

# A BETTER DEAL:

## The Human Rights of Victims in the Criminal Justice System



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Irish Council for  
**Civil Liberties**

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The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included campaigns resulting in the establishment of an independent Garda Síochána Ombudsman Commission, the legalisation of the right to divorce, more effective protection of children's rights, the decriminalisation of homosexuality and the introduction of enhanced equality legislation.

*We believe* in a society which protects and promotes human rights, justice and equality.

*What we do:*

- Advocate for positive changes in the area of human rights;
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- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police reform and judicial accountability;
- Run campaigns to raise awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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# 1. INTRODUCTION



In an adversarial system of justice, the victims of crime can be easily forgotten. An incident which began as one between the victim and the defendant (i.e. the actual commission of the crime itself) develops into an issue solely between the State and the defendant, once a prosecution has been initiated.<sup>1</sup> Although the matter is taken out of the hands of the victim they may still be required to participate as a witness, or if they so desire, and are enabled to do so under legislation, provide a Victim Impact Statement (VIS) where a guilty verdict has been pronounced.<sup>2</sup> Nonetheless, the experience can lead to many emotional responses including personal insecurity, confusion and pain.<sup>3</sup> Each person is unique in how they react to a crime committed against them; however, the:

Common factor in crime is that the act is carried out knowingly by another human being and whatever the reason – greed, poverty, high spirits, hatred, drugs or alcohol – its effects are experienced by most victims and their families as personal acts of aggression aimed specifically at themselves.<sup>4</sup>

This policy document examines the treatment of victims within the Irish criminal justice system. It sets out five rights to which crime victims are entitled<sup>5</sup> and assesses Ireland's performance in upholding these rights. In doing so, the paper draws on human rights law and instruments of international best practice such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 (the "UN Declaration");<sup>6</sup> the European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (the "European Framework Decision");<sup>7</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims (the "Committee of Ministers Recommendation");<sup>8</sup> and the European Convention on Human Rights (ECHR), which has been incorporated into

1 James Hamilton, Director of Public Prosecutions, at the *Launch of Revised Information Booklets*, (13 November 2006) stated that, "One of the greatest challenges we face as prosecutors, is to ensure that victims and the general public have realistic expectations of what the criminal justice system can deliver. The prosecutor prosecutes on behalf of the people and for valid reasons does not represent the victim." As noted by O'Malley, aside from the original decision to report the crime, "all other decisions are taken by official agencies". Therefore, "victims now have a less visible and central role than they did in the past." O'Malley, T., (2000), *Sentencing Law and Practice*, Dublin, at p.225.

2 A Victim Impact Statement can be made for certain crimes only, see below at pp. 34 – 36.

3 Sally Hanlon, Director of Services with *Support after Crime Services*, pointed out "there is no rehearsal for being a victim of crime", in conversation with the author of the report, 10 October 2007, Cork.

4 Victim Support Europe, (1998), *Statement of Victims' Rights to Standards of Service*, London, at p.3.

5 Space restricted the examination of the applicable human rights to five; however, this paper is not an exhaustive examination.

6 This is set out at Appendix 4.

7 This is set out at Appendix 5. The European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings aims to harmonise the rights of victims of crime within the Member States, in order to secure certain minimum standards for the treatment of the victims of crime and their families. See Coffey, G., (2006) *The Victim of Crime and the Criminal Justice Process*, 16(3) ICLJ 15a, at p.6. Made by the European Council (comprising heads of State or Government), Member States must ensure that their legal systems guarantee the intended result of the Framework Decision; however, the choice of form and method of implementation is decided by the Member State itself. Unlike the status accorded to EU Directives, the European Commission cannot bring an action in the Court of Justice to force a Member State to transpose a Decision.

8 Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies. This is set out at Appendix 6.

Irish law by the European Convention on Human Rights Act 2003.<sup>9</sup> In relation to the European Framework Decision, Ireland's record in applying the standards laid down in the instrument has been assessed by the European Commission in their 2004 evaluation report.<sup>10</sup>

Research for this paper involved meetings with twenty-two organisations that provide support to, or are involved with, the victims of crime. Those consulted ranged from direct service providers to organisations which have a broader interest in upholding the rights of victims.<sup>11</sup> Drawing on the practical experiences of these personnel, the paper connects common practice with international standards and best practice frameworks.

The ICCL considers that it is important to focus upon the protection of rights that are achievable on a practical level and capable of having a real impact on the experience of victims involved in the criminal justice system. Nevertheless, the ICCL also believes that victims' rights are deliverable without compromising the fundamental principles which lie at the heart of the criminal justice process: the right to a fair trial and the presumption of innocence. Indeed, a general consensus emerged from the organisations consulted for this paper that the effective recognition of the rights of victims does not require restrictions on the rights of defendants; nor, the amendment of the technical rules of the criminal justice system.<sup>12</sup>

Supporting the victims of crime is a continuous process and the ICCL considers that long-term strategies should be developed and implemented in an effort to achieve this.<sup>13</sup> The Government should devise a workable strategy to realise the needs of victims and ensure there is a streamlined approach across the public and voluntary agencies that come into contact with victims.<sup>14</sup> Indeed, the Committee of Ministers Recommendation

9 Under the 2003 Act, all public bodies are required to act in conformity with the ECHR. Reference is also made to the human rights standards contained in the Commonwealth Best Practice Guidelines on Victims' Rights and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law 2005 (the "UN Guidelines"). The UN Guidelines are concerned with the victims of violations of international human rights and humanitarian law.

10 European Commission, *Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings*, [SEC(2004) 102], available on [www.eurlex.eu](http://www.eurlex.eu). Ireland submitted a compliance report to the Commission under Article 18 of the European Framework Decision in August 2002; however, according to the Department of Justice, Equality and Law Reform, the "report is not for publication and therefore not available to the public".

11 The full list of the organisations consulted can be found at Appendix 1. In general, the discussion focused on the following: (1) What strengths exist in the current criminal justice model? (2) What are the inadequacies of the current process? (3) How would people, who are the victims of crime, wish to see the system operate? (4) The value of the model of restorative justice. (5) The use of victim impact statements; and the benefits, or otherwise, that they bring to the process. (6) How could the system become more victim-centered? (7) Examples of best practice from other countries.

12 Of course, it is arguable that the technical rules of the criminal justice system must be fair and proportionate in order to vindicate the victim's right to an effective remedy. For example, the Rape Crisis Network Ireland has made recommendations for change in criminal law procedures. See "Agenda for Justice: Towards Ending Injustice for Survivors of Sexual Violence" (November 2005) and "Agenda for Justice II: Delivering on the Promise of Child Protection" (September 2006). However, the overwhelming response of groups when asked for examples of positive changes to the system, focused on practical improvements rather than amendments to evidential procedures.

13 See Northern Ireland Human Rights Commission, (June 2003), *Human Rights and Victims of Violence*, at p.8.

14 See Northern Ireland Office, (2007), *Bridging the Gap between Needs and Service Delivery*, Belfast. The ICCL welcomes the inclusion of "The Victim and the Criminal Justice System" in the Law Reform Commission's third programme of law reform. See Law Reform Commission (2007), *Report on the Third Programme of Law Reform 2008 – 2014*, LRC 86 – 2007, at p.13, available at <http://www.lawreform.ie/>.

provides that each “State should develop and maintain co-ordinated strategies to promote and protect the rights and interests of victims”.<sup>15</sup>

Some of the proposals set out in this document require an increase in, and better use of resources by the Gardaí, the courts and other criminal justice agencies. However, many improvements are achievable through operational and ideological changes on the part of the aforementioned bodies as well as the judiciary, the prosecuting authorities and the wider legal world. In this regard, the UN Declaration provides that:

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.<sup>16</sup>

The core theme generated from discussions with the respondent organisations is the need to place victims at the heart of the criminal process when developing services and facilities. The ICCL believes that the human rights of crime victims in Ireland are currently not sufficiently supported and protected in order to comply with international human rights standards. The aim of this document is to contribute to the ongoing debate on victims’ rights and the establishment of the proposed statutory Victim Support Agency and Victim’s Council.<sup>17</sup> Overall, the ICCL believes that victims’ human rights should be vigorously upheld to ensure that their journey through the criminal justice process does not amount to secondary victimisation.<sup>18</sup>

<sup>15</sup> Recommendation Rec (2006) 8 of the Committee of Ministers to member states on the assistance to crime victims, Article 14.1.

<sup>16</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Principle 16.

<sup>17</sup> The Government’s commitment to establishing a Victim Support Agency and a Victim’s Council is contained in *An Agreed Programme for Government* (June 2007), under heading ‘Justice’ at p.71, available at [http://www.taoiseach.gov.ie/attached\\_files/Pdf%20files/NewProgrammeForGovernmentJune2007.pdf](http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NewProgrammeForGovernmentJune2007.pdf). See also, Logue, Patrick, “Victim Support Agency to be set up”, [www.ireland.com](http://www.ireland.com), 16 June 2007. The Victim’s Council will formulate policy with regard to victims’ interests.

<sup>18</sup> “There is a need to avoid procedural abuses and shortcomings in the criminal justice system that can amount to secondary victimisation.” Commonwealth Secretariat, (2002), *Commonwealth Best Practice Guidelines on Victims’ Rights*, London at p.11.

## 2. WHO IS A VICTIM?



The UN Declaration defines a victim 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>19</sup>

Under the UN Declaration, a person may be identified as a victim regardless of whether the perpetrator is identified, prosecuted or convicted. The term “victim” includes, where appropriate, the family or dependants of the direct victim who “have suffered harm in intervening to assist victims in distress or to prevent victimisation”.<sup>20</sup>

The European Framework Decision contains a more narrow definition than its UN counterpart. It requires *direct* impact before a person falls within the category of victim. Article 1(a) defines a victim as:

A natural person who has suffered harm including a physical and mental injury, emotional or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.

Article 1 of the Committee of Ministers Recommendation follows this definition; however, it includes the “immediate family or dependents of the direct victim”. In Ireland, “victim” is defined in the context of a Victim Impact Statement as a “person in respect of whom the offence was committed”.<sup>21</sup> This suggests that the section was intended to apply to primary victims only; however, the courts have used their discretion to also allow the close family of homicide victims to make a statement.<sup>22</sup> Meanwhile, the *Garda Charter for Victims of Crime* (the “Garda Charter”) defines a victim as:

Any person or group of people who individually or collectively, directly or indirectly, suffer harm as a result of a crime or other traumatic incident, which requires a Garda response.<sup>23</sup>

Under the European Convention on Human Rights (ECHR), the term “victim” is not specifically defined but a number of important principles have emerged from the case law of the European Court of Human Rights. The concept of “victim” under the Convention is reasonably wide. It includes those “directly affected” by an act or omission and those “at risk” of being affected by an act or omission. Where people are at risk of “serious and irreparable harm” the European Court of Human Rights is willing to consider a complaint on the basis that a violation of the Convention is “possible”.<sup>24</sup> Indirect victims can also bring proceedings under the Convention where they have suffered themselves and the direct victim is unable to bring a complaint.<sup>25</sup> By virtue of the European

<sup>19</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Principle 2.

<sup>20</sup> *Ibid*, Principle 2.

<sup>21</sup> Criminal Justice Act 1993, section 5.

<sup>22</sup> O'Malley, states that “some courts exercise their discretion, as they are probably entitled to do, to allow a close relative of a homicide victim to make a statement indicating the effect which the offence has had upon the victim's family”. O'Malley, T., *op cit*, at p.234.

<sup>23</sup> See below for more information on the *Garda Charter for Victims of Crime*. The same definition is found in, *Garda Support for the Victims of Crime*, available at <http://www.garda.ie/angarda/vimsup.html>.

<sup>24</sup> For example, in *Soering v. United Kingdom* (1989) 11 EHRR 439, the Court held that the prospect of a prolonged period on death row was sufficient to bring the applicant within the definition of ‘victim’.

<sup>25</sup> See generally, Starmer, K (1999) *European Human Rights Law*, Legal Action Group, London, at pp.49 – 56.

Convention on Human Rights Act 2003, Irish courts are obliged to interpret the law in line with the ECHR and public officials must act in a manner which is in conformity with the Convention. Therefore, any definition of 'victim' within Irish law should be formulated according to the standards set out by the European Court of Human Rights.

The Victims' Rights Bill introduced to the Dáil on 24 January 2008<sup>26</sup> contains an extensive definition of "victim".<sup>27</sup> The following categories come within its ambit:

- Any complainant in a criminal offence;
- Anyone who suffers physical injury, emotional harm or economic loss (including damage to property) as a result of a crime or an offence;
- Every member of the immediate family of someone who dies or is in a state of continuous unconsciousness or suffering serious intellectual disability as a result of a crime or an offence, and;
- The guardian, parent or person acting in loco parentis of any child who is a victim within the meaning of the Bill save where that person is the offender (or engaging in the relevant anti-social behaviour).

It is clear from the feedback received from groups that a wide definition of "victim" is favoured. This would recognise the broad impact that crime can have, not only on the person directly affected but also on his or her wider family and community. The definition of "victim" in current Irish law is limited to the arena of Victim Impact Statements; however, the term used by An Garda Síochána is reasonably broad in its application. In line with the UN Declaration, the ICCL considers that a comprehensive definition of "victim" should be adopted in Irish law.

<sup>26</sup> This is a Fine Gael Bill sponsored by Alan Shatter T.D. and Charles Flanagan T.D.

<sup>27</sup> Victims Rights Bill 2008, section 2.



### 3. RIGHT TO INFORMATION



## Information exchange should commence from the first moment a victim contacts a criminal justice agency, and should continue on a regular and up-to-date basis.

### INTERNATIONAL STANDARDS

The UN Declaration states that legal and administrative actors should inform victims of their role; as well as the scope, timing and progress of the proceedings; and, the disposition of cases, especially where serious crimes are involved.<sup>28</sup> The Committee of Ministers Recommendation calls on States to ensure that “victims have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights”.<sup>29</sup> Furthermore, the European Framework Decision obliges States to ensure that victims have access to information of “relevance for the protection of their interests” from their “first contact with law enforcement agencies”.<sup>30</sup> The right of crime victims to receive information is dealt with comprehensively under Article 4 of the European Framework Decision. For the most part, Ireland has chosen to assume its obligations under this provision by maintaining and updating the Victims’ Charter and Guide to the Criminal Justice System (the “Victims’ Charter”). However, the European Commission is not satisfied that this action alone completely fulfils the obligations imposed under Article 4. This will be considered in greater detail below.<sup>31</sup>

Victim Support Europe<sup>32</sup> considers that victims “benefit from receiving accurate information about their rights, duties and other services available to them”.<sup>33</sup> Irish support service providers consulted for this project also stated that the availability of timely and clear information can have a huge impact on the experience of a victim. “Incomprehension as to the workings of the judicial system pose significant hurdles to the uninitiated”;<sup>34</sup> however, for a witness who is “sufficiently briefed by a

<sup>28</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power 1985, Principle 6(a)

<sup>29</sup> Recommendation Rec (2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 6.1.

<sup>30</sup> European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Article 4.

<sup>31</sup> At pp.16 - 18.

<sup>32</sup> Victim Support Europe is a network of non-governmental organisations that provides community and court based services for victims of crime. Founded in 1990 by all the national organisations in Europe working with victims of crime, the Forum exists to promote the development of victim services throughout Europe and the promotion of policies for victims both in the context of criminal justice and in the wider social environment. European Victim Day is 22 February – this started in 1993 when members of Victim Support Europe (then, the European Forum for Victim Services) signed the Statement of Victims’ Rights in the Process of Criminal Justice.

<sup>33</sup> Victim Support Europe, (1998) *Statement of Victims’ Rights to Standards of Service*, London, at p.4.

<sup>34</sup> Mul Kerrins, K., (2003), *Trial Venue and Process: the Victim and the Accused*, Judicial Studies Institute Journal, Volume 3 No. 1, at p.125. This paper was delivered on behalf of the Rape Crisis Network Ireland.

Garda Liaison Officer, the whole experience of giving evidence is less traumatic and reduces the likelihood of intimidation – no matter how subtle or obtuse – from thwarting the witness/victim giving strong testimony”.<sup>35</sup>

Victim Support Europe has called for all countries in Europe to “ensure that all victims of crime are aware of the services and how to contact them”.<sup>36</sup> The organisation has also advocated for the right of victims to “opt in” to procedures whereby they are kept informed of developments relating to the case. This policy will ensure that victims are not forced to have more involvement in criminal proceedings than they wish and is in line with the European Framework Decision which provides that information on the outcome of the case, the sentence imposed or details of an offender’s release from prison should not be imposed on a victim without their agreement.<sup>37</sup>

Information should be imparted by the person who was responsible for making the decision<sup>38</sup> and must be explained in a full and clear manner.<sup>39</sup> In relaying information to a victim, it is important to recognise that the level of understanding and knowledge of each person varies. Another obvious consideration is the availability of information in various formats e.g. audiotape, Braille and various languages.<sup>40</sup> In this respect, the Committee of Ministers Recommendation provides that “assistance should be provided in a language understood by the victim”, wherever possible.<sup>41</sup>

## Right to Receive Information for Crime Victims in Ireland

The Crime Victims Helpline is funded by the Commission for the Support of the Victims of Crime.<sup>42</sup> The organisation provides support and information to victims of crime as well as acting as a central referral centre. It aims to carry out these activities in an atmosphere of respect, support, confidentiality and non-judgment. The contact details of the Helpline are included on the Garda Charter and posters detailing information about the Helpline should be displayed in all Garda stations.

35 Victim Support, *Submission to the Joint Committee on Justice, Equality, Defence and Women’s Rights*, 28 November 2003, at p.8.

36 Victim Support Europe, (1998) *op cit*, pp.5-7.

37 European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Article 4 (4). The Committee of Ministers Recommendation, at Article 6.5, contains a similar provision.

38 AdVIC suggest that the Garda file which is passed to the Director of Public Prosecutions (DPP) should contain a victim profile together with contact details of the next of kin. When the case is moving through the prosecution stage, it would be the responsibility of the DPP’s Office to keep the victim/victim’s family informed of developments. At present, communication from the DPP’s Office takes place through the Garda member. (Conversation between the author of this report and members of AdVIC, 23 October 2007). The Office of the DPP report that such a service would be resource-dependent; however, it is anticipated that the establishment of the family liaison officer scheme will lead to an improvement in communicating with victims. (Communication with the Office of the DPP, 16 May 2008).

