

# The 2008 Reform to the Political Constitution of the United Mexican States in matters of Victims of Crimes (Rights and Guarantees: The Law of the Weakest)

María Teresa Ambrosio Morales

## semblance

Ambrosio Morales has an undergraduate degree in Law from the UNAM, Master's in Criminology and a Master's in Victimology from the National Institute of Penal Science of the Office of the Attorney General of the Republic and has been working on a PhD in Law at the Institute of Legal Investigation of the UNAM since 1995. She is an Academic Technician at the institute of Legal Investigation of the UNAM. Together with Ángela Villeda Miranda she carried out the Project for the Integral Application of the General Law of Access of Women to a Life Free of Violence for the Ministry of Public Education. She is a member of the National System of Researchers, Level 1. She is a professor in the Specialization in Penal Law at the division of Graduate Studies at the School of Law and at the Center for Continuous Education of the National School of Social Work of the UNAM.

## Abstract

One of the main concerns in relation to attention to victims is taking into account the present day legal framework, analyzing the changes that arose with the reform of June 18, 2008 in the Political Constitution of the United Mexican States, coming into full force on June 18, 2016 when the oral adversarial system takes effect. In this system bio-psycho-social attention to victims must be integral in order to comply with the commitments Mexico acquired in matters of Human Rights established in the constitutional reform of June 10, 2011. The reparation of damages suffered stands out as an element which should be integral for victims with an approach of restorative justice, being both of good quality and treatment, attending victims who are in conditions of vulnerability such as girls, boys, adolescents, women, the elderly, people with disabilities, migrants and Indigenous peoples in a specialized way.

**Keywords:** reform, victims, rights, guarantees.

## General Aspects of the Victim in Mexico

The matter to be developed began with the title of the book by Luigi Ferrajoli: *The guarantees of the Weakest*. This is due to the fact that historically the victim has been a passive subject in the penal system and a figure unnoticed by justice (Ferrajoli, 2009).

However this panorama has undergone great changes due to the creation

and development of Victimology, based to a large extent on the work of Benjamin Mendelsohn and of scientific meetings on Victimology called international symposiums which began in Jerusalem, Israel in 1973 and have taken place every three years in different countries. The last meeting took place in 2015.

The subject of victims is not foreign to Mexico. Regulations and the treatment of victims dates from the first Law of Victims

of the State of Mexico in 1969, as well as the constitutional reforms of September 3, 1993, September 21, 2000, June 18, 2008, June 10, 2011 (reforms on matters of Human Rights (and the most recent on July 14, 2011), making clear the acceptance of victims by the State at the legislative level.

Along these same lines it is important to point out the work of Luis Rodríguez Manzanera and María de la Luz Lima Malvido, which has contributed to progress in the matter in national and international spheres, establishing a true school of Victimology in Mexico. Interest in the victim and Victimology is not a passing fad (Ruiz, 1995); the State must create the conditions necessary for exercising these rights effectively.

Thanks to Victimology the victim is no longer seen as an isolated sporadic phenomenon, he is no longer considered the result of certain behavior of some expressly criminal factor. On the other hand, the victim "is produced" by many determinants which come from various milieus. What we call victimhood is a general problem which affects the existence and evolution of society (Mendelshon, 1974).

The first places it as part of the criminological synthesis, the second theoretic tendency is one which denies the existence of victimology. Most of the authors who write about penal law fall into this latter category, arguing that this is already contemplated in penal analysis. The third tendency shall consider Victimology to be an autonomous subject.

As a science, its development is in four great facets, namely: in this autonomous tendency beginning in the 70s, when Victimology was first considered a science

which studies the victim, victimization and victimhood (see table 1).

Once victimology has been defined, we should consider a basic concept of victim. The scientific concept of victim is: the persons who, individually or collectively, have suffered harm, including physical or mental harm, emotional suffering, financial loss or substantial impairment of one's fundamental rights, as a consequence of actions or omissions which violate the penal law in effect, including abuse of power.<sup>1</sup>

It is essential to have a definition of victims which is derived from a specific regulation:

*The General Law of Victims, Article 4.* Direct victims are those people who have suffered some economic, physical, mental, emotional harm or impairment or anything which puts the person in danger of damages to his legal goods or rights as a consequence of the commission of a crime or violation of his human rights recognized in the Constitution and in international treaties which the Mexican State has signed.

