

# JUSTICE FOR VICTIMS OF CRIME

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## I. INTRODUCTION

Victims of crime and abuse of power should be treated with compassion and respect for their dignity. This demands the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/35 (1985)). Fortunately, this UNAFEI seminar gives opportunity to recall the content of the Declaration (see II). We will together look at the impact of crime on victims (III) and at victim needs (IV). Much has been done to “implement” the Declaration, that is: to translate it into national legislation of UN member states. We will deal with the current situation and with problems that crime victims face at every stage of the criminal justice system (IV). What has been done, has been criticized — for victim activists, reforms are too weak minded, too slow and not extensive enough — for more conservative policy makers they are already too extensive and too much in contrast to customary and cherished convictions. Often the interest in the smooth running of criminal proceedings have been seen as the main objective of reforms, not increased compassion and respect for the dignity of victims.

## II. THE 1985 UN DECLARATION

### A. From 1985 to 2013

In 1983, the Executive Committee of the World Society of Victimology adopted a document which became the core of the 1985 UN Declaration. Originally a document dealing only with crime victims, the scope enlarged to victims of abuse of power. The fathers of the Declaration, Irvin Waller (a Canadian professor of sociology), LeRoy Lamborn, (professor of criminal procedure in USA) were couched — like the whole process within the UN system — by the unforgotten Irene Melup (victim expert from the Office of the Secretary General). The activities in the early eighties opened the victim issue to international political debate, and it was mainly the common law wealth and the American criminal justice systems, which dominated the debate. The inclusion of “abuse of power” was dangerous in the time of the cold war in 1985, when the members of the capitalist camp and members of the communist camp mutually accused each other of “abuses of power” and both accused the South African apartheid regime. In summer 1985 in Milan’s UN Crime Congress, the two superpowers ceased their opposition to the Declaration and finally, in November, the General Assembly unanimously decided on it. It was now up to the member states to act, to implement the Declaration, to translate it into national legislation.

Maybe, the superpowers realized that this document was not a convention which could have the chance to become binding — a UN Declaration is not binding at all. But one should not underestimate this Declaration — it radiates a strong moral obligation, despite the legally non-binding character. That 29 years later UNAFEI conducts this seminar, is an effect of this Declaration.

15 years ago, in 1999, the UNODC published a “Handbook on the Use and Application of the 1985 Declaration”, a work guided by Jan van Dijk, at that time President of the World Society of Victimology<sup>1</sup>.

In 2000, in the Montreal WSV Symposium, we celebrated the 15 year anniversary of the Declaration,

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<sup>1</sup>As Secretary General of the World Society of Victimology, I was to participate on the work. But I could not participate, recovering in Mexico Ciudad from an unpleasant meeting with taxi robbers.

rather critical about the state of implementation. Member states were not able or willing to implement this declaration. One problem was the title of the declaration: it was easier to talk about “Victim Rights” and about “Justice for Victims”. And the newest development: End of last year, the UNODC convened a working group on a review of the 1999 handbook. This group finalized its work and the new Handbook “Justice for Victims” will be available soon. This handbook is, like its predecessor, an exhibition, a list of offers from which interested member states could choose.

In 2008, The Declaration was reviewed by a team of experts in the Tokiwa International Victimology Institute and the Tilburg International Victimology Institute<sup>2</sup>. This 4th Symposium of the TIVI 2008 led the World Society of Victimology to send representatives to the 10th UN Congress in Salvador, Brazil. The final “Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World”<sup>3</sup> on 12 occasions uses the word “victims” or “victimization” (prevent victimization including revictimization, protection and assistance to victims, child victims, victims of trafficking and a victim centered approach with full respect for the human rights of victims of trafficking). Besides the already known issues, two new special victimizations appear, in the wake of two new conventions: child victims and victims of human trafficking.

## **B. Principles of Justice**

While victims are around as long as there is crime, legislation on crime and criminals has been much more detailed and obviously much more important for the legislator and administrators than victims. I have explained this with the Divided Territory Theorem<sup>4</sup>: Criminal justice always was the exercise of power of the rulers against the subordinates who endangered by their crime the position of the sovereigns. The resulting Criminal Justice System was a vertical system: power was used from the state to the offender. The eighteenth and nineteenth centuries were busy with humanizing criminal justice — a task that is still unfinished! The concept of “balance” was introduced, the balance between the power of the state (oppressing the offender) on the one side and on the other side, the human rights of the offender. For the new upcoming powers in society the old criminal justice which did not care for offenders rights, was too dangerous. Today, we often hear about “Justice for Victims”. In the eighties of last century, it became fashionable to complain about the imbalance in criminal justice (US President’s Task Force on Victims of Crime<sup>5</sup>). “The system is out of balance” was the slogan. It was said to be out of balance since it granted offenders many rights and no rights to the victims. There is indeed an unequal distribution of rights. Speaking of the “balance between offenders and victims” in criminal procedure is too simplistic and it contains too much political rhetoric. The balance in criminal justice is between state and offender, not offender and victim. The latter is a useful argument in the political fight for influence and power, for sure — and this is why we allow victim activists to talk about “Victim Rights” and about “Justice for Victims” — but not in a balanced discussion between responsible criminal lawyers and the lawyers who seek to avoid that victims are harmed by criminal procedure.

