

HUMAN RIGHTS and VICTIMS of VIOLENCE

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# Human Rights and Victims of Violence



NORTHERN  
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HUMAN  
RIGHTS  
COMMISSION



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The report is being published in the Commission's name because it represents the current state of Commissioners' thinking on the issues it deals with.





As part of its overall consultation on a Bill of Rights for Northern Ireland, the Northern Ireland Human Rights Commission particularly wanted to consult with victims of violence on which rights, additional to those in the European Convention on Human Rights, might be included in a Bill of Rights. At present the European Convention does not confer any specific rights on victims of crimes. It merely says, in Article 13, that anyone whose rights under the Convention have been breached must be afforded an effective remedy. And while other parts of the European Convention have been incorporated into the law of Northern Ireland by the Human Rights Act 1998, Article 13 has not been.

Northern Ireland has been affected by violence in many ways. All victims of violence have their different stories to tell and the Commission has stressed on many occasions that victims of violence should receive the opportunity to have their needs asserted, their views heard and their feelings acknowledged. The consultation on drafting the Bill of Rights gives victims the chance to participate in the setting up of a whole new human rights culture in Northern Ireland. This report is the outcome of that consultation. While we recognise that it by no means presents a definitive account of the subject-matter, it does provide an important resource for the Human Rights Commission and a useful body of opinion which can inform the broader discussion on victims' issues in the particular circumstances of Northern Ireland. Its conclusions will certainly contribute to the deliberations of the Commission when it is preparing its final advice on a Bill of Rights for the Secretary of State.

Anyone who would like to express further views on the Bill of Rights in general or on the Commission's work on victims' rights in particular is welcome to contact the Commission by telephone, fax or email.

**Brice Dickson**  
**Chief Commissioner**

**June 2003**







### **Aims and Objectives of the Project**

Chapter 1 of the Report explains the purpose behind the Human Rights Commission's Victims' Rights Project. The Project's main aim was to examine and report on the concerns of victims of violence as regards:

- their right to information about the incident of violence in question;
- their right to adequate compensation;
- their right to have someone held to account for the violence inflicted on them; and
- their right to be treated equally with other victims of violence.

More specifically the objectives of the Project were as follows:

- to consult widely with victims of violence and with groups representing victims of violence,
- to take as the framework for the consultation the internationally accepted rules and principles for the protection of human rights, together with human rights law and best practice in other countries,
- to take as "victims of violence" those persons whose rights as set out in Articles 2 and 3 of the European Convention on Human Rights have been affected, *i.e.* the right to life and the right to be free from torture or inhuman or degrading treatment or punishment, and
- to consider the relevance of the findings of the consultation to the Commission's work on a Bill of Rights for Northern Ireland.

Much has happened at the official level over the past few years in the field of victims' rights. These developments are outlined in Chapter 2 of the Report. Chapter 3 then grapples with the thorny issue of who qualifies as a victim in Northern Ireland. It points out that, for the purpose of the consultation conducted for this Report, the Human Rights Commission relied on people's self-definition as to whether or not they were victims of violence.

### **Methods Used During the Project**

Groups and individuals were invited to participate in the Victims' Rights Project in a variety of ways, such as making written submissions, taking part in workshops with representatives of other groups, having discussions with the Project's researcher and responding to a survey questionnaire. The Project was also featured in a range of local newspapers across Northern Ireland.





The researcher visited victims' and survivors' groups to discuss victims' rights issues. She also met with individuals who had suffered violence and attended a range of events where victims' issues were highlighted. In the main the researcher met with groups of victims who had suffered violence and bereavement during the troubles, but she also met with other groups whose members had experienced violence such as domestic violence or racially motivated violence.

Chapter 4 of the Report analyses the written questionnaires as well as the issues raised and discussed during the researcher's meetings with victims' and survivors' groups and with individuals who suffered through violence.

### **The Rights Examined**

Chapter 5 sets the scene for the following two chapters by summarising the current state of the international standards on victims' rights. The chapter pays particular attention to two United Nations' documents in the field and a recently published set of Commonwealth Best Practice Guidelines on Victims' Rights. For readers' convenience these three documents are reproduced in Appendices 1, 2 and 3.

Chapters 6, 7, 8 and 9 look more closely at the main rights which consultees claimed should be included as victims' human rights in a Bill of Rights. These are:

- the right to recognition,
- the right to truth,
- the right of access to justice,
- the right to involvement in the criminal justice system,
- the right to give and receive information,
- the right to compensation,
- the right to restitution,
- the right to protection,
- the right to freedom from discrimination, and
- the right to privacy.

### **Summary of Conclusions**

The main conclusions of the Project are as follows:

1. Victims are agreed that to have their pain acknowledged remains their most fundamental right.
2. There is still much disagreement about the definition of "victimhood." There are those who feel that "real" victims had no choice over life, death or injury, whereas perpetrators had the choice whether or not to take part in premeditated acts of violence.





3. While most victims feel unable to forgive those who carried out violence against their loved ones, there are those who recognise that some perpetrators became involved in the troubles when they were young and that they were influenced by the violence they saw in their communities.
4. Each victim of violence has a different and individual experience. It is important to be aware that different people react to trauma in different ways. Their support needs may be very diverse and will change over time. People need an appropriate setting and mechanism to talk about their feelings and they have the right to choose if, how, where, when and to whom to talk.
5. Wrongs from the past cannot always be righted in law and in many cases there are no legal avenues to win redress. Victims of violence nevertheless feel they have particular needs as regards:
  - the hearing and acknowledgement of their stories,
  - access to relevant information,
  - accountability and justice,
  - apology and repentance from those who have done them wrong,
  - realistic compensation and support in financial matters,
  - appropriate medical assistance with professional care and counselling for psychological, emotional and spiritual needs,
  - codes of practices for statutory, voluntary and community bodies that are working with victims.
6. The current political situation in Northern Ireland is affecting some victims, causing them to re-live their pain. Many speak of their feelings of hopelessness and of not having the ability to take control of their lives. Victims' rights must be an integral part of any plan for the future of Northern Ireland.
7. In due course it will be appropriate to develop some kind of truth recovery mechanism in Northern Ireland. At present, however, there is little support amongst the victim community for such a process to be initiated. It would not be appropriate for the Human Rights Commission to serve this function but the Commission should facilitate discussion of what truth and reconciliation processes might eventually be appropriate for Northern Ireland.
8. The majority of victims' groups are in favour of extra protection for human rights in Northern Ireland. It is generally agreed that a Bill of Rights should state legally enforceable rights and principles, and that society as a whole should support its implementation. Victims also accept that absolute rights might not serve the best interests of individuals concerned.





## Executive Summary

9. A Bill of Rights could be a framework of rights and responsibilities and it should say that no changes can be made to it except with the consent of the people. There is some concern, however, that, as the Bill of Rights will be a piece of Westminster legislation, it could be circumvented if the UK government were to pass an Emergency Powers Act for Northern Ireland.
10. The interests of victims should feature in the codes of practice of all criminal justice organisations which interface with victims, and in the plan advocated for the criminal justice system as a whole.
11. There is a particular need for better structures to be put in place for the police and judiciary so that the human rights of victims can be better protected.
12. There will be practical difficulties in the enforcement of victims' rights. There is a strong argument for an independent effective voice and listening ear, such as an Ombudsman, to oversee the implementation of a range of practical measures to help victims of violence.
13. People whose loved ones were killed by state forces have similar feelings towards the authorities to those experienced by victims of paramilitary organisations. They want the state and its officers to account for what happened to their loved ones. They also want claims of collusion between the state and paramilitary organisations to be investigated.
14. Supporting victims of violence is a long-term process and this should be acknowledged by the different sectors involved in providing the support and in devising and implementing long-term strategies. Victims' groups want more funding to help people to debate issues and to put measures in place to help them in the healing process.
15. It must also be recognised that the great majority of victims choose not to join a victims' support group. Therefore, it is very important to ensure that support appropriate to individual needs is made known and available to all victims.
16. This Project has built on the Northern Ireland Human Rights Commission's existing links with individual victims of violence and victims' support groups. In its next strategic planning period the Commission should provide for further work to be undertaken on the rights of victims, especially victims of breaches of Articles 2 and 3 of the European Convention on Human Rights.







# Chapter 1

## Introduction

### **The Northern Ireland Human Rights Commission**

The Northern Ireland Human Rights Commission was set up as a result of the Belfast (Good Friday) Agreement in April 1998. It is a strictly non-party political body which strives to promote and protect the rights of all the people of Northern Ireland. The Commission is independent of government (whether in London or in Belfast) and its work includes the provision of advice, information, education and research on human rights issues, investigations of specific matters and individual casework assistance. In the field of education, for example, the Commission is trying to influence school and college curricula in order to get human rights placed more centrally on the education agenda.

The Mission Statement of the Human Rights Commission is as follows:

*The Northern Ireland Human Rights Commission will work vigorously and independently to ensure that the human rights of everyone in Northern Ireland are fully and firmly protected in law, policy and practice. To that end the Commission will measure law, policy, practice in Northern Ireland against internationally accepted rules and principles for the protection of human rights and will exercise to the full the functions conferred upon it to ensure that those rules and principles are promoted, adopted and applied throughout Northern Ireland.*

*In carrying out its functions the Northern Ireland Human Rights Commission will be independent, fair, open, accessible and accountable, while maintaining the confidentiality of information conveyed to it in private. The Commission is committed to equality of opportunity for all and to the participation of others in its work. It will perform its functions in a manner, which is efficient, informative and in the interests of all the people of Northern Ireland.*

In implementing this Mission Statement the Commission is committed to adhering to a set of core values. These are accessibility, accountability, equality, fairness, independence, openness and participation.

The Commission currently comprises a full-time Chief Commissioner, 10 part-time Commissioners and 15 staff. It is funded by the Northern Ireland Office and is accountable, through the Secretary of State, to Parliament at Westminster and to the UK Parliamentary Commissioner for Administration (the Ombudsman). The office of the Commission is located in the centre of Belfast. Groups and individuals are welcome to visit the Commission by appointment and representatives of the Commission will be happy to meet people who have human rights concerns anywhere in Northern Ireland.





### **The Victims' Rights Project**

The Belfast (Good Friday) Agreement of April 1998 makes specific reference to the importance of addressing the suffering of victims of violence by acknowledging their loss and pain and their right to the provision of services supportive of, and sensitive to, their needs:

*... it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation. ... It is recognised that victims have a right to remember as well as to contribute to a changed society.<sup>1</sup>*

The concerns of victims of violence have also been highlighted in recent years by the increasing focus in international human rights institutions on the rights of such victims to restitution, compensation and rehabilitation.

The Northern Ireland Human Rights Commission has consistently stressed that victims of violence should have the opportunity to voice their concerns in a society which has changed a great deal, institutionally as well as constitutionally, over the last decade.

The Commission therefore looked carefully at how best to develop work that would be of real benefit to those affected by violence, whether troubles-related or not. After meetings with a wide variety of groups and individuals, members of the Commission formed a committee to address victims' rights issues and to oversee the development of a research project over a six-month period.

The specific objectives of this project were as follows:

- To consult widely with victims of violence and with groups representing victims of violence.
- To take as the framework for the consultation the internationally accepted rules and principles for the protection of human rights, together with human rights law and best practice in other countries.
- To take as "victims of violence" those persons whose rights as set out in Articles 2 and 3 of the European Convention on Human Rights have been affected, i.e. the right to life and the right to be free from torture or inhuman or degrading treatment or punishment.
- To consider the relevance of the findings of the consultation to the Commission's work on a Bill of Rights for Northern Ireland.

This report is the outcome of the Victims' Rights Project.

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<sup>1</sup> Paras. 11 and 12 of the section on Human Rights in the part headed "Rights, Safeguards and Equality of Opportunity".



### *The Methodology Used in the Project*

The report draws on the work of three researchers who presented reports to the Commission. Mary Waldron was employed by the Commission for a six-month period as Victims' Rights Project Worker. Her work forms the basis of Chapter 4. Dr Kathleen Cavanaugh's paper on international standards forms the basis for Chapter 5. Brian Gormally was commissioned to complete the research and his work forms the basis of the remaining chapters. All chapters were revised by the Commission's Committee for Victims and the final report was endorsed by the entire Commission.

During the early stages of the project, the Project Worker, who was appointed in September 2000, contacted as many victims' support groups as possible, and many other groups whose members may have experienced violence in Northern Ireland, to raise awareness of the Project. Due to the sensitivity involved in contacting victims of violence, the researcher also liaised with many professionals working in the field as well as representatives from statutory and voluntary agencies and from community associations. Groups and individuals were invited to participate in the consultation in a variety of ways, such as making a written submission, taking part in a workshop or having discussions with the researcher. The Project was also featured in a range of local newspapers across Northern Ireland. The Project Worker visited victims' groups to discuss victims' rights issues. She attended a range of events where victims' issues were highlighted and met with individuals who had suffered violence.

Besides the consultation, the other core element of the research was a survey based on a confidential postal questionnaire which was distributed early in 2001. Its purpose was to examine in detail the experiences and views of victims of violence. The Commission was naturally concerned that taking part in the survey might be upsetting for some people as the questionnaire asked victims of violence about events in the past that caused great anguish at the time. We therefore sought to be as sensitive as possible in phrasing the questions.

The draft questionnaire was piloted with two groups which were perceived as representing different constituencies. As a result of the piloting it was suggested that there should be different sections in the questionnaire based on different experiences, rather than one general questionnaire. This would allow respondents to focus on their own particular experiences. The sections suggested included:

- having a loved one killed,
- becoming a victim through harassment,
- suffering violence through injury, and
- experiencing imprisonment and internment.

The inclusion of the last section was clearly resented by some respondents. Some of the difficulties around the definition of victimhood are discussed in Chapter 3 below.

A total of 47 questionnaires were returned, although because of different kinds of harm experienced by the same people, they represented 72 episodes of victimisation. We cannot say whether these are representative of all victims, although they do include people harmed by Loyalist and Republican



# Chapter 1

## Introduction



paramilitaries and by security forces. Because of the relatively low numbers, any statistical data we have retrieved must be taken as indicative rather than definitive.

### *The Relevance of the Project to a Bill of Rights*

The Victims' Rights Project will, among other things, contribute to the Commission's thinking about a Bill of Rights for Northern Ireland. A Bill of Rights is a list of the rights everyone in a country can enjoy. Bills of Rights are usually enforceable against institutions of the state and it is states, of course, that are responsible for protecting the rights of their citizens. In most cases a Bill of Rights is included in a state's constitution, as for example in the USA, India and the Republic of Ireland. A country's Bill of Rights is often the "supreme law" which prevents the country's Parliament from passing other laws infringing people's rights. Having said that, rights in a Bill of Rights are not absolute: they can be "limited" by many considerations, including the state's and individuals' responsibility to protect the rights of others.

All the political parties in Northern Ireland are on record as supporting the idea of a Bill of Rights for Northern Ireland, although they disagree about the particular kinds of rights they would like to see included in such a Bill.

Shortly after its establishment, the Human Rights Commission was asked by the Secretary of State to provide advice on what should be contained in a Bill of Rights for Northern Ireland, in line with paragraph 4 of the "Human Rights" section of the Belfast (Good Friday) Agreement. This paragraph says that the Commission will be:

*invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.*

Although the European Convention protects civil and religious liberties, such as fair trial and free speech, the Commission's work to date on a Bill of Rights recognises the need for a range of other rights to be protected in the particular circumstances of Northern Ireland. Amongst these are victims' rights. The only protection granted by the Convention to victims is the guarantee of an "effective remedy" if one of the other rights in the Convention is breached (see Article 13).

In September 2001 the Commission published a draft Bill of Rights in the form of a consultation paper entitled *Making a Bill of Rights for Northern Ireland*. It is still deliberating on the responses to that document. The current report on victims' rights will assist those deliberations, as well as giving feedback to those who participated in the Project and informing policy-makers about the needs and concerns of victims in general.





## Chapter 2

### Recent Developments on Victims' Rights

#### Introduction

Why there was so little structured support for the victims and survivors of the troubles, and those caring for them, throughout the more than 30 years of conflict, is a question which remains unanswered. The period of ceasefire has allowed the voices of victims to be heard and respected to a much greater extent, leading to better assessments of their needs, and the new political arrangements have allowed for the emergence of institutional arrangements which, for all their instability, are attempting to deliver practical support and services as well as acknowledgement of the trauma and hurt sustained in the past. The voluntary and community sectors have endeavoured to meet many of the needs of those affected and the government has in recent years been determined to give the concerns of victims a high priority.

In this chapter we attempt to summarise some of the recent developments in the area of victims' rights in Northern Ireland. In particular, we describe the institutional structures and funding arrangements now in place for the support of victims and victims' organisations.

#### Institutional Arrangements

##### *The Northern Ireland Office*

As a result of the suspension of the devolved administration in October 2002, Des Browne MP currently has NIO and OFMDFM responsibilities for equality, human rights, community relations, victims, criminal justice and elections. He also has responsibility for the Department for Social Development and the Department of Health, Social Services and Public Safety.

##### *The Victims Commission*

On 24 October 1997 the then Secretary of State, Dr Marjorie Mowlam MP, announced the appointment of a Victims Commission, headed by Sir Kenneth Bloomfield, to look at ways of recognising the pain and suffering of victims of violence related to the troubles in the last 30 years, "recognising that those events have also had appalling repercussions for people not living in Northern Ireland". Sir Kenneth embarked on a consultation process to receive as many views as possible on ways to address the pain and loss of all sections of the community, and to recommend a form of memorial which would be as broadly acceptable as possible.

In May 1998 Sir Kenneth's report, *We Will Remember Them*, was launched. The Secretary of State accepted the recommendations in Sir Kenneth's report in full and appointed Adam Ingram MP to be Minister for Victims, in charge of overseeing the implementation of Sir Kenneth's Report.

##### *The Victims Liaison Unit in the NIO*

Mr Ingram set up the Victims Liaison Unit (VLU) in the Northern Ireland Office (NIO) to take this work forward. Since then the government has allocated over £20 million for victims' initiatives (see page 17 below for a breakdown of how the money has been allocated.)



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### Recent Developments on Victims' Rights



In addition to having primary responsibility for implementing the findings of the Bloomfield report, the VLU is responsible for the provision of core and project funding and other grant aid to the Northern Ireland Memorial Fund and for the prioritisation and allocation of government funding for victims and ensuring victims' issues are addressed, particularly in areas such as compensation, criminal justice, security and the "disappeared". (In April 1999 Dr Mowlam introduced legislation to help locate the graves of the "disappeared". The legislation, and its equivalent in the Republic of Ireland, set up a Commission to deal with the matter, and information or evidence given to the Commission is not used in criminal proceedings.)

In August 2002, in carrying out its duties under section 75 of the Northern Ireland Act, the VLU circulated for comment an Equality Impact Assessment of the Core Funding Scheme for Victims and Survivors Groups (2002–2004). This aimed to ascertain whether the Scheme would have an adverse differential impact on any of the protected categories under section 75 *i.e.* religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and having dependants. The document notes that the composition of the victims' community varies from that of the Northern Ireland population in the following areas - the high occurrence of bereaved women, those injured or disabled and the particular age categories requiring support.

#### *The Victims Unit in the OFMDFM*

Work on victims is also carried out within the Office of the First Minister and Deputy First Minister, in the Human Rights, Community Relations and Victims Division. The role of the Victims Unit, which was established in June 2002, is to raise awareness of, and co-ordinate activity on, issues affecting victims of the troubles across all Northern Ireland government departments and more generally in Northern Ireland. Prior to the suspension of the Assembly and Executive in October 2002, Junior Ministers Denis Haughey and Dermot Nesbitt (later James Leslie) were allocated the specific responsibilities for victims within that Office.

The Victims Unit has the responsibility for supporting Ministers in the devolved administration and developing and managing a suitable programme for PEACE II funding (money allocated by the European Union for peace projects in Northern Ireland). It is also responsible for ensuring that victims' needs are met in the devolved administration and that a commitment to victims is sustained in the Northern Ireland Executive's *Programme for Government*.



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### Recent Developments on Victims' Rights

In March 2001 the Northern Ireland Assembly endorsed the first *Programme for Government*. This stated that:

*In seeking to create a new future, and as an important part of addressing human rights, it is important that special attention is paid to the needs of those who have been most directly affected by the violence of the last 30 years.*

It went on:

*“The needs of victims and survivors are complex, ranging from coping with serious injury through to physical and emotional trauma, along with dealing with often adverse economic circumstances. We aim, through meeting victims’ needs, to promote models of community healing (both within and between communities) and to enable growth in confidence and empowerment for individual victims and survivors.”*

The Programme for Government committed the Executive to preparing a Victims’ Strategy during 2001. In August 2001 the Unit circulated a consultation paper on a victims’ strategy, described as “a vital step in helping the devolved administration address the needs of victims of the troubles”. Following extensive consultation, a cross-departmental strategy to deliver practical help and services to victims of the troubles was launched in Craigavon on 11 April 2002 (along with a useful key contacts list) by the First Minister, David Trimble and a Junior Minister, Denis Haughey. The strategy document, called *Reshape, Rebuild, Achieve*, can be obtained from the Victims Unit. The Victims Unit undertook to produce a summary of activity on a yearly basis and in April 2003 it issued a Progress Report outlining its activities during the period 1 April 2002 to 31 March 2003. A follow-on strategy will be developed to run from April 2003, taking into account lessons learned.

#### *The Northern Ireland Memorial Fund*

The Northern Ireland Memorial Fund (NIMF) is an independent charity established in 1998 to provide practical and meaningful support to individuals whose lives have been affected by the troubles in Northern Ireland. It receives funding from the government and through various fundraising events. The Fund currently administers schemes for Small Grants, Short Breaks, Chronic Pain Management, Amputee Assessment, Wheelchair Assessment, Education and Training and Back to School Grant.

#### *Criminal Injuries Compensation*

Another recommendation of Sir Kenneth Bloomfield’s report was implemented in August 1998 when it was announced that Sir Kenneth himself would head a review of the fitness of purpose of the Criminal Injuries Compensation Scheme. This required him to look at a new statutory framework for all criminal injury cases, not just those resulting from terrorism. The Review of Criminal Injuries Compensation report was issued the following year, in July 1999. It made a number of recommendations.



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### Recent Developments on Victims' Rights



Three weeks later Peter Mandelson, the then Secretary of State, announced the government's response to the Review. In essence, the government wanted the Scheme to move closer to the Great Britain model, *i.e.* a tariff scheme. But the tariff was to be based on Northern Ireland average payments (which are generally higher than in Great Britain). Mr Mandelson also noted that there would be improved bereavement support arrangements, flexibility in time limits and in some cases and on certain medical grounds the possibility of reopening claims for a limited time. It would also no longer be necessary to witness the crime leading to death or injury of a loved one in order to be able to make a claim for psychological damage. A points scheme was to be introduced to regulate the effect of previous criminal behaviour on awards and this would also apply to convictions for terrorist activities.

In 2001 the government published a draft Criminal Injuries (Compensation) (NI) Order and invited comments. It was vehemently opposed by the Law Society of Northern Ireland. An *Ad Hoc* Committee at the Northern Ireland Assembly examined the draft Order and the Assembly unanimously voted against its adoption. The UK government nevertheless proceeded to have the draft Order approved at Westminster. The new Scheme created by the Order began to be implemented from 1 May 2002. The Criminal Injuries Compensation Scheme 2002 is available from the NIO.