Relatives of victims or those people directly in charge of the victim who have a close relationship to the victim are considered to be indirect victims.

Potential victims are those people whose physical integrity or rights are in danger due to having helped the victim, either in preventing or detaining the violation of his rights of the commission of a crime.

The status of victims is acquired with the accrediting of the damage or impairment

---

<sup>1</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

**Table 1**

| Victimodomatics  | Victimization Law  | Forensic Victimology   |
|--|--|--|
| <p>Analyzes the incidences of victimology in the sphere of crime theory and kinds of punishment. It takes as a starting point the fact that victims contribute willfully or culpably to her victimization, which may influence the criminal responsibility of the perpetrator and even exclude him.</p> <p>Dynamic vision in which the victim participates.</p> <p>An offense of duty of self-protection by the victim. The victim must assume the predictable consequences objectively</p> <p>Su objetivo principal es la disminución de la aplicación de la pena (Günther Jakobs, Alemania).</p> | <p><b>GENERAL</b><br/>The set of legal national and international principles, values, norms and procedures which tend to require, enable and control the prerogatives and pretensions of the victims.</p> <p><b>SPECIAL</b><br/>Set of legal standards, norms, guidelines, procedures and specialized protocols which allow for providing quality attention to every kind of victim, group or <b>comunidad, según el delito que sufrieron. Este derecho se hace efectivo a través del modelo de atención correspondiente</b> (Lima, 1992).</p> | <p>The study of victims of violent crime for the purpose of heading the forensic investigation and questions. It involves the precision and criteria to lay out the life style, circumstances and events which led to the aggression and the exact nature of any harm or damage suffered (Turvey, 2009).</p> |

of the rights in the terms set down in the present day Law, regardless of whether the person responsible for the damage is identified, caught or condemned or whether or not the victim participates in any kind of legal or administrative procedure.

Victims may be social groups, communities or organizations whose collective rights, interests or legal goods have been affected as the result of the commission of a crime or violation of their rights.

Studies on the victim have developed to a great extent in the area of penal law, that is, the victim of a crime, but following the tendency based on human rights as set down in the constitutional reform of June 10, 2011 and published in the General Law of Victims on May 3, 2013.

García Ramírez considers Article 20 of the Constitution:

In that case, it does not seem reasonable to refer to a guarantee "of the victim or offended party" in bloc. There are different concepts which must not be confused. In proceedings the offended party –or his assignees– appear, who is the possessor of his legal rights protected by penal legislation, which has been harmed or put in danger by the crime which has been committed. The concept of victim, more criminological than juridical, is projected upon many other figures surrounding punishable offenses, who resist the consequences of the crime and do not necessarily take part in the proceedings. Finally it is worth taking into account that some of the guarantees included in part B –specifically in relation to medical and psychological attention– may be update outside the penal proceedings (Institute of Legal Research [IIJ], 2006).

Victimology is a science which to a large extent takes its doctrine from research, knowledge and information from work with victims.

The knowledge in Victimology has an indispensable influence of practical aspects. Research on the victim in Mexico is developed around the victim of crime based on the legal reforms to the constitution and the creation of specialized laws for victims (Law of Victimization) and the foundations of reparation of damages it is broadened in an integral vision of the victim of crime and violation of Human Rights.

The real satisfaction of the interests of the victim by the penal system involves, beyond legal rhetoric, establishing certain concrete procedural mechanisms which enhance reparation for him (Duce, 2002).

Research in victimology has a basic rule that is to place it in a determined space and time; the criminal phenomenon is ever-changing and depends on the country under study, that is, what in one country may be a successful practice, in Mexico may not work; what worked and was efficient a decade ago, may not be useful today and may even be unfavorable (Rocillo, 1995).

We base this paper on the hypothesis that the rights of victims laid down in the *Political Constitution of the United Mexican States* are not yet effective.

### **Reforms in the victim's favor**

In the history of victims, penal law in Mexico has limited its participation to

assisting in interrogating the accused, as well in reparation of damage. It had been a silent witness to the lack of balance created by penal procedures. However, nowadays victims have become agents of social change and promoters of transformation of the penal justice system in Mexico. They have become the possessors of human rights who obligate the State to create the victimology law, build an infrastructure and provide the system with qualified personnel, who provide attention with empathy and sensitivity (Briceño, 2002). To this end, the attention and participation of the victim in codices, laws and regulation must be contemplated. The Executive, Legislative and Judicial branches must show interest not only in defining these rights, but also in complying with them efficiently.

