

Guide for **POLICY MAKERS**

*On the Implementation of the
United Nations Declaration of
Basic Principles of Justice for
Victims of Crime and Abuse of Power*



Centre for International Crime Prevention

Preface

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United Nations Office
for Drug Control
and Crime Prevention

Centre for International Crime Prevention

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Preface

The present guide is designed for policy makers, including those in ministries or departments of justice, interior, and social welfare and health, and local authorities in all countries concerned with improving the position of victims of crime and abuse of power and providing these victims with the necessary assistance and access to justice. The guide briefly sets out lines of work that can be pursued; further information will be available in a 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.

The United Nations Commission on Crime Prevention and Criminal Justice is the key body for encouraging the international community to further implement the 1985 General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985). States can obtain assistance in their work from the United Nations Crime Prevention and Criminal Justice Programme Network, including the Centre for International Crime Prevention, the United Nations interregional advisors and the network of associated institutes.

It is the responsibility of Governments to develop and support programmes that will respond to the challenge of victimization in society. Victims deserve respect for their dignity, privacy and security. Assistance to victims prevents their alienation from the criminal justice system and the community. The efforts and resources devoted to such programmes, including an effective programme of prevention, should provide significant short- and long-term benefits. The costs of crime will be reduced. Victims will be more ready to provide information about crime and criminals, which is indispensable to the criminal justice system. The response must bring together the Government, intergovernmental and non-governmental organizations and the community at large. This guide should help in showing the way forward.

CONTENTS

	<i>Page</i>
Preface	iii
INTRODUCTION	1
DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER	5
Resolution	5
<i>Annex</i>	
Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power	16

INTRODUCTION

In modern criminal justice systems, victims of crime and abuse of power can rightfully be called the “forgotten persons”. Considerable attention has deservedly been paid to ensuring due process for the defendant. It is the defendant who is threatened with State-imposed punishment, and he or she should therefore be allowed all possibilities of establishing his or her innocence. However, corresponding attention has not been given to the rights and interests of victims. It has been assumed that the State represented the best interests of society, including those of victims. Accordingly, there did not seem to be a need for special provisions on the role of the victim in judicial proceedings.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985) was adopted by consensus in the General Assembly in 1985, and thus reflects the collective will of the international community to restore the balance between the fundamental rights of suspects and offenders, and the rights and interests of victims.

The Declaration is based on the philosophy that victims should be adequately recognized and treated with respect for their dignity. Victims are entitled to access to judicial mechanisms and prompt redress for the harm and loss suffered. They are also entitled to receive adequate specialized assistance in dealing with emotional trauma and other problems caused by the victimization.

The adoption of an international instrument, however important, is just a first step towards actual improvements in practice. It must be implemented on the international, regional, national and local levels. The Declaration sets out areas in which action is needed to ensure equitable treatment for victims; it provides the basic standards against which jurisdictions can assess their own practices and evaluate what changes need to be introduced. It also provides guidance for international cooperation and assistance in this area.

Governments and organizations around the world have responded to the challenge of implementation in different ways. Real progress has been made in many jurisdictions. Elsewhere, Governments have only just started to recognize the need to make their justice and support systems more accessible to victims. There is probably no jurisdiction where the treatment of victims of crime and abuse of power is fully in accordance with the Declaration.

Since the adoption of the Declaration the problem of victimization by crime and abuse of power has lost nothing of its urgency. Armed conflict, ethnic strife and oppressive regimes have claimed countless victims, largely among civilian populations, with women and children often the primary targets. Millions of women and children also fall victim to sexual exploitation. Exploitative forms of child labour are still rampant, and many immigrants are subjected to victimization. Many

instances of crime and abuse of power remain hidden from official registration and are part of the “dark number”.

Victimization surveys are an important method to better estimate the prevalence of victimization by conventional crime. The International Crime (Victim) Survey has been carried out in more than 50 countries.¹

Figure 1 shows that victimization by conventional crime is a social problem that afflicts large parts of the urban population throughout the world. The greatest toll is paid by the inhabitants of the megacities in Africa and Latin America but urban dwellers elsewhere in the world also are threatened by conventional crime. More than a third of all urban dwellers do not feel safe in their own neighbourhoods at night. These feelings are particularly common among women and the elderly. The negative impact of criminal victimization on the well-being of individual citizens and on the cohesiveness of urban communities cannot be overestimated.

The first sweep of the International Crimes against Businesses Survey, carried out in the period 1988-1994, indicated very high rates of victimization among retailers and other businesses. The business community carries a large part of the economic burden of conventional crime.

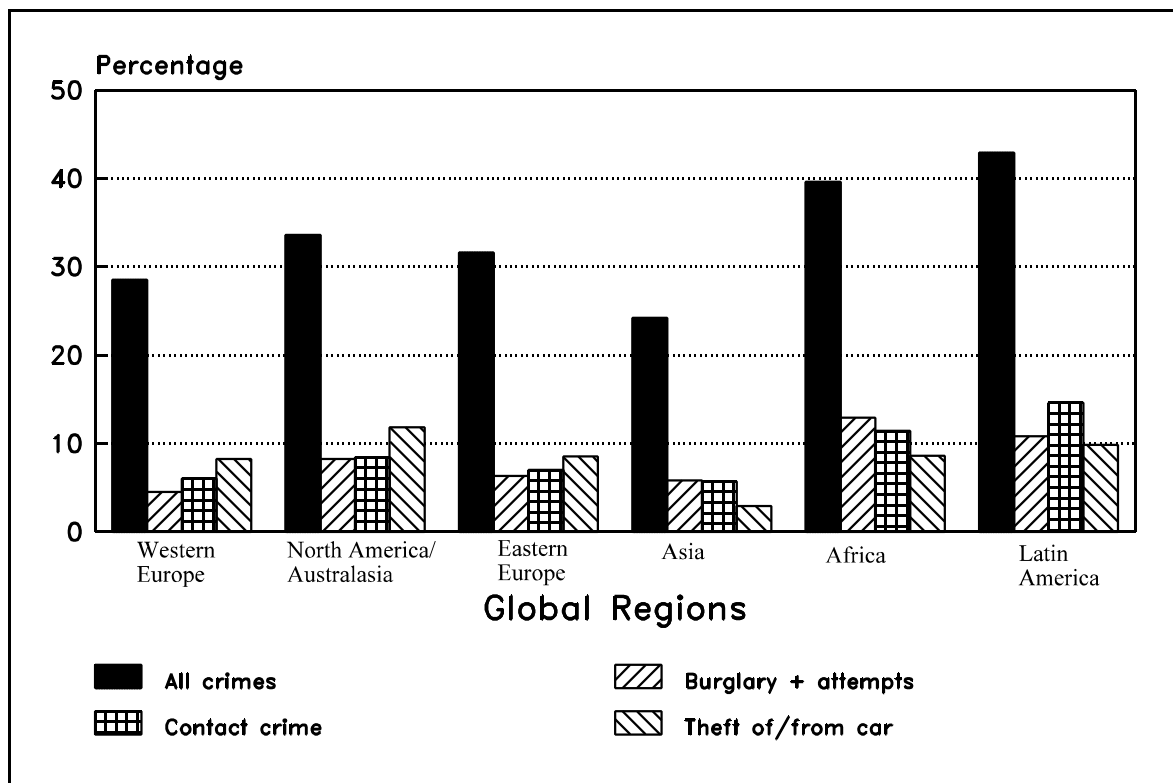
Victimization studies are not likely to fully capture certain hidden crimes such as domestic violence against spouses and children and abuse of the elderly.

