



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Services for Victims and Survivors of the Troubles and
Establishment of a Commissioner for Victims and Survivors**

Response of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to comment on the proposals included in the consultation document. We would welcome feedback from the Office of the First Minister and Deputy First Minister (OFMDFM) on this response. Where it is decided not to take account of the comments made, the

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

Commission would be grateful for an indication of the reasons for not doing so.

Introductory remarks

3. The Northern Ireland Human Rights Commission has long been involved in work with victims and survivors, not least within the framework of the consultations on the scope for a Bill of Rights. We therefore welcome the proposals to bring about the next phase of the strategy to follow the *Reshape, Rebuild, Achieve* (RRA) initiative. It is encouraging that the focus on this particular group in our society continues to have the support of OFMDFM and other governmental departments. We do, however, have concerns about the ways in which current proposed priorities are shaped.
4. The Commission is disappointed that, as was the case in the RRA initiative, the current strategy makes no mention of the existence of a significant body of international human rights standards that relate to the position of victims of crime and human rights abuses.
5. Any governmental strategy should take note of the international standards in this area. Care should be taken that policies designed to address the rights and needs of victims and survivors should contribute to securing the state's compliance with the binding obligations arising from human rights treaty commitments, and should, at the same time, be properly informed by the non-binding or best practice standards developed through the United Nations, the European institutions and other systems including the Commonwealth.⁵
6. The Commission's work on the rights of victims, not least in the context of a possible Bill of Rights, has left it in no doubt that there are many important issues to be addressed. Due consideration must be given, and resources made available, for the material, social, health and other needs of victims, collectively and as individuals. In the search for settlement and closure as Northern Ireland emerges from a long period of conflict, it is essential to allow the participation, respect the

⁵ For a detailed description of the international standards see the Northern Ireland Human Rights Commission's report *Human Rights and Victims of Violence*, 2003, Chapter 5. For ease of reference the three key UN and Commonwealth instruments appended to that report are reproduced below.

rights and acknowledge the suffering of those most closely affected by the violence.

7. There are many different categories of people among those who identify as victims, and political, social and other divisions and differences among the single-community and cross-community organisations that seek to represent and serve those various categories. Survivors of conflict-related and other violence also include many who resist the term 'victim' because they do not perceive themselves, or wish to be stereotyped, in terms of vulnerability and dependence. The needs of all victims and survivors must be met not just with sensitivity towards such differences, and with the flexibility required to work with and through a very diverse range of community and voluntary organisations, but without discrimination and with as much consistency as possible, regardless of the time-lines and definitions applying in particular cases.

The scope of the strategy

8. The Commission would stress at the outset that it welcomes the proposed improvements to services for victims and survivors as a step towards better provision of much-needed assistance. The Commission was disappointed, however, to conclude that the proposed strategy does not address comprehensively the needs of victims and survivors but rather has chosen to concentrate almost entirely on mental health/trauma services and their better coordination, while other areas of need get little, if any, attention.
9. The Commission is not satisfied that this approach properly reflects the outcome of the consultation process initiated by the Minister with responsibility for victims. As the summary of responses included in the current consultation document indicates, much wider issues – such as education, rural isolation and secure long-term funding – were raised by consultees, yet are not addressed within this proposed strategy.
10. The consultation paper refers (on page 3) to the fact that this new policy is “concerned with carrying forward the existing victims strategy *Reshape, Rebuild, Achieve*”, yet it appears that the scope of the proposals is actually narrower than that of RRA.

11. The RRA initiative recognised that “practical help and services are required, particularly in the areas of health, education and learning, housing and developing business skills”,⁶ and proposed practical solutions and timelines for the achievement of the major goals.
12. Several elements of the previous strategy – such as encouragement for economic initiatives and assistance in enterprise – do not feature in the new plan. One example of an area that could be addressed within the overarching strategy is the analysis of the influence of the conflict on poverty as experienced by victims and survivors. Although a clear-cut relationship between experience of violent incidents and risk of poverty is difficult to demonstrate, there is evidence suggesting that victims or witnesses of violent events have more chance of living in poverty than those who were not directly affected.⁷ While this may reflect a higher incidence of violence in relatively deprived areas, it may also be that having experienced violence impacts on an individual’s life chances, and it is at any rate a phenomenon requiring further exploration. Neither the victims’ services strategy nor anti-poverty initiatives such as New Targeting Social Need (TSN) address the socioeconomic impact of victimhood.
13. While a considerable number of targets set in the previous strategy have been achieved, significant delays were experienced with the realisation of some others. A few of the tasks (particularly in the area of education) fell off the agenda,⁸ while other identified needs – such as eliminating the feeling of isolation within rural communities – were addressed only by signposting projects that could be of assistance. This last issue came back on to the list of concerns expressed by victims and survivors in the last round of consultations.⁹ We are concerned that these original targets and strategic goals are not referenced

⁶ *Reshape, Rebuild, Achieve*, p5, at point 2.2.

