

RESTORATIVE JUSTICE AND VICTIM ASSISTANCE – DO FAITH-BASED ORGANISATIONS HAVE A ROLE TO PLAY?

Faith in restorative justice and victim assistance – Side-event, UN Commission on Crime Prevention and Criminal Justice, UNODC Vienna, Austria, 22 May 2019

Michael O’Connell AM, Secretary-General, World Society of Victimology; Chair, WSV UN Liaison Committee.

Like my colleagues who have taken the floor before me, I would like to begin by expressing my gratitude for this opportunity to speak at this side-event on faith in restorative justice and victim assistance.

This afternoon I begin with a brief overview on victimisation, victims’ needs and rights, and restorative justice. I conclude with some pointers on faith-based organisations and victim assistance. For this purpose, I draw on the World Society of Victimology’s submission that Prof Marc Groenhuijsen and I, plus two other members of the Society made to His Worship, Pope Francis¹.

Crime knows no socio-political or geo-political borders². Victimisations daily claim countless lives, injure many others and are blight on human prospects. The breakdown of basic institutions in many places has made the establishment, or re-establishment, of an effective justice system among the most urgent priorities. Preventing travesties of justice is not only a task for individual communities but also the responsibility of the global community, including the faith-based organisations operating locally, regionally and internationally.

International human rights and humanitarian law seeks to guide as well as in some circumstances compel nation-states to provide for the rights and needs of victims of crime. With respect to victims of crime the overarching objectives are to restore victims to a fair, equitable and just place in civil society and in legal systems across the globe and to improve the availability and accessibility of medical, psychological, practical and financial assistance consistent with victims’ needs³. To achieve such there must be partnerships between government agencies, non-government organisations (including faith-based organisations) and civil society.

It is obvious, however, that despite the steps taken to achieve the said aims, too many victims are ignored, too many victims do not get the assistance they need and if they do get

¹ Groenhuijsen, M. et al (2016) ‘Message of the President of the World Society of Victimology’. In For a real human justice: Por una justicia realmente humana.

http://www.penal.org/sites/default/files/Book%20%20Pope%27s%20Audience_0.pdf

² UNODC Reports on world crime trends <https://www.unodc.org/unodc/en/data-and-analysis/statistics/reports-on-world-crime-trends.html>

³ See the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, November 1985 (attached). In brief, the Declaration proscribes victims the right to: - be treated with compassion and respect for their dignity; receive information allow the views of the victim to be presented and considered; proper assistance throughout the legal process; protection of privacy and physical safety; informal dispute resolution; medical, practical and psychological assistance; offender-restitution and state compensation. It also requires the building partnerships between government agencies, NGO’s and civil society.

help, it is not necessarily when they need such⁴. Furthermore, religious institutions and faith-based organisations are among those that have failed victims of crime⁵.

There are occasions when the interests of victims are at odds with those of others. Sometimes, for example, the vested interest of the religious institution that their members seek to protect, and as well individual members vested interests, which can overshadow doing what is appropriate for victims.

Thankfully, some religious leaders and faith-based practitioners have been willing to speak out for victims who have a fundamental right to be treated with respect, dignity and compassion. Such recognition is often premised on the realisation that victims' rights and victims' needs are not in conflict with the concerns of those who seek a just world for all to share⁶.

Victimological knowledge on victimization processes confirms that for many victims the 'need of recognition' is crucial to their coping⁷. Victims want to understand why and how the crime happen, and why in some cases nothing was done to prevent the crime. They feel the need to understand, and to express, what the crime has done with their lives. They seek respect, and recognition, by, among others, criminal justice practitioners and, in cases of abuse by religious, leaders of faith-based organisations. Some wish to contribute to reduce the risk that others will become victims; and, some of these victims become activists⁸.

It is of utmost importance that options for victims to participate in key decisions that affect them are offered and victims can choose whether to accept, or not. Yet in many of the world's criminal justice systems victims remain on the periphery, so their needs are not met.

Some victims value genuine expressions of remorse and apology by perpetrators. These gestures can help to give the painful experience a place and a meaning in the victim's life. Oftentimes, financial compensation for the personal injury and other damages can reinforce recognition and alleviate the personal consequences of the criminal victimisation. Towards these ends, programmes such as family conferencing and victim-offender impact conferences, which are grounded on the core elements of restorative justice, can afford offenders opportunities to accept responsibility for their crimes, to acknowledge the harm done and to make reparations, including making an apology and agreeing to perform deeds such as pay compensation.⁹

⁴ O'Connell, M. & Hayes, H. (in press) 'Victims, Criminal Justice and Restorative Justice' in H. Hayes & T. Prenzler (eds), *An Introduction to Crime*, Pearson, Australia, fifth edition.

⁵ See for example, Royal Commission into Institutional Responses to Child Sexual Abuse. *Religious Institutions*. <https://www.childabuseroyalcommission.gov.au/religious-institutions>

⁶ See for example, Pope Francis suggests putting the victim at the centre of debate on penal reform. (

⁷ O'Connell, M. (2015) 'Violence in Australia and its victims – A case for victims' rights and victim assistance'. In A Day & E. Fernandez (eds) *Violence in Australia: Policy, practice and solutions*, Federation Press: Melbourne.