¹The countries/provinces and years of the survey in each region are as follows:
western Europe: Austria (1996), Belgium (1989 and 1992), England and Wales (1989, 1992 and 1996), Finland (1989, 1992 and 1996), France (1989 and 1992), Germany (1989), Italy (1992), Malta (1997), Netherlands (1989, 1992 and 1996), Northern Ireland (1989 and 1996), Norway (1989), Scotland (1989 and 1996), Spain (1989 and 1995), Sweden (1992 and 1996) and Switzerland (1989 and 1996);
North America and Australasia: Australia (1989 and 1992), Canada (1989, 1992 and 1996), New Zealand (1992) and the United States (1989, 1992 and 1996);
central and eastern Europe: Albania (1996), Belarus (1997), Bulgaria (1997), Croatia (1997), Czech Republic (1992 and 1996), Estonia (1993 and 1995), Georgia (1992 and 1996), Hungary (1992 and 1996), Kyrgyzstan (1996), Latvia (1996), Lithuania (1997), Poland (1989, 1992 and 1996), Romania (1996), Russian Federation (1992 and 1996), Slovakia (1992 and 1996), Slovenia (1992 and 1997), the former Yugoslav Republic of Macedonia (1996), Ukraine (1997) and Yugoslavia (1996);
Asia: China (1994 and 1997), India (1992 and 1996), Indonesia (1989, 1992 and 1996), Japan (1989 and 1992), Mongolia (1996), Papua New Guinea (1992) and the Philippines (1992 and 1996);
Africa: Botswana (1997), Egypt (1992), South Africa (1992 and 1996), Tunisia (1992), Uganda (1992 and 1996), United Republic of Tanzania (1992) and Zimbabwe (1996);
Latin America: Argentina (1992 and 1996), Bolivia (1996), Brazil (1992 and 1996), Costa Rica (1992 and 1996) and Paraguay (1997);
Source: Institute of Criminology, Leiden University, Netherlands and the United Nations Interregional Crime and Justice Research Institute (UNICRI).

Estimates of these “dark numbers” must be added to the total costs of crime. As indicated above, the countless victims of various forms of abuse of power must also be added.

In view of the growing extent of the problem, and considering that public safety is among the most basic of human rights, effective policies to prevent and curtail criminal victimization should be among the first priorities of Governments and the international community.

Figure 1. Percentages of the public in urban areas victimized by any conventional crime, burglary, contact crime (threats/assault, sexual incidents, robbery) and theft of cars or thefts from cars, respectively, during the previous year



Source: International Crime (Victim) Survey (1989, 1991 and 1996).

The purpose of this brief guide is to draw the attention of policy makers to what has been done and what can be done to ensure that the effectiveness and

fairness of criminal justice, including related forms of support, are enhanced to respect the fundamental rights of suspects and offenders as well as those of victims. The guide can also be used to focus international cooperation and technical assistance initiatives in the areas of good governance and strengthening the rule of law.

The structure of the guide follows the structure of the Declaration itself. Following each section of the Declaration (in bold face), suggestions are made for action that have proven effective and useful in various jurisdictions. The guide tells readers what can be done to achieve an acceptable level of victim care in their respective countries. Several of the suggested measures may require significant investments in time, personnel and financial resources and consequently may seem unattainable in many jurisdictions. Nonetheless, these programmes have been tested in practice and found to be successful. The investments required often do provide significant short- and long-term returns. Human and financial resources can be mobilized without additional costs to the State through the use of volunteers under professional supervision, the use of fine-surtax schemes and other innovative means.² Donor countries should consider making funds available for the development of victim services through their official development assistance plans.

These suggestions, if found to be appropriate, may need to be adapted to fit the specific legal, cultural and political circumstances in a particular jurisdiction.

Various jurisdictions have published detailed descriptions of different initiatives and mechanisms for supporting the protection of the rights of victims and meeting their needs. As a companion to this guide, a handbook on justice for victims is being prepared, which is directed at practitioners and those interested in establishing victim support services.³ Annex I contains a selected bibliography on victim policies and services.

²Fine-surtax schemes have been successfully implemented in, for example, Belgium, Canada and the United States. Examples of the creative use of volunteers to offer services can be found in France, Israel, Rwanda and the United Kingdom.

³Helpful suggestions can also be found in M. Cherif Bassiouni, ed., *International Protection of Victims* (International Association of Penal Law, Siracusa, Italy 1988), which has been drawn on extensively in the preparation of this guide.

DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

Resolution

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 [...]

Policies to implement the Declaration and otherwise improve the treatment of victims should be based on a comprehensive strategy. In countries where no such policies have been developed, the first step is to establish a high-level committee or working group⁴ with representatives of all relevant bodies such as, *inter alia*, ministries or departments of justice, the interior, welfare and health, the police, prosecutors and courts, as well as legislators and local governments. The academic

⁴Such advisory bodies have played an important role in the early stages of the victims' movement in several western European States and in the United States. A more recent example is the intersectoral committee on victim empowerment recently established in South Africa, and the National Public Safety Commission Concerning Future Measures for the Support of Victims of Crime in Japan (January 1996).

community, the health and mental health professions, various relevant voluntary organizations such as women's and youth groups, religious organizations and the business sector should also be represented.

The advisory bodies can be assigned the task of:

- (a) Carrying out needs assessment studies, including participation in the international victimization surveys and studies of special victim groups such as victims of domestic violence or abuse of power;
- (b) Assessing the shortfall between needs and the provision of services, including the identification of obstacles to access of justice;
- (c) Making proposals for improvements in the treatment of victims in the immediate and long term, including those requiring financial commitment and/or legislative reform.

In countries where victim policies have been put in place it is essential to strengthen existing administrative structures and voluntary organizations dealing with victim issues in order to further the institutionalization of these policies and to maintain public awareness of their importance. Governments can be made more accountable for their victim policies by assigning a senior member of Government as primary spokesperson for victims' issues.

Other ad hoc methods for giving effect to the Declaration include:

- (a) Providing for the widest possible dissemination in all local languages of the text of the Declaration;
- (b) Informing the public on measures the State has taken to give effect to the Declaration;
- (c) Promoting non-governmental, professional and public initiatives of all kinds designed to advance policy-making, programme development, training, research, information-sharing and advocacy on behalf of victims and the prevention of victimization;
- (d) Cooperating in efforts to respond to the needs of victims through the coordinated work of international and regional intergovernmental and non-governmental organizations;
- (e) Providing information to the public on international and regional procedures for preventing victimization and providing recourse and assistance to victims.

In addition, States should continue to develop and ratify international and regional conventions aimed at preventing victimization and aiding victims, and incorporate the required provisions into national legislation and administrative regulations and practices. Examples include convention such as the European

Convention on the Compensation of Victims of Violent Crimes,⁵ which was adopted by the Council of Europe in 1988. This Convention sets minimum standards and seeks to promote international cooperation in the compensation of victims through reciprocal arrangements. The Convention is also open to non-members of the Council of Europe.

States should make use of the Internet to the fullest extent possible to make information on provisions for victims available.

[4] (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;

The process of planning economic and social development or of planning peacekeeping and peace-building initiatives should include mechanisms designed to identify victimization risks and help to forestall them. By providing services and especially information on crime prevention and civic and human rights to victims of crime, authorities can work towards preventing victimization and re-victimization.

In the case of such offences as domestic violence and sexual violence, preventive measures should include programmes for offenders.

Training programmes can be promoted to ensure that professional workers and others who come into contact with victims are sensitized to their needs and concerns. Examples of groups who can benefit from such programmes are spiritual and other community leaders and medical and mental health personnel. Useful approaches include the use of specialized curricula, manuals and guidelines, as well as the development of special procedures designed to foster such sensitization.

Several jurisdictions have adopted measures that encourage bystanders to assist persons who are being victimized or who are in danger of being victimized.

[4] (b) To promote community efforts and public participation in crime prevention;

Throughout the world, there has been a growing trend to establish national and local crime prevention councils as well as other initiatives that help mobilize the community in preventing, detecting, disclosing, examining and redressing instances of victimization. A number of projects have been implemented successfully and

⁵United Nations, *Treaty Series*, vol. 1525, No. 26456.

evaluated, focusing on specific offences, potential groups of offenders and potential groups of victims.⁶

[4] (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;

While victim-oriented proposals and policies may be established voluntarily, experience suggests that in many cases legislative change may be necessary to ensure consistent and equitable services.

The steps necessary to implement the provisions of the Declaration, including incorporation of its principles into national laws, regulations and practices, can be institutionalized by establishing permanent review boards within legislative and administrative bodies with the participation of independent experts. These reviews have often led to the simplification of laws and practices in order to ensure their flexibility and their comprehension by victims as well as by the general public. This review process may also help in establishing legal and administrative safeguards designed to prevent wrongdoers from passing the cost of their violations on to others, such as to the State, consumers, the general public or international organizations.

A number of jurisdictions have enacted “victims’ bills of rights” or adopted explicit policy statements that lay out victim entitlements and the related government responsibilities.⁷

States have cooperated with international and regional intergovernmental and non-governmental organizations in the adoption of uniform legislation, administrative regulations and practices, and codes of conduct, but considerable further efforts are required to promote compliance.

