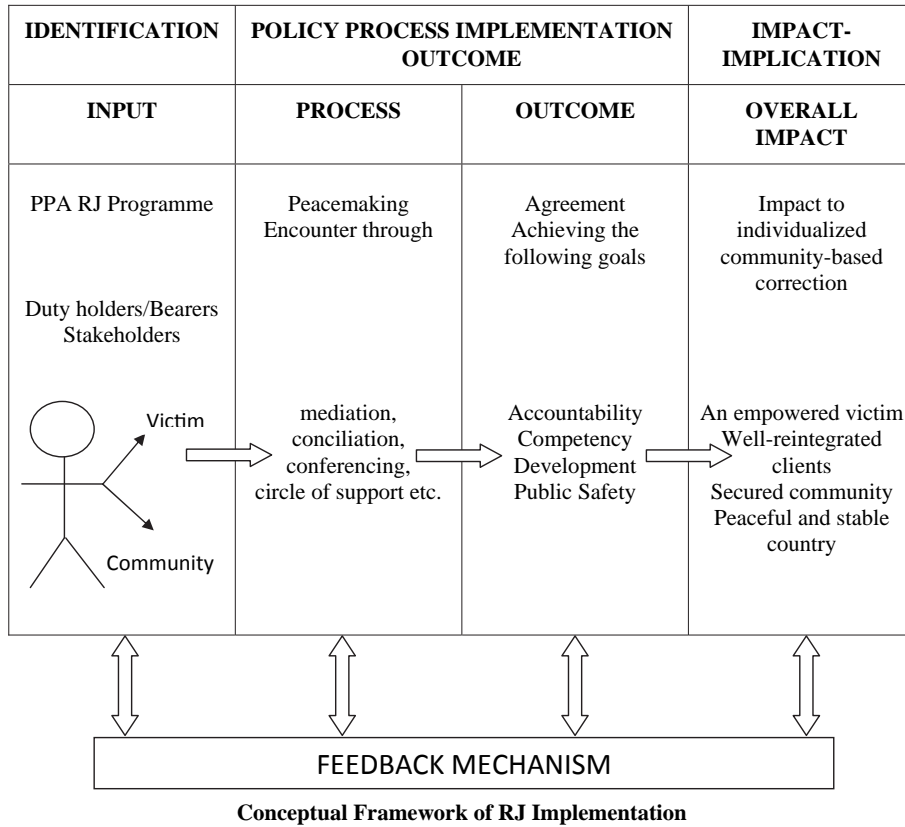
**PEACEMAKING ENCOUNTER MODEL**



Offender tells his or her story of offence and how it affects him or her.

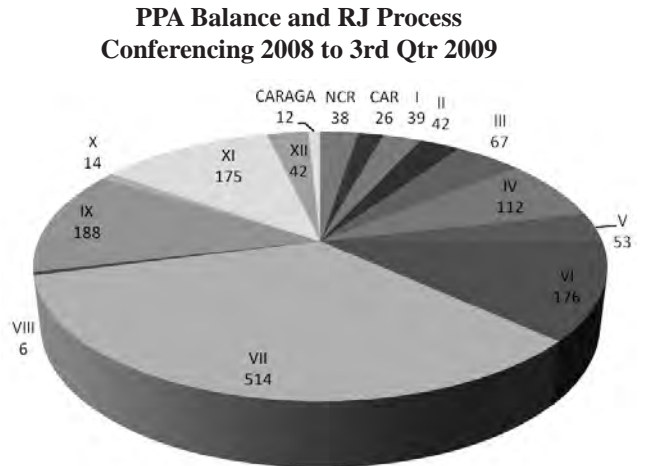
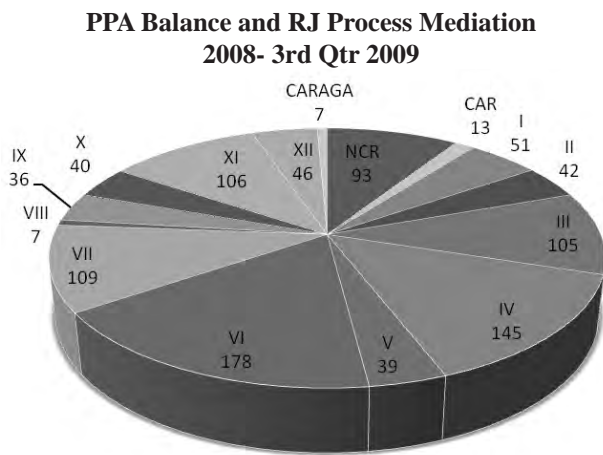
Victim and Community tell how the offence affected them.

Participants designs and agreement.

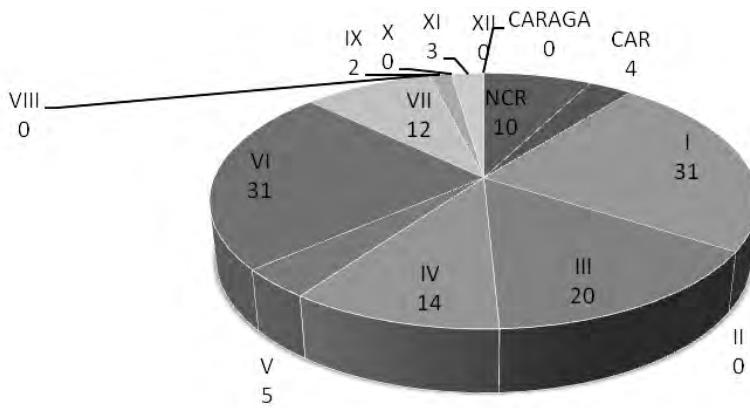


*(ii) PPA-DOJ Peacemaking Encounter*

RJ Processes – any process in which the victim offender and/or individual or community member affected by a crime actively participate together in the resolution of matter resulting from the crime often with the help of a fair and impartial third party. RJ processes, include, among others, mediation, conciliation, conferencing, circle of support.



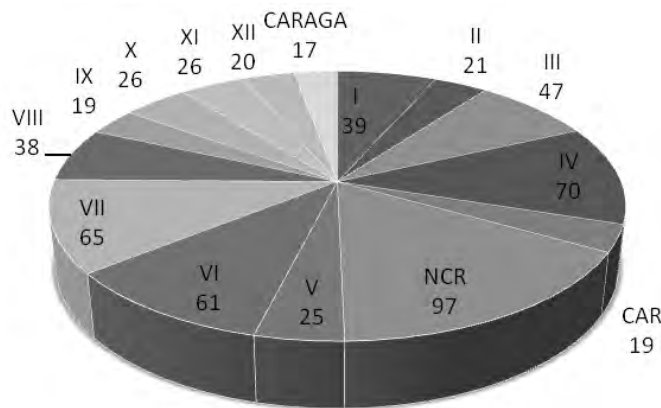
**PPA Balance and RJ Process Circle of Support 2008 to 3rd Qtr 2009**



**7. RJ Procedural Safeguards' Application**

- (i) Client admits the offence, and if possible is encouraged to take full responsibility;
- (ii) RJ Planner (Probation and Parole Officer) solicits interest and willingness of stakeholders (victim, community and offender) to participate in the process;
- (iii) Victim given preference for the time, date and place of the restorative meeting;
- (iv) RJ planner gets in touch with community strengths prior to actual meeting;
- (v) A pre-conference meeting with selected facilitators prior to actual the conduct of peacemaking encounter shall be set to discuss all the details of the dialogue negotiations;
- (vi) Likewise, a pre-conference meeting shall be arranged separately with individual stakeholders to explain the process and other related matters;
- (vii) RJ planners shall ensure everyone knows how to get to the location site;
- (viii) RJ planners/facilitators ensure conference conducted without interruption and secure the safety stakeholders;
- (ix) Stakeholders shall be consulted as to composition of the facilitator and strengths;
- (x) Indigenous systems of settling disputes or differences shall be recognized and encouraged.

