



# Draft Model Law to Rebalance Justice by Implementing Effectively Rights for Victims of Crime

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# **Legislation to guarantee inalienable rights for victims of crime**

## **Support**

1. Right to Recognition
2. Right to Information
3. Right to Assistance

## **Justice**

4. Right to Restitution and Repayment
5. Right to Protection from the Accused
6. Right to Participation and Representation

## **Good government**

7. Right to Effective Policies to Reduce Victimization
8. Right to Full Implementation
  - Office for victims of crime
  - Standards and training
  - Evaluation and ombudspersons
  - Surveys for success
  - Research and development

# Draft Model Law to Rebalance Justice by Implementing Effectively Rights for Victims of Crime

## Preamble

- Recalling many proclamations in laws to provide rights for victims of crime and the commitment by all the world's governments in 1985 at the UN General Assembly (GA/RES/40/34) to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,
- We the people adopt this law to rebalance justice by implementing effectively the inalienable rights for victims of crime, fostering modern strategies to reduce victimization, and minimizing hardship when victims assist in the prosecution of offenders.
- This model law is the appendix in Irv in Waller, *Rights for Victims of Crime: Rebalancing Justice*. It was inspired by the draft convention produced in 2005—see International Victimology Institute Tilburg, *Compilation of International Victims' Rights Instruments*, eds. Marc Groenhuijsen and Rianne Letschert (Wolf Legal Publishers, 2009); and International Victimology Institute Tilburg, "Towards implementation of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power—Preparing a Draft Convention on the Rights of Victims of Crime, Abuse of Power and Terrorism," *Report on Expert Group Meeting* (Tilburg: University of Tilburg, 2005). Some sections from the convention have been eliminated as they are not applicable to a national law. Some sections in the model law are identical to those drafted by the experts. Though I was one of the experts, the conclusions from this book have resulted in some refinements to particular sections.

# Article 1 Right to Recognition

- Crimes are not just against the state but impact millions of people, including many women and children, vulnerable groups, and indigenous populations, who are victims of crime, suffering, loss, injury and mental harm each year. These persons may be victims more than once in that year, and the rights of these victims still have not been adequately recognized, and they may, in addition, suffer hardship when assisting in the prosecution of offenders.
- ‘Victims’ means natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, or economic loss in relation to violations of adult, juvenile, and other criminal codes.
- A person is a victim regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted, and regardless of the familial relationship between the perpetrator and the victim.
- Where appropriate, the term ‘victims’ includes the immediate family or dependants of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.
- The provisions shall be applicable to all, without discrimination of any kind, such as race, color, gender, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
- Where appropriate, persons who are vulnerable because of gender, age, race, disability, susceptibility to post-traumatic stress disorder, or other reasons will receive appropriate services.

## Article 2 Right to Information

- Victims will receive timely information from their first contact with law enforcement or other agencies.
- The information will be provided in the most effective way, consistent with advances in technology. Such information shall facilitate an informed understanding for the victims and shall be at least as follows:
  - a. the type of services or organizations to which they can turn for support;
  - b. the type of support which they can obtain, including the availability of health and social services and other relevant assistance, as well as obligations on those services to report to law enforcement and who will pay for the services;
  - c. where and how they can report an offence and whether they can choose not to report;
  - d. procedures following such a report and their role in connection with such procedures;
  - e. their role and the scope, timing, and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - f. how and under what conditions they can obtain protection;
  - g. to what extent and on what terms they have access to legal advice or legal aid;
  - h. requirements for them to be entitled to compensation from the state;
  - i. if they are resident in another State, any special arrangements available to them in order to protect their interests;
  - j. where and how the victims could obtain more information.

## Right to Information (cont:)

- Victims who have expressed a wish to this effect are to be kept informed of:
  - k. the outcome of their complaint;
  - l. relevant factors enabling them, in the event of prosecution, to know the conduct of the proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;
  - m. the court's sentence.
- Necessary measures shall be taken to ensure that the victim is notified, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released and when the victim requests it. Victims have the right to refuse to receive the information.