⁶Examples of best practice in community crime prevention are collected by the International Centre for the Prevention of Crime in Canada (Montreal). The databank of this centre can be accessed through the Internet (<http://www.crime-prevention-intl.org>).

⁷A description of the Victim’s Bills of Rights adopted in the United States is provided in: U.S. Department of Justice, Office of the Attorney General, *Attorney General Guidelines for Victims and Witness Assistance* (Washington, D.C., Government Printing Office, 1991). Policy statements on victims have been published, for example, in Australia.

[4] (d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;

Many jurisdictions have created effective restraints on the exercise of public and economic power in order to minimize abuses. Such restraints include disclosure requirements and the organization of specialized, multidisciplinary teams to aid in the detection, investigation and sanctioning of such abuses. In a large number of jurisdictions, the powers of criminal justice, social welfare and economic authorities have been extended to overseeing and investigating instances of possible and alleged victimization by economic enterprises.

An increasing number of States have developed ombudsman-type institutions, in particular to provide a channel of recourse for victims. Such institutions help, *inter alia*, in ensuring that the competent authorities promptly conduct an impartial investigation whenever there are reasonable grounds to believe that victimization has occurred. Special attention has been given to the conduct of impartial investigations as soon as possible into all deaths and serious physical and mental injuries apparently caused by law enforcement, military, administrative, medical and other professional personnel and into all deaths and serious physical and mental injuries apparently caused in custody, including in jails, prisons, reformatories, guardhouses, hospitals and mental institutions.

In the case of offences with international dimensions, an increasing number of States have entered into bilateral or multilateral conventions, or otherwise adopted legislation, designed to ensure that persons who victimize others through serious crimes are prosecuted or extradited.

In order to forestall abuse of power, a number of jurisdictions have taken measures designed to ensure that persons complaining about alleged victimization as well as witnesses to alleged victimization are protected from any ill treatment, intimidation, harassment, or retaliation, whether by public officials, personnel of economic enterprises or any other person as a consequence of the complaint or the giving of any evidence. Similarly, many jurisdictions have sought to ensure that public and military personnel and agents receive no immunity from prosecution or disciplinary proceedings for victimization that was caused wilfully and that in such prosecutions or proceedings there is no defence of obedience to superior orders in cases in which those orders are manifestly illegal.

[4] (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;

Jurisdictions in general are seeking to ensure that criminal justice, social welfare and economic authorities oversee economic enterprises and investigate

instances of possible and alleged victimization, with due respect to the rights to privacy and confidentiality. Among the measures being taken are:

(a) Publishing complaints of victimization and increasing awareness of the national and supranational avenues for lodging such complaints, the bodies to which complaints should be made and the protections that are afforded to complainants,

(b) Publishing cases of victimization even in the absence of direct complaints, efforts to suppress victimization and the measures taken against victimizers, including any disciplinary or judicial measures imposed;

(c) Encouraging private organizations and the media to report violations of laws and abuses of power.⁸

[4] (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;

Examples of such codes are the following United Nations instruments: the Code of Conduct for Law Enforcement Officials;⁹ the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹⁰ the Code of Ethics in the Public Service; the International Code of Conduct for Public Officials;¹¹ and the Code of Conduct on Transnational Corporations. Other examples include the conventions and recommendations of the Council of Europe.

Jurisdictions are seeking to ensure that all public servants, particularly personnel involved in the administration of justice, medical, psychological and social services and, as appropriate, the staff of economic enterprises are trained in the observance of internationally recognized norms relating to human rights. Guidelines specifically for the treatment of victims by the police and public prosecutors have been issued in some jurisdictions and found effective.

Jurisdictions are also establishing means to review adherence to such codes of conduct through, for example, the promotion of awareness, independent monitoring and supervision mechanisms, systems of investigation of complaints and judicial or administrative sanctions designed to promote personal accountability for violations of such codes of conduct.

⁸Examples are the work of Amnesty International, Human Rights Watch and Transparency International.

⁹General Assembly resolution 34/169, annex, of 17 December 1979.

¹⁰General Assembly resolution 37/194, annex, of 18 December 1982.

¹¹General Assembly resolution 51/59, annex, of 12 December 1996.

[4] (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention; [and]

Jurisdictions are directing attention to this issue by: (a) reviewing laws and practices with regard to arrest, searches, interrogation and detention in order to ensure adherence to the Standard Minimum Rules for the Treatment of Prisoners¹² and other relevant standards; and (b) promptly informing detainees in a comprehensible manner of these Rules, including the right to lodge complaints.

[4] (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;

This cooperation has been facilitated by the growing network of international agreements. In addition, several States have adopted legislation that makes mutual assistance and extradition possible even in the absence of bilateral or multilateral agreements and other practical arrangements.

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;

In addition to promoting training within the jurisdiction, a growing number of jurisdictions are sponsoring training.¹³ Such training may be sponsored, for example, by the national Government or local government or by professional or voluntary organizations. Training is also being provided in cooperation with, for example, the Crime Prevention and Criminal Justice Programme of the United Nations or with specialized United Nations agencies and with other intergovernmental, governmental and non-governmental bodies.¹⁴

¹²*Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

¹³For example, a national victim assistance academy has been established in the United States.

¹⁴A training has been offered, for example, to police officers in Lithuania on handling of domestic violence cases by the European Institute for Crime Prevention and Control, affiliated with the United Nations, with support of the Netherlands and the United Nations Development Programme (UNDP). Training has also been offered in a number of Latin American countries by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

[5] (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;

Collaborative action-research in many jurisdictions deals with the nature and scope of victimization and the actual needs of victims, as well as with the relative merits of the approaches pursued in different States to prevent victimization and assisting victims. Reference is being made to social, reproductive, health, mental health, education and economic policies; mediation and arbitration proceedings; and civil, administrative and criminal law measures.

New methods are being developed and promoted for obtaining information about various forms of victimization and the needs of victims, such as the International Crime (Victim) Surveys. Various jurisdictions are helping to develop national data banks and research programmes and promoting international, regional and bilateral cooperation in research and the exchange of research data, expertise and experiences. The United Nations On-Line Crime and Justice Clearinghouse (UNOJUST) (<http://www.unojust.org>) provides an international link for such cooperation.

Many jurisdictions are encouraging the establishment of various mechanisms, including the formation of private groups, to monitor the effectiveness of legislation and administrative regulations and practices and to present proposals for modifications thereof, in order to prevent victimization and assist victims. Such organizations are increasingly being allowed access to the personnel and the records of State agencies and economic enterprises, with due respect to the principles of privacy and confidentiality.

[5] (c) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims;

Since the adoption of the Declaration, jurisdictions have increasingly been sharing their experience with other States in providing justice and assistance for victims and in introducing changes to implement the Declaration and supporting intergovernmental and non-governmental organizations in their efforts to prevent victimization and respond to the needs of victims. Specific forms of assistance include the provision of advisory services and support for the establishment of working groups to plan further measures.

A number of States provide technical assistance on a bilateral basis in preventing victimization and improving the response to the needs of victims. Intergovernmental and non-governmental organizations also provide such assistance, in particular the United Nations Crime Prevention and Criminal Justice Programme and the United Nations Development Programme (UNDP).

In some jurisdictions it might be advisable to incorporate victim policy elements in the national development plan. Donor countries could use the Declaration as a criterion for evaluating development assistance requests and for providing the necessary funding.

[5] (d) To develop ways and means of providing recourse for victims where national channels may be insufficient;

The reports of various United Nations investigative commissions and missions of inquiry (conducted, for example, by special rapporteurs or representatives, or in the context of peacekeeping or humanitarian operations) have provided ample evidence of massive victimization. Avenues of recourse already exist in United Nations human rights complaint procedures, and others have been recently introduced by the United Nations High Commissioner for Human Rights (e.g. a hotline) or have been proposed (e.g. by the special rapporteurs), as in the case of the appointment of an international ombudsman and right of petition. The prospects of an international criminal jurisdiction to help pursue wrongdoers were advanced by the establishment of the ad hoc tribunals for Rwanda and the former Yugoslavia. These tribunals have victim/witness protection units, although they have encountered practical difficulties in their work. The draft statutes for the envisaged International Criminal Court contain a section on victims.

