

# Udhëzues për mbrojtjen e viktimave si të punohet me viktimat e krimit

## Informativni priručnik za zastupanje žrtava kako postupati sa žrtvama zlocina



## Victim advocacy introductory manual working with victims of crime

The OSCE Mission in Kosovo Department of Human Rights and Rule of Law expresses its appreciation to all those who contributed to and participated in the Victim Advocacy Conference held in Prishtine/Priština, 1-3 December 2001 and to the representatives of the international community who have funded and supported the Victim Advocacy and Support Section of the Department.

Misioni i OSBE-së në Kosovë, Departamenti i të drejtave të njeriut dhe sundimit të së drejtës, me këtë rast, u shprehë falenderim atyre që kanë marrë pjesë në Konferencën për mbrojtjen e viktimave të mbajtur në Prishtinë/Priština, me datën 1 dhe 3 dhjetor të vitit 2001, e gjithashtu edhe përfaqësuesve të bashkësisë ndërkombëtare, të cilët e kanë financuar dhe përkrahur Seksionin për mbrojtje dhe përkrahje të viktimave në kuadër të këtij Departamenti.

Odeljenje za ljudska prava i vladavinu zakona OEBS-ove misije na Kosovu zahvaljuje svima koji su doprineli i učestvovali na konferenciji zastupanju interesa žrtava zločina održanoj u Prištini/Prištine od 1.do 3.decembra 2001, kao i predstavnicima međunarodne zajednice koji su finansirali i pomogli Sekciji za zastupanje interesa žrtava zločina našeg Odeljenja.

### **Contributors to the manual/Kontribuesit e këtij doracaku/Saradnici na priručniku**

**Adem Vokshi**, Attorney, Kosovo

**Anna Wergens**, Attorney, Brottsoffermyndigheten/Crime Victim Compensation and Support Authority, Sweden

**Counter-trafficking Department, Direct Assistance Unit Staff**, International Organisation for Migration, Mission in Kosovo

**Dr Eva Szeli**, Attorney/Psychologist, Director of European Programs, Mental Disability Rights International (MDRI), United States/Hungary

**Flutura Kumnova**, Psycho-social Therapist, Medica Mondiale, Gjakova/Đakovica, Kosovo

**Gabor Gombos**, Co-founder/President, Hungarian Mental Health Interest Forum, MDRI Consultant, Hungary

**Hamijete Myftari**, Attorney, Kosovo

**Heather Cartwright**, Office for Victims of Crime, United States Department of Justice, United States

**Jasmina Prstojevic**, Victim Advocate, NGO Interventionsstelle, Austria (**Rosa Logar**, Social Worker, Supervisor, NGO Interventionsstelle, Austria)

**Kemal Kuscu**, Psychiatrist and Family Therapist, Marnara University, Istanbul, IOM Kosovo Sub Project Officer for Psychosocial

**Lumnije Decani**, Director, Women's Wellness Centre, Peje/Pec, Kosovo

**Marcel Bosonnet**, Attorney/Victim Advocate, Switzerland

**Melihate Juniku**, Centre for Protection of Women and Children, Prishtine/Priština, Kosovo

**Miftar Jasiqi**, Supreme Court Judge, former Public Prosecutor, Kosovo

**Nesrin Lushta**, Co-Director, Kosovo Judicial Institute, former Juvenile Judge, Kosovo

**Ninfa Martinez**, Therapist (Marriage and Family/ Clinical Professional), The Children's Advocacy Centre and CAUSES (Child Abuse Unit for Studies, Education and Services), Mexico/United States

**Silke Studzinsky**, Attorney/Victim Advocate, Office of Women Lawyers, Germany, Berlin Government Commission on Trafficking Victims, Germany

**Dr Vjollca Gojani**, Safe House, Gjakova/Đakovica, Kosovo

### **Material contributions/Kontributet materiale/Korišćeni materijali**

**Handbook on Justice for Victims: On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**, United Nations Office for Drug Control and Crime Prevention

**First Response to Victims of Crime**, National Sheriffs' Association, Office for Victims of Crime, US Department of Justice

**The Victim Advocacy Conference and this manual were funded and supported by: /Konferenca për mbrojtjen e viktimave dhe ky doracak janë financuar dhe përkrahur nga: /Konferenciju i ovaj priručnik finansirali su i pomogli:**

OSCE Office for Democratic Institutions and Human Rights ODIHR

United States Office, Pristina

American Bar Association/ Central and Eastern European Law Initiative ABA/CEELI

Human Rights Project Fund, United Kingdom Foreign and Commonwealth Office

# CONTENTS

---

## FOREWORD 4

### Victim Advocacy: Safe, informed, supported, represented 6

A recent development 6

A snapshot of the Kosovo context from the Victim Advocacy Conference 7

Why victim advocacy? 8

### What do victims want/need? Ask them 10

Who is a victim? 10

Who are high-risk victims and populations? 11

### What do victims want/need? Compassion and sensitivity 12

What is the impact of victimisation on survivors of crime? 12

*Physical impact* 12

*Psychological impact* 12

*"Victim" and "trauma"* 13

*Secondary victimisation* 14

*Victims stories* 15

What are special considerations for high-risk victims? 15

*Children* 15

*Domestic violence* 16

*Trafficking victims* 17

*Sexual violence* 18

*Victims with mental disabilities* 19

### What do victims want/need: Information about and support throughout the criminal justice process 20

Where to look for the rights of victims in Kosovo? 20

How does the criminal justice process work? 21

*Public prosecutions* 21

*Private prosecutions* 21

*The stages of the criminal process* 22

Information about the criminal justice process and the victim 22

*What information do other systems provide and how?* 22

What information are victims entitled to throughout the criminal justice process in Kosovo? 23

Mechanisms for victim participation in the process 24

What are the ways that the victim as injured party can express their views and protect their interests? 24

Legal Assistance and support throughout the criminal justice process 25

The role of victim advocates 26

Measures to ensure safety and protect the privacy of Victim/Witnesses 27

*What do witnesses want/need?* 27

### What do victims want/need: Reparation for the harm they have suffered through compensation and services 28

How can we compensate victims of crime and fund victim services? 28

*Claims for restitution from the offender* 28

*Compensation from the state* 29

*Crime victims funds and government authorities* 30

Victims services 31

*Types of victim services* 31

Comprehensive and integrated victim response mechanisms 32

*Commissions for victims* 32

*Victim-based legislation* 33

Considering developing a victim services programme? 33

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 36



*"He was drunk and started to abuse me. He hit me in my face with his fist, grabbed my hair and pulled me under the table. He hit me more and more and I started to cry."*

**- Statement from Victim of Crime in Kosovo**

## FOREWORD

**This manual** is meant to be a simply written practical tool for all sectors dealing with victims and working towards the development of a comprehensive and integrated system of victim advocacy in Kosovo.

*"All my bones were broken, I couldn't breathe. I was afraid of how they would kill me. Later on I realised that they wanted me alive. They wanted me to work as a prostitute. That night, the owner of the bar smiled and told me 'I have bought you for 1,300 DM' Was I for sale?"*

**- Statement from Victim of Crime in Kosovo**

Victim Advocacy is the provision of access to justice and fair treatment to victims of crime. This manual is a product of the presentations, workshops, focus groups and materials presented at the Victim Advocacy Conference held in Prishtine/Priština 1-3 December 2001. The conference was organized by the OSCE as an initial step in the development of a comprehensive and integrated system of crime-victim advocacy as an integral part of the respect for the rule of law and the protection of human rights in Kosovo. While the rights of defendants and persons in detention have been a primary focus in the development of legal systems, the human rights of victims have often been forgotten in the administration of justice. In Kosovo, the applicable criminal procedure law defines the rights of victims with legal status in the criminal justice process, but this does not include the broad definition of a victim or the other principles of justice detailed in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

This manual is meant to be a simply-written practical tool for all sectors dealing with victims and working

towards the development of a comprehensive and integrated system in Kosovo. It presents a variety of mechanisms, models and skills involved in crime-victim response, including victim-based legislation and regulations, governmental policies, compensation, funding and development of victim services, the impact of victimisation and special considerations for assisting different types of victims. Although there are many issues presented in this manual, it is not exhaustive. It is intended to serve as a starting point to address what crime victims want and need in Kosovo. As such, this manual serves as an introductory tool to Victim Advocacy.

The OSCE Mission in Kosovo (OMiK), through the Department of Human Rights and Rule of Law, has the mandate to promote the development of institutions that ensure human rights and the rule of law are respected, and that persons suffering from violations of human rights have an effective remedy, in particular through the development of an independent and effective legal system. As a part of the United Nations Mission in Kosovo (UNMIK), OMiK cooperates with the Police and Justice Pillar I, which has the mandate to

administer law enforcement and administration of justice. In order to ensure that victims of crime are included in the development of the legal system in Kosovo, OMiK has recommended the creation of a Victim Advocacy and Assistance Unit in the Department of Justice. This Unit will function as a central governmental focal point or authority for victim response, in particular for the coordination of victim advocates, victim based resources, policy, legislation and support for victim services. The draft Criminal Procedure Code for Kosovo establishes the role for this Unit and a network of victim advocates to safeguard victim's rights by providing victims with information about the criminal justice process, and by support, representation and assistance in accessing the services they require.

In many countries, the development of victim advocacy or assistance mechanisms have proven effective

for crime victims by creating programmes that assist in their psychological, emotional, social and financial recovery. They have helped victims to gain understanding of, and assistance through, the criminal justice system, and to receive reparation for their suffering. A comprehensive and integrated system of victim advocacy does not, however, develop overnight. There are many actors, both governmental and non-governmental, that have a role to play in meeting the needs of victims of crime in Kosovo or anywhere else. Police officers, health workers, prosecutors, government social workers, mental health professionals, judges, non-governmental victim services organizations, which provide shelter, counseling and support, along with victim advocates all have a specific function in providing a just response which meets the needs of crime victims and treats them with dignity and respect.

*"My father was killed first, after he had been shot once in the upper part of the lips and twice in the chest. After that, the defendant shot my stepmother. When I approached my stepmother, I saw that she was still alive, but she couldn't talk. Since the murder of my father and my stepmother, our house has been closed. I live with my uncle and my stepbrothers live at their uncle's. Since I grew up, I know that our two families were in dispute over a property."*

**- Statement from Victim of Crime in Kosovo**

*"I was at home, my father went to work. Somebody knocked on the door and my mother went to open the door. They pushed and beat up my mother until she lost her conscience[ness]. I was screaming but he was shutting my mouth and I couldn't push him because he was strong. They abused me all night till 6:00 in the morning."*

**- Statement from Victim of Crime in Kosovo**

## Victim Advocacy

### Safe, informed, supported, represented

---

#### **Victim and Survivor**

The term victim is not intended to be negative but is used throughout this manual to describe a survivor of crime. Victim and survivor are used interchangeably. A victim of crime is entitled to be treated with dignity and respect because s/he is a survivor.

