



Chapter 15

Protection and redress for victims of crime and human rights violations

Facilitator's Guide

Learning objectives

- To make the participants aware of the effects that crime and human rights violations may have on the victims
- To familiarize the participants with the existing international legal rules for the protection of and redress for victims of crime and human rights violations
- To identify the steps that States must take in order to provide redress and protection for victims of crime and human rights violations
- To increase the participants' awareness of their own potential as judges, prosecutors and lawyers in protecting victims of crime and human rights violations

Questions I

- What interests, needs and problems do victims of ordinary crime have?
- What types of legal protection and/or redress exist in your country for victims of ordinary crime? Give examples, such as with regard to persons abused or maltreated by common criminals?
- Do victims of crime face any special problems in the country where you carry out your professional responsibilities?
- If so, what are they and what is being done to remedy the situation?

Questions II

- Are there any particularly vulnerable groups of victims in your country, such as abused women or children?
- If so, what is being done to protect them if they report the perpetrator of the abuse?
- What measures, if any, are being taken in the country where you work to help protect witnesses whose life may be in danger following their testimony?

Questions III

- What types of legal protection and/or redress for human rights violations exist in your country for the following categories of people, among others:
 - Detainees who consider that they are being arbitrarily detained
 - Detainees who are subjected to ill-treatment, in particular women and children
 - Persons detained incommunicado
 - Victims or their dependants in cases of abduction, enforced disappearance, torture and extrajudicial killing
 - Offenders whose trials have not respected basic due process guarantees
 - Women and children who are subjected to State, community or domestic abuse, or the threat of such abuse
 - Persons subjected to gender, racial or other kinds of discrimination

Questions IV

- Do victims of human rights violations face any special problems in the country where you carry out your professional responsibilities?
- If so, what are they and what is being done to remedy the situation?
- Are there from this point of view any specifically vulnerable groups in your country?
- If so, who are they, what are their problems and what is being done to help them?

Questions V

- How do you perceive your role as judges, prosecutors and/or lawyers in ensuring effective protection and redress for victims of human rights violations?
- How do you perceive your role as judges, prosecutors and/or lawyers in ensuring or providing effective protection for victims of human rights violations?
- What is your view on amnesty or impunity laws, which imply that perpetrators of certain crimes or human rights violations will not be prosecuted or punished for their unlawful acts?
- Can, in your view, an amnesty or pardons for serious human rights violations be justifiable for purposes of reconciliation?
- If so, how would you deal with the victim's right to justice?

Relevant legal instruments I

Legal instruments relating to the protection of and redress for victims of crime

- The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

- The European Convention on the Compensation of Victims of Violent Crimes, 1983
- The Council of Europe Committee of Ministers Recommendation No. R (85) 11 to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985

Relevant legal instruments II

Universal instruments relating to the protection of and redress for victims of crime and human rights violations (1)

- The International Covenant on Civil and Political Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979

Relevant legal instruments III

Universal instruments relating to the protection of and redress for victims of crime and human rights violations (2)

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The Convention on the Rights of the Child, 1989
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000
- The United Nations Convention against Transnational Organized Crime, 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention

Relevant legal instruments IV

Universal instruments relating to the protection of and redress for victims of crime and human rights violations (3)

- The Universal Declaration of Human Rights, 1948
- The Vienna Declaration and Programme of Action, 1993
- The Declaration of Basic Principles for Victims of Crime and Abuse of Power, 1985
- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005
- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005
- The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989
- The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2000

Relevant legal instruments V

Regional instruments relating to the protection of and redress for victims of crime and human rights violations

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention on Forced Disappearance of Persons, 1994
- The Inter-American Convention to Prevent and Punish Torture, 1985
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The European Convention on Human Rights, 1950

Key legal texts I

The notion of a victim of crime (1)

Paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines a victim of crime as follows:

“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.

Key legal texts II

The notion of a victim of crime (2)

According to paragraph 2 of the Declaration:

A person may be considered a victim . . . 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.

Key legal texts III

The notion of a victim of crime (3)

A non-discrimination provision is contained in paragraph 3 of the Declaration, according to which:

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.

Victims of crime I

Treatment by the police (1)

The police must at all times show respect for, and courtesy towards, victims of crime.