#### **Funding Allocations**

Since 1998 the government has allocated over £20 million for victims' initiatives. A breakdown of how much and where this money has been allocated is as follows:

- More than £7 million to the Northern Ireland Memorial Fund. The Fund is an independent charity which provides practical help and support to individuals and families through a number of schemes (see above).
- More than £6 million for core funding for groups working with victims and survivors. The funding scheme aims to help victims or survivors regain fulfilment in their lives and, where appropriate, reintegrate them as members of society. The funding is for key support services provided by groups or organisations to victims or survivors which they cannot access elsewhere.
- £5.84 million for victims made available through the European Union's PEACE II Programme (EU Programme for Peace and Reconciliation). Of this, £1.45 million (25%) came from the Northern Ireland Executive. A consortium led by the Community Foundation for Northern Ireland has been appointed as an Intermediary Funding Body responsible for distributing the funds.
- £1.5m for the development of the Northern Ireland Centre for Trauma and Transformation based in Omagh. The primary purpose of the Centre is to assess, treat and care for those who suffer psychological or psychiatric trauma-related disorders, illness or disability as a consequence of traumatic or distressing experiences arising out of the Troubles in Northern Ireland.





## Chapter 2

### Recent Developments on Victims' Rights

- £750,000 for the Victims / Survivors Development Grant Scheme, to help victims and survivors become active members of society. The Community Relations Council, supported by the government and the European Union, has also established a special fund of £415,000 aimed at developing community relations work.
- £700,000 to establish a Family Trauma Centre. The Centre is a regional resource service which works in partnership with statutory agencies, voluntary organisations and community groups. It is based in South and East Belfast Trust and is dedicated to providing therapeutic and psychological services for families and young people primarily traumatised by the effects of the Troubles.
- £500,000 for initiatives in Great Britain including £250,000 for The Legacy Project, which aims to identify and meet the needs of victims of the troubles living in Great Britain.
- £300,000 for an Education Bursary Pilot Scheme – for individuals whose education was directly affected by the troubles; 350 people received awards.

£225,000 for the Victims Support Grant Scheme to enable groups to develop projects and activity programmes which support victims of the Troubles to become active members of society.

#### **Financial Support for Those in the Service of the State**

Financial support aimed specifically at those who suffered as a result of discharging duties in the service of the state included the award of £4.5 million in May 1998 to establish a Police Foundation. In accordance with Recommendation 88 of the Independent Commission on Policing (the Patten Report), regular funding began and new premises were secured for the RUC Widows' Association in September 2000.

In October 2000 the government took delivery of the Steele Report. Mr Steele had been asked to look at Recommendation 87 of the Patten Report, which proposed a fund to help seriously injured police officers and retired police officers, and their families, as well as police widows. As a result it was announced that £2 million would be made available to fund lump sums for RUC widows whose husbands were killed as a result of terrorist activity before 1982. A trust was to be established to administer the fund. The Steele Report recommended payments of more than £11 million over three years, £6 million in the first year (the £2 million allocated would be part of that) and £2.5 million in years 2 and 3.

In February 2003 the Security Minister Jane Kennedy MP announced funding of £6.3 million over the next three financial years for the Police Rehabilitation and Retraining Trust, which was established in 1999. The Trust provides assistance aimed at the rehabilitation of ex-officers who were injured while on duty as well as retraining for those officers leaving or expected to leave the police mainly as a result of downsizing.



# Chapter 2

## Recent Developments on Victims' Rights



### Reports and Evaluations

#### *(a) Emanating from statutory bodies*

A number of important reports have been published, both by the statutory sector and by non-governmental organisations (NGOs), which have contributed to the growing understanding of the needs of victims and the debate about matters such as funding. Amongst these are the following.

In April 2001, in accordance with a commitment in the *Programme for Government* to assess by April 2002 what improvements to services for victims had taken place and what further steps needed to be taken, the Victims Unit, OFMDFM appointed Deloitte & Touche to undertake a baseline assessment of services to victims. The resulting research report looked not only at the views of victims affiliated to groups but also the views of victims not affiliated to any specific victims' groups. By far the majority of victims, of course, are not affiliated to victims' groups.

"Action Points related to the Assessment of Services" has also been published by the Victims Unit. To improve communication between statutory agencies, an Interdepartmental Working Group (IDWG) on Victims has been established in which each government department, the Social Security Agency, and the Northern Ireland Housing Executive (NIHE) are represented. There is an awareness of the need, for example, to train government departments, create forums to enable victims' groups to make an input into policy development, and reflect victims' needs in corporate planning.

The Community Relations Council has taken on board the "Good Relations Duty" contained in section 75(2) of the Northern Ireland Act 1998 and recently launched a "Good Relations Framework". Statutory organisations and local government, *e.g.* Belfast City Council, will find this of use in carrying out their duties with regard to tackling sectarianism and thus helping prevent future victimisation.

#### *(b) Emanating from NGOs, voluntary groups and independent organisations*

In February 2002 a set of three reports from the completed REAL Programme (Recognition, Empowerment, Awareness), supported by the Northern Ireland Voluntary Trust and facilitated by the Workers Education Association (WEA) was published. The reports included an evaluation of provision and support for people affected by the troubles, carried out by the Institute for Conflict Research, which stressed the need for collaboration between funders and policy makers working with victims and survivors.

In June 2002 the report of the "Healing through Remembering" project was published. Set up in December 2000, the project came out of several years of work with Dr Alex Boraine, Deputy Chair of the Truth and Reconciliation Commission in South Africa, including the publication of a report entitled *All Truth is Bitter*. The project received independent funding to carry out a wide consultation, launched in October 2001, through which it sought "to identify and to document





## Chapter 2

### Recent Developments on Victims' Rights

possible mechanisms and realizable options for how remembering should occur so that healing can take place for all people affected by the conflict in and about Northern Ireland". The resulting report was presented to the British, Irish and local governments.

The Multi-Agency Resource Centre (MARC), now renamed the Conflict Trauma Response Centre (CTRC), launched a report in August 2002 entitled *Perceptions of Victimhood*. The report seeks to address the complex issues around how victims are defined and perceived, for example, the use of terminology, such as 'victim', 'survivor', 'casualty'; whether there is a "hierarchy" of victimhood; whether those who have engaged in the violence can be regarded as victims; and how this contested and painful territory can be explored productively.

The think tank Democratic Dialogue convened a round table in December 2002 to evaluate the progress of the OFMDFM victims strategy *Reshape, Rebuild, Achieve*. A range of victims' groups, statutory and voluntary agencies and experts participated. In May 2003 Democratic Dialogue published the contributions from the policy-makers, practitioners and academics who took part, in a report entitled *Recognition and reckoning: the way ahead on victims issues*.<sup>1</sup>

In April 2003 the Community Foundation for Northern Ireland (formerly Northern Ireland Voluntary Trust) published *Shaping Our Future: Victims and Survivors on the Move*, the report of a conference held in November 2002. This focuses on raising awareness of how important future partnership work will be in this area. There is a useful section, for example, on the role which Trauma Advisory Panels might play.

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<sup>1</sup> Brandon Hamber and Robin Wilson (eds.), Democratic Dialogue, Belfast, 2003. Available from Democratic Dialogue (tel: 028 9022 0050) and on its website: [www.democraticdialogue.org](http://www.democraticdialogue.org).



## Chapter 3

### Problems of Definition



#### The Concept of a “Victim”

As explained in Chapter 1, the Commission’s Victims’ Rights Project was mainly aimed at those who had been harmed, directly or indirectly, by the politically motivated violence of the last 30 or so years, although it also sought to reflect the concerns of some other victims of violence.

Unfortunately, almost everything about the last 30 years of violence is contested in Northern Ireland: who or what caused it, what it should be called, who was involved, who was to blame, who won or lost, when it started, even whether it has ended – all these are hotly debated issues.

It may be no surprise, therefore, that there is no consensus on who should be regarded as a victim of the violence. Moreover some people, who are clearly victims according to the ordinary use of the word, prefer to call themselves “survivors”. The Report produced in 1998 by the Department of Health and Social Services, *Living with the Trauma of the ‘Troubles’*,<sup>1</sup> used the term “individual who has been adversely affected, physically or psychologically, by a violent incident associated with the civil unrest.”

In essence the controversy over terminology reflects a basic difference of opinion between those who prefer a “political” definition of victimhood and those who prefer a “social” definition. A political definition looks at the respective status of victim and perpetrator in a conflict, seeing only “one side” as victims or developing a “hierarchy” of victimhood. A social definition, on the other hand, defines victims by the nature of harm they have suffered rather than by who inflicted that harm or in what circumstances.

For its consultation document on a Bill of Rights for Northern Ireland (published in September 2001), the Commission adopted the following definition of victims:

*“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. A person may be considered a victim regardless of whether the perpetrator is apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term also includes, where appropriate, their family, their dependants, those with whom they have a close relationship and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation*

<sup>1</sup> Social Services Inspectorate, The Stationery Office, Belfast, 1998.



## Chapter 3

### Problems of Definition

This definition made it clear that to be a victim a person had to have suffered from someone else's *criminal* behaviour. It was not enough, for example, to have one's right to privacy breached, or one's right to a fair trial, or one's right to education.

The Commission's Victims' Rights Working Group, which reported to the Commission in January 2001, had recommended a definition which was broader in three respects. First, it did not confine the category to people who have suffered from criminal activity; second, it did not exclude people who were injured through their own behaviour; and third, it included people who suffered harm through witnessing a culpable act. However the Working Group thought that a person could be a victim only if he or she had suffered from an intentional act, thereby excluding (on one view) reckless or negligent behaviour.

For the purposes of the consultation conducted for the present report, the Commission felt it right to adopt a broad definition of who might be a victim of the last 30 years of violence – a social definition as described above. This means that it included the family, neighbours, colleagues and close acquaintances of "direct" victims. It also chose not to exclude people injured through their own act (even if criminal). It allowed people to define themselves as victims if that is how they felt and if there was some objective justification for that feeling.

#### A Hierarchy of Victims?

Some individual victims and representatives of groups consulted during the Victims' Rights Project did not agree with the Commission's stance on the self-definition of victimhood. One group wished to make it known that it was deeply saddened to find the rights which they had demanded for victims could be conferred equally on perpetrators of crimes. The Commission was asked to make special provision for "innocent" victims, as that group felt that it was unjust to put these individuals on a par with perpetrators. The view was expressed that ex-prisoners were victims only if their convictions were miscarriages of justice. There was also criticism of the research project's survey questionnaire because it included a section on imprisonment and internment. Some respondents expressed the view that perpetrators had had the choice of becoming involved in violence, whereas many victims were injured or killed because they were unfortunately caught up in the violence through chance.

On the other hand, there were groups and individuals who bitterly criticised the concept of a "hierarchy of victims." Professor Bill Rolston of the University of Ulster has described this concept thus:

*at the top of the hierarchy of victims were those deemed 'innocent' – usually women and children, usually killed by paramilitaries. At the bottom were members of those same paramilitary groups killed by state forces; they often attracted little widespread sympathy outside the communities from which they drew support.<sup>1</sup>*

<sup>1</sup> Rolston, Bill in Brandon Hamber, Dorte Kulle and Robin Wilson (eds.), *Future Policies for the Past*, Democratic Dialogue Report 13, Belfast. 2001.



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### Problems of Definition



The opinion of those victims at the “bottom” was that the Bloomfield Report (see Chapter 2) exemplified a view that the conflict in Northern Ireland had been simply a “war against terrorism” and that those victims who were on the side of the security forces and the state deserved higher consideration. Many of these people said that they had lost faith in “justice” and that they believed that differential treatment of victims was one example of that. Some relatives of those killed by security forces told us that they were made to feel guilty by the authorities with whom they came into contact. They saw the treatment of those harmed by the state as part of a pattern of discrimination and harassment.

In the Commission’s view it is hard to argue with the conclusion reached by Dr Marie Smyth of the Institute for Conflict Research:

*The language we use deserves careful consideration. If we are to build a society in which we can live respectfully alongside one another, then we must recognise and develop our concern for the suffering of everyone else without exception, even those we have erstwhile considered to be our enemies. When we can operate a system that in order to ‘qualify’ for our legitimate concern, a person must simply be a human being who has been hurt by the Troubles, then we will be able to begin the work of reconstruction and healing.<sup>1</sup>*

However, an important additional point needs to be made here. In whatever way the term “victim” is defined, not all victims need to have the same rights. The rights might deservedly differ depending upon the seriousness of the harm suffered, the time that has elapsed since it was suffered, the attitude and behaviour of the victim him- or herself and the circumstances surrounding the victimisation. In particular, it is not necessarily the case that the same rights need to be accorded to victims of the conflict in Northern Ireland as need to be accorded to victims of post-conflict crimes. Conversely, of course, any Bill of Rights or new piece of legislation on victims’ rights is likely to be primarily forward-looking in character and will not therefore confer the same rights on past victims as on future victims. Any such legislative approach to victims’ rights may also adopt a different definition of victims from that used, say, for the purposes of the work of a Truth and Reconciliation Commission. It is worth noting, as Chapter 5 of this report makes clear, that most of the international instruments dealing with victims comprise guiding principles, not legal standards in the strict sense.

At present the Commission prefers the view that, in a Bill of Rights, victims’ rights should be confined to victims of crimes and to victims of human rights abuses which happen not to be crimes (e.g. abuses of the right to a fair trial, the right to a private and family life and the right not to be discriminated against). To extend the concept so as to include all those who are wronged under the civil law (e.g. through having their copyright breached, or their contract broken) would be to dilute it enormously.

<sup>1</sup> *Fortnight* 373, Belfast, September 1998.





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However the Commission does now agree with another point made in the Working Group Report, namely:

*We do take the opportunity to point out, however, that, in some circumstances, the status of victim may also remain to be proved. It should be understood that our definition of 'victim' also includes 'alleged victim', or a person who claims to be a victim. Just as all alleged offenders must have their rights protected in the investigation and trial of their alleged crimes, even though many will be guilty, so all alleged victims must have their rights protected, even though some will turn out not to have been victimised.*

So, in the trial of someone for murder, where the defence is justifiable homicide, the family of the deceased should have all the rights accruing to victims at that stage, even though the result of the trial might be that they are not counted as victims in the future. In general this might seem self-evident but one can imagine hotly contested cases where the above principle needs to be made crystal clear.

#### **Conclusion**

The task of devising a legal definition of victims of the conflict which attracts real, enforceable rights and at the same time includes all those who “feel” themselves to be victims appears impossible. It would also be highly divisive to apply retrospectively a legal definition made for the future – which assumes a widely recognised and legitimate rule of law – when the rule of law and the legitimacy of the state were bitterly contested in the past.

There is a good deal of consensus in international law and the literature about the general definition of victims. The only significant point at issue seems to be whether the definition should be restricted to victims of crimes. The Commission prefers to adhere to the traditional approach whereby the definition is so limited, but with the acceptance that people whose human rights are abused – whether criminally or not – should also be designated as victims, as indeed they already are under the European Convention on Human Rights.



# Chapter 4

## The Views of Victims in Northern Ireland



The purpose of this chapter is to describe the outcomes of the qualitative research conducted early in 2001 by the Commission's researcher. It begins by describing the methodology adopted for the research and then proceeds to examine respondents' views, in turn, on the Human Rights Commission's Bill of Rights consultation process, on victim support issues, on compensation issues, on investigation and information issues, on harassment and intimidation, on domestic violence, on ethnic minority issues and on transgender issues.

As explained in Chapter 1, the Victims' Rights Project was established to look in particular at the position of victims of violence regarding compensation, access to information, accountability and equality of treatment. Recognising the sensitivities of the topic (for example, the fact that some groups did not wish to be included in the same survey as others whom they did not regard as victims), a questionnaire was drawn up and widely distributed to a mailing list of victims' organisations taken from sources such as the Victims' Liaison Unit, the Northern Ireland Voluntary Trust (now known as the Community Foundation for Northern Ireland) and the Commission's own contacts.

The questionnaire was sent out along with a pamphlet which had been drawn up by the Commission as part of its Bill of Rights consultation process. This pamphlet (one of a series) briefly set out the international human rights standards relating to victims and raised some questions for debate and discussion. The researcher also visited, or otherwise contacted, numerous groups working for and with victims.

### **The Commission's Bill of Rights Consultation**

In general, victims of violence supported the idea that such victims should have the right, protected by a Bill of Rights, to have their stories heard. A large number of groups were also in favour of legislation which would compel statutory and voluntary bodies to adopt a code of best practice and high standards of support for victims of violence. However, the following reservations about the Commission's consultation process for the Bill of Rights were noted:

- Some individual victims and representatives of group did not agree with the Commission's current stance on the self-definition of victimhood. One group in particular wished to make it known to the Commission that they were deeply saddened to find that the rights of "real" victims, for which they have fought, would be conferred equally on perpetrators. The Commission was asked to make special provision for "innocent" victims.
- The timeframe for the Victims' Rights Project (September 2000 to March 2001) was considered too brief to gain a comprehensive knowledge of the concerns of victims of violence in Northern Ireland. A number of groups expressed the hope that the Project would be of a long-term nature.
- Initially, some individuals expressed the view that issues regarding human rights were seen as the preserve of the nationalist community and not for members of the unionist community. This perception led to different interpretations of the process, such as that views would or would not be listened to depending on the constituency from which each group or individual emerged.



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### The Views of Victims in Northern Ireland

This view was discussed at length with the researcher and reassurance was given of the impartiality of the Human Rights Commission and of its concerns for the rights of all the people of Northern Ireland. The Victims Rights Project Worker also strongly reiterated that human rights were important issues for everyone and that it was essential that everyone in Northern Ireland had an input into the Commission's Bill of Rights consultation.

- There was an initial perception that the Bill of Rights was “high above people” and that it would be of relevance only to lawyers and academics. Some individuals and groups were concerned that rights were legal issues, involving lawyers and judges, and that lay people would not know or have the information or experience to examine a Bill of Rights. Once again, this view was discussed with the researcher and it was stressed repeatedly that human rights issues were the concern of all and that the need for legal knowledge or expertise did not exclude people from the debate.
- One member of a victims' support group expressed the hope that the Bill of Rights in Northern Ireland would not follow the example of the United States Bill of Rights and that the Commission would look at other countries that were “affected by imperialists, such as Vietnam.”
- There was a perception amongst some that people in the Commission come along to meetings of victims groups with little happening afterwards. It was also felt by some that the Commission was in danger of “re-victimising” victims through working hard on seemingly high-profile cases.
- Negative views were expressed that paramilitary organisations would not listen to or take heed of a Bill of Rights and that people were still under threat from a range of paramilitary organisations.
- Many victims were not in favour of the Secretary of State's having the final say in the composition of the Bill of Rights. There was a perception that the final Bill of Rights could follow the same path as the Patten Report on policing, which was said to be unsatisfactory to many victims of violence.
- Some people felt, perhaps cynically, that it was a question of catching up with practice concerning offenders: *“The justice system goes to great lengths to provide fairness to perpetrators of crime and violence – victims of crime should be treated equally”*.
- Many certainly felt that having rights enshrined in a Bill of Rights would be some recompense for their loss and a recognition of how much they had been hurt. There was also a very widespread feeling of continuing vulnerability and not a little bitterness that the needs, and especially the views, of victims have been ignored during the conflict.
- It was noted that society should recognise the hurt of victims in order to achieve overall reconciliation. Perhaps the most compelling comment was the following: *“Victims have suffered most – they need special provision if they are to make the journey towards healing. I also feel that*



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### The Views of Victims in Northern Ireland



*having their rights enshrined in a Bill lets them know that they are important and that society takes their needs seriously”.*

#### *The Victims’ Rights that Need to be covered in a Bill of Rights*

The detailed rights which were raised in the questionnaire distributed to victims are discussed elsewhere in this report (see Chapters 6 and 7). At this stage, however, we wish to note the range of issues which, in principle, might be dealt with in a Bill of Rights and, specifically, the priorities mentioned by those who responded to the questionnaire when asked the open-ended question about the rights they wished to see dealt with.

The rights most often mentioned in response to the open-ended question were the rights to respect, recognition and support and to privacy and protection. Although, again, we make the caveat that this was not a scientific testing of opinion, it seems that our respondents put a high priority on dignity and future safety.

Only slightly less frequently mentioned were the rights to truth and to reparation. Again, these two rights go to the heart of feeling valued as a citizen and being recognised as having suffered a loss. Next came the rights to adequate assistance, to receive and give information and to be free from discrimination. Then came the rights to acknowledgement and to access to justice.

There were some points mentioned which do not fall within the above categories. One respondent wished for a Truth Commission. This idea was not raised by the questionnaire and only in passing during the consultation.

One respondent wished for consultation by the media before images or descriptions were used in (for instance) the aftermath of a bombing. It is unlikely that this could be developed into a specific right, unless it could be dealt with under the heading of privacy. A couple of respondents demanded the right to be involved in the actual sentencing of perpetrators, but the Commission’s view is that this goes unacceptably beyond generally understood principles of justice. A few respondents also wanted the “right to hold someone to account” for the harm done to them. While this is an understandable cry from the heart, it is, of course, impossible for any system to guarantee it in any particular case – it can only ensure that there is a process which is *generally* effective in bringing perpetrators to justice.

#### **Support Issues**

The issues of acknowledgement, support and compensation seem interlinked in many ways in the minds of victims of violence. Although it was repeatedly said during the consultation conducted by the researcher that no amount of financial compensation could make up for the bereavement and injuries suffered by victims of violence, the receipt of some measure of compensation was said to bring an acknowledgement of their suffering. Together with the provision of the necessary support required to help people cope with their loss and trauma in order to rebuild their lives, an award of compensation gives a sense that their victimhood has been accepted.



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### The Views of Victims in Northern Ireland

Individual and group members expressed the need for general recognition of their loss and suffering over the years. The perceived lack of acknowledgement was said to be disrespectful to victims. In a large proportion of the groups contacted or visited it was felt that victims of violence have paid a heavy price for peace and were now “not listened to in meetings with statutory agencies”. It was also felt that if a victim spoke out about these feelings he or she was perceived as “a wrecker” of the Belfast (Good Friday) Agreement.

However, during the consultation the researcher also met with representatives from the statutory, voluntary and community agencies which have been working with victims of violence for some time. These representatives have provided support in terms of advice, information on services and funding for victims’ groups. Many victims’ groups acknowledged this work and appreciated the support, but they also generally felt that more provision was necessary.

Many groups and individuals stated that victims of violence, in particular those who were bereaved or injured in the 1970s and early 1980s, used their silence as a coping mechanism. Reasons for this included fear of drawing more attention to oneself or one’s family (thereby bringing the risk of further attacks) and the lack of support available from statutory or voluntary agencies. A number of victims’ groups mentioned the community silence of the time and the “business as usual” atmosphere, with the “abnormal becoming the norm”. Many groups agreed that it could still be difficult to open up and to trust someone with their stories. They felt unable to express their deep feelings of anguish. They also felt aware that the wider public might have made assumptions that their loved ones were injured or killed because they were “up to no good” or there was “no smoke without fire”. However, one worker from a statutory body, which consulted with victims’ groups on a number of issues, expressed the view that while some victims’ groups and individuals felt angry at “being forgotten”, others were appreciative that something was now being done for them.

It was also said that at the time of the 1970s and early 1980s, victims of the troubles did not seek out the support they needed as they did not think it would be available. In particular, it was said to be very difficult for the families of those killed by state violence to access support services, as they saw the state as the perpetrator. They felt they were not treated well by agencies.