## **Article 3 Right to Assistance**

- Victims shall receive the necessary material, medical, psychological, and social assistance through government, voluntary, community-based, and indigenous means. Such assistance may be provided through specialized agencies or comprehensive programs.
- Networks of criminal justice, social services, health and mental health services, victim assistance services, and other relevant groups or institutions may be established to facilitate referrals, coordination, and planning among those providing assistance and to outreach to victims.
- The following kinds of assistance are essential to victims:

## **A. Immediate Assistance:**

- a. medical attention and accompaniment to medical exams, including first aid, emergency medical attention, and medical transport. Support services shall be provided to victims when forensic examinations are called for or in the aftermath of death. Such services shall be at no cost to the victim;
- b. material support such as shelter, housing, transportation, or property repair;
- c. crisis intervention, involving crisis counseling and problem solving;
- d. information and notification about what happened to the extent that such information does not interfere with investigation, including notification of any immediate responsibilities to the criminal justice system. Assistance shall be offered in notifying family or friends of what happened;
- e. protection from repeat victimization shall be provided through the development of safety and security plans. This may include information on police surveillance, relocation, emergency communication, and the like. It may also involve assistance with obtaining protection orders through the judicial system;
- f. victims shall be protected from media intrusion;
- g. general support and advocacy shall be offered when victims interact with social, justice, and medical institutions as well as appropriate referrals for urgent needs;
- h. confidentiality and privacy shall be guaranteed to the extent allowable under current law and policy.

## **B. Medium-term Assistance:**

- a. the continuation of the services provided under A 'Immediate Assistance';
- b. psychological health and spiritual interventions that may include post-trauma counseling, mental health therapy, pastoral counseling, or traditional healing intercessions;
- c. assistance with financial needs or claims including filing and advocacy for compensation claims, restitution, insurance, or emergency funds;
- d. legal referrals shall be provided for legal assistance in the criminal or civil justice systems. To the extent possible such legal assistance shall be at no cost to the victim.

## **C. Long-term Assistance:**

- a. the continuation of the services provided under A 'Immediate Assistance' and B 'Medium-term Assistance';
- b. assurances and re-establishment of the victim's place in the community and in the workplace shall be encouraged;
- c. language understood by victims shall be encouraged. If translators are needed, they shall be trained in the subject matter that they are addressing and victim support personnel shall be familiar with common terms that will be used;
- d. assistance with regard to victims' roles in the criminal justice system, including the nature of information they will receive on case status and their rights to participation or representation;
- e. information and assistance shall be provided on how victims can provide input at all critical stages of criminal justice proceedings, including: bail hearings, initial hearings, plea bargains, diversion programs, case disposition, offender status post disposition, and offender releases;
- f. information, support, and assistance concerning options for participation in alternative justice forums shall be provided.

## Article 4 Right to Reparation

- Victims shall receive assistance to recover their financial losses through at least the following procedures:

*Restorative justice respectful of victim rights* shall endeavor to establish or enhance the systems of restorative justice, which shall seek as a priority to restore the victim. It shall emphasize the need for acceptance by the offender of his or her responsibility for the offence and the acknowledgement of the adverse consequences of the offence for the victim. It shall ensure that victims shall have the opportunity to choose restorative justice forums, which accord to victims' dignity, compassion, and the other rights and services in the Act. Support for the victim shall be equivalent to the legal and social support provided to the offender.

*Restitution from offender* shall make offenders or third parties responsible for paying fair restitution to victims, their families, or dependants. Such restitution shall 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.

- Victims shall request the criminal court to order restitution from the offender in writing with receipts and other documentation justifying the amount.
- The criminal court will obtain an assessment of the income, assets, and liabilities of the offender.
- The department of corrections will be responsible for collecting the restitution and paying it to the victim.
- In cases where the offender is under the legal obligation to pay restitution as well as other pecuniary sanctions, the former shall have precedence over the latter.
- In cases where the victim seeks restitution through civil remedies, the government shall expedite these proceedings and minimize expenses.

## ***Compensation from the state will be paid when restitution is not fully available from the offender or other sources.***

- (1) It shall provide compensation to:
  - victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;
  - the victims' family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- (2) Compensation shall be provided for:
  - treatment and rehabilitation for care of physical injuries and mental health problems;
  - loss of income, funeral expenses, and loss of maintenance for dependants;
  - reasonable pain and suffering and other psychological injuries caused to victims.
- (3) The establishment, strengthening, and expansion of national, regional, or local funds for compensation to victims and funds will come from general revenue, special taxes, fines, private contributions, and other sources.
- (4) These funds shall guarantee fair, appropriate and timely compensation. They shall allow for emergency and/or interim payments.
- (5) Special care shall be taken to ensure that all eligible victims are aware of this compensation and have assistance to apply. This requires, *inter alia*, extensive dissemination of information on the eligibility criteria and the procedure to be followed, as well as application procedures using modern technology such as the internet.
- (6) In cases of cross-border victimization, the government where the crime has occurred shall pay compensation to the foreign national as payment of last resort.