**Personnel Per Region Who Have Undergone Training on Restorative Justice and Juvenile Justice and Welfare Act as of December 2, 2009**



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PARTICIPANTS' PAPERS

Region	No. of Attendees	No. of Filled Positions	%
Luzon			
I	39	39	100
II	21	24	87.50
III	47	56	83.92
IV	70	83	84.33
V	25	29	86.20
CAR	19	19	100
NCR	97	101	96.03
Visayas			
VI	61	62	98.38
VII	65	73	89.04
VIII	38	38	100
Mindanao			
IX	19	22	86.36
X	26	36	72.22
XI	26	31	83.87
XII	20	20	100
CARAGA	17	19	89.47
TOTAL	590	652	

8. Restorative Outcome

The Restorative Outcome is an agreement obtained as a product of a restorative process. Examples include restitution, community work service, personal work service, attendance at a therapeutic session, diversion. It is designed to accomplish reparation for victim, reconciliation, and reintegration of stakeholders.

Probationers'/Parolees'/Pardonees' Indemnification of Civil Liability						
YEAR	Total Numbers of Probationers	Amount of Civil Liability	Amount Collected	Percentage	Balance (if any)	Percentage
1978	234	1,005,608.63	194,152.85	19.31%	660,460.41	65.68%
1979	545	3,278,228.75	370,397.55	11.30%	2,739,364.09	83.56%
1980	708	5,198,285.67	390,372.18	7.51%	4,134,023.71	79.53%
1981	1,059	6,242,507.12	598,325.15	9.58%	4,947,787.04	79.26%
1982	1,367	9,989,572.35	457,723.73	4.58%	8,759,027.47	87.68%
1983	734	528,685.63	58,628.02	11.09%	383,507.46	72.54%
1984	313	1,412,787.70	388,644.24	27.51%	986,822.16	69.85%
1985	384	4,116,628.93	128,455.55	3.12%	3,445,745.82	83.70%
1986	351	1,748,984.42	87,973.91	5.03%	1,661,010.51	94.97%
1987	463	646,713.16	228,615.00	35.35%	418,098.18	64.65%
1988	524	421,285.71	190,277.63	45.17%	231,008.08	54.83%
1989	412	3,878,626.10	414,048.33	10.68%	3,464,577.77	89.32%
1990	382	12,810,838.93	235,144.47	1.84%	12,575,694.46	98.16%
1991*	1,229	125,328,563.73	1,794,575.35	1.43%	123,533,988.38	98.57%
1992	1,352	134,538,783.58	2,388,789.97	1.78%	132,149,993.61	98.22%
1993	1,827	40,986,321.00	1,986,620.40	4.85%	38,999,700.60	95.15%
1994	9,635	261,144,714.05	3,886,570.10	1.49%	257,258,143.95	98.51%

RESOURCE MATERIAL SERIES No.81

1995	1,020	485,776,166.00	2,302,332.00	0.47%	483,473,834.00	99.53%
1996	5,635	209,255,095.22	4,528,682.82	2.16%	204,726,412.40	97.84%
1997	5,296	213,473,415.00	33,464,543.00	15.68%	180,008,872.00	84.32%
1998	4,610	215,667,037.04	3,442,392.42	1.60%	212,224,644.62	98.40%
1999	3,482	100,640,445.22	5,309,653.60	5.28%	95,330,791.62	94.72%
2000	1,586	108,700,024.88	7,030,408.54	6.47%	101,669,616.34	93.53%
2001	3,468	269,103,965.00	5,964,719.00	2.22%	263,139,246.00	97.78%
2002	632	1,147,424,899.00	6,518,085.00	0.57%	1,047,614,919.00	91.30%
2003	955	717,436,603.00	19,636,761.00	2.74%	624,364,943.00	87.03%
2004	1,335	889,262,789.00	11,412,278.00	1.28%	877,850,511.00	98.72%
2005	1,353	657,050,862.00	12,771,110.00	1.94%	644,279,752.00	98.06%
2006	1,660	234,366,662.92	11,739,834.95	5.01%	222,626,827.97	94.99%
2007	1,543	125,291,933.96	19,119,994.63	15.26%	106,171,939.23	84.74%
2008	1,278	182,087,550.00	6,772,251.00	3.72%	175,315,299.00	96.28%
TOTAL	55,372	6,168,814,583.70	163,812,360.39	2.66%	5,835,146,561.88	94.59%

*\*Inclusion of Parolees/Pardonees in PPA's Mandate*

9. Result of Study of PPA RJ

In my study on the “Assessment of the Implementation of PPA’s Restorative Justice Programme in the Parole and Probation Offices of Bataan Province, Sta. Rosa City and Baguio City”, which I have submitted to the National Defense College of the Philippines (NDCP), there are vital areas in the implementation of RJ that needs to be pursued vigorously by the Agency, such as:

1. Continuous advocacy for rehabilitation funds from the National Government, and or resort to tapping of resources available inside and outside the country;
2. Improving capability, competence and commitment of the Agency’s human resources;
3. Extensive networking/partnership with the community, its people and the various institutions and organizations;
4. Review of pertinent rules and procedures to conform to RJ processes; and
5. Extensive information campaign to enhance public awareness and involvement.

The Parole and Probation Administration occupies a very sensitive role in the criminal justice system. Its primordial responsibility is to bring the “lost sheep” back to the folds of the law.

RJ as an intervention provides the framework to enhance the reintegration of clients’ offenders to the mainstream of the society. The inclusion of the victim and the affected community will complete the reengagement process and pave the way for the transformation of these offenders into productive, law-abiding and functioning individuals.

This is the desired goal of the PPA’s individualized, community-based treatment, and the Agency contribution to the total efforts of the government in preserving and sustaining peace and stability in the country, and ensuring national security.



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### D. Unpublished Work

Co, Manuel G., a 'Master's Thesis' on the Assessment of the Implementation of PPA's Restorative Justice Program in the Parole and Probation Offices of Bataan Province, Sta. Rosa City, and Baguio City, submitted to the National Defense College of the Philippines, Quezon City, Philippines

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# THE ENHANCEMENT OF APPROPRIATE MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS

*Donald Yamasombi\**

## I. INTRODUCTION

Papua New Guinea adopted its laws from the British common law in 1972 before independence in 1975 and did likewise with its policing and judicial practices.

Crime is governed by two sets of legislation:

- (i) The Summary Offences Act, chapter 262, which deals with minor offences and carries sentences from court fines to five years' imprisonment; and,
- (ii) The Criminal Code Act, chapter 262, which deals with serious offences and carries sentences from five years to life imprisonment.

These two sets of legislation recognize a range of offences which cover both consensual and non-consensual activities and are designed to help prevent these crimes as well as to seek justice and safety for victims or survivors.

However, in almost every part of the process most attention is given to the apprehension and processing of the suspect in order to secure a desired outcome in the courts. This is because all offenders are presumed innocent until proven guilty beyond reasonable doubt before a competent court.

The victims or survivors of crime, though left out of the picture, are expected to assist the police and the public prosecutor with corroborating evidence to support the charge against the accused. This dilemma has created an unfortunate situation for many victims and survivors of crimes.

In this presentation I will highlight the role of the police in the criminal justice system of Papua New Guinea, and with the given major crime statistics of the last five years, will point out some of the challenges faced by victims of crime in the criminal justice process.

I will then conclude by pointing out some measures currently being worked on to address victims of crime by making the process more user-friendly.

## II. CRIME STATISTICS

**Table 1: Major Crime Statistics between 2005 and 2009**

Reported Crimes	2005	2006	2007	2008	2009
All Murders	587/122	614/173	514/168	610/206	619/253
Manslaughter	17/9	13/1	11/2	18/4	14/7
Rape	878/194	799/182	674/149	943/262	794/215
Other Sexual Offences	418/105	472/97	308/80	229/60	237/57
Robbery	172/250	1605/252	1170/206	1466/301	1306/288
Robbery MV	879/68	797/42	583/30	563/17	654/21
Breaking (Commercial)	642/71	549/69	488/98	389/55	395/55
Breaking (Domestic)	879/72	705/80	442/56	529/101	538/87
Stealing (MV)	289/18	245/25	197/15	216/32	248/16

\* Chief Inspector, Director of Criminal Investigations, Crimes Division. Royal Papua New Guinea Constabulary, Papua New Guinea.