#### *The Long-term Effects of Violence*

There were strong feelings expressed, in all the groups visited, regarding the diminished quality of life for survivors of violence and their loved ones. This was a result of poor physical and psychological health and/or disability. The majority of the group members spoke of their emotional and psychological suffering at the time the violence occurred and in the years that followed, as well as of their subsequent feelings of fear and vulnerability. Many members of the groups felt a need for more medical, psychological and practical support from various statutory sources because there had been a lack of such support in the past. It became very clear from the outset that there were different perceptions of what support had been and was currently available to victims of violence and of the time factors involved in its delivery. It was also felt that those victims and survivors bereaved or injured in the late 1980s and 1990s received a lot of help compared with single-incident families before then, and that pain and hurt were generally more greatly acknowledged in a “big” event



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### The Views of Victims in Northern Ireland



whereas in an individual loss “none came knocking on my door”. Loss of more than one person in an incident was felt to ensure greater support from service providers than a single loss.

Many individuals who were bereaved or injured during the 1970s and 1980s expressed the view in a group setting as well as in one-to-one discussions that they received limited or no support from agencies or organisations. They felt that there was no provision made for the physical, mental and social needs of victims and asked why were their basic needs not met and why were there no services in place? Time and again in all discussions, the quality, accessibility and delivery of services were raised as very important concerns for victims of violence. One victim said that counsellors and support agency professionals should not be surprised that people are only now opening up about their suffering, years after the events in question.

It was also clear that the difficult years of suffering or bereavement often led to loss of education and employment opportunities and to a drop in standard of living. While individual faith was mentioned as a comfort and support in dealing with tragedy, one representative of a victim support group felt that the churches had failed in the care and support of victims.

One member of a group asked “*why must victims have to go to politicians to get what they should have as of right?*” – for example the right to have support provided by the social service agencies. Although many of the victims who contributed to the meetings had had contact with the NIO’s Victims Liaison Unit, there was a feeling that one single and specific agency should look after all the support needs of victims. This would help reassure victims who expressed fears about confidentiality and personal security issues.

Group members whose loved ones had been killed or injured by state violence stated that they suffered harassment and intimidation from the security forces on a continual basis.

#### *The Needs of Prison Officers*

Twenty-eight prison officers and one civilian instructor were killed during the period of the troubles. More than 300 officers received medical retirement status. There is a perception that the needs of such officers have been ignored. During the research it was stated that prison officers feel they were victims of the troubles and that their rights have been trampled on. One person thought that prison officers had been particularly vulnerable in the aftermath of prison disputes. It was stated that prison officers felt and still feel they are under threat and that prison inmates have assaulted many of them. They feel that their lives have to be restricted and they would like the right to live a life without the stress of the troubles. They feel that they have not enjoyed the benefits of cease-fires. They have had to move house for their personal protection. It was said that it is difficult for such officers to admit the need for counselling and support to help them cope with the stress of their jobs. Issues of confidentiality are very important for prison officers. They can be retired due to stress-related illness, but this is not recognised for the purposes of section 11 of the Principle Civil Service Pension Scheme of Northern Ireland, which requires injury at work.



## Chapter 4

### The Views of Victims in Northern Ireland

It has been estimated that at least 10% of prison officers' homes have been attacked. Over the 30 years of the troubles, over 2,500 homes have been hit or threatened. Children of prison officers have suffered stress as a result of these activities. If an adult child of a prison officer's home is attacked, there is no right to claim for compensation.

The needs of prison officers in the aftermath of the accelerated prisoners' release scheme were also highlighted, such as the need for re-training when officers leave the service. There was a perception that it is difficult for ex-prison officers to get employment.

Above all, serving prison officers were said to want the right to do their job without suffering harassment and intimidation. In the early 1990s the rule governing the making by prisoners of false and malicious allegations, which was until then considered an offence under prison discipline, was changed. It is now apparently no longer an offence under prison discipline to make accusations which are later found to be false and malicious. Many prison officers feel that they now have to have protection. They feel it is essential that they work in pairs to avoid any accusations being made against them. It was suggested that an independent person or team should be brought in to investigate allegations against prison officers and that there should be a return to the rule where prisoners would receive a sanction for making a false and malicious accusation.

It was felt that those working for the state, doing a public service, should have special protection under the Bill of Rights.

#### *The Needs of Ex-prisoners*

The Social Services Inspectorate Report, *Living with the Trauma of the Troubles*, states that any person who has felt him- or herself to be psychologically or emotionally damaged by the conflict is a victim of the conflict. The majority of ex-combatants were said to be in the 16- to 27-year-old age group and of working class origin when they went to prison. Views were expressed that men joined the paramilitary organisations for a number of reasons, such as bitterness, anger or perhaps a need to belong. Those who had been involved in the conflict were asked during the research to identify the issues which affected them.

They felt that the rights of their partners and families had been affected by their involvement in the conflict. They and their families felt the separation from each other deeply. They were also concerned about their children, who they felt had a right to privacy. They told of children being abused by schoolmates because their parent had been to prison. Their families were effectively in single-parent situations while the other parent was in prison. It was felt that their partners' rights were affected as regards social and economic issues, such as when they applied to adopt children. Ex-combatants are also denied visas to countries such as the United States because of their convictions.

It was said that there was a perception amongst the public that ex-prisoners "are doing well, getting on well". This was said to be incorrect. One worker suggested that it was easier for prisoners released in the 1980s to come to terms with life outside prison than it was for those who were released under the terms of the Belfast (Good Friday) Agreement. They were said to have difficulty in finding work. On



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employment application forms ex-prisoners had to declare their convictions. They felt that they were perceived as criminals and they would rather be perceived as having been involved in a political war. Their view was that the legal obligation to declare their convictions on employment application forms should be removed. Although they had been released under the prisoners' release scheme, they were still classed as ex-criminals and this affected them on emotional, social, practical and economic levels.

### *Suggestions Made to the Commission Regarding Support Measures*

- Many members of groups felt that there was a “mismatch” between what professionals delivered and the needs of victims. They acknowledged that agencies and organisations might not have had the all resources necessary to assist victims in the early days of the troubles but felt that they should have them available now in order to assist the two or three generations that have been affected.
- Agencies and organisations should have a special duty to help victims of violence when the need arises. Often it will be a new experience for victims to deal with these agencies, so frontline staff in support agencies and organisations should be more aware of the special needs of victims of violence. They should be updated regularly regarding the agency or organisational policy towards victims of violence and trained to have an open and sympathetic approach. They should also have some flexibility within their employment remit to enable them to respond to the different needs of victims. “A one-stop shop”, where all victims' needs could be addressed, was suggested.
- There was support for the idea that there should be a “fast track” approach for victims to health care and other services. It was felt that social services in particular should help where necessary – for example, victims should not have to use their own money for their care when they need long-term residential care.
- Strong views were expressed that support services should be high-profile – available, offered, but never imposed. It was suggested many times over the course of the researcher's visits to groups that statutory bodies need to be more pro-active in working with victims and that their personnel should be trained specifically to enable them to work with victims in a sensitive manner. When the loss of a loved-one occurred, the police and the undertaker were the professionals who worked with victims' families. No other agency was said to offer support.
- Many victims had the perception that in the past no training was given in working with victims of the troubles for those involved in medicine, psychology or social work. One group member thought that in areas such as medicine and psychology, students had not received training in working with victims of the troubles.
- There were many references to the high levels of trauma endured by families whose loved-ones were abducted, tortured and then murdered. The families were said to go over and over the circumstances of their loved-one's last hours. It was said that members of victims' families could suffer mental health breakdowns because of their grief experiences.





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- Many groups felt that support services should be located in areas where high numbers of victims live. It was felt that family trauma centres should be geographically based on these figures. Many called for a directory of victims' groups and support agencies to be made available, with a list of victims' entitlements to services and regular updates over time.
- The Pain Clinic in Belfast was cited by a number of victims as having long waiting lists. It was suggested that there should be more pain clinics available in areas accessible to those victims of violence who were suffering chronic pain from their injuries and that there should be more specialist consultants appointed in this field. One group member who was very badly injured now wears a morphine pump each day to ease chronic suffering.
- It was suggested that there should be a means for victims of violence to access educational and employment opportunities which were lost due to their bereavement or injuries.
- Groups also suggested that there should be a system of designated on-going benefits for victims. They were concerned that the chronic conditions they were suffering might not qualify them for Disability Living Allowance. They also called for the simplification of application forms for benefits and compensation. An agency or organisation should be able to look at the long history of bereavement, trauma and injuries in each case and excuse the applicants from such complex processing of their claims.
- Views were expressed that perpetrators should not be "paraded" in the media. One group member asked if there was any way by which families could be warned in advance of an ex-prisoner's appearance on television or in other media or even of his or her presence in the area in which the victims or their loved-ones live.
- Some victims of violence were not informed that there might be a possibility of seeing on the streets the perpetrators of the violence which affected them. They said they should have been told of this possibility by the authorities.
- A counsellor who works with victims of violence was very concerned regarding the legal onus on counsellors to inform authorities of any illegal act they heard about in their counselling work. It was felt that this legal obligation should be reviewed because of client confidentiality issues.
- One particular group in an isolated rural location felt that young people needed financial help with transport issues, for example when travelling to employment.

#### Compensation Issues

There were very strong feelings of dissatisfaction expressed by both groups and individuals regarding the complex area of compensation. They were critical of the process for claiming compensation, the amount of compensation paid and sometimes the unavailability of any compensation. Over the 30 or so years of the conflict in Northern Ireland, the whole area of compensation has changed, together with attitudes to its receipt. Some victims voiced their feelings regarding newspaper reports of



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individuals receiving large sums of money for stress suffered in various incidents or over a number of years in particular employment. They compared their own suffering and settlements received in the past with these individuals cited in the media. Some victims' families did not claim compensation as they felt for various reasons that they did not want to take money from the state.

In general, the victims' groups were unhappy with the whole compensation process. Why did compensation have to be "fought for" and why had victims and their families to apply for compensation within 28 days of the incident? This was very difficult at a time of bereavement or injury. It was also very difficult to consider at that time the long-term future. Many said that they were unfamiliar with the legal system and just followed the advice of their legal representatives. The question was raised as to why those seeking compensation had to go to court at all and could compensation issues not be settled by means of another less adversarial method. It was felt that the majority of cases did not go to court because their solicitors and barristers guided victims. A number of victims stated that they were offered an amount and told that if the case went into court they might get a lesser figure. They then settled out of court, as they did not want the stress and trauma involved in going to court, when they were feeling already very vulnerable because of their grief and experience.

Victims told stories of their examinations for serious injuries for compensation claims. One lady who had been badly injured in a bomb explosion was said to be so upset at her examination that she settled in court for a sum less than that appropriate for her serious level of injuries. Another lady told her story of having her chest wound examined by two barristers before her case went to court. A widow told of being asked how much she spent on food and clothing for her dead husband and of the deduction of these amounts from her compensation. It was felt in general that no allowance was made for the emotional loss of the relationship of spouse, parent, sibling or child. Some of these stories came to the attention of the media in the summer of 2002. The Minister for Victims, Des Browne MP asked Professor Desmond Greer of Queen's University to review practice in the area and to make recommendations for reform if necessary. At the end of January 2003 the Human Rights Commission commented on a draft of Professor Greer's paper on the subject. By the end of April 2003 a final version was still due to be transmitted to the Minister.

Some dissatisfaction was felt with the level of compensation received and what many saw as the "the government bodies deciding degrees of victimhood." It was asked: "*Is a sister not a close enough relative?*". Groups also felt there should be a principle of equality of compensation, as they perceived that awards differed in many cases and circumstances. It was stated that there should be more clearly established criteria for compensation. Dissatisfaction was also expressed regarding the proposed changes in criminal injuries compensation which were announced in July 2001 by the Secretary of State and later enacted in the Criminal Injuries (Compensation) (NI) Order 2002. This Order was passed at Westminster even though the Northern Ireland Assembly was strongly opposed to it.

There was a perception that there has been no help for the needs of children of victims. A number of victims referred to the rights of a family who had lost the main breadwinner. The surviving spouse received a pension. When he or she died, the children did not get the pension. It was felt that there should be a "follow through" in this instance until the children reached a certain age. Many felt that the money set aside for the education of orphaned children was often inadequate for their needs.



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Their children's schooling had been affected by trauma and their educational needs had not been met. It was felt that children of victims of violence needed educational bursaries to help them with the finance necessary to complete their education. Some victims cited incidents of suicides by young people affected by the troubles.

The majority of victims felt that there should be compensation available for stress-related conditions. They told stories of individuals having survived a bomb explosion but then dying suddenly within a year after the explosion or incident. Their families believed that the trauma of being caught up in the bomb explosion was a contributory factor to their relative's death.

Some victims cited the former compensation requirement that to be eligible for compensation a spouse had to be a witness to the violent incident which injured or killed his or her spouse. This was referred to in detail in Sir Kenneth Bloomfield's report on compensation (see Chapter 2).

#### *The Needs of Farmers*

In the course of this consultation many cases came to light of farmers who had to leave their farms because of intimidation and fears for their own and their families' safety. At the time, they sold their properties in haste, often not getting the full market value. They then had to purchase new farms. They did not claim for compensation at the time. They have found that they are not now entitled to compensation and are consequently angry. They feel that their psychological stress at the time and their loss of property are not being recognised. Some received injuries in attacks. They say that there was no mechanism at the time to claim compensation for what had happened. Now, some 20 or 30 years later, they are not eligible to claim as the time period has elapsed. They cited the long-term effects of having to move from both their homes and the source of their livelihood and the negative effect on children's education of having to change schools at such a vulnerable time. They emphasised the psychological stress the whole situation has placed upon their children. The families had had a strong bond with their land for generations and they felt that families with only sons were targeted for attack, thus breaking the family line and requiring the farm to be put up for sale.

Although the groups' members felt lucky to be alive, they all thought they had been affected psychologically and had suffered a loss of confidence. They said that illnesses they had suffered could have been caused by stress and that, as it had been hard for them to talk about their experiences in the "culture of silence", the psychological wounds had festered for a long time.

These farmers are now looking for funding to help them return to their land as they feel that this funding is vital if they are to build up their business again. While they were off the land, they missed out on financial grants because land was not worked. Some felt that they had been forced to sell their farms for less than market value, which led to severe financial difficulties and some faced homelessness and had to move to Housing Executive property. These farming families also felt that they had been on good terms with all their neighbours and that religion was not an issue.

Others had suffered severe financial hardship as a result of the conflict. One businessman lost a close relative in a bomb blast which destroyed his business premises. He had two compensation claims go



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to court but they were dealt with separately. He took legal advice to settle out of court and received a compensation sum which could not sustain his business. He was therefore forced to sell his business and never recovered from this blow. He did not get an opportunity to set up in business again. He felt that he was a victim of the troubles both personally due to the loss of his close relative and also commercially.

#### *Suggestions Made to the Commission Regarding Compensation Measures*

- It was suggested that all compensation cases should be reopened for retrospective examination and possible further compensation. As people get older, their needs change and their bodies have to cope with the onset of ageing as well as their chronic injuries. There should be a review of compensation awards every five years to facilitate these changes or every case should be individually reviewed at intervals to assess changing needs. It was also felt that there should be specialist funding for medical expenses if necessary, such as complementary therapies for chronic pain and stress conditions.
- Many of those victims of violence who were badly injured in their youth or early adulthood are now entering their fifties. The suffering from their wounds together with the onset of the common pains, aches and constraints of middle age contribute to a poor quality of life. What could be coped with at the age of 30 is very hard to deal with when there are additional complications from the ageing process. These victims felt that there should be a new assessment of their needs at this stage of their lives and compensation made available to enable them to access care and support to deal with these issues and increase their quality of life. There were similar feelings among those parents who had lost children. It was felt that along with the awful desolation of losing a child, in practical terms they had also lost the prospective care they would have received from their children in their later years.
- It was suggested that there should be a change of focus from funding victims' groups' premises and workers to funding the individual needs of the victims themselves. The Government should take into account all the effects of trauma, loss and injury, such as the emotional stress, the damage to quality of life and any possible post-traumatic stress disorder. The needs of victims who are not affiliated to victims' groups need to be particularly borne in mind.
- Some felt that compensation changes should be made retrospectively for those considered as "law-abiding" people, who were acting within the law. Some members of groups drew comparisons between compensation cases which have appeared in the media during the last year, where awards for assault injuries were approximately £9,000. They compared this level of compensation with those received by families after fatal atrocities which happened during the 30 years of the conflict. Comparisons were also drawn between what would be acceptable in England and what would be acceptable in Northern Ireland. Citizens of the UK should be treated equally.
- Many groups tended to make comparisons between compensation cases. They saw the new arrangements for the review of police widows' cases as an example of the unequal treatment of



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victims. Indeed there was a distinct perception among some groups that the Government gives extra money to police and security service victims of violence. It was thought unfair to single out one group from other victims' groups and that there should be no differentiation made between police victims and other victims.

- It was also felt that the compensation assessment system is based on income whereas it should be based on needs. Groups believed that more affluent victims of violence get more compensation than those who have less income.
- Group members also felt that £7,500 compensation for the loss of a child was at best a token of compensation and they felt angry that a child's life seems to be worth so little. They repeatedly said that no amount of compensation could make up for the loss of a child but that the offer of £7,500 was an added blow to such a bereavement.
- A victim of violence should not be penalised financially by the benefits system for having received compensation or pensions through becoming a victim of violence. One widow was entitled to a pension on her husband's death. However she felt she was penalised because other benefits to her were cut because of this pension. She said that this is a constant reminder of her bereavement.
- Many of the groups visited wanted the proposed Bill of Rights for Northern Ireland to include the right to live in one's own home without fear of harassment, intimidation or being forced to leave it.

#### **Investigation and Information Issues**

Among many of the groups consulted there were perceptions that there had been a poor, if any, investigation into the deaths of their loved-ones or into the injuries they had suffered. Many individuals felt alienated from the state because of this. A number of groups felt the need for more intensive inquiries into their members' individual cases and were very keen on having the right to information about investigations enshrined in a Bill of Rights.

There are different degrees to what victims of violence want in terms of information and accountability. Some want justice while others want only the truth surrounding the circumstances of their victimhood. In a number of groups visited, members expressed a lack of confidence in the police and judiciary regarding investigations and the bringing of those responsible to justice for what happened to their loved-ones. A number of groups on both sides of the divide in Northern Ireland made allegations of collusion against the RUC and the Garda Síochána.

Among the groups visited, there were strong feelings that information about the violence which they or their loved-ones had suffered should be accessible and, just as importantly, that it should be seen to be accessible. It was very difficult for families who were looking for information when it was not available. They felt they had a right to know the truth about the violent incident which led to their becoming victims. They need to know the reasons for the non-presentation of evidence against alleged



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perpetrators. They also want to know the reasons behind the giving of different sentences to those who are convicted of similar offences. In general they claim the right to have a system of proper information disclosure imposed upon the police and judiciary. They want to be treated with dignity and respect and feel this is not the case in their present situation. One member of a group told of a mother who found out her son was dead through a telephone call from the police to say that her son's body was in the morgue after he had been killed by the police.

It has become apparent through the casework function of the Commission that there are many issues relating to victims of violence for which there is no legal avenue of redress or, in relation to which, all legal measures have apparently been exhausted.

Among some groups there was a perception that a lot of police work and staff resources are devoted to "high profile" cases, such as those of notable figures or incidents where a large number of people were injured or killed. In the summer of 2000, one member of the group said that he had been told that there were currently no detectives working on the 21 murders which had taken place in the local area. The group felt that they had a right to be treated equally with other victims of violence and that what they perceived as "political considerations" should not override human rights. One member felt that police hands were tied so as to not upset the peace process.

Groups generally felt that all victims of fatal violence must have the right to know if someone has been brought to book for the death. Views were expressed that agencies which deal with victims' needs should be more transparent and more accountable. All should be brought under an umbrella agency with far greater accountability.

Groups feared that perpetrators were often not brought to justice and found the release of prisoners very difficult to accept. One said it was immoral to have "murderers in top positions, and a bad example to the public". It was said to send the wrong message to young people. "Releasing terrorists showed there was no law in this country". There was also a perception that those who serve in the security forces gained little for their service. A view was expressed that in future, justice would be administered only by illegal groups or paramilitaries. People will sort out matters themselves – "the law of first blood". One group stated that it would like to see a situation where ex-prisoners were back in jail and all arms and explosives handed in.

Some group members raised the issue of the provision of legal aid to enable them to take further legal actions over the deaths of their loved ones. A few members had to take their own legal action while others could not afford the costly process, which could continue over a period of years.

#### *Victims of State Violence*

The families of those who were killed by state violence felt they were not treated in the same way as the families of other victims of violence. They said they were made to feel as if they were not the "right kind" of victim. They have difficulty in approaching services because they feel that they will not be treated as "real" victims. Some of those consulted cited the Bloomfield Report in 1998 as an example of this, as they felt that it did not give equal weight to all victims of violence. They wanted



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cases of state violence to be highlighted as they felt that the deaths or injuries of their loved-ones could have been the result of police collusion by what they saw as a “sectarian political” state. They felt there was a lack of proper investigation when deaths were caused by members of the security forces. They cited the lack of access to information and documentation to enable them to get at the truth of what actually happened to their loved-ones. Group members said the state could easily avoid giving information on whatever pre-planning took place before a violent death. They wanted to know if investigations were still on-going or closed. One family said they had written to the police regarding the investigation into their loved one’s death. They had received a one-line letter from the police in 25 years.

Some group members felt that in their case, misinformation had been given to the media by the security forces on the premise that people remember the first thing they hear about an event. For example, when the police had killed a young teenager they said that he had something in his hand. This is vehemently denied by his family.

This group perceived the legal process as “rubber stamping” the deaths of their loved-ones and hindering any further investigation. It was felt that the powers of those involved in investigating violent deaths, such as coroners at inquests, should be increased. One group member quoted a case where it took two years to receive requested information from a child’s inquest documents, although there had been some improvement recently in accessing information. Other members mentioned incidences of families not being told officially of their loved-ones’ inquest date. They complained that soldiers and police personnel had anonymity at inquests for their protection.

They felt there was a culture of silence on the part of the authorities and asked why perpetrators were not brought to justice. They said that this added to their sense of injustice and inequality. They felt that the state does not want to investigate its own activities. There was a perception that there had been a “shoot to kill” policy in Northern Ireland and that “everyone closed ranks”. Families of those killed or injured by state violence said they found it difficult to gain access to government ministers to discuss their cases and to get sight of their files. They also said that they could have moved on years ago if proper investigations had taken place. They felt that some politicians see state violence as “legitimate slaughter.” A number of relatives said they feared retaliation from police if they themselves investigated cases. Some said they had endured raids on their homes after the deaths of their loved-ones. One relative spoke of his home being raided frequently.

There was concern regarding the role of the office of the Director of Public Prosecutions in these cases. Group members said that the DPP’s office does not have to give reasons to explain why legal action has not taken place in a particular case. They felt there should be greater transparency and accountability built into the legal system of Northern Ireland in this respect.

Families felt that a policeman’s word was seen as more acceptable in court than the account of civilians. They were also concerned that the security forces could decide what level of reasonable force to use in any incident. They condemned the Diplock courts and asked about the judiciary’s accountability for inconsistency in judgments and sentencing. They wanted to know who was



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scrutinising the judiciary for their decisions, as they perceived judges as being “pretty unaccountable” at the moment.