⁷ Hillyard, P., Rolston, B. and Tomlinson, M. *Poverty and Conflict in Ireland: An International Perspective*, Combat Poverty Agency (Dublin), 2005, pp127-148.

⁸ One example was the plan to consider the specific needs of victims when developing strategies to engage with disaffected young people; see *Victims Unit Progress Report – 1 April 2002 to 31 March 2003* and *Victims Unit Progress Report – 1 April 2003 to 31 March 2004*.

⁹ Another example is the addressing of community-wide issues identified in the RRA initiative and the recent consultation, such as the phenomenon of paramilitarism; see *Services for Victims and Survivors*, p9, point 18 and Annex A.

in the new strategy, as if it were completely separate from what has been done to date.

14. Despite its stated aim of paving the way for “a strategy which will provide a comprehensive approach to the provision of services”, almost the entire focus of the document seems to be on the provision of healthcare and trauma services, with little or no linkage to other needs, as identified in the RRA initiative and the following consultations.
15. While there might be a justification for focussing limited resources on the provision of those services that are in greatest demand, it is questionable whether any policy addressing the needs of victims and survivors can be effective in isolation from the wider social context. The reasons for particular needs arising in this group in the society are multiple and complex, and arguably any strategy to address them should have the widest possible frame of reference.
16. The Commission is aware that reflection on the needs of victims and survivors is also intended to inform other policy developments. If that were demonstrably happening, it would be appropriate to indicate in the consultation document where the links to other policy areas arise, and what goals have been set for inter-departmental co-operation. RRA provides quite a useful model in this respect.
17. In the light of these considerations, we fully support the opinion of the Northern Ireland Affairs Committee that when talking about a “victim-centred” approach of any policy, the phrase must have a “wider application than to the provision of services for those physically and psychologically hurt”.¹⁰
18. As an example of the need for coordinated measures in relation to dealing with the past, one can point to the reference in the RRA initiative (missing from the current proposed strategy) to counselling assistance for families who request access to coroners’ inquest papers. This Commission’s experience has been that, rather than families being distressed on gaining access to such documentation, it is often the lack of access to

¹⁰ Northern Ireland Affairs Committee, House of Commons *Ways of Dealing with Northern Ireland’s Past: Interim Report – Victims and Survivors*, Tenth Report of Session 2004-05, Vol.1, 6 April 2005, p11, at point 19.

information that has caused distress. In this respect, a coordinated approach to the right to information and the provision of assistance would surely prove helpful. The RRA initiative separated the services available from the actual experience of families seeking information, addressing only one aspect of it in the form of the provision of counselling. Unfortunately, in its current form the proposed new strategy repeats this division.

Defining victims and survivors

19. The Commission sympathises with the difficulties experienced by OFMDFM in trying to agree a widely acceptable definition of victims and survivors for the purposes of creating a manageable policy. In our work, we have consulted widely on the issue, as have the Northern Ireland Affairs Committee and many others who tried either to agree on a timeline for the conflict or to define the victims of the 'Troubles', and we have experienced similar differences in the approaches of victims' groups and individuals.¹¹ It may not be possible to arrive at a complete consensus within Northern Ireland on these politically charged issues, but a greater objectivity may be attained by reference to international standards.
20. The Commission's current proposals on a possible Bill of Rights, informed by the international standards in this area, proposed, in the section relating to victims, that for the purposes of conferring rights the definition should be as follows:
 - (3) [...] "victim" means a person who, individually or collectively with others, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of criminal laws or human rights standards. The term also includes, where appropriate, the family of such person, his or her dependants, those with whom the victims has a close relationship and persons who have suffered harm in intervening to assist a victim in distress or to prevent victimisation.

¹¹ *Ways of Dealing with Northern Ireland's Past*, pp10-11, at points 16 and 17; Northern Ireland Human Rights Commission *Human Rights and Victims of Violence*, 2003, pp21-24; Northern Ireland Human Rights Commission *Progressing a Bill of Rights for Northern Ireland: An Update*, 2004, pp55-56.