39 Victim Support Europe, (1996), *Statement of Victims’ Rights in the Process of Criminal Justice*, London, p.6.

40 State agencies could collaborate with community and adult education providers regarding the most appropriate means to communicate with certain groups of people. In England and Wales, the Crown Prosecution Service (CPS) provides information for vulnerable or intimidated witnesses to help them in preparing for a meeting with the CPS, available at <http://www.cps.gov.uk/publications/docs/yourmeeting.pdf>.

41 Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 3.5.

42 States are encouraged to establish or support free national telephone help lines for victims under the Committee of Ministers Recommendation. Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 5.5.

It is a national service; it deals with the entire spectrum of crime and acts as a single point of referral to other agencies. In this regard, the Helpline is an excellent purveyor of information to victims of crime. However, as outlined below, the Report of the European Commission on compliance with the European Framework Decision makes clear that no one method of information-giving is sufficient; rather, effort should be concentrated on developing different mediums of communication to ensure that all victims of crime are fully informed of the process.

The Victims' Rights Bill 2008 sets out a victim's right to information from various state agencies about the services or remedies available from that organisation.<sup>43</sup> A victim's right to information about the investigation or court proceedings is set out extensively in the Bill and includes information on the investigating Garda, the proceedings, bail issues, the victim's role as witness, evidence-giving, anonymity and restorative justice.<sup>44</sup>

### An Garda Síochána

The Gardaí have an up-to-date *Charter for Victims of Crime*, which is available in nine different languages and all Garda members must abide by it.<sup>45</sup> Under the Garda Charter, Gardaí are obliged to provide information to victims at various stages throughout the process, including: the name, telephone number and station of the investigating Garda; an outline of the investigation and prosecution procedure; the circumstances where a judge may ask for a Victim Impact Statement; services available to victims; matters relating to bail, the court hearing and VISs; and, information on the release of the offender, if requested.

Garda Family Liaison Officers (FLOs) are appointed to victims who have suffered particular crimes. In addition to their support function, FLOs provide information to the victim about the ongoing investigation and liaise with the DPP's Office, relaying and explaining any information about the prosecution proceedings.<sup>46</sup>

43 Victims' Rights Bill 2008, section 7. The State agencies are An Garda Síochána, Courts Services Board, Criminal Injuries Compensation Tribunal, Department of Health and Children, Department of Justice, Equality and Law Reform and the Health Services Executive.

44 Victims' Rights Bill 2008, section 8.

45 The *Garda Charter for Victims of Crime* is available at <http://www.garda.ie/angarda/othdocs.html> or at local Garda stations. This document will feed into the overall Victims Charter currently under review by the Commission for the Support of Victims of Crime – this is discussed below at pp.50 and 51.

46 The role of the FLO is considered further below at pp. 51 and 52.

## Director of Public Prosecutions (the “DPP”)

The DPP’s Office is clear in its commitment to victims in its *Statement of General Guidelines for Prosecutors*.<sup>47</sup> Nevertheless, most of the organisations consulted called for a more proactive role on the part of the DPP’s Office generally in dealing with victims and their families; and, particularly, in respect of the information-giving role of the Office.

Although officials operate under legal restrictions in relation to communications with victims, the DPP’s office has sought to enhance the relationship of prosecutors with the victims of crime. The Office aims to provide good quality, relevant information to victims as soon as possible and these procedures are kept under constant review.<sup>48</sup> Although considered helpful, victim support groups reported that the DPP’s Office *initiates* very little communication and at times, the information provided is restricted.

Victims are also entitled to meet the prosecuting legal team and in general, the DPP’s Office depends on the Gardaí to liaise with the victim in this regard. In more serious cases, the DPP’s Office report that the pre-trial meeting has been virtually automatic and victims do not have to request it (this includes the family of deceased persons).<sup>49</sup> In this respect, the ICCL refers to the European Commission’s Report on the implementation of the European Framework Decision that points to practices adopted in France, Luxembourg and Spain which correspond to the Article 4 (right to information) objectives of the European Framework Decision. In these countries there is an obligation on those involved in the criminal process, such as senior criminal investigative officers or the prosecutor, to inform victims of their rights and possibilities of action.<sup>50</sup>

On a positive note, the Rape Crisis Network Ireland was keen to point out one of the strengths of the system which is the newly-introduced case conferences where the victim of a sexual crime meets the

- 47 The *Statement of General Guidelines for Prosecutors* set out what a victim can expect from the DPP’s office, including:
- regard to the views expressed by victims when making decisions in specific cases on whether to prosecute or not;
  - appeal of a sentence to a higher court (where the DPP considers the sentence to be too lenient);
  - work with the Gardaí to ensure that the victim is kept apprised of developments in the prosecution of offences.
- The DPP’s Office has also published a Victims’ Charter and two booklets entitled *The Role of the DPP and Attending Court as a Witness*; the latter are available in eight languages and on their website at <http://www.dppireland.ie>. The Office also has a dedicated Communications Unit to take telephone calls from members of the public (Correspondence with the *Office of the Director of Public Prosecutions*, 4 October 2007).
- 48 Correspondence from the *Office of the Director of Public Prosecutions*, (4 October 2007) states that the DPP’s Office “endeavours in so far as possible, within legal constraints, to address and enhance the level and quality of information received by victims at as early a stage as possible in the process. The efficacy, of the procedures in place, is kept under continual review”.
- 49 Correspondence with the *Office of the Director of Public Prosecutions*, 4 October 2007. . See the joint study commissioned by AdVic and Support after Homicide, funded by the Commission for the Support of Victims of Crime. Cooper, J., (2008), *The Emotional Effects and Subsequent Needs of Families Bereaved by Homicide in Ireland*, available at <http://www.advic.ie/resources/>. Cooper spoke with families bereaved by homicide about meeting the prosecution team and ultimately recommended that such information should be “pro-actively given to families by an identified information-giving agency”. See the joint study commissioned by AdVic and Support after Homicide, funded by the Commission for the Support of Victims of Crime. Cooper, J., (2008), *The Emotional Effects and Subsequent Needs of Families Bereaved by Homicide in Ireland*, available at <http://www.advic.ie/resources/>. Cooper spoke with families bereaved by homicide about meeting the prosecution team and ultimately recommended that such information should be “pro-actively given to families by an identified information-giving agency”.
- 50 European Commission, *op cit*, at p.6.

prosecution team (with strict guidelines as to coaching). This includes a tour of the courts. Though very simple, the Rape Crisis Network reported that it has a profound effect on victims and has been very helpful in alleviating fear of unknown surroundings and procedures.

### DPP's Policy on the Giving of Reasons for Decisions

Many groups also mentioned the ongoing debate regarding the policy of the DPP not to disclose the reasons why a prosecution has failed to proceed.<sup>51</sup> Some of the groups consulted reported that victims feel a sense of disempowerment when this occurs. Furthermore, in some cases, the groups reported that officials are failing to inform victims or their families of the right to appeal the decision not to prosecute.

However, the groups were unclear as to how such decisions could be formulated in a manner which preserves the right of a person to the presumption of innocence. Nevertheless, the majority consensus was that the publication of general reasons why cases did not proceed would be a sufficient starting point. The DPP's Annual Report of 1999 included general reasons regarding the non-prosecution of alleged sexual crimes as well as an analysis of the cases that had been submitted. At the time, the Rape Crisis Network Ireland welcomed this development; however, this practice has not been replicated since.

The policy of the DPP not to give reasons for decisions has been upheld by the Supreme Court where it was accepted that compelling the DPP to give reasons for a decision not to bring a prosecution would be unjust.<sup>52</sup> Two main reasons were advanced: it could result in suggestions of guilt in certain cases (e.g. the prosecution didn't proceed because there was insufficient evidence) and the protection of Garda sources could be compromised.<sup>53</sup>

In *Jordan v. United Kingdom*,<sup>54</sup> the European Court of Human Rights considered the failure of the DPP in Northern Ireland to give reasons for his decision not to prosecute members of the security forces who had used lethal force against a member of the public. The argument advanced in this case took place in the specific context of Article 2 (right to life) of the ECHR and the requirement that a full and effective investigation be carried out when individuals are killed as a result of the use of force by state agents.<sup>55</sup> The Court considered that the DPP must give the appearance of independence in his decision-making and that a failure to give reasons in a controversial incident involving the lethal use of force

<sup>51</sup> In this regard, the English Court of Appeal held that the police owed no duty of care to victims when taking a decision whether or not to prosecute a suspected offender, even where the decision took into account the interests of the victims. The Court found that it would not be reasonable to impose such a duty, which might require prosecutors to weigh the private interests of the victim against their general public duties. *Vicario v. Commissioner of Police of the Metropolis*, Court of Appeal, 4 January 2008. See [www.timesonline.com](http://www.timesonline.com) for more information.

<sup>52</sup> *H v. Director of Public Prosecutions* [1994] 2IR 589.

<sup>53</sup> *Ibid*, at p.601.

<sup>54</sup> *Jordan v. United Kingdom* (2003) 37 EHRR 52.

<sup>55</sup> For more on full and effective investigations under Article 2 of the ECHR, see pp.40 – 42.

“may not in itself be conducive to public confidence”.<sup>56</sup> The Court further noted that the absence of reasons for a decision not to prosecute “denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision”.<sup>57</sup> In this case, a reasoned decision was not available which could assure the public that the “rule of law had been respected” and this was regarded as incompatible with Article 2.<sup>58</sup>

In January 2008, the DPP’s Office published a discussion paper entitled *Prosecution Policy on the Giving of Reasons for Decisions*. The aim of the document is to undertake a review of the current policy of the DPP not to give reasons and the DPP’s Office sought the views of the public in assessing the current framework. In relation to the *Jordan* decision, the DPP’s Office (Ireland) has stated that it “clearly puts in issue the general compatibility with the ECHR of a blanket policy for not giving reasons for not prosecuting”.<sup>59</sup> As the discussion paper points out, the current policy not to give reasons for decisions is not governed by any statutory provision and “no authority exists that would prevent the Office from modifying its policy on this matter”.<sup>60</sup>

The ICCL considers that reasons should be given to a victim when a decision is made not to prosecute, unless there are compelling reasons not to do so. In line with international standards,<sup>61</sup> a victim’s right to information is served by the giving of reasons for a decision not to prosecute. However, such a practice should not interfere with a suspect’s right to the presumption of innocence or his/her right to a good name. The ICCL believes that a system of adjudication operated on a case-by-case basis is essential to ensure that the rights of a suspect and those of the victim are adequately protected and supported.

## The Victims’ Charter and Guide to the Criminal Justice System

The present Victims’ Charter is nearly 10 years out of date<sup>62</sup> and lacks mandatory status.<sup>63</sup> However, its revision is part of the mandate of the Commission for the Support of Victims of Crime. As noted above, in their report to the European Commission, the Irish Government claimed to be compliant with Article 4 of the Framework Decision by virtue of the provisions set out in the Victims’ Charter. However, in its assessment,

<sup>56</sup> *Ibid*, at para 123.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*, at para 124.

<sup>59</sup> Office of the Director of Public Prosecutions, (January 2008) *Discussion Paper on Prosecution Policy on the Giving of Reasons for Decisions*, at para 2.5, p.16.

<sup>60</sup> *Ibid*, at para 3.1, p. 28.

<sup>61</sup> See Guidelines 12 and 13(d) of the UN Guidelines on the Role of Prosecutors 1990; 4(e) of UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power; Article 4 of the European Council Framework Decision on the Standing of Victims in Criminal Proceedings 2001; and Article 4.4 of Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims.

<sup>62</sup> The Victims’ Charter is available on the website of the Department of Justice, Equality and Law Reform at <http://www.justice.ie/en/JELR/VictimsCharter.pdf/Files/VictimsCharter.pdf>. The Charter was issued in 1999. The Victims’ Charter contains the individual charters of An Garda Síochána; the Courts, Prisons and Probation and Welfare services; the State Prosecution Services; and, the Coroner Service. It also includes the Charter of the Victim Support Group (former community-based organisation which provided support to victims of crime).

<sup>63</sup> The European Commission noted its lack of mandatory status with regret, *op cit*, at p.6.

the European Commission pointed out that information exchange with enforcement authorities is not achieved by “simply issuing information booklets or setting up websites, without the authorities actively providing individual victims with information”.<sup>64</sup> Furthermore, the European Commission considered that “the information provided does not make it possible to know how the Irish Victims’ Charter is distributed and whether it truly reaches its target audience”.<sup>65</sup>

A majority of the groups consulted agreed that there should be a statutory Charter of Rights for Victims and that this should be underpinned by legally binding rights, a breach of which would have implications for those agencies involved. Provisions in the Victims’ Rights Bill propose that the Commission for the Support of the Victims of Crime would draft a Code of Practice on victims’ rights and the services to be provided to them, in consultation with Government departments, state agencies, voluntary groups and appropriate individuals. The Bill further provides that a breach of the Code or indeed any of the rights set down in the Victims’ Rights Bill would allow the victim to complain to the person who should have accorded the right to the victim, the Ombudsman,<sup>66</sup> the Garda Síochána Ombudsman Commission<sup>67</sup> (if the complaint relates to a Garda) or the Children’s Ombudsman<sup>68</sup> (if the complainant is a child).

The mechanisms under the Victims’ Rights Bill are similar to those in England and Wales, where the Domestic Violence, Crime and Victims Act 2004 placed a statutory requirement on the Secretary of State to issue a Code of Practice in relation to victim services.<sup>69</sup> Subsequently, the *Code of Practice for the Victims of Crime* was launched in April 2006. The Code sets out the minimum standards of service to which victims are entitled and is applicable to those bodies which provide services to the victims of crime as well as other criminal justice agencies. Complaints can be made to the specific agency and if necessary to the Parliamentary Ombudsman; or if the complaint relates to misconduct on the part of the police, the complainant may petition the independent police complaints commission.

64 European Commission, *op cit*, at p.5.

65 European Commission, *op cit*, at p.5.

66 The Ombudsman’s Office examines complaints about the administrative actions of Government Departments, the Health Service Executive, local authorities and An Post. More information is available at <http://ombudsman.gov.ie/en/>.

67 The Garda Ombudsman examines complaints made by members of the public concerning the conduct of members of the Garda Síochána. More information is available at <http://www.gardaombudsman.ie/>.

68 The Office of the Ombudsman for Children carries out independent investigations into complaints against public organisations, conducts research into children’s issues and advises the government on matters relating to children. More information is available at <http://www.oco.ie/en/homepage.aspx>.

69 Domestic Violence, Crime and Victims Act 2004, section 32.

## ICCL RECOMMENDATIONS

The ICCL endorses the content of the European Framework Decision, which provides that all victims should receive information on:

- **Support services available;**<sup>70</sup>
- **Where and how to report an offence;**
- **Access to legal advice;**
- **Attributes of the case;**
- **Police procedures;**
- **Court procedures and the role of witnesses;**
- **Sentence imposed;**
- **Compensation matters;**
- **If victims are resident in another State, any special arrangements available to them in order to protect their interests;**
- **Dates of hearings and their relevance e.g. bail, trial, sentence hearings;**
- **Release of the convicted person, at least in cases where there may be danger to the victims.**<sup>71</sup>

Furthermore, the ICCL considers that traditional lines of communication should be improved and modern methods of engaging with vulnerable and/or traumatised people should be explored. A recurring message which emanated from the groups consulted was a lack of initiation on the part of State actors in their role as information-providers. State agencies, in consultation with victim support groups, should consider what information a victim may need and subsequently take steps to put mechanisms in place to impart that information in a holistic manner (e.g. letters, face-to-face meetings, leaflets, website etc.). This will have the effect of reversing the present status quo which appears to oblige victims to seek out the information they require.

In the UK, the treatment of the victims of crime has been high on the agenda for a number of years. The Crown Prosecution Service (CPS),<sup>72</sup> has spent £11 million on a system which allows victims and defendants to track their cases through the courts (an identifying number is provided). There is a dedicated website, *Criminal Justice Online*, which provides information for victims, witnesses, defendants and offenders as well as “virtual tours” through the criminal justice process for each category of person.<sup>73</sup> This is a commendable service; however, the ICCL urges caution in considering the use of such websites a panacea for information provision. In this regard, the ICCL refers to the statement of the European Commission that:

<sup>70</sup> One group suggested that a greater effort should be made to promote awareness of services for crime victims beyond those who have officially reported the crime.

<sup>71</sup> The Rape Crisis Network Ireland have also stated their belief in the right of all complainants to be “informed of the impending release of the defendant in their case, with sufficient safeguards to preclude the possibility of such notice posing a threat to the safety of the defendant.” Mulkerrins, K., (2003), *Trial Venue and Process: the Victim and the Accused*, *Judicial Studies Institute Journal*, Volume 3 No. 1, at p.125.

<sup>72</sup> This is the equivalent in England and Wales to the Office of the Director of Public Prosecutions in Ireland.

<sup>73</sup> Available at <http://www.cjonline.gov.uk/index.html>. The Victim Support Foundation in the Netherlands is developing a website for young people. The site consists of two sections – one for children 9 - 13 years old and one for those who are 14 - 18 years old. Illustrations and linguistic usage will be attuned to each group.

