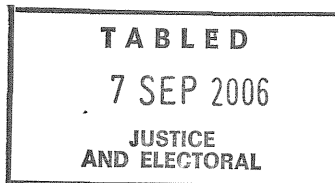
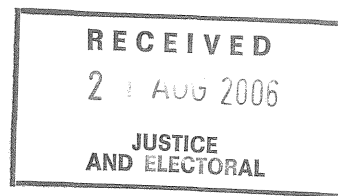




Human Rights
Commission
Te Kāhui Tika Tangata



*Submission of the
Human Rights Commission on*

**Inquiry into the Place of Victims in
the Criminal Justice System**



*To the Justice and Electoral
Select Committee*

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1. BACKGROUND TO THE HUMAN RIGHTS COMMISSION'S INTEREST IN THE INQUIRY

- 1.1 This submission is made by the Human Rights Commission ('the Commission'), an independent Crown Entity which operates under the Human Rights Act 1993 (HRA).
- 1.2 A primary function of the Commission is advocating and promoting respect for, and an understanding of, human rights in New Zealand society¹. In 2001, as a result of an amendment to the HRA, the Commission's statutory functions were extended to include responsibility for developing a National Plan of Action for human rights².
- 1.3 In order to develop a Plan of Action it was necessary to determine how New Zealanders felt their human rights are protected at present. In 2004, following extensive consultation and research, the Commission published *Human Rights in New Zealand Today: Nga Tika Tangata o te Motu* ('HRNZT')³.
- 1.4 HRNZT formed the basis of the *New Zealand Action Plan for Human Rights: Mana ki te Tangata* ('the Action Plan')⁴. The Action Plan identified violence and the implications for victims as a significant issue. As a result a number of priorities in the Action Plan relate to aspects of this Inquiry. They include:
- ensuring that victims of crime have the opportunity to be heard;
 - due weight is given to their views in court proceedings; and
 - access to restorative justice in various forms is promoted.⁵
- 1.5 HRNZT also endorsed the use of a conceptual framework which embodies an approach designed to ensure that those most directly affected by a policy or

¹ Section 5(1)(a), HUMAN RIGHTS ACT 1993

² Section 5(2)(m), HUMAN RIGHTS ACT 1993

³ HUMAN RIGHTS IN NEW ZEALAND TODAY Human Rights Commission, Wellington (2004).

⁴ THE NEW ZEALAND ACTION PLAN FOR HUMAN RIGHTS: *MANA KI TE TANGATA*, Human Rights Commission, Wellington (2005).

⁵ *Id.* at 5.5

law - especially those who are vulnerable or disenfranchised – are better able to enjoy the rights they are entitled to under international law⁶. Most of the elements in the framework apply to the Inquiry but it is worth emphasising (particularly in this context) the importance that the UN standards place on measures designed to ensure empowerment and participation.

2. SUMMARY OF COMMISSION'S CONCERNS

2.1 Although the Commission is not in a position to make a comprehensive submission it appreciates the opportunity to draw the Inquiry's attention to a number of issues and to emphasise that, although there has been a commendable attempt since 2000 to address some of the issues relating to victims, a whole of government approach which recognises that victims have rights as well as needs, is required.

2.2 More specifically the Commission considers that the rights of victims would be improved if:

- there was a more cohesive legislative framework dealing with victims' rights that explicitly reflects the fact that victims have rights, and is designed to empower victims and ensure genuine participation in the criminal justice process;
- there was better understanding of the international guidance on best practice outlined in various instruments;
- it was mandatory to treat victims with courtesy and compassion and to ensure access to necessary services;
- there was a more equitable system for payment of compensation by the State and restitution by individual;
- restorative justice programmes were promoted in various guises.

⁶ *Report of the Secretary-General: Promotion and protection of human rights – human rights and bioethics*, UN Economic and Social Council (2003b), E/CN.4/2003/98.