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Stealing	716/ <b>149</b>	902/ <b>235</b>	621/ <b>107</b>	1026/ <b>107</b>	981/ <b>276</b>
Fraud	196/ <b>88</b>	186/ <b>83</b>	161/ <b>58</b>	220/ <b>111</b>	219/ <b>120</b>
GBH	1443/ <b>203</b>	1302/ <b>207</b>	828/ <b>120</b>	1003/ <b>144</b>	1204/ <b>177</b>
Firearms	201/ <b>142</b>	154/ <b>126</b>	108/ <b>117</b>	79/ <b>70</b>	98/ <b>90</b>
Drugs	690/ <b>732</b>	536/ <b>559</b>	663/ <b>777</b>	435/ <b>514</b>	585/ <b>720</b>
Escape from CIS	242/ <b>76</b>	64/ <b>10</b>	23/ <b>27</b>	18/ <b>9</b>	22/ <b>21</b>
Escape from Police	229/ <b>97</b>	183/ <b>59</b>	208/ <b>68</b>	90/ <b>46</b>	124/ <b>77</b>
Arson	284/ <b>18</b>	276/ <b>18</b>	268/ <b>81</b>	284/ <b>50</b>	239/ <b>37</b>
Abduction	146/ <b>5</b>	137/ <b>15</b>	109/ <b>9</b>	128/ <b>16</b>	159/ <b>18</b>
Bribery	2/ <b></b>	1/ <b>1</b>	1/ <b>1</b>	4/ <b>2</b>	3/ <b>3</b>
TOTAL CRIMES/TOTAL ARRESTS	10459/ <b>2419</b>	9540/ <b>2237</b>	7448/ <b>2171</b>	8511/ <b>2353</b>	8765/ <b>2616</b>

Note: The arrest figures are shown in bold type.

### III. NATIONAL PROSECUTION'S SUCCESS RATE OF CASES PROSECUTED (2005-2009)

The prosecution's records showed only the number of cases that were prosecuted and the successful convictions as percentages for each month over the five year period as listed below.

**Table 2: Cases Prosecuted and Successful Convictions**

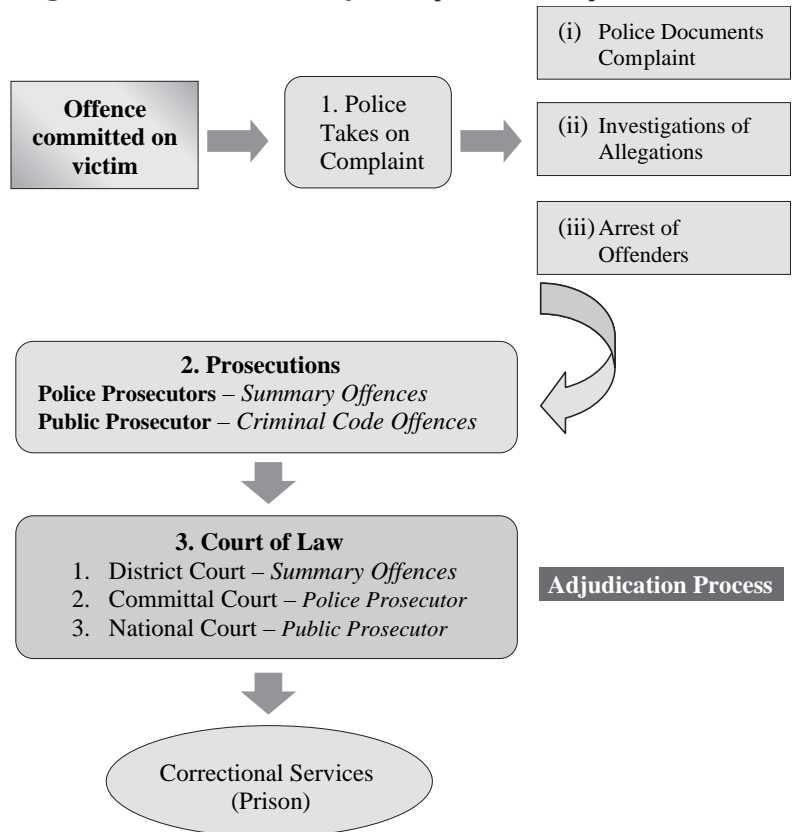
Month / Year	2005	2006	2007	2008	2009
January	71%	74%	75%	76%	66%
February	71%	74%	73%	77%	56%
March	71%	71%	79%	79%	54%
April	75%	74%	68%	69%	63%
May	72%	70%	74%	70%	57%
June	73%	73%	63%	71%	62%
July	71%	72%	62%	77%	59%
August	74%	69%	66%	71%	72%
September	75%	70%	73%	Not recorded	58%
October	72%	70%	67%	59%	45%
November	70%	69%	67%	67%	65%
December	71%	79%	59%	69%	71%

Papua New Guinea has serious concerns in its law and order problems. There are many crimes reported daily but the attendance rate by police to these cases is very poor. This is further compounded by the poor rate of convictions by investigators for the same reasons: lack of manpower and training.

The above table can be used as an illustration to show the number of victims whom the law has not protected or to whom justice been denied for the reasons mentioned above.

**IV. THE CRIMINAL JUSTICE SYSTEM IN PAPUA NEW GUINEA**

The following flow diagram shows the Criminal Justice process in Papua New Guinea.



**Figure 1.**

In the above process, there remain many inadequacies regarding accessibility to justice on the part of the victims.

The key functions and duties of the individual agencies are highlighted below.

**A. The Role of the Police**

The Royal Papua New Guinea Constabulary is the only recognized national agency of the country whose primary functions are to:

- (i) preserve peace and good order in the country, and
- (ii) maintain and, as necessary, enforce the law in an impartial and objective manner,

as per stipulated under section 197 of the National Constitution, chapter 1. As such, the police are the first agency to be approached in any conflict or crime situation.

Complaints are registered on receipt into an occurrence register and allocated to investigators to investigate. Depending on the seriousness and nature of the crime, it may be delegated to the Criminal Investigations Directorate to conduct detailed investigations before an offender is arrested and charged.

The Criminal Investigation Directorate comes under the Crimes Division and is the key functional directorate in investigating and dealing with serious criminal offences.

In so doing the police initiate the whole criminal process as shown in Figure 1 above by documenting the complaint, then investigating the crime to establish the truth of the incident.

They are required to identify what law has been broken, identify the person(s) who may have committed

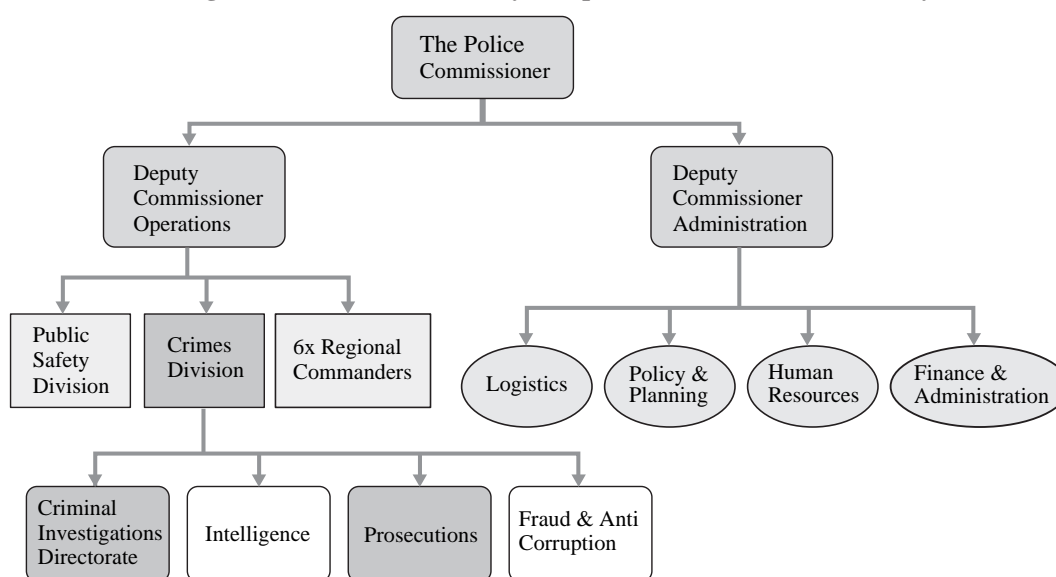
the offence and gather necessary evidence to support the charges against that person before he or she is brought before the court.