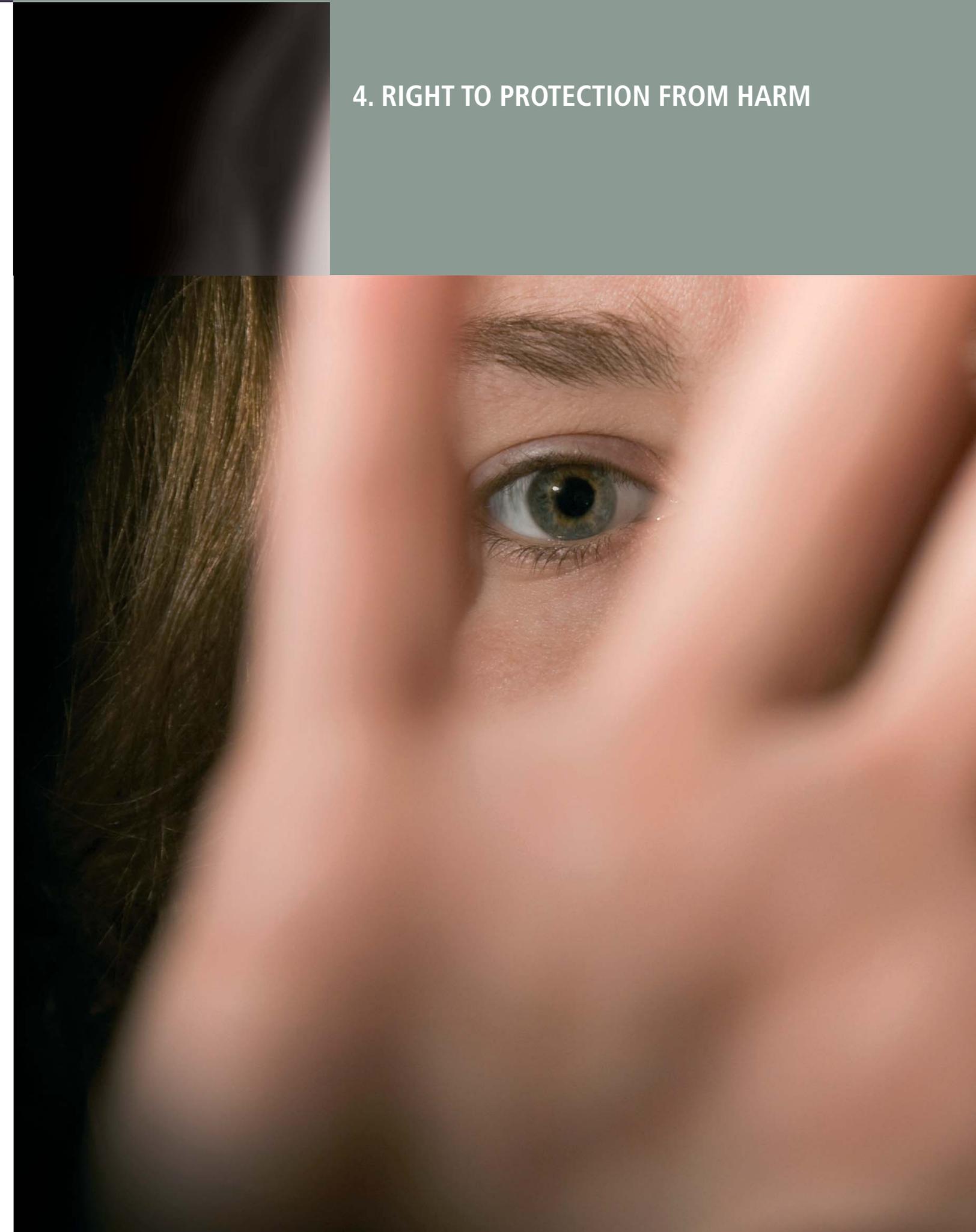
[...] it is legitimate to ask whether everybody is in a position to seek this information on the Internet: this would assume knowing that the information is available and that everyone has access to a computer, which is far from being the case of all victims. In addition, what guarantee is there that the person truly understood the information made available?<sup>74</sup>

In order to promote the right to information of crime victims, the ICCL believes that the following measures should be considered:

- **Dispersal of information about the Crime Victims Helpline to every household in the country;**
- **Development of various platforms for communicating information to victims;**
- **Targeting the provision of information to particular vulnerable groups including, children, older people and minority groups;**
- **Proactive services on the part of the Office of the DPP to engage with crime victims. This should include procedures for contacting every victim or their family on receipt of a case file and pre-trial meetings to take place at least two weeks before the trial date;**
- **Measures should be developed (within a Government agency or through a properly resourced support service provider) to ensure that victims are acquainted with the court complex and informed of the legal arguments/rulings in plain language;**
- **On the crucial issue of the giving of reasons by the DPP in relation to prosecution decisions, the ICCL recommends that reasons should be given to victims when a decision is made not to prosecute, unless there are compelling reasons not to do so.**

74 European Commission, *op cit*, at p.5.

## 4. RIGHT TO PROTECTION FROM HARM



**Victim groups consulted for this paper were unanimous in their call for measures to deal with victim intimidation and harassment. The groups reported that ongoing intimidation is a significant issue.**

### INTERNATIONAL STANDARDS

The UN Declaration provides that legal and administrative agencies should take measures to ensure the safety of victims “as well as that of their families and witnesses on their behalf, from intimidation and retaliation”.<sup>75</sup> The Committee of Ministers Recommendation also requires States to protect the “physical and psychological” integrity of crime victims.<sup>76</sup> In the preamble to the European Framework Decision, the EU Council calls for Member States to put in place laws which allow them to obtain the “objective of affording victims of crime a high level of protection”. Article 8 of the European Framework Decision deals with a victim’s right to protection and sets out the following:

- **Danger of reprisals.** If there is a serious risk of reprisals or firm evidence of an intent to intrude upon privacy, Member States should ensure that a suitable level of protection is administered;
- **Court proceedings.** Appropriate measures should be put in place to protect the privacy of victims and their families. This should include measures to deal with the use of photography;
- **Court Premises.** Contact between victims and defendants should be avoided unless absolutely necessary and each Member State should ensure that court premises have special waiting areas for victims. Those, who are in need of protection, should have the option of testifying in a manner other than in open court.

Article 15 of the European Framework Decision calls on states to put in place conditions to prevent secondary victimisation which may place victims under unnecessary pressure.<sup>77</sup> Such considerations would particularly apply to venues where criminal proceedings take place.

In relation to the trial of sexual offences, certain measures may be taken for the purpose of protecting the victim provided that those measures can “be reconciled with an adequate and effective exercise of the rights of the defence”.<sup>78</sup> In this case, the applicant had been able to confront, but

<sup>75</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power 1985, Principle 6(d).

<sup>76</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 10.

<sup>77</sup> The Committee of Ministers Recommendation also contains provisions on protection against repeat victimisation. Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Articles 10.5 to 10.7.

<sup>78</sup> *Baegen v. The Netherlands*, A/327 – B (1995), unreported, at para 77.

not question, the complainant in a rape trial and therefore, he claimed a breach of Article 6 (right to fair trial) because he had not been able to test her credibility. However, the Court rejected his claim on the basis that he had been in a position to mount an effective defence but had not chosen to do so. The defendant had not used the opportunity to put written questions to her; nor, had he submitted to blood or other tests.

### Right to Protection from Harm for Crime Victims in Ireland

The Victims' Charter sets out the obligation to protect victims; however, in this regard, the European Commission has questioned the non-mandatory nature of the Charter.

In the main, the groups consulted for the present research sought straightforward changes which, they said, would bring about huge differences to the victim's experience. For example, Women's Aid reported that, as a key witness, an abused woman is often required to give evidence against her abuser in open court which can be a highly traumatic experience.<sup>79</sup> Witnesses who are in fear of intimidation may apply to the court to give evidence via television link under the Criminal Justice Act 1999.<sup>80</sup> The 1999 Act also created new offences, including intimidation of a witness, a jury member or any person helping the Gardaí with a criminal investigation;<sup>81</sup> as well as attempting to locate or impart information about relocated witnesses.<sup>82</sup> This is especially relevant as victims are often prosecution witnesses. Further options for tendering evidence in a safe and private environment will be examined under the *Right to Privacy* at pages 28 - 31.

It was generally recommended by the victim groups consulted that there should be a dedicated, separate waiting area for victims. It was further advocated that the victim should be afforded a safe means of arrival and departure so that she or he is protected from the alleged abuser/defendant. In this respect, Article 15 of the European Framework Decision deals with the practicalities for victims attending court proceedings. The Government claim to have transposed this provision; however, the Commission found that the "description of the measures [adopted by the Government] is too vague and not very satisfactory".<sup>83</sup> Moreover, Article 8(3) of the European Framework Decision obliges States to have special waiting areas for victims; however, the Commission reported that Ireland was among a group of countries that did not identify how this provision operated. At present, the Court Support Services run an excellent service in providing victims with a suitable, private waiting area; however, this service is run on an almost voluntary basis. According to the Commission the main difficulty is that, "no national legislation clearly provides for a victim's right to avoid contact with the offender".

79 Other groups consulted reported similar fears of the victims that they support. Women's Aid report a further complicating factor for victims of domestic abuse is that the fear instilled by this arrangement means they often do not present as very good witnesses.

80 Criminal Justice Act 1999, section 39.

81 Criminal Justice Act 1999, section 40.

82 Criminal Justice Act 1999, section 41.

83 European Commission, *op cit*, at p.11.

The Victims' Right Bill 2008 introduces "notice entitlements" to victims of sexual crimes, violent offences and those who have reasonable grounds for fearing his/her physical safety or security or that of members of his/her immediate family.<sup>84</sup> Gardaí are under a duty to inform victims about their entitlement<sup>85</sup> and the victim may appoint a representative to receive notifications on his or her behalf.<sup>86</sup>

Identification of alleged perpetrators can also be a very traumatic experience for victims and witnesses alike. In this respect, the ICCL welcomes the commitment set out in the current Programme for Government which provides for the installation of one-way glass in Garda stations to "protect the identities of witnesses and victims at identification parades".<sup>87</sup>

Particular groups of victims considered intimidation a bigger problem than others. Due to the close knit nature of the Traveller Community, Pavee Point reported that crime victims can be subjected to intimidation when they inform the Gardaí about an incident. Moreover, the tactics used to scare a victim are not always overt; therefore, they are difficult to apprehend.<sup>88</sup> This has been described as "silent intimidation" such as sustained eye contact and intentional jostling passed off as accidental contact.<sup>89</sup> According to some research, it appears to be a double edged sword for Travellers:

Some individuals described experiencing intimidation from other Travellers and therefore felt unsafe within their own community. Nevertheless, these individuals also felt mistrustful of police and therefore would not always express their concerns outside of their community for fear of being further victimised by the police or other Travellers.<sup>90</sup>

Meanwhile, the Rape Crisis Network Ireland also reported numerous complaints of intimidation by victims of sexual crimes. The organisation finds that:

Low-grade intimidation abounds where complainants have to share waiting room/cloak room facilities with the defendant and his family while awaiting hearings.<sup>91</sup>

84 Victims' Rights Bill 2008, sections 27 to 32. The offences of attempting or conspiring to commit, or aiding, abetting, counselling or procuring or inciting the commission of one of these offences is also included. Notice entitlements pertain to bail, consideration for parole, release/escape, prosecutions for breach of conditions of release, discharge/escape/leave of absence from hospital and consideration to make a deportation order.

85 Victims' Rights Bill 2008, sections 25.

86 Victims' Rights Bill 2008, sections 33.

87 *An Agreed Programme for Government* (June 2007), *op cit*, under heading 'Justice' at p.71.

88 Victims report that they "just know" what the intent of the alleged perpetrator is and that they can "feel" the warning not to proceed with the charges (In conversation with Pavee Point, 3 September 2007).

89 Commonwealth Secretariat, *op cit*, at p.18.

90 Ellis, C.L.K., *Community-orientated Policing within the Travelling Community*, (November 2005) Thesis for MA in Conflict Analysis and Management, Royal Roads University, Canada, at p.54.

91 Mulkerrins, K., *op cit*, at p. 127. The Rape Crisis Network receives funding from the Commission for the Support of Victims of Crime for the operation of a court accompaniment service throughout the country.

## ICCL RECOMMENDATIONS

Where there is evidence to suggest that a victim (or indeed any witness) may be subject to threats or harassment, the ICCL believes that it is incumbent upon the State to provide every possible protection. The victim has a right to protection from intimidation or harassment under Article 2 (right to life) of the ECHR. However, there are further benefits as well. The testimony of the victim ensures that the State can continue to prosecute the alleged perpetrator and it serves to uphold the confidence of communities in the Gardaí and the judicial process. If prosecutions fail because of intimidation, “the likelihood of that often beleaguered community co-operating in further investigations is therefore also diminished”.<sup>92</sup> Victim and witness protection can range from the extreme of a state-run witness protection scheme to the less dramatic imposition of courtroom security, accompaniment to court, secure and separate access to the courthouse, separate and safe waiting areas, metal detectors, Garda presence in the court, personal alarms and priority response listing.

The ICCL believes that the following range of services for protection should be available to victims of crime:

- **The establishment of a statutory Witness Protection Scheme;**<sup>93</sup>
- **A criminal court complex which is safe and secure for victims and includes, separate access, safe waiting areas and Garda presence in all criminal courts;**
- **Garda escort for any victim who has been intimidated or fears that they may be subject to intimidation.**

In relation to the privacy rights of crime victims discussed within this paper, the ICCL makes a number of recommendations regarding the tendering of evidence in court by victims (and other witnesses); for example, the use of television links and videotapes of testimony. Such practices are also essential to protect victims from intimidation or other forms of harm.

<sup>92</sup> Victim Support, *Submission to the Joint Committee on Justice, Equality, Defence and Women’s Rights*, 28 November 2003, p.3.

<sup>93</sup> The Witness Protection Programme (No. 2) Bill 2007 was introduced by the Labour Party on 31 October 2007; however, it was defeated at second stage in Seanad Éireann where the former Minister of State at the Department of Justice, Equality and Law Reform, Mr Seán Power T.D. stated that “[it] was unnecessary to place the existing witness security programme on a statutory basis” and to do so, “could introduce an element of inflexibility which could hinder Garda efforts”. See Seanad Debate, 31 October 2007, Vol. 187 No. 12, available at [www.oireachtas.ie](http://www.oireachtas.ie).

## 5. RIGHT TO PRIVACY



## The privacy issues of concern to victims are closely connected to their desire to be protected from harm.

### INTERNATIONAL STANDARDS

Article 8 of the European Framework Decision entitled *Right to Protection* calls on Member States to put in place, where possible, measures to protect the privacy and photographic image of victims during court proceedings. Principle 6(d) of the UN Declaration also requests States to take measures to protect the privacy of victims or their families alongside the obligation to ensure their safety. The protection of privacy is promoted in the Committee of Ministers Recommendation which provides that appropriate steps should be taken to protect the private and family life of victims, including their personal data.<sup>94</sup> Furthermore, Victim Support Europe's *Declaration on the Social Rights of Victims* contains a detailed section on the protection of privacy mainly covering issues relating to the media and the confidentiality of victim support groups.<sup>95</sup>

Article 8 of the ECHR provides protection for private life, family life, home and correspondence. States have a positive obligation under Article 8 to refrain from interfering in these matters. Moreover, the European Court of Human Rights has derived an important secondary duty under Article 8 which obliges States to protect those rights effectively; therefore, mere restriction from interference on the part of State authorities does not fulfil States' obligations under Article 8. Bodies which are independent of the State, e.g. Press and other media, may also be accountable for infringements of privacy. In the case of *X and Y v. Netherlands*, the European Court held that:

There may be positive obligations inherent in an effective respect for private and family life [...]. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.<sup>96</sup>

In deciding whether a positive obligation exists, the Court frequently carries out a balancing exercise between the rights of the community and the rights of the individual.<sup>97</sup> The public interest in the prosecution of a crime and an individual's right to privacy came into play in the case of *Z*

<sup>94</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 10.8 – 10.9.

<sup>95</sup> Victim Support Europe, (8 August 2001) *Declaration on the Social Rights of Victims*, pp.10 – 12, available at [http://www.euvictimservices.org/EFVSDocs/social\\_rights.pdf](http://www.euvictimservices.org/EFVSDocs/social_rights.pdf).

<sup>96</sup> *X and Y v. Netherlands*, (1986) 8 EHR 235.

<sup>97</sup> Ovey, C., White, R., (2006) *Jacobs & White, The European Convention on Human Rights*. 4th Ed. Oxford, Oxford University Press, at p.243.

*v. Finland*.<sup>98</sup> In this case, the public interest was balanced against the right to private life of a third party under Article 8 of the Convention. Here, confidential medical information on a third party was seized together with an order compelling her legal advisors to give evidence. The European Court held that the public interest in the investigation and prosecution of crime and the public interest in the publicity of court proceedings can outweigh medical confidentiality but *only* in limited circumstances where safeguards exist to protect the rights and interests of patients.<sup>99</sup>

### Right to Privacy for Crime Victims in Ireland

Within the Irish criminal process, certain provisions have been put in place to protect a victim's privacy. For example, reporting restrictions on the identity of sexual crime victims,<sup>100</sup> the provision for *in camera* proceedings<sup>101</sup> and the preservation of anonymity in respect of a claim under the Criminal Injuries Compensation Scheme.

The European Commission's Report on the transposal of the European Framework Decision noted that all States reported procedures for proceedings to be held *in camera*. Following on from this, the Commission found that:

It is regrettable that certain countries such as *Ireland* [emphasis added] or Germany, did not notify provisions enabling them to penalise dissemination of information concerning victims, or at least the most vulnerable categories of them.

At times, the Central Criminal Court sits in courts around the country and in general, this serves a useful and efficient function. However, it is important to ensure that the regional seats of the Court contain a large enough population for maintenance of anonymity for the victim. This is especially true in cases of sexual crimes, and, after consultation with the victim, the option should remain open for the trial to be held in Dublin if the victim so wishes. The vast majority of rape victims who contact the Rape Crisis Network Ireland consider the protection of their privacy to be of extreme importance and a "key determinant as to their willingness to report".<sup>102</sup>

Some groups mentioned the possibility of admitting a videotape of the victim's statement to the Gardaí as evidence in chief.<sup>103</sup> This procedure enables the jury to see and hear a victim being interviewed at the time of the complaint by means of a video recorded statement which can be used as evidence in chief. For example, procedures in the courts of England

<sup>98</sup> *Z v. Finland* (1998) 25 EHRR 371.

<sup>99</sup> Starmer, K., (1999) *op cit*, at p 297.

<sup>100</sup> Criminal Law (Rape) Act 1981, section 7 and section 8, as amended by section 14 of the Criminal Law (Rape) (Amendment) Act 1990.

