

THE VICTIMOLOGIST

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NEWSLETTER OF THE WORLD SOCIETY OF VICTIMOLOGY

WSV and the International Bureau for Children's Rights

*Paul C. Friday
Maria de la Luz Lima*

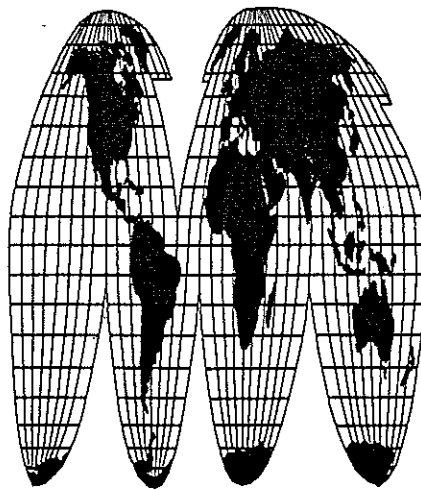
The International Bureau for Children's Rights has long been involved in children's issues. We, as two of the WSV delegates to the UN Commission on Crime and Crime Control in Vienna, have worked very closely with the group as they laid the foundation to implement the recommendations of the International Tribunal for Children's Rights. We were subsequently invited to be members of the Steering/Drafting Committee to develop Universal Guidelines for the Protection of Child Victims and Child Witnesses of Crime and have tried to represent the World Society of Victimology in these meetings.

Preliminary research for the project was financed by Justice Canada, Policy Section, and was undertaken by the International Bureau for Children's Rights in order to identify the legal provisions, protocols, policies and practices addressing the needs and rights of child victims and witnesses of crime. Researchers in Montreal also explored the difficulties that might be encountered in the implementation of good provisions, policies and practices, as well their potential for duplication.

Overall, the IBCR project aims to:

- Raise the awareness of primary intervention workers such as educators, firemen, etc, law enforcement agencies, prosecutors, defense attorneys, the judiciary and the media about the importance of

protecting children's rights and of responding to the needs of child victims and child witnesses of crime.



***Already emotionally
and physically
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revictimized***

- Enhance and share knowledge and expertise on issues affecting the rights and the needs of child victims and child witnesses, both nationally and internationally.
- Provide the necessary tools to both national and international initiatives towards the protection of child victims and child

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A Compensation Scheme for South Africa

Rika Snyman

South Africa, with its high levels of violent crime, does not have a compensation scheme. In the Criminal Procedure Act 51 of 1977, Sections 300 and 301 make provisions for compensation paid by the perpetrator to certain victims of crime at the request of the prosecutor. The Act however does not make provisions for compensation to victims for injuries sustained, or to the next of kin of a victim who was killed. The orders for compensation can only be considered if the complainant requests the public prosecutor to do so. Because not all victims are present in court, and/or are aware of these provisions, such orders are the exception rather than the rule. Because of the high levels of poverty in South Africa, it often happens that a victim is left destitute after he/she suffered a disabling injury. There are no useful precedents of victim compensation schemes in the developing world apart from very dedicated schemes that focus on victims of war or terrorism. Should a compensation scheme be introduced in South Africa, it will demonstrate that it can be done in a developing country.

*The strategic context for a
compensation scheme*

The debates about a compensation scheme for South Africa must be seen

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witnesses of crime.

- Improve the education and training of professionals in the methodology of child-friendly procedures, and increase collaboration between professionals as well as between governmental and non governmental sectors towards a more effective protection of child victims and child witnesses.

In a summary of the work of the Montreal staff and of the efforts of the Steering/drafting Committee, Jean Jean-François Noël, Director General of the International Bureau for Children's Rights and Anne Saris, Research/Project Director have written the following:

Why do child victims and child witnesses of crime have special judicial needs?