It is the responsibility of the police to seek and identify sufficient evidence on the complaints reported by the victims to eliminate mere suspicions before a person can be arrested and charged with an offence. Other minor offences are investigated and dealt with by the uniformed branch under the Public Safety Division. The criminal investigators in the course of their investigations are also duty bound to ensure that offenders or suspects of any offences are treated with due diligence as human beings until proven guilty by a competent jurisdiction of law beyond reasonable doubt.

In so doing, investigators spend more time on investigation by establishing avenues of enquiries to gather enough evidence to charge a suspect. The victims, on the other hand, are also placed in a position to assist police investigations with corroborating evidence, should it be medical reports, eye witness accounts or other material evidence. The state gives little to no consideration at all to the victims in terms of their security, assistance to overcome traumas, assistance to free legal aid or the assistance to obtain medical reports.

With the country's population at about 6.5 million and the police manpower strength at 4,700, the ratio is one police officer to every 1,382 people. Therefore, the crime statistics in Table 1 clearly show the inability of police to attend to and deal with all reported crimes because of the lack of manpower, which is compounded with logistical, training and funding constraints.

**Figure 2: Structure of the Royal Papua New Guinea Constabulary**



### **B. The Prosecution**

Because of the court systems in the country, the summary or minor offences are prosecuted by Police Prosecutors in the District Court, which is the lower court.

Serious criminal cases are firstly heard in a Committal Court presented by a police prosecutor before a senior magistrate to determine the sufficiency of evidence on hand before it can be committed for a trial proper in the National Court or be struck out.

When the cases are committed to the National Court, the Public Prosecutor then takes carriage of the matter as this is a higher court.

### **C. The Courts**

The court system in the country is based on the burden of proof. The court is really an independent body that functions impartially on cases brought before it.

All criminal cases are deemed to be the state's case, hence the onus is on the state to present its case beyond reasonable doubt to prove guilt of an accused, because the accused is presumed innocent until proven guilty.

## **V. SOME ASSOCIATED CHALLENGES FOR VICTIMS AND SURVIVORS OF CRIME**

Having briefly discussed the criminal justice process, the following are some obvious challenges faced by the victims and survivors of crime.

- Costs involved at certain points of the process. These costs include medical bills for victims and medical reports, transport fares to the nearest police stations to lodge complaints and even legal fees.
- Delays in the process. Police investigators most times delay investigations unnecessarily. As such cases may get adjourned in the Courts over extended periods and sometimes get struck out. Lack of manpower and logistics may be some reasons for this; however this does not serve justice on the complainants or victims.
- Difficulties with the Court administrative processes. Some case files get misplaced and lost in court houses and other times cases are dismissed due to non-compliance with court procedures, processes and rules.
- Lack of information and trust in certain points of the process. Inadequate awareness of the procedures and processes of investigations and the Court processes leads to mistrust and ignorance.
- Lack of resources. This causes undue delay in the production of case files in the initial stage by the police, thus leading to undesired striking out of cases in Courts due to time limitations
- Lack of adequate and affordable legal representation. Because victims cannot afford legal fees many at times their cases are thrown out as the defence can afford legal counsel to adequately argue their cases in court.

### **A. Current Measures**

In 2006 some attention was drawn to address the effect of crimes on the victims. They included issues as:

#### **1. Victim Impact Statement**

It is vital that at the trial of the matter, police and prosecutors must provide to court the impact of the crimes on the wellbeing of the victim to assist the court in its decision making and imposition of appropriate penalties. Recent meetings between the police and public prosecution on who should obtain victim impact statements have agreed that the public prosecution obtains and presents these statements as part of evidence in the court of law.

#### **2. Medical Report**

Victims experience significant problems as they have had to pay their own expenses after undergoing medical treatment. Then they have to pay for medical reports to form part of the evidence of the crime inflicted on them. Furthermore, the doctors' affidavits are not always available to assist the courts.

On occasions that the doctors' affidavits or statements were provided, they have been written in medical terms difficult for laymen to understand.

A number of measures are now in place to address this situation, including:

1. Meeting with the Health Department authorities to formalize a pro-forma for medical officers' affidavits to be presented in a language easily understood by all;
2. Medical pro-forma prepared for victims of crime to be presented to the hospitals so that they are treated at no cost;
3. Reception centres created within the hospitals to cater for victims of crime, especially women and children;

4. Reception Centres are established with trained officers at selected police stations and hospitals to deal with the problems of victims of crime, especially cases involving women and children.

Reception Centers were introduced between 2005 and 2006 in the two major cities of Papua New Guinea. The main reason for the establishment of these centres was to deal with the victims of crime against women, child victims and sexual assault victims.

Women and children were seen as the most vulnerable group that cannot speak out in public of the abuses and traumas they have been through unless they have been treated with compassion and respect.

Although no formal training is provided in government institutions like the police, some workshops have been run by NGO groups and the United Nations Save the Children Fund to deal with the victims of crime. At the police stations the staff of the reception centres are taught to deal with this vulnerable group more attentively in order to make them feel comfortable and assist in the investigation process.

In hospitals, when these victims are referred, they are attended to in a separate set up from the main out-patient area.

These arrangements are basically to provide a more conducive environment for victims, especially women and children, to be attended to compassionately and with care so that they are at ease and comfortable in assisting the investigation process.

### 3. Working Collaboratively

Policing in Papua New Guinea is promoted as everybody's business. Every individual and organization in the community has a part to play in making the society safe. Thus, the Royal Papua New Guinea Constabulary adopted the mission statement: "Securing a Safer Community in Partnership".

Currently many non government organizations are advocating for the rights of all people from all forms of violence and this is beginning to get off the ground with considerations given to victims of crime. Unlike in the past, victims had no support from the community around them and they feel cornered and helpless. The police are collaborating with all these groups through the concept of Community Policing. In this concept, people with respectable characters are identified from within the communities they live in and sworn as auxiliary constables. They do not have the power to arrest offenders but they can mediate trivial conflicts and resolve them using the accepted customary practices of the community.

It is essential that a collaborative effort is to be made to create harmonious environments for victims of crime to feel at home and able to willingly support case officers or the courts. This working relationship requires all agencies and whole government approach and support, especially from key organizations that are actively involved in handling victims of crime cases. They include the Office of Public Prosecution, Police, Department of Health and NGOs, as in the case of Port Moresby; House Ruth (an NGO group) and other safe passages or safe houses are made available to victims of crime by certain private companies including Digicel, Protect Security and other stakeholders in the business community.

This collective effort by the community is really making an impact in actually providing the temporary shelter needed by the women and children who are being abused or harassed at their homes.

### 4. Legal Aid/ Investigations Oversight

In Papua New Guinea victims of crime are at liberty to seek legal representation at will. However, the cost involved in seeking this service is very high.

Apart from the services of private lawyers, which are expensive, the Public Solicitors' Office, which is a government agency, does provide some form of legal advice to victims of crime, though in most instances they represent the defendants or suspects in court because they likewise cannot afford to engage private lawyers.

One avenue that is really gaining momentum is the 2005 Memorandum of Agreement between the Police and the PNG Ombudsman Commission. In this MOA, the Ombudsman Commission is obliged to oversee

that reported cases are fairly investigated without fear or favour by the police and justice is delivered to the concerned party.

Early September 2009, two murder cases, one alleging the involvement of a policeman and another alleging the involvement of a prominent businessman, were investigated under the Police Ombudsman oversight arrangements as the cases were unnecessarily delayed by police investigators under suspected undue influence by the suspects.

In November 2009, I investigated and charged a police officer for wounding another person using his official firearm on a mere suspicion that he was a suspect in a stealing offence. The victim's family and relatives were very much overwhelmed by the action because it took a year before this action was taken under the arrangement.

Under this same arrangement all witnesses and victims are protected from any threats or harassment by the suspects or their accomplices according to the existing law. Although no restitutions are imposed, any threats, harassments and inducements on the victims or the witnesses are treated as new offences.

#### 5. Court User Forums

In about mid 2006, the National Court Judges initiated and introduced the idea of running Court Users Forums especially in the Port Moresby and Lae cities.

