

❖ Offenders have rights . . . but do victims

Offenders may now have several well-entrenched rights, but a growing number of surveys have revealed widespread dissatisfaction among their victims.

More than 50 per cent of victims around the world are unhappy about the way police treat them, and many others end up severely traumatized by criminal justice systems, according to the International Crime Victims Survey (ICVS), which has been carried out in more than 60 countries over the past decade.

Victims of contact crimes, including domestic violence and rape were the least satisfied, according to the survey.

According to Human Rights Watch, police in some Asian countries routinely reject complaints of sexual violence and harass the victims. In one Asian nation, several law



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enforcers, including a police chief, insisted that, in most cases of alleged rape, women had agreed to the sexual act and then lied to incriminate their partners.

Victims want a say

Many crime victims complain that they are not allowed any say in key decisions made by the court, including those about sentencing and parole. In some cases, victims would treat offenders more constructively than the courts, recommending community service and “restorative justice” in place of prison sentences for some types of offences.

Often, victims are denied the right to tell the court in a so-called “victim impact statement” about any physical or emotional damage wrought by the offender.

Offenders backed by constitutions

Offenders rights, which range from the right of counsel and a public trial to the right of appeal, are guaranteed by national constitutions and also included in international law. The main international instrument for victims rights in general is the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted in 1985. The document led to new laws and projects in several nations.

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❖ BRIEFING:

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Rights can conflict

“The most significant conflict (between offenders’ and victims’ rights) is that victims are exposed to repeated cross-examination in public about sensitive matters to satisfy the offender’s right to a fair trial”, says Mr. Jan van Dijk, Officer-in-charge, United Nations Centre for International Crime Prevention.

Legal experts disagree about whether victims or their families should be allowed to influence the court by speaking about physical or emotional damage. Likewise, consensus is lacking on whether victims should have any say about pre-trial detention, plea bargaining, sentencing or parole for the offender.

New crimes, New victims

More recently, the entire rights issue has been complicated by an upsurge of less traditional crimes, which has brought with it new classes of victims. Offences such as large-scale consumer fraud, inflated prices, environmental pollution and rampant corruption victimize large groups of people, rather than individuals. Trafficking in illicit drugs and many forms of racketeering have been called “victimless crimes”.

Even when the victims are clearly identifiable, such as those caught up in trafficking for sexual exploitation and forced labour, a new set of rights may be required for their protection, because of organized crime involvement.

Victims of people-smuggling rings may feel particularly threatened, since they could be treated as illegal prostitutes or immigrants and denied protection or services. Victims may be afraid to report crimes against them for fear of deportation.

In some countries, legal authorities may give key witnesses immunity. But that may not be enough for victims or witnesses of organized crime who fear retaliation if they testify. Some nations have set up witness protection programmes, but these are costly. Experimenting with less expensive methods, such as anonymous testimony, is needed.

Victims of organized crime should benefit from the proposed Convention Against Transnational Organized Crime and its protocols on trafficking in illicit firearms, migrants and human beings, which include measures to protect witnesses and victims.

Rights of victims

The international community agreed in the 1985 United Nations Victim’s Declaration on the following rights for victims:

- The right to be treated with respect and recognition;
- The right to be referred to adequate support services;
- The right to receive information about the progress of the case;
- The right to be present and give input to the decision-making;
- The right to counsel;
- The right to protection of physical safety and privacy; and,
- The right of compensation, from both the offender and the state.

“We must agree amongst ourselves that we want a world where there will be no hiding place for criminals — *and* adequate support for their victims.”
Executive Director,
Mr. Pino Arlacchi.