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;*

Such reports, as provided by some jurisdictions, deal with the incidence of victimization and the extent to which present legislation and practices are consistent with the Declaration, the measures taken domestically to implement them and assistance that might be required from the international community. A report was submitted by the Secretary-General to the Commission on Crime Prevention and Criminal Justice in 1996, and more States are encouraged to respond to the requests of the Secretary-General for information.

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;*

In addition to inviting interested States and organizations to establish and promote international and regional mechanisms for exchanging information and encouraging the implementation of the Declaration, the Secretary-General should

seek to promote the development of a United Nations clearinghouse on information related to this subject. In order to coordinate various relevant initiatives, which are now often taken in isolation from each other, a mechanism should be developed to help integrate action and obtain a synergistic effect.

8. *Further requests the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;*

The Secretary-General has been requested to include the Declaration and the General Assembly resolution adopting it in all major human rights publications. The Declaration has been translated into a number of languages in addition to the six official languages of the United Nations, but further efforts at dissemination should be undertaken.

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.*

Considerable advances have been achieved in some regions in establishing collaborative mechanisms or in creating new mechanisms. For example, the European Convention on the Compensation of Victims of Violent Crimes, and the Council of Europe recommendation on Guidelines on Assistance to Crime Victims were adopted in the context of the activities of the Council of Europe. The European Forum on Victim Services is complementing these primarily statutory inter-governmental initiatives with practical collaboration among victim service providers. This collaboration is designed to monitor developments, allow discussion and feedback and encourage meaningful dialogue and constructive change.

Several international and regional organizations, such as the International Scientific and Professional Advisory Council (ISPAC) and the World Society of Victimology (WSV) can be invited to assist in the implementation of the Declaration. They can make appropriate recommendations for action and fund raising and draft and promote the development of model legislation, training and technical assistance programmes, as well as international conventions consistent with the objectives of the Declaration.

Another important means of promoting implementation of the Declaration is the development of a handbook for practitioners [on the implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power] and of a database accessible through the Internet, in particular based on the database developed by UNOJUST.

Annex

**DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS
OF CRIMES 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.**

Many jurisdictions have reviewed their legislation and practices in order to ensure that the definition of who is a “victim”, and thus has the standing to seek justice and redress, is appropriate.¹⁵ For example, several jurisdictions allow those who have suffered not only physical but also mental injury as the result of a crime to seek redress.¹⁶

In cases of harm to large groups of victims, several jurisdictions allow the presentation of class actions or (as in the case of environmental damage) allow associations to represent victims and seek redress.¹⁷

- 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.**

Research shows that the shock waves from victimization touch not only the victim but also the victim’s immediate family and next of kin, neighbours and acquaintances. This holds true for the emotional as well as the financial consequences, and the effects can endure for years or for a lifetime. In the case of child abuse and exposure to violence, the effects can even be passed on from one - generation to the next. While this is to be expected in connection with offences such as murder, torture and rape, the crimes of assault, domestic violence, robbery and burglary can also leave enduring residues of feelings of powerlessness, insecurity, anger and fear. Those who have suffered the loss of a close friend or relative can be tragically and lastingly affected. The suffering experienced by the families of

¹⁵For example, in Brazil and the United States.

¹⁶For example, in Finland.

¹⁷For example, in France.

“disappeared persons” is compounded by their social isolation and the uncertainty in which they must live.

The Declaration applies to victims even if there has not been an authoritative determination of the guilt of the offender. This allows, *inter alia*, the application of the Declaration to civil and informal proceedings.

Some jurisdictions have expanded rights such as the right to State compensation, thus allowing claims even if the perpetrator has not been identified or regardless of whether there is a close familial relationship between the perpetrator and the victim.

A number of jurisdictions representing the different legal systems allow the next of kin to seek redress in the case of wrongful death, either in the form of State compensation¹⁸ or directly from the offender.

Several jurisdictions have adopted so-called “good samaritan” laws, which seek to protect persons who have intervened in good faith to assist victims.¹⁹ Under such laws, such persons would ordinarily be protected against legal action should the intervention inadvertently lead to damage. Should such persons themselves suffer injury in providing assistance, they might also be entitled to State compensation.²⁰

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Many jurisdictions have noted that special categories of victims may require particular attention, owing to the problems they face in coping with the victimization and/or their limited access to justice. Examples of such categories include women, children, the elderly, persons with disabilities, sexual assault victims, domestic violence victims, survivors of homicide, victims of drunk or drugged driving crashes, victims of hate crimes, refugees as victims and victims of large-scale crimes. For all these categories special measures may be necessary to ensure adequate and/or equal treatment.²¹

¹⁸This applies, for example, to the State compensation programmes in Austria, Canada, Denmark, Finland, France, Germany, Japan, Netherlands, Norway, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland and the United States.

¹⁹For example in the United States.

²⁰For example in Finland.

²¹Many examples relating to domestic violence are cited in Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual* (ST/CSDHA/20) (New York, United Nations, 1993). Special all-women police stations have been set up in Brazil. For example, Mexico, United Kingdom and the United States have special sexual

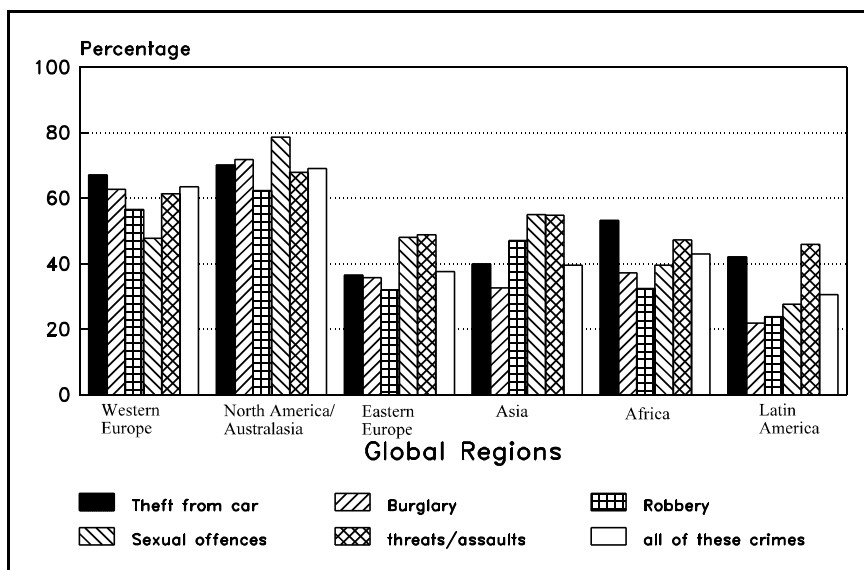
Access to justice and fair treatment

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.**

For most victims and their families, the first contacts with the authorities are with the police. If the perpetrator of the offence cannot be apprehended (as in the case in the majority of offences reported to the police), the interview by the police is often the only contact with the authorities. The satisfaction of the victims with their treatment by the police is an important measure of the victims' satisfaction with the system.

In the International Crime (Victim) Survey, victims who had reported the incident to the police were asked whether or not they were satisfied with how they had been treated by the police. Figure 2 gives the results for six global regions.

Figure 2: Percentages of victims in urban areas satisfied with the police after reporting any crime, in six global regions; results of the 1989, 1992 and 1996 International Crime (Victim) Surveys



assault units.

The findings indicate that globally more than a third of the victims are dissatisfied with the way the police dealt with their complaint. Satisfaction was the lowest in Latin America and Africa. Several reasons were given for dissatisfaction. In Latin America, Africa and Central and eastern Europe, the single most important reason was that the police did not recover the property. Financial considerations seem to be more pertinent for victims in these countries than for those in more affluent jurisdictions where most people are covered by insurance.

In all global regions large proportions of the dissatisfied victims complained that the police did not appear to be interested in the case (on average 33 per cent), did not keep the victim informed (10 per cent) or did not treat the victim properly (8 per cent).

The survey results also indicate that in jurisdictions where victim satisfaction is low, fewer victims report crimes to the police. Reporting rates for victims are 30-40 per cent overall with reporting rates for offences such as sexual assault as low as 10 per cent. The lowest reporting rates are found in the least developed jurisdictions; a partial explanation for this may be that many offences were reported to informal bodies.