Having to face the criminal justice system and, more specifically, having to testify in court, can be a difficult experience for any victim of a crime. When it comes to child witnesses and child victims, the experience is even more fraught. Participating in an adult-oriented criminal trial – with all its confusing information, convoluted courtroom procedures, unfamiliar language and alien culture – can be, at the very least, intimidating. Without careful attention to the needs of these young participants, the experience can become emotionally distressing and damaging. This is especially true for

child victims of criminal acts. Already emotionally and physically vulnerable, children run the risk of being re-victimized by the criminal justice system. Children victimized by their parents also require special attention, especially when it comes to their participation in the courtroom process.

Are the needs of child victims and child witnesses currently being met and their rights protected?

An elaborate international legal framework governing juvenile justice has already been developed for those who face prosecution or imprisonment. Unfortunately, no such framework exists to protect the rights or respond to the needs of child victims and child witnesses. In many countries, child victims and witnesses do not benefit from adequate protection nor from child-friendly court procedures. Worse, children are often intimidated, confused, and traumatized by the justice system as a whole. Most experts agree that there is a need for specific procedures adapted to their needs, and that there should be a linkage between court proceedings and the treatment and rehabilitation of child victims.

The Committee has worked since August 2000 to develop a research plan to identify best practices in a effort to eventually have a United Nations Declaration that could build upon the principles of the 1985 *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *UN*

Convention on the Rights of the Child.

In addition to the two of us and the IBCR Director, members of the Steering/Drafting Committee are: **Howard Davidson, J.D. (USA)**, Director of the American Bar Association Center on Children and the Law, **Barbara Esam (United Kingdom)** a lawyer in the Public Policy Department of the National Society for the Prevention of Cruelty to Children, **Hakan Friman (Sweden)** Associate Judge of Appeals, Svea Court of Appeals in Stockholm, and Deputy Director in the Swedish Ministry of Justice, Division for Criminal Law, **Barry S. Hancock (United Kingdom)** General Counsel of the International Association of Prosecutors, **Judith Karp (Israel)** Member and former Vice-Chairperson of the UN Committee on the Rights of the Child and Deputy Attorney General of the State of Israel, and **Daniel Préfontaine (Canada)** former Chief Executive Officer and member of the Board Of Directors of the International Centre for Criminal Law Reform and Criminal Justice Policy.

Preliminary documentation has been prepared and any members of the World Society of Victimology who are especially interested in this issue are welcome to become involved. Interest should be communicated to Anne Saris, IBCR, 1185, rue Saint-Mathieu Street, Montréal, Québec, H3H2P7, Canada. email: a.saris@ibcr.org.

This issue of the *Victimologist*

From the Editor's Desk

contains a number of interesting articles addressing victimological developments around the world. In their article, Paul Friday and Maria de la Luz Lima present their work, together with the International Bureau for Children's Rights on the development of Universal Guidelines for the Protection of Child Victims and Child Witnesses.

Another international development is the UN Declaration on Basic Principles of Restorative Justice. This initiative and its implications

for victims of crime are discussed in the article by Jo-Anne Wemmers.

Rika Snyman kicks off what will hopefully be a series of articles on the status of crime victims on the African continent. In her article, Rika Snyman discusses state compensation for victims of violence and the fact that no such scheme presently exists in South Africa. As she points out, because of the high levels of poverty and the high crime rate, the consequences of crime can be devastating for

victims.

The upcoming International Symposium on Victimology which will take place in South Africa promises to be an important event for the WSV members. We will keep members informed of its progress.

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NEW HORIZONS FOR VICTIMOLOGY

STELLENBOSCH, SOUTH AFRICA.

13 – 18 JULY 2003

The 11th International Symposium on Victimology follows on a long line of symposia hosted in various countries. It will be the first time the World Society of Victimology will host this prestigious symposium on the African continent. This will afford international victimology experts the opportunity to experience the warmth and hospitality that is a key feature of Africa. Although it is proposed that the conference be hosted in South Africa, it will be a truly international conference with a vibrant African flavour.

“New Horizons in Victimology” is proposed as the overarching theme and name of the conference. This captures the outlook of the WSV towards its identified research themes, and encapsulates the beauty and promises of the African continent.

ORGANISING THE SYMPOSIUM:

The Executive Committee of the symposium will be compiled of various international and African leaders in the field of victimology. The Faculty of Public Safety and Criminal Justice of the Technikon Southern Africa (TSA) will host the conference.