In Mexico there are still many chapters pending in justice and attention to victims and the legal system, as well as policies for providing attention; integral solutions are not offered; there is still a lack of proportionality with respect to the rights of victims.

It has been over two decades since the first reform to the *Political Constitution of the United Mexican States* in favor of victims (September 3, 1993) and its evolution and efficiency are still considered to form part of a chapter which is pending for our country. In Table 2 we show, briefly, the legislative evolution of constitutional Article 20, which regulates some of the rights of victims as an example of what we are presenting.

**Table 2** Constitutional reforms in the victim's favor

**September 3, 1993**

In all criminal processes the victim or offended party of a crime, shall have the right to legal counsel, to having the damages (Briceño, 2002) repaired or when applicable, to assist the Public Prosecutor's Office, to receive emergency medical attention if he so requires and **los demás que señalen las leyes.**

**September 21, 2000**

B. Of the victim or offended party:

I. Receive legal counsel; be informed of his rights established in the Constitution and, if he requests it, keep informed on the development of the criminal proceedings;

II. Assist the Public Prosecutor's Office by giving them all information and elements of proof which he has, during the preliminary investigation and during the trial, so that the corresponding enquiries are pursued exhaustively;

III. Receive, from the time of the crime, emergency medical and psychological attention;

IV. Repair the damages. In cases where this is appropriate, the Public Prosecutor's Office shall be obligated to solicit the reparation of damage and the judge may not absolve the accused of said reparation if a condemnatory sentence has been emitted. The law shall fix the most agile proceedings for carrying out the sentences in matters of reparation of damages;

V. When the victim or the offended party is a minor, he shall not be obligated to face the accused face to face when the crimes are rape or kidnapping. In these cases, **se llevarán a cabo declaraciones en las condiciones que establezca la ley; y VI.- Solicitar las medidas y providencias que prevea la ley para su seguridad y auxilio.**

**June 18, 2008**

C. The rights of the victim or offended party:

I. Receive legal counsel; be informed of his rights established in the Constitution and, if he requests it, keep informed on the development of the criminal proceedings;

II. Assist the Public Prosecutor's Office by giving them all information and elements of proof which he has, during the preliminary investigation and during the trial, so that the corresponding enquiries are pursued exhaustively, and to intervene in the trial and lodge an appeal in accordance with the terms of the law. When the Public Prosecutor's Office deems it not necessary to submit the measure, he must give the basis and reasons for his negative reply;

III. Receive, from the moment of the crime, emergency medical and psychological attention.

IV. Repair the damages. In cases where this is appropriate, the Public Prosecutor's Office shall be obligated to solicit the reparation of damage without prejudice to the victim or offended party soliciting reparation directly, and the judge may not absolve the accused of said reparation if a condemnatory sentence has been emitted. The law shall fix the most agile proceedings for carrying out the sentences in matters of reparation of damages;

V. To safeguard his identity and other personal information in the following cases: when they are minors; when the crime is rape, kidnapping or organized crime; and when the judge deems it necessary for his protection, safeguarding in all cases the rights of the defense.

The Public Prosecutor's Office must guarantee the protection of the victims, offended parties, witnesses and in general all of those subjects who intervene in the process. The judge shall oversee the proper compliance with this obligation.

**VI. Solicitar las medidas cautelares y providencias necesarias para la protección y restitución de sus derechos, y**

**VII. Impugnar ante autoridad judicial las omisiones del Ministerio Público en la investigación de los delitos, así como las resoluciones de reserva, no ejercicio, desistimiento de la acción penal o suspensión del procedimiento cuando no esté satisfecha la reparación del daño.**

**June 10, 2011**

Reform to Human Rights

**July 14, 2011**

V. To safeguard his identity and other personal information in the following cases: when they are minors; when the crime is rape, kidnapping or organized crime; and when the judge deems it necessary for his protection, safeguarding in all cases the rights of the defense.

Broadening rights to a great extent depends on having enough personnel to do the job, personnel with a professional profile of empathy and sensitivity, who provide humane

and resilient service in the face of the various problems victims confront in the sphere of justice in Mexico.

The victim has the rights set down on September 3, 1993 in Article 20 of the *Political Constitution of the United Mexican States*, but it will not be until June 18, 2016 when the oral adversarial system takes effect based on the reform of 2008.