Relatives were also concerned about the use of exclusion orders and internment legislation. They asked what the situation would be if a Bill of Rights was in force and the Government decided to derogate from it in a time of public emergency. What criteria would be used to deem a particular situation to be one of public emergency?

#### *The Right to Accountability*

A number of victims’ groups expressed their difficulties regarding the accelerated programme for the release of prisoners who had been convicted of scheduled offences in Northern Ireland. It was felt that this had resulted in deep tensions and conflicts for many victims of violence who want real peace and a new future for Northern Ireland. They were angry on seeing the release of those they feel were perpetrators of the violence they have endured. However there was also the perception that it was better for the perpetrators of violence to be convicted, serve two years and be out on licence than for them not to be convicted at all.

Some group members questioned the morality of the situation where their loved ones were dead or injured while those whom they saw as perpetrators of violence were free to begin their lives again.

Many individuals and groups asked if the lives of their loved ones were “worth anything” because of the early release of ex-prisoners. Sentiments were often expressed about the effects of the prison releases on children and young people. For example, one widow who raised her children after the death of her security service husband stated that she tried to bring up her family to be law-abiding but felt that the government had given her children the message that violence pays and that they were paying the price. She felt that she and her family had been “lied to” to encourage her to accept the peace process and to appease the paramilitary groupings. One group expressed the view that victims of the troubles were always being asked to change their position, while perpetrators were not.

Many of the groups who took part in this consultation had the perception that ex-prisoners had higher priority status than victims of violence and that paramilitary ex-prisoner groups received more funding from the authorities than groups set up to support victims of violence. They seem to believe that even before the recent releases, prisoners were leaving prison and getting privileges such as coming out “to money and houses”. One group member described the early releases as “laughing in our faces”. Ex-prisoners were seen as “reinventing” themselves. It was said that victims as a group are perceived as “not having power” and that prisoners have to be “kept happy” as there was the potential risk of their returning to violence. It was stated that ex-prisoners were given opportunities to take up educational or training courses or to take up job opportunities in the voluntary and community sector.

The relatives of those killed by state violence said that there was a need for a police force that treats everyone equally and is accountable for what it does. There was a perception amongst this group that the judiciary is unrepresentative and discredited by its handling of events in the past. All the group members who were consulted wanted to pursue justice in the cases of their loved ones. They felt that



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victims should have the right to justice. Families affected by state violence stated that no RUC officer had ever been convicted of murder. They were also angry that British soldiers who had been convicted of murder were allowed to rejoin their regiments after they had served their sentence.

In addition, this group has concerns regarding issues such as lack of respect, lack of information and lack of being able to have any input into court process. They felt alienated from the process of investigation and any criminal proceedings which may have followed. They also felt that the inquest procedure into the cause of death was inadequate. They stated that in the area of controversial deaths, there should be another forum. None of the existing mechanisms could provide an adequate assessment of how the deceased died or of what could be done to ensure that any errors or wrongdoing were not repeated. They also felt that there should be an independent Commissioner for Victims in place of a British Minister, as Britain was a participant in the conflict.

In the groups visited there was some discussion regarding the possibility of setting up a Truth and Reconciliation Commission. Many members were familiar with the South African model and were following the on-going Bloody Sunday inquiry. Some felt that Northern Ireland is too small an area to hold a South African style Commission, as “everybody here knows everyone else”. However some felt that the truth exposed in a Commission-style setting would be an acknowledgement in public of hurt done to victims.

#### *Suggestions Made to the Commission Concerning Accountability*

- There is a need for equality of treatment of victims in the investigation and judicial process.
- Everyone should have the right to know the truth about what happened to them or their loved ones.
- Everyone needs to be treated with respect and dignity in all investigations and in judicial proceedings.
- Confidence in the justice system and policing is a very important point for the families of those killed by state violence.
- The families of those killed by state violence felt that the state must reveal the true circumstances of their loved-ones’ deaths and acknowledge that it played a part in the deaths.
- Truth was the most important issue to the families. The deeds of the past need to be resolved before the Bill of Rights can work for everyone.

#### **Harassment and Intimidation**

Views were expressed that harassment and intimidation are seen as part of life in Northern Ireland. Some group members told of how their families have suffered displacement, internment, imprisonment, bereavement and harassment.



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Some groups spoke of being harassed by police working under the Prevention of Terrorism Act and they called for its repeal. Some individuals spoke of daily harassment on the road by police and feared that if they drew attention to harassment, they would suffer even more harassment. They cited incidents of the younger members of their families being stopped at every corner on their way to work and detained by the security forces for searches. They said that their cars would be stopped and checked for motoring offences. Some had left their areas because of this. This harassment was still happening but had lessened since the Belfast (Good Friday) Agreement.

Victims of intimidation (whoever the perpetrator) felt that there should be a right to live in the area of one's choice and not to be intimidated out of one's home. Some victims have had to leave the country and are still under threat from others. It was said that the community's attitude is that they must have done something to get a beating or a threat. They felt like "lepers" in their own communities. They said that others seem to believe what the inflictors say. It was said to be a case of "give a dog a bad name and it will stick". One victim of violence said that "in a beating you would say anything to get them to stop".

The victims of intimidation had suffered attacks on their houses and felt as though they were living under siege. The attacks had had a very traumatic effect on them and on their families. One victim said that intimidation could be very hard to prove and he felt that the police did not want to come out to incidents when called. He also said that if the police knew of an individual's mental illness, a judgement would be made that any report by that person of an attack must be a paranoid complaint.

Some victims said they found it very difficult to deal with being forced to move from their home, "knowing that you can't go back to your home and you're homeless". When they were forced to leave their homes, the Northern Ireland Housing Executive offered alternative housing in other estates. Despite this, the victims felt that they needed more support from the Housing Executive. They said that the investigation into the intimidation could take one or two weeks because of having to wait for a police report to be completed. One victim mentioned that it took six weeks from an attack before an offer of alternative housing was received. If a victim refused the offer of the alternative area because he or she did not perceive it as safe, the victim could lose priority status after rejecting two offers. When looking at alternative housing, victims do not want to go to another area where they will be recognised or their stories known. In this situation, a family could be waiting up to a year for what they perceived as safe housing in a safe area. When they did get a house they were too scared to talk to neighbours in case they had connections with those who had intimidated them. Those who had had to leave their own property behind said that they had to sell at a lower price than they would have gained commercially over a longer period.

Some victims felt that the authorities did not care about their plight – "you're just a number" – and that the authorities should be more understanding towards victims. They also had had difficulties with the Benefits Agency regarding requests for replacing property that had been damaged in attacks on their homes. They felt that the administration of the Social Fund was inconsistent and that it was difficult to access. They said that when a person is trying to claim disability payments it is very difficult to write in the application about a punishment beating from which the disability resulted, for





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fear of prejudice. They felt the need to disguise the nature of their disability because of such fears. If they try to claim compensation, they feel traumatised by the court proceedings.

#### *Suggestions Made to the Commission Concerning Harassment and Intimidation*

- People do not know about their rights and they should be better informed about dealing with authorities.
- Victims want to be free from the fear of intimidation and secure in the knowledge that it will not happen again.
- Victims want the right to live where they choose.
- Victims feel they need compensation for being forced out of their homes, regardless of how long ago this happened.

#### **Domestic Violence**

The Women's Aid organisation works to support women in domestic violence situations. Workers consulted during this project felt there was a perception that victims of domestic violence were not treated equally with other victims of violence, although they spoke about the effectiveness of the new orders issued under the Family Home and Domestic Violence (NI) Order 1999. In some cases they said there were problems with getting orders granted. The organisation is planning to monitor breaches of orders.

Women need to be informed about the legal issues in their cases but there was a perception that legal personnel had to become more friendly and that legal jargon was not explained properly to women in domestic violence cases. There should be undergraduate training for law students to help them work on domestic violence cases.

Going to court was said to be very traumatic for victims of domestic violence. They felt there should be a room in a court building for them to avoid meeting their partner or their partner's family in the waiting areas. They also felt that the court proceedings could be "doubly victimising" and suggested a video-conferencing system as an alternative.

There were also concerns regarding the contact by the violent partner with the children of the relationship who might have witnessed so much of the violence. The best interests of the children should be the paramount criterion in the decisions made regarding contact orders. Women who refused contact were liable for imprisonment for contempt of the court's orders.



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### *Suggestions Made to the Commission Regarding Domestic Violence*

- There should be wider awareness among the public of the problem of domestic violence.
- The difficulty in reconciling the rights of a partner to a family life and privacy, and the rights of victims to be free from violence, needs to be resolved.
- Domestic violence should be consistently highlighted as an offence not to be tolerated.
- Women find it difficult to speak out and during the troubles police were wary of going into certain areas. Some women would not call the police because of this. All women, regardless of culture or area of residence, should be able to get police protection.
- There should be an automatic follow-up of domestic violence cases by the authorities.
- Survivors of domestic violence should have support and access to counselling and support services. If good support were available, this would help people to cope.
- Preventative work should be undertaken with young people on relationship issues.

### **Ethnic Minorities**

A member of one of the ethnic minority groups spoke of how he felt that the conflict had affected everyone in Northern Ireland and that racism is just an extension of the sectarian divide. It was said that members of ethnic communities suffer abuse both verbal and physical, as well as damage to home and business property. It was estimated that the level of reported crime is much less than the actual cases. Views were expressed that there should be a multi-agency approach to help victims of racial abuse and violence.

It was stated that members of ethnic communities fear retaliation and revenge if they report a crime. They do not want to be made more vulnerable. In cases of racial name-calling, a decision had to be made if an incident was deemed to be racially motivated; it could then be recorded as a racist incident.

### **Transgender Issues**

The transgender group consulted during the research felt that there was much confusion among the public regarding transsexual and transgender issues. Transsexual issues affect people who, having been born as members of one gender, feel that they need to become members of the other gender. Transgender issues embrace not just transsexual issues but also transvestite issues (men dressing as women and vice-versa).

The group stated that its members felt they were very vulnerable and wished the Commission to know about the verbal and physical abuse they frequently received on the streets. This intimidation and harassment had terrorised and alienated them from the community and led to their having to leave





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their areas. They spoke of having suffered beatings and kicking in the 1970s and 1980s, which then tailed off in the 1990s.

They estimated that 95% of violent incidents towards the transgender community are not recorded, because it is difficult to report incidents which might lead to loss of privacy. In cases of violence, they did not want court cases for fear of ridicule in the press and they had the perception that the judiciary “seem to think they deserve the violence”.

Those consulted praised members of the police for being understanding towards members of the transgender community. In some areas, there was preventative policing, such as “warning off kids from throwing stones”.

They felt that they have very complex problems in not being legally recognised in their right gender for the purposes of insurance and legal proceedings. They stated that they wished to be recognised in their new gender.

They expressed fears regarding officialdom. They have to “out” themselves every time they have to approach a statutory agency and then more and more people get to know their history. They felt that the more people get to know about them, the more the level of violence against them increases.

As regards the Human Rights Commission’s proposed Bill of Rights, the following suggestions were made:

- Transgender individuals want the right not “to have to fight” for their rights. They would like to be able to leave their houses without fear of intimidation and harassment, which “wears them down”.
- Transgender individuals cannot legally get married in their right gender. They felt that the Bill of Rights should take account of this.
- Transgender victims of violence did not feel that they were treated equally with other victims of violence.
- In compensation schemes and criminal injuries cases involving transgender individuals, they are not classed as anyone’s partner. They also have no right to bereavement awards in such cases.
- They would like to have better access to medical support. They perceived that doctors “put their real concerns down to psychosomatic problems”.



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### Conclusions

The comments reported in this chapter indicate that there is much which human rights legislation could do to help those who have been victims of violence. For this to happen it will be necessary to promote a culture around human rights in Northern Ireland. A Bill of Rights could help change behaviour, and the changed behaviour should eventually change attitudes and treatment towards victims. Education on human rights should be provided to encourage people to take human rights issues on board at every level of society.

Individuals, families and communities have all suffered grievously during the period of the conflict in Northern Ireland. Behind every statistic there is a human story, extended family grief and hardship. There is a need for further research to be undertaken on the effects of the conflict and for further compilation of information on victims' issues. Many statutory, voluntary and community sectors have been working on victims' issues and policies must reflect this work and the expressed needs of victims. Professionals who work with victims should receive training in assisting victims and there should be further consultation with victims of violence.

Victims want a strategic, long-term, multi-agency approach to helping victims of violence in Northern Ireland. They want victims' issues to be addressed at a policy level and more critical intervention when necessary. They feel that they need a mechanism for influencing policy on victims' issues. The possibility of a victim's advocate could be considered if arrangements on behalf of victims are not seen to be working effectively.

The right to have integrated planning in the delivery of services, where statutory and voluntary agencies work together to address the needs of victims of violence, would help greatly. A holistic view should be taken, which would cover social, economic and health requirements and identify gaps in provision. If agencies took such an approach, a cohesive package of priority measures, developed from shared and agreed protocols and guidelines, could be put in place to meet them. Meanwhile agencies should promote examples of good practice of working with victims, especially flexible models of service delivery to suit victims' needs and circumstances.





# Chapter 5

## International Standards Concerning Victims

### International Standards Concerning Victims <sup>1</sup>

#### Introduction

The purpose of this Chapter is threefold. First, it examines the status of victims under international law. Second, it examines both existing and emerging international legal principles concerning redress and reparation for violations of human rights law and of humanitarian law, as well as for violations of domestic criminal law and abuse of power. Third, it examines the question of accountability when societies are moving from a conflict to a post-conflict situation.

#### The Status of Victims under International Law

There are a number of provisions to be found in international as well as regional instruments that provide for a right of remedy for victims of violations of international human rights law and humanitarian law.

Within international instruments, these provisions include:

- Article 8 of the Universal Declaration of Human Rights (UDHR);
- Article 2 of the International Covenant on Civil and Political Rights (ICCPR);
- Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Article 11 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- Article 39 of the Convention on the Rights of the Child (CRC).

Within regional instruments, the provisions include:

- Article 7 of the African Charter of Human and Peoples' Rights and Duties;
- Article 25 of the American Convention on Human Rights; and
- Article 13 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Additionally, since 1989 there have been several studies commissioned by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. These have examined the question of victims' rights with a view to delineating the duties imposed on states under international law towards victims of violations of human rights and humanitarian law, as well as victims of crime and the abuse of power. The work began with the Van Boven Guidelines of 1993, 1996 and 1997, and the Joint Principles of 1996 and 1997. In 2000, the work of Van Boven and Jointet was merged in the revised *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of*

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<sup>1</sup> See in particular Jonathan Doak, "The victim and the criminal process: an analysis of recent trends in regional and international tribunals" (2003) 23 *Legal Studies* 1.



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## International Standards Concerning Victims



*International Human Rights and Humanitarian Law* submitted by Bassiouni<sup>1</sup> (subsequently referred to here as the *Draft Guidelines*). Throughout this process, the *Draft Guidelines* have benefited from the contribution of experts, comments of UN member states and international non-governmental organisations (NGOs). To date, the *Draft Guidelines* only consolidate existing norms as they have evolved but do not have legal standing themselves. The most recent report by Bassiouni was discussed at the 59th Session of the UN Commission on Human Rights in March-April 2003 but the discussion was inconclusive. The Commission asked for further consideration to be given to the *Draft Guidelines* and resolved to return to the issue at its 60th Session in 2004.<sup>2</sup> The full text of the current *Draft Guidelines* is included in Appendix 1 to this report.

In addition to the reports by Van Boven, Joinet and Bassiouni, the UN Sub-Commission and the UN Commission on Human Rights have commissioned several studies which address directly, or which impact on, the question of victims' rights, including:

- a study which examined the question of impunity and focused on economic, social and cultural rights in seeking to provide guidelines for an effective remedy for victims of violations of economic, social and cultural rights,<sup>3</sup>
- recognition of gross and massive violations of human rights perpetrated on the orders of governments or sanctioned by them as an international crime,<sup>4</sup> and
- a report of the independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms.<sup>5</sup>

A starting point for examining the issue of victims' rights is to define the term "victim" in a manner that is consistent with international legal norms and against which the status of "victim" in a national legal system can be evaluated. In this regard, there are a number of definitions that have been proffered but for present purposes the most pertinent is that provided by the *Draft Guidelines*, which states that:

*A person is a "victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.*<sup>6</sup>

<sup>1</sup> UN Commission on Human Rights; 56th Session, 18 January 2000, E/CN.4/2000/62.

<sup>2</sup> E/CN.4/2003/L.44 (14 April 2003).

<sup>3</sup> E/CN.4/Sub.2/1997/8.

<sup>4</sup> E/CN.4/Sub.2/1997/29.

<sup>5</sup> E/CN.4/1999/65.

<sup>6</sup> E/CN.4/2000/62; Principle 8.



Additionally the status of “victim” does not depend on “any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted”. However this definition has not yet been agreed by the international community as there are concerns over who can be considered a “victim” and there is a divergence of opinion over the idea of collective victims.<sup>1</sup>

In 1985, the UN General Assembly adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*<sup>2</sup> (subsequently referred to here as the *Basic Principles*), which defines victims as:

*...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.*<sup>3</sup>

Similarly, the *Basic Principles* state that the status of the victim does not change regardless of the relationship of the victim to the perpetrator. The *Basic Principles* are concerned, primarily, with victims of domestic criminal law and abuse of power, whilst the *Draft Guidelines* are concerned with victims of violations of international human rights and humanitarian law. Similarities can be found between the two documents in what they say about the treatment of victims and about the right to an effective remedy, whilst significant differences exist, as will be noted, on the question of reparations. The *Basic Principles* are reproduced in Appendix 2 to this report.

In 2002, the Commonwealth Secretariat issued a set of Best Practice Guidelines for Victims. A representative from the Northern Ireland Human Rights Commission assisted in the production of these and extracts are reproduced in Appendix 3 to this report.

### Principles Concerning Redress and Reparation

Whilst international law sets out the obligations of states towards victims of crimes under law, it should be noted that a state’s primary duty is to take robust legal and administrative measures to *prevent* violations. Thus, a state has a duty to ensure that:

- its domestic law is in compliance with international legal norms;
- its practices are in conformity with the treaties it has signed; and
- it provides fair, prompt and effective access to justice.

When a crime under international law has occurred, a state has the further duties to:

- investigate it;
- provide mechanisms which ensure prompt and adequate reparation for victims;
- ensure that remedies are sufficient to prevent recurrence of the crime; and
- provide for or facilitate reparation to victims.

<sup>1</sup> E/CN.4/2003/ paras. 64-78.

<sup>2</sup> GA Resolution 40/34, 1985, reproduced in Appendix 2 of this report.

<sup>3</sup> GA Resolution 40/34, 1985, para. 1.



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In the *Draft Guidelines*, the obligation to investigate is expanded to include the duty “where appropriate, [to] take action against the violator in accordance with domestic and international law”.<sup>1</sup> The *Draft Guidelines* continue by stating that:

*Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.*<sup>2</sup>

Despite the long-standing legal obligation to try perpetrators of international crimes, the duty to prosecute remains very contentious within international law, particularly concerning human rights abuses committed by non-state forces, and the related problem of distinguishing between human rights and humanitarian law. In addition, many states appear to be concerned about the extent of the duty to prosecute. For example, at the discussions on the *Draft Guidelines* in December 2002,<sup>3</sup> the United States asserted that the “international community only recognised a duty to seek or pursue prosecutions, since the authorities themselves determine the probable ground for prosecution”.<sup>4</sup> Overall, the majority of attending states were opposed to a duty to prosecute,<sup>5</sup> with only a few speaking in favour of this obligation.<sup>6</sup> The latter group of states were supported by the comments of the NGOs in attendance, which highlighted the existence of this duty in customary international law and pointed to its recent confirmation by the International Court of Justice regarding the crime of genocide. A possible solution to the dispute is the suggestion by Van Boven that the wording of the *Draft Guidelines* be altered to replace “duty to prosecute” with the language used in the Convention Against Torture, thereby reflecting more precisely existing international obligations *vis-à-vis* prosecutions.<sup>7</sup>

This divergence of views regarding the extent of the duty to prosecute is also evident in the jurisprudence of the regional human rights courts. The Inter-American Court of Human Rights has found in a number of cases that a “state has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation”.<sup>8</sup>

<sup>1</sup> E/CN.4/2000/62, Principle 3(b).

<sup>2</sup> E/CN.4/2000/62, Principle 4.

<sup>3</sup> E/CN.4/2003/63.

<sup>4</sup> E/CN.4/2003/63, para. 39.

<sup>5</sup> The United States, Sweden, Japan, Canada and the Russian Federation all opposed the existence of a “duty to prosecute”.

<sup>6</sup> Egypt, Mexico and Argentina supported the existence of a “duty to prosecute”.

<sup>7</sup> E/CN.4/2003/63, para. 23.

<sup>8</sup> Inter-American Court of Human Rights, *Case of Velázquez Rodríguez*, Judgement of July 29, 1988, Series C, No. 4, para. 174. See also *Case of Neira Alegria and others*, Judgement of 19 January, 1995, Series C, No. 20, para. 69; *Case of Cabellero Delgado and Santana*, Judgment of December 1995, Series C, No. 22, para. 56; *Case of Blake*, Preliminary exceptions, Judgement of July 2, 1996, Series C No. 27, para. 39; and *Case of Castillo Páez*, Judgment of 3 November 1997, Series C, No. 34, para. 90.



The European Court of Human Rights has found that “the notion of an effective remedy entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure”.<sup>1</sup> The state is afforded some discretion regarding the process for uncovering the truth, the means by which justice is achieved and what reparations are provided. In four important decisions made on 4 May 2001, in cases emanating from Northern Ireland, the European Court underlined its insistence that to comply with the procedural requirements of Article 2 of the European Convention on Human Rights (the right to life), investigations of killings need to be independent, thorough, prompt and effective and the prosecution system needs to be fully accountable (*Jordan v UK, Kelly v UK, McKerr v UK* and *Shanaghan v UK*).

Attempts to tackle the question of accountability in societies emerging from conflict suggest that the accountability problem has legal, moral and political dimensions. The task, therefore, is to provide a framework that takes a realistic view of the political constraints whilst not surrendering fundamental principles. The argument is that there must be a “balance” secured between what is feasible and what is legally compelled. Emerging principles within international law, which address the question of victims’ rights and accountability for past abuses, are framed with a view to achieving that balance. These emerging trends can be divided into a series of duties and correlative rights.

### The Duties of States

The duties and obligations of a state are not limited to which rights victims should be afforded but also cover how victims should be treated. The *Basic Principles* state that victims should be treated with dignity and compassion. These principles direct judicial and administrative mechanisms to carry out a number of tasks. These tasks are:

- providing access to information, including “informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases” (6a);
- providing a forum for victims to voice their concerns, and a means of redressing these concerns (6b);
- providing assistance to victims throughout the legal process and, after the proceedings are concluded, ensuring that victims receive the necessary “material, medical, psychological and social assistance” and understand where these services are available (6c, 14, and 15);
- ensuring that proper training is given to sensitise members of the police, justice, health and all relevant services to the special needs related to victims and their families (16);
- ensuring that victims’ and their families’ privacy and safety are protected (6d); and
- ensuring prompt disposition of cases and reparation and ensuring that reparation is “fair” (6e and 8).

<sup>1</sup> *Askoy v Turkey*, 1996, No. 100/1995/606/694, para. 98.



# Chapter 5

## International Standards Concerning Victims



### The Rights of Victims

The international guiding principles on victims' legal rights concur that there is a duty on the state to:

- investigate, prosecute, and punish the perpetrators;
- disclose to the victims and their families, as well as to society, the truth about events;
- provide adequate reparations for victims; and
- remove perpetrators from positions of authority, including from law enforcement bodies.