#### **A recent development**

The concept of victim advocacy or victim assistance has developed only recently in most countries where it exists. In the late 1970s and early 1980s in many countries, a general awareness was raised about the need for increased focus on the victims of crime to ensure an overall system of justice. The General Assembly of the United Nations, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter the UN Declaration) in 1985, based on the belief that victims should be treated with compassion and respect. The objectives of victim assistance programmes as stated by the General Assembly are to:

- ◆ increase the commitment of Governments and other organisations to help victims;
- ◆ create and make available direct services not only at the moment of the crime but also for long term treatment, and;
- ◆ improve outreach to victims in need.

The aim is to empower victims to take back a sense of control of their lives after crime and to provide opportunities for legitimate participation in the criminal justice process.

Responses in Europe and North America to increased awareness of the needs of crime victims included victim-based legislation, governmental mechanisms and funding for victim services. In the United States in 1982, a task force was set up by the President which identified that victims were frequently being re-victimized by the judicial system. The outcome was the Victims of Crime Act, which was the first in a series of laws protecting the victim. In Sweden, the Crime Victim Compensation and Support Authority was established as a governmental response to demands for better legal protections for victims. In 1978, the Criminal Injuries Compensation Act was created so that state compensation financed by public taxes would become a legal right.

In July 1999, the European Commission presented its first European Union measure on crime victims, named "Crime Victims in the European Union". It contained recommendations in five areas: "1) prevention of victimisation, 2) assistance to victims, 3) standing of victims in criminal procedure, 4) compensation and 5) general issues." Recently, the European Council has agreed that a document on minimum standards

on the protection of victims of crime should be drafted, addressing in particular crime victims' access to justice and right to compensation.

### **A snapshot of the Kosovo context from the Victim Advocacy Conference**

Kosovo is in a time of post-conflict transition and development. The population is still affected by the physical and societal destruction and the other consequences of the conflict. High levels of unemployment exists. The criminal justice and social welfare systems are undergoing tremendous changes. The international presence and the creation of new regulations and frameworks mean that the response to crime and judicial and law enforcement practice is constantly evolving. Although victims of crime have specific rights in the criminal justice procedure, the domestic laws in Kosovo at present do not consider adequately the broader representation and needs of the victim.

Currently, a crime victim in Kosovo is often subject to psychological and physical pressure by the perpetrator and/or society. The victim needs to feel secure and protected physically and psychologically in order to express her/himself freely without any fear for her/his security, any fear of revenge from her/his family and any fear from stigmatization and isolation by the surrounding society. Victims of crime in Kosovo generally do not receive adequate professional support nor are they properly informed of their rights or of the criminal justice process. The presence and role of the prosecutor is often only symbolic and, in many cases,

there can be a lack of active engagement of victims or representation of their interests. Although victims are entitled to hire an attorney to represent their interests, the economic situation in Kosovo means that few crime victims can afford such a luxury. Another problem is the process for and the provision of adequate compensation to victims of crime. Despite articles in the law which provide that criminal courts can decide on compensation, the practice is often that the courts require the victims to seek compensation in civil proceedings.

For victims of gender-based violence in Kosovo, there are three shelters presently available to victims; one short-term shelter for internal trafficking, rape and domestic violence victims in Prishtine/Priština and a longer-term, 6 month shelter for such victims in Gjakova/Đakovica. These two shelters have SOS lines. There is also a shelter for foreign victims of trafficking who have elected to return to their home countries through repatriation. In addition to the NGOs which run

### **...women's NGOs**

have developed in all communities of Kosovo to provide other services to female victims of crime and violence, such as counselling, intervention and health care. Many of these groups also implement education and awareness raising projects to prevent such violence. These organisations have observed positive changes in the attitude towards violence against women over the past two years.



**As a consequence**

of the situation in the criminal justice system in Kosovo, some perpetrators have not been prosecuted and have continued to commit crime, while the victim remains without the necessary assistance, representation and compensation.

these shelters, women's NGOs have emerged in all communities of Kosovo to provide other services to female victims of crime and violence, such as counselling, intervention and health care. Many of these groups also implement education and awareness-raising projects to prevent such violence. These organisations have observed positive changes in the attitude towards violence against women over the past two years. However, there is still a lack of forms of assistance needed by these victims to ensure personal and social security. For example, there is no regulatory classification for victims of this violence to receive social assistance or priority for employment assistance, court cases take too long, and other material assistance is not available to women who are mothers and single breadwinners. In short, much remains to be done.

As a consequence of the situation in the criminal justice system in Kosovo, some perpetrators have not been prosecuted and have continued to commit crimes, while the victim remains without the necessary assistance, representation and compensation. This may result in a lack of trust by victims in the criminal justice system, who in cases of further violence and abuse, will not be willing to turn to the police. Without reporting to the police, crime remains unchecked and there is no deterrence against future criminal activity. When victims do report but become frustrated by the process, such as in the case with accessing compensation, it can also result in a loss of faith in the criminal justice system. Although the present economic and material condi-

tions in Kosovo mean that the provision of cost-free victim advocates and services will be difficult, it would serve both to ensure the protection of the victim's rights and to foster a more "victim friendly" criminal judicial system.

**Why Victim Advocacy?**

*The rights of the victim as human rights*

The United Nations has recognized that victims deserve to be treated with dignity and respect. Under the UN Declaration, victims are "entitled to access to mechanisms of justice and prompt redress, as provided for by national legislation, for the harm that they have suffered." Human rights are those rights that individuals possess and that governments are obligated to respect. Whereas a crime by one or more individuals in society against other individuals or groups is generally not a human rights violation, participation of government or government actors in such conduct or the failure of government to adequately investigate, protect certain groups or address such conduct may result in human rights violations. In other words, the government is required to provide victims of crime with an effective remedy for the crime in order to protect the human rights of the survivor.

*A healthier society*

When a crime is committed, society and public order is placed at risk and, for the majority of crimes, the state prosecutes the alleged perpetrator for the benefit of protecting society. It is the victim of crime, however, that experiences the direct harm and requires assistance to heal. As a result of victimisation, vic-



tims' perspectives and ability to function is affected in ways that may modify their behavior. Thus, assisting victims in their recovery can assist in the restoration of the health of the community. One of the most powerful examples of the possible consequences of lack of assistance has been seen with child victims of crime and abuse who, without intervention, are more likely to become perpetrators of crime themselves. Moreover, research has shown that once victimized, individuals are more at risk of further victimisation. Providing assistance and intervention with victims of crime may assist in preventing repeat victimisation.

#### *Trust in the criminal justice system*

Treating a victim with respect and dignity serves to maintain faith and trust in the criminal justice system. If victims do not feel that jus-

tice is being served, they are less likely to co-operate with the system or to report criminal conduct. In such circumstances, victims may even resort to seeking their own form of justice outside of the system, which contributes to instability in the rule of law and in society.

#### *A more effective system of justice*

Perpetrators of crime may only be convicted on the basis of evidence collected and adjudicated by the criminal justice system. Victims of crime are often critical participants as witnesses in this process. Where victims' needs are met and a level of trust is developed, they are more likely to provide truthful information and a more detailed or complete story. This assists the actors in the criminal justice system in establishing the facts, thus guaranteeing a more legitimate and fair system.

### **The United Nations**

has recognized that victims deserve to be treated with dignity and respect. Under the UN Declaration, victims are "entitled to access to mechanisms of justice and prompt redress, as provided for by national legislation, for the harm that they have suffered." Human rights are those rights that individuals possess and that governments are obligated to respect...the government is required to provide victims of crime with an effective remedy for the crime in order to protect the human rights of the survivor.



**... assisting** victims in their recovery can assist in the restoration of the health of the community.

## What do victims want/need?

### Ask them

---



**The best way** to find out what victims want or need is to hear from the victims themselves. Victims of crime have played a crucial role in many countries in highlighting the problems with the system, and advocating an increase in their rights and the development of better mechanisms to address their needs.

Victims want and desire to be treated with dignity and respect. The best way to find out what victims want or need is to hear from the victims themselves. Victims of crime have played a crucial role in many countries in highlighting the problems with the system, and advocating an increase in their rights and the development of better mechanisms to address their needs. Victims' contributions assist in making the criminal justice system more effective, legitimate and responsive to the views of society. The inclusion of victims in assessing and reforming the way they are treated by the criminal justice and social systems in Kosovo is a key factor in ensuring that the results truly empower victims and meet their needs.

#### Who is a Victim?

In Kosovo, the applicable law includes internationally recognized human rights standards and the laws applicable in Kosovo prior to 1989. The United Nations Declaration defines "victims" as:

"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through

acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation."

In the law of criminal procedure in Kosovo, a victim may have the legal status of an "injured" or "injured party". The injured party is a person who has had her/his rights, either in property or person, injured or threatened by a crime. This includes immediate family members of direct victims, such as in cases of murder. The status of "injured party" is, however, attached to the criminal proceedings and therefore, unlike the broad UN definition, it does not cover those persons who have experienced crime where the offender is not identified, apprehended, prosecuted or convicted. As such, the definition of a victim and the principles of the UN Dec-

laration should be applied by sectors dealing with victims in Kosovo.

### Who are high-risk victims and populations?

The Handbook on Justice for Victims of Crime states:

“The effects of victimisation strike particularly hard at the poor, the powerless, the disabled and the socially isolated. Research shows that those already affected by prior victimisation are particularly susceptible to subsequent victimisation by the same or other forms of crime. These repeat victims are often found in many countries to reside in communities with high crime levels and are also a common phenomenon during times of war.”

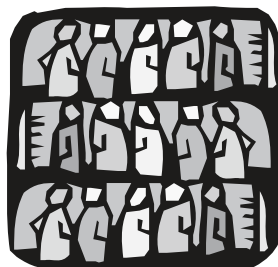
There are cases of crime that may involve hundreds of victims. Populations can be victimised as in the case of abuse of power, genocide or armed conflict. Typically, women and children are primary targets during times of war and the impact of such abuse can be passed from one generation to the next. In Kosovo, there are communities and families as well as individuals still dealing with post-conflict trauma. Repeat victimisation may trigger past experiences or may negatively influence the individual’s coping mechanisms. In such cases with large numbers of survivors, victims still require assistance and responses, with more creative methods needed to reach and impact the large numbers of victims.