Article 20. C. On the rights of the victim or offended party  
I. The right to receive legal counsel; be informed of his rights established in the Constitution, and when solicited, be informed of the development of the criminal proceedings.

As part of the fundamental rights, the victim has the right to all information about what is happening with his case, within the system of law enforcement and administration. Therefore, it is essential to create conditions which are appropriate for this right to be effective and efficient (Campos, 2004).

In this respect, legal counsel, specialists in penal matters, express their ideal that the Public Prosecutor is not the person who should carry this out. Therefore a professional person specialized in victims is needed; thus the present day tendency of the accusatory system and oral trials would allow for the creation of the figure of the victim's legal counsel (García, 2006).

Legal counsel is provided through the Executive Commission of Attention to Victims, both federal and state, by a person with a Law degree, who not only informs the victim of the rights set down in the Constitution and legislation, but is also required to provide this information throughout the proceedings. Personally

we believe that there should be real legal representation and defense of the victim and not just legal counsel.

The advisor would provide legal, humanistic elements and a bonding of empathy which should take into account the suffering and pain of the victim (Simon, 2004).

At all time the person who provides the service of advice to the victim should avoid scolding or taking an overprotective attitude, since this, far from benefiting the victim's recovery and progress, weakens him, making the victim more vulnerable and the recovery process is set back.

II. Assist the Public Prosecutor's office in receiving all of the information and elements of proof on the investigation as well as on the process; facilitating the proceedings and intervening in the trial, within the terms of the law. When the Public Prosecutor's Office does not believe the submission of the diligence, he must furnish ground for his negative;

Assistance provides the victim with limited participation in the penal process. The tendency nowadays is the accusatory system and in oral trials shall be extremely beneficial for broader and more dynamic participation, empowering the victim in the process of the defense of his rights (Zuruerta, 1990).

The assistance contemplated by procedural Law is a limited figure for authorizing the victim full participation in the penal process. The victim has the right to appeal only in relation to reparation of damages, providing he has participated in the action of reparation. This means that if the victim was not presented in the Public Prosecutor's Office with assistance

in his process because he was not aware of that right, he was confident in the work of his social representative or because he had no defending lawyer, he may not appeal (Crosswell Arenas, 1996).

Assistance should not be a discretionary right that the Public Prosecutor's Office grants the victim. It is an obligation of the State for creating the ideal conditions for carrying out this fundamental right, and many times the victim may provide a much more complete investigation than the authority (García, 1990).

The enthusiasm of the victim to assist must be properly guided by the Public Defender's Office so that favorable results may be obtained in the process being investigated.

III. To receive, from the time of the crime on, emergency medical and psychological attention;

The right to protection of the health of the victim is regulated in broad terms in Article 4 of the Constitution and complemented in Article 20, paragraph C, Section III. Since 1984 it has been included in the General Law for Healthcare in Article 171:

Members of the National Healthcare System shall provide immediate, preferential attention to minors and the elderly who have experienced any kind of mistreatment which puts their physical and mental health in danger. Moreover, they shall provide attention to those who have been the passive subjects of crime which threatens an individual's physical or mental integrity or his normal psychosomatic development.

This compulsory obligation has not resulted in the effectiveness which was

expected. Medical services are saturated and the lack of resources mean that this right is not integral.

The healthcare sector, many times, is afraid of and limited in attention to victims for fear of becoming involved in legal medical cases which make their work more complicated and may put them a risk of being sued for professional responsibility or involve them in legal cases, many times practicing actions of defensive medicine.

Psychological attention for victims in Mexico has a long way to go. While it is mentioned in the law, a basic protocol of attention which provides effective, scientific emergency psychological care has yet to be established. There needs to be official regulations which provides effective psychological emergency and scientific intervention, established in an official norm. Everything which takes place in the later therapeutic context may be used as proof for matters of integral reparation of damages.

Our professionals should begin by providing the invaluable help of telling the victim and his relatives of the moral situation which has created the victim's trauma, telling the victim and his protectors, when he is not alone, of all of the mechanisms available at the local level for him to recover from the situation. Healthcare officials should make sure that the judicial, police or administrative organisms come to the victim's aide in order to provide the necessary services in each case, and should act as a reasonable, affective and caring bridge between the victim and state services (Ruiz, 1995).