To understand this, we have to discuss the topic of secondary victimization. We have to understand why the avoidance of secondary victimization is such a central goal. We have to see that we move in a field of tension between different concepts of criminal law. Criminal justice and the application of criminal law is a means of social control. It is a formal offender oriented social control by repression of the offender, of course ideally under strict observation of human rights of offenders. The topic in criminal justice is traditionally social control by repression of offenders.

Obviously, the style of social control is in dispute. In postmodern times it is no wonder that there

<sup>2</sup>Dussich, J.P.J. and Mundy, K. (eds.) (2009): Raising the Global Standards for Victims: The Proposed Convention on Justice for Victims of Crime and Abuse of Power. Proceedings of the 4th Symposium of the Tokiwa International Victimology Institute. Tokyo (Seibundo) , Japan.

<sup>3</sup>[http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador\\_Declaration/Salvador\\_Declaration\\_E.pdf](http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf).

<sup>4</sup>Kirchhoff, G.F. (2005) What is Victimology? Tokiwa International Victimology Institute Monograph Series No.1. Tokyo (Seibundo) p.46

<sup>5</sup>US President’s Task Force on Victims of Crime, Final Report. Washington D.C. 1982.

is a heated discussion about the right of the state to determine the way of this formal social control. The vivid and passionate discussion between the poles of repressive justice and restorative justice is a symptom for this. Regardless where one stands, in the camp of restorative justice, in the camp of traditional justice or with one leg in each of the camps: Victims have a right to be unharmed by criminal proceedings. Victims have suffered from offenders — that is enough. We have to be clear: Justice can only be achieved if victims do not suffer more than absolutely necessary from the criminal justice system. Victimologists argue: the protection of victims from harm is not realized radically enough.

The counterweight of this right is the obligation of the state to arrange the criminal proceedings correspondingly. This is the center of the discussion on “avoiding secondary victimization”. This is the center of the 1985 Declaration. The discussion is about victim needs, about victims’ position in criminal proceedings, about what harm is needed and unavoidable, and about what has to be done to keep up the social control that is desired and necessary. On the other side there is the position of more victim-friendly discussants — observing the right not to be secondarily victimized — and on the other side that offenders rights are not curtailed, “without prejudice to the accused” (Declaration 1985 A nr. 4 b). I believe that in 2014 we have to be even more pronounced:

In some situations, the right of the state to criminal justice has to step behind the right of the victim to be unharmed:<sup>6</sup> I would be more radical in the demands: If victims are likely to suffer, the state is obliged to invent procedures to alleviate the burden, even if this means that the state has to refrain from criminal prosecution.

### **C. A Summary of the Content of the Declaration and an Outlook to a New Handbook**

The Declaration contains the following “principles of Justice” which are commonly called “victim rights”. These are the “victim rights” we might find in the 1985 Declaration: These are the right

1. to be treated with compassion and respect for their dignity (A 4)
2. to access to justice (A 4)
3. to prompt redress (A 4)
4. to procedures — formal or informal — that are fair, expeditious, inexpensive and accessible (A5)
5. to receive information
  - a. procedure, scope, timing, progress of the procedure and the disposition (A 6 a)
  - b. role of the victims (A 6 a)
  - c. availability of redress possibilities (A 5 sentence 2)
  - d. about social assistance (A 15 to 17)
6. to allow 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 (A 6 b)
7. to provision of proper assistance to victims throughout the legal process (A 6 c and 15)
8. to minimal inconvenience (A 6 d)

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<sup>6</sup>An example of the priority of protection of victims before state prosecution is seen in the institution of the child interrogator in Israel: Sternberg, K.J., Lamb, M.E. (1996): Child Sexual Abuse Investigations in Israel: Evaluating Innovative Practices. In: Bottoms, B. & Goodman, G., Thousand Oaks (Sage) p.62-77.

9. to protection of their privacy (A 6 d)
10. to be safe from intimidation and retaliation (family members and witnesses on their behalf) (A 6 d)
11. to speedy trial, avoiding unnecessary delays (A 6 d)
12. to access to informal mechanisms of dispute resolutions including mediation, arbitration and customary justice (A 7)
13. to restitution: offenders should make fair restitution, restitution as a sentencing option , special mention of environmental harm (A 8 - 10)
14. to compensation by the state (A 12 and 13)
15. to general (social) victim assistance (three sub-articles) (A 14 to 17).

If we use the word “rights” to describe “desirable states of affairs”, then the Declaration deals with victim rights.

The Declaration turns to Member States and to their government — victims are of interest as the matter of member state legislation. In the center of the matter is “Avoidance of Secondary Victimization” — not the “rights of victims”.

The “nude” norms are too abstract, and therefore the UNODC tried to give more concrete explanations of what was really meant by this Declaration. This is done by “Guides for Practitioners” or by “Handbooks”.

The most recent “Handbook on Justice for Victims” was drafted during the year 2013 by a group of experts convened by the UNDOC in Vienna. The group finished the work in December 2013. The “Handbook” is ready for publication in 2014.