The police should provide victims of crime with information about available help, assistance and compensation for injuries and losses they have sustained as a consequence of the crime.

The police should share other relevant information with victims of crime, including information as to the role the victims might play in criminal proceedings.

The police should undertake to protect victims of crime from intimidation, retaliation and violence.

Victims of crime II

Treatment by the police (2)

The police should inform victims of the outcome of their investigation and provide the prosecution with detailed information as to the effect or effects that the relevant crime has had and continues to have on the victims concerned.

By treating victims with respect and understanding and by sharing relevant information with them, the police help to promote confidence in the criminal justice system.

Victims of crime III

Treatment by the prosecution (1)

The prosecuting authorities should at all times show respect for, and courtesy towards, victims of crime.

The prosecuting authorities should keep victims informed about their role in the investigation as well as the scope, timing and progress of the proceedings.

Victims of crime IV

Treatment by the prosecution (2)

The prosecuting authorities should inform the victim of the outcome of the investigation unless, at least at the European level, the victim has indicated that he or she does not want to have this information.

In cases where the competent authority decides not to prosecute, the victim concerned should have the right to seek review of the decision or to bring a private prosecution.

Victims of crime V

Questioning during criminal procedures

Questioning by the police, prosecutor or judge of victims of crime must be carried out with compassion and respect for their dignity. Special assistance to victims testifying in court may be necessary in order to reassure the victims and ensure that they are playing a proper role in the proceedings.

Special assistance may be needed inter alia for victims – and their relatives – of sex crimes, child abuse, trafficking, abduction, enforced disappearance, torture or terrorist acts.

Victims of crime VI

Victims of crime and criminal court proceedings

Victims of a crime should be informed of the date and place of the court proceedings concerning that crime, and should also be informed of any delay or adjournment.

Victims of crime should be duly informed about the rights they may have to obtain restitution or compensation for the crime concerned.

Victims of crime should be informed about how they can obtain a copy of the judgement related to that crime.

Victims of crime VII

The right to protection of their private life and safety

Whenever necessary, the competent authorities should protect the privacy of victims of crime, and protect the victims, their families and any witnesses on their behalf from intimidation or retaliation.

Special protection of the right to privacy and safety of persons may be particularly indicated in cases of sexual abuse, abduction, enforced disappearance and terrorism as well as in criminal cases concerning organized crime.

As a general rule, it is preferable to obtain the consent of the victim before his or her name is given to the media.

Redress for victims of crime I

Restitution

Whenever appropriate, persons responsible for criminal offences should make fair restitution to the victims of their crimes for any harm or loss suffered. By restitution, the offender restores to the victim the rights that were breached.

Redress for victims of crime II

Compensation (1)

Compensation to victims of crime for physical or psychological harm suffered as a consequence of crime is an important recognition of concern for the victim.

When such full compensation is not available from the offender or other sources, such as private insurance, the State should provide such compensation to either the victim or his or her dependants as the case may be.

Redress for victims of crime III

Compensation (2)

At the European level, Member States of the Council of Europe may have a treaty obligation to provide compensation to victims of violent crime when such compensation is not available from other sources. Such compensation may however be reduced or refused inter alia in the light of the victim's own conduct in connection with the commission of the criminal act concerned or if the victim is known to be involved in organized crime, such as drug trafficking or terrorism.

Redress for victims of crime IV

Assistance

In addition to financial needs, victims of crime may have a variety of needs of a material, medical, psychological and social nature.

The need for assistance will vary according to the situation of the victim and the nature of the crime.

In order to be able to provide victims of crime with prompt and efficient help, all relevant professional groups, including judges, prosecutors and lawyers, must be made aware of the needs of victims and the availability of assistance.

Human rights violations I

The notion of a victim (1)

A “victim” is a person whose nationally or internationally recognized human rights and fundamental freedoms have been violated as a consequence of governmental acts or omissions.

Close relatives of the disappeared, tortured or arbitrarily killed may be considered victims of violations of their own right not to be subjected to ill-treatment.

Human rights violations II

The notion of a victim (2)

Human rights violations are a particularly serious form of abuse of power in that they are committed by – or with the knowledge of – persons or authorities with a duty to protect the individual and his or her rights.