(4) A person may be considered a victim regardless of whether the perpetrator of the crime or human rights violation in question is apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.¹²

21. The Commission would consider such a definition to be inclusive of victims of both past and future crimes and human rights abuses, promoting the rights of all regardless of the timeline of the conflict, the status of the victim or perpetrator, and the nature of the violence or harm experienced.
22. The Commission is therefore disappointed that the narrow definition of 'victim' that informed the RRA initiative has been retained for the purposes of the next stage of the strategy. We consider that there are a number of problems with how it has been framed.
23. In the first instance, the consultation document states that the strategy is concerned with the "victims and survivors of Northern Ireland's troubles".¹³ The Commission would observe that the timeline of the conflict is a disputed notion. We have stated elsewhere that the "debates in this jurisdiction will yield various time lines depending on differing perspectives about the root causes of the conflict, and the key events that marked its outbreak and its presumed conclusion".¹⁴ The lack of agreement, and consequent lack of definition of what 'our past' and 'conflict-related' mean in the document, present a significant shortcoming when it comes to any meaningful selection of those who should be able to avail of the proposed services.
24. Our work on the Bill of Rights and on victims' rights acknowledges the fact that there are many in our society for whom the experience of conflict-related or other violence has not ceased, although it is not on the scale of the 'armed conflict' of past years.¹⁵ Indeed, the consultation document itself makes a

¹² *Progressing the Bill of Rights for Northern Ireland: An Update*, April 2004, p56.

¹³ *Services for Victims and Survivors*, p3 at point 1.

¹⁴ Northern Ireland Human Rights Commission *Response of the Northern Ireland Human Rights Commission to the Inquiry of the Northern Ireland Affairs Committee on 'Reconciliation: Ways of Dealing with Northern Ireland's Past'*, December 2004, at point 43.

¹⁵ *Human Rights and Victims of Violence*, pp25-45.

point that the continuing activity of paramilitary organisations “puts pressure on individual families and communities”,¹⁶ and points to children as those particularly vulnerable to ‘continuous’ victimhood.

25. The difficulties around definition are compounded by the choice made in the strategy to separate the victims and survivors of the conflict from other victims and survivors when it comes to the provision of services. It is problematic, from a human rights perspective, to suggest that the state has greater or very different obligations towards, for example, those who have lost a loved one through politically motivated violence than in relation to deaths resulting from an armed robbery or domestic violence. The experience, the impact, and the support needs of the families may be nearly identical. There would need to be a compelling reason – something more than resource arguments or political expediency – for, in effect, discriminating against non-‘Troubles’ victims and survivors.
26. The Commission found in its own work that most who responded to the consultation on a Bill of Rights for Northern Ireland perceived such differentiation as unhelpful.¹⁷ In line with those comments, we do not propose such a separation and, instead, introduce the rights of victims and survivors as one group.
27. The majority of services for victims and survivors of violence – whether ‘criminal violence’ narrowly defined or wider violence (including politically motivated violence) – address the similar needs of those who were hurt by the conflict and those who were victims of, for instance, violent assault. This is particularly true in relation to trauma counselling, but may equally apply in relation to other services, such as support with housing, disability benefits, and difficulties that may arise directly or indirectly through victimhood (such as loss of employment). While the Commission recognises that some services would have to have particular features to address the needs of victims and survivors of ‘conflict-related’ violence, services ought to be matched to individual need, whatever the nature and cause of victimhood.

¹⁶ *Services for Victims and Survivors*, p11, at point 21.

¹⁷ *Progressing the Bill of Rights for Northern Ireland: An Update*, p56.

28. The inclusion of all victims and survivors within one strategy would, in our view, help to dispel the perception that there is any 'hierarchy of victims'. An inclusive strategy could significantly decrease the differences in the treatment of different categories, thus lessening the feeling of a hierarchical approach to victims' issues. One area in which such a perception has led to dissatisfaction is the issue of the review of some 1,800 'Troubles'-related deaths, the so-called 'historic cases', where the differentiation between those deaths that fall within the remit of the review, and those excluded, inevitably leads to different interpretations of the rights applicable in relation to investigation of death. However the Commission was pleased to learn that specially trained family liaison officers, who are normally assigned to families of homicide victims by the police, are soon to be deployed by the review team.¹⁸ The need for bereaved families to be offered support, information and an accessible channel of communication is no different in relation to the reinvestigation of past deaths than in relation to new cases.
29. Lastly, in relation to definition and terminology, the Commission would submit that using the term 'close relative' is unhelpful as it excludes from its scope those whose relationship, however crucial in terms of support or care, is not familial. Questions also arise as to whether the qualifier 'close' refers to the degree of involvement or the legal category of the 'next-of-kin'. In this connection, we recommend that research into the structure of care in Northern Ireland should be used to inform the evaluation of the definition of victim used in the strategy.¹⁹
30. The definition as retained in the document potentially goes against the stated vision of both the RRA and the proposed new strategy, of a society where "the suffering of all victims is recognised". Although the document stresses that the definition of close relative should not be used 'too stringently', it is to be expected that service providers who have to manage limited resources will come under pressure to limit access by excluding persons who do not fit this definition, possibly excluding vulnerable individuals from access to services. The same problem may arise while practitioners struggle with the concept

¹⁸ A key part of the work of the Serious Crime Review Team will be disclosure of "appropriate information" to families (see 'New unit to review unresolved deaths', NIO press release, 8 March 2005).