This Handbook will cover these topics:

1. Description of crisis and trauma that victims of crime and abuse of power may suffer, PTSD.
2. Other consequences of victimization
3. Victims that are ignored or dismissed by the public (children and elderly)
4. Victims of international crimes (cybercrime, cross-border human trafficking)
5. Formal criminal justice processes and victim rights in affluent countries
6. Emergent victim services program: establishing, sustaining and expanding programs
7. Helpful groups and professionals for victims
8. Remedies: Restitution and Compensation
9. Issues involved in restorative justice and crime prevention
10. Promising practices in implementing the legislation of victim rights
11. Key examples of international cooperation and collaboration
12. Consequences for those working with victims, methods for maintaining personal health (for

example avoidance of burnout).

The draft Handbook contains 184 pages of A4 text. It is a wealth of information about what can be done for victims and what has been tried successfully. This UNODC Handbook on Justice for Victims 2014 is an object of great expectations.

### III. THE IMPACTS OF CRIME ON VICTIMS

#### A. General Impacts

What is the impact of crime on victims? For analytical purposes we distinguish: Victimization means experience of damage (diminution of resources). Damage is experienced in three dimensions: emotional, physical and financial.

For many lawyers, the consequences would be more plausible in a reversed sequence: financial, physical and finally the emotional damage. Jurists are used to handle financial consequences for sure, most conflicts in civil law deal with finances. The whole area of civil laws, tax laws, social security and welfare laws deal with finances. This is the field lawyers feel most competent in.

In reality we know that these analytical categories are neither mutually exclusive nor do they have clear boundaries: emotional burden can very likely express itself in headaches, muscle aches, tensions and other physical consequences. These transform easily in financial damages if, for example, a physician must be consulted or medicine must be bought. There is no clear borderline between emotional and physical damage. Therefore I will give up this introductory static scheme and come to a more dynamic one.

#### B. Victimizations as Invasions of the Self

The new Handbook says that the most important element in dealing with victims of crime is to understand the nature of crisis and trauma. It then explains how to understand scientifically trauma - reactions. The Handbook deals with these topics: Normal equilibrium and stress, the brain structure, communications of the brain, brain functions, traumatic thinking (the thought processes during experience of trauma), normal memory processes, traumatic memory as compared to narrative memory, crisis reactions, traumatic reactions, uncomplicated PTSD and finally complicated PTSD. This is described in 26 pages, highly concentrated and not easy to understand. The difficulty is partly due to the problem itself — the emotional impacts of crime for victims are a complicated matter; in addition the way the brain processes trauma information is not well understood<sup>7</sup>, let alone easily explained<sup>8</sup>.

Victimizations are invasions into the self of the victim. That formula was developed some forty years ago. I find it still very useful. Invasions into the self of the victim. Of course this is a parable, an allegory, a picture: Behind this formula, there we find a specific image of men:

Imagine an onion: here is the outer peel, brown, tough, hard though fragile. Remove the peel — a different layer appears, and removing layer after layer, you reach the soft center. Penetration is easier and easier the more you come to the center, to the heart of the onion. That stands for the heart of the person, the “self” of the victim, the center of its existence.

Victimizations are invasions into the self of the victim, they are like needles that penetrate the onion.

We can employ this allegory to demonstrate different intensities or different severities of victimization. More on the outer skin we have victimizations by, for example, taking away from us items which are not valuable and easy to replace. Different, if the item was emotionally valuable to you: if the stolen ring was given to you as a sign of love by your partner. Then the invasion goes deeper and cannot be brushed away like a flurry of dust from your jacket.

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<sup>7</sup>See Winkel, F.W. (2007) Posttraumatic Anger. Nijmegen (Welp).

<sup>8</sup>Foa, E., Hembree, E. & Olasov Rothbaum, B.: Prolonged Exposure Therapy for PTSD. Oxford 2007.

Assaults: usually victims do not realize how easy it is to be hit. It would take a slight backhand move of your hand to injure the face of your neighbor. Of course we are not aware how vulnerable we are. This victimization would invade a completely unsuspecting victim. And would the pain be the main dimension of victimization? Or the humiliation to be treated in such a disrespectful way? Publicly? In an international UNAFEI conference? The feeling of surprise, of being unexpectedly harmed, told how vulnerable you are — even in this setting, and that your position of a leader in the homeland criminal justice system does not help you at all. You feel enraged, ashamed, deeply offended, humiliated, bewildered, you turn maybe to the chairperson for help. . . .

In the oral presentation there follows a description of a victimization the author experienced himself.

I have provided a detailed description to demonstrate to you what this robbery meant. The financial loss was not important. The emotional damage I experienced was the central event. That this would be classified as robbery and consequently be punished was unimportant to me in the moment of the invasion. Loss of physical integrity, experience of fear and despair, of helplessness, of being isolated and completely alone, of pain, of humiliation that some complete strangers treated me with such disrespect to what? To my person, to my identity, that they invaded me, that they brought me to such childish reactions like inventing numbers which I knew would bring only short-time relief, the humiliating feeling that I owed my life to the leader of this gang who “allowed me” to get away from them. . . .

Victimizations are invasions into the self of the victim. Burglary is not alone (and often to the lesser extent) a property victimization — The victim’s feeling of security is shattered. Victims realize that they sleep safely behind very thin and fragile glass windows of their bedroom. Humans tell themselves permanent stories about the safety of their existence.