<sup>101</sup> A legal proceeding is *in camera* when the public are excluded from the hearing and reporting restrictions are put in place.

<sup>102</sup> Mulherrins, K., *op cit*, at p. 126.

<sup>103</sup> Evidence in chief is the testimony that is given by a witness in making his/her case. For example, the victim may give evidence in chief for the prosecution and the defendant may give evidence in chief for the defence. Any such measures would be subject to suitable safeguards to ensure the defendant's right to a fair trial is not prejudiced.

and Wales have been reformed to allow the use of video evidence in rape trials.<sup>104</sup> The Criminal Evidence Act 1992 provided for the subsequent use of the video recording of a child's statement to the Gardaí as evidence in chief;<sup>105</sup> however, this practice has not yet been implemented in a general way.<sup>106</sup> Moreover, the person whose statement is video recorded must be available for cross-examination at trial.<sup>107</sup> Therefore, children must cope with the daunting prospect of facing the defendant in a courtroom and being subjected to cross-examination by defence counsel (or possibly by the abuser, self-representing) in open court. The availability of witnesses for cross-examination is important to ensure the fair trial of the defendant; however, other methods of evidence collection could be facilitated by the courts which would retain the principles of fair procedures. For example, all children's organisations consulted referred to the tendering of evidence by children by way of video-link.<sup>108</sup> Such practices would ensure that children are not forced to confront alleged abusers in court. Under the Criminal Evidence Act 1992, those under seventeen years of age are permitted to give evidence via television link.<sup>109</sup> Adults may also tender evidence in this manner where the judge agrees (risk of intimidation is not required).<sup>110</sup> However, these legislative rights cannot always be asserted as not all courtrooms are equipped with the necessary technology.<sup>111</sup>

In this respect, the ICCL also refers to the European Court of Human Rights which held that certain measures can be taken to protect a child in criminal proceedings concerning sexual abuse, "provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence".<sup>112</sup> In *S.N. v. Sweden*,<sup>113</sup> the complainant gave videotaped evidence which provided the main evidence for the conviction of a school teacher for sexual assault. The Court found that there was no violation of Article 6(1) and 6(3)(d) (right to fair trial) although that evidence provided the main basis for the conviction.

In relation to the privacy of children, Barnardos have called for a review of the law on the appearance of children before the criminal courts. The identity of a child victim (or witness) should never be compromised and if necessary, Barnardos call for a "general legislative provision requiring

104 See Criminal Justice System (28 November 2007) "Convicting rapists and Protecting Victims – Government announces new measures", available at <http://www.cjsonline.gov.uk>.

105 Section 16 of the Criminal Evidence Act 1992, as amended by section 20 of the Criminal Justice Act 1999: those under seventeen years of age can use the recording of evidence tendered in the District Court at the preliminary hearing and those under fourteen years of age can use the video recording of evidence given during the Garda interview.

106 According to Barnardos, *op cit*, p. 3.

107 Section 16(1)(b)(ii) of the Criminal Evidence Act 1992, as amended by section 20(b) of the Criminal Justice Act 1999.

108 Appearing before the Oireachtas Committee on the Constitutional Amendment on Children, Ms Sophie Magennis of the Office of the Ombudsman for Children spoke of the Ombudsman's recommendation that video evidence be available to "all those under the age of 18". Debates of the Committee on the Constitutional Amendment on Children, Vol. 188, No. 12, 13 February 2008. See also O'Brien, C., (14 February 2008) "Shatter criticizes delay on child protection vote", *Irish Times*.

109 Criminal Evidence Act 1992, section 13.

110 Criminal Evidence Act 1992, section 13. Such practices have been upheld as constitutional by the Supreme Court, see the judgment of Hamilton C.J. in *Donnelly v. Ireland* [1998] 1 ILRM 401.

111 Under section 39(4) of the Criminal Justice Act 1999, the judge has the power to transfer the proceedings to another court where such facilities are available.

112 Ovey, C., White, R., *op cit* at p. 209.

113 *S.N. v. Sweden*, Application No. 34209/62, Judgment of 2 July 2002.

that the privacy of children in court proceedings be ensured".<sup>114</sup> Moreover, the organisation has also highlighted the need for personal support for children before, during and after court courses. In addition it has called for "specialised seminars for lawyers and judges dealing with cases in which children are witnesses/complainants".<sup>115</sup> It is envisaged that only judges/lawyers who have undergone such training should be allowed to participate in criminal cases where the victim (or witness) is a child.<sup>116</sup>

In the UK, the Criminal Justice and Criminal Evidence Act 1999 contains provisions which seek to help young, vulnerable or intimidated witnesses to give evidence. Examples include the use of screens; the ability to give evidence using television link; the restriction in certain circumstances of defendants who are unrepresented being allowed to cross-examine the witness and further restrictions on reporting in order to protect the anonymity of the victim. Furthermore, in June 2007, the Home Office launched a consultation paper entitled *Improving the Trial Process for Young Witnesses*. The paper invites views and suggestions on making better use of technology, improving trial management and increasing choice for young witnesses.<sup>117</sup>

## ICCL RECOMMENDATIONS

Privacy is a broad issue which pertains to more than the facilities available to a crime victim in a Garda station, hospital or court house. It also encompasses a right of a victim and his or her family to a passage through the criminal justice system which is comfortable and secure. However, the safety of victims and their families will be enhanced only when practical measures which protect their privacy are implemented. In order to uphold the right of a victim and his/her family to privacy, legislative provision should be made for:

- **Video statements of minors to be admissible as evidence in chief;**
- **Adults to be entitled to submit video statements as evidence in chief, with permission of the court;**

The ICCL further recommends that:

- **Video link facilities should be available in every court room to allow for the full implementation of victims' rights as set out in section 13 of the Criminal Evidence Act 1992;**
- **Victims and their families should be afforded entry to and exit from the courthouse in a private fashion;**
- **Private and secure waiting areas should be made available.**

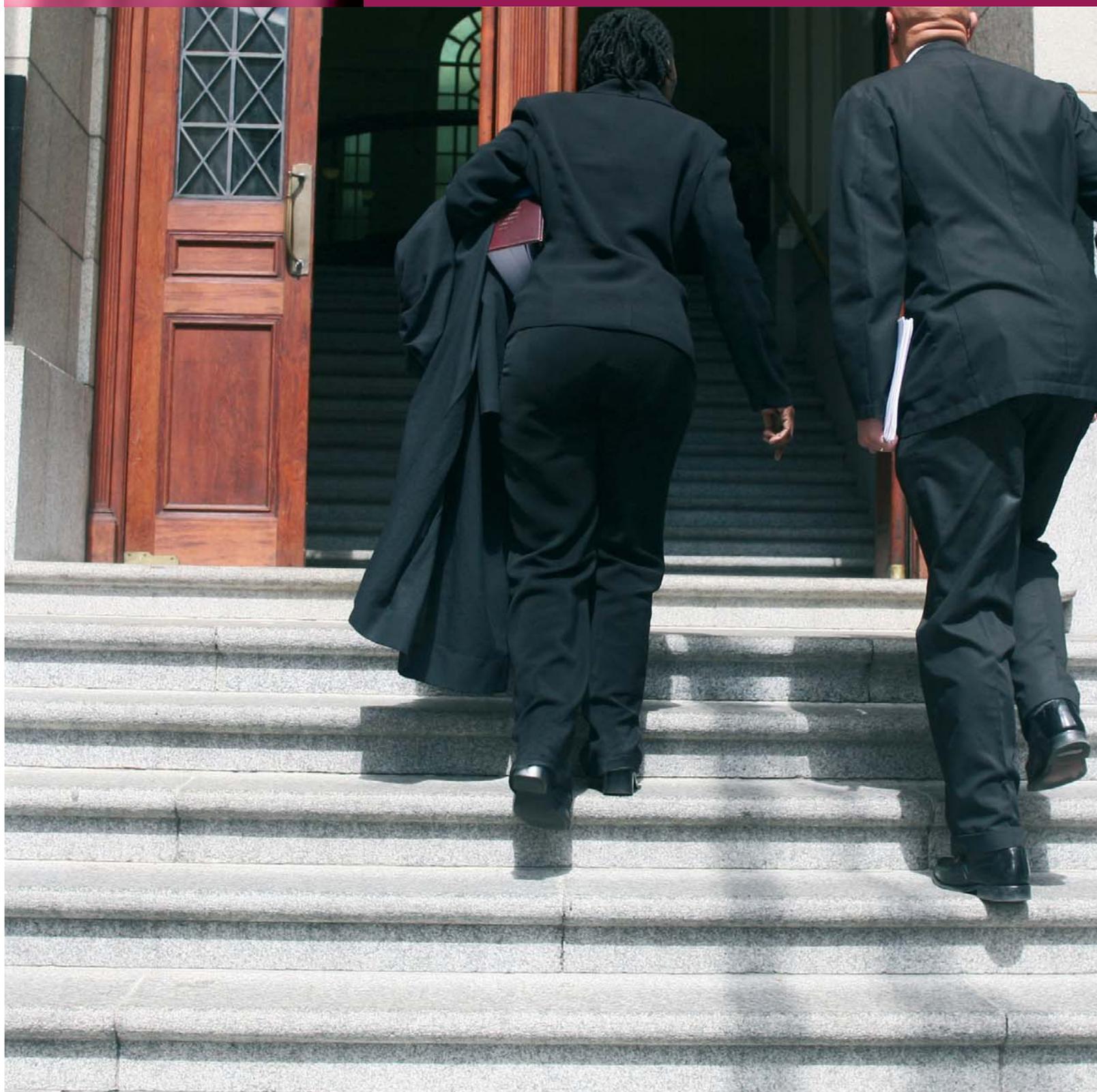
<sup>114</sup> Barnardos, *Submission to the Law Reform Commission*, Re: Third Programme of Work, May 2007, p. 2

<sup>115</sup> Barnardos, *ibid.*

<sup>116</sup> Barnardos, *op cit*, p. 5.

<sup>117</sup> A copy of the paper is available at <http://www.justice.gov.uk/docs/cjr-consult-young-witnesses.pdf>.

## 6. RIGHT TO PARTICIPATE IN A FAIR AND EFFECTIVE CRIMINAL PROCESS



**The right to participate in a just criminal process includes the full, fair and effective investigation of a person’s complaint and the right to make complete statements of the whole circumstances surrounding his or her victimisation.**

### INTERNATIONAL STANDARDS

The UN Declaration calls on States to “establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes”.<sup>118</sup> It also provides that unnecessary delays in the hearing of cases as well as the execution of any orders should be avoided.<sup>119</sup> The UN Guidelines 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>120</sup>

Under Article 5 of the European Framework Decision, States should enable witnesses to overcome any communication difficulties they may have regarding their understanding of or their involvement in criminal proceedings. This should be undertaken, “to an extent comparable with the measures of this type which it takes in respect of defendants”. Article 3 of the Framework Decision provides that States should safeguard the possibility for victims to be heard during proceedings and to supply evidence

### Right to Participate in a Fair and Effective Criminal Process in Ireland

Most of the groups consulted raised the question of the low rate of reported crime. This is considered a significant problem in respect of tackling crime; helping victims deal with the experience; and ensuring that communities can live safely. In the main, the groups consulted for this paper believe that crimes are not reported due to a lack of public confidence in the current systems of investigation and prosecution. The Northern Ireland Human Rights Commission found that “victims’ sense of security is directly related to their perception of whether perpetrators have been held to account”.<sup>121</sup>

Significant delays in the criminal justice system can have a serious effect on victims and their families.” The victim of crime, particularly in the case of

<sup>118</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power 1985, Principle 4(d).

<sup>119</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power 1985, Principle 6(c).

<sup>120</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law 2005, Principle 5.

<sup>121</sup> Northern Ireland Human Rights Commission (June 2003), *ibid.*, at p.86.

violent crimes and sexual offences, has a vested interest in the prosecution authorities proceeding with the case against the accused without undue delay".<sup>122</sup> According to media reports, the forthcoming Courts Service Annual Report 2007 sets out a waiting time of seven months for cases to come to trial [in 2007] "about one month longer than at the end of 2006, when there were fewer new cases".<sup>123</sup> While delays in the proceedings are detrimental to all parties involved, the organisations consulted for this document spoke of the need for cases involving children to be prioritised or fast tracked. Barnardos pointed out that delayed proceedings are especially damaging for children given the "time-limited nature of child development".<sup>124</sup>

The European Court of Human Rights has examined the issue of delays in criminal trials from the perspective of the defendant. The right to trial in a reasonable time is guaranteed under Article 5(3) for those held in pre-trial detention. Article 6(1) provides a more general right to trial within a reasonable time in relation to the determination of any criminal charge. Normally, delays of less than two years are likely to be accepted by the European Court and depending on the complexities of the case, longer delays may be permitted. Nevertheless, failure to ensure a hearing within a reasonable time may fall foul of Article 13 (right to a remedy) of the ECHR if the national authority does not provide an effective remedy for an "alleged breach of the requirements under Article 6(1) to hear a case within a reasonable time".<sup>125</sup> In this regard, "national legal orders must ensure that there is a remedy which either ensures that excessive delays are avoided, or provides redress where such delays arise".<sup>126</sup>

The organisations consulted did not favour the provision of a separate legal representative for the victim who would be charged with addressing the court on behalf of the victim. Apart from the constitutional difficulties in a tripartite prosecution model (victim, defendant and DPP), it is likely that "separate legal representation for the victim would cause even further delays in the system".<sup>127</sup> Moreover, most respondents pointed out that the actual needs of the victim in court are not about representation but relate to information, support and an explanation of the process. The groups consulted suggested the appointment of a liaison person or "friend" of the victim who could accompany the victim through the process and explain the steps accordingly.<sup>128</sup>

<sup>122</sup> Coffey, Gerard, *The Victim of Crime and the Criminal Justice Process*, (2006) 16 (3) ICLJ 15a, p.3.

<sup>123</sup> According to the Court Service, the 2007 Annual Report is due to be published sometime in June 2008. Coulter, C., (19 February 2008) "Court handles 26% increase in rape cases", Irish Times. This article also notes that the "average duration of a murder trial was 8.3 days, with the two longest trials taking 19 and 21 days. The average time for a rape trial was 6.6 days, with the longest taking 14 days".

<sup>124</sup> Barnardos, *op cit*, p.4.

<sup>125</sup> *Kudla v. Poland* (2002) 35 EHRR 198, at para. 156.

<sup>126</sup> Ovey, C., White, R., *op cit*, at p.467.

<sup>127</sup> Coffey, *op cit*, at p.3.

<sup>128</sup> It was suggested that this should be a person who is suitably qualified i.e. with an understanding of legal terminology and procedures.

### Investigations

All crime victims have a right to adequate support during the investigative phase; however, those who have suffered sexual violence require a “specialised and tailored response”.<sup>129</sup> Indeed, the UN Declaration states that “attention should be given to those who have special needs because of the nature of the harm inflicted”.<sup>130</sup> The *Domestic Violence and Sexual Assault Investigation Unit* is staffed by Gardaí who have specialist skills in this regard. However, this unit is based in Harcourt Street, Dublin and although Gardaí throughout the country can draw upon this expertise, specialist sexual assault investigators are not present in all Garda stations or districts. Consequently, the support available to sexual crime victims throughout the country can vary.<sup>131</sup> In the UK, Project Sapphire of the London Metropolitan Police also specialises in investigating sexual crimes and providing victims with the support and care they need. Rather than a centralised team, each London borough has a dedicated Sapphire team which has specially trained officers to investigate rape and look after victims, ensuring they are provided with the information they need (including the details for any partner agencies) and are kept up to date with any developments.<sup>132</sup>

One of the main concerns for the Rape Crisis Network Ireland is the high attrition rate<sup>133</sup> in rape cases in Ireland.<sup>134</sup> Although more cases of sexual violence are being reported to the Gardaí, this had not translated itself into an increase in the cases heard within the system.<sup>135</sup> In light of the controversy surrounding the suspended sentence handed down for rape in a 2006 case,<sup>136</sup> politicians called for mandatory sentencing<sup>137</sup> for the crime of rape to be enacted.

However, it has been pointed out that the:

Devastating impact [of crime] on victims would be more credibly addressed by research into why so many do not report rape and what difficulties arise for those who do, rather than glib calls for mandatory sentences which, in themselves, may offer little real benefit to victims or to the cause of justice.<sup>138</sup>

<sup>129</sup> Rape Crisis Network Ireland, (April 2007), *Agenda for Justice III. The Investigation of Sexual Violence: Priority*, at p.8. At Note 9, the Report refers to academic research that identifies the ‘unique’ features of sexual crime “which distinguishes it from other serious violence in particular ways”.

<sup>130</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power 1985, Principle 17.

<sup>131</sup> Rape Crisis Network Ireland, April 2007, *op cit*, at p.12.

<sup>132</sup> Information available at <http://www.met.police.uk/sapphire/>.

<sup>133</sup> The attrition rate is the rate of shrinkage. Therefore, in this context the attrition rate concerns the comparison between the numbers of cases reported with those prosecuted, and ultimately, with those cases which secure a conviction.

<sup>134</sup> A Report on Attrition Rates has been commissioned by the Rape Crisis Network Ireland (currently being conducted by Connor Hanly, at NUIG) and is investigating why the attrition rate is so high. It is anticipated that the Report will be published in early 2009. There are three strands to the Report:

- survey (100 complainants) who have recently gone through the system;
- unprecedented access to over 600 of the DPP’s sex crimes files;
- review of the central criminal court files for last 6 years of rape trials.

<sup>135</sup> Rape Crises Network Ireland, (April 2007), *op cit*, at p.7. Seventy- three rape cases were filed in the Central Criminal Court in 2007, Coulter, C. (19 February 2008) *op cit*.

<sup>136</sup> *DPP v. Adam Keane* [2007] 1ECCA 119.

<sup>137</sup> Mandatory sentences for certain crimes may be introduced by legislation. They are absolute sentences, to be applied in all cases, irrespective of the specific circumstances of the case.

<sup>138</sup> Opinion, (2007), “*The debate on sentencing policy*”, Irish Times, 15 March 2007.