¹⁹ Such study could form a part of the research into the needs of carers as proposed in the strategy: see: *Services for Victims and Survivors*, p24 at point 53.

of 'conflict-related' incidents, so that there may be a tendency to 'screen out' cases where the motivation for a particular crime was not very clearly related to the Troubles. Again, this could exclude people from access to services.

Dealing with the past

31. One example of an isolation of issues of concern to victims and survivors is the separation of "dealing with the past" from the current strategy and the assumption that they are going to be dealt with within a "wider initiative being carried forward by the Secretary of State".²⁰ In the absence of any detailed proposals this is generally understood as referring to some sort of 'truth and reconciliation' process broadly comparable to the South African and Latin American models.
32. The Commission's consistent approach has been to advocate death investigation processes that comply, as far as possible, with the Article 2 ECHR obligations. It is most unlikely that that end would be well served by a 'truth commission' or similar exercise addressing several thousand fatalities. We do not believe that the time is yet right to proceed with a truth process that examines individual cases, if that compromises or entails the abandonment of ongoing investigations (whether by police or by inquiry), thus depriving victims and families of their Article 2 rights. A further difficulty, particularly for victims and survivors, is that such a process typically involves admissions in return for non-prosecution. The problem of immunity from prosecution in return for disclosure can be accommodated within a human rights perspective, but not to the extent that impunity is conferred on those guilty of massive human rights violations.
33. In the longer term, and subject to a consultation securing wide support for a mechanism appropriate to Northern Ireland's circumstances, the Commission can see the potential for a truth process to ease the pain of victims and survivors by allowing their stories to be heard, providing them with more information, and possibly bringing some degree of closure. These are matters of the greatest relevance to victims and survivors and they deserve a fuller treatment, if only in terms of a discussion of the broad issues, within the context of a consultation on services. Arguably, presenting any vision for services for victims

²⁰ *Services for Victims and Survivors*, p8, point 17.

and survivors of the 'Troubles' without addressing the issue of dealing with the past can lead to a very reactive policy, addressing immediate support needs but with no strategic focus and inadequate attention to what, for many, is the fundamental issue of the need for information, analysis and acknowledgment of what actually happened in the course of the Northern Ireland conflict.

34. While we sympathise with the view that there is no agreement at this time on how to approach this delicate and difficult issue, it is our view that a commitment to consult, with victims and survivors and more widely, on the processes for 'dealing with the past' should form an important part of any overarching strategy for victims and survivors. If Government is not yet ready to put forward a range of options, there must at least be an indication of how the policy consultation will be taken forward.

A Commissioner for Victims and Survivors

35. The Commission is not clear from the current proposals whether the remit of a Commissioner for Victims and Survivors will focus on the victims and survivors of the 'Troubles' or will take account of wider issues around victimhood – including past victims, those with ongoing suffering, and cases arising in the future. The Secretary of State's announcement in March 2005, the inclusion of proposals in the current consultation, and the way in which they are connected in the document to the current strategy, all suggest that 'new' victims (possibly all post-Agreement cases) will be excluded from the office's remit. Such exclusion would not be appropriate and this issue requires further clarification.
36. The proposals included in the consultation also do not make it clear where the office of the Commissioner will be positioned within the wider governmental/non-departmental structure. The nature of the functions – such as coordination of action between governmental departments and agencies to improve access to services – would suggest that the office will be firmly embedded in governmental structures, and will not have a sufficient degree of independence. If this is to be the case, it will potentially limit the office's monitoring role, its openness and its capacity to criticise and advise. Additionally, the relationships among the office of the Commissioner, the NIO Minister with responsibility for victims, the NIO's Victims Liaison Unit and the Victims Unit within OFMDFM is not even mentioned, despite the fact that

these departments are already performing many of the functions that could devolve to and would at least be overseen by a Commissioner.²¹ Before implementation of the proposals, more clarification of these issues is needed.