And finally, in sexual victimizations, in cases of being groped and sexually invaded, victims experience that they are completely helpless, that they can be sexually attacked and invaded at any moment. Victims of rape tell us that they felt that their life was endangered, by this forceful closeness of invading actions of another person who invades not only the body forcefully but invades a part of victim’s personality that, for normal social interactions, must be kept un-invaded, undisturbed. Can we live with the feeling that we are open for everyone’s sexual invasion? Of course we cannot.

### **C. Understanding Crisis**

Victimizations are invasions into the self of the victim. That does not have to be demonstrated in cases of physical and sexual assault, in cases of torture, in cases in which the victims are forced to endure invasions into their self. It is self-evident in cases of homicide.

In all victimizations the emotional damage is very important — that a human being treated the victim without respect — let alone the physical and financial consequences. Even in cases of investment fraud the emotional damage is evident — the humiliation felt by the victim that someone treated the victim in this way, taught him a lesson about his own financial credulity, dupability, gullibility and outright stupidity.

Victimizations tell the victim that he surrounded himself with stories about his own independence, intelligence, smartness, about his own ability to control, about his power to determine what is going on in his personal life — these stories are like protective walls, protective shields we construct against our own vulnerability. People nurture illusions about the power of the criminal justice system and its organs including police to protect them, to grant that life is worth being lived. It is easy to imagine that victims of stalking lose all their hopes to ever live safely again.

Victimizations mean the forceful experience of the destruction of protective stories we tell ourselves about us and about the world we live in. We need these stories to stay alive. If we delve too deep into this knowledge, we might kill ourselves. Life is not worth living anymore. Every week we read something like this:

156TH INTERNATIONAL SENIOR SEMINAR  
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A 12-year-old girl who was killed after she walked onto the tracks and was hit by a bullet train in Tendo, Yamagata Prefecture, on Jan 7, left a note in which she hinted she had been bullied at school.<sup>9</sup>

“Bullying” is a cute way of denying the real harm and the revolting insensitivity of school to the emotional well-being of their students.

The impact of this invasion on victims is crisis.

Crises are situations of experienced instability, of insecurity. They are generated by the experience that the normal crisis management functions are blocked. The experience of blockage causes anxiety and stress. The usual skill, power, capability to handle difficult situations, is gone. The coping resources cannot be activated. The new Handbook describes very well how that functions physiologically.

Victims are suddenly confronted with a situation that does not make sense to them. They react with

insecurity,	what is going on here?
confusion	I need an explanation to understand what is happening!
disorientation	where am I? why am I here?
surprise	That is completely new and unexpected!
Despair	I cannot see any way to get out of here!
Cluelessness	How could this happen?
Anger	about oneself, about the people who usually are supposed to assist and help, family members, spouses, but as well police, prosecutors and the court, the whole state administration.
Self-Blaming	If I would not have done this and this!
Blaming of others	
Loss of control and powerlessness	They cannot comprehend what happened. They do not know how to respond.
Shock	Victims may be completely surprised, numbed,
Disbelief	this cannot be true!
Denial	No, this is not happening
Terror	complete shock and confusion and anxiety
resulting in frozen fright	numbness, no reaction at all, frozen, immobilization,
stress	resulting from impossibility to fight or to escape, another consequence of hyper-arousal

There is a certain pattern in responses:

Fear is caused by the loss of autonomy and control and by the loss of the ability to face situations by planning, “a uniquely human characteristic. The threat that pain will be inflicted can trigger fears more intensely than the immediate sensation of pain. Anger often results from fear. Anger might be directed against an offender or another person held responsible for a traumatic event. It may displace to supernatural powers (God, fate), family members, social institutions against oneself and it may generalize focusing not only on the one who offended but might be directed against the whole group he stands for. Related to anger is the desire for revenge.

The thirst for revenge is an enhancement of anger directed at classes of individuals. It is not uncommon. People do not know how to handle anger. It leaves people empty, bitter, morally in conflict and painfully in dissonance with what victims or other survivors of a catastrophe believe to be an ethically good reaction. Social reaction to anger is often disgust and rejection. Victimologists know that victims quite often are not at all vengeful. That is not plausible for people who would like to believe that victims turn to the criminal justice system for revenge. Victims are in a situation where

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<sup>9</sup>Japan Today, January 7, 2014.

they look for the meaning of what happened, and of course they seek protection in the system that is taught to them as “taking care of their needs”. Victims feel themselves confronted with a situation that does not make sense to them. Their understandable reaction is that they seek protection. They want to feel safe.

In this confusion, victims try to remember what happened. They have only scattered memories of the traumatic event. They cannot cohesively reconstruct this event. This scattered memory is a sign of PTSD and is accessible through cognitive behavioral therapy (and not in a police hearing or in an oral court hearing, see Foa et al. 2007). The confusion becomes frustration and despair when victims think they should remember or could remember when they only tried. It is obvious how important this fact is for police, prosecutor and judge.

Self-blame: Victims often think they are guilty of something. They blame themselves. Victim self-blame comes in two forms, blaming the behavior of oneself (If I would not have done this!) and blaming the character (I am the kind of person who attracts these events; It is me and my individuality).

Self-blame goes hand in hand often with shame. Shame is often exacerbated by the reaction of the social environment.