There are also groups or persons in society who are vulnerable to crime as a result of their status, age, sex or position. The category of most vulnerable or high-risk victims, includes children/

minors, mentally and physically disabled, women (particularly to gender-based violence), elderly, foreigners and minorities. These groups tend to be more vulnerable to violence and exploitation due to segregation, discrimination and lack of power or authority.

In order to ensure that these groups receive access to mechanisms of justice and a response that meets their needs, governments are required to enhance measures, laws or policies for these groups. These enhanced measures may vary widely depending on the needs and nature of the offence, for example:

- ◆ domestic violence is a complex form of crime that may need to be addressed through specific legislation, which includes a targeted domestic violence victim assistance programme;
- ◆ victims of sexual violence require rape counselling as well as a unique medical response, such as testing for sexually transmitted disease and HIV, emergency contraception, and a victim sensitive examination by a forensic physician;
- ◆ children often need special protection and intervention, including a specialised interviewer who understands the mental development of children and can utilise anatomic dolls or drawings;
- ◆ minorities who live in enclaves or who experience other forms of isolation such as speaking a minority language, require special mechanisms to ensure these groups have access to justice and to services in their own language.



**In Kosovo**, there are communities and families as well as individuals still dealing with post-conflict trauma. Repeat victimisation may trigger past experiences or may negatively influence the individual’s coping mechanisms. In such cases with large numbers of survivors, victims still require assistance and responses, with more creative methods needed to reach and impact the large numbers of victims.

## What do victims want/need?

### Compassion and Sensitivity

**“Trauma”** is used to define the response of an individual to an adverse experience which overwhelms that individual and surpasses her/his ordinary ability to cope with stress.



Types of crimes and individuals who are victims of them vary widely and therefore an understanding of the impact of victimisation and responses to victims must be flexible. For example, a victim of a sequence of crime, exploitation and violence, such as a trafficking victim, may be impacted differently than a family that has experienced a one time armed robbery of their apartment. However, there are some common physical and psychological responses by victims to crime and their experiences on contact with society and systems after the crime. An understanding of the impact of victimisation on individuals who survive crime and the response of actors who come in contact with victims is crucial to addressing the needs of a victim and to receiving from them the information necessary to build a criminal case against the offender(s).

#### **What is the impact of victimisation on survivors of crime?**

##### *Physical Impact*

Immediate physical reactions to a crime may include shaking, numbness, increased heart rate, a rush of adrenaline or hyperventilation. Physical injuries produced by assault, especially in cases of domestic

violence, frequently include abrasions, bruises, damage to teeth, and broken bones. Some injuries may not be immediately evident especially if the injuries have occurred on parts of the body that are normally clothed. Physical symptoms may persist for some time following the incident manifested by a loss in appetite, insomnia, headaches, and nausea.



**An assessment** is necessary to determine if the victim has physical injuries that require immediate medical attention.

##### *Psychological Impact*

A common psychological response to crime can be broken down into four stages:

- ◆ The first reaction may be fear, shock, anger, a sense of helplessness, or even guilt and self-blame. The victim may lash out at others, including people who are trying to help.
- ◆ The second stage may be a period of disorganisation. The psychological impact may include recurring nightmares, depression, fear, intensified stress, low self-esteem and a lack of trust towards others. The victim may withdraw from people and from any situation they associate with the crime.
- ◆ This period is followed by a time of reconstruction and acceptance. Acceptance that

the incident occurred is key to the recovery and healing process.

- ◆ The final stage is adjustment and normalisation.

### *“Victim” and “Trauma”- the psycho-social perspective*

The use of the terms “trauma” and “victim” are ways to categorize the result of an adverse experience on an individual. “Trauma” is used to define the response of an individual to an adverse experience which overwhelms that individual and surpasses her/his ordinary ability to cope with stress. It is often hard to define the beginning and the end of an adverse experience, particularly when many survivors of crime come from harsh backgrounds and circumstances. Individuals who survive an adverse event are classified as “victims” by society and systems within society, such as the criminal justice system. Such classification of individuals and their responses to adverse experiences can be useful for finding a common language to address human experience. However, classification can also restrict the ways that other individuals within society and society as a whole perceives and treats survivors and their responses to their experiences.

Survivors of adverse events, such as crime, frequently suffer from a sense of injustice, lack of control or “helplessness”, and insecurity. The consequences of an adverse event on an individual are:

- ◆ Uncertainty of how to deal with the totally unpredictable danger or long-term threat, which results in an immense sense of losing control.
- ◆ Sense of loss of a secure base and disconnection from communal networks, i.e. relationships with others.

Victims feel alone with their experience.

- ◆ Pressure to develop new roles and patterns of behavior different from that which they had prior to the adverse experience. For example, once a survivor has reported a crime, s/he will need to participate as a witness in the criminal justice system or, if the survivor is severely injured, s/he will need to adjust to being cared for within the health system.

In order for the victim to talk about the “traumatic event” and begin to heal s/he will need to redevelop a sense of her/his individual identity. This means that the individual needs to make her/his own decisions, speak for her/himself, and reconstruct her/his sense of control. A secure base or community safety net, i.e., stable relationships with others, needs to be re-established.

The victim can be assisted in this process through referrals, a safe environment with assurance of confidentiality in order to speak openly and be heard. However, in developing a referral network, it is essential to ensure that survivors are not required to tell their stories multiple times to different individuals.

The criminal justice process, as well as other systems in society, like social welfare, requires survivors to play the role of a victim in the system and to be clear about the circumstances and the facts surrounding the adverse experience. The therapeutic process is intended to allow survivors the time and the freedom to reconstruct an alternative version of the events in order to accept that the adverse experience occurred and to integrate the experience into their life. It is also for the survivor

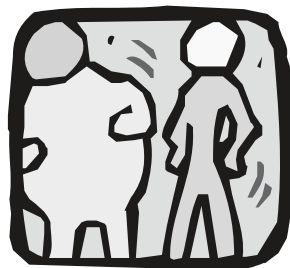
### **The therapeutic process**

is intended to allow survivors the time and the freedom to reconstruct an alternative version of the events in order to accept that the adverse experience occurred and to integrate the experience into their life. It is essential to ensure that survivors are not required to tell their stories multiple times to different individuals.



**Negative interactions**

can be a result of individual workers who are insensitive to the victim's needs or who "blame the victim." Even family and friends may demonstrate disdain and believe that the victim's behavior somehow contributed towards or even caused the victimisation.



**"the real story"**

The fact that a victim may be feeling guilty or blaming her/himself for the occurrence of the crime(s) can contribute to this. Time and trust is crucial for the victim to tell "the real story".



to reconstruct the survivor's sense of themselves and their relationships with others and societal systems. As such, there is a tension between these two processes which needs to be recognised by actors within the criminal justice system.

**Secondary Victimisation**

Survivors of crime may feel the impact of victimisation again when they decide to come forward and talk about the crime. This can occur through insensitive and inappropriate treatment by actors within the criminal justice and social welfare sectors as well as by the actual process of participating in the investigation and the trial. The criminal justice process may require victims to tell their story many times to different actors, such as the police, investigative judge and at trial, as well as require victims to face their offenders multiple times or stand near them in court. Special mechanisms for protection and psychological wellbeing of victims while providing testimony in court proceedings, such as shields, video links or taped examinations, and the provision of support persons can mitigate this effect. The applicable law in Kosovo, through UNMIK Regulation 2001/20 provides for the possible use of such mechanisms in the criminal justice process.

A recurrence of victimisation can happen due to the inappropriate conduct of the police, mistreatment by doctors or forensic examiners, social welfare workers or other actors within and without the criminal justice system. Negative interactions can be a result of individual workers who are insensitive to the victim's needs or who

"blame the victim." Even family and friends may demonstrate disdain and believe that the victim's behavior somehow contributed towards or even caused the victimisation.

Professionals who work with victims should be aware of their prejudices and assumptions regarding crime victims in order to mitigate the chances that their responses revictimise the survivor. Listening to horrific experiences of others can remind us of our own vulnerability; and as a consequence, "blaming the victim" or not "believing" the victim can serve as ways to distance ourselves from the reality of the experiences of others.



**"Blaming the victim"**

serves to mitigate the blame on the offender for the crime and attribute to the victim fault for the crime. It is often manifested with those victims about whom individuals and/or society generally have developed prejudices or assumptions or with victims who are perceived to have broken cultural or societal norms. Typical examples of this are:

- ◆ persons with mental disabilities are often perceived to be "crazy" and not believable;
- ◆ women are often blamed for provoking domestic violence by their husbands;
- ◆ women are perceived to have "asked for it" in the case of sexual violence, if they were wearing a short skirt prior to the incident or entered into a vehicle with the offender.



**Demonstrating clear disbelief**

that a crime happened to a victim, based on prejudice or assumptions, may lead to secondary victimisation and result in the failure to investigate a possible crime. Only following a proper investigation, can a conclusion be made as to whether or not the

victim has told the truth.

### *Victims' Stories*

Following victimisation, some survivors may not be able to articulate clearly what happened to them or they may be fearful of explaining certain aspects of their story. The fact that a victim may be feeling guilty or blaming her/himself for the occurrence of the crime(s) can contribute to this. Time and trust is crucial for the victim to tell "the real story". Even though there may be inconsistencies or gaps in a victim's story that does not mean that s/he is not a victim of crime or a series of crimes.

Professionals who work with victims should not be afraid of inconsistent statements or gaps in the initial interview with the victim. During victims' statements, interviewers need to:



**listen** closely to hear if some of the inconsistencies may be an attempt to protect someone else or that the victim may not yet have the trust necessary to feel free to explain all of the circumstances of the event(s);



**assess** all possible aspects of the crime that the victim may be afraid of explaining;



**establish** a level of trust where s/he may ask some difficult questions of the victim.

In many systems, victims are prepared for retelling their stories in front of the court and sometimes have assistance of an advocate before talking to the police. Preparation of a victim in terms of knowing what will be asked and expected of her/him while telling her/his story is an important part of ensuring an effective criminal process.