These findings underline the urgent need for better treatment of victims by the police and other divisions of the criminal justice system in many jurisdictions.

According to the Declaration, victims should be treated with dignity and respect at all stages of the criminal justice process. Some jurisdictions have developed guidelines for the police and judicial authorities that stipulate the proper treatment of victims.²² Others have introduced comprehensive victim bills of rights.²³

Many jurisdictions are seeking to simplify procedures in the administration of justice and to promote general awareness of the availability of various mechanisms for obtaining justice and redress. Several jurisdictions have designated particular police officers, prosecutors and judges to be responsible for victim issues in general or for matters relating to particular victims.²⁴ In some jurisdictions, bar associations have established special sections that focus on victim issues.²⁵ Some jurisdictions have even established separate victims' affairs offices, for example at police stations or in court.²⁶

In addition, several jurisdictions are examining legal procedures in order to ensure the availability of judicial review, where appropriate, or the use of an ombudsman to ensure accountability. For example, where the prosecutor may decide

²²For example, in the Netherlands and the United Kingdom.

²³For example, in southern Australia and the United States.

²⁴For example, in Mexico.

²⁵For example, in Brazil.

²⁶For example, in France, Sweden and the United States.

(when permitted to do so by the respective legal system) that there is no public interest in proceeding against a suspect or that there is insufficient evidence to do so, different jurisdictions have varying means of redress available to the victim. Examples include allowing the victim to request that a superior prosecutor or a court review the decision²⁷ or even allowing the victim to prosecute directly.²⁸

Many jurisdictions are considering different options in providing redress to the victim. Redress can include not only financial reparation but also the public or formal acknowledgement (primarily through the criminal justice system) of the wrong done by the offender to the victim and an apology (often through informal proceedings) by the offender to the victim.

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.

Victims are increasingly being provided, where appropriate, with a choice of proceeding with criminal, administrative, civil or informal measures. The establishment or expansion of the possibility of presenting civil claims in connection with criminal proceedings is being considered in many jurisdictions. This possibility is available in a great number of jurisdictions, for example as “*partie civile*” (in French-based systems) or “adhesion” proceedings (in many jurisdictions based on the Germanic system).

In some jurisdictions, neglect by the prosecutor or the court to take into consideration the right of the victim to claim redress in criminal proceedings may lead to administrative sanctions.²⁹

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;

Many jurisdictions and voluntary organizations are disseminating information explaining judicial and administrative processes. This includes the publication of

²⁷For example, in Germany and Mexico.

²⁸For example, in Austria and Finland.

²⁹For example, in Mexico.

books or brochures that outline the procedures and describe the rights and obligations of victims.³⁰

Several jurisdictions have sought to ensure that judicial and administrative officials provide victims with timely information on procedural and practical issues regarding their case, as well as the scope and relevance of any decisions taken. Consideration is being given to designating of a specific agency or official to be responsible for keeping the victim informed, as appropriate, of the progress of the case.³¹

In some jurisdictions, in the case of certain serious offences, such as sexual assault and homicide, the prosecutor must invite the victim or the family of the victim for a personal discussion, during which the decisions to be made are explained.³²

[6] (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;

A number of options exist for improving, where necessary, police and prosecutorial procedures in order to ensure that the final judicial or administrative decision-making authority is provided with information on all relevant factors surrounding the offence and its impact on the victim.

The standard approach in many jurisdictions has been to assume that the prosecutor would also represent the views and concerns of the victim. The victim in these jurisdictions has had, at most, the status of witness.

There has been growing concern in several jurisdictions that this approach not only does not ensure that the decision-making authority has all the relevant information, but it also does not provide the victim himself or herself with an opportunity to be heard directly on the issue. Information on the impact of the offence on the victim would be particularly relevant in assessing the seriousness of the offence and in deciding, where applicable, on restitution.

Among the arrangements adopted in different jurisdictions for allowing the views and concerns of the victim to be presented and considered have been the presentation of written or oral “victim impact statements” or “victim statements of opinion” to the authority in question.³³ Some jurisdictions grant the victim a right to serve as a “subsidiary prosecutor”. In this capacity victims may submit evidence,

³⁰For example, in Brazil, France, Nigeria and the United Kingdom.

³¹For example, in the United Kingdom.

³²For example, in the Netherlands and the United Kingdom.

³³For example, in Australia, New Zealand and the United States.

suggest questions that may be asked of the defendant or of witnesses, and comment on statements and evidence submitted to the court.³⁴ In addition, granting the victim the right to present civil claims in connection with criminal proceedings provides some scope for ensuring that the views and concerns of the victim are to be presented and considered.

In many jurisdictions, there has been a review of the administrative and judicial processes in order to determine at what stage presentation of the views and concerns of the victim would be appropriate, how this can be promoted, whether the victim himself or herself should be heard or whether the victim should be represented. Among the stages being considered are decisions on the release of the suspect on bail, decisions on prosecution and decisions regarding restitution. Some jurisdictions provide the victim a right to be heard on the appropriate sentence of the defendant and on their release from prison on parole.³⁵

[6] (c) Providing proper assistance to victims throughout the legal process;

In many jurisdictions, the laws on cost-free legal proceedings also apply to victims in the case of need.³⁶ Other jurisdictions are considering whether the present limits on the scope of such cost-free services could be widened. This generally applies only to court proceedings and to those who are parties to the case and not, for example, to pre-trial proceedings or to the victim as a witness.

As noted above, many jurisdictions are considering the establishment of special victim support programmes. Many jurisdictions have established such programmes in close cooperation with law enforcement agencies, who are often the victim's first contact with persons of authority.³⁷ Some jurisdictions have arranged for a social worker or a specially trained volunteer to accompany the police officer when responding, for example, to domestic disturbance calls and when informing family members of a violent crime.³⁸

Other jurisdictions have experimented with victim/witness programmes based in the prosecutors' offices or, since social workers are often present in court and see all parties requesting help, in probation services.³⁹

The same jurisdictions have often sought to ensure effective cooperation among justice, health, mental health, welfare and other services in order to focus

³⁴For example, in Austria.

³⁵For example, in the United States.

³⁶For example, in Finland and India.

³⁷This is the case, for example, in most countries in western Europe, Australia, Canada, Hungary, Poland and the United States.

³⁸For example, in Finland and the United States.

³⁹For example, in Portugal and the United States.

attention on the needs of victims in legal proceedings, in particular the need of the victim for emotional support. Some jurisdictions have created a position of “support persons” whose services are paid by the State and who, in such serious cases as sexual assault, accompany the victim throughout the process, from the first contacts with the authorities to the implementation of the decision.⁴⁰

[6] (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;

A great number of jurisdictions have developed guidelines for judicial and administrative personnel, in which due consideration is given to balancing the priorities and needs of the State and the accused against the inconvenience to, and interference with, the personal interests of the victim. These guidelines relate particularly to arrangements for police questioning, the timing and arrangement of hearings and the granting of continuances.

Examples of the measures that have been taken in different jurisdictions include:

(a) If the property of the victim (such as stolen property or soiled clothing) is required as evidence, photographs can be taken or sworn statements prepared by the investigating officer. The property can then be restored to the victim, unless a formal objection is made;

(b) Immediate reimbursement to the victim of expenses involved in participating in the police investigation and attending proceedings, pending the determination of guilt and the final allocation of responsibility for the costs;

(c) Special consideration as to whether the testimony of a witness is required at a court session and, if so, whether the summons could indicate more closely the actual time at which the case would be heard;

(d) Arrangements for sustenance, child care facilities and other conveniences while waiting in court and the possibility of separate waiting room facilities to avoid undue contact with the suspect or with the suspect’s relatives and acquaintances;

(e) Reviewing the possibility of *in camera* proceedings or, for example, the provision of videotaped testimony or the use of one-way mirrors where this would encourage the victim to speak more freely, as in the case of victims of sexual assault or child victims;

(f) The appointment of child advocates, who are mandated by the court to represent the interests of the child victim;

⁴⁰This position exists in Denmark, Finland, Norway and Sweden.

(g) The hearing of testimony given by children, for example, by a special investigator, who then relates the testimony to the court.

One particular source of secondary victimization is the unwarranted negative consequences that publicity may have on the victim. Special attention is being paid in many jurisdictions to the interest that victims may have in avoiding publication of their names and addresses, intimate details of the offence or their relation to the offender. For example, some jurisdictions have prohibited the publication of details that may lead to the identification of a rape victim. Correspondingly, some jurisdictions do not require that victims state their addresses when being sworn as witnesses in court.