⁸ From Pain to Power: Crime Victims Take Action – NCJRS.

https://www.ncjrs.gov/ovc_archives/reports/fntp/fntp.pdf See also Caveats regarding victim activism - https://www.ncjrs.gov/ovc_archives/reports/fntp/caveats.htm

⁹ O'Connell, M. (2017) *Restorative Justice: Better justice for Victims of Crime*.

<https://consultingvictimologist.com/2018/12/27/restorative-justice-better-justice-for-victims-of-crime/#more-135> and O'Connell, M. & Hayes, H. (in press) 'Victims, Criminal Justice and Restorative Justice' in H. Hayes & T. Prenzler (eds), *An Introduction to Crime*, Pearson, Australia, fifth edition.

Marc Daniela and Fernanda spoke on the theory, evidence and practice of restorative justice, so I will make only one observation then focus my comments on victim assistance – as introduced by Marc.

In sharing with faith-based organisations the values of intense humanness, universal interconnectedness, compassion, respect and reconciliation, the World Society of Victimology submits that restorative practices can be very appropriate for some victims when healing wrongs, such as those perpetrated by religious and faith staff. I reiterate; however, such practices should first and foremost seek to represent victims' interests as a priority. It is crucial to ensure that victims can choose, or not choose, restorative practices as mechanisms to attain justice; and if they do choose such, these mechanisms must accord with victims' dignity, compassion and other rights and assistance.¹⁰

There are many countries with fully functional victim support services. On the other hand, there are at least as many nations where any such services are completely absent. The United Nations handbook to guide the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power lists the core elements of a comprehensive approach to victim assistance.¹¹ That approach includes a 'cluster of services': crisis intervention; counselling; advocacy; support during investigation of a crime; support during criminal prosecution and trial; and, support after case disposition.

In many developed nation-states a combination of public agencies and non-government organisations, such as religious organisations, provide a myriad of victim support services. In nation-states where victims' rights have not been entrenched in domestic law and in developing nation-states, non-government organisations, including religious organisations, frequently are at the forefront in the delivery of victim assistance. In fact, millions of people throughout the world when faced with crisis resulting from crime call upon religious people, such as clergy, for support, information, counsel and spiritual guidance. In response faith-based assistance programmes have evolved and expanded to offer a range of assistance.

Hence, the World Society of Victimology holds that faith-based organisations are an important source of support for victims of crime, including their families and their communities. It is important that faith-based organisations continue to aid victims whenever possible. It is also essential that pastoral or like counselling techniques are evidence-based and are trauma-informed. Further, it is vital that faith-based organisations cooperate with other victim assistance providers to offer victims assistance in timely and appropriate ways that match victims' needs; otherwise, it is impractical to deliver the aforementioned 'cluster of services'.

¹⁰ See Article 9 of the WSV draft Convention on Justice and Support for Victims of Crime and Abuse of Power.

http://www.justice.gov.za/VC/docs/international/2006_Draft%20UN%20Convention%20Victims.pdf

¹¹ https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf

Assistance to victims should counter the deleterious effects of crime¹². In order that those working in victim assistance to do so in ways that cause 'no more harm', two other ingredients are necessary: training and education. As with other victim support providers, there is a need for religious and faith-based staff to understand criminal victimisation and how it differs from other sources of trauma; and, they should be sensitive to the needs of victims and their rights.

Research confirms that well trained victim support workers and other experts who utilise trauma-informed practices can play an integral role in assisting victims to cope with the effects of crime.¹³ Contrary, unaware and ill-trained workers and others can cause a 'second injury'.

In summary, it is the World Society of Victimology's contention that faith-based organisations and mainstream victim services, as well as victims and victim-advocates should work together locally, nationally and internationally to accomplish improved outcomes for victims of crime.

¹² See for example section 11 of the Victims of Crime Act 2001 (SA), which states "A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence."
<https://www.legislation.sa.gov.au/LZ/C/A/VICTIMS%20OF%20CRIME%20ACT%202001/CURRENT/2001.58.AUTH.PDF>

¹³ Using a trauma informed approach, OVC, USA. <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/> The OVC USA offers free online training on, among other topics, trauma informed care. Such training "Covers the impact of trauma on crime victims. Victims react to the psychological trauma of a crime in various ways. In order to ensure they receive the care they need, you must become familiar with the impact of trauma and the concept of trauma-informed care." https://www.ovcttac.gov/views/TrainingMaterials/dspOnline_VATOnline.cfm

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

The General Assembly,

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

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

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;
2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;
3. Adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;
4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:
 - (a) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;
 - (b) To promote community efforts and public participation in crime prevention;
 - (c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing

acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;

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

(e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;

(f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;

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

(h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

5. Recommends that, at the international and regional levels, all appropriate measures should be taken:

(a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;

(b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;

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

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

6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

7. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

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

9. Urges the specialized agencies and other entities and bodies of the United Nations system, other relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

ANNEX

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

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

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

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

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

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

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

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

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

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

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

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

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

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

Assistance

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

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

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

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

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.