#### **D. Secondary Victimization**

Not only victims react. Their social environment reacts too. These reactions can help the victim to overcome the emotional impacts of the victimization. But there are good chances that these reactions are not helping and that they are damaging. Victims are confronted with reactions of the social environment that do not help them. The damage by these reactions is called “secondary victimization”.

Reactions may intensify the feeling of powerlessness, lack of self-esteem, lack of confidence, the loss of self-control, increased fearfulness and vulnerability, damage in the self-esteem of victims. They may intensify the feeling to be left alone, having no control, leaving no hope for the future.

Secondary victimization refers to the victimization that occurs through responses of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the criminal justice system. At times, per the Handbook, it amounts to a complete denial of human rights to victims of a particular cultural group, of classes or of a particular gender. It amounts to a refusal to recognize their experience as criminal victimization. An example of a complete lack of social recognition of victimization is the family of the offender after sentencing.

Another example for this might be the evaluation of violence against children — In Sweden a criminalized event, in Germany an illegal act with family law, civil law and administrative law consequences. In South Africa, for example, parents and teachers have the inherent power of chastisement. The South African courts first declared the imposition of corporal punishment by courts unconstitutional — before this, the victims of corporal punishment were not recognized (till 1995) while in 1996 the South African School Act declared it criminal for teachers to punish corporally. The total abolition of the power to resort to corporal punishment is “probably” inevitable (SAfr Crim Law p. 111).

Whether parents have the right to disciplinary chastisement or whether children’s rights prohibit this is victimologically irrelevant: it is the suffering of the victim, and basically it is not important from the victim’s perspective whether beatings are applied under observation of the limits of the law or whether these limits are crossed.

Secondary victimization is characterized by a loss of trust. This loss of trust explains why victims often show dramatic changes which we normally do not expect — they move out of their apartment, they change their address, they move into another city after they have been stalked. They change the school after being bullied by their schoolmates and teachers did not intervene properly. Marriages break down in the wake of victimization. The whole setting in which life usually functioned may be

changed. We have disturbing news about victims of rape who after reporting to police were bullied and harassed by their peers and by adult members of the community who blamed the victims so much that victims committed suicide or moved out of the neighborhood, into a new city and often that was not enough. The victims killed themselves or tried to do so. We have disturbing news about harassment of rape victims on the Internet.

The whole process of criminal investigation and trial may cause secondary victimization, from investigation through decision to prosecute or not, the trial itself and the sentencing to the possible release. It is not so much that there are difficulties to balance the rights of the victim with the rights of the offenders, it is more so that personnel are unaware of the possibility that their decisions may victimize, and they act without taking into account the perspective of the victim.

***Victims of abuse of power*** have particular difficulties in gaining recognition as victims. That can be explained by the fact that the power under which they suffer, power that is created to protect citizens, is here used to damage, pertains not only to abuses but pertains to the whole apparatus that is involved in recognizing victims, like the press, the criminal justice system, the majority of the population. Often, when the abuser is the state itself, supporting groups come from outside the country. International NGOs have been useful in some countries in pursuing cases of victimization outside the country. The letter action of Amnesty International is a good example for this.

I deal here with the impacts of normal victimization on victims. These are impacts that can be observed in run-of-the-mill court proceedings. They can be seen every day in the criminal justice systems of the countries represented here.

Of course they are more concentrated and visible in cases of mass victimization armed conflicts or genocide. There is a worldwide campaign against violence against women.

Another topic are the victims of hate crimes: prejudice against persons due to race. Culture or ethnicity are contributors to violence and to mistreatment in the justice system. Victims not only suffer from the emotional wounds caused by the violence but also from being categorized as the "others" — other people which do not really belong to us. As a result, some countries have responded with passing new "hate crimes" laws involving enhanced punishments for crimes motivated by prejudice. This is often the reaction of legislators: to invent new crimes and to increase the upper or the lower limit of punishment. There is no evidence that this really produces less victimization. The victimologist recognizes: victimizations are used to justify a stricter social control of offenders. This is done to enhance the reputation of the justice system, not to serve victims.

The impact on victims includes the physical consequences and the financial consequences of victimization. There is simply not enough room available in this paper to deal with the two consequences with the necessary intensity. This does not mean to downplay the role of these victimizations. It must be emphasized that in most if not all cases of physical victimizations (assaults, injuries) and financial victimizations (the so called property crimes), there is an emotional impact on victims and that is often, even in cases where we do not expect it, a very important part of the victimization.

#### IV. WHAT VICTIMS NEED

In victimology, there is often the talk about "victim needs". Victims need recognition that they are victimized. They need restoration of their damages. They need a social environment (individuals, institutions and communities) that is aware of secondary victimization. They need an environment that tries to avoid secondary victimization as much as possible. It is theoretically very simple: the damages they suffered must not be intensified.

The answer to the question "What Victims Need" is quite complicated. Victims have emotional needs — for they had emotional damages. They have physical needs if they are physically impaired. They have financial needs.

## **V. CURRENT SITUATION AND PROBLEMS FOR VICTIMS AT EVERY STAGE OF THE CRIMINAL JUSTICE SYSTEM**

### **A. The Investigative Phase: Police and Victims**

Victims need attention and care. That is difficult to deliver in the criminal justice system. Why?