The key issue was to assist stakeholders of the Criminal Justice System to see the Courts as not only a place where punishment is imposed on lawbreakers but a place where both parties, the suspects and the victims, can access services more freely.

It was obvious that some court processes were very rigid and the judges, magistrates, police, the correctional services and lawyers needed to come together and discuss issues of common interest and make the process more user-friendly.

Some positive outcomes from these meetings have been the understanding of the courts on extending timeframes for case files to be prepared as agencies like the police do not always have resources available to complete investigations and case files on time.

Another outcome has been to address the previous years' cases dating back some five to seven years as this was seen as denial of justice to those who reported the matters.

### **VI. CONCLUSION**

The approach to the Criminal Justice Process in Papua New Guinea has been concentrated on the handling of the suspects, administering their rights and presuming that they are innocent of any allegations until proven guilty by the competent jurisdiction.

It was only in 2005 that the measures I have briefly highlighted above were introduced and many more consultative meetings and workshops need to be held before more refined, practical and constructive approaches are put in place to better treat and deliver justice to the people who fall victim to the hands of criminals in Papua New Guinea.

On the outset it is my firm belief that victims of crime and the criminals are part of the society that allows the criminal justice system in PNG to remain a vibrant process; hence it is critical now that the victims and survivors of crime be given similar if not better treatment by the government and its agents.

However, in order to do so, proper training must be conducted in all government law enforcement agency institutions on the appropriate procedures and processes of receiving and processing the victims of crime.

Appropriate legislation also needs to be put in place to foster trust and confidence of the public and better serve the victims of crime in Papua New Guinea.



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## REPORTS OF THE SEMINAR

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### GROUP 1

#### MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS WITH SPECIAL ATTENTION TO VICTIMS OF SEX CRIME/ CHILD VICTIMS

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<b>Chairperson</b>	Ms. Mari Elvira Bote Herrera	(Philippines)
<b>Co-Chairperson</b>	Mr. Masahito Murohashi	(Japan)
<b>Rapporteur</b>	Mr. Donald Yamasombi	(Papua New Guinea)
<b>Co-Rapporteur</b>	Mr. Eduardo Jose Tristan Castro	(Peru)
<b>Members</b>	Mr. Ryoji Terado	(Japan)
	Ms. Valéria Raquel Pereira Martirena	(Brazil)
	Mr. Philip Shem	(Vanuatu)
	Mr. Takeshi Nishioka	(Japan)
<b>Visiting Experts</b>	Prof. Cho Kyoon Seok	(South Korea)
	Ms. Martina Peter	(Germany)
	Ms. Kim Herd	(USA)
<b>Advisers</b>	Prof. Tetsuya Sugano	(UNAFED)
	Prof. Ayako Sakonji	(UNAFED)
	Prof. Fumiko Akahane	(UNAFED)

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### I. INTRODUCTION

Group 1 commenced its discussion on 22 January 2010. The Group elected the above-stated officers to lead the discussion. Group 1 was assigned to discuss the Measures for Victims of Crime at each Stage of Criminal Justice Process with special attention to Victims of Sex Crime/Child Victims.

It is now widely-recognized that all crime victims should have a right to a full range of services and support to help them recover physically, psychologically and in all practical ways, from the effects of crime. The Group attempts to provide various perspectives, from different backgrounds and different jurisdictions, to address the needs of victims of sex crimes, specifically rape victims. Rape, as we acknowledge it, is a heinous offence that can happen to anyone: children, women and sometimes even men.

Although some countries have existing laws in place to provide assistance and support for crime victims, other jurisdictions recognize the need to establish certain measures to alleviate the needs of these vulnerable crime victims.

### II. SUMMARY OF THE DISCUSSION

To come up with appropriate measures for crime victims, the Group discussed the following issues concerning their respective countries' experiences:

1. Collection/reception of evidence.
2. Preservation of evidence.
3. Improvement of line agencies co-operation.
4. Providing for the safety and well-being of victims

#### A. Collection of Evidence

On the matter of the collection of evidence the following desirable points were discussed by the group members:

- Police personnel dealing with sex crimes must have adequate education and training in human relations and must display empathy to the victims, particularly child victims;
- Awareness and education should be rendered to children and everyone on what to do in a sex crime situation and whom to call immediately (only with emphasis to children). Media for disseminating information include mass media, pamphlets, workshops, conferences, etc.;

- Creation of a special section at the police stations to receive and interview crime victims;
- In collection of evidence there is a need for co-operation between the police and other agencies like hospitals to create a one-stop support centre;
- The state should provide the equipment necessary for laboratory and physical examinations;
- There is a need to tap or seek help from NGOs or International Organizations to provide training/equipment in case of a lack of funds;
- In Brazil, a pilot project is now being built that would facilitate the assistance given to crime victims by putting up a hospital, police station and social assistance/welfare institution, as well as the office of the prosecutor and the court in one area where the victim may go to and where everybody in that area or network will be prepared to deal with the situation.

### **B. Preservation of Evidence**

In the preservation of evidence the group narrowed the issues down to the following:

- Contamination of evidence (i.e. physical, object or biological evidence) must be avoided;
- Physical examination of victims is required to obtain credible evidence;
- Police officers and prosecutors need to be properly trained in evidence preservation techniques;
- Medical expenses incurred by the victims must be borne by the police/state.

### **C. Improvement of Line Agencies Co-operation**

The group recognizes that line agencies' co-operation is relevant to the dynamics of protection of crime victims and, so recognizing, agreed on the following points:

- A working relationship and greater co-operation needs to be fostered between the hospital and the police for a speedy and timely response and results;
- There is a need for conferences to be held, including the police, hospitals and other agencies, to promote more effective collaboration on the rules and guidelines as many personnel lack understanding;
- NGO can provide legal assistance through community support programmes and they can also help lobby for legislative changes;
- One-Stop Support Center. There must be collaboration between line agencies for two basic reasons:
  1. Investigation;
  2. Deciding how best to assist victims (i.e. police, medical and legal assistance, temporary shelter).
- NGOs must be included as part of any crime victim support system because they often have the funds necessary to assist crime victims.

### **D. Providing for the Safety and Well-Being of Victims**

The group discussed the magnitude and significance of managing crime victims' feelings and sentiments and established the following issues in providing for their safety and well being.

#### **1. Secondary Victimization or Re-victimization**

- Victims often have to relate the incident three times; first to the police investigator, then to the public prosecutor who is mandated to come to the police station to get testimony of the victim and finally during the trial;
- The privacy of the victim should be taken into consideration;
- Dolls should be used to reduce anxiety and to encourage child victims to talk more about the incident;
- Dolls should be used at the police level to aid the re-enactment of the incident during the investigation process and the police investigator acts as suspect;
- Attendants, screens and video links should be used in criminal trials;
- Video-tapes of initial investigations or a question and answer session before a psychologist should be

played during court proceedings to prevent re-victimization;

- The public may be excluded from the court at the request of a rape victim.

## 2. Notification

- There is a need to notify and inform the victim of the status of the case at each stage of the proceedings.

## 3. Victim Impact Statement

- Victim Impact Statements are already used in some countries while in other jurisdiction, it is still in the trial stage;
- There is a need to explain the process to the victim and to reach out to the victim by conferring, informing or notifying the victim of the law and guidelines;
- Existing Measures unanimously agreed as appropriate to be adopted:
  1. Victim Impact Statement.
  2. Notification Process.

### **III. CONCLUSION AND RECOMMENDATIONS**

At the end of the discussion, the Group reached a consensus regarding the recommendation of possible countermeasures in the investigation up to the trial stage to protect victims of sex crime, specifically rape.

In sum, the measures recommended by the group to be adopted in their respective jurisdictions include the following:

#### 1. Giving special consideration to the mental and physical needs of victims:

- Development of system/organization (an intake or emergency centre dealing with medical, social, welfare and psychological needs, and the collection and preservation of evidence);
  - (i) Special sections for crime victims in police stations;
  - (ii) The establishment of a One-Stop Support Centre;
  - (iii) Collaboration with other concerned organizations: such as hospitals, NGOs, Police Offices, etc.;
  - (iv) Training line agencies' personnel as part of collaborating mechanism.
- Development of guidelines on investigation methods such as collection of evidence, preservation of evidence, or interview.
- Core-group training among police officers (Based on a Training of Trainers Programme) on proper criminal investigation, which includes re-training in basic aspects of investigation as well as the following:
  - (i) Social measures;
  - (ii) Medical measures;
  - (iii) Psychological (mental and emotional) measures;
  - (iv) Religious/community measures (if need be).