3. REVIEWING LEGISLATION AFFECTING VICTIMS, INCLUDING THE VICTIMS' RIGHTS ACT 2002

- 3.1 Much of the law that deals with victims' rights is so recent it seems almost premature to suggest reviewing it. The legislation includes the Injury Prevention, Rehabilitation and Compensation Act 2001, the Victims Rights Act 2002, the Sentencing Act 2002, the Parole Act 2002 and the Prisoners' and Victims' Claims Act 2005 together with aspects of the Privacy Act 1993 that protect the privacy of victim impact statements. Hence, the regime is complex and it has been suggested that at times victims can be inadvertently overlooked in the resulting bureaucratic maze. There are also issues about how successful some of the legislation is in practice and matters that were overlooked or deferred when the legislation was introduced.
- 3.2 Inevitably any legislative review must involve consideration of the continuing viability of the **Prisoners' and Victims' Compensation Act 2005 (PVCA)** if a more comprehensive compensation scheme is introduced. As the Commission noted in its submission to this Committee, the PVCA which is designed in part to restrict the right of prison inmates to claim compensation for abuse while imprisoned, is misconceived and will not prevent a repetition of the situation which gave rise to the need for the legislation in the first place⁷. In addition, it does not apply uniformly to victims as payment of compensation is premised on the right of prisoners to claim compensation for mistreatment.
- 3.3 The **Injury Prevention, Rehabilitation, and Compensation Act 2001** is uneven in its application. While it provides compensation in situations where someone suffers personal injury as a result of criminal action, personal injury only includes mental injury when it is linked to physical injury⁸. As a result, compensation for mental trauma is not available if it does not stem from physical injury. A bank teller who suffers mental injury during an armed hold-

⁷ *Taunoa v Attorney-General [Compensation]* (HC, Wellington, CIV-2002-485-742, 2 September, 2004, Ronald Young J).

⁸ Section 26(1)

up therefore would not be entitled to compensation by the ACC. This also means that there is no compensation for mental trauma affecting “secondary victims” such as the families of murder victims, as their emotional trauma is unrelated to a physical injury.

- 3.4 Arguably, the legislation that is most relevant in this context is the **Victims’ Rights Act 2002**. Although the Commission was generally supportive of the changes brought about by the introduction of the Victims’ Rights Act, it was concerned that some of the changes did not go far enough. For example, the Commission had recommended that provisions relating to victims’ treatment and access to services should be viewed as rights rather than treated as discretionary. The Select Committee, however, considered victims’ entitlement to certain treatment and services were better seen as desirable goals rather than mandatory requirements.
- 3.5 The Commission also suggested making it mandatory for victims to be treated with courtesy and compassion, and their right to dignity and privacy respected. The Select Committee resisted this on the grounds that the concepts were too nebulous to make them mandatory in any meaningful way and, as they would have had to be defined more precisely, it would have meant narrowing their scope⁹. However, the terms are used in UN material referring to victims of crime¹⁰ and the Commission remains of the view that strengthening these provisions would reinforce the pivotal role that victims can play in the criminal justice process.
- 3.6 Ensuring victims are properly treated at the time an offence is committed will go a long way to alleviating the sense of grievance and desire for retribution experienced by victims and assist in achieving closure.

⁹ Justice and Electoral Select Committee *Report on Victims’ Rights Bill: Explanatory Note*.

¹⁰ See, e.g., Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Art.4, G.A. RES 40/34, U.N. DOC. A/RES/40/34 (Nov. 29, 1985).

4. IDENTIFYING SERVICES AVAILABLE TO VICTIMS

- 4.1 A preliminary paper by the Law Commission on the review of the court system - *Striking the Balance* - suggested that many victims were dissatisfied with their experience of the courts¹¹. In the discussion paper that followed¹² the Law Commission acknowledged the need to take victims' views into account, and improve provision of information and court facilities for victims as a way of ensuring access to justice for victims of crime¹³. It subsequently recommended that the treatment of victims would be improved if witnesses were screened or gave evidence by video and allowed access to separate rooms at court – measures that the Ministry of Justice states are currently being implemented¹⁴.
- 4.2 If there is to be a genuine commitment to addressing the concerns of victims, consideration needs to be given to making them an integral part of the process, rather than merely peripheral players. A rights-based approach would ensure that victims were empowered to participate in the process by identifying their own needs rather than relying on the system to do so on their behalf. As needs differ, a system which provided a pool of resources – such as counselling services – from which victims could select the services that matched their individual requirements, would be a more appropriate way of involving them in the process and recognising their rights.
- 4.3 Emphasising the rights of victims is often contested on the ground that victims' concerns relate to individual perpetrators whereas observance of human rights is the responsibility of the State. To some extent this is reinforced by the fact that although victims can rely on aspects of generic international law (such as the right to be treated with humanity and dignity and not to be discriminated against) for redress, there is no specific international

¹¹ New Zealand Law Commission, *STRIKING THE BALANCE*, Wellington (2002), 44.

¹² New Zealand Law Commission, *SEEKING SOLUTIONS: OPTIONS FOR CHANGE TO THE NEW ZEALAND COURT SYSTEM – HAVE YOUR SAY*, Wellington (2002).