The whole criminal justice system is part of the system of social control. In a famous sentence, a high Japanese court said that Justice is in public interest, not in the interest of the victim. That sentence electrified the supporters of victims. In a rather short time, they collected more than 550,000 signatures, requesting the Prime Minister to take better care of and respect the victims of crime. That changed the political climate in Japan. Since 2005, Japan has revamped its justice system.

For traditionally educated lawyers, criminal law is the matter of the state against the offender, applied in a clearly vertical system of social control. The victim has to serve as evidence. But today there are different demands on this system.

Police need training to improve their attitude in accepting the information of victims about crimes. Modern police are service oriented. Police have to be polite. They have to take the victims seriously and to do this, they must be aware of their emotional situation. That is difficult for police. They deal professionally with crime. For them, a crime story is one story in an endless chain of repeated stories. They deal with these events as everyday events. For victims this is completely different: For them, victimization is usually a one-time event, an exceptional situation. This is obviously so in case of burglary, a very upsetting event, a deep invasion into the self of victims. Feelings of security, of safe living, of “my home is my castle” — all these shields with which we surround ourselves, are destroyed. Victims do not get angry with police if the offender is not found — usually about 85% of reported burglaries are not cleared by police. Nevertheless, people were content with their police — since the officer was polite, caring, came out to them, offered a listening ear and was generally understanding.

Victims do not know the criminal justice system. They do not know what happens with their report. They are in a strange environment. They are afraid and nervous. They have difficulties to reconstruct the event.

Taking the emotional situation of victims seriously: that means that the first approach to the crime scene, home visits of victims, are performed without using police cars and uniformed policemen — neighbors are watching and victims are afraid of their reaction. The use of special limousines for questioning victims at crime scenes is needed. In police stations, there are installed special victim suites where victims can be interrogated and questioned in a safe environment, away from interference by other police performances done in a larger multi-purpose office.

Taking the emotional and social situation seriously — in Brazil since 1985 there are 475 women-only police stations where women feel better served than in the usual police stations. The Korean police has specialized units to serve the victims of sexual assaults — one stop sexual assault centers. There are nurses on duty, evidence can be taken in a way that respects human dignity of victims, respects their feeling of shame and their needs for privacy. Social workers and or clinical psychologists interact with the victims.

It is necessary for the police to protect the identity of victims — no press release with the names of victims! Respect for the dignity of victims means to take their fears seriously: victims must be allowed to bring trustworthy attendants to hearings. It must be considered to allow a lawyer on the side of the victim. There are many opportunities to help victims in the difficult situation during the investigation: Japan has very successfully used experienced retired policemen and prosecutors to give information, to provide escort services to hospitals, to assist in situations where personal protection is needed. There are countless situations where victims need counselling and information.

### **B. The Trial Phase**

#### **1. Waiting Rooms for Victims and Services for Victims in the Court**

Victims suffer if they have to wait — together with the defendant! — in front of the courtroom.

Since 1980 the international victimological scene is informed about the need for special waiting areas in courts.<sup>10</sup> It took twenty more years until the first victim waiting room was installed in a court in Germany. It was so difficult to convince judges and the administration of justice that such a service is needed. The professionals in the court took it almost as a personal offence that there was the suspicion that they would not take care of obvious needs of victims. It was simply that judges and prosecutors were not aware of the fears of victims. It is not enough to have these waiting rooms where victims can wait separated from the offender, it is very much needed to have social workers attending the waiting victims and witnesses. In Germany, there are regular training courses for “Professional Caretakers of Victims and Witnesses” in the court houses. These professionals give information. They provide guidance, They can explain what victims can expect in the courtroom. They guide victims through the physical appearance of a courtroom. Judges and prosecutors had to learn to think about these services as positive — of course they thought that it is not so difficult to serve as witnesses. They simply forgot how intense the fear and the nervousness and the insecurity of witnesses in front of the court are!

Nils Christie<sup>11</sup> has convincingly described that courts — for non-insiders — are a “jungle”. Even for lawyers it is very difficult to find the physical way through this jungle, to find the right courtroom where the case is heard. It is even more so for the material orientation. For people working in criminal justice, proceedings and routines are self-understood and daily experience. But all these routines are a “terra incognita” for victims, frightening, confusing, disorienting. His ingenious essay “Conflicts as Property” can be used as a primer in the need of victim-witness orientation services in the courtroom. Christie shows that the traditional criminal justice system serves its own interests. The smooth running of criminal proceedings and the ease to achieve convictions is often more important for legislators than the service to victims.

### 2. Protection of Special “Vulnerable” Victims

Occasionally it is needed to protect witnesses/victims by the use of screens, by closed circuit TV, by video recording of the testimony. That means investment of money and technical training, but it means primarily the development of an awareness of the persons working in the criminal justice system, of judges and prosecutors and lawyers.

### 3. Victim Participation

The Declaration demands to allow 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 for the accused and consistent with the relevant national criminal justice systems (D 6 (b)).

This blends into the discussion about “victim participation”. If we read the declaration very exactly, participation is a very broad interpretation: 6 (d) gives the right for victim input if national legislation already provides this possibility, and this input — of course, why else is it given? — must be considered by the court.