For each specific duty of a state, there is a corresponding right. A victim has a right to ascertain the truth regarding the violation, to get access to justice and to receive reparation for the harm that he or she has suffered.

#### a) *The right to know the truth*

Underpinning the legal rights of victims – both individually and collectively – is the right to the truth about violations. As Joinet has noted, the right to know:

*...is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a "duty to remember", which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right...*<sup>1</sup>

Various measures have been proposed, and critiqued, for this purpose. Joinet recommends the establishment of "extra-judicial commissions of inquiry" and measures which ensure the preservation of archives. The idea of a commission of inquiry, or truth commission, is not new. The South African experience is but one of a number of truth commissions that have been established to facilitate a victim's right to know. However, the Joinet guidelines note that the establishment of such a commission must take care not to "furnish a pretext for not going before the courts" and that, when establishing such a commission, basic principles should be derived (as well as, implicitly, lessons learned) from past commissions' experiences. These principles<sup>2</sup> are noted as:

- guaranteed independence and impartiality,
- safeguards for witnesses and victims,
- guarantees for persons implicated and
- publicity for the commissions' reports.

The right to the truth in the Van Boven and Bassiouni studies is discussed in relation to the issue of reparation: the state is obliged to disclose information related to violations. The Van Boven Guidelines note the duty of the state to disclose all information relevant to the determination of claims for reparation.<sup>3</sup> Similarly, the *Draft Guidelines* call for "verification of the facts and full and public disclosure of the truth" as a necessary measure for the "satisfaction and guarantees of non-

<sup>1</sup> E/CN.4/Sub.2/1997/20/Rev.1, para. 17.

<sup>2</sup> E/CN.4/Sub.2/1997/20/Rev.1, paras. 20-24.

<sup>3</sup> E/CN.4/1997/104, Principle 10.



repetition”.<sup>1</sup> This recognition of the right to know the truth does not appear to be disputed by states, according to the discussion of the *Draft Guidelines* in 2002.<sup>2</sup>

### b) *The right to justice*

Victims must be afforded access to justice both individually and collectively. They should also be provided with an “adequate, effective and prompt remedy” against a violation of human rights or humanitarian law.<sup>3</sup> The *Basic Principles* call for the establishment and strengthening of “judicial and administrative mechanisms” which would enable victims to “obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible”.<sup>4</sup>

The obligations of a state to ensure that victims obtain justice are detailed in Joinet’s guidelines. They include: investigation of violations, prosecution of perpetrators and, if their guilt is established, the punishment of perpetrators.<sup>5</sup> In addition, the *Draft Guidelines* emphasise the right to access justice, which places obligations on the state to publicise all available remedies for violations of international human rights and humanitarian law, to minimise the inconvenience to victims and to “protect the privacy of victims and their families as appropriate and ensure their safety” and that of witnesses.<sup>6</sup> According to the discussion that was held on the *Draft Guidelines*,<sup>7</sup> these obligations appear to have been broadly accepted by states.

The duty to prosecute carries direct implications when questions of amnesty or impunity are raised. It is important to note that, under international law, there is a distinction between amnesty and impunity. The terms are not interchangeable. Nonetheless, UN documents which address impunity do make reference to amnesty. Under international law, amnesty “...is considered to be the juridical expression of a political act whose expected effects directly concern the promotion or protection of human rights and, in some instances, the return to, or consolidation of, democracy...”.<sup>8</sup> In contrast, impunity “...means the impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims”.<sup>9</sup> Whilst the underpinnings for the application of amnesty and impunity differ, the effect may largely be the same – the exemption of those who have committed crimes under international law from prosecution.

The granting of amnesty can find legal foundation.<sup>10</sup> However, when turning to “serious and systematic violations of human rights” international law precludes the application of measures to protect violators of certain kinds of crime, even if they are political in nature. Crimes such as torture,

<sup>1</sup> E/CN.4/2000/62, Principle 25.

<sup>2</sup> E/CN.4/2003/63, paras. 127-148.

<sup>3</sup> E/CN.4/2000/62, Principle 12.

<sup>4</sup> GA Resolution 40/34, 1985, Principle 5.

<sup>5</sup> E/CN.4/Sub.2/1997/20/Rev.1, para. 26.

<sup>6</sup> E/CN.4/2000/62, Principle 12.

<sup>7</sup> E/CN.4/2003/63, paras. 84-93.

<sup>8</sup> E/CN.4/Sub.2/1985/16.

<sup>9</sup> E/CN.4/Sub.2/1997/20/Rev.1, p. 15.

<sup>10</sup> E/CN.4/Sub.2/1985/16, paras. 20-21.



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involuntary or forced disappearances and summary executions may be considered as such. In all cases, “the principle that rights of victims should be safeguarded is generally recognised by amnesty laws and is one from which there can be no derogation except by virtue of an explicit provision”.<sup>1</sup> The UN’s *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (1989) note that “any person allegedly involved in extra-legal, arbitrary, or summary executions” should not be afforded blanket immunity even during “a state of war, siege or other public emergency”.<sup>2</sup> The 1992 *Declaration on the Protections of All Persons from Enforced Disappearance* states that those responsible for this crime “shall not benefit from any special amnesty law or special measures that might have the effect of exempting them from any criminal proceedings or sanction”.<sup>3</sup>

Whilst amnesty cannot be granted for grave human rights violations, the granting of amnesty for other political offences as a means to promote national reconciliation is not incompatible with international law provided that victims’ rights (truth, access, and remedy) are secured. As Joinet effectively argues:

*...there can be no just and lasting reconciliation without an effective response to the need for justice; as a factor of reconciliation, forgiveness, insofar as it is a private act, implies that the victim must know the perpetrator of the violations and that the latter has been in a position to show repentance. For forgiveness to be granted, it must first have been sought.*<sup>4</sup>

### c) *The right to reparations*

Central to the question of victims’ rights is the issue of reparations. The determination on the extent of reparations should be proportional – that is, as Bassiouni argues, “proportional to the gravity of the violations and the harm suffered”.<sup>5</sup> The right to reparation entails both individual as well as collective measures. The international guidelines on victims’ rights all have sections, in most cases substantial, dedicated to the right of reparation. There are four courses of action required to effect reparation. They are:

- Restitution: seeking to restore victims to their previous state by measures such as the restoration of liberty, citizenship, and employment.
- Compensation: providing damages for physical or mental injury, including compensation for lost opportunities, physical damage or harm to reputation.
- Rehabilitation: providing medical care, including psychological and psychiatric treatment.
- Satisfaction and guarantees of non-repetition: taking measures to ensure that there is a cessation of hostilities and closure provided for victims, including a search for those who have disappeared and an official acknowledgement of responsibility and apology, in addition to preventative measures instituted to prevent recurrence of violations.

As the question of reparations is so essential when addressing victims’ rights, it is worth examining each of these courses of action in more detail.

<sup>1</sup> E/CN.4/Sub.2/1985/16, para. 77.

<sup>2</sup> Economic and Social Council Resolution 1989/65, 24 May 1989, para. 19.

<sup>3</sup> General Assembly Resolution 47/133, 18 December 1992, UN Doc A/47/49, Art. 18(1).

<sup>4</sup> E/CN.4/Sub.2/1997/20/Rev.1, para. 26.

<sup>5</sup> E/CN.4/2000/62, Principle 15.



### *i Restitution*

In the case of violations of international human rights or humanitarian law, restitution is intended to restore the victim to his or her original state before the violations occurred. The term “restitution” is intended to be understood as the restoration of rights rather than financial compensation.<sup>1</sup> According to the *Basic Principles*, restitution entails the “return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimisation, and the provision of services and the restoration of rights”.<sup>2</sup> Interestingly, the *Basic Principles* also address the question of harm to the environment and note:

*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.*<sup>3</sup>

Furthermore, the *Basic Principles* suggest that governments should review their policies to consider whether restitution should be considered as a sentencing option, in addition to other forms of criminal sanctions.<sup>4</sup> The *Draft Guidelines* are narrower in their prescriptions regarding restitution, stating simply that this entails the restoration of “liberty, legal rights, social status, family life and citizenship; return to one’s place of residence; and restoration of employment and return of property”.<sup>5</sup> This formulation was accepted by every country during the discussions in December 2002, with the exception of Norway, whose representative stated that “restoration is sometimes very difficult in practice, and even where possible, it is not always appropriate”.<sup>6</sup>

### *ii Compensation*

Turning to the question of compensation, the *Draft Guidelines* are comprehensive. They state:

*Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:*

- a. physical or mental harm, including pain, suffering and emotional distress;*
- b. lost opportunities, including education;*
- c. material damages and loss of earnings, including loss of earning potential;*
- d. harm to reputation or dignity; and*
- e. costs required for legal or expert assistance, medicines and medical services, and psychological and social services.*<sup>7</sup>

<sup>1</sup> E/CN.4/2003/63, para. 52.

<sup>2</sup> General Assembly Resolution 40/34 of 29 November 1985, Principle 8.

<sup>3</sup> General Assembly Resolution 40/34 of 29 November 1985, Principle 10.

<sup>4</sup> General Assembly Resolution 40/34 of 29 November 1985, Principle 9.

<sup>5</sup> E/CN.4/2000/62, Principle 22.

<sup>6</sup> E/CN.4/2003/63, para. 136.

<sup>7</sup> E/CN.4/2000/62, Principle 23.



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The *Basic Principles* also call for compensation to be rendered to victims, but within more defined limits. Compensation should be afforded to victims who have sustained “significant bodily injury or impairment of physical or mental health as a result of a serious crimes” and to their families.<sup>1</sup> The right to compensation appears to be generally accepted although some dispute remains over the idea of “lost opportunities”.<sup>2</sup>

### *iii Rehabilitation*

The provision of the right to rehabilitation in the *Draft Guidelines* acknowledges “the need of victims, many of whom come from the least-resourced sectors and groups of society, to be afforded medical, psychological, legal and social services”.<sup>3</sup> This right does not appear to be disputed.<sup>4</sup>

### *iv Satisfaction and guarantees of non-repetition*

The *Draft Guidelines* also set out specific means to secure satisfaction and prevention of repetition. These measures, whilst not exhaustive, are comprehensive and should serve as a useful base from which initiatives specific to Northern Ireland could be drawn. The *Draft Guidelines* indicate that satisfaction and guarantees of non-recurrence should include:<sup>5</sup>

- a. *cessation of continuing violations;*
- b. *verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim... (the “right to know”, as already detailed above);*
- c. *the search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;*
- d. *an official declaration or a judicial decision restoring the dignity, reputation, and legal and social rights of the victim and of persons closely connected with the victim;*
- e. *apology, including public acknowledgement of the facts and acceptance of responsibility;*
- f. *judicial or administrative sanctions against persons responsible for the violations;*
- g. *commemorations and tributes to the victims;*
- h. *inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;*
- i. *preventing the recurrence of violations by such means as:*
  1. *ensuring effective civilian control of military and security forces;*
  2. *restricting the jurisdiction of military tribunals to specifically military offences committed by members of the armed forces;*
  3. *strengthening the independence of the judiciary;*
  4. *protecting persons in the legal, media and other related professions and human rights defenders;*

<sup>1</sup> General Assembly Resolution 40/34 of 29 November 1985, para. 12.

<sup>2</sup> E/CN.4/2003/63, paras. 127-148.

<sup>3</sup> E/CN.4/2003/62, para. 57.

<sup>4</sup> E/CN.4/2003/63, paras. 127-148.

<sup>5</sup> E/CN.4/2000/62, Principle 25.



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5. *conducting, and strengthening on a priority and continued basis, human rights training for all sectors of society, in particular to military and security forces and to law enforcement officials;*
6. *promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;*
7. *creating mechanisms for monitoring conflict resolution and preventive intervention.*

The 1996 Joint report includes an additional recommendation on the question of emergency legislation and courts which should be considered here. The subsection on the provision of guarantees of non-recurrence<sup>1</sup> recommends that:

*Emergency legislation and courts of any kind adopted or set up during the period of repression must be repealed or abolished insofar as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.*

*Habeas corpus, whatever name it may be known by, must be considered a fundamental right of the individual and as such a non-derogable right.*

In addition, measures taken to address and satisfy victims' rights individually should also be applied collectively. In fact, some of the measures recommended in the *Draft Guidelines* apply collectively, such as a formal recognition by the state of its responsibility, ceremonies to commemorate victims, and symbolic measures (*e.g.* monuments) which endeavour to fulfil the duty to remember.<sup>2</sup>

The need for the right to satisfaction and guarantees of non-repetition appears to have been recognised by the international community, but there are some minor disputes about the exact content of this right.<sup>3</sup>

It is clear in international law that, "while the forms and modalities of reparation may differ, the right to reparation applies both to violations of human rights and violations of humanitarian law, regardless of the status of the perpetrator or of the succession of Governments".<sup>4</sup> The *Basic Principles* allocate responsibility for reparations to the offender, except in cases where the offender was a public official who was acting in his or her official or quasi-official capacity.<sup>5</sup> In these cases, the burden shifts to the state. Furthermore, in cases where the offender cannot pay, the state is again charged with a responsibility to provide an effective remedy.<sup>6</sup>

<sup>1</sup> E/CN.4/Sub.2/1997/20/Rev.1, Principle 39.

<sup>2</sup> E/CN.4/2000/62, Principle 25.

<sup>3</sup> E/CN.4/2003/63, paras. 127-148.

<sup>4</sup> E/CN.4/2003/63, para. 47.

<sup>5</sup> General Assembly Resolution 40/34 of 29 November 1985, Principle 8.

<sup>6</sup> General Assembly Resolution 40/34 of 29 November 1985, Principle 12.



# Chapter 5

## International Standards Concerning Victims



Similarly, the *Draft Guidelines* state:

*In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.*<sup>1</sup>

*In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has not already provided reparation to the victim.*<sup>2</sup>

Under these *Draft Guidelines*, if the party responsible for the violation is unable to pay then it falls on the state to provide reparations for those who have been subject to physical or mental injury and for their families. One means through which this could be achieved is by establishing national funds for reparations to victims. The *Draft Guidelines* also stipulate that a state must “enforce its domestic judgements for reparation against private individuals or entities responsible for the violation”.<sup>3</sup>

In the recent discussions, there was some controversy regarding the obligation of the state to pay reparations in response to an act committed by a non-state actor. Bassiouni responded to these concerns by explaining that the *Draft Guidelines* seek to ensure that victims receive remedy and reparations regardless of who is the principal violator.<sup>4</sup>

It should be noted that, even when the perpetrators of human rights violations have been given amnesty, the rights to compensation for victims are normally provided for in amnesty laws under the rights of third parties.

Underpinning a victim’s right to reparation is a policy on non-discrimination. Reparation must be afforded without “any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability”.<sup>5</sup>

### **Accountability in Transitions from Conflict to Post-conflict Situations**

In regions that have been affected by protracted conflicts, the desire to achieve and secure peace is often the barrier to achieving accountability for past abuses. The argument, by no means without merit, is that securing peace and promoting reconciliation entails a process of forgiveness and closing painful chapters. In some conflict to post-conflict transitions, amnesty was issued only after mechanisms were established which sought to uncover the truth about disputed killings or disappearances (e.g. through the use of truth commissions). In other cases, a “blanket amnesty” was introduced without any recourse for victims to obtain truth, justice or reparations. A review of the failures to hold violators accountable in post-conflict situations should provide valuable lessons for societies, like Northern Ireland, emerging from protracted conflicts.

<sup>1</sup> E/CN.4/2000/62, Principle 16.

<sup>2</sup> E/CN.4/2000/62, Principle 17.

<sup>3</sup> E/CN.4/2000/62, Principle 19.

<sup>4</sup> E/CN.4/2003/63, para. 114.

<sup>5</sup> E/CN.4/2000/62, Principle 27.



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Remembering that international law does not prohibit amnesty, save for international crimes of genocide, crimes against humanity, war crimes and other serious violations of humanitarian law, international guiding principles established by the UN have sought to frame the context in which amnesty can be used. The most exhaustive evaluation of amnesty laws was undertaken by the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Louis Joinet, in his *Study on Amnesty Laws and their role in the safeguard and the promotion of human rights, Preliminary report*.<sup>1</sup> The report seeks to outline the conditions under which amnesty can be granted and, importantly, details the safeguards which must be implemented to secure victims' rights. Sadly, case examples in which amnesties have been afforded without an effective remedy for victims are the rule, rather than the exception.

In Sierra Leone, a protracted eight-year conflict led to a Sierra Leone Peace Agreement (known as the Lomé peace agreement) which granted a blanket amnesty (amounting to impunity) for all crimes that took place during the conflict. Whilst the UN attached a disclaimer to this agreement, stating that grave human rights violations would be excluded from this amnesty, no substance was given to this disclaimer. As Amnesty International commented, "it was a peace agreement which failed to provide justice for victims of human rights abuses. It also appeared to give a signal that human rights abuses would be condoned and that their perpetrators would not be held accountable".<sup>2</sup>

In Peru, as a result of a 15-year war, the government proposed to include in its new Constitution of 1995 an amnesty clause that would provide impunity for crimes committed during the war. The proposal would effectively extend the 1995 amnesty decree to include all human rights crimes. The UN Human Rights Committee commented on the 1995 Decree:

*The Committee is deeply concerned that the amnesty granted by the Decree Law 26,479 on 14 June 1995 absolves from criminal responsibility and, as a consequence, from all forms of accountability, all military, police and civilian agents of the State who are accused, investigated, charged, processed or convicted for common and military crimes for acts occasioned by the "war against terrorism" from May 1980 until June 1995. It also makes it practically impossible for victims of human rights violations to institute successful legal action for compensation. Such an amnesty prevents appropriate investigation and punishment of perpetrators of past human rights violations, undermines efforts to establish respect for human rights, contributes to an atmosphere of impunity among perpetrators of human rights violations, and constitutes a very serious impediment to efforts undertaken to consolidate democracy and promote respect for human rights and is thus in violation of article 2 of the Covenant. In this connection, the Committee reiterates its view, as expressed in its General Comment 20, that this type of amnesty is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction, and to ensure that they do not occur in the future.*<sup>3</sup>

<sup>1</sup> E/CN.4/Sub.2/1985/16.

<sup>2</sup> AFR 51/60/00, p. 2.

<sup>3</sup> UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/C/79/Add.67, para. 9.



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The Committee went on to stress that “domestic legislation cannot modify a State party’s international obligations under the Covenant”.<sup>1</sup>

The experience of commissions of inquiry or truth commissions also raises questions as to the ability of such commissions to deliver on victims’ rights. The Truth and Reconciliation Commission in South Africa, the Rettig Commission in Chile, the National Commission on the Disappeared in Argentina and the Commission on the Truth for El Salvador<sup>2</sup> are some notable examples of commissions set up in the wake of protracted conflicts. Whilst a critique of each model is beyond the scope of this report, it is worth noting some aspects of each case.

The South African experience had initially been the subject of much hope but now there is much criticism. In the spirit of promoting national reconciliation, a Truth and Reconciliation Commission (TRC) was set up under the provisions of the new South African Constitution. The formula was a simple one: amnesties were provided in exchange for the truth. In certain cases (of non-compliance), criminal prosecutions could be pursued. Arguments that this forum may have been the only viable path in the post-apartheid transition may well have merit. However, victims have argued that, in pursuit of political expedience, their rights have been denied. Specifically, they point to the use of amnesties, even for those who have committed acts of torture or in cases where full disclosure of the truth was not achieved, and the lack of reparations for victims.

In Chile, the Rettig Commission was set up to investigate only murders and disappearances. Its remit did not include cases of torture, detention, exile or censorship. Its findings indicated that 2,279 persons died for “political reasons” and that 95% of those deaths were attributed to security forces. However, the Commission chose not to publish the names of accused perpetrators. Despite this and its limited mandate, the Commission’s work was noted for its thoroughness. However, incidents of violence, together with the deal which ushered Pinochet from office, halted discussion of the report and ensured that only a minimum of truth was revealed and no justice for victims achieved.

In Argentina, the refusal of the military to provide evidence on the fate of the disappeared, and the failure of the government to investigate abuses that happened during the “dirty war”, have left victims without any mechanisms to discover the truth about the disappeared. As a result of an initial attempt (after the Falklands war) by the then President of Argentina to set up a National Commission, several military leaders were imprisoned. However, little was learned about the fate of the disappeared as the amnesty laws were abolished, leaving some critics to argue that members of the military who might have been able to shed light on the whereabouts were reluctant to come forward. The subsequent President pardoned those who were imprisoned as a result of the inquiry and stopped any further attempts to bring the military to justice, arguing that Argentina’s democracy was too fragile.

<sup>1</sup> UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/C/79/Add.67, para. 10.

<sup>2</sup> In addition to these, commissions of inquiry have been undertaken in the Philippines, Bolivia, Germany, Rwanda, Chad, Uruguay, Uganda, Honduras and Guatemala. A National Commission of Investigation has been proposed by the Russian Government on Chechnya.



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Reparations were to be paid to victims but documentation requirements<sup>1</sup> have made it impossible for a majority of victims to collect.

The El Salvador experience was different in that it was an international commission of inquiry that was operated, financed and staffed by the UN. The Commission undertook an extensive inquiry and the report it produced named the alleged perpetrators. The Commission had the power to remove members of the military that were named in the report. Whilst the report was thorough and hard-hitting, the government of El Salvador has thus far been reluctant to implement many of the recommendations in the report. It has been suggested that whilst the international dimension of the Commission allowed it to be quite strong in its proposals, the fact that it was not a national commission may explain why the Salvadorean government has not been keen to adopt the report's recommendations. While victims may have benefited in knowing the truth as a result of the report, recommendations for satisfaction and non-recurrence have not been adopted and reparation has been afforded to only a small number of victims and their families.

Whilst these cases point to failures or limitations of commissions of inquiry, this does not suggest that such a mechanism does not warrant serious consideration. That said, if we are to draw lessons from these past experiences, there seem to be certain conditions that must be guaranteed regarding the composition, mandate, independence, time frame, and budget for such bodies. These are:

- impartiality and independence from governmental or political control or influence;
- provision by the government of necessary resources for the commission to carry out its work effectively, including full access to all the information that it requires;
- establishment soon after the conflict has ended;
- operation under a limited and specific time frame – the commission should not be of an unspecified duration;
- unlimited mandate with the ability to inquire into all forms of abuse that occurred during the conflict;
- power to make recommendations, with a view to the governing authority giving these serious consideration; and
- publication of the commission's findings.

Lessons drawn from these post-conflict experiences suggest that, far from promoting national reconciliation, courses of action that do not provide for, and deliver, victims' rights to truth, justice and reparations are likely to impede, rather than facilitate, healing, leaving those who have suffered feeling twice as victimised. Safeguarding these principles is not intended "to thwart reconciliation but to avoid distortions in certain reconciliation policies so that, once beyond the first stage, which is more concerned with 'conciliation' than reconciliation, the foundations of a 'just and lasting reconciliation' may be laid".<sup>2</sup> As has been well said, "Before a new leaf can be turned, the old leaf must be read...".

<sup>1</sup> Victims were required to show dates of detention and the military has thus far refused to provide that necessary information.

<sup>2</sup> E/CN.4/Sub.2/1997/20/Rev.1, para. 49.