¹³ *Id.* at 45.

¹⁴ Ministry of Justice, *GOVERNMENT RESPONSE TO LAW COMMISSION REPORT ON DELIVERING JUSTICE FOR ALL*, Response to House of Representatives in accordance with Cabinet Office circular CO (01) 13 (2004) at paras 148 et seq.

treaty addressing their concerns. Most of the standards are found in ‘soft law’ such as the *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*¹⁵ (‘the Declaration’) and, although such documents have considerable persuasive value, they do not have the status of binding legal obligations.

4.4 However, recently a Committee of Experts met in Holland to draft a *Convention on Victims of Crime, Abuse of Power and Terrorism* for eventual adoption by the UN General Assembly¹⁶. While the proposed Convention¹⁷ is still in the early stages of development, it is nevertheless a clear indication that the international community recognises that victims of crime have a significant role to play in criminal proceedings, that victims have rights and that those rights should be enforceable.

4.5 The Convention would make it mandatory for States to provide “the necessary material, medical, psychological and social assistance to victims” lending force to the Commission’s argument that provision of services and the way in which victims are treated under the Victims’ Rights Act 2002 should be mandatory rather than discretionary.

5. WHETHER CRIMINALS OWE A DEBT TO INDIVIDUALS AS WELL AS SOCIETY - INCLUDING ISSUES OF COMPENSATION AND REIMBURSEMENT OF COSTS.

5.1 As the criminal justice system focuses on the prosecution of criminals and ensuring observance of their rights, this can have the effect of subordinating the rights of victims¹⁸. A number of commentators have suggested that one

¹⁵ G.A. res.40/34, annex, 40 U.N. GAOR Supp. (No.53) at 214, U.N. Doc.A/40/53 (1985)

¹⁶ *Convention on Justice and Support for Victims of Crime, Abuse of Power and Terrorism*.

¹⁷ A copy of the draft is appended to this submission.

¹⁸ See, e.g., *R v. Jason John Cumming* (CA 43/03, 2/11/05) in which the right of the accused to personally cross examine his victim resulted in the victim being cross examined for a day and a half. Public concern and the fears of advocacy groups such as Rape Crisis that this would prevent other rape victims coming forward, led to suggestions that the Evidence Act be amended to prevent a recurrence.

way of redressing this imbalance - and empowering victims - is to require offenders to provide restitution to their victims¹⁹.

- 5.2 This would be consistent with the approach to victims internationally. For example, article 8 of the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states that:

*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.*²⁰

- 5.3 The UN's *Guide for Practitioners Regarding the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* notes that restitution can be important for victims. It can serve as an indication that an offender recognizes the harm they have caused²¹ and a court order that a victim is paid compensation can be an important "symbol of the State's concern for the victim" that will increase victims' confidence in the criminal justice system.²²

- 5.4 Article 10 of the draft Convention reflects the wording in the Declaration. States would be required to legislate to make offenders pay restitution to victims, families or dependants. Where compensation is not fully available from the offender or other sources, the draft Convention directs that States should endeavour to compensate victims or their families by establishing funds to provide "fair, appropriate and timely" compensation.²³

¹⁹ Margaret McElroy, *Criminals Owe Debt to Victims, Not Society*, IPA REVIEW MARCH 2004; Lala Camerer, *supra*, fn 21.

²⁰ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Art. 8, G.A. RES 40/34, U.N. DOC. A/RES/40/34 (Nov. 29, 1985).

²¹ U.N. DOC A/CONF.144/20, Annex, Guide for Practitioners Regarding the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, p.21, para. 83.

²² Guide for Practitioners, at 21, para. 83, as quoted in OHCHR, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS, AND LAWYERS 766 (2003).

²³ Article 11(3)

- 5.5 Despite the international consensus on the availability of compensation there is still disagreement about whether the State or the offender should pay compensation. On one hand it is argued that as the State is responsible for maintaining law and order, the State should be responsible for compensating the victims of crime because it has not fulfilled this function²⁴. This is increasingly being questioned, however, on the ground that the State cannot be held liable for injuries caused to people by the acts of others: *The guilty party is the offender and, in an ideal world, it should be the offender who compensates the victim*²⁵.
- 5.6 Requiring offenders to pay restitution to victims is significant since it not only imposes a more meaningful moral burden on offenders but raises the profile of the victims in the process²⁶. It may also lead to difficulties if this is the only source of compensation as many offenders will simply not be in a position to pay. However, a system which provides for restitution by offenders need not exclude the possibility of State compensation. As the UN instruments suggest, while the focus should be on offenders providing restitution, there should be a fall back position in which restitution is supplemented by a State funded compensation system where necessary.
- 5.7 In New Zealand, the possibility of limited compensation under the Prisoners' and Victims' Compensation Act 2005 and the Injury Prevention and Rehabilitation Act 2001 is arguably too fragmented to satisfy the international standards. Consideration should be given to developing legislation which would require offenders to pay restitution to their victims.