#### 2. Providing awareness and enlightenment programmes for vulnerable subjects:

- Information dissemination
  - (i) Raising the awareness of students by police officers and teachers;
  - (ii) Raising awareness of the community, especially parents, by public health professionals or other officials;
  - (iii) Awareness raising and dissemination of information through the mass media (i.e. television, radio and print).

#### 3. Allowing for protection of privacy and dignity of victims:

- Creation of special police units or stations designed for handling sex offences in which the majority of officers are female;

- Non-disclosure of basic information which would reveal the identity of victims (such as name, address and nationality);
  - Behaviour modification of personnel who come in contact with victims directly in the criminal justice system.
4. Rendering professional (including psychological) protection and services for crime victims by the State.
  5. Notifying victims and/or immediate family members (when they are not perpetrators) of the status of the case at every stage of the criminal justice process.
  6. Establishing legal frameworks for victim protection and for participation in judicial procedure (including providing the opportunity to make a victim impact statement).
  7. Developing victim advocate programmes for the community.  
A victim advocate may be one who volunteers to provide:
    - Legal support;
    - Liaison between agencies, etc.;
    - Case process monitoring;
    - Escorting of victims to the police station and to court;
    - Psychological support.

## **GROUP 2**

### **MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS WITH SPECIAL ATTENTION TO VICTIMS OF SERIOUS VIOLENT CRIME, INCLUDING HOMICIDE**

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<b>Chairperson</b>	Mr. Manual Goloso Co	(Philippines)
<b>Co-Chairperson</b>	Mr. Hiroshi Sato	(Japan)
<b>Rapporteur</b>	Mr. Muhammad Athar Waheed	(Pakistan)
<b>Co-Rapporteur</b>	Mr. Yoshiaki Furukawa	(Japan)
<b>Members</b>	Mr. Md. Awlad Ali Fakir	(Bangladesh)
	Mr. Nam Ha Vu	(Vietnam)
<b>Visiting Experts</b>	Ms. Emiko Nishimura	(Japan)
	Mr. Musaed Dhaifallah Qaid Al-Dhaheri	(Yemen)
	Ms. Kim Herd	(USA)
	Ms. Martina Peter	(Germany)
	Mr. Cho Kyoong Seok	(Korea)
<b>Advisers</b>	Mr. Jun Oshino	(UNAFED)
	Mr. Haruhiko Higuchi	(UNAFED)
	Mr. Toru Kawaharada	(UNAFED)

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#### **I. INTRODUCTION**

The group started its discussion on 22 January 2010 and elected by consensus Mr. Co as its chairman, Mr. Sato as its co-chairman, Mr. Waheed as its rapporteur and Mr. Furukawa as its co-rapporteur. The main topic of discussion as assigned was “Measures for victims of crime at each stage of the criminal justice process with special reference to victims of serious violent crime including homicide”. The topic under discussion was too broad to cover, consequent upon which, the group further decided to focus only on the analysis of measures for the survivors of homicide. The agenda of discussion was planned by the group with the sub-topics: 1.Needs and concerns for victims of violent crimes; 2.Legal and Regulatory framework; 3. Measures for victims of violent crime at the Investigation Stage; 4. Measures for such victims at the prosecution stage; and 5. Measures for victims at the trial/sentencing and post sentencing stage.

#### **II. SUMMARY OF DISCUSSIONS**

##### **A. Needs and Concerns of Victims of Violent Crime**

All the participants identified five major needs of the victims of violent crime including homicide. The financial need of such victims was given much importance in the discussion and then the psychological need of such victims was discussed. The physical safety of the victim was also declared an important need and concern. Access to information was also discussed as an important need of victims of violent crime and then the available facilities for medical treatment was considered a second important need for such victims.

The Japanese participants discussed the available financial measures available after the enactment of the Basic Act and Compensation Payment Act. Ms. Nishimura said that the victim had to pay all expenses at the initial stage, which is a big financial burden. Mr. Furukawa from Japan stressed the role of non-governmental organizations in providing financial support for victims of violent crime. Mr. Waheed from Pakistan discussed the expenses related to burial ceremonies and issues related to blood money. He stated that the victim’s family gets blood money as a result of compromise as homicide in many countries is still a compoundable offence, which is not case in Japan and other countries.

The psychological needs of such victims were identified by the group. All the participants stressed on the behaviour of criminal justice practitioners can be overcome through training of officers on crisis intervention.

The issue of physical safety was thoroughly discussed by almost each participant. In Japan the system of patrolling the home of victim was discussed whereas Mr. Waheed pointed out that the use of modern gadgets

can be helpful for tracking the offenders and ensuring the safety of victims. Mr. Fakir from Bangladesh explained that the system of quick response teams should be available for the safety of such victims. Mr. Al-Dhaheeri from Yemen pointed out that it is the responsibility of the tribe, clan and then family to provide physical safety for the victims of violent crime. Mr. Co explained that it is the duty of the police and village government in Philippines to ensure such safety.

The victims' need regarding access to information was discussed by the group and it was found that such a formal mechanism is available only in Japan. The institutional methods and infrastructure for providing information are not available in Pakistan, Bangladesh, Yemen and Vietnam. It was agreed by the group that a system of notification should be a mandatory part of the criminal justice process.

The issue of medical facilities for the victims of crime was discussed by each participant and many discrepancies were discovered in the criminal justice systems of countries where there is no culture of life insurance.

### **B. Legal and Regulatory Framework**

The legal aspects for victim's treatment were thoroughly discussed by all participants.

Mr. Al-Dhaheeri from Yemen explained that there are some special laws for children, juveniles and women to protect the rights of these groups of victims. But there are no special laws for victims of crime. Mr. Waheed from Pakistan said that the right to life is the most important and foremost fundamental human right and further explained the surrounding legal issues in Pakistan. He concluded that though the constitution and some substantive and procedural laws explain the rights, it does so in much generalized terms. There is no separate enactment specifically meant for the rights of victims of crime. Mr. Fakir stated that the situation in respect to the legal and regulatory framework is the same as that of Pakistan, except the recent enactment of some special laws for some special groups and cases. Ms. Nishimura and Mr. Sato from Japan discussed the available legal and regulatory measures. Mr. Ha from Vietnam also pointed out that there is no separate laws in Vietnam stating victims' rights. Mr. Co also agreed that separate enactment for victims is a necessity of the time. There are some special laws for women and children in the Philippines but other categories of victims are still ignored. It was the consensus of all participants that without a legal framework it is not possible for any state to provide institutional means for better victim treatment.

### **C. Measures for Victims at the Investigation Stage**

The problems faced by the victims of violent crime were discussed by the group in detail. Mr. Waheed from Pakistan discussed nonprofessional treatment by first responders because of lack of training in crisis intervention. Moreover, there are no special investigation units regarding each category of crime. The investigators more focus on offenders in the process of interrogation and analysis of evidence and forget the victim, which is always damaging for establishing a bond of trust and confidence. The issue of trust deficit is a major problem in most of developing countries where there is more chance of political interventions and unjust treatment of the victims of crime. Mr. Sato from Japan also pointed out that sometimes the victim statement just after the occurrence of a crime is problematic. In the same way, Ms. Nishimura from Japan explained that in some cases, the media representation of the victim has very negative impact on the process of investigation as well as secondary victimization by the media. Mr. Co stated that in the Philippines, the village government, called the Barangay, has a very important role in providing basic information and services regarding victim treatment. He also emphasized the importance of dying declarations in the criminal justice process. It was the consensus of all participants that a victim impact statement is very important in the process of investigation. Such a system is not practiced in many countries.

