



GENDER DIRECTORATE

AFRICA AND VICTIMS RIGHTS

The African Charter on Human and People's Rights, 1987, makes provision, under Article 45, for the formulation of principles and rules for solving legal problems relating to human and people's rights. **The Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa** is in fulfillment of the African Charter's mandate.

The Principles includes a definition of victim:

"Victim" 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 or **that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights**. 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.

Interestingly, the definition includes violations of human rights contained in international instruments that are not covered in national legislation. This is significant because victims who have been violated can seek redress, even if national legislation does not recognize the violation. The African Court on Human and People's Rights, established in 1994, can be used by individuals to seek redress.

The principles contains specific guidelines on Victims of Crime and Abuse of Power (section N).

VICTIMS OF CRIME AND ABUSE OF POWER

- a) Victims should be treated with compassion and respect for their dignity. They are entitled to have access to the mechanisms of justice and to prompt redress, as provided for by national legislation and international law, for the harm that they have suffered.
- b) States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials.
- c) States shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment.
- d) 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.

e) States are required to investigate and punish all complaints of violence against women, including domestic violence, whether those acts are perpetrated by the state, its officials or agents or by private persons. Fair and effective procedures and mechanisms must be established and be accessible to women who have been subjected to violence to enable them to file criminal complaints and to obtain other redress for the proper investigation of the violence suffered, to obtain restitution or reparation and to prevent further violence.

f) Judicial officers, prosecutors and lawyers, as appropriate, should facilitate the needs of victims by:

1. Informing them of their role and the scope, timing and progress of the proceedings and the final outcome of their cases;

2. Allowing their views and concerns 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;

3. Providing them with proper assistance throughout the legal process;

4. Taking measures to minimize inconvenience to them, 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;

5. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

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

b) 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, the provision of services and the restoration of rights.

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

d) Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws or international law, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.

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

1. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

2. The family, in particular dependants of persons who have died or become physically or mentally incapacitated.

a) States are encouraged to establish, strengthen and expand national funds for compensation to victims.

b) States must ensure that :

1. Victims receive the necessary material, medical, psychological and social assistance through state, voluntary, non-governmental and community-based means.

2. Victims are informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

3. Police, justice, health, social service and other personnel concerned receive training to sensitize them to the needs of victims, and guidelines are adopted to ensure proper and prompt aid.

The guidelines acknowledges vulnerabilities of women victims and makes specific recommendation for women who are victims of sexual and domestic violence;

- States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials.
- States shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment.

As African citizens, we need to use the African Human Rights Charter and test government's commitment to addressing needs of victims in society.