²⁴ Council of Europe, CONVENTION ON COMPENSATION FOR VICTIMS OF VIOLENT CRIME, Strasbourg (1983).

²⁵ UK Home Office, COMPENSATION FOR VICTIMS OF CRIME: POSSIBLE CHANGES TO THE CRIMINAL INJURIES COMPENSATION SCHEME (CONSULTATION PAPER) Stationery Office Group 1999, p.4, section 11.

²⁶ Lala Camerer, *Victims and Criminal Justice in South Africa*, Monograph No.7: Putting Victims on the Agenda (1996).

6. EXAMINING THE EFFECT OF THE CURRENT COURT SYSTEM ON VICTIMS, INCLUDING THE ROLE AND STATUS OF COMPLAINANTS DURING COURT PROCEEDINGS.

6.1 As noted earlier, the Action Plan identified a number of priorities relating to victims including ensuring that victims of crime have the opportunity to be heard, and that due weight was given to their views, in court proceedings [at 5.5].

6.2 Again, the importance of these priorities is reinforced by the international instruments. For example, to ensure access to justice and fair treatment the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states that:

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.²⁷ 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;

²⁷ *Id.* at Art. 5.

- 6.3 Article 5(2) of the draft Convention would impose an obligation on States to ensure that the informal, administrative and judicial processes are responsive to the needs of victims by:
- ...
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant domestic criminal justice system;*
- (c) Allowing victims to present their views and concerns themselves through legal or other representatives without prejudice to the discretion of the court, tribunal or other appropriate authority and in consonance with the relevant domestic criminal justice system.*
- 6.4 Opposition to victims playing a direct role in the judicial process is often based on the argument that it would unduly prejudice the rights of the accused²⁸ but excluding victims from the process raises a significant human rights concern - the need to balance the rights of all involved not only the rights of offenders.
- 6.5 As the international material suggests, this means striking an appropriate balance between sympathy for victims with a fair trial and appropriate sentence for offenders. Just as victims' rights are not subordinate to those of offenders, offenders' rights are not subordinate to those of victims. Victims should be treated with dignity and respect, and they should have the opportunity to be legally represented in court proceedings if they wish.
- 6.6 Domestically it has been suggested that if rights - such as victims' rights - are to compete with fundamental rights such as the rights and freedoms in the

²⁸ See, e.g., Sam Garkawe, *Victims Rights are Human Rights*, Presentation on the 20th anniversary celebration of the 1985 UN Victims Declaration, Canberra (2005).

New Zealand Bill of Rights Act 1990 then they require “frank and explicit legislative expression in order to come within the rubric of justified limits”²⁹. At present the Victims’ Rights Act 2002 does not do this. As Hammond J noted³⁰, what the Act does is to reaffirm the concern that ought properly to be paid to the interests of victims but it does not displace rights such as those found in the Bill of Rights. It would follow that if victims are to be recognised as full participants in the criminal justice process, legislative intervention is necessary.

7. THE PLACE OF RESTORATIVE JUSTICE PROGRAMMES IN THE CRIMINAL JUSTICE SYSTEM AND THEIR IMPACT ON VICTIMS

7.1 HRNZT notes that when properly structured, restorative justice programmes can help victims, as well as criminals and communities, by providing “an opportunity for victims to obtain reparation, feel safer and seek closure”³¹ but also recognises that they need to be structured and implemented in such a way that victims are not further victimised. Problems can arise due to the imbalance of power between the victim and offender, the emotional vulnerability of the victim, and the victims’ fear of retaliation by the offender³².

7.2 The Action Plan itself notes that “Restorative justice has the potential to address a wide range of ... issues... including access to justice, victims’ rights and their involvement in justice processes, high rates of re-offending and dislocation of offenders from their communities and families”³³. One of the

²⁹ Justice Lowell Goddard, *Victims and Criminal Law: the last 30 years and on to the future*, Presentation to the Legal Research Foundation, Auckland (2004) available at www.legalresearch.auckland.ac.nz/docs/victims_criminal_seminar.