## Victim Impact Statements

Section 5 of the Criminal Justice Act 1993 (the “1993 Act”) introduced Victim Impact Statements (VIS) whereby victims can provide information to the court on the impact that the crime had on her/him. However, there are various difficulties associated with the process. First, the 1993 Act defines a victim in this context as “a person in respect of whom the offence was committed”. This excludes the family of victims who are deceased. However, as mentioned, in practice the courts, generally, allow statements to be made by the family members in the event of death.<sup>139</sup> Secondly, the 1993 Act fails to give any guidance on the weight to be attributed to a VIS.<sup>140</sup> Thirdly, under the 1993 Act it is not clear who has responsibility for the VIS as the Act is silent on this matter. Therefore, it is not apparent who should guide the victim through the preparation of the statement. Fourthly, the problems posed by victims who stray outside the boundaries of the VIS are not addressed.

Matters relating to VISs, including a definition of same,<sup>141</sup> the allocation of responsibility for the statement to the prosecutor,<sup>142</sup> obligation on the court to take account of the statement<sup>143</sup> and provision that the VIS must be given to the defendant’s lawyer in good time<sup>144</sup> have been addressed in the Victims’ Rights Bill 2008. Under the proposed framework, directions or conditions of disclosure of the statement are also set out<sup>145</sup> and a broader range of offences will attract the submission of a VIS.<sup>146</sup>

Victim Impact Statements provide an appropriate avenue for the victim or the victim’s family to inform the court how the crime has affected them emotionally, psychologically and perhaps economically. AdVIC point out that they may also “be considered an important part of the rehabilitation of the convicted person in facing the reality of what he or she has done”.<sup>147</sup> Although the 1993 Act provides for the making of a VIS, it does little else and consequently, there are serious lacunae in the process. The Court of Criminal Appeal suggested that formal restrictive guidelines should be put in place surrounding the use of Victim Impact Statements.<sup>148</sup> It considered that a copy of the statement should be given to the judge and the defence, and the judge should warn the victim that deviation from the prepared statement may result in contempt of court. The court would have discretion to take such a departure into account as a mitigating

139 The need for clarity in this area is illustrated by a recent high profile murder case where the trial judge refused a request by the family of the murder victim to provide a victim impact statement. See Mac Cormaic, R., (6 March 2008) “Kearney gets mandatory life sentence for murder of his wife”, Irish Times.

140 O’Malley, T., “Punishment and Moral Luck: the Role of the Victim in Sentencing Decisions” (1993) 3 I.C.L.J. 40 at p.41.

141 Victims’ Rights Bill 2008, section 17.

142 Victims’ Rights Bill 2008, section 12.

143 Victims’ Rights Bill 2008, section 16.

144 Victims’ Rights Bill 2008, section 18.

145 Victims’ Rights Bill 2008, section 20.

146 Under the Criminal Justice Act 1993, VISs are only required where a person has been convicted of a sexual offence, or an offence involving violence or the threat of violence. Section 16 of the 2008 Bill widens the scope of offences to include any offence which “results in a victim on reasonable grounds having ongoing fears for his or her physical safety or security of one or more members of his or her immediate family”. This will encompass offences such as “burglary, theft, road traffic offences, offences relating to damage to or destruction of property and various offences chargeable as a result of anti-social behaviour” (Explanatory Note to the Victims’ Rights Bill 2008 at p.6).

147 Deane, J., (2007), “Balancing the Scales in a Homicide Trial”, *Judicial Studies Institute Journal*, 2007 No. 1, at p. 22.

148 *DPP v. Wayne O’Donoghue* [2006] IECCA 134.

factor in sentencing.<sup>149</sup> The Court found that Victim Impact Statements were favourable for two main reasons: assistance in sentencing for the trial judge and an opportunity for the family and friends of a deceased person to express their loss arising from the homicide. However, the Court also declared that “such a statement should only be permitted on strict conditions” so as to ensure that the role of the prosecution in the trial is not usurped or that unproven allegations against the defendant are introduced into the public domain.<sup>150</sup>

The ICCL believes that Victim Impact Statements serve an important role in the criminal justice process as a vehicle of contribution for the victim which in turn assists the trial judge in sentencing. However, all aspects of sentencing – including the Victim Impact Statement – must be placed in the context of the findings of the court. Furthermore, as delivery takes place as part of formal proceedings, the authority of a VIS is heightened and in this respect, it is essential that adequate and fair procedures are in place. The ICCL considers that a statutory framework should be developed to achieve this. In this regard, the ICCL notes that the Law Reform Commission has specifically targeted an examination of the operation of VISs as part of their proposed review of the victim and the criminal justice system.<sup>151</sup> The ICCL believes that a properly structured framework for Victim Impact Statements is required as well as a commitment from all criminal justice actors to inform, support and guide victims through the system.

## ICCL RECOMMENDATIONS

Lack of public confidence in the effective investigation and prosecution of crime can result in victims failing to come forward with complaints. Negative components include the inherent delays in the system and lack of specialist investigative Gardaí for offences such as sexual crimes. The victim’s participation in a criminal trial by way of Victim Impact Statement, though a welcome development, was introduced without sufficient guidance as to its operation and consequently, problems have occurred. To safeguard the right of a victim to participate in a fair and effective criminal process, the ICCL recommends the following:

- **Ongoing commitment by the criminal justice agencies to the expeditious hearing of criminal trials, subject to the defendant’s right to fair procedures and right to a fair trial;**
- **In respect of serious crimes, or where the victim is particularly vulnerable, an adequately resourced court liaison service should be available;**
- **A statutory framework should be developed for Victim Impact Statements, in consultation with victims’ organisations, the judiciary, the DPP’s Office, the Courts Service and criminal practitioners;**
- **Gardaí should receive specialised training in the investigation of sexual crimes and specialist sexual assault investigators should be available within every Garda district.**

<sup>149</sup> *Op cit*, at p.14.

<sup>150</sup> *Op cit*, at p.14.

<sup>151</sup> Law Reform Commission, (2007) *Report on the Third Programme of Law Reform 2008 – 2014*, *op cit*, at p.13.

## 7. RIGHT TO A REMEDY



**In providing for the right to a remedy, most global and regional human rights instruments guarantee victims “both the procedural right of effective access to a fair hearing and the substantive right to a remedy”.**

## INTERNATIONAL STANDARDS

Article 8 of the Universal Declaration on Human Rights states:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The International Covenant on Civil and Political Rights imposes an obligation on State parties to ensure the availability of an effective remedy which must be determined by competent judicial, administrative or legislative authorities.<sup>152</sup>

Under Principle 12 of the UN Guidelines, victims should be provided with an “adequate, effective and prompt remedy” and Principle 8 states that:

Offenders or third parties responsible for their behaviour should, where appropriate make fair restitution to their 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 relation to compensation, the European Convention on the Compensation of Victims of Violent Crimes<sup>153</sup> obliges States to establish compensation schemes for the benefit of victims of serious crimes or their surviving families.<sup>154</sup> Meanwhile, the Council Directive on Compensation to Crime Victims 2004 established a system of cooperation between Member States to facilitate access to compensation schemes for victims of serious crime where the offence was committed in a Member State other than the State of the victim’s residence. The Directive ensures that each Member State has a national scheme in place which guarantees fair and appropriate compensation to victims of crime.<sup>155</sup>

<sup>152</sup> International Covenant on Civil and Political Rights 1966, Article 2. For the right to remedy in cases of specific human rights violations, see International Convention on the Elimination of All Forms of Racial Discrimination 1965, Article 6; United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 11; and United Nations Convention on the Rights of the Child 1989, Article 39.

<sup>153</sup> Adopted by the Council of Europe in 1983.

<sup>154</sup> Marks, S., *International Human Rights Lexicon*, (2005), Oxford University Press, at p.401.

<sup>155</sup> Coffey, G., (2006), *op cit*, at p. 7.

Providing a remedy to the victims of crime or their families can take various forms. In the main, the two modes of restitution most applicable in the context of the Irish criminal justice system are schemes of compensation and the judicial punishment of the offender. However, there are various forms of reparation including the following:<sup>156</sup>

- **Rehabilitation** – this involves the rehabilitation of victim both mentally and physically as well as socially.
- **Satisfaction** – verification of the facts, public disclosure of the truth and public apology.
- **Revelation of the truth** – this is a form of closure for the community and can prevent the type of crime from being committed again.
- **Guarantees of non-repetition** – amending laws or institutions to improve the rule of law.<sup>157</sup>

Under the ECHR, Article 13 provides for an effective remedy where any rights under the Convention are violated. This provision is concerned with guaranteeing a process within the national legal order by which a remedy for a violation can be provided. Although the European Convention on Human Rights usually considers the exercise of this right in conjunction with other Convention rights, Article 13 may be breached even if there is no violation of another Convention right and an effective remedy under this provision must “involve the determination of a claim and the possibility of redress”.<sup>158</sup> Once a remedy is identified it is not necessary to show a favourable outcome;<sup>159</sup> however, the remedy must be effective. In the case of *Keenan v. United Kingdom*<sup>160</sup> the European Court found a breach of Article 13 as there was no effective remedy available to the applicant which would have established where responsibility for the death of her son lay. This was regarded as an essential element under Article 13 for a bereaved parent. Appropriate relief must be facilitated by the authorities; however, there is discretion afforded to States in this regard. In some cases, the nature of the relief must include the possibility of compensation, particularly in the event of a breach of Article 2 (right to life) and Article 3 (freedom from torture and inhuman or degrading treatment).<sup>161</sup>

The right to a remedy under Article 13 is closely allied to the duty of States to carry out an effective investigation under Article 2 (right to life). In the case of *Askoy v. Turkey*, the Court held 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>162</sup>

<sup>156</sup> For a more detailed examination of different types of reparation see the Northern Ireland Human Rights Commission, (June 2003), *Human Rights and Victims of Violence*, at pp.53 – 57.

<sup>157</sup> Hammarberg, T., Council of Europe Commissioner for Human Rights, *Victims of Human Rights Violations Deserve More*, 23 July 2007, Council of Europe, available at [www.coe.int/t/commissioner](http://www.coe.int/t/commissioner), as reprinted by the ICCL in Autumn 2007 edition of Rights News.

<sup>158</sup> Starmer, K., (1999), *op cit*, at p.144.

<sup>159</sup> *Pine Valley Developments v. Ireland* (1992) 14 EHRR 319, see Ovey, C., White, R., *op cit*, at p.463.

<sup>160</sup> *Keenan v. United Kingdom* (2001) 33 EHRR 913.

<sup>161</sup> *Oneriyildiz v. Turkey* (2005) 41 EHRR 325, at para. 147 and *Z and Others v. United Kingdom* (2002) 34 EHRR 97, at para. 109.

<sup>162</sup> *Askoy v. Turkey*, (1997), 23 EHRR 553 at para. 98; *Keenan v. United Kingdom*, (2001) 33 EHRR 913.

The obligation to protect the right to life (Article 2), read in conjunction with the State's general duty under Article 1 of the ECHR to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention" requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, by agents of the State<sup>163</sup> or where life has been lost in circumstances potentially engaging the responsibility of the State.<sup>164</sup> What constitutes an effective investigation will vary in the circumstances, within certain defined parameters. However, once the matter has come to the attention of the authorities, they must act and cannot leave it to the next of kin to lodge a formal complaint.

The effectiveness of an investigation into an alleged unlawful killing must be carried out by "someone who is fully independent of those implicated in events on the basis of objective evidence".<sup>165</sup> Moreover, the authorities must take any reasonable steps available to secure all evidence relating to the incident;<sup>166</sup> the investigation must be carried out promptly,<sup>167</sup> be open to public scrutiny (to a certain extent)<sup>168</sup> and be "capable of leading to a determination of whether the force used in such cases was justified in the circumstances and to the identification and punishment of those responsible".<sup>169</sup> The relatives of the deceased must have the opportunity to become involved to the extent necessary to "safeguard their legitimate interests".<sup>170</sup>

Suspicious deaths usually result in an inquest taking place and the procedures practiced during the inquest must comply with the standards under Article 2. For example, in *Jordan v. United Kingdom*,<sup>171</sup> delay in the proceedings as well as the inability of the inquest to identify or prosecute any criminal offences which may have occurred resulted in a breach of Article 2. The *Finucane* case<sup>172</sup> also examined the procedures during an inquest, albeit in Northern Ireland under slightly different rules. The Court found that there had been no enquiry into the allegations of collusion; that the applicant had not been afforded the right to make a statement to the inquest and ultimately, the inquest had "failed to address the serious and legitimate concerns of the public".<sup>173</sup> The Court also examined the police investigation and two inquiries which were established known as

<sup>163</sup> *McCann and Others v. United Kingdom* (1996) 21 EHRR 97.

<sup>164</sup> *Oneriyildiz v. Turkey* *op cit*, at para.91. In *Menson v. United Kingdom*, the applicant's brother died in suspicious circumstances after he had been set on fire by four white youths. There was no allegation that the State caused the death or that the authorities should have known that he was at risk of violence. However, the Court held that Article 2(1) imposed the duty to secure the right to life "by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions". (*Ovey, C., White, R., (2006) op cit*, at p.68). Here, despite initial shortcomings, the killers had eventually been prosecuted and convicted; therefore, the State's duty under Article 2 was discharged.

<sup>165</sup> *Ovey, C., White, R., (2006) op cit*, at p. 66. See *Gulec v. Turkey* (1999) 28 EHRR 121; *Ogur v. Turkey* (2001) 31 EHRR 912 and *Ergi v. Turkey* (2001) 32 EHRR 388.

<sup>166</sup> *Salman v. Turkey* (2002) 34 EHRR; *Tanrikulu v. Turkey* (2000) 30 EHRR 950; *Gul v. Turkey* (2002) 34 EHRR 719.

<sup>167</sup> *Yasa v. Turkey* 28 (1999) EHRR 408; *Cakici v. Turkey* (2001) 31 EHRR 133; *Tanrikulu v. Turkey, op cit*; *Maymut Kaya v. Turkey* (App. 22535/93) Judgment of 28 March 2000.

<sup>168</sup> *Gulec v. Turkey, op cit*.

<sup>169</sup> *Ovey, C., White, R., op cit*, at p. 67.

<sup>170</sup> *Gulec v. Turkey, op cit*.

<sup>171</sup> *Jordan v. United Kingdom* (2003) 37 EHRR 52.

<sup>172</sup> *Finucane v. United Kingdom, (2003) 37 EHRR 656.*

<sup>173</sup> *Ibid*, at para. 78.

the Stevens Inquiries. It considered that the former lacked independence and in relation to the first Stevens Inquiry, the Court found that the ten year delay meant that it could not be regarded as expeditious. The lack of publication of the second Stevens Inquiry Report (among other matters) resulted in the omission of public scrutiny and accessibility for the family.

### Right to a Remedy for Crime Victims in Ireland Compensation

Section 6 of the Criminal Justice Act 1993 provides that an offender may pay compensation to a victim in cases involving homicide. The dependant of the deceased victim is deemed an “injured party” and may petition the court in this regard.<sup>174</sup> Obviously, the main drawback to this scheme is the disparity in ability to pay such compensation among offenders. It has been pointed out that such economic discrimination could result in wealthier offenders attracting more favourable treatment e.g. the imposition of a non-custodial sentence. However, in practice it is unlikely that the commission of a homicide would not attract a custodial term or that the term would be significantly reduced on the basis of a monetary payment.<sup>175</sup>

The Criminal Injuries Compensation Tribunal administers the Scheme of Compensation for Personal Injuries Criminally Inflicted.<sup>176</sup> The Tribunal considers applications from people who suffer a personal injury as a result of violent crime.<sup>177</sup> If the victim dies on foot of the crime, his or her dependant(s) may submit an application. While there is a general deadline of three months for the submission of an application, there is no time limit in cases of fatality. Compensation may be paid for “out of pocket expenses” such as loss of earnings and bills; however, there is no compensation for the pain and suffering caused. A person who is responsible for looking after the victim and consequently suffers a financial loss may also claim compensation. There is an appeals process available where compensation has been refused. A number of exceptions to the scheme exist; most notably where the victim and the assailant were living together as part of the same household when the victim suffered the injury<sup>178</sup> and where the injury resulted from a traffic offence unless the Tribunal considers that there was a deliberate attempt to run down the victim.<sup>179</sup>

<sup>174</sup> Coffey, G., (2006), *The Victim of Crime and the Criminal Justice Process*, 16 (3) ICLJ 15a, at p.6.

<sup>175</sup> Coffey, G., (2006), *ibid*, at p.6.

<sup>176</sup> In addition, the Tribunal administers the Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers. The Government plans to introduce a right for the State to recover from the perpetrators of crime the amount paid out by the Criminal Injuries Compensation Board in respect of that crime. The current Programme for Government contains a commitment to streamline this recovery procedure, including the possibility of permitting the sentencing judge to make an order directly against the perpetrator, rather than the State being required to launch a separate civil suit, *An Agreed Programme for Government* (June 2007), *op cit*, under heading ‘Justice’ at p. 71.

<sup>177</sup> However, one group reported that they are aware of many victims of serious crime who have never heard of the Tribunal and furthermore many crime victims, though not injured, suffer serious financial hardship due to crimes inflicted.

<sup>178</sup> Women’s Aid supports the elimination of this exemption (Correspondence with Women’s Aid, 12 May 2008).

<sup>179</sup> For general information on the Tribunal see the website of the Department of Justice, Law Reform and Equality at [www.justice.ie/en/JELR/Pages/Criminal\\_Injuries\\_Compensation\\_Scheme](http://www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme) and for more detailed information see the website of the Citizens Information at [http://www.citizensinformation.ie/categories/justice/victims-of-crime/victims\\_and\\_compensation](http://www.citizensinformation.ie/categories/justice/victims-of-crime/victims_and_compensation).