### **D. Measures for Victims at the Prosecution Stage**

There are some basic differences in the role of public prosecutors in different criminal justice systems. Mr. Waheed from Pakistan said that the prosecution service remained a part of the police service until made independent in 2005 by the Public Prosecution Act, but again, its role is very restricted and correctional. The victims of crime have less contact with the prosecutors in Pakistan and situation is the same in Bangladesh. In Japan, the Philippines and Yemen, the public prosecutor has a defining role in victim treatment. Mr. Sato pointed out that there is no system of private prosecution in Japan, whereas Mr. Co from

Philippines added that a private prosecutor works under the supervision of public prosecutor and the victim is consulted in a case for a plea bargain. In most of the represented countries, the screening mechanism at the prosecution stage is not available as in case of Japan, where about 54% of cases are not prosecuted at the discretion of public prosecutor, considering the circumstances and seriousness of the case. On the other hand, in countries where a screening mechanism exists, there should be another mechanism to review the discretionary power of prosecution authority for victims of crime.

The participants also discussed the alternative dispute resolution mechanism. Mr. Al-Dhaheri from Yemen stated that a very effective alternative dispute resolution mechanism through mediation and arbitration is available in the form of a tribal mediation mechanism. Mr. Waheed from Pakistan explained that there is bifurcation of offences into compoundable and non-compoundable. The historical method of alternative dispute resolution remains in practice but its role has been diminished due societal changes. The quality of justice in such institutions is always questionable. Mr. Co pointed out that the village government and indigenous practices play a significant role in out-of-court settlement. Ms. Nishimura said that out-of-court settlement may not divert serious violent cases from formal criminal proceedings in Japan because the system has to take care of the social injury caused by the offender.

#### **E. Measures at the Trial/Sentencing Stage**

In most of the represented countries, with the exception of Japan, a codified mechanism for presenting the views and concerns of victim is lacking. Mr. Furukawa explained that in Japan, the victim is consulted in the case of probation and parole. The victim has also the right to express his or her grievances at trial stage and also in the victim impact statement. Mr. Co also added that the victim is also consulted at the time of parole in the Philippines through the publication in newspapers of the names of persons to be released and victims and other concerned people can give their comments.

The issue of compensation and restitution was thoroughly discussed by each participant. Mr. Waheed said that the provision of restitution is available in the Penal Code of Pakistan but there are very few cases in which restitution orders have been passed by the courts. It is at the discretion of the court to pass a restitution order. On the other hand, the institutional mechanism for compensation to the victim of crime is not given in the criminal justice system of Pakistan. Mr. Fakir from Bangladesh added that the same system is in practice and political heads announce compensation in some cases; the amount varies according to the situation. Mr. Co claimed that in his country compensation for unjust imprisonment or detention and victims of violent crimes is granted by law. Of the represented countries, only Japan has a victim support fund.

#### **F. Measures at the Post-Sentence Stage**

Most of the participants agreed that there is a misconception in many countries that the role of victim is finalized at the sentencing stage when in fact there are many issues in the post-sentencing stage which are directly related to victims of crime. For example, Mr. Al-Dhaheri explained that in Yemen the victim has the right to prevent capital punishment even after a presidential order for such a sentence is given. Mr. Waheed pointed out that in Pakistan corruption and maladministration in correctional centres sometimes leads to hardened criminals using cell phones inside the prisons and threatening victims with dire consequences if they pursue the case. Moreover, the correctional centres transform “ordinary” criminals into hardened criminals because inmates learn from each other, which is again a threat for their victims. In the case of parole and probation, in Japan, a victim is informed through the notification scheme. But in other countries, the victim is disassociated from criminal justice agencies, including the correctional centres, in the post-sentencing stage. Most of the time, the victim is not aware of offender’s treatment and even sometimes remains unaware of the release of the offender.

### **III. RECOMMENDATIONS**

All group members finalized the following recommendations:

1. Each state may establish a separate national institution responsible for planning and execution of national victim policy;
2. There is utmost need for separate laws for victims’ rights regarding information, compensation and restitution and other allied facilities;

3. Each state should create a victim support fund for victims of crime for all categories of victims, but especially for women and children. Those states having financial constraints are recommended to implement a system of fine surcharge and some percentage of fines collected from offenders must be added to the victim support fund;
4. Each state may incorporate victim impact statements in their criminal justice process;
5. Basic training on victims' issues for common practitioners and advanced training for specialized units should be a mandatory part of training for criminal justice officials. Listening to the victims' experiences should also be a part of such training;
6. There must be infrastructure and a system to assist victims of crime. There is need for separate offices to provide such assistance;
7. A one-window operation to provide information to the victims of crime within a criminal justice system is recommended for each state to simplify the acquisition of information;
8. There is a need to establish a balance between the offenders and victims' rights at each stage of the criminal justice process. Greater focus on victims' rights should not prejudice the rights of suspects and offenders;
9. There is need to inculcate victims' rights in the education system of each state so that present and future generations are sensitized to victim issues;
10. The media should adhere to guidelines which accord with the International Code of Ethics for media practitioners when writing about victims to avoid victimizing them secondarily;
11. Communities should be involved in victims' issues through awareness, motivation and participation campaigns. A victims' day or week may be celebrated to sensitize communities to victims' issues;
12. Each state may encourage public-private partnerships (PPP) for victim support;
13. Research on victims' concerns should be both governmental and academic, and modifications in the criminal justice system can be undertaken in view of given policy recommendations. Independent sources within each state should undertake a national survey of crime victims;
14. There is need to focus on the "3Ms formula": "men, material and method". There is no shortcut without capacity-building in terms of human resources; then the basic requirement is separate infrastructure; and after modification of procedures and practices, a state will be able to establish a just and fair system for better treatment of the victims of crime.



## **GROUP 3**

### **MEASURES FOR THE VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS WITH SPECIAL ATTENTION TO VICTIMS OF ORGANIZED CRIME**

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<b>Chairperson</b>	Mr. Mahito Araki	(Japan)
<b>Co-Chairperson</b>	Mr. Conrado A. Reyes	(Guatemala)
<b>Rapporteur</b>	Mr. Shakeel Ahmed Durrani	(Pakistan)
<b>Co-Rapporteur</b>	Mr. Balarabe Nayaya Sulaiman	(Nigeria)
	Mr. Masaki Yokose	(Japan)
<b>Members</b>	Mr. Muliawan Wawan	(Indonesia)
	Mr. Ko Takano	(Japan)
<b>Visiting Experts</b>	Professor Cho Kyoong Seok	(Korea)
	Ms. Kim Herd	(USA)
	Ms. Martina Peter	(Germany)
<b>Advisers</b>	Professor Junichi Watanabe	(UNAFEI)
	Professor Naoyuki Harada	(UNAFEI)

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#### **I. INTRODUCTION**

Group 3 started its discussion on 22 January 2010. The group elected by consensus Mr. Araki as Chairperson, Mr. Reyes as Co-Chairperson, Mr. Durrani as Rapporteur, Mr. Sulaiman and Mr. Yokose as Co-Rapporteurs. The group, which was assigned to discuss “Measures for the victims of crime at the each stage of the criminal justice process with special attention to victims of organized crime”, agreed that since organized crime is a very vast subject, it might not be possible to cover all its aspects. Keeping this limitation in mind, the group unanimously decided to focus on human trafficking, as it is emerging as one type of organized crime which is affecting almost every country in one way or another. After having agreed on human trafficking as the main subject of the group discussion, the group conducted its discussion in accordance with the following agenda:

- 1) Definition of Human Trafficking;
- 2) Current situation with regard to the treatment of victims of human trafficking in participating countries;
- 3) Measures and counter-measures in place to alleviate the sufferings of victims of human trafficking;
- 4) Conclusion;
- 5) Suggestions.

#### **II. SUMMARY OF THE DISCUSSION**

##### **A. Definition of Human Trafficking**

The discussion started with the definition of organized crime and human trafficking as one of its components. As compared to ordinary crime, organized crime involves planning and co-ordinated execution among the tentacles of the organized criminal groups. It is transnational in nature. In the case of human trafficking, there are normally two or more countries involved i.e. the country of origin (from where the victim is trafficked), the transit country (through which the victim is trafficked) and the destination country (country to which the victim is finally trafficked). The group also attempted to differentiate between human trafficking and migrant smuggling. The participants opined that in the case of migrant smuggling, the smuggled persons’ consent is crucial. On the other hand, there is always an element of deceit, intimidation, coercion or enticement in cases of human trafficking.