THE FOCUS OF THE SYMPOSIUM:

A conference is proposed that will focus on the implementation of the nine research themes identified in mid-2000 by the WSV Research Committee and the WSV international community:

- *Defining victims and victimology*
- *The use and application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*
- *The impact of Politics, Policy and Populism on Victims*
- *Power inequalities*
- *Helping victims*
- *Restorative Justice, victims and victimology*
- *Repeat Victimization*
- *Transnational Victims*
- *Developing methodologies for victimology research*

STRUCTURE OF THE CONFERENCE:

The international victimology community will be invited to participate in daily plenary sessions and workshops focusing on the research focus areas of the WSV. It is planned that an international scientific committee composed of leading victimologists from Asia, Latin-America, Europe, Africa, and North America will supervise the selection of the papers. It is proposed that this process be electronically facilitated and coordinated by Dr. Rika Snyman from the Technikon Southern Africa.

The conference will commence on Sunday with the registration of delegates. Daily plenary sessions, with parallel running workshops will accommodate the presentations of the invited speakers and delegates whose abstracts were accepted by the Scientific Committee. Wednesday afternoon will be set aside for excursions to victimology-related sites. Social activities will include an opening function on Sunday night, a network evening on Tuesday night, a conference banquet on Thursday night, and the closing function Friday afternoon.

The conference proceedings will be electronically documented. This will facilitate access to the conference publications following the symposium in a shorter time span than when done via hard copy. Wide-screen display in the main venue of the plenary speakers will allow a greater involvement of the delegates in the proceedings.

Ample opportunity will be provided for victimology-related exhibitions at the conference venue and excursions to local programmes and facilities of interest to victimologists. A pre-conference student course is planned; students from all over the world will be invited to benefit from lectures presented by leading victimologists. A student workshop during the conference will provide an ideal platform for emerging victimologists to gain exposure of their ideas. The students partaking

in the Dubrovnik course can also benefit from this workshop.

COMMUNICATION OF AND AT THE CONFERENCE:

A web page will be created where the conference particulars can be accessed. Registration and bookings may be done via this web page. This will accommodate the time-differences between countries. Notifications of time-lines for submission of abstracts, registration, etc., can be obtained electronically, complementing the postage communication.

Three announcements of the symposium will be distributed electronically and via the postal system. The time-lines for these announcements will be determined in consultation with the executive committee of the symposium.

English will be the *lingua franca* of the symposium, but consideration will be given to the simultaneous translation of plenary sessions into French.

ACCOMPANYING ACTIVITIES:

Stellenbosch, just outside Cape Town, is a university town that offers many opportunities for relaxation and fun. Tours, visits and daily activities will be available for accompanying persons and children of the delegates. Since South Africa is a tourist mecca, various pre- and post conference tours can be accessed within South Africa, and also wider into Africa.

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*A Compensation Scheme for South Africa
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against the back drop of the victim empowerment initiatives that have already been taken, and those that are still planned. The birth of democracy in South Africa in 1994 paved the way for specific measures to empower the victims. These measures are not all perfect, and much criticism can be leveled against some of them. Despite this, the measures contributed to creating a climate where serious consideration can be given to the introduction of a victim compensation scheme.

• The South African Law Commission Report (SALC) on a new sentencing framework: In as much as this framework sets out a sentencing approach, does it relate to the priority needs and experiences of victims of crime? It is proposed that victim impact statements be introduced to give voice to the victims, and a new sentence of reparation that includes elements of both restitution and compensation, is proposed.

• A restorative justice approach and the government's victim empowerment programme: This approach aims to improve victims' access to the criminal justice system, and reduce the experiences of secondary victimization. A government-driven victim empowerment programme reinforces the restorative justice approach that is based on the recognition that crimes are not merely wrongs committed against the state, but have serious impacts on the victims.

• The Draft Victims' Charter: The Charter is primarily based on the seven rights entrenched in most victims' charters in developing countries. These rights are administrative rights and are not included in the Constitution. It says amongst other things that if victims go to court they have the right to compensation or to expect that the court will make a compensatory order to remedy loss or damage suffered by the victim as a result of the offence. The Draft is silent on victims' rights when such cases do not proceed to trial or where the offender is not apprehended.