In September 2007, seven new board members (including the Chairman) of the Tribunal were appointed by the Minister for Justice, Equality and Law Reform for a duration of three years. This follows a gap of five months where the Tribunal was without a Board as the outgoing Board lapsed in April. In the absence of the Board, claims were neither approved nor denied and some members of the legal profession complained at the delay in having the claims processed. It was also reported that complaints were made about the length of time it takes for monies to be released to successful applicants.<sup>180</sup> In this respect, it should be recalled that the Committee of Ministers Recommendation calls on States to establish Compensation Schemes and states that “compensation should be granted without undue delay, at a fair and appropriate level”.<sup>181</sup>

### Sentencing

The issue of sentencing is critical for victims and their families. There have been a number of cases in recent years where victims and the public alike have expressed their dissatisfaction with the sentences handed down by the courts.<sup>182</sup> However, judges are constrained by the system of judicial precedent under which they operate and must sentence within their discretion on a case-by-case basis. Under section 2(1) Criminal Justice Act 1993, if the DPP considers that the sentence imposed is unduly lenient, he may apply to the Court of Criminal Appeal to review the sentence.<sup>183</sup> The DPP has utilised this power a number of times with varying results.<sup>184</sup>

In order to deliver justice to victims and defendants alike, clear, appropriate and reliable sentencing is essential.<sup>185</sup> In this regard, the ICCL welcomes the work of the Irish Sentencing Information System<sup>186</sup> and endorses the recommendation of the Law Reform Commission that non-statutory sentencing guidelines should be introduced.<sup>187</sup> To this end, the ICCL is encouraged by the commitment set out in the current Programme for Government to establish a Judicial Sentencing Commission under the auspices of the Courts Service.<sup>188</sup> The Commission will comprise serving judges and will have the power to establish sentencing guidelines. Under

<sup>180</sup> Lally, Connor, (2007), *Shortlist for new crime compensation board*, Irish Times, 24 August 2007.

<sup>181</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Articles 8.2 – 8.5.

<sup>182</sup> Recent cases include for example, *DPP v. Wayne O'Donoghue* [2006] 1ECCA 134 and *DPP v. Adam Keane* [2007] 1ECCA 119.

<sup>183</sup> The onus is on the DPP to prove that the sentence was unduly lenient and there must be a ‘substantial departure from what would be regarded as the appropriate sentence’ in order to justify the intervention of the Court (*DDP v. Byrne* [1995] 1L.L.R.M. at p. 287).

<sup>184</sup> In *People (DPP) v. Cox and Keeler*, (Unreported, Court of Criminal Appeal, October 12, 1998), the Court of Criminal Appeal imposed the sentences that had been suspended by the trial judge; while, in *People (DPP) v. Power* (Unreported, Court of Criminal Appeal, March 3, 1997), the Court of Criminal Appeal increased a sentence for rape from four years to six years. In the aforementioned case of *Wayne O'Donoghue*, the Court of Criminal Appeal upheld the sentence imposed by the Central Criminal Court and in the *Adam Keane* case (also mentioned previously), the sentence was increased from a three-year suspended sentence to a seven-year custodial sentence. More recently, on 14 January 2008, the Court of Criminal Appeal substantially increased the prison sentences of three men in Limerick for crimes arising out of a shooting incident. For more information see (15 January 2008) “Sentences increased on DPP’s appeal”, [www.Ireland.com](http://www.Ireland.com).

<sup>185</sup> For example, in the UK, the Sentencing Guidelines Council is an independent council which issues sentencing guidelines to help encourage consistent sentencing. Details can be found at <http://www.sentencing-guidelines.gov.uk/about/index.html>.

<sup>186</sup> Set up under the chairmanship of Mrs Justice Susan Denham.

<sup>187</sup> Law Reform Commission, (1996), *Report on Sentencing*, LRC 53 – 1996, at p.65.

<sup>188</sup> *An Agreed Programme for Government* (June 2007), *op cit*, under heading ‘Justice’ at p. 70.

the proposed regime, trial judges will be required to follow the guidelines of the Judicial Sentencing Commission or to explain why the guidelines are not being followed in a particular case. Given the particular elements of individual cases, the ICCL contends that any system of sentencing guidelines should retain a degree of flexibility to ensure that judges can apply the principle of proportionality to the cases that come before them.

Structured training and regular updates will also assist in the implementation of coherent judicial policies with regards to sentencing. Indeed, this has been recognised by the judiciary and the promised establishment of the proposed Judicial Council should facilitate this. To date, the Judicial Council Bill has yet to be introduced.<sup>189</sup>

### *Restorative Justice*

Restorative justice brings victims, offenders and communities together to decide on a response to a particular crime. The aim of restorative justice services is to place victims' needs at the centre of the criminal justice system and to find positive solutions to crime by encouraging offenders to face up to their actions.<sup>190</sup> One of the outcomes of a system of restorative justice is that offenders are offered a framework within which to make amends directly to the people or organisations that they have harmed. Some of the benefits of this approach are:

- Victims have a greater voice;
- Victims can receive an explanation from the offender;
- Offenders become accountable for the harm caused by allowing them to take responsibility for their actions;
- Community confidence is increased;
- Victims may find it easier to overcome the stress caused by the crime;
- The difficulty that many offenders feel in facing up to the impact of their crimes motivated them to cease those activities.

The UN Declaration calls upon Member States to take the necessary steps to promote community efforts and public participation in crime prevention;<sup>191</sup> while the European Framework Decision declares that "each State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure".<sup>192</sup> The Committee of Ministers Recommendation provides that the possibility of mediation should be considered where appropriate and available, bearing in mind not only the potential benefits but also the potential risks to the victim.<sup>193</sup>

<sup>189</sup> The Judicial Council Bill will establish a Judicial Council representative of the judges in all the courts. The Council will be responsible for judicial ethics (including the drafting of a Code of Ethics) and judicial information such as sentencing issues and judicial studies. In the Government Legislation Programme for Autumn Session the Judicial Council Bill is set down in Section C which lists those Bills the Heads of which have yet to be approved by the Government.

<sup>190</sup> Home Office, *Restorative Justice* available at <http://www.homeoffice.gov.uk/crime-victims/victims/restorative-justice/>.

<sup>191</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Principle 4(b).

<sup>192</sup> European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Article 10.

<sup>193</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Articles 13.1 and 13.2.

Research commissioned by the Office for Criminal Justice Reform in England and Wales into public attitudes to alternatives to prosecution found that 44% of participants felt the most appropriate way to deal with offenders who own up to minor offences was for them to make amends to the victim, for example by compensation or an apology.<sup>194</sup>

The current Programme for Government<sup>195</sup> includes a commitment to introduce a “Community Payback” Scheme that will require those offenders who have not been given long prison terms to provide “real services for the communities they have damaged”. This could include street cleaning, painting over graffiti or repairing public facilities. There is also a commitment to give victims and communities a greater say in what work offenders do as part of their community service, including, “where appropriate, direct reparation in cash or kind”.<sup>196</sup>

Victim participation is always voluntary and offenders must admit some responsibility for the harm that they have caused. Perpetrators and victims can be brought into contact through direct mediation; indirect mediation; conferencing and wider community involvement. Restorative justice has a significant role to play in crime that affects communities as a whole and in particular that which is perpetrated by young people. However, the effectiveness of this model in terms of more serious crime is questionable. In recognising the limits of its merits, the ICCL believes that the model of restorative justice should be utilised in the areas where it is most likely to produce worthwhile results.

## ICCL RECOMMENDATIONS

For the victims of crime, securing a remedy is one of the most fundamental components of the criminal justice system and a number of avenues for restitution should be available to victims. In some cases, monetary compensation may be sought for criminal injuries and in the spirit of preventing secondary victimisation, the Criminal Injuries Compensation Tribunal should operate expeditiously and effectively.

Not all convictions will warrant the incarceration of the offender; however, sentences imposed by the criminal courts must be consistent and fair. Furthermore, there are crimes where the most productive and satisfying process for the victim (and the defendant) is that of restorative justice. In this respect, the ICCL recommends that:

- **Sentencing guidelines should be introduced.**
- **Systems of restorative justice should be sufficiently funded, supported, strengthened and developed by Government policy.**

<sup>194</sup> The research report is available at <http://www.cjsonline.gov.uk/downloads/application/pdf/Public%20Attitudes%20to%20Alternatives%20to%20Prosecution.pdf>.

<sup>195</sup> *An Agreed Programme for Government* (June 2007), *op cit*, under heading ‘Justice’ at p.65.

<sup>196</sup> The Law Reform Commission’s third programme of law reform sets out plans to examine restorative justice from a community, victim and offender perspective and will take into account any relevant work being carried out by the National Commission on Restorative Justice. Law Reform Commission (2007), *Report of the Third Programme of Law Reform*, *op cit*, at p.13.

## 8. RIGHT TO RESPECT, RECOGNITION AND SUPPORT



**Victims of crime have a right to be treated with respect and dignity throughout the process, from the initial reporting of the crime in a Garda station to the end of the process brought about by a decision of the DPP or that of a judge/jury in a criminal court.**

### INTERNATIONAL STANDARDS

Article 2 of the European Framework Decision provides that victims should have a real and appropriate role within the legal system. It continues:

States shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.<sup>197</sup>

Furthermore, the UN Guidelines state that victims should be treated with dignity and compassion<sup>198</sup> while the UN Declaration provides that:

Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.<sup>199</sup>

Moreover, the Committee of Ministers Recommendation states that:

States should identify and support measures to encourage respect and recognition of victims and understanding of the negative effects of crime amongst all personnel and organisations coming into contact with victims.<sup>200</sup>

### The Right to Respect, Recognition and Support for Crime Victims in Ireland

In Ireland, the system is adversarial in its nature and consequently, the victim is viewed as a witness. However, state agencies have a responsibility to recognise the victim as more than the instigator of the litigation; rather, he/she should be considered as someone with a legitimate and fundamental interest in the proceedings. In tandem with the whole process – from reporting to conviction or acquittal – the victim should be afforded the necessary support relevant to the person’s individual needs.<sup>201</sup> The Criminal Justice Act 1993 was the first piece of legislation that granted the victim a role in the criminal justice process other than reporter of the crime or witness. As mentioned, the 1993 Act provided for prosecution appeals against sentences that are considered unduly

<sup>197</sup> European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Article 2.

<sup>198</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law 2005, Principle 10.

<sup>199</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power 1985, Principle 14.

<sup>200</sup> Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Articles 4.1.

<sup>201</sup> Northern Ireland Human Rights Commission’s Report on *Human Rights and the Victims of Violence* points out that, “every victim of violence has a different and individual experience”, June 2003, at p. 7.

lenient; introduced the Victim Impact Statement; and set out a framework for the payment of compensation from the offender to the victim.

The Victims' Rights Bill 2008 aims to introduce further measures. For example, "support persons" for victims who may not be in a position to receive and evaluate information could receive the material on behalf of a victim under the proposals.<sup>202</sup> In this respect, a "support person" includes a spouse or *de facto* partner of the victim (of same-sex or opposite sex), parent, legal guardian, close relative or the Health Service Executive where the victim is, by law, under the care of that body.<sup>203</sup>

In England and Wales, the Crown Prosecution Service (CPS) has produced a comprehensive document setting out guidance on interviewing victims and witnesses. The aim of the document is to assist in achieving best evidence in criminal proceedings and includes guidance on planning and conducting interviews with children, vulnerable adult witnesses and intimidated witnesses. The guidance has been produced for the benefit of prosecutors and plays an additional role of supporting victims through the trial process.<sup>204</sup>

Victims who act as witnesses for the prosecution case should be afforded the opportunity to seek reimbursement of the expenses incurred as a result of their participation in the criminal proceedings.<sup>205</sup> If a victim or his/her family decides to bring civil proceedings, the European Framework Decision provides that their legal expenses should be met. At present, Ireland, is one of only four EU states (along with the UK, the Netherlands and Belgium) not to make such a provision.<sup>206</sup>

### *Commission for the Support of Victims of Crime*

The Commission for the Support of Victims of Crime (the "Commission") was established in March 2005 and its remit includes:

- Disbursement of funding to organisations that support the victims of crime;
- Developing a support framework for victims of crime into the future;

The Commission has also concentrated on:

- Developing cooperation and co-ordination between the organisations, the Commission and the criminal justice agencies;
- Reviewing and revisiting of the Victims' Charter (and Guide to the Criminal Justice System);
- Promoting an awareness of the services available to the victims of crime (with particular reference to the Crime Victims' Helpline).

<sup>202</sup> Victims' Rights Bill, section 10.

<sup>203</sup> Victims' Rights Bill, section 2. However, the definition of "support person" does not include a reference to a member of an NGO or victim support group.

<sup>204</sup> The guidance is available at <http://www.cps.gov.uk/publications/> and is entitled "Achieving best evidence in criminal proceedings: Guidance on interviewing victims and witnesses, and using special measures". On the same webpage, see also "Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial - Practice guidance"; "Provision of therapy for child witnesses prior to a criminal trial - Practice guidance"; and "CPS policy on prosecuting criminal cases involving children and young people as victims and witness".

<sup>205</sup> European Council Framework Decision on the Standing of Victims in Criminal Proceedings, 15 March 2001, Article 7.

<sup>206</sup> European Commission, *op cit*, at p.7.

With five members, the Commission is supported by a secretariat which is based in the Department of Justice, Equality and Law Reform. The tenure of the current Commissioners was expected to expire in March 2008; however, it is likely that this period will be extended pending the establishment of the proposed Victims Support Agency and the Victim's Council.<sup>207</sup>

Article 13 of the European Framework Decision deals with the initial reception of victims, victim support and assistance through the process. Under this provision, States should promote the involvement of victim support groups "whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support agencies". The Commission fulfils this role in the allocation of funding to various victim organisations; although it tends to fund service providers mainly rather than those bodies who advocate on behalf of victims. The Commission operates an open and transparent process for allocation of funding and most of the groups consulted indicated their satisfaction with the Commission in this regard.

The former Minister for Justice, Equality and Law Reform, Mr Brian Lenihan, indicated his desire to establish a fully-resourced statutory Victims Support Agency, with a mandate to "champion" the rights of victims of crime. The Minister stated that "this body will make a real difference and will ensure that the victims of crime [will] have a voice and will be heard in our criminal justice system".<sup>208</sup> The proposed Victim's Council would be tasked with formulating policy and it is expected that the Agency will take charge of the allocation of funds while the Council will retain a purely policy role. Most of the groups consulted expressed a preference for a model where service provision would remain with local groups. This regime, it was suggested, could be overseen by a body, similar to the Commission, which would be accountable to the Government or the Oireachtas.

### *Garda Support for Victims of Crime*

Gardaí play a crucial role in the support of victims of crime, not least because a Garda is often the first person to whom a victim recounts the incident. There is a huge understanding among victims' organisations of the difficult job of the Gardaí in this regard. Support groups have stressed the success of Gardaí in dealing with victims and report that many people who are affected by crime testify that the Gardaí were supportive and helpful. However, the overwhelming majority of groups pointed out that the quality of services offered by the Gardaí can be inconsistent and can be provided on a "hit and miss" basis. Although individual Gardaí are generally sensitive to the needs of victims; it appears that a lack of priority for training and policy development in the area of victim support for *all*

<sup>207</sup> This has not however, received Ministerial confirmation. In conversation with an official in the Department of Justice, Equality and Law Reform, 5 March 2008.

<sup>208</sup> Logue, Patrick, "Victim Support Agency to be set up", [www.ireland.com](http://www.ireland.com), 16 June 2007.

Gardaí can result in haphazard application of the guideline treatments set out in the Garda Charter.<sup>209</sup>

One aspect of victim support which has been greatly enhanced is that of family liaison. Garda Family Liaison Officers (FLOs) are appointed to families of victims who have been or are being subjected to emotional or psychological trauma related to homicide; kidnappings; false imprisonment; hostage siege situations; suicide; road traffic fatalities; crime (other than above) where the victim has suffered violence or there has been an immediate threat of violence. Seventy-eight FLOs have been trained in the last twelve months as part of a new initiative of the Garda Community Relations Section.<sup>210</sup> The FLO acts as the victim's primary source of contact in relation to the ongoing investigation and liaises between the victim and the DPP's Office; explaining to the victim any information received from the DPP. The FLO devises an exit strategy to ensure that the victim is not left permanently isolated once the alleged perpetrator has been tried and/or the case is closed.<sup>211</sup>

The Rape Crisis Network Ireland has called for dedicated sexual violence Gardaí to provide an immediate response and to be the single point of contact for a complainant following an allegation of rape.<sup>212</sup> Such a system would vastly improve both "the quality of the investigation and of the experience of the complainant with the Gardaí and the justice system".<sup>213</sup> It believes that recruitment of appropriate personnel as well as enhanced formal training is vital for this role.<sup>214</sup> In England and Wales, the network of Sexual Assault Referral Centres<sup>215</sup> is undergoing ongoing extension and independent Sexual Violence Advisors are being piloted in thirty-eight areas to provide advocacy and support for victims.<sup>216</sup>

The Committee of Ministers Recommendation provides that "states should facilitate the referral of victims by the police to assistance services so that the appropriate services may be offered".<sup>217</sup> Previously, when a crime was reported, Gardaí automatically passed victims' details to the victim

209 A similar issue among criminal justice agencies was noted by the Criminal Justice Inspectorate in Northern Ireland which stated in a 2005 Report, "standards vary within and across agencies, often influenced by the level of autonomy within organisations, the degree of awareness of policies and procedures, the level of experience of staff delivering the service, and the geographical location, *Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland*, July 2005, at p.6.

210 It is a five-day course and the training is conducted by specialist officers from the crime academy of Scotland Yard and the London Met. The Garda Community Relations Section reported that the UK police forces are more advanced in victim liaison procedures as they started to provide specialist training to officers seven years ago.

211 The Community Relations Section of an Garda Síochána is currently working on a leaflet for victims which explains the role of FLOs; the particular Garda contacts for the victim in question (this section is filled in manually); details of what FLOs do and what they do not do, as well as useful telephone numbers. (Conversation with Superintendent Joseph McKeown, Family Liaison Office, Garda Community Relations, 20 August 2007).

212 Indeed, the Committee of Ministers Recommendation encourages states to "support the setting up or the maintenance of specialised centres for victims of crimes such as sexual and domestic violence and to facilitate access to these centres". Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 5.3.

213 Rape Crisis Ireland Network, April 2007, *op cit*, at p.13.

214 Rape Crisis Ireland Network, April 2007, *op cit*, at p.13.

215 Where victims receive medical care and counselling and can assist the police investigation through forensic examination.