37. In relation to the proposed functions, the Commission is not convinced that the new Commissioner for Victims and Survivors should have a role in the distribution of funds to victims' projects within the statutory and voluntary sector. While it would unquestionably help to focus grant-giving, such connection of roles introduces unnecessary mixture of monitoring and executive functions in relation to funding. This assignment of functions may also potentially put the office of the Commissioner in conflict with victims' groups that may at times be dissatisfied with decisions taken regarding financial support.
38. The Commission is also concerned that the remit of the new Commissioner is too narrowly defined by virtue of linking it to the proposed new strategy. The way in which the possible role is described in the document suggests that most of the energy of the new office will be concentrated on assuring the provision of services included in the new strategy. As the new strategy clearly does not deliver a comprehensive approach to the range of issues affecting victims and survivors, there is a danger that defining the remit of the Commissioner in terms of an incomplete strategy will in practice prevent him or her from creating "a clearer focus on meeting [victims'] needs".²²
39. While a concentration of all proposed functions within one office could advance a more coordinated approach in both policy and practice, it is not clear that the same cannot be achieved by other means of improving communication and collaboration within existing structures of government.
40. If a Commissioner is to "'add value' quickly and demonstrably to the support of victims" and is to be "able to hold the government and other bodies strictly and publicly accountable",²³ the remit, issues around available resources and the position within existing statutory structures need clearer planning at the outset.

²¹ OFMDFM Victims Unit *Model of Service Delivery to Victims*, available at: <http://www.victimsni.gov.uk/pdf/model.pdf>

²² *Services for Victims and Survivors*, p29, at point 63.

²³ *Ways of Dealing with Northern Ireland's Past*, p24, at point 67.

Funding and timeframe of the strategy

41. It is disappointing that discussion in the consultation document about the possible timeframe of the strategy is limited to the description of possible concerns (such as the changing needs of victims and survivors over time) which might influence the suggested timeline. While we appreciate the concern that the needs of individuals, the political context and other constraints change over time so that it is hard to plan for a number of years ahead, a more detailed timeline could contribute to a more organised approach to realisation of the policy. We understand that some of the tasks are more possible to achieve if time-bound, while others need to be taken with an open-ended approach. Notwithstanding this, the strategy could benefit from a more organised set of targets.
42. In respect of the time span of the proposed strategy, we also note with concern that no monitoring mechanism – similar to the Victims' Unit progress reports, prepared annually under the RRA initiative – is foreseen in the current document. The document suggests that if the office of the Commissioner for Victims was to be established, he or she will prepare annual reports on activity. Regardless of the attribution of this duty to the Commissioner, this Commission would urge OFMDFM to include a separate undertaking for a comprehensive review of the policy after a fixed term. This will presumably be achieved by subjecting the agency to the standard quinquennial 'landscape review' applied to many public bodies, but an indication that this will happen will provide further reassurance that Government is prepared to adjust service provision and policy on victims and survivors in the light of experience.
43. The Commission also notes with concern that discussion of funding – identified by the victims and survivors as one of the most important areas – has been limited in the document to a description of existing and past resources. The only reference to future resources is the proposal that funding decisions are to be informed by three-year plans agreed by Trauma Advisory Panels (TAPs).²⁴
44. It is unclear to this Commission what funds will be made available and whether the TAPs' plans would feed into wider

²⁴ *Services for Victims and Survivors*, pp. 24-25 at points 54-56.

policy areas (such as education, housing, etc.), or whether they would only be concerned with the therapeutic and health services, as envisaged in the current proposals. It is, therefore, not clear to us what kind of funding decisions they would be able to make.

Conclusions

45. The Commission strongly supports efforts to provide comprehensive assistance to victims and survivors of violence in Northern Ireland.
46. Having considered the proposed strategy we are, however, concerned that it does not deal sufficiently with issues beyond the immediate need for healthcare and therapeutic services.
47. Overall, the Human Rights Commission finds itself in agreement with the view expressed earlier this year by the Northern Ireland Affairs Committee that

[...] the measures announced, while unexceptionable, do not break new ground in the approach to victims and survivors, and an opportunity may have been missed to maximise the positive impact which victims can have on rebuilding Northern Ireland society.²⁵

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²⁵ Northern Ireland Affairs Committee, House of Commons *Ways of Dealing with Northern Ireland's Past: Interim Report – Victims and Survivors*, Tenth Report of Session 2004-05, Vol.1, 6 April 2005, p4.

Appendix 1

DRAFT BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

**(Final report of the Special Rapporteur, Mr Cherif Bassiouni, to the UN
Commission on Human Rights, March 2000)**

The Commission on Human Rights,

Pursuant to Commission on Human Rights resolution 1999/33 of 26 April 1999, entitled "The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms", in which the Commission took note with appreciation of the note of the Secretary-General (E/CN.4/1999/53) submitted in compliance with resolution 1998/43 of 17 April 1998 and the report of the independent expert (E/CN.4/1999/65),

Recalling resolution 1989/13 of 31 August 1989 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission decided to entrust Mr. Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, which was contained in Mr. Van Boven's final report (E/CN.4/Sub.2/1993/8) and which resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex), and resolution 1994/35 of 4 March 1994 of the Commission on Human Rights in which the Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples' Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Recalling resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled "Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", as well as Council resolution 1990/22 of 24 May 1990, entitled "Victims of crime and abuse of power",

Noting that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that "the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law",

Noting with satisfaction the adoption of the Rome Statute of the International Criminal Court on 17 July 1998 which obliges the Court to "establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation" and obliges the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented point of departure, the community, at local, national and international levels, affirms its human solidarity and compassion with victims of violations of international human rights and humanitarian law as well as with humanity at large,

Decides to adopt the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law as follows:

I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

1. Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, inter alia:
 - (a) Contained in treaties to which it is a State party;
 - (b) Found in customary international law; or
 - (c) Incorporated in its domestic law.