• The SALC's investigation in respect of sexual offenses: A victim centered approach is seen to be an important aspect of this investigation into both the substantive law and the processes and procedural facets of sexual offenses. It gives consideration to in-

cluding guiding principles for the management of sexual offences cases to protect victims from discrimination and to ensure that they are treated with compassion, that their dignity and rights are fully respected, their privacy protected and assistance provided.

• The Truth and Reconciliation Committee's (TRC) policy on reparation for victims of past human rights abuses: The TRC proposed a system of reparations for the victims that testified or made statements before it. Although money was allocated from the Treasury, limited urgent interim reparations were paid in only a few instances.

The systems and processes followed and suggested here provide an important learning curve for the design and implementation of a compensation fund. Although the above mentioned matters are hotly debated at present and are not beyond criticism and controversy, they provide a broad context from and within which the debates on a compensation scheme for South Africa are set.

Discussions around the introduction of a compensation scheme

The South African Law Commission (SALC) commissioned the Centre for the Study of Violence and Reconciliation (CSVR) in 2000 to conduct research on compensation and to prepare a document for public discussion. This document was finalized during 2001. The public was invited to participate in workshops, in the major centers of South Africa, which were facilitated by SALC members in five centers around the country during November 2001. The workshops were attended by a wide spectrum of interest groups, and included amongst others: judges, service providers, members of the public, academics and people who are survivors of crime. Four broad themes were addressed during these workshops, namely:

- The viability of establishing a compensation fund for victims of crime when there are pressing competing priorities such as poverty relief and the provision of primary health care.
- The introduction a compensation fund in an incremental manner, in terms of crime categories, categories of victims, and specified monetary amounts.

• The identification of the source of the fund, the way in which the fund will be regulated, and the role of the private sector in supporting its development and financing. On the basis of a very conservative estimate, the research estimated that the cost of the scheme will be R 4.7 billion (rand) and, based on the UK victim compensation scheme, an administrative bureaucracy of between 2 000 and 3 000 staff will bring the total cost of the scheme to R 5 billion.

• The alternatives that can be pursued if a compensation fund is not regarded as affordable and viable.

As can be expected, the consultative process raised more questions than answers. The uninhibited feedback provided different opinions, viewpoints and suggestions on how best to deal with the process of introducing a compensation fund in South Africa. One of the pertinent discussion points was the fact that victim compensation funds generally rely very heavily on support systems, outside government, in the developed world and in most countries this is heavily dependent on a tradition of voluntarism. Due to various reasons, amongst others the high unemployment rate, a culture of voluntarism is not present in South Africa and this very important support base is therefore not readily available. Another discussion point was the wisdom to invest such a large sum of money in a compensation fund when that money can increase the reach of existing counseling, medical and legal services. It was argued that there are other ways in which victims of violent crime may receive improved assistance and support, which would be more efficient than the paying out of financial compensation. These options include increased funding to the trauma units of hospitals especially in the rural areas, the funding of accessible delivery of counseling and legal support services and increased funding of disability grants for victims of violence. Various voices emphasized the danger of creating expectations that can not be realized resulting in further victimization. Various people recommended that a victims' act be promulgated, such as Australia, to provide a platform from which the different support and empowerment initiatives, amongst them a compensation scheme, could be launched. The SALC is still in the process of collating the feedback, and no definite decision has been made whether or not and how, to introduce a compensation scheme in South Africa.

Declaration of Basic Principles of Restorative Justice

Jo-Anne Wemmers

At the 10th United Nations Congress on Crime Prevention and the Treatment of Offenders, in Vienna in April 2000, the member states discussed and defined the challenges facing them in the new century. One issue that received substantial interest at the meeting is restorative justice.