Actors in the criminal justice system are generally obligated to attempt to collect all possible evidence to avoid dropping a case. Regardless of the victim's statement, a criminal case can be built in other ways; for example, using medical records, or investigating who else was present at the scene of the crime, had a reason for committing the crime and an opportunity to do so.

### **What are special considerations for high-risk victims?**

#### *Children*

Persons under 18 years are children according to international human rights standards and applicable law in Kosovo. A child of 16 years or older has the right to represent her/himself as an injured party in the criminal justice system. For those under 16, children's interests are represented through parents or other legal representatives.

Child victims or survivors of crime require special sensitivity and responses from persons who understand and are specially trained in child development. Children's capabilities vary widely depending on many factors such as age, gender, cognitive skills and social skills for handling difficult experiences, physical, social and emotional development. Moreover, the social and emotional development of a child is influenced by a range of factors in their upbringing, including prior experience with violence or crime. Depending on these factors, some younger children may have difficulties distinguishing between reality and fantasy. Therefore, determining a child's skills level prior to the crime or violence assists in assessing the impact of the crime on the child.


### **First Response tips!**

The immediate response by the person with first contact with a victim should be to help the victim to feel safe, to be able to express some of her/his own feelings, and to understand what will happen next:

- ◆ **reassure** the victim that s/he is now safe. This can be expressed in words and in body language using a calm empathetic manner.
- ◆ **ensure** privacy and confidentiality, where possible, as these are key to providing a sense of security.
- ◆ **assess** potential medical needs by asking the victim about physical injuries.
- ◆ **offer** crisis counseling, where possible, or contacting a family member or friend to support the victim during the interview.
- ◆ **ensure** that the victim feels comfortable, for example, by offering something to drink.
- ◆ **describe** the potential physical and emotional symptoms that the victim may experience as a result of the crime to help her/him prepare for future feelings.
- ◆ **do not** be judgmental and do not make promises that cannot be kept. Victim needs to be able to explain what happened without fearing blame. Victim need to have their feelings validated rather than being told that you know exactly how they feel.
- ◆ **ask** simple and clear questions.
- ◆ **eye contact**, head nodding, and open body language are all responses that will convey active listening and encourage the victim to express her/himself openly.
- ◆ **avoid** interruptions as much as possible unless it is for clarification.
- ◆ **tell** the victim about upcoming legal proceedings and their potential role in the investigation of the crime. Knowing what to expect will most likely alleviate anxiety.
- ◆ **inform** the victim of resources and services available in the community, including shelters, psychological help, and medical care. The first responder should accompany or contact a person who can accompany the victim through the process of accessing services rather than simply handing the victim a referral list.

**Children** have a tendency to shut down in the face of direct questioning and insensitivity. Multiple interviews and questioning of a child about a traumatic event is likely to result in revictimisation.



 **An assessment** of the child's previous skills level and the impact of the crime involves reviewing:

- ◆ symptoms that the child presents;
- ◆ existing skills of the child;
- ◆ previous history;
- ◆ prior interaction with sexual abuse or violence;
- ◆ bio-social influences on the child; such as health, environment, and war experiences.

Children have a tendency to shut down in the face of direct questioning and insensitivity. Multiple interviews and questioning of a child about a traumatic event is likely to result in revictimisation. Actors in the criminal justice system in Kosovo are under an obligation to ensure that an examination of a child as a witness does not negatively impact her/his mental state. Many systems in other countries use multi-disciplinary teams, with one specially trained interviewer, to respond to child victims of crime. These teams often include, police, prosecutors, child protection authorities (the guardianship authority of the Centres for Social Work) and a victim advocate. In Kosovo, it is possible for children to be questioned with the assistance of a pedagogue or other professionally trained person. Where a child is required to testify as a witness in court proceedings, special mechanisms are often used to ensure that the mental and emotional wellbeing of the child is not affected. Beyond the exclusion of the public from hearing the child's testimony, children may sit on the lap of a trusted adult and protective shields or devices may be used.

Children's behavior and responses are affected by the

presence of their parents and due to shame, embarrassment or other reasons, they may be afraid to tell their stories with parents present. In some systems, as in the United States, parents are not involved in interviews due to this impact and because it may place parents in the position of being a witness in criminal court. In these cases, parents who are not suspected offenders of the crime are informed of the outcome of any interview or assessment of the child.

Therapy or counselling may be necessary to assist the child in adapting to a new situation after the crime(s), particularly if the crime was committed against the child by a parent or other family member. In fact, the ideal scenario would be to have therapy available for the entire family.

#### *Domestic violence*

Domestic violence usually consists of a crime(s) and a series of abusive conduct by one family member against another or others, which can include emotional, psychological abuse as well as physical and sexual abuse. In Kosovo, there are various crimes that can occur within the family as domestic violence.

A domestic violence survivor has been subject to abuse and violence within what is usually considered an individual's most safe place, his/her home, and from a person with whom there is considered to be the most trust, a spouse or other family member. Unlike most other victims of crime, domestic violence victims live with an on-going cycle of violence and in constant fear of further acts of violence. This causes severe impact on the victim's ability to trust and cope and results in an adverse dependency by the victim on the offender. Research indi-



cates that children, even in cases where they are not direct victims of abuse, are negatively impacted by viewing and living with domestic violence in their families.

Victims often feel tremendous self-guilt or shame, blaming themselves for the violence. Societal perceptions regarding the role of women in the family often contribute to this. Survivors usually struggle with the fact that reporting a crime or crimes within the home will inevitably affect the future of the family and the economic, social and psychological situation of the family members. This is particularly true for mothers who are concerned about the impact on their children of reporting crime or of losing them as a result.

For these reasons, victims of domestic violence may often change their minds and decide not to make a statement, or to retract their initial statement. The victim may be subject to immense pressure from the offender or other family members. Domestic violence may not end with separation from the offender and victims may still be at risk during the time of leaving the violent relationship. In recognition of this, certain countries, such as Austria, require the reporting of domestic violence cases regardless of the victim's consent.

In Kosovo, the police have a policy that mandates the arrest of an alleged perpetrator of a crime within the family where there are reasonable grounds for suspicion. One of the most frequent crimes within domestic violence is light bodily injury or a simple assault. In cases of a light bodily injury committed without the use of a weapon or tool, it is the obligation of the victim as injured

party to file a complaint and proceed with the prosecution.

#### **Trafficking victims**

The offence of trafficking involves a series of crimes and violations of human integrity. Trafficking in persons is defined under UNMIK Regulation 2001/4 as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

Trafficking in persons is usually undertaken by organized criminal groups, which cooperate internationally and it can occur across borders or within borders. In many cases, persons, particularly women and girl children, are vulnerable to becoming victims of trafficking as a result of difficult economic or social backgrounds or experience with prior abuse or violence. Many survivors of trafficking may come from other countries and therefore do not speak or understand the language and are not used to the norms or laws of the place into which they have been trafficked. In fact, many victims of trafficking can be female, under 18 and foreign which makes them even more vulnerable to victimisation and secondary victimisation by society and the criminal justice system.

The experience of trafficking usually involves a series of violence, abuse, deception, degradation and isolation of the victim in order for the offender(s) to maintain con-

**In many cases,** persons, particularly women and girl children, are vulnerable to becoming victims of trafficking as a result of difficult economic or social backgrounds or experience with prior abuse or violence. Many survivors of trafficking may come from other countries and therefore do not speak or understand the language and are not used to the norms or laws of the place into which they have been trafficked.



**Sexual violence** can happen within many contexts, including within families, against trafficking victims, against children, between couples who are dating and between strangers. It is common that the victim and offender knew each other before the sexual violence incident or incidents.



trol and domination. Victims are often living in an environment of constant deception, where false information is fed to them to prevent them from turning to the police or trying to escape. The resulting impact is that victims develop dependency on the offenders while they lose a sense of their own identity, self-esteem, and their ability to react and cope is gradually diminished. Due to the difficult circumstances they often face returning home, victims may have a high level of uncertainty, which drives them into making impulsive decisions. As a result of the impact of the trafficking experience, survivors are usually suspicious of assistance and respond with anger and abuse towards those trying to assist them.

Victims of trafficking are also often in situations where they are in violation of the criminal or other laws. For example, victims may be involved in prostitution, they may be present in the country illegally (without documents) or may be in possession of false documents. Consequently, victims are likely to fear law enforcement authorities and they usually require a significant level of trust to tell their stories. Authorities in some countries may “blame the victim” on the basis that the victim wanted to migrate and seek labour and therefore, is responsible for getting her/himself into situations where s/he becomes a victim of crime. Authorities have a choice between charging and punishing or deporting a victim and treating the survivor as a victim of crime and providing her/him assistance and support. In Kosovo, where a person can show evidence, which supports a reasonable belief that s/he

was a victim of trafficking, the person is not criminally liable for these offences under UNMIK Regulation 2001/4. Furthermore, where there is a criminal conviction, it cannot be the basis for deportation if the person is a victim of trafficking.

#### *Sexual violence*

Sexual violence can happen within many contexts, including within families, against trafficking victims, against children, between couples who are dating and between strangers. It is common that the victim and offender knew each other before the sexual violence incident or incidents. Whereas it is difficult for all crime victims to discuss their victimisation, it is especially painful for victims of sexual violence. One of the reasons for this is that generally in society the details of sexual experiences are not discussed openly. It is particularly difficult for child victims to discuss such personal and intimate violations.

Sexual violence survivors often fear the repetition of the crime and can be extremely vulnerable to intimidation. Their fears may be compounded by other possible consequences of the crime such as pregnancy or transmission of disease, and negative reactions of spouses, family, friends or co-workers to them and the crime. Unlike the prosecution of most other crimes, victims’ participation is crucial, as the victim is often the sole witness to the crime. Despite some societal prejudices about the rate of false accusations of sexual violence, research shows that in the United States the rate of false accusations is estimated to occur at around 2%, which is similar to the rate of false accusations for other crimes.

Due to the severity of sexual

crime and the difficulties victims face with reporting and being involved in the criminal justice process, many countries, like Sweden, initially developed victim assistance programmes for these victims. In order to mitigate the impact of secondary victimisation on a victim of sexual violence, some countries, such as Switzerland, provide for the following techniques for protection:

- ◆ Victims have the right to choose to be interviewed by a person of the same sex.
- ◆ Questions about the victim's prior sexual or personal history are prohibited. Such a protection which prohibits the questioning of a victim about his/her past history or experiences exists in Kosovo for victims of trafficking.
- ◆ Victims may sit in a separate room from the offender and be questioned via video broadcast where a confrontation is necessary, or only the defendant's counsel may be allowed to sit in the same room as the victim. The defense counsel, however, can also have an intimidating impact on the victim.
- ◆ Breaks can be and are requested for victims during questioning, particularly when a victim is emotionally distressed or crying.