³⁰ *Re Victim X* [2003] 3 NZLR 220, at 225, but see the comments in *R v.L* [1994] 2 NZLR 54, 63 in which Richardson J noted that a weighting can be given to competing rights, even subordinate rights, according to the particular facts.

³¹ *Id.*

³² NZ Ministry of Justice, *Restorative Justice: A Discussion Paper* (1996).

³³ NZAPHR, at 28.

priorities in the Action Plan is to “extend the availability of restorative justice in its various forms.”³⁴

- 7.3 Restorative justice is recognized internationally as an “evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities.”³⁵ Various international instruments not only require that States support restorative justice in all its forms – including incorporating “indigenous practices” to facilitate conciliation and redress for victims³⁶ - but also take measures to ensure that the directions agreed at restorative justice meetings are implemented and follow-up procedures put in place so that victims feel as though they have benefited by the program. Suggestions along these lines have been made, for example, by the UN Economic and Social Council, which published a set of *Basic principles on the use of restorative justice programmes in criminal matters* in 2002.
- 7.4 New Zealand has been at the forefront in promoting the use of restorative justice in criminal matters, issuing best practice guidelines³⁷ and achieving some significant successes in relation to reducing re-offending by children and young people, promoting accountability and preventing crime³⁸. While the system is not perfect, it is a considerable advance on what existed previously. It is axiomatic, therefore, that the use of restorative justice programmes should continue to be developed and refined.
- 7.5 The Commission has concerns about recent legislative initiatives such as the Young Persons (Serious Crimes) Bill which have the potential to undermine the use of restorative justice measures such as Family Group Conferences.

³⁴ NZAPHR, at 29.

³⁵ *Basic principles on the use of restorative justice programmes in criminal matters*, UN Economic and Social Council E/2002/INF/2/Add.2, p.56; Article 9, *Draft Convention on Justice and Support for Victims of Crime, Abuse of Power and Terrorism* (supra, fn.).

³⁶ *Declaration of Basic Principles*, Art.7

³⁷ NZ Ministry of Justice, *Restorative Justice in New Zealand: Best Practice*.

³⁸ LO WING, GABRIELLE MAXWELL & DENNIS WONG, *ALTERNATIVES TO PROSECUTION* (Singapore: Marshall Cavendish Academic, 2005).

8. CONCLUSION

- 8.1 The application of a human rights analysis to the Inquiry's Terms of Reference clarifies some of the issues raised. For example, international developments indicate that there is no longer any question that victims of crime have a significant role to play in criminal proceedings, that victims have rights and that those rights should be enforceable. While how States go about this will vary, the international initiatives can provide guidance and identify best practice.
- 8.2 A number of the Inquiry's Terms of Reference relate to priorities in the *New Zealand Action Plan for Human Rights: Mana ki te Tangata*. For example, ensuring that victims have the opportunity to be heard and due weight is given to their views in court proceedings. These goals are consistent with empowering victims and ensuring genuine participation. Although this is recognised to some extent in the Victims' Rights Act, some of the provisions could be strengthened and consideration could be given to providing for victims to be represented in their own right in the criminal justice process. Adopting a more uniform approach to compensation and reparation would also be consistent with the international instruments.
- 8.3 The Action Plan also endorses the promotion of access to restorative justice in its various forms. New Zealand has a worldwide reputation in relation to its use of restorative justice programmes and the Commission is concerned that the gains made are not inadvertently lost through misconceived legislative change.

DRAFT
Convention on Justice and Support
for Victims of Crime, Abuse of Power and Terrorism

PREAMBLE

Recalling the resolution of the UN General Assembly (GA/RES/40/34) in 1985 which called upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Cognizant that millions of people, including many women and children, throughout the world still suffer harm as a result of crime, abuse of power and terrorism, and that the rights of these victims still have not been adequately recognized, and that they may, in addition, suffer hardship when assisting in the prosecution of perpetrators,

Noting the partial progress achieved by some Member States in

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

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

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

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

Noting in 2005 the inclusion in the declaration of the UN Crime Congress in Bangkok by the Member States of the following paragraph:

“17. We recognize the importance of giving special attention to the need to protect witnesses and victims of crime and terrorism, and we commit ourselves to strengthening, where needed, the legal and financial framework for providing support to such victims, taking into account, inter alia, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.”