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### **A Truth Commission for Northern Ireland?**

The Northern Ireland Human Rights Commission is of the view that, sooner or later, some sort of mechanism will have to put in place to deal with the recovery of the truth in Northern Ireland concerning what happened during the years of conflict here. But it is equally of the view that the Commission itself cannot provide that mechanism and that the time is not right at the moment for any such mechanism to be put in place. We believe that further study is required of the truth recovery mechanisms which have been tried elsewhere in the world so that a considered view can be reached as to what form of mechanism would be most appropriate for Northern Ireland. The work already begun by the Healing Through Remembering project is, we believe, well worth building on.



## Chapter 6

### The Right to Recognition and Truth

It was clear during the course of this research that the main demand of victims in Northern Ireland – whether they be “victims of the conflict / troubles” or victims of “ordinary” crimes of violence – was the demand to be *recognised* as victims. Once this recognition has been secured victims next want to be able to get to the bottom of what happened to them – they want to know the truth. In the absence of any more wide-ranging inquiry into the truth – such as that provided by the Truth and Reconciliation Commission in South Africa and the Tribunal of Inquiry into Bloody Sunday in Derry / Londonderry – victims want to be involved to some degree in the criminal investigation and prosecution of persons responsible for what happened to them. In particular they want to be able both to receive and to provide information relevant to those processes.

This chapter explores the first two of those three key claims – the right to recognition and the right to truth. Chapter 7 looks at the right to involvement in the criminal justice system, including the right to give and receive information. Chapter 8 then looks at related rights concerning claims to more personal justice – such as the rights to support and compensation. Chapter 9 examines specifically the right to protection, the right to equality (or non-discrimination) and the right to privacy.

#### The Right to Recognition

The Report of the Victims’ Rights Working Group (set up by the Human Rights Commission in the autumn of 2000 to advise it on which victims’ rights should be included in a Bill of Rights for Northern Ireland) stated:

*All the evidence is that the first and overriding need of victims is full acknowledgement of their hurt...Being hurt by the intentional actions of some other person dents a fundamental faith in human society; the first step in repairing that faith is acknowledgement of the hurt and its significance.*

It became clear during the research for this report that this was indeed the case. What victims want, first and foremost, is not simply recognition within the criminal justice process (see Chapter 7 below) but a general acknowledgement by the whole of society that they have been hurt and that their rights as citizens have been breached. According to the responses to the Commission’s questionnaire, only 30% of respondents felt that people generally were sensitive to their problems as victims.

This is largely a social, cultural and political matter, rather than a legal one, but that does not mean that it is ineligible for inclusion in a Bill of Rights. The *Basic Principles* (see Chapter 5) demand that victims be treated with “dignity and compassion,” and list a number of ways in which agencies should fulfil their obligations (see Chapter 5). The European Forum for Victim Services’ *Declaration on the Social Rights of Victims* includes an important provision. Under its first heading, “Recognition by Society,” it states:



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*If victims of crime are to receive adequate recognition for the pain and suffering they have endured, society must first consider victims' views and take these into account. Expectations and needs must be defined according to the victim's perception of the injustices they have suffered and the consequences of these injustices. Crime may be experienced as a negation of citizenship; therefore whatever help is offered must facilitate the victim's recognition as an individual and as a member of society.*

This passage makes it clear that this general concept of recognition or acknowledgement is strongly connected to a sense of justice. In other words, for a victim, the starting point of justice is an acknowledgement that what has happened to him or her is wrong, unfair and unjust.

All agencies with which a victim comes into contact can therefore be said to have a responsibility to grant acknowledgement of the status of victim. Even in normal circumstances, this status is not as unproblematic as it may at first appear. Women and children, for example, have often had difficulty in convincing relevant agencies that they have been abused in the home. In the context of the violent political conflict experienced within Northern Ireland, however, the matter takes on an even more important dimension. As we have seen in the discussion around an alleged "hierarchy of victims" in Chapter 3, not all the harm that has been done in Northern Ireland is seen as equally wrong and not all victims are seen as equally deserving of recognition as others.

The main grievances are, on the one hand, on the part of those who feel that they were "innocent" victims and, on the other, of those who were the victims of security force actions. Both sets of people tend to feel that the state and society in general are uninterested in properly acknowledging the depth of harm and alienation they have suffered. Some contrast their experience with that of ex-prisoners and others with that of state personnel. Outside of real political reconciliation, it is hard to see how these subjective interpretations can be brought into congruence.

This was the problem that Sir Kenneth Bloomfield had to wrestle with in his report as Northern Ireland Victims Commissioner.<sup>1</sup> His terms of reference were to look specifically at "the feasibility of providing greater recognition" for victims of the troubles. His report makes many valuable suggestions for the work of statutory agencies and around matters such as the funding of victims' groups, although representatives of the victims of state security force violence have expressed the view that his report did not properly acknowledge the needs of their sector.

Sir Kenneth also raised the matter of memorials. He proposed one physical memorial in the shape of a building within a garden, although no-one appears to be implementing this recommendation. The approach of the Commission's Victims' Rights Working Group Report in this regard was to suggest the creation of two complementary rights. The first was:

*Victims have the right to individually or collectively commemorate particular events or categories of harm...by public assemblies or physical memorials.*

<sup>1</sup> *We Will Remember Them*, The Stationery Office, Belfast, 1998.





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The second was:

*Victims have the right not to be exposed to any public celebration of their loss or suffering.*

The basic idea behind this second right was that the commemorations should not adopt a tone or be in a location which would give offence to any other possible category of victim.

#### *The Draft Advice on a Bill of Rights*

The draft advice on a Bill of Rights issued by the Commission in September 2001 would require legislation and other measures:

*to ensure that the loss and suffering of all victims of [the] conflict and the responsibility of State and non-State participants are appropriately and independently established and/or acknowledged.*

The draft goes on to say, as regards “future victims,” that each has the right to “*be treated with compassion and respect for his or her dignity*”. However the draft does not explore how this duty and right might be enforceable, nor what steps would be enough to comply with them. The arguments that the hurt, bitterness and divisions of the past must be lanced by some sort of truth-telling process are easy to accept. They appeal to much that we know about human nature and draw on experience from other conflicts. It is much harder, unfortunately, to come up with a clear and acceptable mechanism to carry out the process. This report does not have to wrestle with that problem, however. Our only concern at present is whether there should be a reference to this kind of process in the proposed Bill of Rights for Northern Ireland. Although the draft advice on a Bill of Rights did include such a reference, an analysis of the messages given to us during the Victims’ Rights Project shows that, at the present time, in view of the lack of clarity and consensus around a possible truth process and the impossibility of developing an acceptable legal definition of “victims of the conflict”, there is little widespread support amongst the victim community for such a process to be initiated.

#### **The Right to Truth**

The right to truth can be understood as “the right to know,” that is, the right to know the truth about violations. The seeking of justice is to a large extent the seeking of truth, so it is important for a state to have a proper inquest procedure, a transparent system of criminal investigations and a willingness to disclose all relevant information. But in the context of a society attempting to move from conflict to peace the right to truth may also be said to be about a need to know the truth about the whole conflict. This would obviously include a need on the part of victims to know what happened to themselves or to their loved ones in specific instances, but it would also include a more general need for openness about the conflict in general.



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While demands for truth and accountability are made within the criminal justice system, in a post-conflict situation it may be that there needs to be some kind of suspension of the criminal justice process or an awareness that it is inadequate or inappropriate to deal with some of the incidents of the past. There may even be a need for a legal amnesty to be considered for acts committed during the conflict. It is in these situations that the concept of truth commissions or other mechanisms to establish truth and accountability comes to the fore.

There is a strong current running through international legal texts and commentaries that the establishment of truth and accountability about past conflict is important in order to prevent repetitions of human rights abuses and to strengthen the rule of law. There is also a growing amount of literature arising out of debate on the subject in Northern Ireland.<sup>1</sup>

#### *State Abuses*

The previous chapter in this report showed that international human rights and humanitarian law maintains that transgressions of human rights and humanitarian legal norms should not go unpunished. It is also clear, however, that the tendency of states is to cover up past human rights abuses committed by their own forces. Some would argue that the same thing has been true of the British state in Northern Ireland. They would like to see these alleged human rights abuses committed by the state investigated, even if individuals are not eventually prosecuted in relation to them. Others would point out that there were wholesale abuses of human rights committed by paramilitary organisations during the conflict and that no-one has been brought to account for many of them. As on so many other issues, this is a matter where the divisions underlying the conflict are also the cause for dispute over how it can be put behind us.

There are at least three reasons why it is arguable that investigations into possible state abuses are of a higher priority than those of non-state entities. The first is that any breach of the law or human rights by the organs of the state, which are themselves tasked with upholding the law and protecting citizens, is a much more devastating blow to the rule of law and people's sense of security and legitimacy than criminal acts by non-state actors, however horrendous. Second, given that the criminal justice system is the main method of protecting citizens' rights, if elements of it breach those rights, it is unlikely that its institutions will themselves be capable of adequately investigating and righting the wrongs. Special arrangements will probably therefore be necessary for the state whereas the criminal justice system should be capable of adequately investigating and punishing non-state crimes. Third, the state endures while non-state entities pass away. In Northern Ireland, in spite of many reforms, there is a

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<sup>1</sup> See, for example, Democratic Dialogue 13, *op. cit.*; Borraine, A *et al*, *All Truth is Bitter*, Victim Support Unit Northern Ireland / NIACRO; Belfast, 1999.

#### *State Abuses*





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continuity of personnel and perhaps also of culture in the institutions of the state. In contrast, the peace process holds out the hope that paramilitary organisations will disarm, demobilise and either disappear or become purely peaceful cultural or political organisations.

In practice, we now have a number of continuing inquiries into disputed actions of the state or allegations of collusion with criminal elements, the biggest being the Saville Inquiry into the events on Bloody Sunday in Derry / Londonderry in 1972. On the other hand, while many state perpetrators *were* punished during the conflict, there are many incidents involving breaches of human rights by non-state elements that remain unresolved. This was highlighted in April 2003 when Sir John Stevens published a summary of his third report into the allegations of collusion surrounding the murder of the solicitor Patrick Finucane in 1989.

#### *Uncovering the Truth in Particular Cases*

In the Commission's consultation for this research, and in the results of the questionnaires, considerable dissatisfaction was expressed in relation to the uncovering of the truth in Northern Ireland in particular cases. The hurt and anger of victims came through many of the comments made by respondents when they were expressing the denial of their right to truth. Truth may be the first casualty of war, but its demise creates considerable collateral damage, not least a lack of confidence in the justice system.

Where the victimisation incident involved a death, 85% of respondents said that an investigation had been carried out into the circumstances. It appears, though, that the other 15% of respondents were expressing a view about the adequacy of the investigation, rather than saying that nothing happened at all. Where the victimisation involved "serious physical injury or trauma" to an individual or loved-one, the percentage of those saying that no investigation took place was 32%. Amongst the reasons given were the fact that the alleged perpetrators were members of the security forces and that the victimisation was part of a general campaign of harassment. In addition, and a point worth noting, there would be no direct investigation where the victim suffered trauma as a close witness of a violent event.

When we asked victims of harassment or intimidation about investigations, 77% of them said that no investigation had taken place. Again, the main reasons given were either that the alleged perpetrators were security force personnel or that the campaign of harassment was too wide-ranging for the police to carry out comprehensive investigations. A few respondents implied that the police themselves were subject to so much intimidation that they could not operate adequately.

#### *Inquests*

Inquests are popularly seen as the opportunity for the proper public airing of the causes of a death. However, only 38% of respondents to the questionnaire for this research said that they were satisfied with the inquest process in their case. It would be a matter for comparative study to see whether this level of dissatisfaction is related to the particular limitations on inquests in Northern Ireland. Lack of



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information about the process, the inability of families or their representatives to question witnesses and the limited character of the findings pronounced by coroners were all negative aspects of inquests mentioned by respondents. One complained that *“much of what was said we did not understand.”* Another summed up much of the feeling by saying:

*I expected the family to have some input into the inquest. No consideration was given to the family or their feelings. It was cold and indifferent.*

However, another commented that *“the inquest was done very caring”*. In Northern Ireland’s post-conflict situation it is to be hoped that the recently published Fundamental Review of Inquests (covering not only Northern Ireland but also England and Wales) will be taken as an opportunity to improve the inquest system dramatically. The Commission responded to the Review’s 2002 consultation paper and looks forward to studying the Review’s June 2003 report as well as the Smith report into the Harold Shipman case (also due in 2003). Before the end of 2003 the Commission hopes to publish the results of its own research into what is amiss with the current inquest system in Northern Ireland.

#### *The Draft Advice on a Bill of Rights*

In its current draft advice on a Bill of Rights, the Commission deals with the right to truth in one of its short list of general rights for future victims. It suggests that there should be:

*the right of every victim to have the crime in question investigated thoroughly, promptly and impartially.*

In order to fully meet this aspect of the right to truth, it would also have to be read together with the right to information (see Chapter 7). At an everyday level, the practical implementation of the right to have crimes properly investigated will demonstrate the success or otherwise of a new relationship between the police and the community. Open communication and the development of a relationship of trust between the investigators and the public will be essential. The next section of this report is based on the same premise.

The Commission is in favour of a restorative justice approach to criminal activity since it believes that in many instances this will be more satisfactory from the victim’s point of view as well as the offender’s. We are currently reviewing the procedures used by the restorative justice schemes at present operating in or planned for Northern Ireland to reassure ourselves that they will comply with human rights requirements. Whether a provision on restorative justice will be included in the Commission’s final advice on a Bill of Rights has still to be decided.

The Commission has also given advice to the UK government on what principles should be borne in mind when it is addressing the issue of people who are supposedly “on the run” (OTRs). International human rights law seems to suggest, as Chapter 5 of this report indicates, that there is little or no discretion in governments to refuse to investigate killings, but that there is more leeway as





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far as prosecution and punishment are concerned. The principle of equality, however, would demand that all persons reasonably suspected of certain crimes should be treated in the same way by any scheme dealing with “amnesty” or “immunity from prosecution”.

A particular category of people who could be said to be “on the run” are those who have been forced to leave Northern Ireland by paramilitary organisations, usually because they are suspected of having perpetrated “anti-social behaviour” (the “exiles”). Ironically, there are probably more of these individuals from the Loyalist community than there are from the Republican community. The Human Rights Commission is of the clear view that all such individuals should immediately be “permitted” to return to Northern Ireland if they so wish, with no fear that they will be attacked if they do so. The rule of law demands that private justice cannot be exacted within any part of our society. The return of the exiles should not be seen as a *quid pro quo* for the return of other “on the runs”: both categories of people deserve to be allowed back. The Commission was glad to note that both categories were referred to in the proposals published as part of the two governments’ Joint Declaration on 30 April 2003.



# Chapter 7

## The Right to Justice and Information



### The Right to Involvement in the Criminal Justice System

One context in which “respect” might be given concrete meaning is that of the criminal justice process. Since the functions of prosecution, trial and punishment are taken out of the hands of victims by the state, there can be a tendency to ignore completely their interests.

Perhaps the clearest formulation of this area of rights is to be found in the statement on victims’ rights by the European Forum for Victim Services:

*The rights of victims of crime must be accorded the same priority as those of the defendant. Victims have a right to be recognised and acknowledged as having legitimate interests which must be taken into account at all stages of criminal justice proceedings.*

The statement goes on to demand protection for victims as witnesses, particularly if they are children or vulnerable adults, and the provision of legal advice and representation.

A report by a Committee of Justice lists a series of measures aimed at recognising the role of victims in the criminal justice system,<sup>1</sup> as does the Report of the Criminal Justice Review in Northern Ireland (2000). The latter’s strongest pronouncement comes in its Recommendation 228:

*The interests of victims should feature in the codes of practice and plans of all criminal justice organisations that interface with them, and in the criminal justice plan that we advocate for the system as a whole.*

Unfortunately the Justice (NI) Act 2002 does not fully implement this recommendation.

It would be fair to say that the details of victims’ engagement with the criminal justice system did not figure very highly in the discussions with victims’ and other groups conducted during the current research project. The discussion on justice was dominated by the two contrasting views: that the system was fundamentally unjust and refused to investigate crimes committed by the security forces and that the system was hamstrung in pursuing perpetrators and biased towards terrorists.

There were a number of relevant questions in the Commission’s questionnaire. One asked whether the victim had been referred to any organisation for advice or support during the criminal justice process. Only 13% said yes. Only 11% said they had been offered a separate waiting room or other facilities during the trial. None felt that their views had been taken into account at various stages of the process, such as charging, bail, sentencing or parole. However, 52% said that legal advice had been available to them.

<sup>1</sup> *Victims in Criminal Justice*: Report of the Justice Committee on the role of the victim in criminal justice (1998).



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We have to caution, however, that the number involved in our sample was small – as we have noted, in the cases of 68% of our respondents there was no legal action taken beyond investigation. It may well be that the response to our questionnaire was weighted very much towards those who felt particularly aggrieved because no formal process of justice actually followed their victimisation.

#### *The Draft Advice on a Bill of Rights*

In the Commission's draft advice on a Bill of Rights, the relevant provision in this context is as follows:

*the right...to have his or her concerns taken into account in the conduct of any relevant legal proceedings.*

The Victims' Rights Working Group Report actually suggested the following:

*Victims have a right to be recognised and acknowledged as having legitimate interests which must be taken into account at all stages of criminal justice proceedings or any other form of investigation or process.*

There is little practical difference between these formulations. In addition, however, following the European Forum on Victim Services quoted above, the Working Group Report suggested that: *"the rights of victims of crime must be accorded the same priority as those of the defendant or alleged perpetrator"*. While that may be an entirely proper aspiration, it is easy to see significant complications if it were formulated into a justiciable right in a Bill of Rights.

There can be no simple balance struck between the rights of victims and the rights of offenders, certainly not in a single case. It is part of the criminal justice system's job to reinstate and uphold the rights of the citizen – the victim – and, in so doing, it may need to use its coercive power against another citizen, the alleged offender. The rights of the individual citizen, whoever he or she is, must be defended in the face of that coercive power – otherwise the rights and liberties of all are diminished. However it is not necessarily a zero-sum game, where an increase in the rights of the victim means a decrease in the rights of the alleged offender.

There are circumstances in which helping victims can disadvantage the defendant in a criminal case – victim witnesses giving evidence behind screens or via video links, for instance. In these circumstances the necessity of these methods must be demonstrated without doubt and on a case-by-case basis, care being taken that their use is not extended merely to suit the convenience of the prosecution or state security forces.

Protecting the rights of victims within the criminal justice system by a Bill of Rights would help to underpin the practical implementation of the detailed commitments given in codes of conduct and charters of individual criminal justice agencies. But it would probably be wrong to go further and



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provide for formal equality in the Bill of Rights between the rights of victims and the rights of alleged offenders. This would be of uncertain legal effect and might encourage the mistaken view that the rights of victims and those of offenders are bound to conflict.

### The Right to Receive Information

As noted in Chapter 3, the *Basic Principles* put an obligation on the state to keep victims informed of legal proceedings. They say that the interests of victims must be facilitated by:

*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 (Principle 6(a)).*

Requesting such information is important. Victims' rights organisations are particularly keen that victims should not be forced to have more involvement in criminal proceedings than they wish. The European Forum's Statement on Rights in the Criminal Justice Process provides:

*All victims, when reporting a crime, should have the right to 'opt in' to procedures for being kept informed of all developments relating to their case – e.g. the arrest of the offender, the decision to prosecute, dates of hearings, bail, final decisions, and any release from a custodial sentence. Victims should be given clear information to enable them to opt in or out of being kept informed at any stage of the case.*

Once they have decided to opt in, the Statement then proposes full co-operation from the authorities:

*For those victims who choose to be kept informed, all information should be provided at the earliest possible opportunity, with full and clear explanations of the decisions which have been taken, the information upon which they were based and, where relevant, any legal issues which had to be taken into account. Victims should have the right to inspect the case file by appointment. As far as possible, information should be given to victims by the authorities who were responsible for the decision, as they will have clearer information about the reasons. In all cases where particular distress may be expected – e.g. a decision not to prosecute or to reduce charges in cases of bereavement, sexual assaults, domestic violence or any form of harassment – an opportunity for a personal interview should be provided, to enable them to fully understand the decision.*

The Report of the Criminal Justice Review in Northern Ireland deals in detail with the provision of information to victims. Its general position is made clear in Recommendation 236:

*[T]he criminal justice agencies in Northern Ireland should build on their existing commitments in the Code of Practice for victims, in which they undertake to provide information at various stages in the criminal justice process (although not if it is against the wishes of the victim). The provision of information should not be limited to cases that the criminal justice system might classify as 'serious'.*



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The Review goes further, however, in its concept of a “lead agency” with responsibility for liaison with victims at any given stage of the process. So, the police would take responsibility until the case was passed to the prosecutor, who would be responsible during all court processes including any appeal. After that, if a custodial sentence has been imposed, the Prison Service would take responsibility or, if a non-custodial order has been made, the Probation Service. If any diversionary or mediatory process involved the victim, the agency in charge of the process would have responsibility for keeping the victim informed.

The abandonment of a prosecution, or the decision not to begin one, is a particularly sensitive and difficult decision. Until recently the presumption was that only the most general reasons could be given for the decision, if any at all. This secrecy was fertile grounds for developing all sorts of suspicion in particular cases. The Human Rights Commission intervened in a case in 2000 (the *Adams* case: [2001] NI 1) to try to persuade the court that international best practice in this field required the giving of reasons, but the judge rejected the argument. The Criminal Justice Review recommended changing the existing practice, in general arguing that: “*the presumption should shift towards giving reasons where appropriate*”. (Recommendation 49). The government’s Implementation Plan accepted this recommendation, but with significant qualifications. In the end the Justice (NI) Act 2002 fails to impose any duty on the Prosecution Service to give reasons for refusing to pursue a prosecution. All that has happened is that the Attorney-General has made a statement in Parliament (1 March 2002) saying that the policy of the Director of Public Prosecutions has been reviewed:

*Having done so, the Director recognises that there may be cases in the future, which he would expect to be exceptional in nature, where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling reasons for not giving reasons, including his duties under the Human Rights Act 1998, the Director accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation.*

The provision of information about the release of prisoners is dealt with by the Justice (NI) Act 2002, which (in section 68) requires the Secretary of State to establish a Victim Information Scheme which will tell victims (at the very least) the month when a prisoner who committed an offence against them is due to be released and, “where reasonably practicable”, the fact that a prisoner is being considered for temporary release under prison rules. In July 2002 the Secretary of State announced that consultation was beginning on such a scheme.

Victims will have to opt in to this scheme and different arrangements may be made for different types of offender. The information may also be given to people other than a direct victim (someone witnessing a violent crime, for example) and the information may be denied if it is not felt to be in the best interests of the victim or if it places someone in danger.



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This matter of information on the release of prisoners came up in the Commission's consultation for this research project and was mentioned in the questionnaires. Some victims seem to have a particular fear of suddenly coming across the perpetrator of the crime in question in the street. That is perfectly understandable and the scheme produced under the Justice (NI) Act 2002 should help avoid this problem. The proposed scheme would build, of course, on the experience of the unit set up to inform victims of the early release of politically motivated ex-prisoners by the Sentence Review Commissioners under the Northern Ireland (Sentences) Act 1998.