Discussing “victim participation” is unavoidable for any criminal justice system — after the seminal analysis of Nils Christie. He analyzed the need for involvement of victims in finding the solution of the conflict that he described as a “property of the lawyers”. He provoked with his thesis: lawyers have stolen the conflict from victims and offenders. His vision of “giving the conflict back to the owners” — to the victims and the offenders — has opened the way of the traditional vertical system to include more possibilities of the victim to participate in the vertical system. It was like opening the gate of the vertical system to allow more meaningful elements of horizontal victim oriented solutions.

### 4. Victim Impact Statement and Side Prosecution

Criminal justice systems have developed the institution of the “Victim Impact Statement” to enable the victim to play a more active role in the proceedings. The lack of active role was seen as a major deficit of existing systems. It is almost self-understood that these systems were introduced without ever empirically researching whether victims really want such a position. Different criminal justice systems

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<sup>10</sup> Viano, E.: Zeugenwarteraeume. In Schneider, H.J. (ed.) 1980 Opfer in Internationaler Persepektive. Berlin (de Gruyter).

<sup>11</sup> Christie, N.: Conflicts as Property. In British Journal of Criminology, 1977 (17) no. 1, p.1-15.

may share one experience — that victims are not so much interested in being involved in the trial.

It is a very important field. In the traditional criminal justice systems — as they developed in Europe in the nineteenth century and as they developed the criminal justice systems in the world, the victim had to answer questions. The judge determined basically what “belonged to the matter” — all what did not belong to the matter, was superfluous and wrong. That silenced at least those victims who wanted to tell “their” stories. This “silencing” is interpreted as not taking victims seriously. It is an example that structural constraints are faced by the victim. In reality, the limitations of the victim impact statement cause new problems. These problems are avoided if the system gives to the victim the right of full participation like it is done in the German system of “Side Prosecution” (*Nebenklage*).

Some jurisdictions have allowed the victim to act as a “side prosecutor”. In these cases, the victim has the right — enforceable — to be admitted as “side prosecutor”, sharing the position of the prosecutor in equal rights. It is highly interesting for victims, for example, of rape to be represented during the whole court proceeding. It is highly interesting for victims to not only react to questions but to be able to ask questions. This institution is very well developed in Germany. At times, the institution was attacked. Experts in criminal procedure demanded its abolition: it was seen as a private “instrument of revenge”. Nowadays, it is a very welcome shield against the demand of victim activists for more influence on the proceedings. Contrary what one would expect, in Germany, the side prosecutor is usually quite passive — the institution is used to prepare the civil law case against the offender. Victims and their representatives are not so much interested in demanding higher punishment — that even would taint most probably the perception of the court and give extra ammunition to the defence lawyer. I therefore will not repeat the arguments that are usually made in favor of side prosecution as an instrument to give the victim an opportunity to introduce its viewpoints into the criminal proceedings. “*Nebenklage*” is an institution that is strictly ruled by principles of criminal procedure. Therefore it does not compare to the *partie civile* in French influenced legal systems.

#### 5. Refund for Victim/Witnesses

Victims need to be refunded for the costs they have to face when they are called as witnesses. If the accused is sentenced, he has to pay the costs — if he is too poor, then the victim has to pay these costs. It does not need recourse to the Declaration and to principles of compassionate treatment to expect that the state alleviates the burden of the victim. In any case, victims need to be refunded for their costs of the participation in the traditional criminal proceedings when they have to serve as witnesses. The refundable costs include:

- Refund for transportation costs to the courthouse (limited to the costs of public transportation) for public transportation
- Refund for parking fees
- Refund for loss of income — usually with a cap on the amount of hours and the value for single hour
- Refund for household assistance
- Refund for food and hotel
- Covering the costs for necessary support services (blind persons, handicapped victims)
- Cost for child care

#### 6. Review of the Decision of the Prosecutor

Victims often have the right to seek a review of the decision of the prosecutor not to prosecute. This right is not given in most jurisdictions. Especially in systems who use the system of plea bargaining extensively — in the USA to 96% of the indictable offences — it is difficult to imagine installing this right.

A full revision is possible in Germany: If the prosecutor wants to drop a case, he has to inform the victim. The victim can administratively appeal. That has the consequence that now the deciding prosecutor has to report to the Chief State Prosecutor who makes a decision — either in favor of the victim or in favor of the decision to drop the case. In this case, the victim can — with the help of a lawyer — appeal to the highest court in the state which then will decide.

There are many possibilities to subject the prosecutor to a kind of scrutiny if they do not want to prosecute. In Japan, there is a special administrative proceeding. It makes it possible to review the decisions of the prosecutor and finally is able to force prosecutors to prosecute. The value of these kinds of possibilities is that prosecutor's decisions are reviewable from outside the prosecution system — within limits. For victims, it at least offers the theoretical possibility that prosecutorial decisions are reviewed. A problem is that there are only decisions possible to prosecute or not to prosecute. Much more fruitful for victims would be not to seek punishment but to seek peaceful solutions in the dimensions of restorative solutions.