Following the congress, a resolution was submitted by the Governments of Canada and Italy to the UN Commission on Crime prevention and Criminal Justice proposing that the UN develop international guidelines to assist countries in adopting restorative justice measures. A draft Declaration was prepared and, following the comments received from over 30 countries, an Expert Meeting was held in October 2001 in Ottawa, Canada. The group of experts concluded that the guidelines were necessary and reached consensus on a set of basic principles that will be submitted for approval when the Commission meets in April 2002.

According to the Vienna Declaration, the United Nations encourages restorative justice programmes that are respectful of the needs and interests of victims in addition to those of offenders, communities, and all other parties (Art. 28). The purpose of the Declaration on Restorative Justice is to guide the development and operation of restorative justice programmes in Member States. If it is to aid in the development of victim-friendly policies and programs, the Draft Declaration must give ample attention to the needs and interests of victims in restorative justice programmes. An important question is therefore; *does the Draft Declaration give sufficient attention to the needs and interests of victims of crime?*

The Draft Declaration

In order to answer this question one must first examine the contents of the Draft Declaration on Restorative Justice. The Declaration opens with a preamble, which states the general spirit of the Declaration. This is followed by 24

articles divided into 5 sections: 1) Use of terms 2) Use of Restorative Justice 3) Operation of restorative justice programmes 4) Continuing development 5) Saving Clause.

In the preamble a number of advantages of restorative justice for victims of crime are outlined. It emphasizes that such programmes provide victims with an opportunity to "obtain reparation, feel safer and seek closure". While it is clear that restorative justice programmes offer victims an opportunity to seek reparation and may even facilitate healing (Strang, 2000), the impact on victims' feelings of safety and security are still very much open to debate. Research shows that just the idea of meeting one's aggressor can enhance fear in some victims (Wemmers, 2002). The Declaration fails to address the potential restorative justice programmes have for secondary victimisation. This is an important weakness from a victimological perspective. As a guide for the development of future programmes, it is imperative that the Declaration address the possibility of secondary victimisation and include safeguards on how programmes can reduce this risk.

The definition of restorative justice given in the Declaration is: "any programme that uses restorative processes and seeks to achieve restorative outcomes" (Art. 1). Important actors are the victim, the offender and, where appropriate, any other individuals or community members (Art 2). Examples of restorative programmes mentioned in the Declaration are mediation, conciliation, conferencing and sentencing circles. Thus, victims play a central role in restorative justice programmes and the reparation or restorative of the victim by the offender is key.

On the use of restorative justice, the Declaration includes several articles concerning the protection of the accused. For example, that "restorative processes should be used only where there is sufficient evidence to charge the offender and with free and voluntary consent of the victim and the offender..." (Art. 7) and "participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings" (Art. 8).

Regarding the protection of victims, the special needs and interests of victims are not recognized in the Declaration. While power imbalances and concerns about safety are addressed in the Declaration (Art. 9), these issues are presented as problems among the "parties". Certain crimes, like conjugal violence, are characterized by power imbalances. Consequently, doubts have been raised if all crimes are suitable for restorative justice programmes (Reeves, 2000; Wemmers, 2002). Victims have special needs and those participating in restorative justice programmes are particularly vulnerable (Strang, 2000; Aertsen and Peters, 1998), lumping their interests together with those of other parties fails to respect the unique position of victims of crime.

Article 10 of the Declaration addresses how to handle cases that are not suitable for restorative justice programmes. According to the Declaration, in such cases, "the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay." and "officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community". The "reintegration" of the victim is a curious concept. It is not at all clear what is meant by this or why the authors of the Declaration have chosen to place emphasis on the reintegration of the victim rather than the reparation or restoration of the victim. After all, the latter concepts would be more in line with the objective of restorative justice namely, "restorative outcomes".

Concerning the operation of restorative justice programmes, Member States are encouraged to develop guidelines and standards that govern the use of restorative justice programmes (Art. 11) and fundamental safeguards guaranteeing fairness to the offender and the victim should be applied to programs (Art. 12). Such safeguards include the right to consult with legal counsel (Art. 12a). The Declaration does not address

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INTERNATIONAL REVIEW OF VICTIMOLOGY

Published in association with the World Society of Victimology, the *International Review of Victimology* is the leading international journal devoted exclusively to the entire range of theoretical and empirical work concerning victims of crime.