The lack of any such system hitherto was highlighted by one respondent:

*Following several letters to the NIO they referred me to Victim Support. If I hadn't persisted I wouldn't have received any information from the Prison Service or NIO. Victim Support made me aware of parole dates, home visits, etc. It's unfortunate that I wasn't aware of their existence 10 years ago.*

Absence of information during the progress – or lack of it – of an investigation can be a particular grievance. The following view reported to the researcher for this report is typical:

*The family were given little to no explanation / information as to whether anyone had ever been questioned or if any new information had presented itself.*

As we have noted, in the case of many of the respondents, no legal action against any perpetrator ever took place. In over two-thirds of the cases respondents claimed that they were given no explanation for this. Of those that were, nine out of ten were dissatisfied with the explanation. We asked whether people were kept informed throughout the course of any investigation: almost 80% wanted to be, but three-quarters of those said they were not. We asked other questions about specific aspects of information but hardly any respondents felt that they had been provided with these. By any standards this is a dismal record, but again we have to remember that the numbers involved in our survey are small because in most cases no trial took place at all.

#### *The Draft Advice on a Bill of Rights*

The Commission's current draft Bill of Rights protects the right "to be informed of the progress of any relevant investigation". This may be a little limited, in that investigation is only the first part of a criminal process. The Commission's Victims' Rights Working Group suggested the following formulation:

*Victims have the right to receive continuing information about any investigation, enquiry or other judicial proceedings arising out of the circumstances of their victimisation.*

This wording does, however, omit to highlight the right of the victim *not* to receive such information and it is clear that this is an important point for victims.



### The Right to Give Information

While the provision of information to victims about criminal proceedings that concern them is widely felt to be a proper humanitarian process, there is more sensitivity about victims putting information into the system. This raises fears of undue influence on the purportedly independent and objective criminal justice system by those who are inevitably emotionally engaged in the particular case.

Nonetheless, the principle that the victim's voice should be heard is enshrined in the *Basic Principles* (see Chapter 5). Principle 6(b) says that the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

*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.*

Victims' rights organisations have increasingly raised the importance of the victim's viewpoint being taken into account at appropriate stages of criminal proceedings. For victims, there are two points in a judicial process that are most significant. The first is the process of investigation and the decision on prosecution. The second is the point at which the sentence is decided.

The Statement of Rights in the Criminal Justice System, published by the European Forum for Victim Services, gives a cogent argument and detailed suggestions for how victims should be facilitated in giving information. It is worth quoting in full:

*Victims frequently feel that they have information which is ignored by the authorities because it does not form part of the specific evidence needed to prove the case. This problem may be less acute in an inquisitorial system of justice. In all jurisdictions, victims should be able to provide information, in their own words, directly to the police and prosecution services who are responsible for decisions.*

*The information may include the extent of the financial, physical or emotional damage caused by the crime, the existence or otherwise of any prior or continuing relationship with the offender, and any fears for personal safety or intimidation from the offender. Victims should be free to include any information they wish, although they should recognise that the information will be disclosed to the defendant and can be challenged if necessary.*

*The purpose of the statement should be to:*

- *ensure that the victim has a right to be heard,*
- *provide information needed for any award of financial compensation,*
- *alert the authorities to any continuing risk to the victim which could affect release from custody,*
- *enable the professional parties involved to take the victim's interests into account at any stage at which the public interest may be relevant to a decision,*



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- *inform the prosecutor about the wider circumstances of the case, which may alert him to potential secondary victimisation during the management of the case both before and during the court hearing,*
- *provide the prosecutor with information which could be used to refute misleading statements made by the defence,*
- *enable the prosecutor to provide additional relevant information to the court - for example, prior to sentence.*

The implication of these formulations is that all contact by the victim with the process will be via the police and/or prosecutor. There is an alternative view that victims should have the right to make a “victim impact statement” in person, in court.

The Criminal Justice Review in Northern Ireland considered these matters. With regard to sentencing, it noted that there were potentially a number of risks if victims became more involved. For example, a statement made before sentencing would be evidential and a victim could be cross-examined about it. There might also be perceptions of inequity if the accounts of vengeful or, perhaps, forgiving victims were given undue weight. In the end, the Review put the onus on the prosecutor to ensure that all relevant evidence, including the views of victims, is put before the court. It is likely that that will not be satisfactory as far as most victims are concerned.

Consultation between the prosecution and the victim was also felt to be problematic by the Criminal Justice Review. It saw three possible dangers: victims might seem to be required to take decisions that are properly for the authorities, they might develop unrealistic expectations and, if they are to be witnesses, consultation might be held to be prejudicial. The Review concluded, in Recommendation 238, that:

*wherever possible victims should be informed and consulted about the development of their cases. But when and how to consult them, particularly those who are witnesses, must be a matter for the professional judgement of the prosecutor.*

The Review felt that this general principle should especially apply where the prosecutor is considering varying or dropping a charge. The government’s Implementation Plan for the Review accepts this recommendation in principle but without any obvious enthusiasm. The DPP and the police will consider all these matters and, as for timescale, the document says that “*Existing practice will continue to be developed*”. Again, therefore, we should probably not expect anything dramatic in the near future. The Justice (NI) Act 2002 is silent on these aspects of victims’ rights.

The issues were discussed in the consultation for this research project, but there were few specific suggestions made by respondents. In the questionnaire the Commission asked respondents whether they had had the opportunity to provide their own information about their case; only a third said they had. This might well be an area in which the views of victims might be sought more widely and systematically.





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## The Right to Justice and Information

### *The Draft Advice on a Bill of Rights*

The Commission's current draft Bill of Rights does not refer specifically to the right to give information. It is meant to be subsumed within the right to "have their concerns taken into account". This might appear a little weak, but on the other hand it is questionable whether the right to give an impact statement should be in a Bill of Rights rather than in appropriate specific legislation.

### **The Right of Access to Justice**

In many ways, this is the most fundamental right that victims are entitled to. If a victim is a person whose rights as a citizen have been infringed, then it is the duty both of the state and of his or her fellow citizens to take action to make recompense and to prevent further violations.

Historically, the process of the state taking over responsibility from the victim for identifying and punishing offenders has been seen as a vital constituent of progress and the foundation of the criminal law. The statement of the European Forum for Victim Services on "Victims' Rights in the Process of Criminal Justice" declares that this aspect is a basic right of victims. It says:

*Throughout Europe, the State has assumed responsibility for prosecuting the offenders and has removed from the victim the burden of responsibility for determining any action to be taken in respect of the offender. The acceptance of responsibility by the State should be recognised as a fundamental right of victims of crime, and no attempts should be made to erode this by returning the responsibility for decision making to victims.<sup>1</sup>*

This position was also held by the Criminal Justice Review in Northern Ireland, whose report was published in March 2000. The Review Report noted that there is no requirement:

*that victims should have to take decisions about what should happen to offenders or about how cases should be progressed or, in particular, whether there should be a prosecution.*

The organisations Justice<sup>2</sup> and Victim Support<sup>3</sup> agree with this line. This led the Human Rights Commission's own Victim's Rights Working Group to recommend a substantive right:

*Victims have the right not to participate in any decision on the future of the perpetrator.*

<sup>1</sup> The European Forum for Victim Services was set up in 1990 to promote the development of effective services for victims of crime throughout Europe. Its Secretariat is at Cranmer House, 39 Brixton Road, London SW9 6DZ; tel: 020 7735 9166. It has issued three documents on victims' rights: *Statement of Victims' Rights in the Process of Criminal Justice* (1996), *The Social Rights of Victims of Crime* (1998) and *Statement of Victims' Rights to Standards of Service* (1999).

<sup>2</sup> *Victims in Criminal Justice*, Report of the Justice Committee on the role of the victim in criminal justice (1998).

<sup>3</sup> *The Rights of Victims of Crime*, Victim Support; London, 1995.



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This does not, of course, impair the right of victims to give information – including about the impact of the crime upon themselves – during judicial proceedings. Nor does it prevent a victim taking part in mediative processes that may involve deciding an offender’s future. It does mean, however, that victims should not be pressured in any of these directions.

In the consultation for this research, this was also widely recognised as a basic right of victims. The main complaints about its denial referred either to security force involvement or to the fact that no-one had been tried and convicted for an offence. In the questionnaire, the Commission asked whether any further legal action, beyond investigation, was taken arising out of the victimisation. Some 68% of the respondents said that no further action was taken. In every single case the respondents felt there should have been a prosecution. Overall, of those who answered the relevant questions, only 9% felt that someone had been held accountable for the injury done to them. Of the relatively few who answered the relevant question, only 20% thought that the criminal proceedings they were involved with were quick and only 10% that they were fair. This last figure is particularly worrying.

These responses are, of course, not necessarily representative of the totality of victims’ experience, yet they do demonstrate how many dissatisfied, unreconciled victims there are out there. Whatever the disparate and justifiable reasons, it is clear that the criminal justice system of Northern Ireland has failed many victims, at least in their own eyes.

#### *The Draft Advice on a Bill of Rights*

The most relevant provision in the Commission’s draft advice on a Bill of Rights is as follows:

*the right of every victim to obtain redress by way of restitution or compensation through formal or informal procedures that are expeditious, fair, inexpensive and accessible.*

There may be some weaknesses in this formulation. It refers only to restitution or compensation and fails to mention the finding of guilt and possibility of punishment, both of which should be decided by an independent as well as a fair tribunal. But it is surely the proper course to ensure that this basic right of victims is included in the Bill of Rights? It is the other side of the coin to the right to a fair trial and should be given equal prominence. There is clearly a need to rebuild confidence among victims in the criminal justice system.

That law and practice concerning victims’ rights in the criminal justice system are still in the early stage of development is clear from a valuable article recently published by Jonathan Doak of the University of Ulster. He concludes it by saying:

*In spite of the inherent difficulties in domestic adversarial processes, the international redefinition of ‘victims’ rights’ as ‘human rights’ marks a tremendous leap forward, both for victimology and human rights discourse, and, of course, for crime victims themselves. The task of giving comprehensive effect to these rights is yet to be fully accomplished, but it is hoped that national, regional and international*





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*tribunals and policy-makers will continue to build upon current trends. If they do, this will go a long way to giving victims the opportunity to enforce rights through legal mechanisms, as opposed to having to rely on non-binding standards, principles and guidelines. Providing victims with effective access and sufficient protection within the criminal process is vital for the framing of a holistic criminal justice policy both at national and international level.*<sup>1</sup>

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<sup>1</sup> “The victim and the criminal process: an analysis of recent trends in regional and international tribunals” (2003) 23 *Legal Studies* 1.



# Chapter 8

## The Right to Assistance, Compensation and Restitution



### The Right to Assistance

Every relevant form of assistance should be available, either directly from public authorities or through publicly funded organisations. This should include specialist victim support services but there should be obligations placed on all institutions that come into contact with victims.

In Chapter 5 there is a list of the various forms of services and provision that governments should ensure, taken from the *Basic Principles*. The European Forum for Victim Services lists in detail many relevant forms of assistance in its *Declaration on the Social Rights of Victims*. That Forum also publishes a *Statement of Victims' Rights to Standards of Service*, which is effectively a guideline for victim support organisations.

The Commission's Victims' Rights Working Group proposed a detailed formulation of this right:

*Victims have the right to the highest possible level of social care in accordance with their needs, particularly in the areas of provision of advice and information, access to health care, income support, security in the home, employment, training and education. All social agencies have a duty to give priority to their victims in their operations and deliver sensitive and respectful care.*

The Commission's consultation for this research showed that there was a great deal of dissatisfaction about the level of services that have been provided during the conflict. On the whole, people had little complaint about the formal services they may have come into contact with, such as the health service, but they perceived little or no specialist help for victims. It is true that, with some exceptions, there was little specialist provision during most of the conflict. Only as the "peace horizon" began to appear were specialist groups set up and did general victims' organisations begin to work more closely with victims of the troubles.

The Commission's survey showed the usual depressing results. Less than 30% of respondents felt that they were able to get organisations or services to help them and their family. Some of the reasons given were:

*There were no victim support groups. Victims were just left to get on with it.*

*The only people who helped us were neighbours, friends and family.*

*There were no groups available in those days.*

*Didn't know there was help available except for my GP.*



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Those who did report receiving help tended to echo the view that there was less available in the past but they were fulsome in the praise of those organisations that had come through for them recently. However, not one of our respondents was prepared to say that they were given enough information about their rights and how to use them. Again, less than 15% felt that their needs were taken into account when services and assistance were provided to them.

Unlike most of the other subjects dealt with in this report, this one is relatively straightforward. Society has an obligation to help victims; we did not do this well during the conflict and, although things are now better, future assistance should be guaranteed. The Commission's current formulation in its draft advice on a Bill of Rights uses similar wording to that of the Working Group suggestion cited above, but restricts it to victims of the conflict. The Commission is currently considering whether to apply the formulation to all victims.

#### **The Right to Compensation**

This is one of the most fraught and sensitive issues for victims themselves. There may, of course, be actual poverty and hardship if compensation levels are insufficient, but that is not the main grievance of victims. They hate the idea that they may be seen to be grasping for money at a time, for example, of bereavement. Inevitably, the amount of compensation is seen as putting a value on a loved one's life or on one's own incapacity. The matter exacerbates the divisions of the conflict with an inevitable perception that the "other side" gets better treatment.

It helps if we see the issue of compensation as part of a broader process of recognition and support of victims. A demonstrably caring framework might take some of the spotlight off the cash nexus. This was put well in a passage in a Victim Support publication a few years ago:

*Policy and practice on compensation should not be considered in isolation from policy and practice relating to other forms of recognition. Not all of these are matters for the state or the government: they are also matters for individuals, employers, providers of services, and statutory and voluntary agencies of many kinds.*

*The government does have important responsibilities which include not only funding and providing for the administration of a state compensation scheme, but also promoting an awareness of victims' issues in all the services and agencies for which it has responsibility (health and social services, social security as well as the various criminal justice services), providing support and funding for victims' services, and overseeing the legislative and administrative framework in which the relevant functions are performed. None of these should be neglected or overlooked.<sup>1</sup>*

<sup>1</sup> *Compensating the victim of crime*. Report of an independent working party, Victim Support, London, (1993).



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This position is also taken up by the European Forum's Statement on Social Rights:

*While financial compensation is often the only redress for victims available within the legal system, money alone can rarely offer a complete solution to the problems and distress caused by crime. Compensation should therefore take account of the social and psychological needs of the victims and their families by providing help in dealing with the many administrative and legal procedures which victims have to cope with.<sup>1</sup>*

In the consultation conducted as part of this research there was a general feeling of dissatisfaction around compensation issues. We were told many anecdotes where the deep grief of victimhood was compounded by the experience of claiming compensation. One told of a widow being asked how much she spent on food and clothing for her dead husband and the deducting of these amounts from her compensation. Another said bluntly: *"My sister-in-law and niece received £11,000 for watching a husband and father gunned down in front of them"*. One person described a woman who had been badly injured in a bomb explosion and was said to be so upset at her examination that she settled in court for a sum less than appropriate for her serious level of injuries. Another woman told her story of having her chest examined by two barristers before her case went to court.<sup>2</sup> The latter kind of complaint became public in August 2002 and as a result the Minister for Victims, Des Browne MP, asked Professor Des Greer of Queen's University to undertake a review of current practice in the area. The Human Rights Commission commented on a draft of Professor Greer's report and the final version was submitted to the Minister in March 2003. It indicates that various changes have been made to pre-existing practice to ensure that greater privacy is guaranteed to persons who need to be examined by lawyers for legal purposes.

Another respondent to the Commission's survey commented:

*The stock civil service [position] is that no amount of money can give you compensation for the loss of a child – and it would be an insult to offer it. Compensation of some reasonable amount would have made life easier and meant that I did not have to return to work a week after his death!*

Some important themes came through during the consultation:

- Needs change over time. It was suggested that all compensation cases should be reopened for retrospective examination and possible further compensation. As people get older, their needs change and their bodies have to cope with the onset of ageing as well as their chronic injuries. It was suggested that there should be a review of compensation awards every five years to facilitate these changes.
- The effect on victims' children has been underestimated. Compensation should try and replace the start in life that a deceased parent might have given as well as recognising the trauma and disruption caused. Finance set aside for the education of orphaned children was often said to be inadequate for their needs.

<sup>1</sup> European Forum for Victim Services: *The social rights of victims of crime*. London, 1998.

<sup>2</sup> In August 2002 there were further revelations along these lines. They generated much public disgust that the system could be so apparently insensitive.



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### The Right to Assistance, Compensation and Restitution

- The degree of closeness to a person killed in order to be regarded as a victim was felt to be arbitrary. “*Is a sister not close?*” asked one person.
- Many farmers had had to leave their farms because of intimidation and fears for their own and their families’ safety. At the time, they sold their properties in haste, often not getting the full market value. Then they had to purchase new farms. They did not claim for compensation at the time. They have found that they are not entitled to compensation and are consequently angry. They feel that their psychological stress at the time and their loss of property is not being recognised.
- Compensation should take into account the broad range of the individual victim’s needs, not simply loss of earnings. If restitution is seen as a semi-private arrangement between one individual and another, then the amount to be paid is the amount calculated to be lost. So the death or incapacity of an individual with high earnings would be “worth” more than that of someone with low income. That is widely held to be unacceptable, at least where state compensation is concerned. Making good the loss should look towards the all-round life chances of the survivor and how they might be assisted, rather than to the particular loss of earnings involved.
- There are anomalies regarding the position of victims’ families living in Great Britain. It is apparently the case that if a British soldier is killed in Northern Ireland his or her family living in Great Britain is not compensated to the same extent as they would be if the killing had occurred in Great Britain, even if the incident in Great Britain were connected with the conflict in Northern Ireland.

We asked our respondents whether they had received compensation from the state. In cases of death or serious injury, almost half reported that they had. In contrast, only 16% of those who had suffered intimidation or harassment had received financial compensation. Of those who did receive compensation, only 12% thought it was adequate.

#### *The Draft Advice on a Bill of Rights*

The Commission does not think it is appropriate for a Bill of Rights to go into great detail about the respective responsibilities of a perpetrator and the state as far as compensation is concerned. However, it might be best to be clearer about the overall responsibility of the state to guarantee proper compensation, based on the individual needs of a victim, rather than on the basis of a calculation of loss of earnings. There is much to be said for the formulation devised by the Commission’s Working Group on Victims’ Rights:

*A victim...has a right to full and speedy compensation from the state, calculated on the basis of need, rather than loss.*



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### The Right to Restitution

The use of the terms “restitution” and “compensation” are not particularly consistent in legal and other texts. The former can perhaps best be used to represent the process of the *offender* making good the harm done and the latter to mean the responsibility of the state to back up or replace the offender in this action. The *Basic Principles*, in Principle 8, puts primary responsibility on the offender:

*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 victimisation, the provision of services and the restoration of rights.*

In Principle 12 the *Basic Principles* go on to suggest that the state’s responsibility is as a safety net:

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

This tendency to look first towards the perpetrator and only afterwards towards the state is repeated in the European Forum’s Statement on Rights in the Criminal Justice process. Only in the case of victims of violent crime is it insisted that the state act first and quickly:

*In cases of violent crime, victims should receive compensation from public funds for their injuries, emotional distress, loss of earnings and loss of maintenance as soon as possible after a crime has occurred, regardless of whether or not an offender has been identified.*

*Where death has occurred, compensation should be paid for loss of dependency, funeral expenses and for bereavement for those most closely related to the victim.*

The Commission’s Victims’ Rights Working Group Report insisted on a separate right to restitution from the offender, but the Commission’s draft Bill of Rights simply refers to “*the right of every victim to obtain redress by way of restitution or compensation*”. The Commission still needs to consider in more detail where and how the responsibility of the state should back up, replace or supersede that of the offender. It commented on the draft Order which became the Criminal Injuries Compensation (NI) Order 2002 and it remains unhappy at some of the provisions contained in that legislation. Again, though, some may think that a Bill of Rights may not be the most appropriate place to provide for this matter.



## Chapter 9

### The Right to Protection, Equality and Privacy

#### The Right to Protection

It is well understood that the experience of victimisation damages or destroys a person's sense of personal security. This is deeper than a simple fear of repetition of the offence; it can distort a person's whole perception of the way he or she relates to the surrounding world. A constant sense of insecurity and a lack of trust in those around one can be a most debilitating feeling.

The difficult circumstances in which Northern Ireland finds itself – trying to emerge from decades of conflict through a consensual peace process but where deep divisions and serious violence still exist – can make this feeling particularly intense. Especially where no specific perpetrator was identified or brought to justice, people tend to feel that society has failed to give them the sense of basic security they are entitled to.

The uncertainty of the peace process, with all the change that it involves, makes matters worse. At least during the conflict, people who felt beleaguered, whether by state or non-state forces, could achieve a certain level of defensive security by cleaving to those in a like situation. That could produce the psychological and emotional – if not always physical – safety of shared adversity and a common outlook. Now, new institutions are being created, old ones changed out of all recognition and political society is talking about looking forward, not back. Many feel bereft of justice and that their “cause” has been forgotten and devalued. Underlying many of the emotions this situation gives rise to there appears to be a deep sense of insecurity.

As with virtually every other theme this report has tackled, this insecurity gets coloured by the individual's personal view of the conflict. So, some of those on the unionist side tend to see “terrorists” being released from prison and “their” police force being dismantled as evidence that their cause is belittled and their protection gone. Some of those on the nationalist side tend to see the chances of bringing state perpetrators to justice dwindling and find the call to “trust” the new police service disingenuous.

There appears to be little in the international legal texts that directly addresses a right to protection or security. Governments are enjoined to prevent repetitions of victimisation both by pursuing perpetrators and instituting reforms, where relevant. This is a way of interpreting the right to protection. In this context the question of amnesty or the effective non-pursuit of past perpetrators arises. We have dealt with this from the point of view of the right to truth (see Chapter 6), but we must at least acknowledge the legal position here too.

International law appears to say at the moment that crimes such as torture, involuntary disappearance and summary execution should not be subject to amnesty. But the texts in question are designed to deal mainly with the repressive actions of states. In a violent political conflict where that aspect was, at most, only part of the story, the situation is bound to be more complicated. Virtually all serious offences committed by all sides in the conflict fall into one or other of these categories. A strict application of international standards would therefore offer a prospect of legal conflict for many years to come.



## Chapter 9

### The Right to Protection, Equality and Privacy



This area received some of the strongest responses in the Commission's questionnaire. 78% of our sample said they did not feel secure in their personal safety and 70% said they did not feel their families were secure. Again, 70% of respondents felt they were restricted in terms of place, activities, friendships and movement through their victimisation. Of course, as before, we have no way of knowing if this reflects the feelings of victims of the troubles in general, but the results are nevertheless worrying.

It is worth quoting some of the statements made to the Commission to give a flavour of the depth of feeling on this issue:

*How can you feel safe when it is the forces of 'law and order' – those who are supposed to keep you safe – who are making you feel insecure and unsafe.*

*I was targeted myself by terrorists. My movements were being watched and for personal security reasons there were places I could not go to. My whole way of life was restricted.*

*On quite a number of occasions the Royal Marines came to our house asking to speak to my father. No matter how many times they were told he was dead, they still came back. How could we feel safe when these are supposed to be the people protecting us?*

*We have been threatened because we speak of innocent victims. With prisoners being released, we now have a culture of organised crimes and lawlessness.*

*As there was never anyone convicted for these crimes – I still feel that they are out there and can strike again. They know us – but we don't know them. I have lost friends over these incidents.*

*Family members were restricted in what they did, when they did it. Our freedom of movement was restricted, especially whenever we wanted to socialise. We were all very wary of new friendships, as everyone had to be treated with suspicion. We never disclosed to people where we were planning to attend and with whom.*

*I/we have been forced to stay within our own community and circle of friends because it is safer to do so. People locally understand.*

*You are afraid because the State forces know your name and where you live. You feel vulnerable because they can give this information to the Loyalists.*

*Because the terrorists (IRA) have not decommissioned their weapons, we as a family unit still feel under threat and very uneasy. We still imagine that we are still a target for them.*

*I just feel safe with myself.*



## Chapter 9

### The Right to Protection, Equality and Privacy

One of the conclusions that we must draw from the evidence collected is that victims' sense of security is directly related to their perception of whether perpetrators have been held to account. It is also related to whether they feel that the institutions or communities from which alleged perpetrators came have changed or remain a threat.