#### 7. Private Prosecution

In a limited scope of crimes, some jurisdictions introduced “private prosecution”. In Germany the prosecutor in some cases can recommend to the victim to act as private prosecutor. Private prosecution means that the victim has all the rights of a prosecutor against the defendant. This institution is quite disputed among the legal profession: There is an enforced mediation procedure and victims can only prosecute when there is a certificate of a fruitless mediation attempt. 50% of all these cases in the biggest state of Germany are solved by peaceful mediation, by an apology or by payment to a non-for-profit organization (not a fine). Another bulk of the cases ends with a peaceful settlement in front of the judge. There are professors who evaluate private prosecution as very unsuccessful — since they do not result in sentencing and punishment. I think these proceedings are very successful: the vast majority of cases are solved without resorting to punishment, and that is a strength of a society and a success for freedom and compromise.

The idea of private prosecution rests on an — often false — image that victims are vengeful and that they need punishment. It is less the idea of improving the position of the victim. It is the idea to make punishment possible even if the prosecutor does not see a public interest in punishing. But that is not at all in public interest but in the interest of revenge-seeking victims. It is therefore highly welcome that the *Privatklage* in Germany so rarely leads to a punishment of the offender.

Restorative elements are often included in the way criminal justice proceeds. But that is outside of the topic of my presentation. Very fruitful was the decision of the German legislature: The behavior after the offence, especially the serious attempts of the offender to reach an agreement with the offender (Offender — Victim — Mediation) has to be taken into account in sentencing. That led to a mushrooming in cases that are solved with mediation. It is very sad that the European attempts to solve a problem, are so rarely known.

#### **C. Victim Aspects in Probation and in Parole**

Since probation is part of the sentencing, it does not need to be discussed here. Parole hearings: The UN Declaration says nothing about parole hearings. In Japan, the victims do not have a right to make a statement in front of a parole office or a parole board. The same is true for Germany. No matter how much victims might express their plight and suffering and how much they express their expectation for a negative decision of the parole authority. The Declaration is quite careful: Victims should be able to express their opinion “without prejudice to the accused”. If parole hearings were such “appropriate stages of the proceedings”, then the declaration would have used the word “sentenced” or “convict”. To augment this more formal reason, the material parole decisions must be based on the future dangerousness and development of the convict. Victims cannot have any information about this.

And they should not be heard in parole proceedings. It would decrease the parole rate beyond necessity. It would increase victim disappointment. Input of victims in parole decisions is not only dangerous, it is counterproductive. In the USA, victim support organizations very often rally against decisions of parole boards who do not have the independence of a court. Regularly there is an outcry of anger and rage against the chance that offenders are released “prematurely”. Such an outrage can

be organized by means of telecommunication. Organized public “outrages” are really no help for a society which tries to solve its conflicts peacefully. In Germany, there is no sign that the justice system is in any way impressed by demands for stiff sentencing, and comparably Germany is known for rather mild sentencing.

This brings the discussion back from more technical details to the idea that is behind all the efforts to bring “victims” into the right place in the criminal justice system.

#### **D. Victims in Corrections**

In Japan, there are Victim Awareness classes in the correctional institutions. These victim panels play an important role in prisons. They belong to the resocialization efforts in corrections. The Belgian correctional system is very far advanced in bringing victimological aspects into the treatment of offenders. Every prison in this country has a victimological expert in a high ranking correctional position.

## **VI. CONCLUSION**

In one of the preceding UNAFEI seminars on victims the famous victimologist and criminologist Ezzath Fattah<sup>12</sup> lectured here in this place. Fattah pointed out that “victim lingo” often hides a conservative, law and order orientation which is anti-offender and which brings the criminal justice system to more stiffness and harsher sentencing. I agree fully with my highly respected colleague. Fattah rightly attacks the political propaganda of some victim support groups who are in accord with law and order orientation. There is indeed a danger that well-organized voices of some victim assistance organizations stir up emotions against offenders. The rhetoric of “We are for victims and therefore against offenders” — belongs to the repertoire of political arsonists. Progress in the position of the victim has to do with taking the victim seriously. It is necessary to revise old positions. Avoidance of secondary victimization is in line with striving for a world with less fear and less avoidable repression.

It is difficult to see what punishment sustainably does for the alleviation of the pain of victims. Punishment has not healed a single wound. Financial damage cannot be restored by punishment. Forfeiture of assets, illegally and criminally gained, may be much more healing — especially if the money is used to repair the damage of the victim. Why is it not possible to put fines on probation? A condition of probation could be that the offender compensate the victim. Is the financial interest of the state more important than the interest of the victim in restitution of damages? Legislators can do a lot to make sure that the criminal justice system takes care of the interests of victims.

A less pretentious goal might be to strive for a system that does not damage victims. Avoidance of secondary victimization is of great importance. If criminal justice serves to achieve a peaceful world with a minimum of violence, then avoidance of secondary victimization is even more important than sentencing. It is a miscarriage of justice, when sentencing leads to avoidable secondary victimization. It is better that a guilty offender is acquitted than that “justice” is done while victims suffer avoidable secondary victimizations.

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<sup>12</sup> Fattah, E.A.: *Victimology Today: Recent Theoretical and Applied Developments*. UNAFEI Resource Material Series No. 56, December 2000, p. 60-70; *The Vital Role of Victimology in the Rehabilitation of Offenders and in Their Reintegration to Society*. UNAFEI Resource Material Series No. 56, December 2000, p. 71-86.