The technical guidelines of psychology must be established and approved using



Foto: AP

institutional criteria of the various instances of administration and enforcement of justice and for all acts in which a victimizing event occurs.

IV. Reparation of damage. In the cases where appropriate, the Public Prosecutor's Office shall be obligated to demand reparation for damages, without prejudice to what the victim or offended party may directly demand and the court may not absolve the sentenced party from said reparation if a sentence of guilty has been handed down.

The law shall lay down agile proceedings for carrying out the sentence in matters of reparation of damage;

Nowadays we must act according to paradigms of restorative justice for victims, which allows for integral response to his needs and is up to standards with matters of treaties on human rights.

Present day legislation places the responsibility of investigating on the judicial official, with the same care with which he carries out his penal responsibility of the accused, the occurrence of prejudices caused by the crime and the quantification of the same, establishing the impossibility of there being an abstract condemning sentence, in a way that the law is clear about the judicial employee's job to show



the occurrence of prejudices, quantify them and demand the corresponding payment of reparation. All of this should take place in the process even if the victim has not brought about civil suit since this obligation may only disappear if it is proven that the victim has instigated action of reparation in another jurisdiction (Gaviria, 1999).

In Mexico the study of the victim has been widely developed since the constitutional reforms and that is why specialized legislation is needed for victims (victims' laws) and funds for reparation of damages are also needed, complementing the integral protection, attention to the needs of victims nowadays (Rodríguez, 2004).

With respect to reparation, we find that this legal institution has a civil nature and while the penal code uses it as accountability, it should also be applied in the area of civil law. Integral reparation for damages must be proven in both areas: in the civil case it may be broader than in the penal sphere.

The latter is due to the fact that civil law for the reparation of damages arises as a legal obligation of the accused. In the criminal sentence which declares that it has been proved that a crime has been committed and that the accused is responsible, criminally, he is obligated to reimburse the affected party for the criminal act, himself, or by way of the severally responsible. At the same time he is fined, besides serving time (Mancilla, 2000).

Reparation of damages was instituted in the Penal Code for the Federal District and Federal Territories in 1929 (INICIFE, 1975) and established a table of retributions which served the same purpose as

what is set down today in the Federal Labor law.

V. To safeguard his/her identity and other personal data in the following cases: when they are minors; when the crime is rape, human trafficking, kidnapping or organized crime; and when in the opinion of the judge it is necessary for his protection, always safeguarding the rights of the defense. The Public Prosecutor must guarantee protection for the victims, offended parties, witnesses and in general all those who intervene in the process. Judges must assure the proper compliance to this obligation.

In this sense, legal guidelines in the National Code of Penal Procedures must be elaborated in order to provide better protection for victims. It is important to mention that some authorities take this obligation very seriously along with the sensitivity of the Legal Branch by means of protocols for acting in cases of girls and boys, adolescents, Indigenous People, people with disabilities, migrants and in gender matters.<sup>2</sup>

The protection of the victim in the interrogations in the legal process, for example, of battered or raped women, bodily mistreated children and those who have been abused sexually, also have insufficient legal regulations (Joachim, n/d). The appearance of children before an authority should count on sensitivity and empathy of the personnel of law enforcement and administration of justice, which should be

<sup>2</sup> See the directives of justice for child victims and witnesses of crimes of the Victimology Foundation and the protocol for receiving the testimony of children who are abused of the Argentinean Federation of Colleges of Lawyers.

closely monitored when there is contact with youngsters under 18 years of age.

VI. To solicit the precautionary preventive measures for the protection and restitution of his rights.

The National Code of Criminal Procedures establishes the right to legal counsel in all processes in which the accused has the right. He may be present, receive emergency medical and psychological attention, directly or by means of the counsel. He may present all information and elements he has available which lead to accrediting criminal elements and establishing the probable or proven responsibility of the accused, depending on the case and the origin and amount of the integral reparation for damages.

Here the authorities of public security also intervene in collaboration with administering and imparting justice.

The victims have the right to ask the judge or the Public Prosecutor for legal protection in the case.

The judge or Public Prosecutor shall evaluate the circumstances of the case and determine whether said protection proceeds or not, as well as the measures to be taken. The witnesses must also have the right to enjoy the benefits of protection by public forces and be allowed to participate in the proceedings while reserving their identity (Andrade, 1997).