2. To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:
 - (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
 - (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
 - (c) Making available adequate, effective and prompt reparation as defined below; and
 - (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

II. SCOPE OF THE OBLIGATION

3. The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, *inter alia*, a State's duty to:
 - (a) Take appropriate legal and administrative measures to prevent violations;
 - (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
 - (c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
 - (d) Afford appropriate remedies to victims; and
 - (e) Provide for or facilitate reparation to victims.

III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

4. Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.
5. To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

IV. STATUTES OF LIMITATIONS

6. Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.
7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is "a victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.
9. A person's status as "a victim" should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

VI. TREATMENT OF VICTIMS

10. Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatisation in the course of legal and administrative procedures designed to provide justice and reparation.

VII. VICTIMS' RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim's right to:
 - (a) Access justice;
 - (b) Reparation for harm suffered; and
 - (c) Access the factual information concerning the violations.

VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:
 - (a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
 - (b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
 - (c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.
13. In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.
14. The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

IX. VICTIMS' RIGHT TO REPARATION

15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.
16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.
17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.
18. In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

19. A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.
20. In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

X. FORMS OF REPARATION

21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.
22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.
23. Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:
 - (a) Physical or mental harm, including pain, suffering and emotional distress;
 - (b) Lost opportunities, including education;
 - (c) Material damages and loss of earnings, including loss of earning potential;
 - (d) Harm to reputation or dignity; and
 - (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.
24. Rehabilitation should include medical and psychological care as well as legal and social services.
25. Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:
 - (a) Cessation of continuing violations;
 - (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
 - (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
 - (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;

- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial or administrative sanctions against persons responsible for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- (i) Preventing the recurrence of violations by such means as:
 - i. Ensuring effective civilian control of military and security forces;
 - ii. Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - iii. Strengthening the independence of the judiciary;
 - iv. Protecting persons in the legal, media and other related professions and human rights defenders;
 - v. Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
 - vi. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
 - vii. Creating mechanisms for monitoring conflict resolution and preventive intervention.

XI. PUBLIC ACCESS TO INFORMATION

26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

XII. NON-DISCRIMINATION AMONG VICTIMS

27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.

Appendix 2

DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

Adopted by General Assembly resolution 40/34 of 29 November 1985

A. Victims of Crime

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

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

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

Restitution

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

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

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

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

Compensation

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

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

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established

for this purpose, including 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 in paragraph 3 above.

B. Victims of Abuse of Power

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

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

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

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

Appendix 3

EXTRACTS FROM COMMONWEALTH BEST PRACTICE GUIDELINES - GUIDELINES FOR THE TREATMENT OF VICTIMS OF CRIME (2002)

Background

In July 2002 an expert group (including a representative from the Northern Ireland Human Rights Commission) was convened by the Commonwealth Secretariat's Human Rights Unit and met at Marlborough House in London. It was tasked with drawing up "Best Practice Guidelines for the Treatment of Victims of Crime". It comprised members from developed and developing countries and large and small jurisdictions from around the Commonwealth. They were assisted by officers of the Human Rights Unit of the Commonwealth Secretariat.

Whilst the Guidelines have no binding legal effect, they represent a commitment by Commonwealth countries to the principles stated therein and set out a model legal and administrative framework that emphasises the structural similarity of the treatment of victims of crime in member states.

PART 1 - FUNDAMENTAL PRINCIPLES

- 1.1 In these Guidelines, "Victims of crime" (also called "Victims") are defined as "Persons who have suffered harm, including physical or mental injury or trauma or economic loss through acts or omissions that are in violation of the national criminal law. These include dependants and members of the immediate family of the direct victim". A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.
- 1.2 Commonwealth countries recognise the historical neglect of the rights and interests of victims of crime.
- 1.3 Commonwealth countries should include in their national constitution or legislation appropriate measures for the protection of victims of crime.
- 1.4 All agencies within the criminal justice system must observe the rights of victims of crime.
- 1.5 The rights of victims of crime should not conflict with the rights of the accused.
- 1.6 The rights of victims of crime should include:
 - to be treated with courtesy, respect, fairness and dignity
 - to offer information and to be heard
 - to receive information

- to privacy and protection
- to assistance
- to an effective and efficient investigation of the crime
- to timely processing of criminal proceedings following the arrest of the accused.

