

World Society of Victimology — Statement on Indigenous Peoples as Victims of Crime and Abuse of Power



On behalf of the World Society of Victimology (WSV) thank you for the invitation to attend the 11th session of the Permanent Forum on Indigenous Issues, 7 - 18 May 2012. The WSV notes the special theme is "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)". Consistent with such theme, the WSV makes this statement.

In 1985 the United Nations General Assembly endorsed by consensus the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This international instrument was the first dedicated exclusively to victims of crime and victims of abuse of power. Since then, that Declaration has become a primary reference for international, national and local victim-oriented reforms over the globe. The WSV played a key role in forging the Declaration and its on-going implementation.

Although the statistics are imperfect, those available are sufficient to demonstrate the disproportionate occurrence of violence in many Indigenous communities and the traumatic impact of crime and abuse of power on Indigenous peoples. In too many places, Indigenous women and children are particularly vulnerable to violence. This is especially so in conflict and post-conflict situations.

Each experiences and reacts to victimisation in a unique manner but there are commonalities. Each intervention to assist an Indigenous person should respect that person's individuality. Furthermore, a person who is Indigenous (or identifies him- or her- self as being of Indigenous origin) should not be denied the right, in community with other members of his or her culture or ethnicity, to seek and receive assistance as a victim of crime or abuse of power.

Several clauses in the Declaration are particularly relevant to the plight of Indigenous peoples as victims of crime and abuse of power, as well as the forthcoming session on the 'Doctrine of Discovery'. Notably, the 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". In other words, the Declaration acknowledges victims as a natural person but also as a collective of persons, so it is consistent with many Indigenous rights narratives.

Clause 7 states, "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."

Clause 8 states. "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."

Clause 9 states, "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."

Clause 10 states, "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."

Clause 11 states, "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."

Clause 12 states, "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.

Clause 13 states, "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.

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

The WSV looks upon these clauses as embodying rights on access to justice, provision of assistance and on restitution and or compensation for victims of crime and abuse of power that are human rights. The WSV has replicated these clauses in a draft 'model convention' on justice for victims of crime and abuse of power that it has promulgated for debate.

In 2005 the United Nations General Assembly adopted the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Those principles and guidelines advance the rights of victims of crime against humanity. Like the Declaration of Basic Principles of Justice for Victims of Crime and

Abuse of Power, those principles and guidelines include the right to justice and the right to reparations.

Indigenous justice can be variously defined but most often refers to approaches to justice in general and to crime in particular in which Indigenous people have a central role. Indigenous justice has gained more visibility and acceptability both international and domestically out-of-concern, amongst other things, to restore Indigenous communities and to put right the destruction of Indigenous peoples' culture and social structures brought about by colonisation, disposition and state violence.

The WSV believes that meaningful and culturally respectful responses to crime and abuse of power are needed now rather than later. The WSV recognises that issues relating to justice and support for Indigenous victims should address individual's needs but also, where appropriate, incorporate principles of community involvement in dispute resolution, victim empowerment, offender accountability and restoration of harmony in relationships and community that do not jeopardise victims' safety and well-being.

The WSV urges all nations to honour their commitments to provide mechanisms for victims to attain restitution and/or compensation for the harm they have suffered. Reparation is a key ingredient to righting the wrong but also helping to build a better future for Indigenous peoples as victims of crime and abuse of power. Reparation can be both a process and an act of repairing the harm caused by, for instance, past conquests of Indigenous peoples. Thus, reparation need not be exclusively financial compensation; rather it might entail restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, amongst other things.

The aforementioned international law and other law are not intended as noble statements; rather they a mandatory statements for action. It is time to honour the worthy intents of such instruments. It is time to strengthen the resolve to ensure justice for Indigenous peoples across the globe.

Thank you

A handwritten signature in black ink that reads "Michael O'Connell". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Michael O'Connell
Vice-President
World Society of Victimology