#### *Victims with mental disabilities*

Persons with mental disabilities may fall into two categories: those who have a diagnosed mental illness or those who have a developmental handicap ("retardation"). The use of the term "mental disabilities," unlike "illness" and "handicap," reflects the fact that there is not something "wrong" with a person with mental disabilities but that it is the interaction between those persons and society which creates distinctions between them

and others. Often in society, persons with mental disabilities are perceived as violent and dangerous. However, research has shown that, to the contrary, persons with mental disabilities are more likely to be victims of exploitation and violence due to their vulnerability or stigmatisation rather than to be the perpetrators. This is particularly true of females with mental disabilities. The fact that there is under-reporting of crime by persons with mental disabilities does not mean that there are not survivors with mental disabilities. In fact, under-reporting may be the result of fear on the part of the victim that s/he will not be believed because of her/his mental disability.

Despite the high-risk of crime or abuse of power against persons with mental disabilities, they are often not believed when they allege that a crime has been perpetrated against them. General societal perceptions or prejudices about persons with disabilities indicate that they cannot be trusted or believed or that what they say is not credible because they are not able to distinguish what has happened to them. It is, however, not true that persons with mental disabilities cannot assess their experiences. The starting point with victims who have a mental disability should be the same as with any survivor. There should be trust developed, patience, compassion and sensitivity to the victim. Providing feedback to the victim is an important tool to ensure that the victim with a mental disability understands the process. Allegations of crime may be true and should be investigated accordingly.



**First Contact!** the way people cope as victims of crime depends largely on their immediate experiences following the crime. Police are often the first contact that a victim has with the criminal justice system and as such, they can play a crucial role in establishing the basis for trust and co-operation. Where the initial contact is positive, victims may be more willing to provide detailed information about the crime. This contact may also assist victims in a quicker recovery. On the other hand, where the initial contact is negative, it might be very hard to establish the trust and cooperation necessary at a later stage.

## What do victims want/need?

### Information about and support throughout the criminal justice process

---



**Information** can relieve the victims' anxiety about the unknown and fears about safety. It can prepare them for what to expect and assist them in better participating in the case.

Access to justice and fair treatment as described in the UN Declaration includes:

- ◆ provision of **information** to a victim about the criminal justice process and her/his role;
- ◆ **mechanisms** for the victim to express and have considered her/his interests and concerns;
- ◆ **assistance** throughout the legal process;
- ◆ **measures** to ensure safety and protect the privacy of victim/witnesses.

Providing victims with information about their rights, the offender, the criminal justice process, compensation and assistance serves to empower victims. Information can relieve victims' anxiety about the unknown and fears about safety. It can prepare them for what to expect and assist them in better participating in the case. The provision of information should include instructions on the ways that victims are entitled to participate in the process and make their views and concerns known.

Survivors of crime often have concerns and interests, such as safety and recovery, which are not shared by the public prosecutor. Legal rights to be informed and participate in the criminal process are crucial for ensuring a

fair system of justice and to assist victims in their recovery. However, without support it is often difficult for victims to use this information, protect their interests, utilize the rights to express their views and access compensation and services. In order to ensure that victims can fully participate, protect their interests and avoid revictimisation, many systems provide legal assistance or direct support throughout the criminal process. Such assistance - free of charge - ranges from persons who are advocates who provide support to the provision of legal counsel.

#### Where to look for the rights of victims in Kosovo

There is no overall framework for the rights of victims in Kosovo that simply describes what all victims can expect from the criminal justice system and the government. The criminal procedure law defines the rights of victims with legal status in the criminal justice process, but this does not include the broad definition of a victim or the other principles of justice detailed in the UN Declaration. The UN Principles provide guidelines but not specific requirements for implementation. Criminal justice systems, including Kosovo's, are

complex and legal language is technical making it difficult for a victim to understand or negotiate through them. In many countries, Charters or Bills of Victim Rights exist for the purpose of combining all victims' rights in one simply written document to inform victims of what they can demand and from whom. For example, in Poland the Ministry of Justice has created a Charter on Victims Rights which details a full range of rights of victims, including:

- ◆ the right to be treated with dignity, respect and sympathy;
- ◆ the right not be blamed for the offence;
- ◆ the right to reliable, understandable and comprehensive information about his/her rights and procedures to exercise these rights;
- ◆ the right to information about the case and the right to legal assistance.

### How does the criminal justice process work?

#### Public Prosecutions

Crimes that are perceived to jeopardise the public interest, which includes the most serious crimes, are prosecuted by the state through a public prosecutor. This is called a "public prosecution." In these cases, the public prosecutor is under an obligation to prosecute where there are sufficient grounds to believe that an identified person committed a serious crime, regardless of the desires of the injured party. However, if the public prosecution is ended prior to a trial judgment on the case, the injured party has a right to proceed with the prosecution her/himself as a "subsidiary prosecutor". An exception exists with criminal cases against juveniles, where only the public prosecutor has the

right to prosecute the case.

A public prosecution may be initiated in two ways:

- ◆ Any member of the public who is aware of a serious crime should file a report of the crime to the public prosecutor either in written or orally.
- ◆ A police investigation is initiated where the police have sufficient grounds to believe that a serious crime was committed. The police have the obligation to investigate, which includes actions such as collection of evidence and information or statements and identification of the alleged perpetrator, and to inform the public prosecutor of the investigation.

#### Private Prosecutions

For less serious crimes, it is the decision of the victim whether or not s/he would like to prosecute the crime. If the victim as injured party wants to prosecute the crime, s/he is required to file a complaint to initiate the investigation. In these cases, the injured party takes on the role of a "private prosecutor" and is required to follow the procedure strictly, to ensure that her/his prosecution is effective. In cases of acquittal of the accused, the injured party as private prosecutor may be required to pay the costs of the criminal proceedings.

#### Right to an attorney

The fact that victims may decide in some cases to prosecute the crime themselves or to continue with prosecution after the public prosecution ends, may be empowering, but also requires a significant amount of knowledge on the part of the victim regarding the legal system. In all cases, the injured parties have a right to hire an attorney to advise them represent their interests.

**The criminal procedure law** defines the rights of victims with legal status in the criminal justice process, but this does not include the broad definition of a victim or the other principles of justice detailed in the UN Declaration.



The injured party may request the court to appoint an attorney if s/he cannot afford one, but only in cases where an injured party is undertaking a subsidiary prosecution for a crime where the possible imprisonment may exceed 5 years.

*The stages of the criminal justice process*

The regular criminal justice process for serious crimes can be broken down into three stages:

**The Police investigation stage:** is when the police have grounds to suspect that a serious crime has been committed and undertake actions to locate the perpetrator of a crime, to prevent an alleged perpetrator or accomplices from fleeing, to detect clues and find and gather evidence of the crime. This includes interviewing potential witnesses and suspects, and gathering all evidence necessary which might be used in a criminal case.

**The Court investigation stage:** is when a request for an investigation against an alleged offender or offender(s) for a specific crime or crimes is filed by the prosecutor with the investigative judge and the judge agrees with the investigation. The investigation consists of actions based on the information and evidence collected in the police investigation, such as collecting evidence and interviewing witnesses. After the completion of the investigation, the prosecutor decides whether to file an indictment which accuses a person(s) of the crime(s) and provides the evidence for this accusation. A final indictment forms the basis for a trial.

**The Trial and appeal stage:** is when there is a public trial of the indicted offender(s) and a trial panel

of judges renders a verdict of guilt, innocence or dismissal of the case after reviewing the evidence, examining the accused and witnesses and taking final statements. The judgments of a trial court can be challenged through an appeal process.

**INFORMATION about the criminal justice process and victims role**

*What information do other systems provide and how?*

In many countries and systems, the laws mandate that actors in the criminal justice process, such as police and prosecutors, inform victims of two types of information; information about the criminal process and the case, and information about what victims can do and receive.

Information about the process, developments and status of the case include:

- ◆ the status of the investigation in general terms (specifics may be imparted as long as the information will not interfere with the investigation);
- ◆ the arrest of the offender;
- ◆ the filing of charges;
- ◆ the schedule of court proceedings;
- ◆ the release of or detention status of the offender;
- ◆ the outcome of a trial and the sentence;
- ◆ parole possibilities;
- ◆ the release of the offender or escape.



**The regular criminal justice process** for serious crimes can be broken down into three stages:  
 The Police investigation  
 The Court investigation  
 The Trial and appeal

Information about what victims can do and receive are:

- ◆ ways that the victim can participate or express their views in the procedure,
- ◆ ways to be protected and ensure safety;
- ◆ ways to receive victims services (health, counseling, shelter etc.);
- ◆ ways to receive compensation or reimbursement;
- ◆ ways to receive further information, clarification and assistance.

Methods of providing this information vary widely and can include:

- ◆ information material, such as brochures and leaflets,
- ◆ phone calls or letters for notification,
- ◆ in person from police, prosecutors, judges or victim advocates. For example, in the United States, in situations where communication is difficult and there are no phones, victim advocates travel to the victim's house driving for several hours for notification of court dates and to provide transportation as needed. Accompaniment of the victim can be quite extensive for isolated minorities, such as, for persons who live on Indian Reservations.

In order to ensure that victims can seek clarifications about the information or be aware generally of victim information, some systems use:

- ◆ hotlines for victims to call and ask questions,
- ◆ broadcasting of information through the media.



## What information are victims entitled to throughout the criminal justice process in Kosovo?

### **VICTIMS ARE ENTITLED TO**

#### **✎ *Speak their own language through an interpreter***

The injured party is entitled to oral translation of testimony and to written translation of statements or other documents used as evidence

#### **✎ *information about the injured party's rights and role***

The injured party is entitled to oral information about his/her rights and role throughout the court process from the investigative judge during the court investigation and from the presiding trial judge before and during the trial process.