Volume 8.3 (2001), contains articles on (first named author only):

- *the impact of physical attractiveness on impression formation in rape cases (Alder Vrij)*
- *a review of the UN Ancillary meeting on terrorist victimization (Peter Kratkoski)*
- *a review of the victim-related provisions in the International Criminal Court (Sam Garwake)*

There are also reviews of a number of recently published books on *elder abuse, therapy models and restorative justice*. The lead review considers Marian Brienen and Ernestine Hoegen's survey of the treatment of victims in European criminal justice systems.

Forthcoming issues in 2002 (volume 9) will include articles on:

- *compensation of non-material damages in case of crime in the Netherlands (Marijke Malsch)*
- *restorative justice (Jo-Anne Wemmers)*
- *clinical intervention, supportive counselling and therapeutic methods (Grant Devilly)*
- *the treatment of victims of organised crime under the UN Convention (Jan van Dijk)*
- *abuse and violence against businesses (Matt Hopkins)*

There will also be a Special Issue on *Victims and Community Policing*. The Guest Editor is David Weisburd.

The Editors are always pleased to hear from potential authors and book reviewers. Please write to:

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UN: RESTORATIVE JUSTICE
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specifics such as who should pay for legal counsel. However, the reality is that in many justice systems offenders will have counsel and subsidized legal aid is often available to offenders with little income. Victims, however, generally do not have their own counsel and subsidized legal aid will often not be available to them. Consequently, from a victims' perspective such "safeguards" are not realistic and do little to improve their position.

According to article 13 of the Declaration, all information disclosed in the negotiations shall remain confidential. Should parties fail to reach an agreement, this should not have any consequences for a possible trial (Art. 15). Failure to respect an agreement should not lead to a more severe sentence (Art. 17). Clearly, the intention is to protect the offender. However, in negotiations important information regarding the victim's needs may surface and this information should be transmitted to the authorities. It is important that authorities

that they may consider victims' needs in their decisions.

Perhaps more concerning the principle that agreements have the same status as judicial decisions (Art. 14). This leaves open the possibility that an offender merely sign an agreement in order to have his case closed. Consequently, when the offender fails to respect his end of the agreement, the victim may have no recourse. Victims must be protected from this kind of secondary victimisation. It is of vital importance that the criminal case against the offender not be closed until the offender has fulfilled the agreement.

Finally, nowhere in the Declaration is reference made to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It is a gross oversight that the needs and rights of victims outlined in the Victim Declaration not be clearly recognized in the present Draft Declaration. In the Vienna Declaration (Art. 27) the development of restorative justice programs is promoted as a means to support victims of crime. The Draft Declaration on Restorative Justice, which is a direct result of the Vienna

Declaration, however, does not reflect this perspective.

Conclusion

The Draft Declaration on Restorative Justice does not adequately address the needs and interests of victims of crime. In its present form, it fails to address the risk of secondary victimisation and to provide measures to protect victims. If the Draft Declaration is to aid in the development of restorative justice programmes then it is imperative that it be modified to give sufficient attention to the needs and interests of victims of crime.

Notes

The literature cited above can be found in: Wemmers, J. and Canuto, M. (2002). *Victims' Experiences With, Expectations and Perceptions of Restorative Justice: A Critical Review of the Literature*. Ottawa: Department of Justice Canada.

A copy of the Draft Declaration of Basic Principles on Restorative Justice can be found at: www.restorativejustice.org

Publish your short article or review in The Victimologist

The Editorial Board of The Victimologist strongly urges all members of the World Society of Victimology to send in contributions for upcoming issues.