## Article 5 Protection of Victims, Witnesses, and Experts

- (1) Appropriate measures shall be provided to protect the safety, physical and psychological wellbeing, dignity, and privacy of victims, witnesses, and experts from potential retaliation or intimidation and, as appropriate, for their relatives and other persons close to them.
- (2) The measures envisaged in paragraph 1 of this article may include:
  - establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
  - providing evidentiary rules to permit victims, witnesses, and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other appropriate means;
  - agreements or arrangements for the relocation of persons.

## Article 6 Right to Participation and Representation

For harm suffered, victims shall be provided with access to the mechanisms of justice and redress which is expeditious, fair, inexpensive, and accessible, through:

- judicial and administrative mechanisms which will enable victims to obtain redress;
- informal mechanisms for the resolution of disputes, including mediation, arbitration, and customary justice processes or indigenous practices, where appropriate, to facilitate conciliation and redress for victims;
- timely information about their rights in seeking redress through all these mechanisms.

## Victims shall have access

Victims shall have access to informal, administrative and judicial processes responsive to the needs of victims. This shall be facilitated by:

- providing victims with participation and representation equal to that of the accused to have their interests in their safety, reparation, and justice respected and balanced fairly against interests of the accused or convicted offender in all judicial and administrative proceedings;
- giving the victim a fair hearing within a reasonable time in the determination of their entitlement to a remedy for the injury, loss, or damage suffered by them as a result of their victimization;
- the prompt return to victims of their property taken or recovered by the police or any other agency in the course of the investigation;
- providing to victims, where appropriate, the right of appeal against decisions of the prosecutorial authority not to prosecute in cases where they were victimized;
- providing proper assistance to victims throughout informal, administrative, investigative, and judicial processes;
- taking measures to minimize delays inconvenience to victims and protect their privacy wherever appropriate;
- ensuring the safety of victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- ensuring the enforcement of any order or decree granting awards to victims.

Victims and witnesses shall be reimbursed for court expenses incurred as a result of their legitimate participation in criminal proceedings.

# Article 7 Right to Effective Policies to Prevent Victimization

Strategies and programs shall be put in place to reduce victimization consistent with international guidelines and knowledge by, *inter alia*, developing:

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

## Article 8 Right to Full Implementation

- (1) *An Office for Victims of Crime* shall be strengthened or established to ensure that funds are invested in the programs to implement the services in this Act.
- (2) Standards and Training shall be implemented by developing standards, norms, and codes of practice for all services in this Act, and providing training, education, and information to all persons working with victims to improve and sustain the necessary methods and attitudes. The standards and training shall include:
  - standards, norms, and principles relating to victims;
  - principles and ethical duties of personnel dealing with victims;
  - crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
  - impact, consequences (including negative physical, mental, emotional, psychological, and financial effects), and trauma of crimes;
  - special measures and techniques to assist victims and witnesses in the justice process (both formal and informal);
  - cross-cultural and age-related linguistic, religious, social, and gender issues;
  - appropriate communication skills;
  - interviewing and assessment techniques that minimize any trauma to the victims while maximizing the quality of information received from the victim;
  - skills to deal with victims and witnesses in a sensitive, understanding, constructive, and reassuring manner;
  - methods to protect and present evidence and to question victims and witnesses;
  - roles of, and methods used by, personnel working with victims and witnesses.

## Monitoring ....

- (3) Monitoring is essential to ensuring the full implementation. So appropriate measures shall be put in place to monitor the efficiency and effectiveness of policies and measures designed for the implementation of this statute. In particular, they shall undertake periodical review and evaluation of their legislation, regulations, and procedures, including through government surveys and independent research.
- A victim commissioner or ombudsperson shall be established to whom complaints from victims can be sent and who will recommend reforms to the legislation and practice to better meet the needs of victims of crime. The commissioner will investigate cases and act for individual victims to assist them in getting rights. The commissioner will recommend reforms based on these investigations, analysis of surveys, and research;
  - The various agencies, organs, or bodies dealing with victims shall submit performance reports.
- (4) *Surveys* shall be undertaken annually to measure rates of victimization, reporting to police, and costs and consequences of crime. These shall include indicators of the extent to which each of the rights in this Act have resulted in service to victims. Additional surveys will examine the implementation of this Act in relation to vulnerable groups.
- (5) One or more *Institutes for Research and Development* shall be created to undertake research to supplement the surveys and work of the Commissioner. To ensure independence, the funding will be based on one percent of the annual expenditures on corrections.