#### **During the court investigation, the rights are:**

- ✎ to call attention to facts and suggest evidence about the circumstances of the crime, the apprehension of the perpetrator and the establishment of a claim for compensation
- ✎ to examine the record and articles presented as evidence unless temporarily restricted due to reasons of national defence or security and the possibility to appeal a restriction

#### **During the trial process the rights are:**

- ✎ to propose evidence and request witnesses
- ✎ to put questions to the accused
- ✎ to question witnesses or other experts
- ✎ to make remarks and present clarifications concerning testimony and evidence
- ✎ to examine the records and evidence of the case

### **THE DOMESTIC LAWS ARE NOT CLEAR ABOUT VICTIMS ENTITLEMENT TO**

- ✎ information about the police investigation
- ✎ information from the police about victims' rights and roles
- ✎ information about the arrest of the offender
- ✎ information about the detention, release or escape of the offender, prior to or after sentencing
- ✎ information from police, prosecutors or judges about available victim services, **except in cases of persons who are suspected victims of trafficking**, where the police are obligated to advise victims of their right to request services and facilities under UNMIK Regulation 2001/4 such as, free interpreting services, free legal counsel, safe housing, psychological, medical and social welfare assistance
- ✎ information from police or prosecutors about securing their safety



## **VICTIMS ARE ENTITLED TO**

### **Notification of the time and place of proceedings where the injured party may attend**

The injured party is entitled to notification orally or in written of the time and place of proceedings where the injured party may attend and exercise her/his rights throughout the court investigation and the trial stages. These proceedings are:

- ✎ investigation hearings of experts
- ✎ investigation hearing of witness who are likely not to attend trial
- ✎ the trial through a summons which informs the injured party of the consequences if s/he does not attend
- ✎ any testimony taken from witnesses or experts for the trial but prior to the beginning of the trial
- ✎ examinations of witnesses/experts, reconstruction of the crime or other inquests outside of the court during the trial

### **Notification of the termination of the public prosecution and the injured party's rights to continue**

The injured party is entitled to written notification of the termination of the public prosecution at any stage of the process and notification of her/his right to initiate/resume the prosecution and information on how to do this. This notification is provided at any stage in the process where the public prosecution is ended including, where the public prosecutor decides not to initiate a prosecution, the court investigation is withdrawn or dismissed, and where the indictment is withdrawn prior to trial.

### **Notification of the outcome of the case and instructions for appeal**

The injured party is entitled to oral notification at the trial and written notification of the outcome of the case in the form of a certified copy of the verdict, which includes information on the right to appeal where relevant. A guilty verdict contains information which can be of particular importance to the injured party, including:

- ✎ sentence of the offender
- ✎ decision on the costs of the proceedings
- ✎ decision of whether the verdict will be made public through the media
- ✎ decision on their compensation claim

### **Information on claiming compensation/restitution with the criminal court**

The injured party is entitled to information about her/his rights regarding claims for compensation and restitution. This includes her/his right to be asked by the investigative judge whether s/he wants to make a claim for compensation and to be reminded of this right by the presiding trial judge, if a claim has not been filed prior to trial. The injured party is also entitled to notification of a decision on the compensation claim or to be informed if s/he is required to pursue the compensation claim, either in whole or in part, in a civil action.

## **MECHANISMS for victim participation in the process**

### **What are the ways that victims as injured parties can express their views and protect their interests during the criminal justice process?**

Criminal justice systems throughout the world vary considerably on the ways in which victims can participate in the criminal justice process. In Kosovo, injured parties can generally:

- ◆ submit and request investigation about evidence and witnesses or other information related to the crime, and request protective measures;
- ◆ participate in the clarification of this evidence and testimony through access, questioning and making comments;
- ◆ express their own view of the case and the basis of their claims for compensation and restitution;
- ◆ challenge some parts of the judgment.

### **Injured parties should also be informed of their responsibilities during the criminal justice process! These are to:**

- ◆ report the existence of, and information they have, about a serious crime;
- ◆ inform the court of their residence or any change of address;
- ◆ provide testimony as a witness when summoned;
- ◆ respect the decisions and instructions of the court throughout the proceedings;
- ◆ provide information and evidence that is truthful and ask questions and make comments that are relevant to the crime and the alleged offender.



### LEGAL ASSISTANCE and support throughout the criminal justice process

Increased awareness of the fact that crime victims have needs and concerns of their own in the criminal justice process contributes to a recognition that victims may require other forms of legal assistance and support to proceed through the system than that provided by the public prosecutor. The treatment by, and impact of, the criminal justice system on victims of sexual violence particularly highlights how criminal justice systems can revictimise the victim and lead to injustice. Increased assistance mechanisms for victims during the criminal justice process have been created to address issues, in particular, decreasing retractions of statements by such victims and mitigating of the impact of testifying in the court process.

The types of assistance for helping victims through the criminal justice process vary widely depending on the system and exist to assist most survivors of violent crime. In many civil law systems, such as Sweden, Switzerland, and Germany, certain victims are provided with support and legal counsel free of charge. The responsibility of the legal representative/counsel is to explain the legal system, prepare the injured party for questioning, assist the injured party in questioning and commenting on witnesses and the accused testimony, provide support during the process, and assist the victim in making claims for damages. In the United States federal system, victim/witness assistance coordinators are provided free of charge



#### Injured parties can!

- ✍ provide a statement as a witness, which indicates or provides evidence of the crime, and the perpetrator(s)
- ✍ request throughout the court investigation that certain evidence be collected and witnesses or experts be examined
- ✍ request the court to undertake protective measures to protect the identity of the injured party as witness, family or other witnesses where there is a serious risk to that person. This includes measures such as omitting data that can be used to identify the person or use of shields, video-tapes or other means while providing testimony to the court (UNMIK Regulation 2001/20)
- ✍ use their own language and receive translation of testimony and documentation
- ✍ participate in the examination of witnesses who will not attend trial and all expert witnesses, including asking questions and highlighting clarifications
- ✍ examine the file which includes the statements of witnesses, reports and evidence collected in the case
- ✍ petition the criminal court to decide on a claim for compensation and restitution
- ✍ file a complaint with the president of the court about the length of the court investigation or any other irregularities and request information about actions taken on the complaint
- ✍ request prior to trial that new evidence be considered or that new witnesses be called for trial
- ✍ attend and be present throughout the trial
- ✍ present to the trial court the basis for their claim for compensation at the beginning of the trial
- ✍ put questions to the accused, witnesses and experts during the trial
- ✍ comment on any of the testimony or evidence submitted at the trial
- ✍ request that new evidence be considered or new witnesses called at any stage of the trial including after the evidence process is completed and resubmit all prior requests for the collection of new evidence or the hearing of witnesses or experts
- ✍ address the court in a closing speech about the case and the claim for compensation and rebut the closing speech of the accused and/or defense counsel
- ✍ appeal a decision on the costs of the proceedings (or on any grounds if the public prosecution was undertaken from the injured party)

to support victims, but not to take legal action on their behalf. This assistance is attached to the prosecutor's office and contact with victims is initiated at the prosecutorial stage of a process, not during the initial investigation.



**Lessons Learned**

*One of the lessons learned from the US model is that contact with a victim advocate at the prosecution stage is too late to address all the needs of a victim. At this late stage, victims have missed essential information and services when most needed, which is close to the time of victimisation. Also, after victimisation victims may need more than just information on services from the police, due to the impact of victimisation, many survivors need actual personal assistance in accessing services. Connection with advocates immediately following contact with the police serves to ensure that victims have information, feel safe and are provided the services they need to recover as soon as possible after the crime. For this reason, the US Department of Justice is in the process of hiring victim advocates to assist victims from the moment of contact with the police.*



**In Kosovo,** there is presently no system for the provision of support and legal assistance for victims of crime. It is envisioned that a system of victim advocates with the purpose of safeguarding victims' right will fill this need.

Although the models for the provision of assistance and support throughout the legal process vary depending on the country, the premise of these programmes is to treat victims with the dignity and respect they deserve and to assist them in better participating in a fair criminal justice process.

**The role of victim advocates**

The goals of these programmes are to provide victims with:

- ◆ support while reporting a crime, information about and providing assistance to access emergency services, including shelter, health care and counseling;
- ◆ accompaniment to and support during initial investigation interviews, other evidentiary examinations, and identification of bodies;
- ◆ assistance in accessing longer-term services such as long-term counseling, social welfare, employment and housing assistance;
- ◆ assistance with the return of property, filing claims for compensation or receiving other financial assistance;
- ◆ information and explanations about the criminal justice system and about the developments and progress of the case, and preparation of the victims for participation in the process;
- ◆ accompaniment and support during investigation hearings and trial to ensure representation of victims' interests and implementation of victim's rights and that attendance during the process and trial is convenient;
- ◆ information about, or referrals for, redress outside of the criminal justice system, such as ombuds institutions;
- ◆ information about, and referrals for, further assistance after the criminal justice process is over; enforcement of compensation claims and information on the rights of the victim after the disposition, or about the results of the sentence, such as release of the offender.

*In Kosovo, there is presently no system for the provision of support and legal assistance for victims of crime. It is envisioned that a system of victim advocates with the purpose of safeguarding victims' right will fill this need. These victim advocates would be specially trained persons, who need not be attorneys, to work closely with victims and provide them with support, information, and representation throughout the criminal justice system, from contact with the police until the final disposition in the case.*

**MEASURES to ensure safety and protect the privacy of Victim/Witnesses**

Safety is the first concern of victims and of witnesses who are testifying in criminal cases. Measures to protect victims' privacy and ensure their safety and that of their families and witnesses from retaliation and intimidation are another crucial part of responding to victims needs and guaranteeing an effective and fair criminal justice case. Where victim/witness intimidation is a common problem, such as in the United States, victims are informed about the potential of threats and intimidation and provided information about what to do, in particular, special numbers to call in case it occurs. Increased police presence around the victim's residence is also an option. Interference with a victim/witness in a criminal case is a separate crime and prosecutors in the United States take the offense seriously and charge the offenders in order to deter this conduct.



In Kosovo, UNMIK Regulation 2001/20 was designed to provide courts with the ability to use measures to protect victims and witnesses while they are testifying in a criminal case.

What do witnesses want/need?

Witnesses in criminal court cases have some of the same needs and concerns as victims. A witness may also be psychologically impacted by viewing a crime and may need intervention and counselling. Safety is a key concern of a witness who is providing testimony against an offender. In providing testimony, witnesses also need an understanding of the criminal justice process and support to participate effectively. For these reasons, many systems provide witnesses with information and support services similar to those that are provided victims throughout the criminal justice process. For example, in the United States federal system, information and support is provided to witnesses as well as victims. There are also witness support programmes being initiated in Europe, such as in Sweden, where witness support officers are accessible to victim/witnesses in the waiting room at the court to provide information and support to witnesses prior to hearings and testimony. Over the next three years, this service will become available in all district courts in Sweden.