The question of amnesty for convicted or alleged perpetrators of wrongs committed during the conflict is one of the most complex and controversial in Northern Ireland politics. At the present, no formal amnesty exists for anyone but there are aspects of the overall peace process that point in that direction. The release of prisoners is one of the most obvious, although they are released on licence and retain their criminal convictions. Immunity given to witnesses at processes such as the Saville Inquiry into Bloody Sunday constitutes a form of amnesty, as will any immunity from prosecution given to "OTRs" (people "on the run" from investigations, prison or remand). It can also be argued that the lack of any mechanism other than *ad hoc* inquiries to investigate alleged past misdeeds by security forces amounts to *de facto* amnesty for them.

So, do these moves amount to an abuse of the rights of victims to justice in general and to protection in particular? Or are they part of a process of "promotion of human rights" and "consolidation of democracy", and so, acceptable under international law? How to answer these questions has to be a matter of political judgment. For the time being the Commission thinks it can say that the *intention* is that such elements are designed to be part of a process that builds a new, democratic, inclusive society within which the human rights of all are better protected.

However, international law is clear that amnesty cannot be granted for grave human rights violations. Indiscriminate killing of civilians, summary executions and torture – in barracks or back alleys – have all been features of our conflict. Some were carried out by the state, but by far the most were carried out by paramilitary organisations who claimed to be fighting a war of some kind. Does this fact rule out the kind of processes tending towards amnesty noted above?

It is not the purpose of this report to answer that question, but to raise it because of its direct relevance to victims. However, it might be arguable that the international texts should be glossed by reference to Protocol II of the Geneva Convention, which this report discusses in Chapter 3. That Protocol effectively offers the protection of the "laws of war" to combatants in intra-state conflicts. In "legalising" open warfare it also, however, imposes the absolute obligation to respect human rights and humanitarian norms. From a legal perspective, the conflict in Northern Ireland has been framed in the context of criminal law, however distorted, rather than the Protocol II version of the laws of war. It would be strange then, at this point, to insist on the illegality of amnesty – arguably relevant only to war or Protocol II conflicts – at a point when using it might help us out of a conflict, away from human rights abuses and towards the avoidance of further victimisation.



# Chapter 9

## The Right to Protection, Equality and Privacy



### *The Draft Advice on a Bill of Rights*

It is difficult, if not impossible, to summarise this complex mix of legal and political opinion, involving an assessment both of the character of the past conflict and of the present peace process, in a precise statement in a Bill of Rights. People's perception of whether their erstwhile enemies remain a threat is not susceptible to the provisions of a legal document. It is only in the process of building a new, harmonious society that the deep sense of fear and hurt expressed in the quotes above can begin to be assuaged.

We would, of course, distinguish the deep, emotional sense of insecurity that we have engaged with in this section, from practical issues of personal security. We believe it right that victims receive all practicable and reasonable assistance in providing for their personal security in the home. Clause 8(a)(2) of the draft advice on a Bill of Rights tries to deal with this by providing:

*All victims of the conflict have the right to the highest possible level of social care and support in accordance with their needs, particularly in respect of personal security and access to health care, income support, employment, training and education and for those purposes to be protected from any unfair or discriminatory treatment.*

It is worth noting that the Northern Ireland Human Rights Commission is seeking through other channels to improve law and practice concerning the protection of people against threats to their lives.

### **The Right to Equality**

It is not easy to assess the extent and seriousness of any discrimination against victims that arises purely from the status of victimhood itself. In its survey the Commission did not ask any questions about this issue and it arose during the consultation only in the context of a person's relationship to the conflict, as described below. The international legal literature does not appear to take specific notice of the issue. Nonetheless, the Commission's draft advice on a Bill of Rights states, in its chapter on discrimination and equality, that:

*the Commission has been made well aware that in Northern Ireland victims of crimes are often put at a disadvantage when, for example, they seek employment or access to social services and public facilities.*

There are a number of ways in which discrimination can arise out of victimhood. First, it can result from a particular relationship to the conflict. So, for example, an injured member of the security forces comes to public attention as such when, in the process of claiming any rights or services, he or she has to reveal the circumstances of his or her victimhood. An injured paramilitary combatant faces the same situation. A direct and official form of discrimination is the refusal or reduction of compensation to people injured during the troubles who had convictions relating to it.<sup>1</sup>

<sup>1</sup> See, e.g., art. 10(3) of the Criminal Damage (Compensation) (NI) Order 1977.



## Chapter 9

### The Right to Protection, Equality and Privacy

It is clear that, if any discrimination does take place, it is as a general consequence of official and community attitudes to the conflict rather than to victimhood in general. Nonetheless, the occasion for discrimination arises because of victimhood.

Second, and allied to the first, the fact of victimhood may lead to a person's identification, rightly or wrongly, as some kind of offender. Young people who have been maimed by paramilitaries, for example, may be perceived as "hoods," and so be discriminated against. Victims of sexual assault are often re-victimised in this way too.

Third, victims may anyway be members of disadvantaged or socially excluded groups or, more generally, belong to categories recognised as possible targets for discrimination. This may make them particularly vulnerable and the fact of victimhood may provide the occasion for them to be discriminated against when they require specific goods or services. If victimhood is "the negation of citizenship" then those whose citizenship might already be seen as second class will be doubly disadvantaged.

Fourth, the circumstances of his or her victimisation may bring a person into a disadvantaged group. Tragically, it may make them disabled or affect their marital status or whether they have dependent children. It might be argued that society has a particular responsibility to those who have been so disadvantaged through the actions of others, amounting to a breach of their rights as citizens. It is presumably the case, however, that such a responsibility could not be exercised by providing facilities or services in excess of what could be accessed by "ordinary" members of the disadvantaged group. That should not stop private or voluntary groups, for good and specific reasons, from specialising in giving support to victims of various kinds. Nor should it stop public authorities from carrying out their duties under section 75 of the Northern Ireland Act 1998, whereby they must have due regard to the need to promote equality of opportunity between various different sectors of society in Northern Ireland.

In general, victimisation is usually seen as a secondary ground of discrimination. It arises when one is treated differently because one has alleged discrimination in the past. But victimhood can also be a primary ground of discrimination. It can therefore do no harm, and might clarify some situations, to include the status of victim as a ground of discrimination.

The Commission believes that that is the right way to handle the issue – as a sub-category of discrimination, rather than as a sub-category of the rights of victims. It has therefore included "status as a victim" in the non-discrimination clause in its draft advice on a Bill of Rights. The Commission would also like this included in the forthcoming Single Equality Bill.

#### **The Right to Privacy**

The feeling of the need for privacy is, perhaps, a distinct issue. Nonetheless, an invasion of privacy is a failure of protection and does lead to insecurity. Again, this is an issue for all victims, with particular issues arising in the case of sexual abuse and some other forms of violence.



# Chapter 9

## The Right to Protection, Equality and Privacy



In terms of international law, the *Basic Principles* contain the general injunction on states to ensure the privacy and security of victims. The European Forum for Victim Services' *Declaration on the Social Rights of Victims* contains a detailed section on protection of privacy. Its basic theme is that victims' privacy must be protected through responsible journalism, backed up by a code of practice, and confidentiality protocols in public institutions. In general, of course, privacy for victims has to be set against the principle of public justice. The Commission's Victims' Rights Working Group Report suggested the following provision:

*Subject to the principles of justice and the public interest, victims have a general right to privacy. In particular they have:*

- *the right to withhold their place of residence from defendants and the public,*
- *the rights to claim or decline anonymity in respect of the publication of their names, and*
- *the right to challenge the particular publication of any image or description of the circumstances of victimisation.*

For victims of the troubles this issue may more directly relate to the question of security. Publicity about a victim can lead quite directly to danger during and after a conflict.

In the Commission's survey, only 15% of those that answered the question "felt that their privacy had been respected" at the time of victimisation. We should note, however, that this question was asked only of those who had suffered the death of a loved one, so the issue may be particularly sharp for such people.

The police and the media seem to be the targets of people's resentment in this area. One comment was "*the media was given information about my brother from the police*". Another was "*the media hounded and tried to discredit our family and our dead loved ones*".

We cannot know the accuracy of these perceptions in individual cases, nor can we know how widespread they are. All we do know is that a large majority of the relatives of people killed in the troubles who answered the Commission's question felt their privacy had been invaded.

### *The Draft Advice on a Bill of Rights*

The question of privacy again involves a weighing of competing rights and interests. On the one hand, victims' privacy needs to be protected, but on the other society has interests in public justice and a free, investigative press. However, we think that the general principle could be stated in the Bill of Rights. In addition to the existing formulation of various rights, some wording such as "*subject to the principles of public justice and a free press, victims have the right to privacy*" might be appropriate.





## **DRAFT BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW**

**(Final report of the Special Rapporteur, Mr Cherif Bassiouni, to the UN Commission on Human Rights, March 2000)**

*The Commission on Human Rights,*

*Pursuant to Commission on Human Rights resolution 1999/33 of 26 April 1999, entitled "The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms", in which the Commission took note with appreciation of the note of the Secretary-General (E/CN.4/1999/53) submitted in compliance with resolution 1998/43 of 17 April 1998 and the report of the independent expert (E/CN.4/1999/65),*

*Recalling resolution 1989/13 of 31 August 1989 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission decided to entrust Mr. Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, which was contained in Mr. Van Boven's final report (E/CN.4/Sub.2/1993/8) and which resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex), and resolution 1994/35 of 4 March 1994 of the Commission on Human Rights in which the Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation,*

*Recalling the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,*

*Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples' Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,*

*Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,*





*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Recalling* resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled "Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", as well as Council resolution 1990/22 of 24 May 1990, entitled "Victims of crime and abuse of power",

*Noting* that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that "the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law",

*Noting with satisfaction* the adoption of the Rome Statute of the International Criminal Court on 17 July 1998 which obliges the Court to "establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation" and obliges the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented point of departure, the community, at local, national and international levels, affirms its human solidarity and compassion with victims of violations of international human rights and humanitarian law as well as with humanity at large,

*Decides* to adopt the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law as follows:

## I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

1. Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, inter alia:
  - (a) Contained in treaties to which it is a State party;



- (b) Found in customary international law; or
  - (c) Incorporated in its domestic law.
2. To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:
- (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
  - (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
  - (c) Making available adequate, effective and prompt reparation as defined below; and
  - (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

## II. SCOPE OF THE OBLIGATION

3. The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, inter alia, a State's duty to:
- (a) Take appropriate legal and administrative measures to prevent violations;
  - (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
  - (c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
  - (d) Afford appropriate remedies to victims; and
  - (e) Provide for or facilitate reparation to victims.

## III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

4. Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.





5. To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

#### IV. STATUTES OF LIMITATIONS

6. Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.
7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

#### V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is "a victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.
9. A person's status as "a victim" should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

#### VI. TREATMENT OF VICTIMS

10. Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.



## VII. VICTIMS' RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim's right to:
- (a) Access justice;
  - (b) Reparation for harm suffered; and
  - (c) Access the factual information concerning the violations.

## VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:
- (a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
  - (b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
  - (c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.
13. In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.
14. The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

## IX. VICTIMS' RIGHT TO REPARATION

15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.





16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.
17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.
18. In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.
19. A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.
20. In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

## X. FORMS OF REPARATION

21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.
22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.
23. Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:
  - (a) Physical or mental harm, including pain, suffering and emotional distress;
  - (b) Lost opportunities, including education;



- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity; and
- (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

24. Rehabilitation should include medical and psychological care as well as legal and social services.

25. Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;
- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial or administrative sanctions against persons responsible for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- (i) Preventing the recurrence of violations by such means as:
  - i. Ensuring effective civilian control of military and security forces;
  - ii. Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
  - iii. Strengthening the independence of the judiciary;





- iv. Protecting persons in the legal, media and other related professions and human rights defenders;
- v. Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
- vi. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
- vii. Creating mechanisms for monitoring conflict resolution and preventive intervention.

## XI. PUBLIC ACCESS TO INFORMATION

26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

## XII. NON-DISCRIMINATION AMONG VICTIMS

27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.



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

Adopted by General Assembly resolution 40/34 of 29 November 1985

#### *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 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.



### 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.





## **EXTRACTS FROM COMMONWEALTH BEST PRACTICE GUIDELINES - GUIDELINES FOR THE TREATMENT OF VICTIMS OF CRIME (2002)**

### *Background*

In July 2002 an expert group (including a representative from the Northern Ireland Human Rights Commission) was convened by the Commonwealth Secretariat's Human Rights Unit and met at Marlborough House in London. It was tasked with drawing up "Best Practice Guidelines for the Treatment of Victims of Crime". It comprised members from developed and developing countries and large and small jurisdictions from around the Commonwealth. They were assisted by officers of the Human Rights Unit of the Commonwealth Secretariat.

Whilst the Guidelines have no binding legal effect, they represent a commitment by Commonwealth countries to the principles stated therein and set out a model legal and administrative framework that emphasises the structural similarity of the treatment of victims of crime in member states.

### **PART 1 - FUNDAMENTAL PRINCIPLES**

- 1.1 In these Guidelines, "Victims of crime" (also called "Victims") are defined as "Persons who have suffered harm, including physical or mental injury or trauma or economic loss through acts or omissions that are in violation of the national criminal law. These include dependants and members of the immediate family of the direct victim". A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.
- 1.2 Commonwealth countries recognise the historical neglect of the rights and interests of victims of crime.
- 1.3 Commonwealth countries should include in their national constitution or legislation appropriate measures for the protection of victims of crime.
- 1.4 All agencies within the criminal justice system must observe the rights of victims of crime.
- 1.5 The rights of victims of crime should not conflict with the rights of the accused.
- 1.6 The rights of victims of crime should include:
  - to be treated with courtesy, respect, fairness and dignity
  - to offer information and to be heard
  - to receive information
  - to privacy and protection
  - to assistance
  - to an effective and efficient investigation of the crime
  - to timely processing of criminal proceedings following the arrest of the accused.



- 1.7 Commonwealth countries should develop a “Charter of Victim’s Rights” that should be made widely available.
- 1.8 Relevant government policies should support the rights of victims of crime. Where appropriate, governments should conduct impact assessment exercises in relation to policies that affect or may affect victims of crime.
- 1.9 Parliamentarians should consider the impact of any proposed legislation on victims of crime
- 1.10 There is a need to develop effective victim support programmes.
- 1.11 States should implement these Best Practice Guidelines, amongst other things by providing adequate training and sensitising of all officials of criminal justice agencies to the needs of victims of crime.
- 1.12 There is a need to avoid procedural abuses and shortcomings in the criminal justice system that can amount to secondary victimisation.
- 1.13 The duties of law enforcement officials, prosecutors and judicial officers that follow in these Guidelines are intended to help prevent the secondary victimisation of victims of crime.

### PART 2 - DUTIES OF LAW ENFORCEMENT OFFICIALS

- 2.1 “Law enforcement officials” include members of national, regional or local police services or any other department, office or agency of the State or a statutory body with powers to investigate violations of the criminal law.
- 2.2 Law enforcement officials shall have a duty to support victims of crime to the fullest extent possible in accordance with the applicable law and practices in that jurisdiction and in light of these Guidelines.

In particular:

(1) Law enforcement officials must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.

(2) At the earliest opportunity, a victim of crime shall be entitled to receive the following information from law enforcement officials:

- the name, rank and contact details of the officer to whom the complaint about the crime is made,
- the case number/reference number,





- the name, rank and contact details of the investigating officer,
  - upon request, a copy of the statement made to the reporting officer, or written reasons for a refusal to register the complaint.
- (3) (a) Where practicable, law enforcement officials must inform the victims of crime of the date, place and time of any bail proceedings.
- (b) Where practicable, law enforcement officials must inform victims of crime of the outcome of bail applications.
- (4) Law enforcement officials must provide victims of crime with information about the procedure for investigating the crime and, upon request, inform victims periodically on the status of the criminal investigation.
- (5) Law enforcement officials must, as soon as reasonably possible, inform victims of crime of relevant support agencies and programmes.
- (6) Law enforcement officials must, as a general rule:
- (a) establish procedures, in association with the prosecuting authorities, to ensure the release of the property belonging to victims of crime as soon as possible,
  - (b) inform victims of crime of the reasons for non-release of that property,
  - (c) inform victims of crime when a decision is taken not to release the property of the procedure for safekeeping, early release or return of their property.
- (7) Law enforcement officials must allow victims of crime to add to or amend their initial statement or to make a further statement.
- (8) Law enforcement officials must inform victims of crime of their right to apply for compensation under any applicable compensation schemes (if any) or to seek restitution.
- (9) In cases of sexual offences or other crimes involving life-threatening diseases, particularly HIV/AIDS or hepatitis B, law enforcement officials must immediately assist victims of crime obtain medical testing and preventive medical measures and inform them of any appropriate counselling facilities.
- (10) Law enforcement officials must protect the privacy of victims of crime, and scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.
- (11) Law enforcement officials must take all reasonable measures to protect victims from violence, intimidation or harassment. This includes informing the victim should an alleged offender escape from lawful custody, abscond whilst on bail or otherwise be released from official custody.



(12) As soon as reasonably possible after the detection of a crime the law enforcement official in charge of the investigation must:

- (a) with reference to the definition of “victim” contained Part 1, identify all victims of the crime;
- (b) compile a list of the identified victims of the crime;
- (c) amend the list from time to time as new victims are identified.

(13) Law enforcement officials should provide victims with an information pack detailing the general rights of victims.

### PART 3 - DUTIES OF PROSECUTORS

- 3.1 “Prosecutors” shall include any person entrusted with the duty to prosecute a criminal matter.
- 3.2 Every victim has the right, at any stage of the criminal justice process, to make representations in writing to the relevant prosecuting authority about any matter, and to receive a written reply giving reasons for the decisions taken.
- 3.3 Prosecutors have a duty to support victims of crime to the fullest extent possible in accordance with applicable laws and practices and in light of these Guidelines.

This support shall be based on the following principles:

(1) Prosecutors must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.

(2) Prosecutors must take into consideration the views of the victim(s) when considering whether a prosecution is in the public interest.

(3) Victims must have the right:

- (a) to be informed, prior to the commencement of the trial, of the final charges to be preferred against the accused and the reasons for any amendment to the original charge(s);
- (b) to be informed as soon as possible of any decision not to proceed with or to discontinue the prosecution of the case;
- (c) to be informed as soon as possible of any decision to proceed with the matter through non-trial procedures;
- (d) to be informed, should they not be satisfied with any of the decisions taken in (a) (b) or (c) above, of the right to make representations to the superior of the prosecutor concerned.

(4) Upon request, prosecutors must inform victims of the status of the criminal matter.





(5) Prosecutors must at all stages of the criminal process ensure that the privacy of the victim is protected and scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.

(6) Where practicable:

- (a) prosecutors must inform victims of crime of the date, place and time of any bail proceedings,
- (b) prosecutors must inform victims of crime of the outcome of bail applications.

(7) Prosecutors should ensure, as far as possible, that victims proceeding to court, at court and whilst leaving court, are protected against unwanted contact occurring between such persons and the accused or anyone associated with the alleged offender.

(8) Prosecutors must as far as is practicable take steps to ensure that victims are familiarised with court procedures and conduct in court.

(9) In addressing the court on sentence the prosecutor has a duty to place before the court all relevant information about the victim. In addition the prosecutor must inform the court of all monetary compensation options available in terms of the law and practice, and, if required, the prosecutor must assist the victim to claim compensation.

(10) In serious cases a prosecutor must inform the victim that she/he has a right to make or provide information for the making of a Victim Impact Statement. This statement may include information on the financial, social, psychological, and medical impact of the crime upon the victim and the victim's family.

(11) Prosecutors must inform victims of the noting of any appeal and the outcome of that appeal.

### PART 4 - DUTIES OF THE COURT

- 4.1 Judicial officers must scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.
- 4.2 Judicial officers must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.
- 4.3 In deciding a suitable sentence, a judicial officer should take into account the impact of the crime upon the victim. With the consent of the victim a judicial officer may require a Victim Impact Statement to be obtained where the Prosecutor has failed to provide one.



- 4.4 When an offender is convicted the judicial officer should always consider the question of compensation for the victim and restitution.
- 4.5 The judicial officer must, in deciding whether to postpone or adjourn or otherwise dispose of a criminal matter, give full consideration to the interests of the victim.

### PART 5 - RIGHTS OF VICTIMS AT THE POST-SENTENCING STAGE

- 5.1 Victims must have the right to be informed of a parole or similar hearing, and to receive details of the premature release of the prisoner(s) detained or imprisoned for a serious offence against them.
- 5.2 Victims must have the right to be heard in private at parole or similar hearings.

### PART 6 - COMPENSATION AND RESTITUTION

- 6.1 Member States should set up and develop a statutory victim relief/compensation fund. The relief or compensation is intended to help the victim and is not intended to reflect the compensation to which the victim may be entitled under law.
- 6.2 Compensation should be expressly distinguished from damages in a civil action.
- 6.3 States should put in place options for compensation for victims of crime in their legislation.
- 6.4 States should consider restitution as an additional sentencing option. Where appropriate, offenders should make fair restitution to victims and their families.
- 6.5 State sponsored victim relief schemes should generally be limited to victims of violent crime.
- 6.6 States should make provision for the victim's rights to compensation either on their application or on the court's own motion.
- 6.7 Independent human rights commissions or victims support groups should assist victims to seek redress.
- 6.8 The right to claim compensation should be extended to the dependants of the deceased victims of crime.
- 6.9 Legislation should provide the right for the court to award compensation to direct victims of a crime of violence who have suffered material loss or personal injury as a result of the crime.





- 6.7 Independent human rights commissions or victims support groups should assist victims to seek redress.

### PART 7 - GENERAL POLICY ISSUES

- 7.1 States should establish an independent oversight mechanism or office for victims within the criminal justice system with the responsibility of protecting and promoting the interests of victims.
- 7.2 States should introduce effective sanctions for a failure of those working in the criminal justice system to comply with their duties with respect to victims' rights.
- 7.3 States should encourage the setting up of Victims Support groups.
- 7.4 Governments should ensure adequate co-ordination between criminal justice agencies, social welfare bodies and relevant victim support organisations and structures.
- 7.5 Suitable training on victims' rights should be provided for all those working within the criminal justice system.
- 7.6 States should provide a conducive court environment for victims and their families who attend the trial.
- 7.7 States should establish appropriate mechanisms to protect children from possible re-offending by released prisoners convicted of offences against children.
- 7.8 States should establish and develop, where appropriate, restorative justice programmes and Alternative Dispute Resolution (ADR) mechanisms which will help the victims of crime.
- 7.9 States should commission research on the rights of victims and encourage a sharing of information between Commonwealth States.
- 7.10 The Commonwealth should support the development of research projects on victims of crime.











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The Northern Ireland Human Rights Commission aims  
to protect and promote the human rights of everyone in Northern Ireland