1.7 Commonwealth countries should develop a “Charter of Victim’s Rights” that should be made widely available.

1.8 Relevant government policies should support the rights of victims of crime. Where appropriate, governments should conduct impact assessment exercises in relation to policies that affect or may affect victims of crime.

1.9 Parliamentarians should consider the impact of any proposed legislation on victims of crime

1.10 There is a need to develop effective victim support programmes.

1.11 States should implement these Best Practice Guidelines, amongst other things by providing adequate training and sensitising of all officials of criminal justice agencies to the needs of victims of crime.

1.12 There is a need to avoid procedural abuses and shortcomings in the criminal justice system that can amount to secondary victimisation.

1.13 The duties of law enforcement officials, prosecutors and judicial officers that follow in these Guidelines are intended to help prevent the secondary victimisation of victims of crime.

PART 2 - DUTIES OF LAW ENFORCEMENT OFFICIALS

2.1 “Law enforcement officials” include members of national, regional or local police services or any other department, office or agency of the State or a statutory body with powers to investigate violations of the criminal law.

2.2 Law enforcement officials shall have a duty to support victims of crime to the fullest extent possible in accordance with the applicable law and practices in that jurisdiction and in light of these Guidelines.

In particular:

(1) Law enforcement officials must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.

(2) At the earliest opportunity, a victim of crime shall be entitled to receive the following information from law enforcement officials:

- the name, rank and contact details of the officer to whom the complaint about the crime is made,
- the case number/reference number,
- the name, rank and contact details of the investigating officer,
- upon request, a copy of the statement made to the reporting officer, or written reasons for a refusal to register the complaint.

(3) (a) Where practicable, law enforcement officials must inform the victims of crime of the date, place and time of any bail proceedings.

(b) Where practicable, law enforcement officials must inform victims of crime of the outcome of bail applications.

(4) Law enforcement officials must provide victims of crime with information about the procedure for investigating the crime and, upon request, inform victims periodically on the status of the criminal investigation.

(5) Law enforcement officials must, as soon as reasonably possible, inform victims of crime of relevant support agencies and programmes.

(6) Law enforcement officials must, as a general rule:

- (a) establish procedures, in association with the prosecuting authorities, to ensure the release of the property belonging to victims of crime as soon as possible,
- (b) inform victims of crime of the reasons for non-release of that property,
- (c) inform victims of crime when a decision is taken not to release the property of the procedure for safekeeping, early release or return of their property.

(7) Law enforcement officials must allow victims of crime to add to or amend their initial statement or to make a further statement.

(8) Law enforcement officials must inform victims of crime of their right to apply for compensation under any applicable compensation schemes (if any) or to seek restitution.

(9) In cases of sexual offences or other crimes involving life-threatening diseases, particularly HIV/AIDS or hepatitis B, law enforcement officials must immediately assist victims of crime obtain medical testing and preventive medical measures and inform them of any appropriate counselling facilities.

(10) Law enforcement officials must protect the privacy of victims of crime, and scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.

(11) Law enforcement officials must take all reasonable measures to protect victims from violence, intimidation or harassment. This includes informing the victim should an alleged offender escape from lawful custody, abscond whilst on bail or otherwise be released from official custody.

(12) As soon as reasonably possible after the detection of a crime the law enforcement official in charge of the investigation must:

- (a) with reference to the definition of “victim” contained Part 1, identify all victims of the crime;
- (b) compile a list of the identified victims of the crime;
- (c) amend the list from time to time as new victims are identified.

(13) Law enforcement officials should provide victims with an information pack detailing the general rights of victims.

PART 3 - DUTIES OF PROSECUTORS

3.1 “Prosecutors” shall include any person entrusted with the duty to prosecute a criminal matter.

3.2 Every victim has the right, at any stage of the criminal justice process, to make representations in writing to the relevant prosecuting authority about any matter, and to receive a written reply giving reasons for the decisions taken.

3.3 Prosecutors have a duty to support victims of crime to the fullest extent possible in accordance with applicable laws and practices and in light of these Guidelines.