216 Criminal Justice System, (28 November 2007), *op cit*.

217 Recommendation Rec(2006)8 of the Committee of Ministers to member states on the assistance to crime victims, Article 4.3.

support organisation.<sup>218</sup> However, the Data Protection Commissioner issued guidance in 2006 setting out that the use of personal information in such a way, without the informed consent of the victim, may be incompatible with the rules regarding the disclosure of personal data under the Data Protection Acts.<sup>219</sup> Gardaí now provide victims with information on the relevant support services in a letter together with the details of the investigating Garda, his/her contact details and the PULSE incident number. People choose to make contact with support services should they wish to do so; consequently, the number contacting the services has decreased. Support groups fear that people may not be accessing the services that they need.<sup>220</sup> It is essential that people who report crime are adequately informed of the support services available to them. In addition to information on their availability, the UN Declaration sets out the right of victims to be readily afforded access to “health and social services”.<sup>221</sup> In certain circumstances, this may require action other than the standard letter sent to those who report a crime. Gardaí and support service providers should come together to devise a strategy to safeguard victims who are in need of support but may be unwilling or unable to request it.

Particular groups have more difficult relations with Gardaí. Research has shown that Travellers believe that the negative perception of the majority of the settled population of their community has “directly influenced the attitudes of the police”.<sup>222</sup> Indeed, it was found that there was an “overriding consensus” by Gardaí and Travellers that many members of an Garda Síochána share the “majority settled population’s negative perception of the Traveller community”.<sup>223</sup> While admitting that Travellers are mostly distrustful of the Gardaí, Pavee Point pointed out that male Travellers can be stereotyped as violent and aggressive and that Travellers are generally identified (incorrectly) as law breakers and criminals.

Meanwhile, clients of the Rape Crisis Network Ireland who are foreign nationals report that their legal status can become the focal point when they report a sex crime to the Gardaí, who may view it as an attempt to avoid deportation.<sup>224</sup> Therefore, in some instances, it appears that there may be a conflict between the dual roles of the Gardaí as investigators of crime and immigration-control officers. Such conflicts could lead to discrimination against the victims of crime on the basis of nationality.

218 As mentioned previously, Victim Support was a community-based organisation which provided support to victims of crime. Its funding was withdrawn in 2005, mainly due to internal difficulties. See O’Síocháin, C., Dunphy, M., (8 April 2005) “All victim Support Funding Withdrawn” Village Magazine, available at [http://www.village.ie/Ireland/Society\\_&\\_Justice/All\\_Victim\\_Support\\_funding\\_withdrawn/](http://www.village.ie/Ireland/Society_&_Justice/All_Victim_Support_funding_withdrawn/); and Kehoe, L., (10 July 2005) “Victim Support files sit in disused office” Sunday Business Post, available at <http://archives.tcm.ie/businesspost/2005/07/10/story6351.asp>.

219 Further information on the guidance issued by the Office of the Data Protection Commissioner is available at [http://www.dataprotection.ie/docs/Case\\_Study\\_8/01\\_Victim\\_Support/128.htm](http://www.dataprotection.ie/docs/Case_Study_8/01_Victim_Support/128.htm).

220 Both the Gardaí and support groups cite strong lines of communication between each other. However, some support services have expressed fears that the referral information is not being passed on in all cases.

221 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Principle 15.

222 Ellis, Colleen, L., K., (November 2005), *op cit*, at p.39.

223 Ellis, *ibid*, at p. 43.

224 Integrating Ireland report that a similar view can be taken about foreign nationals when they report any type of crime. (In conversation with Integrating Ireland, 18 October 2007). Furthermore, Women’s Aid reported that victims of domestic violence who are foreign nationals are very reluctant to call the Gardaí or to engage with the legal process as their residency status in Ireland may be dependent on their relationship with the perpetrator (Correspondence with Women’s Aid, 12 May 2008).

## ICCL RECOMMENDATIONS

In its submission to the European Commission under the European Framework Decision, the Department of Justice, Equality and Law Reform referred to the Victim's Charter to demonstrate the Government's implementation of Article 2 (right to respect and recognition) of the Framework Decision. However, the European Commission does not consider that this mechanism fully transposes the Framework Decision on the basis that the Charter "explicitly states that it is intended as a guide only and does not purport to interpret the legislation it refers to or confer legal rights".<sup>225</sup>

Generally, victims are supported well by the Gardaí and the various victim support organisations throughout the country. However, to ensure a streamlined and guaranteed support network for all victims, the ICCL recommends the following:

- **In line with the European Framework Decision, victims who act as witnesses for the prosecution case should be able to seek reimbursement of expenses. Furthermore, if a victim or his/her family decide to bring civil proceedings, their legal expenses should be met;**
- **A statutory Victims Support Agency should be established which oversees all Government policy relating to the victims of crime;**
- **Support service providers should continue to be funded through a central Government body (such as the proposed Victims Support Agency) with the allocation of money for more full-time posts;**
- **Ongoing training in supporting and assisting victims should be provided for all Gardaí. The training package should be developed in consultation with victim support organisations;**
- **Sexual assault treatment centres should be rolled out throughout the country;**
- **Each victim of a sexual crime should be assigned a dedicated sexual violence officer.**

<sup>225</sup> European Commission, *op cit*, at p. 4.

## 9. CONCLUDING REMARKS



Some commentators suggest that the criminal justice system has morphed into a process designed to assist defendants. However, statistics from the DPP's Office demonstrate otherwise: the 2006 Report indicated that 95 per cent of all prosecutions on indictment end in conviction and sentencing.<sup>226</sup> Such figures imply that the vast majority of defendants are either pleading guilty (due to the weight of evidence against them, collected by the Gardaí) or are convicted by a jury following criminal trial. This debate, which has centred on the concept of 'balance', has led to a widespread misconception that reducing the rights of defendants somehow increases the rights of victims. However, this is not the case and weakening defendants' rights does little or nothing to help the victims of crime. This issue is considered in the ICCL's companion report to this document which examines the human rights implications of the report of the Balance in the Criminal Law Review Group.<sup>227</sup>

Nevertheless, there is a vacant hole in the criminal justice system which should be filled by victim recognition. In the past, given the adversarial nature of the system, victims were treated as prosecution witnesses or, as sideline actors in a process that concerned the criminal court and the defendant. It appears as though this perception of the victim has changed and that state agencies are interacting more with the victims of crime. Consideration of the role of victims has been greatly enhanced. However, serious limitations remain within the system, particularly regarding the provision of information, protection from intimidation, the tendering of evidence in a private and secure manner and the appropriate operation of Victim Impact Statements.

In relation to victims' rights, the message from the European Commission is clear: legally enforceable rights are necessary to protect victims. The paramount issue for the Commission in relation to Ireland's report under the European Framework Decision concerned the non-mandatory status of the Victims' Charter.<sup>228</sup> In this respect, the ICCL contends that victims' rights should be set down as legally binding provisions capable of enforcement against the agency or actor required to accord the right to the victim. This aim would be assisted by the establishment of a statutory Victim Support Agency (or similar body), which should be adequately funded and tasked with overseeing the "victim experience" across the spectrum of criminal justice agencies.<sup>229</sup>

226 Office of the Director of Public Prosecutions, Annual Report 2006, at p. 33. See Coulter, C., (20 May 2006) "Dispelling the myths that justice system favours the accused", Irish Times.

227 See ICCL (June 2008), *Taking Liberties: The Human Rights Implications of the Report of the Balance in the Criminal Law Review Group*, Dublin.

228 European Commission, *op cit*, at pp. 6, 8, 9, 10, 12.

229 In line with recent comments made by the former Minister for Justice, Equality and Law Reform, Mr Brian Lenihan. Logue, Patrick, "Victim Support Agency to be set up", [www.ireland.com](http://www.ireland.com), 16 June 2007.

In recent times, there has been a shift towards the dilution of the rights of accused persons.<sup>230</sup> Such practices have been portrayed as measures to upgrade the position of victims within the criminal process. At the same time, however, the Government has failed to uphold the basic rights of victims in line with their obligations under the UN Declaration and the European Framework Decision. In respect of the latter, the shortcomings of the Irish system in promoting the rights of victims have been plainly highlighted by the European Commission and indicators have been set out for strengthening the process.

The ICCL believes that victims of crime should be afforded every possible support from the State during their passage through the criminal justice system. This should be easily achievable, given the clear road map provided by the European Commission and the United Nations which can be adapted accordingly to the Irish context. If the Government is sincere in its declarations that the victims of crime are important, it should ensure that victims' rights are upheld to the highest possible degree in line with European and global human rights standards.

<sup>230</sup> See ICCL (June 2008), *op cit.*



# ICCL CHARTER OF RIGHTS FOR THE VICTIMS OF CRIME

## **RIGHT TO INFORMATION**

All criminal justice agencies have a responsibility to ensure that the victim of a crime and his/her family remain informed throughout the investigation and trial process. In general, the decision-maker should be the person to relay the information to the victim. A range of information exchange methods should be used including face-to-face communication to ensure that all victims understand the process and procedures.

## **RIGHT TO PROTECTION FROM HARM**

Every victim has a right to protection from intimidation and harassment. The benefits of protecting the safety of victims are multiple: the DPP can prosecute the alleged perpetrator; the victim is likely to be more comfortable giving evidence; and community confidence in the justice system may increase. Witness/victim protection measures should include criminal court complexes which are safe and secure with separate access and waiting facilities for victims and witnesses; Garda escort for those who have a reasonable fear of intimidation; and the establishment of a statutory witness protection scheme.

## **RIGHT TO PRIVACY**

Practical measures should be in place to protect the privacy of victims and their families. Victims should be afforded entry and exit to the court in a private fashion and separate waiting facilities should be made available. Video statements of those under eighteen years of age should always be permitted as evidence in chief and in certain circumstances, adults should also be allowed to submit prosecution evidence in this manner. Facilities to enable victims to give evidence by way of video link should be available in every courtroom.

## **RIGHT TO PARTICIPATE IN A FAIR AND EFFECTIVE CRIMINAL PROCESS**

An effective criminal justice process is a benefit to victims, the Gardaí, the courts and the community at large. Due to the particular nature of the offence, specialist sexual assault investigators should be available in every Garda district. Delays in criminal trials should be addressed. Furthermore, procedures guiding the operation of Victim Impact Statements should be set down in statute following consultation with relevant partners.

## RIGHT TO A REMEDY

The European Convention on Human Rights requires that people should have an effective remedy if their rights are violated. The Government must ensure that inquests and any other enquiries established to investigate suspicious deaths or the use of force by state agents comply with the standards set down by the European Court of Human Rights.

Sentencing guidelines should be introduced to ensure fair, consistent and effective sentencing. These could be developed by the proposed Judicial Council. The Government should bring forward legislation to establish the Council at the earliest possible opportunity.

For less serious offences and especially those that affect the wider community, restorative justice can be a useful and beneficial tool. In this respect, systems of restorative justice should be strengthened and supported.

## RIGHT TO SUPPORT, RESPECT AND RECOGNITION

Upholding this right is fundamental to the experience of the victim throughout the criminal process. The victim and/or their family are entitled to be treated with respect and dignity by every actor who has a role to play in the criminal justice system. There may be a tendency for victims to be viewed as the reporter of crime or as a mere witness; however, state agencies should ensure that the victim is recognised as a legitimate participant in the process.

A statutory Victim Support Agency (or similar body) should be established to develop, monitor and co-ordinate policy regarding the victims of crime. Furthermore, support services must be adequately funded to ensure that suitable accommodation and adequate staffing is available. A dedicated strategy in dealing with the victims of sexual crimes should be developed. The establishment of additional sexual assault treatment centres and a system for the appointment of sexual violence officers to each victim of a sexual crime should be rolled out.

## APPENDICES



## APPENDIX 1

### ORGANISATIONS CONSULTED:

| ORGANISATION / INDIVIDUAL                           | DATE OF INTERVIEW |      |
|---|-------------------|------|
| Advocates for Victims of Homicide (AdVIC)           | October           | 2007 |
| An Garda Síochána                                   | August            | 2007 |
| Barnardos   | October           | 2007 |
| Commission for the Support of Victims of Crime      | September         | 2007 |
| Committee for the Administration of Justice (CAJ)   | August            | 2007 |
| Children's Rights Alliance (CRA)                    | September         | 2007 |
| Court Support Services                              | December          | 2007 |
| Crime Victims' Helpline                             | September         | 2007 |
| Department of Justice, Equality and Law Reform      | September         | 2007 |
| Integrating Ireland                                 | October           | 2007 |
| Northern Ireland Human Rights Commission (NIHRC)    | August            | 2007 |
| Office of the Director of Public Prosecutions (DPP) | October           | 2007 |
| Pavee Point   | September         | 2007 |
| Rape Crisis Ireland Network (RCNI)                  | September         | 2007 |
| Support after Crime Services                        | October           | 2007 |
| Women's Aid   | August            | 2007 |

## APPENDIX 2

### BIBLIOGRAPHY

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United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

United Nations Convention on the Rights of the Child 1989.

United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law 2005.

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*Salman v. Turkey* (2002) 34 EHRR.

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*Yasa v. Turkey* 28 (1999) EHRR 408.

*Z v. Finland* (1998) 25 EHRR 371.

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## APPENDIX 3

### SOURCES OF FURTHER INFORMATION:

#### The Victims Charter

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#### Public Bodies

**An Garda Síochána:** <http://www.garda.ie>

**Citizens Information:** <http://www.citizensinformation.ie>

#### **Criminal Injuries Compensation Tribunal:**

[www.justice.ie/en/JELR/Pages/Criminal\\_Injuries\\_Compensation\\_Scheme](http://www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme)

#### **Department of Justice, Equality and Law Reform:**

[http://www.justice.ie/en/JELR/Pages/Victims\\_of\\_crime](http://www.justice.ie/en/JELR/Pages/Victims_of_crime)

**Garda Síochána Ombudsman Commission:** <http://www.gardaombudsman.ie>

**Irish Prison Service:** <http://www.irishprisons.ie>

#### **Office of the Data Protection Commissioner:**

<http://www.dataprotection.ie/docs/Home/4.htm>

**Office of the Director of Public Prosecutions:** <http://www.dppireland.ie>

**Office of the Ombudsman:** <http://ombudsman.gov.ie/en>

**Office of the Ombudsman for Children:** <http://www.oco.ie>

#### UK Bodies

**Criminal Justice Online:** <http://www.cjsonline.gov.uk/index.html>

**Project Sapphire:** <http://www.met.police.uk/sapphire>

#### **Sentencing Guidelines Council:**

<http://www.sentencing-guidelines.gov.uk/about/index.html>

#### Victim Support Bodies

**Advocates for the Victims of Homicide (AdVIC):** <http://www.advic.ie>

**Akidwa:** <http://web.mac.com/greville1/AkiDwA/Home.html>

**Barnardos:** <http://www.barnardos.ie>

**Cari:** <http://www.cari.ie>

**Children's Rights Alliance:** <http://www.childrensrights.ie>

**Court Support Services:** <http://www.courtsupport.ie>

**Crime Victims' Helpline:** [www.crimevictimshelpline.ie](http://www.crimevictimshelpline.ie) / Telephone 1850 211 407

#### **Federation for Victim Assistance:**

<http://www.victimassistanceireland.com/about.html>

**Integrating Ireland:** <http://www.integratingireland.ie>

**Irish Tourist Assistance Service:** [www.itas.ie](http://www.itas.ie)

**Missing in Ireland Support Service (MISS):** <http://www.miss.ie>

**National Network of Women's Refuges and Support Services:** <http://www.nnwrss.ie>

**One in Four:** [www.oneinfour.ie](http://www.oneinfour.ie)

**Pavee Point:** <http://www.paveepoint.ie>

**Rape Crisis Network Ireland:** [www.rcni.ie](http://www.rcni.ie)

**Support after Crime Services:** <http://www.supportaftercrimeservices.ie>

**Support after Homicide:** <http://www.supportafterhomicide.ie>

**Victim Support Europe:** <http://www.euvictimservices.org>

**Women's Aid:** [www.womensaid.ie](http://www.womensaid.ie)

## APPENDIX 4

**A/RES/40/34**

**29 November 1985 96th plenary meeting**

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

The General Assembly,

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

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

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

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

- (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;
- (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;
- (h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

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

- (a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;
- (b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;
- (c) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims;
- (d) To develop ways and means of providing recourse for victims where national channels may be insufficient;

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

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

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

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

## ANNEX TO GENERAL ASSEMBLY RESOLUTION A/RES/40/34 DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

### A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

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

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system
  - (c) Providing proper assistance to victims throughout the legal process;
  - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.
  - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

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

#### *Restitution*

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

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

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

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

#### *Compensation*

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

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

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

#### *Assistance*

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

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

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

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

### *B. Victims of abuse of power*

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

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

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

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

## APPENDIX 5

### COUNCIL FRAMEWORK DECISION OF 15 MARCH 2001 ON THE STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS (2001/220/JHA)

#### THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular Article 31 and Article 34(2)(b) thereof,

Having regard to the initiative by the Portuguese Republic (1),

Having regard to the opinion of the European Parliament (2),

Whereas:

- (1) In accordance with the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, in particular points 19 and 51(c), within five years following entry into force of the Treaty, the question of victim support should be addressed, by making a comparative survey of victim compensation schemes and by assessing the feasibility of taking action within the European Union.
- (2) The Commission submitted a communication to the European Parliament, the Council and the Economic and Social Committee on 14 July 1999 entitled "Crime victims in the European Union: reflections on standards and action". The European Parliament adopted a Resolution on the Commission communication on 15 June 2000.
- (3) The conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, in particular point 32 thereof, stipulate that minimum standards should be drawn up on the protection of the victims of crimes, in particular on crime victims' access to justice and on their right to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.
- (4) Member States should approximate their laws and regulations to the extent necessary to attain the objective of affording victims of crime a high level of protection, irrespective of the Member State in which they are present.
- (5) Victims' needs should be considered and addressed in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation.
- (6) The provisions of this Framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime.

(7) Measures to assist victims of crime, and in particular the provisions regarding compensation and mediation do not concern arrangements under civil procedure.