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

Have agreed as follows:

PART I GENERAL CONSIDERATIONS

Article 1

Definitions

- (1) A victim means a natural person who, individually or collectively has suffered harm, including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under Scope.
- (2) A person is a victim regardless of whether a 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 victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.
- (3) A witness is a person who could be called to a court or other appropriate forum to provide testimony.
- (4) An expert is a person who by virtue of specialized training, particularly knowledge or experience assists the legal system.

Article 2

Scope

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

- (a) Violations of criminal laws of States Parties or the criminal provisions of an applicable convention, including criminal abuse of power;
- (b) Violations of internationally recognized norms relating to human rights or the provisions of an applicable convention that are not yet violations of criminal laws of States Parties;
- (c) Acts of terrorism and others as defined in international instruments intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

Article 3

General Application

- (1) Nothing in this Convention shall diminish any provisions which protect the rights and interests of victims which are contained in the law and practice of a State Party or international law in force in that State.
- (2) States Parties undertake to implement these provisions to the maximum extent of their available resources. For planning purposes, States Parties should set priorities for implementing the provisions and seek to provide them over time through progressive realization of goals.
- (3) States Parties should provide such assistance to all victims, without discrimination based on race, color, gender, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. This will be without prejudice to providing special justice and support best suited to victims who are particularly vulnerable because of age, gender, disability or other characteristics mentioned.
- (4) States Parties shall ensure that all officials and other persons dealing with victims treat them with courtesy, compassion, cultural sensitivity, and respect for their rights and dignity.

Article 4

Commitment to Reduce Victimization

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

- (a) more effective detection, prosecution, sentencing and corrections of perpetrators, consistent with internationally recognized norms;
- (b) measures to reduce the risk of occurrence of crimes by tackling their multiple causes;
- (c) strategies to reduce the opportunity for crime by improving protection for property and persons;
- (d) collaboration between civil society and relevant governmental institutions, in areas such as schooling, social services, family, public health and economic sectors;
- (e) institutional frameworks to improve the planning, cost effectiveness and sustainability of strategies;
- (f) greater public participation in, and engagement with, strategies in both the short and the long term;
- (g) international cooperation to exchange proven and promising practices and seek trans-national solutions.

PART II RIGHTS AND DUTIES

Article 5

Access to justice and fair treatment

- (1) For harm suffered, States Parties shall provide victims with access to the mechanisms of justice and redress which is expeditious, fair, inexpensive and accessible, as provided for by domestic legislation, through:
 - (a) Informal mechanisms for the resolution of disputes, including mediation, arbitration, and customary justice processes or indigenous practices, where appropriate, to facilitate conciliation and redress for victims;
 - (b) Administrative and judicial mechanisms which will enable victims to obtain redress;
 - (c) Information about their rights in seeking redress through all these mechanisms.
- (2) States Parties shall ensure that the informal, administrative and judicial processes are responsive to the needs of victims. This should be facilitated by:
 - (a) Giving the victim a fair hearing within a reasonable time in the determination of their entitlement to a remedy for the injury, loss or damage suffered by them as a result of their victimization without prejudice to the accused;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant domestic criminal justice system;
 - (c) Allowing the victims to present their views and concerns themselves through legal or other representatives without prejudice to the discretion of the court,

tribunal or other appropriate authority, and in consonance with the relevant domestic criminal justice system.

- (d) The prompt return to victims of their property taken or recovered by the police or any other agency in the course of the investigation;
 - (e) Providing to victims the right of appeal against decisions of the prosecutorial authority not to prosecute in cases where they were victimized;
 - (f) Providing proper assistance to victims throughout informal, administrative, investigative and judicial processes;
 - (g) Taking measures to minimize inconvenience to victims and protect their privacy wherever appropriate;
 - (h) Ensuring the safety of victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (i) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims;
 - (j) Ensuring the enforcement of any order or decree granting awards to victims.
- (3) States Parties should seek to reimburse victims and witnesses who have the status of parties for court expenses incurred as a result of their legitimized participation in criminal proceedings.

Article 6

Protection of Victims, Witnesses and Experts

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

Article 7

Information

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

Article 8

Assistance

- (1) States Parties shall provide the necessary material, medical, psychological and social assistance to victims through government, voluntary, community-based and indigenous means. Such assistance may be provided through any agencies or comprehensive programs that are appropriate under domestic laws or norms.
- (2) States Parties should be encouraged to develop networks of criminal justice, social services, health and mental health services, victim assistance services and other relevant groups or institutions in order to facilitate referrals, coordination and planning among those providing assistance.
- (3) States Parties should encourage the establishment of local and regional victim assistance centers to coordinate networks, develop and make referrals, and provide outreach to victims and direct services where appropriate.
- (4) States Parties should facilitate the referral of victims by the police and other relevant agencies to victim assistance centers or other service institutions.
- (5) States Parties should seek to establish the following kinds of assistance to victims.