VII. Challenge, before the legal authority omissions of the Public Prosecutor in the investigation of crimes, as well as the resolutions of reserve, non-exercising, withdrawal of the criminal action or suspension of procedures when the reparation for damages is not satisfied.

The victim, in the face of negligence, inactivity or acts of corruption of the authorities, may act in favor of his rights as an advisory prosecutor. That is to say, he may carry out procedural activities and self defense before various authorities of the criminal justice system for lawsuits.

Institutional collaboration for issuing this guarantee gives better results for protecting the victim. In some cases regulations establish guidelines and specific situations for protecting victims.

The reforms of June 18, 2008 (Criminal) and of June 10, 2011 (Human Rights) provide an important basis for developing attention to victims to our way of thinking, through oral trials.

The Criminal reform based on criminal law is only the first step. It is necessary to have infrastructure and the ideal personnel. Besides, the country needs a base which protects human rights, victims and gender perspective, which defines criminally and methodologically sound bases.

Today's panorama is not enough: we need criminal legislation which strengthens the Socio and Democratic State of Law integrally.

Article 20 makes an essential point: the injured party has the right to reparation. If this reparation cannot be directly claimed by the State —when this is not derived from the responsibility or subsidiary of its employees, but it must be made responsible for the criminal conduct, it is necessary that the State issue the appropriate norms—substantive and procedural—so that this right is to the greatest extent possible. If not, the emphatic declaration shall face a still more emphatic resistance of the truth, as we have seen over decades (García, 2004).

Therefore, it is essential to take into account the social prevention of violence and crime based on Human Rights, gender perspective and the protection of groups in situations of vulnerability, especially those which refer to the rights of women, children, adolescents, the elderly, people with disabilities and Indigenous People, regulate by the principle in favor of people, greater interest and interpretation in accordance with standards established in instruments of protection of Human Rights in criminal matters, based on inclu-

sive, humanistic and sensitive criminology which gives the criminal justice system a different reading of the criminal phenomenon.

It is important to make a brief consideration of the reform of June 18, 2008 to the *Political Constitution of the United Mexican States* with respect to increasing the reference made to victims in the Joint Commissions of Constitutional Points and Justice of December 10, 2007, prior to the publication of the reform (see Table 3) (García, 2004).

Table 3

**Decision of the Joint Commissions on the Constitutional Points and Justice of December 10, 2007**

Deputy de Leon affirms that the victim of a crime or the offended party is the weakest link in the criminal justice system. After receiving the damage committed on his physical and moral integrity and his material goods, the victims are then victims of the legal and ministerial power as well as legal practices which, instead of facilitating things, make them more difficult, in reality, systematically and structurally to such a degree that exercising one's fundamental rights becomes ineffective.

He maintains that they not only suffer the damage caused by the delinquent, but also have to defend themselves against the lack of legal protection which takes place due to the antimonies, defects and normative loopholes in the essential content of his basic rights. The victim or offended party is defenseless. He is not in a situation of "equality of arms" to face the Public Prosecutor's Office, the judge, the accused and his defender. On the one hand the law has limited scope and the judges, on the other, do not have a protective approach needed to develop discourse in favor of the rights of the victim.

His bill, therefore, has the purpose of making advances in strengthening the basic rights of the offended party or victim of a crime, based on three proposals: the fundamental right to a public defender; strengthening the fundamental right for the reparation of damages; and the fundamental right to appeal the non-exercising of legal action and withdrawal and equivalent acts, by means of legal control, as well as improving constitutional control in the face of today's problems.

The bill says that the victim should be the main character in the criminal process, since no one has the interest he does in defening the legal asset which has affected him, balancing the response of the organisms of social control, but protecting and xxxxx

**Decision of the Joint Commissions on the Constitutional Points  
and Justice of December 10, 2007**

Finally, he proposes that the State has the obligation to give total support and immediate protection to the victims of crime, thus satisfying one of the most heart-felt complaints of the population, creating mechanisms which guarantee the rights and guarantees of the victims of crime and offended parties.

They also suggest an increase in the rights for people connected to a criminal process as well as for the victims or offended parties of a crime.

For the victims, they propose the right to reparation of damages through the obligation of the State to create a monetary fund, also they propose that no victim should be obligated to face the accused face to face, unless the victim so requests.

