

# Victims' rights

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## and the human rights of victims

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## Two major questions

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- the significance of human rights to victims of crime
- the recognition of victims' rights as part of human rights law

# The proliferation of rights

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Women, children, indigenous people, the disabled, LBGT, older people and now victims?

# The issue

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**the significance of human rights  
to victims of non-state crime?**

# The significance of human rights to victims of non-state crime

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## The Why-question

Why is it possible to talk about victims in terms of human rights?

## The How-question

How are victims protected by the legal framework, by case law and by means of the rights-concept?

# Two areas

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## Human rights

Victims of state-sponsored  
crime  
/acts condoned by the state

Protection from crime  
avoidance of repeat  
victimisation

## Victims' rights

Victims of crime –  
acts committed by individuals  
against other individuals

Protection of secondary  
victimization

# **A new discourse – crime victims as a matter of human rights I**

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**States should ensure  
the effective recognition of  
and respect for the rights of victims  
with regard to their human rights.**

Article 2.1 Principles, the Council of Europe Recommendation (2006) 8 on  
assistance to victims

## A new discourse – crime victims as a matter of human rights II

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In order to be able to exercise their fundamental human rights, appropriate assistance and protection should be offered, in connection with criminal proceedings, to persons who fall victim to crime.”

Council Conclusions on a strategy to ensure fulfilment of the rights of and improve support to persons who fall victim to crime in the European Union, 2009

# **A new discourse – crime victims as a matter of human rights III**

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**On the report entitled Violence against women: an EU-wide survey;**

**It shows that violence against women, and specifically gender-based violence that disproportionately affects women is an extensive human rights abuse that the EU cannot afford to overlook.**

Violence against women - an EU wide survey Main results, FRA 2014

# A new discourse – crime victims as a matter of human rights IV

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*Victim Support Europe fulfills an important space in progressing the human rights of victims of crime under national and EU laws.*

*Irish Council for Civil Liberties, Victims Support Europe  
Manifesto 2014-2019*

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## **Victims of non-state crime**

*Horizontal relationship,  
the private sphere*

## ***Victims of state-sponsored crime***

*Vertical relationship,  
the public sphere*

# Points of departure

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- The discourse; crime victims as a matter of human rights
- Poor implementation of victims' rights
- The superior status of human rights law and the binding nature of human rights obligations
- Repeat victimisation

# Victims,

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as members of the community have the human rights of all persons and are entitled to avail themselves of these rights.

Proposed General Assembly Resolution on measures for implementation of the Declaration of Basic Principles of Justice for victims and abuse of power, Bassiouni (ed) International protection of victims, 1988

# *Perspectives on Human rights*

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- *which* are the human rights?
- *what* are the human rights?

# Victims in two spheres

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- **Victims of human rights**

*Vertical relationship,  
the public sphere*

- **Victims of crime**

*Horizontal relationship,  
the private sphere*

# The human rights of victims

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- The right to life
- The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- No one shall be held in slavery or servitude
- Everyone has the right to respect for his private and family life, his home and his correspondence.
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him

# The concept of rights

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**Approach**

**Position**

**Basis**

**Justification**

**Consequence**

Rights-based

Rights-bearer

Rights

Entitlement

Protection  
and remedies

# The rights-concept

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Rights-bearer

Duty holder

Entitlement

Remedy

Accountability

## Private issues as a matter of human rights

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**For the purposes of this Declaration,  
the term "violence against women" means any act of  
gender-based violence  
that results in, or is likely to result in, physical, sexual or  
psychological harm or suffering to women,  
including threats of such acts, coercion or arbitrary  
deprivation of liberty,  
whether occurring in public or in private life.**

Declaration on the Elimination of Violence Against Women, 1993

# Expansion of state responsibility in human rights law

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“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, **but because of the lack of due diligence** to prevent the violation or to respond to it as required by the Convention.”

**Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988)**

# The rights-based approach

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- **The individual as a rights-bearer.**

- **Accountability**

The naming of human rights violations - remedies

- **A holistic dimension**

The preventive/remedial nature of human rights

# Two approaches

<b>Approach</b>	<b>Position</b>	<b>Basis</b>	<b>Justification</b>	<b>Consequence</b>
Rights-based	Rights-bearer	Rights	Entitlement	Protection and remedies
Welfare	Victim	Welfare	Needs	Solidarity/pity

# The human rights of victims and victims' rights - a fusion

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Victims' rights to support and assistance is becoming part of human rights law

## A human rights dimension in victim policies

- A stronger emphasis on protection from crime
- Fairness, right to remedies and proceedings in reasonable time

# A rights-based approach to crime victims

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## A change of attitude

The victim; from a beneficiary to a rights-bearer

## Accountability

Rights as entitlements - corresponding to duties

## And possibly?

Making victims' rights enforceable?