A. Immediate Assistance

- (a) Medical attention and accompaniment to medical exams, including first aid, emergency medical attention and medical transport. Support services should be provided to victims when forensic examinations are called for or in the aftermath of death;
- (b) Material support such as shelter, housing, transportation, or property repair;
- (c) Crisis intervention, involving crisis counseling and problem solving;
- (d) Information and notification about what happened to the extent that such information does not interfere with investigation, including notification of any immediate responsibilities to the criminal justice system. Assistance should be offered in notifying family or friends of what happened;
- (e) Protection from repeat victimization should be provided through the development of safety and security plans. This may include information on police surveillance, relocation, emergency communication and the like. It may also involve assistance with obtaining protection orders through the judicial system;
- (f) Victims should be protected from media intrusion;
- (g) General support and advocacy should be offered when victims interact with social, justice and medical institutions as well as appropriate referrals for urgent needs;
- (h) Confidentiality and privacy should be guaranteed to the extent allowable under current law and policy.

- B. Medium term Assistance
- (a) The continuation of the services provided under A Immediate Assistance;
 - (b) Psychological health and spiritual interventions that may include post-trauma counseling, mental health therapy, pastoral counseling, or traditional healing intercessions;
 - (c) Assistance with financial needs or claims including filing and advocacy for compensation claims, restitution, insurance, or emergency funds.
 - (d) Legal referrals should be provided for legal assistance in the criminal or civil justice systems. To the extent possible such legal assistance should be free.
- C. Long term Assistance
- (a) The continuation of the services provided under A Immediate Assistance and B Medium Assistance,
 - (b) Assurances and re-establishment of the victim's place in the community and in the workplace should be encouraged
 - (c) Language understood by victims should be encouraged. If translators are needed, they should be trained in the subject matter that they are addressing and victim support personnel should be familiar with common terms that will be used.
 - (d) Assistance with regard to victims' roles in the criminal justice system, including the nature of information they will receive on case status and their rights to participation or representation.
 - (e) Information and assistance should be provided on how victims can provide input at all critical stages of criminal justice proceedings, including: bail hearings, initial hearings, plea bargains, diversion programs, case disposition, offender status post disposition and offender releases.
 - (f) Information, support and assistance concerning options for participation in alternative justice forums should be provided.

Article 9

Restorative Justice

- (1) States Parties should endeavor to establish or enhance the systems of restorative justice, which shall seek as a priority to restore the victim.
- (2) States Parties shall ensure that victims shall have the opportunity to choose restorative justice forums under domestic laws, which accord to victims' dignity, compassion and similar rights and services to those described in this convention.

Article 10

Restitution

- (1) States Parties should legislate to make offenders or third parties responsible for paying fair restitution to victims, their families or dependants. Such restitution should

include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

- (2) States Parties should review their practices, regulations, laws and their constitution to ensure that restitution is an available option in criminal cases.
- (3) In cases of environmental crime, States Parties should legislate to include restitution to restore the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of the community.
- (4) Where public officials or other agents acting in an official or quasi-official capacity have violated domestic criminal laws, States Parties should legislate to provide restitution to victims from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurs is no longer in existence, the State or Government successor in title should provide restitution to the victims.
- (5) When there is a court order of restitution, the State Party shall be responsible for enforcing the order.
- (6) In cases where the offender is under the legal obligation to pay restitution as well as other pecuniary sanctions, the former shall have precedence over the latter.
- (7) In cases where the victim seeks restitution through civil remedies, States should endeavor to expedite these proceedings and minimize expenses.

Article 11

Compensation

- (1) When compensation is not fully available from the offender or other sources, States Parties should endeavor to provide compensation to:
 - (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;
 - (b) The victims' family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- (2) The establishment, strengthening and expansion of national, regional or local funds for compensation to victims should be encouraged. States Parties may consider providing funds through general revenue, special taxes, fines, private contributions, and so on
- (3) These funds should guarantee fair, appropriate and timely compensation. They should also allow for emergency and/or interim payments. Special care should be taken to

make the funds accessible. This requires, *inter alia*, extensive dissemination of information on the eligibility criteria and the procedure to be followed. States should also consider other means to raise public awareness of the existence of these funds.