In some jurisdictions the media have developed victim-sensitive codes of ethics.⁴¹

Several jurisdictions have reviewed their laws and practices in order to ensure responsiveness to reports of threats, intimidation or harassment of victims and witnesses. Many jurisdictions grant victims and witnesses special protection by the police and under criminal law. Examples are “anti-stalking” legislation that criminalize intrusive following or harassment of a person or the possibility of court injunctions ordering that certain persons refrain from contacting the person in question.⁴²

[6] (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Numerous jurisdictions have prepared guidelines on the expeditious handling of cases by judicial and administrative personnel, without prejudice to the rights of the defendant.

Many jurisdictions have also reviewed their laws and practices in order to facilitate the collection of awards granted to victims. Examples are assisting victims in the execution of orders or decrees granting such awards and assigning such awards priority over fines and other payments to be made by the offender to the State.

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.

Several jurisdictions have established or strengthened informal mediation, conflict resolution or reconciliation proceedings where the two parties immediately concerned, and in some cases also the local community, can take an active part in

⁴¹For example, in the United Kingdom.

⁴²For example, in Austria and the United States.

deciding on the proper outcome.⁴³ Increasing international attention has been paid to the benefits of this approach to the parties concerned, the community and the State. In this connection, the value has been shown of drawing on indigenous practices and traditions that have often been discarded in an effort at “modernization”, relying on alien prototypes to the detriment of victim-oriented approaches.

Non-judicial dispute resolution mechanisms, including mediation and arbitration, have traditionally been used and are still applied in many parts of the world, including Africa, Asia and Latin America. Several Western European countries, South Australia and some North American jurisdictions have demonstrated considerable interest in mediation and conciliation programmes, and several experimental programmes have been implemented.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

Jurisdictions differ in the scope of the “harm or loss suffered” for which the offender is liable. Most schemes allow claims for out-of-pocket expenses, such as medical expenses, compensation for stolen property or immediate repairs to damaged property. In addition, several jurisdictions allow the victim to claim for pain and suffering and for other intangible harm.⁴⁴

Different jurisdictions have adopted a variety of methods for encouraging timely and fair restitution by offenders to victims. These include:

- (a) Providing that payment of restitution is to be deemed a mitigating factor in sentencing;
- (b) Imposing a fine that is higher than the amount of restitution, with the fine to be waived if the offender provides restitution to the victim;
- (c) Otherwise imposing a conditional sentence, with the sentence suspended on condition that the offender provides restitution to the victim;
- (d) Seizing the assets of persons found responsible for the victimization for purposes of restitution to the victim;
- (e) Allowing for the possibility of “creative restitution”, in which the offender can, with the consent of the victim, provide services directly to the victim, for example by repairing the damage or working for the victim.

⁴³For example, in Austria, Finland, Germany, Norway, Sweden and the United States.

⁴⁴For example, in Sweden and the United Kingdom.

Several jurisdictions have made arrangements for the encouragement of early restitution by the offender, for example by waiving further measures should restitution be paid.

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.

Several jurisdictions allow for the use of a restitution order as the main sanction, requiring that the offender provides restitution. In some jurisdictions, if both a restitution order and a sentence are imposed, priority is given to the enforcement of the restitution order.

Some jurisdictions have introduced sanctions which are closely related to restitution to the victim:

(a) “Financial community restitution” (known in some jurisdictions as “transactions”) involves the payment of money by the offender to some other entity, such as a community programme or charity;

(b) “Community service”, where the offender performs some beneficial community service, is generally regarded as a sanction. However, in this type of restitution, society serves as a “symbolic victim” and the practice is often referred to as “symbolic restitution”;

(c) “Restitution fines” differ from actual restitution in that they are imposed and collected for the purpose of depositing funds into a State fund for victim compensation and/or services. Once deposited, the moneys are then used to reimburse victims for financial losses through the State compensation scheme or to support assistance services.

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.

Several jurisdictions require individuals or enterprises undertaking projects that involve any appreciable risk to the environment take out insurance that would cover possible losses or otherwise deposit a sum of money that would be used to cover possible losses. Proposals have also been made for restitution by corporate entities for any damage, including environmental damage, inflicted through criminal conduct or a special tax or surcharge for the damage inflicted (“polluter pays”).

- 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victim 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.**

As a result of the increased attention being paid to abuse of power by public officials, many jurisdictions have sought to ensure that, where there is reasonable ground to believe that a public official or other person acting in an official or quasi-official capacity has violated national criminal law and caused harm to a victim, the competent authorities conduct a prompt and impartial investigation as a basis for a decision on restitution. Many jurisdictions have also reviewed their liability for the acts of public officials and agents.⁴⁵ In connection with amnesties or corresponding measures that have benefited wrongdoers, some jurisdictions have sought to ensure that this does not impair the right of victims to access to justice, restitution, compensation and assistance. Taking into account the ongoing transformation and changes towards democratic systems of government, some jurisdictions have already dealt with the question of the succession of State and the provision of appropriate measures to victims.

Compensation

- 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:**
- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;**
 - (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.**

The number of jurisdictions that allow for State compensation to victims of crime is growing, a trend which has been promoted by international conventions such as the European Convention on the Compensation of Victims of Violent Crime. Such compensation, which is paid in cases where restitution is not fully available from the offender or other sources (such as private insurance), is provided either within the framework of general programmes of national insurance and welfare or through special compensation programmes covering victims of crime. One of the earliest national programmes is often cited as an example for other States to follow.⁴⁶ It provides victims of crime with the same level of awards as the victims

⁴⁵See, for example, the International Code of Conduct for Public Officials and the Code of Conduct for Law Enforcement Officials.

⁴⁶This is the State compensation scheme in New Zealand.

of industrial and motor vehicle accidents. Some programmes provide the possibility of emergency payments pending the final determination of the award.

Several jurisdictions are considering expanding the scope of coverage in respect of what offences and what types of losses are covered⁴⁷ and in respect of the territorial coverage. On this last point, some jurisdictions cover all incidents that occur in their territory (regardless of the citizenship of the victim) and all incidents where a citizen of these jurisdictions is the victim (regardless of where the incident occurred).

Many jurisdictions have devoted special attention to informing victims about compensation programmes, preferably as soon as possible after the incident.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Some jurisdictions fund their State compensation schemes through fines, civil surcharges, assets seized from offenders in general or a surcharge on private insurance schemes. Some jurisdictions provide fiscal exemptions to donors in order to encourage contributions to such funds.

Various regional and international intergovernmental and non-governmental funds have been established for the compensation of, and assistance to, victims, and some jurisdictions have provided support to these funds. Other jurisdictions have started to put into place a dedicated approach towards integration and coordination of efforts.⁴⁸

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

In the International Crime (Victim) Survey, victims were asked whether they had received assistance from a specialized agency. In most countries very few victims had received any such help. There were no countries surveyed in which more than 10 per cent of the victims had received such assistance.

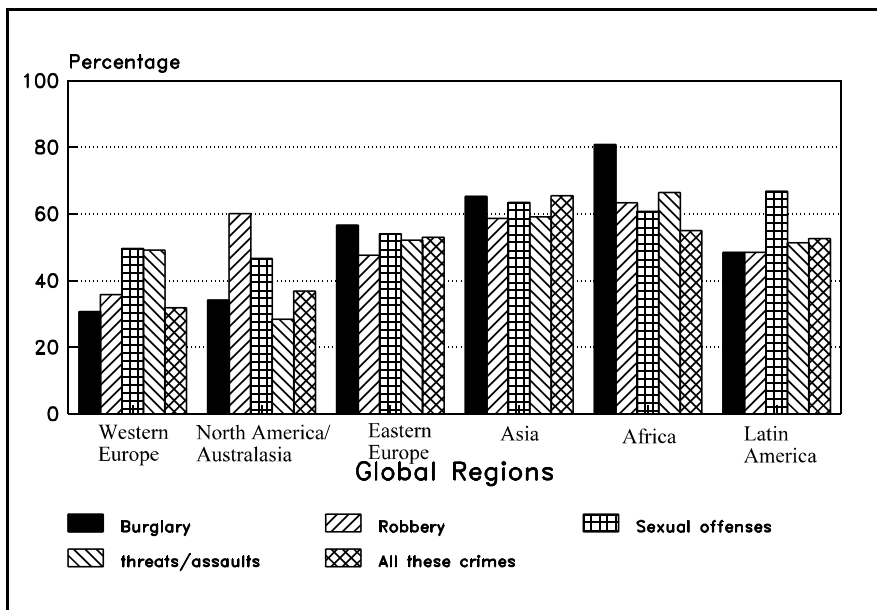
Victims who had not received help from a specialized agency were asked whether they would have appreciated help in getting information, or practical or

⁴⁷The schemes in Finland and France, for example, also cover victims of property offences on a needs basis.