Victims of human rights violations may require multiple forms of help and assistance to deal with the effects of victimization, including a recognition by the State of the wrongs committed.

The general duty of States to ensure the effective protection of human rights I

Key legal texts (1)

Article 2 (1) of the International Covenant on Civil and Political Rights:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The general duty of States to ensure the effective protection of human rights II

Key legal texts (2)

Article 1 of the African Charter on Human and Peoples' Rights:

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

The general duty of States to ensure the effective protection of human rights III

Key legal texts (3)

Article 1 (1) of the American Convention on Human Rights:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

The general duty of States to ensure the effective protection of human rights IV

Key legal texts (4)

Article 1 of the European Convention on Human Rights:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.

The general duty of States to ensure the effective protection of human rights V

What it means

Irrespective of the terms used in the international human rights treaties, the State parties are duty bound to provide effective protection of the rights and freedoms recognized therein to all persons within their jurisdiction.

These legal obligations comprise a duty effectively to prevent, investigate, prosecute, punish and provide redress for human rights violations.

Positive obligations may be inherent in the effective protection of a human right recognized by international law.

The duty of States to prevent human rights violations

What it means

The duty to prevent violations of human rights is inherent in the legal duty to ensure their effective protection.

Preventive measures may be of a legal, administrative, political, cultural, social, educative, remedial or other nature, depending on the problem and the country concerned.

The duty to prevent human rights violations such as disappearances, torture or extrajudicial killings implies a duty not to subject a person to a situation where he or she is at risk, even if such illegal acts are committed by private individuals.

The duty of States to provide domestic remedies I

Key legal provisions (1)

Article 8 of the Universal Declaration of Human Rights:

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 duty of States to provide domestic remedies II

Key legal provisions (2)

According to article 2 (3) (a) of the International Covenant on Civil and Political Rights:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

The duty of States to provide domestic remedies III

Key legal provisions (3)

According to article 2 (3) (b) and (c) of the International Covenant on Civil and Political Rights:

Each State Party to the present Covenant undertakes:

[. . .]

- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The duty of States to provide domestic remedies IV

Key legal provisions (4)

Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

The duty of States to provide domestic remedies V

Key legal provisions (5)

Article 7 (1) of the African Charter on Human and Peoples' Rights:

Every individual shall have the right to have his cause heard. This comprises:

- (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

The duty of States to provide domestic remedies VI

Key legal provisions (6)

Article 25 (1) of the American Convention on Human Rights:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

The duty of States to provide domestic remedies VII

Key legal provisions (7)

Article 25 (2) of the American Convention on Human Rights:

The States Parties undertake:

- (a) To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- (b) To develop the possibilities of judicial remedy; and
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The duty of States to provide domestic remedies VIII

Key legal provisions (8)

Article 13 of the European Convention on Human Rights:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The duty of States to provide domestic remedies IX

What it means (1)

The legal duty under international law to provide effective protection of human rights comprises also the obligation to ensure the availability of effective domestic remedies to victims of human rights violations.

This means that it is not sufficient that a remedy is provided for by the constitution or other law of a country. It must truly exist in fact and be allowed to function freely.

The duty of States to provide domestic remedies X

What it means (2)

To be able to provide effective remedies, the authorities concerned, including the courts and the legal professions in general, must be competent, independent and impartial.

States should endeavour to develop judicial remedies for alleged violations of human rights.

In order to be effective, the exercise of a remedy must not be hindered by acts or omissions of the State concerned.

The duty of States to provide domestic remedies XI

What it means (3)

While effective remedies must exist with regard to all violations of human rights, the prompt and unhindered exercise thereof is particularly important in relation to grievances of persons deprived of their liberty, whose life and personal health and security must be protected at all times.

The duty of States to provide domestic remedies XII

What it means (4)

To deprive a detained person of his or her right to bring complaints for reasons such as unlawful deprivation of liberty or torture and other forms of ill-treatment amounts to putting the person concerned in a legal vacuum where he or she has no possibilities of redress. Such a situation is a manifest violation of a State's legal obligations under international human rights law.