This support shall be based on the following principles:

- (1) Prosecutors must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.
- (2) Prosecutors must take into consideration the views of the victim(s) when considering whether a prosecution is in the public interest.
- (3) Victims must have the right:
 - (a) to be informed, prior to the commencement of the trial, of the final charges to be preferred against the accused and the reasons for any amendment to the original charge(s);
 - (b) to be informed as soon as possible of any decision not to proceed with or to discontinue the prosecution of the case;

- (c) to be informed as soon as possible of any decision to proceed with the matter through non-trial procedures;
 - (d) to be informed, should they not be satisfied with any of the decisions taken in (a) (b) or (c) above, of the right to make representations to the superior of the prosecutor concerned.
- (4) Upon request, prosecutors must inform victims of the status of the criminal matter.
- (5) Prosecutors must at all stages of the criminal process ensure that the privacy of the victim is protected and scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.
- (6) Where practicable:
 - (a) prosecutors must inform victims of crime of the date, place and time of any bail proceedings,
 - (b) prosecutors must inform victims of crime of the outcome of bail applications.
- (7) Prosecutors should ensure, as far as possible, that victims proceeding to court, at court and whilst leaving court, are protected against unwanted contact occurring between such persons and the accused or anyone associated with the alleged offender.
- (8) Prosecutors must as far as is practicable take steps to ensure that victims are familiarised with court procedures and conduct in court.
- (9) In addressing the court on sentence the prosecutor has a duty to place before the court all relevant information about the victim. In addition the prosecutor must inform the court of all monetary compensation options available in terms of the law and practice, and, if required, the prosecutor must assist the victim to claim compensation.
- (10) In serious cases a prosecutor must inform the victim that she/he has a right to make or provide information for the making of a Victim Impact Statement. This statement may include information on the financial, social, psychological, and medical impact of the crime upon the victim and the victim's family.
- (11) Prosecutors must inform victims of the noting of any appeal and the outcome of that appeal.

PART 4 - DUTIES OF THE COURT

4.1 Judicial officers must scrupulously ensure that the laws and practices protecting the victim as a complainant or witness are observed.

4.2 Judicial officers must treat all victims of crime with courtesy, respect, fairness and dignity and in a way that is responsive to age, gender, race, ethnic, cultural, religious, political and linguistic differences or disability or other special need.

4.3 In deciding a suitable sentence, a judicial officer should take into account the impact of the crime upon the victim. With the consent of the victim a judicial officer may require a Victim Impact Statement to be obtained where the Prosecutor has failed to provide one.

4.4 When an offender is convicted the judicial officer should always consider the question of compensation for the victim and restitution.

4.5 The judicial officer must, in deciding whether to postpone or adjourn or otherwise dispose of a criminal matter, give full consideration to the interests of the victim.

PART 5 - RIGHTS OF VICTIMS AT THE POST-SENTENCING STAGE

5.1 Victims must have the right to be informed of a parole or similar hearing, and to receive details of the premature release of the prisoner(s) detained or imprisoned for a serious offence against them.

5.2 Victims must have the right to be heard in private at parole or similar hearings.

PART 6 - COMPENSATION AND RESTITUTION

6.1 Member States should set up and develop a statutory victim relief/compensation fund. The relief or compensation is intended to help the victim and is not intended to reflect the compensation to which the victim may be entitled under law.

6.2 Compensation should be expressly distinguished from damages in a civil action.

6.3 States should put in place options for compensation for victims of crime in their legislation.

6.4 States should consider restitution as an additional sentencing option. Where appropriate, offenders should make fair restitution to victims and their families.

6.5 State sponsored victim relief schemes should generally be limited to victims of violent crime.

6.6 States should make provision for the victim's rights to compensation either on their application or on the court's own motion.

6.7 Independent human rights commissions or victims support groups should assist victims to seek redress.

6.8 The right to claim compensation should be extended to the dependants of the deceased victims of crime.

6.9 Legislation should provide the right for the court to award compensation to direct victims of a crime of violence who have suffered material loss or personal injury as a result of the crime.

PART 7 - GENERAL POLICY ISSUES

7.1 States should establish an independent oversight mechanism or office for victims within the criminal justice system with the responsibility of protecting and promoting the interests of victims.

7.2 States should introduce effective sanctions for a failure of those working in the criminal justice system to comply with their duties with respect to victims' rights.

7.3 States should encourage the setting up of Victims Support groups.

7.4 Governments should ensure adequate co-ordination between criminal justice agencies, social welfare bodies and relevant victim support organisations and structures.

7.5 Suitable training on victims' rights should be provided for all those working within the criminal justice system.

7.6 States should provide a conducive court environment for victims and their families who attend the trial.

7.7 States should establish appropriate mechanisms to protect children from possible re-offending by released prisoners convicted of offences against children.

7.8 States should establish and develop, where appropriate, restorative justice programmes and Alternative Dispute Resolution (ADR) mechanisms which will help the victims of crime.

7.9 States should commission research on the rights of victims and encourage a sharing of information between Commonwealth States.

7.10 The Commonwealth should support the development of research projects on victims of crime.