(8) The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.

(9) The provisions of this Framework Decision do not, however, impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.

(10) The involvement of specialised services and victim support groups before, during and after criminal proceedings is important.

(11) Suitable and adequate training should be given to persons coming into contact with victims, as this is essential both for victims and for achieving the purposes of proceedings.

(12) Use should be made of existing contact point networking arrangements in Member States, whether under the judicial system or based on victim support group networks,

#### **HAS ADOPTED THIS FRAMEWORK DECISION:**

##### **Article 1: Definitions**

For the purposes of this Framework Decision:

(a) “victim” shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;

(b) “victim support organisation” shall mean a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;

(c) “criminal proceedings” shall be understood in accordance with the national law applicable;

(d) “proceedings” shall be broadly construed to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal process;

(e) “mediation in criminal cases” shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.

**Article 2: Respect and recognition**

1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.

2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.

**Article 3: Hearings, and provision of evidence**

Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.

Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.

**Article 4: Right to receive information**

1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:

- (a) the type of services or organisations to which they can turn for support;
- (b) the type of support which they can obtain;
- (c) where and how they can report an offence;
- (d) procedures following such a report and their role in connection with such procedures;
- (e) how and under what conditions they can obtain protection;
- (f) to what extent and on what terms they have access to: i) legal advice or ii) legal aid, or iii) any other sort of advice, if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;
- (g) requirements for them to be entitled to compensation;
- (h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

2. Each Member State 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 criminal 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. Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.

4. In so far as a Member State forwards 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 5: Communication safeguards**

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

#### **Article 6: Specific assistance to the victim**

Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.

#### **Article 7: Victims' expenses with respect to criminal proceedings**

Each Member State shall, according to the applicable national provisions, afford victims who have the status of parties or witnesses the possibility of reimbursement of expenses incurred as a result of their legitimate participation in criminal proceedings.

#### **Article 8: Right to protection**

1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.

2. To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.

3. Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.

4. Each Member State shall ensure that, where there is a need to protect victims - particularly those most vulnerable - from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.

**Article 9: Right to compensation in the course of criminal proceedings**

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.
2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.
3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

**Article 10: Penal mediation in the course of criminal proceedings**

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

**Article 11: Victims resident in another Member State**

1. Each Member State shall ensure that its competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a State other than the one where the offence has occurred, particularly with regard to the organisation of the proceedings. For this purpose, its authorities should, in particular, be in a position:
  - to be able to decide whether the victim may make a statement immediately after the commission of an offence,
  - to have recourse as far as possible to the provisions on video conferencing and telephone conference calls laid down in Articles 10 and 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000(3) for the purpose of hearing victims resident abroad.
2. Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so.

The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the national law of the State in which the offence was committed.

**Article 12: Cooperation between Member States**

Each Member State shall foster, develop and improve cooperation between Member States in order to facilitate the more effective protection of victims' interests in

criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between victim support organisations.

**Article 13: Specialist services and victim support organisations**

1. Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organisations.

2. Each Member State shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards:

- (a) providing victims with information;
- (b) assisting victims according to their immediate needs;
- (c) accompanying victims, if necessary and possible during criminal proceedings;
- (d) assisting victims, at their request, after criminal proceedings have ended.

**Article 14: Training for personnel involved in proceedings or otherwise in contact with victims**

1. Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.

2. Paragraph 1 shall apply in particular to police officers and legal practitioners.

**Article 15: Practical conditions regarding the position of victims in proceedings**

1. Each Member State shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure. This shall apply particularly as regards proper initial reception of victims, and the establishment of conditions appropriate to their situation in the venues in question.

2. For the purposes of paragraph 1, each Member State shall in particular have regard to facilities within courts, police stations, public services and victim support organisations.

**Article 16: Territorial scope**

This Framework Decision shall apply to Gibraltar.

**Article 17: Implementation**

Each Member State shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision:

- regarding Article 10, 22 March 2006,
- regarding Articles 5 and 6, 22 March 2004,
- regarding the other provisions, 22 March 2002.

**Article 18: Assessment**

As from the dates referred to in Article 17, each Member State shall forward to the General Secretariat of the Council and to the Commission the text of the provisions enacting into national law the requirements laid down by this Framework Decision. The Council shall assess, within one year following each of these dates, the measures taken by Member States to comply with the provisions of this Framework Decision, by means of a report drawn up by the General Secretariat on the basis of the information received from Member States and a report in writing submitted by the Commission.

**Article 19: Entry into force**

This Framework Decision shall enter into force on the date of its publication in the Official Journal of the European Communities. Done at Brussels, 15 March 2001.

## APPENDIX 6

### COUNCIL OF EUROPE

Committee of Ministers

**Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims** *(Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe.

Aware of the fact that criminal victimisation is a daily phenomenon affecting the lives of citizens throughout Europe;

Having regard to Recommendation No. R (87) 21 on the assistance to victims and the prevention of victimisation, intended to complement the European Convention on the Compensation of Victims of Violent Crime (ETS No. 116, 1983) and Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure;

Noting that, since the adoption of Recommendation No. R (87) 21, several recommendations have been adopted by the Committee of Ministers and significant developments have occurred in the field of assistance to victims including developments in national legislation and practice, a better understanding of the victims' needs and new research;

Bearing in mind the European Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950), the European Convention on the Compensation of Victims of Violent crimes (see above), the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196, 2005) and the Council of Europe Convention on Action against trafficking in Human Beings (CETS No. 197, 2005);

Recalling the resolutions of the conferences of the European ministers of justice in 2003 and 2005, inviting the Committee of Ministers to adopt new rules concerning the support of victims of terrorist acts and their families;

Noting the work of the Committee of Experts on Terrorism (CODEXTER), with regard to victims of terrorism;

Having considered the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 and the Guidelines on the protection of victims of terrorist acts, adopted on 2 March 2005;

Taking account of the standards developed by the European Union and by the United Nations with regard to victims;

Noting with appreciation the achievements of non-governmental organisations in assisting victims;

Aware of the need for co-operation between states particularly to assist victims of terrorism and other forms of transnational crimes;

Aware of the need to prevent repeat victimisation, in particular for victims belonging to vulnerable groups;

Convinced that it is as much the responsibility of the state to ensure that victims are assisted as it is to deal with offenders,

Recommends that the governments of member states disseminate and be guided in their internal legislation and practice by the principles set out in the appendix to this recommendation which replaces Recommendation No. R (87) 21 on the assistance to victims and the prevention of victimisation.

### ***Appendix to Recommendation Rec(2006)8***

#### **1. Definitions**

For the purpose of this recommendation;

1.1. Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term victim also includes, where appropriate, the immediate family or dependants of the direct victim.

1.2. Repeat victimisation means a situation when the same person suffers from more than one criminal incident over a specific period of time.

1.3. Secondary victimisation means the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.

#### **2. Principles**

2.1. States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims.

2.2. States should ensure that the measures set forth in this recommendation are made available to victims without discrimination.

2.3. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act.

#### **3. Assistance**

3.1. States should identify and support measures to alleviate the negative effects of crime and to undertake that victims are assisted in all aspects of their rehabilitation, in the community, at home and in the workplace.

3.2. The assistance available should include the provision of medical care, material support and psychological health services as well as social care and counselling. These services should be provided free of charge at least in the immediate aftermath of the crime.

3.3. Victims should be protected as far as possible from secondary victimisation.

3.4. States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation.

3.5. Wherever possible, the assistance should be provided in a language understood by the victim.

#### 4. Role of the public services

4.1. States should identify and support measures to encourage respect and recognition of victims and understanding of the negative effects of crime amongst all personnel and organisations coming into contact with victims.

##### *Criminal justice agencies*

4.2. The police and other criminal justice agencies should identify the needs of victims to ensure that appropriate information, protection and support is made available.

4.3. In particular, states should facilitate the referral of victims by the police to assistance services so that the appropriate services may be offered.

4.4. Victims should be provided with explanations of decisions made with regard to their case and have the opportunity to provide relevant information to the criminal justice personnel responsible for making these decisions.

4.5. Legal advice should be made available where appropriate.

##### *Agencies in the community*

4.6. States should promote the provision of special measures for the support or protection of victims by organisations providing, for example, health services, social security, housing, education and employment.

##### *Role of embassies and consulates*

4.7. Embassies and consulates should provide their nationals who become victims of crime with appropriate information and assistance.

#### 5. Victim support services

5.1. States should provide or promote dedicated services for the support of victims and encourage the work of non governmental organisations in assisting victims.

##### *Minimum standards*

5.2. Such services should:

- be easily accessible;
- provide victims with free emotional, social and material support before, during and after the investigation and legal proceedings;
- be fully competent to deal with the problems faced by the victims they serve;
- provide victims with information on their rights and on the services available;
- refer victims to other services when necessary;
- respect confidentiality when providing services.

##### *Specialised centres*

5.3. States are encouraged to support the setting up or the maintenance of specialised centres for victims of crimes such as sexual and domestic violence and to facilitate access to these centres.

5.4. States may also consider it necessary to encourage the establishment or maintenance of specialised centres for victims of crimes of mass victimisation, including terrorism.

##### *National help lines*

5.5. States are encouraged to set up or to support free national telephone help lines for victims.

### *Co-ordination of services for victims*

5.6. States should take steps to ensure that the work of services offering assistance to victims is co-ordinated and that:

- a comprehensive range of services is available and accessible;
- standards of good practice for services offering help to victims are prepared and maintained;
- appropriate training is provided and co-ordinated;
- services are accessible to government for consultation on proposed policies and legislation. This co-ordination could be provided by a single national organisation or by some other means.

## **6. Information**

### *Provision of information*

6.1. States should ensure that victims have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights.

6.2. This information should be provided as soon as the victim comes into contact with law enforcement or criminal justice agencies or with social or health care services. It should be communicated orally as well as in writing, and as far as possible in a language understood by the victim.

### *Content of the information*

6.3. All victims should be informed of the services or organisations which can provide support and the type and, where relevant, the costs of the support.

6.4. When an offence has been reported to law enforcement or criminal justice agencies, the information provided to the victim should also include as a minimum: (i.) the procedures which will follow and the victims' role in these procedures; (ii.) how and in what circumstances the victim can obtain protection; (iii.) how and in what circumstances the victim can obtain compensation from the offender; (iv.) the availability and, where relevant, the cost of:

- legal advice,
- legal aid, or
- any other sort of advice;

(v.) how to apply for state compensation, if eligible; (vi.) if the victim is resident in another state, any existing arrangements which will help to protect his or her interests.

### *Information on legal proceedings*

6.5. States should ensure in an appropriate way that victims are kept informed and understand:

- the outcome of their complaint;
- relevant stages in the progress of criminal proceedings;
- the verdict of the competent court and, where relevant, the sentence.

Victims should be given the opportunity to indicate that they do not wish to receive such information.

## **7. Right to effective access to other remedies**

7.1. Victims may need to seek civil remedies to protect their rights following a crime. States should therefore take the necessary steps to ensure that victims have effective access to all civil remedies, and within a reasonable time, through:

- the right of access to competent courts; and
- legal aid in appropriate cases.

7.2. States should institute procedures for victims to claim compensation from the offender in the context of criminal proceedings. Advice and support should also be provided to victims in making these claims and in enforcing any payments awarded.

## 8. State compensation

### *Beneficiaries*

8.1. Compensation should be provided by the state for:

- victims of serious, intentional, violent crimes, including sexual violence;
- the immediate family and dependants of victims who have died as a result of such crime.

### *Compensation scheme*

8.2. States should adopt a compensation scheme for the victims of crimes committed on their territory, irrespective of the victim's nationality.

8.3. The compensation awarded to victims should be based on the principle of social solidarity.

8.4. The compensation should be granted without undue delay, at a fair and appropriate level.

8.5. Since many persons are victimised in European states other than their own, states are encouraged to co-operate to enable victims to claim compensation from the state in which the crime occurred by applying to a competent agency in their own country.

### *Damages requiring compensation*

8.6. Compensation should be provided for treatment and rehabilitation for physical and psychological injuries.

8.7. States should consider compensation for loss of income, funeral expenses and loss of maintenance for dependants. States may also consider compensation for pain and suffering.

8.8. States may consider means to compensate damage resulting from crimes against property.

### *Subsidiarity*

8.9. State compensation should be awarded to the extent that the damage is not covered by other sources such as the offender, insurance or state funded health and social provisions.

## 9. Insurance

9.1. States should evaluate the extent of cover available under public or private insurance schemes for the various categories of criminal victimisation. The aim should be to promote equal access to insurance for all residents.

9.2. States should encourage the principle that insurance be made available to as many people as possible. Insurance should be available to cover the person's belongings, as well as their physical integrity.

9.3. States are encouraged to promote the principle that insurance policies do not exclude damages caused by acts of terrorism unless other applicable provisions exist.

## 10. Protection

### *Protection of physical and psychological integrity*

10.1. States should ensure, at all stages of the procedure, the protection of the victim's physical and psychological integrity. Particular protection may be necessary for victims who could be required to provide testimony.

10.2. Specific protection measures should be taken for victims at risk of intimidation, reprisals or repeat victimisation.

10.3. States should take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victims if necessary.

10.4. In so far as a state forwards on its own initiative the information referred to in paragraph 10.3, it should ensure that victims have the right to choose not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.

### *Protection against repeat victimisation*

10.5. States should develop policies to identify and combat repeat victimisation. The prevention of repeat victimisation should be an essential element in all strategies for victim assistance and crime prevention.

10.6. All personnel in contact with victims should receive adequate training on the risks of repeat victimisation and on ways to reduce such risks.

10.7. Victims should be advised on the risk of repeat victimisation and of the means of reducing these risks as well as assistance in implementing the measures proposed.

### *Protection of privacy*

10.8. States should take appropriate steps to avoid as far as possible impinging on the private and family life of victims as well as to protect the personal data of victims, in particular during the investigation and prosecution of the crime.

10.9. States should encourage the media to adopt and respect self regulation measures in order to protect victims' privacy and personal data.

## 11. Confidentiality

11.1. States should require all agencies, whether statutory or non-governmental, in contact with victims, to adopt clear standards by which they may only disclose to a third party information received from or relating to a victim under the condition that:

- the victim has explicitly consented to such disclosure;
- there is a legal requirement or authorisation to do so.

11.2. In these two cases of exception, clear rules should govern the disclosure procedures. Complaints procedures should be published for dealing with alleged breaches to the rules.

## 12. Selection and training of personnel

12.1. States should assist and support victim support services to:

- develop appropriate standards for the selection of all paid and voluntary staff providing direct assistance to victims;
- organise training and support for all paid and voluntary staff to ensure that such assistance is delivered according to professional standards.

### *Training*

12.2. Training should as a minimum include:

- awareness of the negative effects of crime on victims;
- skills and knowledge required to assist victims;
- awareness of the risk of causing secondary victimisation and the skills to prevent this.

### *Specialised training*

12.3. Specialised training should be provided to all personnel working with child victims and victims of special categories of crime, for example, domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice, as well as to families of murder victims.

### *Training of personnel in other services*

12.4. Member states should ensure that appropriate training is provided for:

- the police and personnel involved in the administration of justice;
- the emergency services and others attending the scene of a major incident;
- relevant staff in health, housing, social security, education and employment services.

12.5. Such personnel should be trained to a level which is appropriate to their contact with victims. Training should include, as a minimum:

- general awareness of the effects of crime on a victim's attitudes and behaviour, including verbal behaviour;
- the risk of causing secondary victimisation and the skills required to minimise this risk;
- the availability of services providing information and support specific to the needs of victims and the means of accessing these services.

## **13. Mediation**

13.1. Taking into account the potential benefits of mediation for victims, statutory agencies should, when dealing with victims, consider, where appropriate and available, the possibilities offered for mediation between the victim and the offender, in conformity with Committee of Ministers' Recommendation R (99) 19 on mediation in criminal matters.

13.2. The interests of victims should be fully and carefully considered when deciding upon and during a mediation process. Due consideration should be given not only to the potential benefits but also to the potential risks for the victim.

13.3. Where mediation is envisaged, states should support the adoption of clear standards to protect the interests of victims. These should include the ability of the parties to give free consent, issues of confidentiality, access to independent advice, the possibility to withdraw from the process at any stage and the competence of mediators.

## **14. Co-ordination and co-operation**

14.1. Each state should develop and maintain co-ordinated strategies to promote and protect the rights and interests of victims.

14.2. To this end, each state should ensure, both nationally and locally, that:

- all agencies involved in criminal justice, social provision and health care, in the statutory, private and voluntary sectors, work together to ensure a co-ordinated response to victims;
- additional procedures are elaborated to deal with large scale victimisation situations, together with comprehensive implementation plans including the identification of lead agencies.

### **15. International co-operation**

#### *Preparation of states' responses*

15.1. States should co-operate in preparing an efficient and co-ordinated response for transnational crimes. They should ensure that a comprehensive response is available to victims and that services co-operate in providing assistance.

#### *Co-operation with the state of residence*

15.2. In cases where the victim does not normally reside in the state where the crime occurred, that state and the state of residence should co-operate to provide protection to the victim and to assist the victim in reporting the crime as well as in the judicial process.

### **16. Raising public awareness of the effects of crime**

16.1. States should contribute to raising public awareness of the needs of victims, encouraging understanding and recognition of the effects of crime in order to prevent secondary victimisation and to facilitate the rehabilitation of victims.

16.2. This should be achieved through government funding and publicity campaigns, using all available media.

16.3. The role of the non-governmental sector in focusing public attention on the situation of victims should be recognised, promoted and supported.

### **17. Research**

17.1. States should promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research, including comparative research by researchers from within or outside their own territory.

17.2 Research should include:

- criminal victimisation and its impact on victims;
- prevalence and risks of criminal victimisation including factors affecting risk;
- the effectiveness of legislative and other measures for the support and protection of victims of crime – both in criminal justice and in the community;
- the effectiveness of intervention by criminal justice agencies and victim services.

17.3 States should take into consideration the latest state of victimological research available in developing consistent and evidence-based policies towards victims.

17.4 States should encourage all governmental and non-governmental agencies dealing with victims of crime to share their expertise with other agencies and institutions nationally and internationally.

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