##### **B. Current Situation with regard to the Treatment of Victims of Human Trafficking in Participating Countries**

Japanese participants were of the view that Japan could be a destination country for the victims of human trafficking. Since there is growing global concern regarding human trafficking, the Japanese government should adopt a proactive approach in order to identify the victims of human trafficking in Japan and provide

them with necessary assistance before their respectful deportation to their countries of origin. The group shared the concern that the trafficked persons, when detained in transit or destination countries, are, invariably, treated as illegal residents (immigrants). They are subjected to the same kind of harsh and inhuman treatment that is meted out to the offenders, which makes them victims of secondary victimization at the hands of law enforcement authorities. Once viewed as illegal immigrants, the victims of human-trafficking lose all prospects of respite. Even though they are provided with immediate assistance such as medical care and food, the victims (trafficked persons) do not receive any other assistance which might include legal assistance, safe accommodation, translators, etc. A few participants disclosed that those adults, who, of their own volition, opt to be trafficked, or smuggled, are prosecuted upon their apprehension in their country of transit or destination. They are also prosecuted in their original country upon their return after deportation from transit and destination countries.

Participants from a few countries informed the group that there was no state compensation for victims of any crime in their countries. However, if a victim suffers financial damages, his or her loss is compensated from the recoveries made from the offenders. In the case of human trafficking, the same procedure is adopted. Since the offenders of organized crime are very difficult to detect, poor victims end up being victims of multiple victimizations. Pursuant to ratification of the UN conventions, some countries made new special or specific laws relating to the victims of human trafficking, but they were found to be either insufficient or followed no strict enforcement.

### **C. Measures and Counter-measures to alleviate the Sufferings of Victims of Human Trafficking**

Following local legislation, some countries adapted measures for the victims of human trafficking. National level agencies were established to identify and protect potential and actual victims. For instance, in Nigeria, the National Agency for the Prohibition of Trafficking in Persons is equipped with necessary material assistance for victims of human trafficking, especially those who are deported from transit and destination countries. The agency also provides other assistance such as legal and psychological counselling for traumatized victims. However, meagre resources adversely hamper the activities of the Agency. Participants from other countries also quoted the scarcity of resources to be the major impediment towards adherence to national and international commitments with regards to treatment of trafficked victims.

## **III. CONCLUSION**

The group unanimously agreed on the fact that the existing laws were not sufficient to protect victims and witnesses at all stages of the criminal justice process with respect to organized crimes. Even if there are laws, their enforcement is defective. The main emphasis and focus of the law-enforcement agencies is to arrest, prosecute and punish offenders (agents) of trafficking-related offences. Little attention is paid to the sufferings and plight of victims, particularly at the investigation stage, which renders them victims of secondary victimization. The group opined that new legislation was required which should be aimed at protecting the victims of this organized crime. Victims of human trafficking should be treated as victims regardless where apprehended. Their treatment as offenders subjects them to secondary victimization which is against the very spirit of international and national legislation. The group also shared the alarming concern that there was no state compensation for the victims of organized crime in some countries.

### **A. Suggestions**

After thorough and detailed discussions on the sensitive issue of victims of human trafficking, the group suggested the following short and long-term measures.

#### **B. Short-term Measures**

1. Special Units entrusted with the task of providing protection and safety to the victims and witnesses of organized crimes should be established;
2. Officials associated with the criminal justice system, especially at the investigation stage, should be trained in such a way to bring about behavioral and attitudinal changes in their treatment of victims of human trafficking. Sensitization of such individuals to the sufferings of victims of human trafficking is essential for the success of any measure. The government should improve upon the existing measures to make them more victim-friendly and comfortable;
3. More co-ordination and co-operation amongst various agencies/organizations in collaboration with

NGOs/civil society organizations should be streamlined by the national commission for prohibition of human trafficking in each country;

4. Awareness-raising campaigns should be launched targeting the potential victims, particularly more vulnerable groups, to educate them on all aspects of this crime. Different aspects of this crime, such as risk to life and health, should be highlighted in such awareness-raising campaigns;
5. Vulnerable and weak groups such as trafficked children and women should, in no case, be treated as offenders. If and when detained, they should not be confined and should be provided with all possible material assistance including psychological, social and legal counselling. Efforts should also be made to ensure that the victims are notified of their above-mentioned rights;
6. The affected countries, including country of origin and destination, should post representatives on a reciprocal basis who would liaise and oversee the treatment that is meted out to the victims hailing from his or her country.

### **C. Long-term Measures**

1. The group suggests the establishment of an administratively and financially autonomous national level committee entrusted with the exclusive task of ensuring provision of immediate assistance to the victims of organized crime, particularly, human trafficking. In addition to the rehabilitation of victims, the committee should also devise ways to ensure restitution/compensation to the victims;
2. Best practices of victim treatment from countries should be replicated, even if they do not relate to the victims of human trafficking;
3. A national commission for prohibition of human trafficking, comprising legislators, academics, intelligentsia, representatives of I/NGOs and seasoned criminal justice practitioners, should re-visit/re-assess the existing substantive and procedural laws relating to human trafficking and its victims. They should suggest amendments as they deem fit for the victims of this inhuman crime;
4. The affected countries, i.e. origin, transit and destination, should maintain close co-ordination with one another. Bilateral and multilateral MOUs (Memoranda of Understanding) should be signed between these countries aimed at treatment of human trafficking victims with compassion and respect, even though these victims might emerge *prima facie* as offenders (illegal residents);
5. These MOUs should also include provision of informal mechanisms of information-sharing relating to the identification and protection of victims of human trafficking;
6. Private sector participation should be ensured and multi-national companies should be co-opted to extend social assistance to the victims of human trafficking;
7. An independent national institute should be established to conduct studies in victimology with special reference to the victims of organized crimes, including human trafficking;
8. The respective governments should create crime victim funds. A reasonable percentage of proceeds from the executed fines received from the defendants of all types of crimes should be deposited into such funds and compensation to the victims should be made from such funds;
9. In addition to creation of crime victim funds, it is also suggested that the proceeds received or recovered from the confiscated items of the offenders of organized crimes should also be used for compensation and restitution to victims.

## **APPENDIX**

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***COMMEMORATIVE PHOTOGRAPH***  
***• 144<sup>th</sup> International Senior Seminar***

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**UNAFEI**

# 144<sup>th</sup> International Senior Seminar



**Left to Right:**

**Top:**

Prof. Dussich, Prof. Chokalingam, Prof. Higuchi, Prof. Sakonji

**Fourth Row:**

Ms. Yamada (Staff), Mr. Shirakawa (Staff), Mr. Saito (Staff), Mr. Kojitani (Staff), Mr. Nagata (Staff), Mr. Nishitani (Staff)

**Third Row:**

Mr. Koiwa (Staff), Mr. Kosaka (Staff), Mr. Waheed (Pakistan), Mr. Reyes (Guatemala), Mr. Furukawa (Japan), Mr. Sato (Japan), Mr. Castro (Peru), Mr. Takano (Japan), Mr. Muliawan (Indonesia), Ms. Yamamoto (JICA), Ms. Usuki (Staff), Ms. Iwakata (Staff)

**Second Row:**

Ms. Sakai (Chef), Mr. Fakir (Bangladesh), Mr. Nishioka (Japan), Mr. Murohashi (Japan), Mr. Sulaiman (Nigeria), Mr. Al-Dhaheri (Yemen), Mr. Yokose (Japan), Mr. Yamasombi (Papua New Guinea), Mr. Ha (Vietnam), Mr. Shem (Vanuatu), Mr. Araki (Japan), Ms. Bote Herrera (Philippines), Ms. Pereira Martirena (Brazil), Ms. Nishimura (Japan), Mr. Co (Philippines), Mr. Terado (Japan), Mr. Durrani (Pakistan)

**First Row:**

Mr. Kobayashi (Staff), Mr. Iida (Staff), Prof. Harada, Prof. Kawaharada, Prof. Oshino, Ms. Herd (USA), Ms. Peter (Germany), Director Sasaki, Prof. Cho (Republic of Korea), Deputy Director Ukawa, Prof. Watanabe, Prof. Sugano, Prof. Akahane, Mr. Fujiwara, Ms. Lord (L.A.)