⁴⁸See for example the Portuguese Minor Protection Committee (Comissão de Protecção de Menores).

emotional support. Figure three gives the findings for six regions. The findings indicate that on average over 40 per cent of the victims would have welcomed more help than they actually received. The demand for such services is the highest in Latin America, Africa, eastern and central Europe and Asia. In these parts of the world such services are the least developed.

Figure 3. Percentages of victims in urban areas in six global regions who said the services of a specialized agency would have been useful for them



Source: International Crime (Victims) Surveys (1989, 1992 and 1996).

Many jurisdictions have reviewed their basic medical, psychological and social services in order to ensure that they are responsive to the needs of victims. Guidelines have been developed on how these services should deal with victims, for example in structuring their responses and in their referrals to other services. Governments should support and encourage community and social networks as integral to victim support and empowerment.

To ensure that victims are provided with access to the mechanisms of justice and to prompt redress, many jurisdictions have established victim service programmes that provide support to victims and intervene on their behalf, when necessary, with criminal justice and social welfare institutions. Such programmes have taken a number of forms, such as crisis centres, shelters for battered women

and general services for victims of crime. In cases of domestic violence, where the offender is incarcerated, particular attention should be paid to the financial support of the family.

In the experience of these jurisdictions, certain principles have had to be followed in designing such programmes. The point of departure has been an assessment of whether there is a shortfall between the availability of services and the need. Assessing the incidence and prevalence of victimization cannot be done on the basis of police data alone; as stated earlier, even in industrialized countries, overall reporting rates by victims tend to be only 30-40 per cent. Police data must be supplemented with, for example, victimization surveys as well as special studies of seldom-reported incidents, such as abuse of power, domestic violence and sexual assault.

Once the general need for victim service programmes has been identified, the next step is to define the goals of such a programme clearly and ensure that it is well organized, appropriately staffed and has the support of host agencies or governmental authorities. The programme should be able to provide a comprehensive system of service to victims. If the programme has limited capacity, there should be coordination with other services to ensure continuity of support for victims.

In planning the programme, the views and experiences of representatives from various professions and sectors of society should be taken into consideration. At a minimum, this should include representatives from law enforcement, prosecution, the medical profession, local government and the mental health profession. Equally, full representation should be made of the jurisdiction—both males and females of varying ages and representatives of the different races, religions, cultures, geographic areas and economic status groups.

The general goal should be the development of a victim service programme that provides the following nine types of services to all victims:

- Crisis intervention
- Counselling
- Advocacy
- Support during investigation of a crime
- Support during criminal prosecution and trial
- Support after case disposition
- Training for allied professionals on victim issues
- Violence prevention and other prevention services
- Public education (including awareness-raising campaigns) on victim issues.

Based upon resources, the expertise of programme staff, existing services institutions and an analysis of the needs of a jurisdiction, programme developers are

urged to prioritize the implementation of services and to phase in full service to victims over a period of time. In setting priorities, a systematic approach should be used to take into account the severity of the victimizing event and its impact on the victim.

In several western European jurisdictions, victims are visited by voluntary workers who provide immediate emotional and practical help and short-term counselling and who refer victims to professional agencies if necessary.⁴⁹ In other jurisdictions all work is done by professional staff. All victim assistance workers should be carefully recruited and offered a minimum of training on mental trauma and prevention—particularly violence prevention—prior to providing services. Special attention should be given to “burn out” among staff and volunteers.

Where appropriate and attainable, 24-hour crisis services should be available to all victims of serious crimes. Such services should be provided by telephone or through on-scene responses, home visits or walk-in services.⁵⁰

Special provisions must be made for the protection of victims of domestic violence, where necessary, through safe houses or shelters and specialized legal advice.

Comments were made on support for victims in their contacts with the criminal justice system (in connection with paragraph 6 [c] of the Declaration, above). In several jurisdictions, victim assistance centres provide a wide range of paralegal services, including support during hearings, interviews and the trial and with the enforcement of restitution orders or arrangements based on mediation.

For a number of crimes, the prevention of repeat victimization can be a powerful way to reduce overall victimization. Research shows that victims of any crime are at greater risk than non-victims of subsequently being a victim of that or another type of crime. Those developing victim assistance programmes should therefore consider their mission as having two parts: restoring the victim to wholeness in the aftermath of victimization and providing guidelines for reducing the risk of victimization.

⁴⁹The national victim assistance organizations in the Netherlands and the United Kingdom, for example, provide nationwide services through a network of local centres staffed by professionals and teams of volunteers.

⁵⁰According to one definition (as applied in the United States of America), the objectives of crisis intervention are: (a) safety and security (identifying and responding to emergency needs; providing a safe place for victims); (b) ventilation and validation (defusing and calming victims to relate their experience; reassuring victims that their reactions are not uncommon; assisting victims in cognitively restructuring the crisis situation); and prediction and preparation (problem-solving and conflict management).

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

In order to serve victims who do not immediately call for assistance, are not immediately referred to services or are not a part of the programme's priority victim population, several methods of contact have been used in different jurisdictions. Brochures and booklets explaining the types of services available to victims are distributed. Trained crisis counsellors screen police reports regularly and select cases for referral. Law enforcement officers refer victims to support services. Some victim service programmes encourage law enforcement personnel to advise victims that the programme is in existence and ask if victims object to having their name referred to the programme for further assistance. If there is no objection, the referral is then made. Whatever method is used, victims should be contacted and informed of the services as soon as possible.

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 that they provide proper and prompt aid.

Several jurisdictions have focused attention on the role of the police in dealing with victims, since the police are generally the first point of contact that the victim has with the criminal justice system. Among the points stressed in police training is that the victim should be treated as a human being, not as just a source of evidence. The victim should be assured that what occurred is condemned by society and that the community sympathizes with him or her. The responding police officer should reassure the victim that he or she is safe now, that the officer regrets what happened to the victim, and, when applicable, that what occurred was not the fault of the victim.

In addition to training in on-site crisis intervention and securing emergency medical assistance, police are being trained to provide victims with information regarding their rights and referrals to services and resources that can help the victim. Essential services should include, but are not limited to:

- (a) Explaining police procedures and investigation;
- (b) Providing information to victims on how to protect evidence;
- (c) Accompanying victims to emergency medical services where needed;
- (d) Providing information to crime victims about their rights, as well as the availability of crime victims' compensation and restitution;
- (e) Making immediate referrals (verbally and in writing) to crisis intervention services and community agencies that offer emergency services to victims, as well as information about financial assistance;

(f) Providing confirmation that the victim has been personally contacted by telephone or in person 24 to 48 hours following the initial response to determine whether assistance has been sought and/or received;

(g) Ensuring that the property of the victim is secured so that personal safety is not compromised as a result of crime;

(h) Establishing procedures to ensure that at least the victims of violent crime are periodically informed of the status and closing of investigations;

(i) Contacting a victim service professional to provide on-site assistance where needed;

(j) Establishing and enforcing strict property return protocols and procedures (in coordination with prosecutorial offices and the courts).

Some jurisdictions have developed protocols that specify how various professionals should balance their other responsibilities with those of responding to the needs of victims. In addition, an increasing number of governmental agencies and professional organizations are assisting in the development of curricula that focus on the initial response to victims as well as responding to their long-term needs. Several professional organizations have arranged seminars for public prosecutors, judges, senior police personnel and prison and parole officials at which these issues are discussed and participants are informed of the benefits offered by the many victim-specific services. Peer review systems also can be used for the sensitization of the police.⁵¹

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.