The duty of States to provide domestic remedies XIII

What it means (5)

Effective domestic remedies must be ensured with regard inter alia to complaints of discrimination, such as alleged racial or gender-based discrimination, including acts of violence arising in either the domestic or the public sphere.

The duty of States to provide domestic remedies XIV

The role of the legal professions

It is the professional responsibility of all judges, prosecutors and lawyers to ensure that claims of human rights violations are given diligent and effective treatment.

The duty of States to investigate, prosecute and punish I

What it means (1)

Inherent in the general duty to provide effective protection for human rights is the specific legal duty to investigate, prosecute and punish violations of the individual's fundamental rights and freedoms.

The ultimate purpose of this duty is to enable the swift restoration of the victim's rights and freedoms.

The duty of States to investigate, prosecute and punish II

What it means (2)

In order to fulfil their duty, States must conduct prompt and effective investigations into all alleged violations of human rights. This is, however, of particular importance whenever the allegations concern the right to life and the right not to be subjected to torture or other forms of ill-treatment, including gender-based violence as well as violence originating from other forms of discrimination.

The duty of States to investigate, prosecute and punish III

What it means (3)

The duty to investigate is one of means and not of ends, which implies that:

- The investigation must, for instance, be carried out by an independent organ, that is, by an organ other than that implicated in the alleged violations.
- The investigation must be carried out impartially, speedily, fully and effectively to enable the identification of the person or persons responsible for the alleged human rights violations for the purpose of their subsequent prosecution and eventual punishment.

The duty of States to investigate, prosecute and punish IV

What it means (4)

- The investigation must be initiated by the State once it has knowledge of the alleged facts, and does not consequently depend on steps taken or proof tendered by the victim or his or her next-of-kin.
- Formal investigations not intended to establish the truth will violate the duty to investigate human rights violations effectively.

The duty of States to investigate, prosecute and punish V

What it means (5)

- Examples of the steps necessary to ensure an effective investigation into alleged arbitrary killings are the taking of eyewitness testimony, the collection of forensic evidence, and an autopsy involving an objective analysis of the clinical findings, including the cause of death.
- In respect of grave human rights violations such as disappearances, the duty to investigate lasts as long as there is uncertainty about what has happened to the victim concerned.

The duty of States to investigate, prosecute and punish VI

The role of the victim

The role of the victim of human rights violations or his or her next-of-kin is essential in investigations and during court proceedings relating to the violation concerned. He or she should have considerable opportunity to be heard and to take an active role in the criminal justice process.

The duty of States to investigate, prosecute and punish VII

Special responsibilities of the legal professions

Judges, prosecutors and lawyers should show courtesy to and understanding of victims of human rights violations and their families, and be particularly sensitive to the trauma caused by torture, disappearances, extrajudicial killings and other serious violations of human rights.

The duty of States to investigate, prosecute and punish VIII

Consequences of failure to investigate

The failure to investigate human rights violations promptly and effectively jeopardizes the victim's right to redress for his or her grievances and undermines the rule of law, including the confidence of the public therein.

The duty of States to provide redress for human rights violations

Victims of human rights violations, or their next-of-kin, have the right to effective redress for the wrongs committed.

Wherever possible, such redress should be in the form of restitution of rights. If restitution is not possible, fair compensation for pecuniary and/or moral damages must be awarded.

Redress in the form of rehabilitation should be envisaged whenever necessary for victims of violence, such as torture or other forms of ill-treatment or racial, gender-based or other forms of discrimination.

Impunity for human rights violations I

The legal perspective

Impunity for human rights violations is contrary to States' legal duty to ensure the effective protection of such rights under international law.

De facto failures to prosecute human rights violations as well as laws that grant impunity for such violations can amount to breaches of international law.

The prohibition on States allowing impunity also relates to acts carried out by private individuals.

Impunity for human rights violations II

Justice, impunity and reconciliation

Impunity for serious human rights violations, such as arbitrary killings, disappearances and torture, creates particular hardship for the victims or their next-of-kin, and must be prevented.

Respect for the dignity of the human person demands that such violations are recognized, punished and redressed.

Sustainable national reconciliation is unlikely to emerge in a situation of refusal to acknowledge the basic interests of victims of serious human rights abuses.