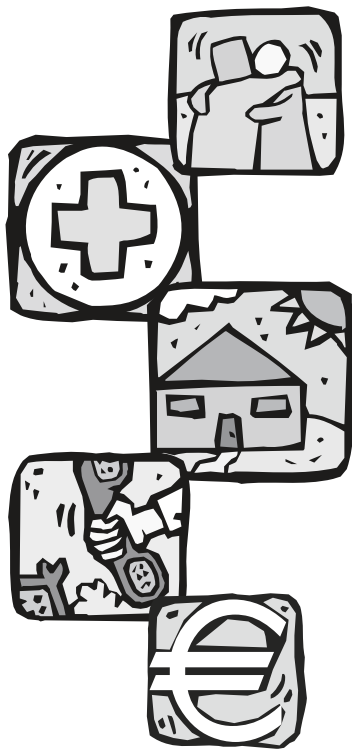


**Safety** is the first concern of victims and of witnesses who are testifying in criminal cases. Measures to protect victims' privacy and ensure their safety and that of their families and witnesses from retaliation and intimidation are another crucial part of responding to victims needs and guaranteeing an effective and fair criminal justice case.



## What do victims want/need?

### Reparation for the harm they have suffered through compensation and services



**The provision** of material, medical, psychological and social assistance to victims for their recovery forms the other essential part of a holistic system of victim response.

Compensation is one of the pillars of a system of victim response because it reinstates the victim psychologically, as a form of acknowledgment of the harm suffered, and financially, as criminal conduct can have serious financial consequences for a victim. The UN Declaration states that such compensation “should include the return of property or payment of harm or loss suffered, reimbursement of expenses as a result of victimisation, the provision of services and the restoration of rights.” Where the victim is not able to receive compensation/restitution from the offender, compensation provided from the state as a subsidiary right is outlined as one of the principles of justice in the UN Declaration. But compensation and restitution is only a part of victim reparation. The provision of material, medical, psychological and social assistance to victims for their recovery forms the other essential part of a holistic system of victim response.

#### How can we compensate victims of crime and fund victim services?



#### Claims for restitution from the offender

##### How to claim?

There are two ways that victims may claim restitution

from an offender in Kosovo. One way is to file a claim as an injured party with the criminal court which is prosecuting the crime. The other is to file a claim with a civil court in a civil proceeding. There are risks involved in a civil claim because it is another legal proceeding that the victim may have difficulty pursuing without legal assistance and s/he may be ordered to pay the cost of the civil proceedings. Any claim for restitution must be submitted with evidence that supports it, such as medical reports, employer certificates or other documentation.

##### What to claim?

An injured party has the right to request the criminal court to decide on a claim for restitution (based on property law). During the criminal justice process, the injured party should be asked whether s/he wants to file a claim. The claim must be submitted prior to the end of the trial and can include three areas of restitution:

- ◆ compensation for damages, which includes claims for mental suffering, physical injury and costs for care, loss of employment or loss of wages, funeral costs and damage to physical property
- ◆ return of property

- ◆ annulment of a legal transaction

#### *What to expect from the criminal court?*

An injured party can expect the criminal court to take steps to investigate any possible claim throughout the process including even before s/he has filed a petition on the claim. Based on a filed claim the criminal court (the investigative judge and trial judge) is obligated to:

- ◆ examine the accused concerning the facts alleged to support the claim
- ◆ investigate the circumstances which provide the basis for the claim

An injured party can expect a decision on the claim unless a full investigation of the claim would considerably lengthen the criminal proceedings. In these cases, the court must at least collect evidence which supports the claim when that evidence would likely be lost later or be more difficult to establish.

An injured party can expect the return of property that is clearly established as her/his and which is not evidence in the proceedings. Where an injured party's property is being used as evidence in the case, it will be returned at the end of the process unless the s/he informs the criminal court that the property is urgently needed and that it will be returned to the court when necessary.

#### *What will be the decision?*

A decision on the claim is made in the final judgment convicting the accused in the case. However, even with a conviction the criminal court may not decide on the claim for compensation or may make a decision on only part of the claim if not enough evidence was collected for a decision. In this case, the injured

party will be informed that s/he will need to pursue the case in a civil action. In cases where the accused is not convicted or the case is dismissed for other reasons, the injured party will be informed that s/he needs to pursue the claim in a civil court.



#### **Lessons Learned**

*Countries with similar systems as in Kosovo, such as Sweden, have found that victims have difficulties understanding how to proceed with their compensation claims in the criminal procedure, particularly in terms of enforcement. As a result, some victims have not been able to receive compensation. The free legal assistance provided to victims in Sweden assists the injured party in claiming damages and arranging the evidence to support the claim. In fact, this is one of the lawyer's most important roles.*

*In order to address the problem with enforcement of the criminal court decision granting restitution, a document was developed to inform victims in simple terms about the damages process and the procedure for enforcement. This document is distributed in Sweden in connection with the judgment on the case.*

#### **Compensation from the state**

##### *The Swedish Model*

State compensation is government provided compensation for victims of crime regardless of the apprehension and conviction of the offender. This compensation mechanism is a secondary entitlement, which means that it is provided to victims who are not able to claim damages or receive compensation

#### **An injured party** can

expect the criminal court to take steps to investigate any possible claim for restitution from the offender throughout the process.

### **Crime Victims Funds in Kosovo?**

The applicable law in Kosovo provides for the creation of such a fund for trafficking victims. UNMIK Regulation 2001/4 requires that a “reparation fund for victims of trafficking shall be established... and [be] authorized to receive funds from the confiscation of property” “used in or resulting from the commission of trafficking in persons”. The draft Criminal Procedure Code also opens the door for such funding through the use of confiscation of material benefit by offenders, beyond the amount of compensation for the injured party, for the benefit of services for crime victims. Crime Victims Funds are often administered by governmental authorities, which provide an overall umbrella for government response to victims of crime.

directly from the offender or through another process, such as insurance. The amount and nature of state compensation is often limited to that which the victim would have been entitled to receive from the offender, such as compensation for hospital costs, other costs related to injury, pain and suffering, permanent disability and other inconveniences. The state compensation scheme in Sweden covers a new form of mental suffering which reflects the special nature of the impact of crimes on victims such as sexual violence, molestation and crimes against personal liberty. It is called “violation of personal integrity”. State compensation in Sweden is financed through public taxation.

In order to receive state compensation in Sweden, a victim must only establish that a crime was committed. Informing victims of their right to claim compensation and an explanation of the actual application procedures is a legal obligation in Sweden. The Swedish Government Crime Victim Compensation and Support Authority publishes information material for dissemination to victims for this purpose and operates a hotline for victims to ask questions and receive information as well.

#### **Crime Victims Funds and Governmental Authorities**

In some countries, such as Sweden and the United States, all convicted offenders are required to pay a fine or penalty, which is placed in a special fund called a Crime Victims Fund. For example, in Sweden, each offender is required to pay a fine of around 50 USD for this purpose. Crime Victims Funds are administered only for the benefit of crime victims.

The money from Crime Victims Funds is used to indirectly support victims of crime through the development of victim services and increasing responses to victims, both in the non-governmental and governmental sectors. These funds support NGO programmes, such as shelters, SOS lines and rape counseling centres, and projects, such as trainings and research and victim peer support groups. In the United States, these funds are also used as compensation to reimburse victims expenses as a result of crime (e.g., medical, counseling, funeral costs and lost wages).

Crime Victims Funds are often administered by governmental authorities (i.e., the Crime Victim Compensation and Support Authority under the Swedish Ministry of Justice or the Office of Victims of Crime of the US Department of Justice), which provide an overall umbrella for government response to victims of crime. These authorities play important roles as government institutions. They serve as:

- ◆ administrators of Crime Victim Funds and decide which victim services programmes receive funding
- ◆ “expertise centres” which provide specialist training and educational programs for professionals dealing with victims, such as police, prosecutors, and others
- ◆ “resource centres” which publish information brochures for victims, educational materials regarding victim issues, leaflets, booklets and often reports. These authorities may also run hotlines where victims can call and receive information about accessing services or compensation

## Victims Services

### Types of Victim Services

Victim services organizations provide a range of services for survivors of crime:

- ◆ victim advocates (legal counsel or support/legal representation) are a type of victim service.

There are also services for victims that are not necessarily directly connected to the criminal justice process. These include:

- ◆ crisis counseling and intervention (in person or via telephone/hotlines/SOS);
- ◆ longer-term counseling and/or mental health referral or therapy/substance abuse counseling;
- ◆ self-support/peer groups and advocacy activities by victim groups (e.g., parents of murdered children);
- ◆ shelter and emergency needs provision (clothing, food etc.);
- ◆ crime prevention activities;
- ◆ awareness and public education;
- ◆ related civil legal assistance;
- ◆ advocacy and campaigning on victims issues: policy making and legal reform.

Victim services should ideally be provided for all victims. An example of a victim service that responds to all victims is the Swedish Association for Victim Support Services which is an umbrella organization, based on models of support that exist in the United Kingdom. The organisation is non-profit and funded by the Swedish Crime Victims Fund. It includes more than 110 local victim service centres that correspond to the number of police districts. In many places, the support services function on the same premises as the police. The organization works closely

with the police and most victims are referred by the police. There is one paid staff per service centre who has a background in social work, psychology or police work. The backbone of victim services, however, is the network of volunteers who are continually looking at police reports and determining who may need assistance, including financial help. One of the drawbacks of a volunteer work force is the difficulty that arises around communication and the inability of the victim to locate a volunteer in the office during the day. The other role of the Association is to implement training and cooperation between all institutions working with crime victims and to raise the awareness of the public and government institutions on crime victim issues.

Victim services are often more limited based on the available resources in the community and the needs of survivors. The establishment of focused services is recommended to be based on an analysis of the severity of the crime and its impact on the victim. The Handbook on Justice for Victims of Crime suggests prioritising the implementation of victim services and phasing in full service for victims over time.

Some victims require certain specialised services. The National Organization of Battered Women Shelters is one NGO in Sweden, which focuses its work only on women victims of violence from a feminist perspective. The NGO coordinates the work of 131 shelters throughout Sweden that provide accommodation (in some places) and support, counseling and self-help groups for female survivors of crime.



**Victim services** are often more limited based on the available resources in the community and the needs of survivors. The establishment of focused services is recommended to be based on an analysis of the severity of the crime and its impact on the victim.