Several jurisdictions have established special programmes for more vulnerable groups of victims. Examples are sexual assault crisis centres, shelters for battered women and hot lines to assist victims of “hate crime”. In some jurisdictions, agencies and organizations dealing with the elderly have been developing special programmes for their focus group. Child victims require not only special medical and emotional assistance but also special attention in their contact with the criminal justice system. Several jurisdictions have established special units to carry out the police investigation and prosecution of such cases and allow videotaped testimony or the use of closed-circuit television for the presentation of testimony by child victims in court.

⁵¹In Utrecht, the Netherlands, a peer review system has been established in which, after the victim has been questioned by a police detective, a second detective asks the victim how he or she was dealt with by the first detective. The responses are used as the basis for further training.

Other jurisdictions have established child advocacy centres, where multiple services for victims are available at one location.

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.**

During recent years, armed conflict has claimed countless victims, largely among civilian populations, with women and children often the primary targets. Tribal warfare, ethnic strife and other fratricidal conflicts, mass rapes, trafficking in women and children, victimization of immigrants, kidnappings and expulsions, “ethnic cleansing”, torture, arbitrary detention and killings have greatly compounded the human toll. The Office of the United Nations High Commissioner for Refugees estimates that at the beginning of 1996, worldwide there were some 13.2 million refugees, 3.4 million returnees, 4.6 million internally displaced persons, and 4.8 million victims of armed conflict, most of them women and children.

Many jurisdictions have reviewed their laws and practices with a view to improving the position of victims of violations of internationally recognized norms relating to human rights, including norms of international law protecting the life, liberty, personal security and well-being of individuals and groups under article 38 of the Statute of the International Court of Justice.

Jurisdictions have sought particularly to provide for victims of violations, *inter alia*, of:

The Universal Declaration of Human Rights⁵²

The International Covenant on Civil and Political Rights⁵³

The International Covenant on Economic, Social and Cultural Rights⁵³

The Convention on the Prevention and Punishment of the Crime of Genocide⁵⁴

The Convention on the Rights of the Child⁵⁵

The Convention on the Elimination of all Forms of Discrimination against Women⁵⁶

The Declaration on Violence against Women⁵⁷

⁵²General Assembly resolution 217 A (III) of 10 December 1948.

⁵³General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

⁵⁴General Assembly resolution 260 A (III), annex, of 9 December 1948.

⁵⁵General Assembly resolution 44/25, annex, of 20 November 1989.

⁵⁶General Assembly resolution 34/180, annex, of 18 December 1979.

⁵⁷General Assembly resolution 48/104 of 20 December 1993.

The International Convention on the Suppression and Punishment of the Crime of *Apartheid*⁵⁸

The slavery and slave-related practices conventions

The Standard Minimum Rules for the Treatment of Prisoners

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵⁹

The Code of Conduct for Law Enforcement Officials

The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Conventions against the seizure of diplomats and taking of hostages

Relevant instruments related to crimes against humanity, crimes against peace, and war crimes

Where these jurisdictions have enacted legislation criminalizing conduct covered by the above Conventions or instruments, part A of the Declaration would apply.

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 the necessary material, medical, psychological and social assistance and support.

Part A of the Declaration calls for a guarantee that victims of abuse of power have the same rights as those conferred upon victims of crime, in particular rights related to access to justice, fair treatment, restitution, compensation and assistance. Many jurisdictions have enacted legislation criminalizing or otherwise proscribing violations of internationally recognized norms relating to human rights and humanitarian law or have otherwise enacted legislation guaranteeing these rights to victims of abuse of power.

There is a growing trend towards reparation for collective victims. Some jurisdictions have pioneered the use of class actions. Other examples include jurisdictions that have established reparation schemes for the victims of genocide and other grave mass violations of human rights.⁶⁰ Elsewhere compensation, even

⁵⁸General Assembly resolution 3068 (XXVIII), annex, of 30 November 1973.

⁵⁹General Assembly resolution 3452 (XXX), annex, of 9 December 1975.

⁶⁰Examples include the schemes for victims of Nazi Germany in Austria, Germany and Hungary; the scheme for compensation in the United States to Japanese-Americans interned during the Second World War; compensation in Canada to aboriginal peoples dispossessed of their land; compensation in Rwanda to victims of genocide; compensation in Brazil to the next-of-kin of "missing" persons and victims of torture; and reparation through a special fund established in Japan to women in countries such as Indonesia, Korea and the Philippines who were forced into

if only symbolic, has been part of efforts to determine the truth and ensure justice as a basis for national reconciliation.⁶¹

The status of victims in countries undergoing profound social, economic and political change, including war-torn countries, is particularly complex and precarious, and effective and timely victim assistance in such countries calls for specialized programmes.

Several jurisdictions provide compensation to persons who have been illegally deprived of their liberty or to victims of miscarriages of justice.

Many jurisdictions have ratified international human rights treaties, standards and norms and those international criminal law conventions that embody the protection of individual and collective human rights and incorporate them into national laws and State practice.

Furthermore, many jurisdictions have sought to ensure that legal or disciplinary action is taken against persons who fail to comply with legislation or regulations governing arrest, searches, interrogation and detention.

In order to provide medical, psychological and social assistance and support, a number of national agencies, United Nations agencies and intergovernmental and non-governmental organizations have developed appropriate programmes to provide such services.

20. States should consider negotiating multilateral international treaties relating to victims as defined in paragraph 18.

Several Conventions set up mechanisms for monitoring compliance with these instruments. Examples include the Committee on the Rights of the Child, the Committee on Torture and the Committee on the Elimination of Discrimination against Women. Such Committees should be encouraged to devote attention to preventing victimization and to providing assistance to victims.

The regional human rights courts in Europe and Latin America have heard cases dealing with victim concerns. The European Court and Commission on Human Rights have dealt, *inter alia*, with complaints of prisoner mistreatment in a groundbreaking decision, the Inter-American Court of Human Rights awarded damages to the surviving relatives of disappeared persons, holding a Government accountable for the violation of its duties and fundamental guarantees contained in the Inter-American Convention on Human Rights which that Government had ratified. The African Commission on Human and Peoples' Rights has, *inter alia*, a promotional mission: to collect information, conduct research and formulate principles, as well as to collaborate with other African and international institutions

prostitution during the Second World War.

⁶¹For example, in Argentina, Chile, El Salvador and South Africa.

in fostering the observance of fundamental rights and reducing victimization. Having recently developed its conflict-resolution role, it provides for the submission of “negotiation-communications” and “complaint-communications”, as stipulated in the African Charter on Human and Peoples’ Rights.⁶² This includes submissions from parties other than States, such as individual complainants and national or international non-governmental organizations.

Several jurisdictions have established national commissions or committees charged with the responsibility of reviewing implementation of some of the instruments or mechanisms mentioned above.⁶³ These national commissions or committees should pay special attention to victim issues.

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.

States should institute reporting procedures in respect of victims of abuse of power pursuant to treaty obligations or requests of United Nations bodies.

Due account should be taken of the recently concluded work of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms,⁶⁴ including the extent to which the principles formulated in this respect are or may be included in national legislation. It might also be useful to clarify the implications of State responsibility for the provision of reparation, i.e. which entities are under the obligation to provide reparation and who was entitled to such reparation, including individuals, groups and communities.

The periodic review of legislation and its application should further explore the concept of abuse of power beyond the matters covered in human rights treaties. This includes taking due account of the harm caused, for example, by economic, environmental and technological practices that may not yet be criminalized in certain jurisdictions yet inflict considerable damage collectively or individually. The victim may not even be aware of the damage, which may become apparent only in the longer term. Forms of community reparation should be envisaged in this connection, as well as specific measures of control (e.g. the “polluter pays” principle).

⁶²United Nations, *Treaty Series*, vol. 1520, No. 26363.

⁶³For example, in Brazil, Indonesia and Mexico.

⁶⁴“Question of the human rights of all persons subjected to any form of detention or imprisonment: note by the Secretary-General” (E/CN.4/1997/104), annex.

International means of recourse and redress should be developed where national channels may be insufficient, including the right of individual and group petition for harm suffered or likely to be suffered. As recommended by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, an international fund for victims should be established to be used by victims of transnational offences where there is a conflict of jurisdictions or where access to other remedies is lacking. Coordinated international assistance should be rendered to prevent victimization and provide redress to the victims as an essential tenet of justice and responsibility, especially in post-conflict reconstruction and transition to democracy.

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