Contributions should be sent by e-mail to the Managing Editor: Jo-Anne Wemmers at: jo-anne.m.wemmers@umontreal.ca



Post doc in Victimology at the Université de Montréal 2002-2003

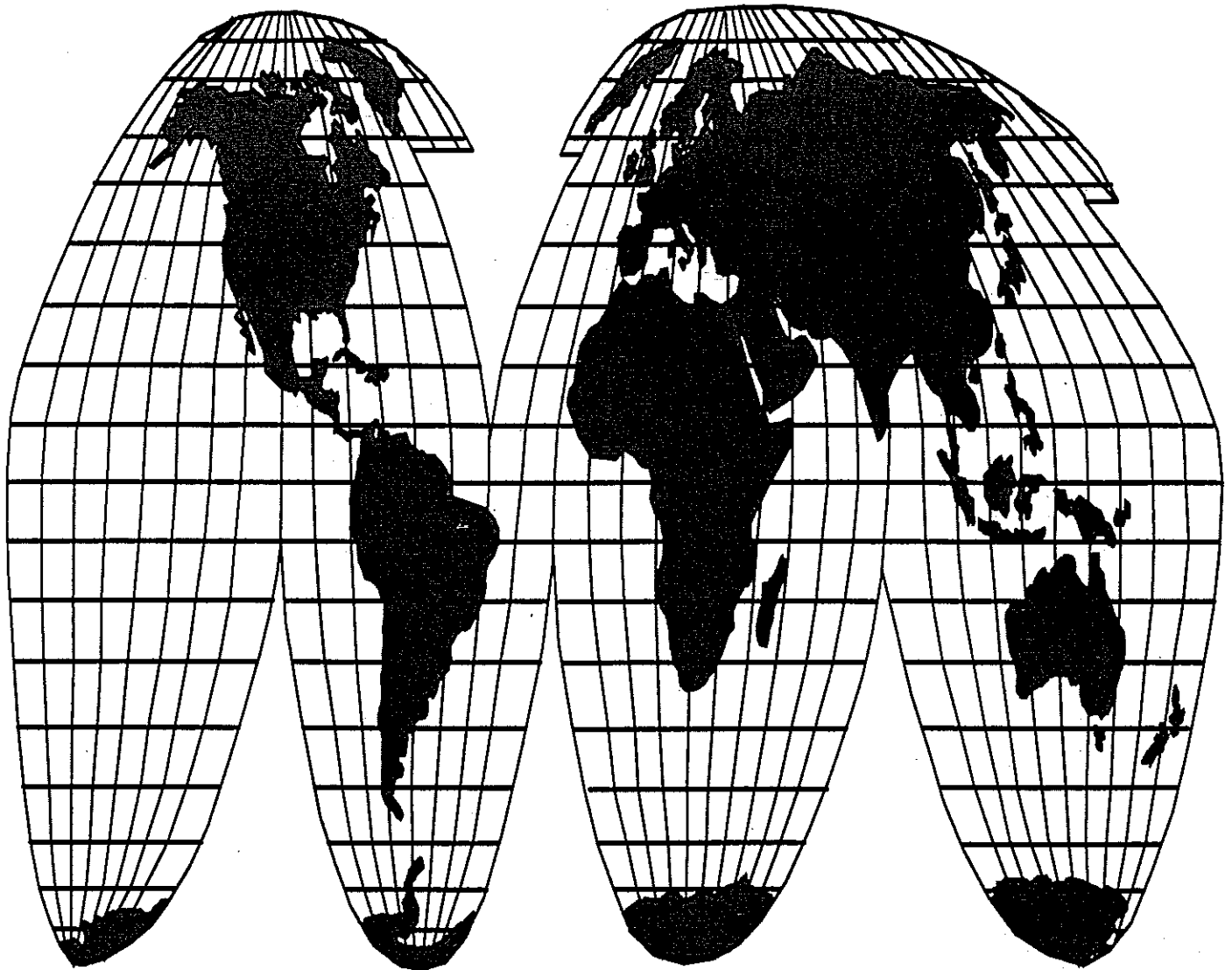
The International Centre for Comparative Criminology at the Université de Montréal (Canada) offers 2 scholarships for post doctorate positions. Each scholarship is for one year and is worth \$25,000 CAD.

Candidates are required to have completed their Ph.D. in criminology or a related area. Positions are now available in Victimology.

The Université de Montréal is a French university and candidates are expected to have a good knowledge of French and English. Research can be conducted in either language.

For more information contact:
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