

What are the rights of victims of human rights violations?

From the beginning of the UN human rights system, international human rights instruments have recognized that victims of human rights violations have a right to remedy and redress. Although earlier human rights concepts focused on the need to punish perpetrators of violations, over time, the focus has shifted to the rights of victims and the obligations of States to victims. The 1948 Universal Declaration of Human Rights states that everyone has the right to “effective remedy by the competent national tribunals” for acts that violate fundamental rights (Art. 8).

The International Covenant on Civil and Political Rights (“ICCPR”) requires States to ensure that any person whose rights are violated has an effective remedy, even if the violation was committed by persons acting in their official capacity. In addition, States must ensure that any person claiming such a remedy can have his or her claim determined by a competent court or other competent authority, and the authorities must enforce any remedies that are granted.

Since the ICCPR was adopted in 1966, other more focused human rights treaties have also specifically referred to the rights of victims. For example, the 1984 Convention Against Torture states that “[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible” (Art. 14).

In 2005, the General Assembly of the UN adopted the **“Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (A/RES/60/147)**. The Basic Principles are not legally binding on States, but they represent a consensus on the rights of victims of violations of international human rights law and international humanitarian law. States are encouraged to consider the Basic Principles as guidelines for domestic laws and policies. Since their adoption, the Basic Principles have become the main international framework for victims’ rights. The rights of victims overlap to some degree with the fundamental principles of transitional justice. The relationship between the two is that transitional justice serves to ensure that the rights of victims are respected, protected, and fulfilled, among other aims.

Under the Basic Principles, victims can be individual or collective. They may have suffered “physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights” (Art. 8). In addition to direct victims, their family members and dependents can also be victims, as well as persons who tried to intervene to help the victim.

The Basic Principles set out that all victims of violations of international human rights and international humanitarian law have the right to:

- (a) Equal and effective access to justice;*
- (b) Adequate, effective and prompt reparation for harm suffered;*
- (c) Access to relevant information concerning violations and reparation mechanisms (Art. 11).*

Access to Justice

Victims have the right to effective judicial remedies by competent courts without any form of discrimination. They should also be able to access other administrative bodies, mechanisms and modalities that may be established. In order to ensure access to justice, States should disseminate relevant information about available remedies, take measures to protect victims and make it easier for them to participate safely in these processes, and provide relevant assistance, among other things. There should be no statute of limitations for serious violations which constitute crimes under international law. The statutes of limitations relating to other violations should not be unduly restrictive. The Basic Principles reiterate that persons accused of human rights violations still have the right to due process of law.

Reparation

Victims are entitled to “adequate, effective and prompt reparation” for violations of their rights. Reparation can be individual or collective. If the State is responsible for the violations, the State should be responsible for reparation. Where individuals or private entities are responsible, that person or entity should provide reparation, or compensate the State if the State has already done so. However, reparation does not have to be exclusively monetary, or even material; reparation can be symbolic acts such as apologies and recognition of the plights of victims through construction of memorials. This is especially helpful where there are very large numbers of victims. The Basic Principles set out the actions States should take to help ensure reparation, and establish the main forms of reparation: **restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.**

Restitution means returning victims to their situation before the violations occurred. For example, this could include releasing them from detention, returning them to their place of residence or employment, or returning their property.

Compensation should be paid where the violation of rights can be assessed economically. Economic damages apply for physical or mental harm, lost opportunities (such as education and social benefits), lost wages or potential future wages, moral damages, and the costs of dealing with the violation (such as lawyers, doctors, and other services).

Rehabilitation means medical and psychological care, and legal and social services.

Satisfaction can take many forms, including: a) measures to end ongoing violations, b) verification of facts and disclosure of the truth, c) searching for missing persons or their remains, and appropriate treatment of their remains, d) an official declaration or judicial decision restoring the dignity, reputation, and rights of victims, e) public apologies including acknowledging the facts and accepting responsibility, f) judicial and administrative sanctions against those who are responsible, g) commemorations and tributes to victims, and h) including accurate information about the violations in training and educational materials at all levels.

Guarantees of non-repetition means that the State must take steps to ensure that violations stop and do not happen again. For example, the State could work to ensure effective civilian control over the military, strengthen its judiciary, change policies to protect lawyers, doctors, journalists, and human rights defenders, and reform laws that allow violations to happen, among other actions.