- (4) 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.
- (5) In cases of cross border victimization, the State where the crime has occurred should pay compensation to the foreign national, subject to the principle of reciprocity.

PART III IMPLEMENTATION AND MONITORING

Article 12

Implementation

- (1) States Parties shall take appropriate measures to:
 - (a) Bring into force the laws, regulations and administrative provisions necessary for the implementation of this Convention;
 - (b) Establish and enhance such institutions and mechanisms as may be necessary for the achievement of the objective of this Convention;
 - (c) Ensure the establishment and/or enhancement of appropriate procedures, which are victim-friendly and which must be adhered to.
- (2) States Parties shall ensure that personnel dealing with victims and witnesses make every effort to adopt an interdisciplinary and cooperative approach in aiding them. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to victims and witnesses.
- (3) States Parties shall ensure the building of partnerships among local, national and international stakeholders, including intergovernmental and non-governmental organizations, civil society as well as the private sector in the implementation process. To this end all stakeholders shall be encouraged to contribute to the resources required for implementation.
- (4) States Parties shall foster, develop and improve international cooperation in order to:
 - (a) facilitate the more effective protection of victims' interests in informal, administrative or judicial proceedings.
 - (b) promote mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of crimes.
- (5) States Parties shall provide adequate training, education and information to all persons working with victims and witnesses with a view to improving and sustaining

specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with victims and witnesses. This training should include:

- (a) Standards, norms and principles relating to victims;
- (b) Principles and ethical duties of personnel dealing with victims;
- (c) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- (d) Impact, consequences, including negative physical, mental, emotional, psychological and financial effects, and trauma of crimes;
- (e) Special measures and techniques to assist victims and witnesses in the justice process (both formal and informal);
- (f) Cross-cultural and age-related linguistic, religious, social and gender issues;
- (g) Appropriate communication skills;
- (h) Interviewing and assessment techniques that minimize any trauma to the victims while maximizing the quality of information received from the victim.
- (i) Skills to deal with victims and witnesses in a sensitive, understanding, constructive and reassuring manner.
- (j) Methods to protect and present evidence and to question victims and witnesses
- (k) Roles of, and methods used by, personnel working with victims and witnesses.

- (6) State Parties shall ensure that adequate sensitization be provided to
 - (a) victims in order to enable them to be empowered to seek assistance from appropriate quarters so as to able to receive justice, support and assistance in respect of their victimization
 - (b) members of the public in order to enable them to understand the reasons for provision of justice, support and assistance to victims to be able to become more committed to victim assistance.
- (7) States Parties shall foster, develop and improve cooperation between States in order to facilitate the more effective implementation of the provisions contained in this Convention in order to facilitate the more effective protection of victims' interests in criminal proceedings, whether in the form of network directly linked to the judicial system or of links between organizations which provide support to victims.

Article 13

Monitoring

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

- (3) States Parties undertake to make the principles and provisions of this convention widely known, by appropriate and active means.
- (4) For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the Convention, there shall be established a Committee on Justice and Support of Victims of Crime, Abuse of Power and Terrorism, which shall carry out the functions hereinafter provided.

See appendix for details

APPENDIX I

Article 1

Committee on Justice and Support for Victims of Crime, Abuse of Power and Terrorism

- (1) For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on Justice and Support for Victims of Crime, Abuse of Power and Terrorism, which shall carry out the functions hereinafter provided.
- (2) The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
- (3) The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
- (4) The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
- (5) The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
- (6) The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
- (7) If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
- (8) The Committee shall establish its own rules of procedure.
- (9) The Committee shall elect its officers for a period of two years.
- (10) The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the

Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

- (11) The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
- (12) With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.
- (13) States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
- (14) Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
- (15) A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
- (16) The Committee may request from States Parties further information relevant to the implementation of the Convention.
- (17) The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
- (18) States Parties shall make their reports widely available to the public in their own countries.

Article 2

Cooperation

- (1) In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:
 - (a) The United Nations Office on Drugs and Crime, the specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the United Nations Office on Drugs and Crime, the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the United Nations Office for Drugs and Crime, the specialized agencies and other United Nations organs to

- submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including national human rights institutions, governments, relevant United Nation bodies, specialized agencies and programmes, in particular with the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee of the Security Council and the Office of the United Nations High Commissioner for Human Rights.
 - (c) The Committee shall transmit, as it may consider appropriate, to the United Nations Office for Drugs and Crime, specialized agencies and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
 - (d) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the matters covered under this convention;