**In many places** such as Kosovo, there is a range of NGOs and government services that are newly established. In such cases, it is crucial that the various victim services organisations co-ordinate with each other to ensure that victims receive referrals to access all the services they may require.

This NGO also undertakes substantial awareness raising activities, both through training and advocacy with media and the government on the needs of women victims. It receives funding for its work from the government and the Swedish Crime Victims Fund.

In many places such as Kosovo, there is a range of NGOs and government services that are newly established. In such cases, it is crucial that the various victim services organisations co-ordinate with each other to ensure that victims receive referrals to access all the services they may require. The creation of umbrella victims co-ordinating organisations or mechanisms can assist in ensuring that co-ordinated referral networks function for the benefit of survivors of crime. It can also ensure less duplication of efforts and highlight areas where certain types of services or services for certain victims are lacking. The establishment of standards of good practice and code of ethics are crucial to ensuring a high level of professional service, which respects the privacy and integrity of survivors of crime.

### **Comprehensive and Integrated Victim Responses**

#### *Commissions for Victims*

In many countries, commissions or task forces are developed to study and recommend legal and policy changes to improve responses to the needs of crime victims and/or of certain high-risk victims, such as victims of gender-based violence. Many of these commissions or task forces bring together the responsible government authorities and NGO victim service providers. In Sweden, during the early 1990s, a government Com-

mission on Violence Against Women was established to study all types of violence against women from a women's perspective. This commission did not include NGOs. It did, however, recognize the expertise of victim services NGOs in Sweden such as the National Organization of Battered Women's Shelters and highlighted the need for co-ordination between such NGOs and government services. The commission recommended not only legal reform and but also policy measures to ensure the effective implementation of already existing legal frameworks in practice. Some of the results of the commissions were:

- ◆ A new crime of "gross violation against a women's integrity" which covers the whole process of violence against women, not just the individual acts of violence. This includes threatening and abusive behavior.
- ◆ A national resource centre for rape victims, which provides a range of assistance through a multi-disciplinary team and crisis intervention hotline for survivors.
- ◆ Police policies for better first response to female victims of crime and for better collection of physical evidence of the crime at the scene.

In Germany, Commissions on Trafficking Victims exist which include government authorities and NGOs. The Berlin Commission on Trafficking in Women has achieved some results in recommending improvements for trafficking victims and the inclusion of independent non-governmental participants has been essential in this process. As a result of the work, a co-operation agree-



ment has been made between NGOs and police to share information with the victim's consent. Also, some victims may be entitled to accommodation and a special work permit. However, one of the lessons learned from this commission is that looking narrowly at an issue, such as trafficking, without considering other aspects of the wider context, may result in policies that end up penalising other groups, such as, in this case, female migrants.

#### *Victim-based legislation*

In many countries, governments have passed comprehensive legislation based on the needs of victims that includes both a criminal justice response and the provision of victim services by NGOs or government funded multi-disciplinary centres. Some examples are:

#### *Domestic violence - Austrian model*

In Austria, a comprehensive package of support for domestic violence survivors was legislated as a result of co-operation and consultation between relevant government ministries and women's NGOs. The *Federal Law for Protection in Cases of Violence in the Family*, or Violence Protection Law, went into effect in Austria in May, 1997. This legal system consists of:

1) Sign-Posting and Prohibition of Entrance by the police;

2) Civil Interim Protection Order from the civil court;

3) Support for the victim and coordination of intervention by a coordinating NGO.

The first step in this system is to provide security to the victim of family violence by removing the perpetrator from the place of residence for 10-20 days. The police post signs to warn the offender



### **Considering a developing a Victim Services programme? The first thing that should happen is a NEEDS ASSESSMENT**

#### **What to consider....**

- ☞ Is this programme really needed?
- ☞ What do survivors think about it?
- ☞ What is the structure of the society?
- ☞ What are the current social conditions; what was lost during the war?
- ☞ What is the level of unemployment?
- ☞ What is the situation of parenthood? Of families?
- ☞ Are there women making more money than men? How do men feel?
- ☞ What happens to the structure of the family? And to the extended family?
- ☞ How has the health of the community changed?
- ☞ What is the community's sense of pride, sense of community?
- ☞ Does the community want this program? Or only you?
- ☞ Is the community pulling together to support this program? What kind of responses will you get from your community?
- ☞ How geographically isolated is your population? Do villagers have phones or other means of communication? Do they have transportation?
- ☞ What other services already exist? Do you have access to them?
- ☞ Which victims are you trying to service? Why have you chosen those victims?
- ☞ Do have special provisions for victims with physical or mental disabilities?
- ☞ Do you have access to financial resources? Do you know how to solicit funds?
- ☞ Can you use volunteers from the community or paid staff? What are the positives or negatives of each of these choices?
- ☞ Are there possible security or safety concerns for the staff? How can you plan for and address these?
- ☞ When will your services be available? Have you taken into account the needs of the survivor in deciding this?
- ☞ Have you taken into account ethnic differences in the population? Are ethnic minorities treated as second class citizens?
- ☞ Are you familiar with the different religious beliefs? What impact does your service have on different religious communities, for instance, what is the impact of a separation between husband and wife for a Muslim woman? A Catholic woman? An Orthodox woman?
- ☞ Have you accounted for distinctions in social class and education? Some people have access to certain things that others do not.
- ☞ Do you have or not have support of your local government for the things you want to achieve?

to stay away. The perpetrator may take her/his personal items and provide an address for receiving legal documents/information. Usually, the offender goes to stay with a relative or friend during this time. The victim is not given a choice about the sign-posting; s/he cannot request to have the signs removed before the 10 days are over. The threat of violence is sufficient to have the residence sign-posted. If the person presenting danger does not go voluntarily s/he will be fined. This is meant as a preventive measure, if the person has already committed an act of domestic violence, which is a crime, than the police will file a criminal charge regardless of the victims' consent and the offender may be arrested. For the most part, there are few violations of the sign-posting, so it appears to be taken seriously.



**The police** are obligated to report the case and provide the documentation to the NGO Intervention Centre, regardless of the victim's desires. The NGO has the responsibility to reach out to the victim and offer all levels of assistance, both related to civil and criminal issues.

The police are obligated to report the case and provide the documentation to the NGO Intervention Centre, regardless of the victim's desires. The NGO has the responsibility to reach out to the victim and offer all levels of assistance, both related to civil and criminal issues. The centre has found that most victims, once there has been proactive outreach, use and benefit from the assistance. However, a victim's choice to refuse assistance is respected. The NGO also receives cases through a domestic hotline run by another organisation. During the 10-day period, the intervention centre works with the victim to see whether s/he wants to file for a longer-term civil protection order with the civil court. The sign-posting will be extended to 20 days, if the victim has decided to file with the court. The court

informs the police that an application for a protection order was filed. In the year 2000, the Vienna Intervention Centre assisted 845 women, 44 men and 23 children. In about 1/3 of the cases, the survivor requests a longer-term protection order.

The Intervention Centre coordinates the work of all institutions that address the problem of domestic violence, including intervention activities with perpetrators of domestic violence.

#### *Sexual/Domestic and other Violence - Swiss Model*

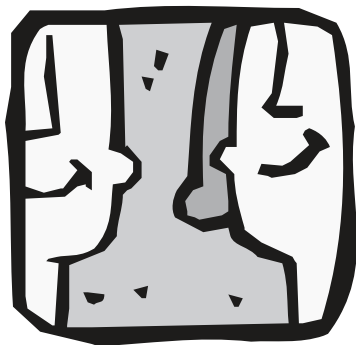
The *Swiss Victim's Aids Laws* were established in Switzerland in January 1993. They have three areas of integrated focus:

- 1) advice and care to the victim through consultation: women, children, youth, men;
- 2) increased rights in the criminal proceedings (consultation/confidentiality);
- 3) financial support.

Consultation Centres may be located in either governmental institutions or NGOs depending on the decision of the local cantonal government in Switzerland. There are additional Consultation Centres that specialize in specific populations such as women, children and men. Services provided to the victim by the Consultation Centres consist of immediate aid and long-term care. The victim has access to a pool of professionals, such as lawyers, doctors and psychologists. Immediate assistance includes medical care, psychological help, legal advice, and financial support. If the woman needs a secure shelter she is offered housing at the Women's Centre. The staff will talk to the victim's employer, if necessary. Finally, childcare is provided. Long-

term care can include ongoing therapy and everyday assistance, free of charge.

Confidentiality is built into the system at the Consultation Centres. The victim has the option to consent to the use of the information that she provides to the Consultation Centre but she may also decide to keep it confidential. There is no obligation to provide a statement or testimony for the court. The victim has the legal right to remain silent in court or, if she chooses, not to appear in court at all. The legal counsel provided *informs* the victim as to what it will mean to pursue a case in court, how it may affect her and the offender (if he is a family member). The victim makes the final decision about whether or not to pursue the criminal proceedings. The lawyers are paid by the Consultation Centres until the case goes to court. After that, the court pays the lawyer.



### **The role of the non-governmental sector in promoting change**

In many countries and on the international level, the work of NGOs has been one of the most important stimuli for governmental response to survivors of violence and crime. NGOs who work on the ground directly with victims and with a victim perspective are often the best placed to identify the obstacles to the provision of adequate and sensitive assistance for victims and to advocate for policy and legal reform to address the problems. One of the most effective ways to do this is by formulating reports of statistical information and cases, based on well-founded documentation. Such reports should demonstrate the issues and problems for victims, and to advocate the implementation of concrete recommendations. These reports and other documents can be sent to the responsible government officials and widely distributed. In many places, NGOs have to struggle with government actors or systems that are not immediately responsive to NGO involvement with victims. A NGO can be perceived as “the child that no one wants” and asked to sit in a corner and be quiet. However, with consistency, determination and a professional approach, NGOs have been successful in gaining respect for their work and promoting real change for crime victims.



**Confidentiality** is built into the system at the Consultation Centres. The victim has the option to consent to the use of the information that she provides to the Consultation Centre but she may also decide to keep it confidential. There is no obligation to provide a statement or testimony for the court.



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

### A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

### Access to justice and fair treatment

---

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
- Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
  - Providing proper assistance to victims throughout the legal process;
  - Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

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

### Restitution

---

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

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

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacements of community facilities and

reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

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

## **Compensation**

---

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

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

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

## **Assistance**

---

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

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

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

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

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

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

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

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

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

\* General Assembly resolution 40/43, annex