The most injurious of these was the practice of keeping track of the process in thick files, a practice which ended up being taken as if it were a legal demand, which is no guarantee, for the victims nor for the accused parties, of a just trial. For the victims, the private criminal action and the obligation of the State to instrument protocols and practices have proven to be successful in matters of protection of victims. Similarly, they propose the obligation of police to investigate crimes. They propose to hold the Public Prosecutor's Office to the criminal process, and the judges to clear, efficient and transparent proceedings in order to thus obtain a rupture in the monopoly of criminal action, returning to the victim the right to face the judge and file his complaints, in the process counting on the anticipation of the Public Prosecutor himself, so that there he may carry out his job of authority, testify, obtain proof, to which only the authority shall have access, all of this in order to carry out all of his duties, now without the unjust obligatory tutoring which today is carried out on the victims. Likewise, he suggests providing the preventive police with legal duties to investigate, prevent crimes and participate as the accusing party in those crimes which he knows of and where there is no denouncer. He also proposes to vindicate the rights of the victim or offended party, guaranteeing reparation for damages.

On a different note, the possibility of the victim directly carrying out criminal action will be included in the new system, notwithstanding the fact that the Public Prosecutor's Office may intervene if it is necessary for safeguarding public interest. Two modalities are foreseen, one related to the possibility of sticking to the accusation of the Public Ministry, which was explained when dealing with the matter of intervening in a trial, and the autonomous exercising of this duty for determining cases provided for in the law. Exercising criminal action in this modality shall be exceptional, only in those cases in which the interest affected is not general. As in the case of assistance, this possibility should not be taken to mean that the Public Prosecutor's Office disregard cases, the intervention set forth in Article 21 must take place. These possibilities will allow for more transparent procurement and administration of justice, as they set up the existence of citizens' control over duties of procurement of justice.

c) due to the complexity of the reforms, it is necessary to give different actors who intervene in the criminal process, that is, public prosecutors, judges, accused and victims, among others, total legal assurance in the face of adopting a criminal justice process which will effectively modify ancient traditions and behaviors, as well as

---

La argumentación antes citada respecto de la reforma tiene su base teórica en el garantismo penal (Luigi Ferrajoli) y el derecho penal del enemigo (Günther Jakobs).

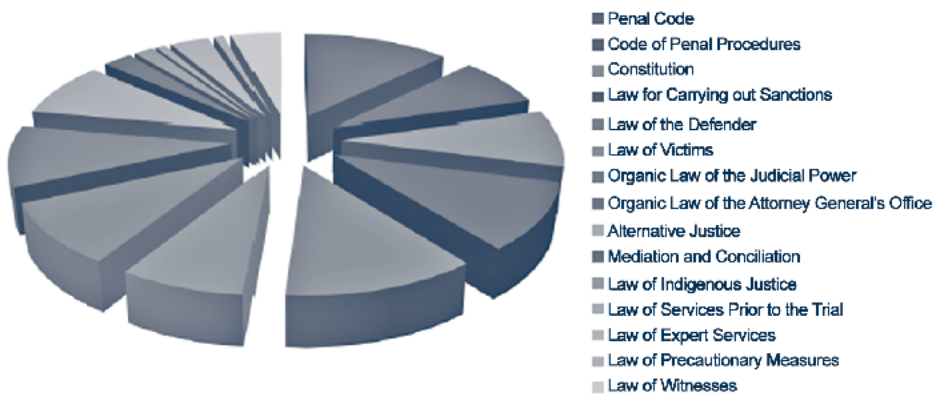
Once the previous considerations have been carried out, it is important to emphasize that following the reform of 2008, criminal policies in Mexico have been limited in technical law with changes headed by the Technical Secretary of the Coordinating Council for the implementation of the System of Criminal Justice, to some basic regulations for modifying (constitutions, Criminal codes, Codes of Criminal Procedures, Organic Laws of Attorney General's Offices, Organic Laws of the Judicial Branch, Laws of Defenders, Laws of Victims, Laws of Alternative Justice, Laws

of Indigenous Justice, Laws of Services Previous to Trials, Laws of Services of Expertise, Laws of Protective Measures, Laws of Witnesses, Laws of Enforcement of Sentences (See Chart 1).

### Attention to Victims of Crime

The substantial part of victimology is the attention to the victim. This requires scientific and methodological planning in order to obtain the best results. The following table shows this proposal formulated by Dr. Hilda Marchiori (2006) (See Table 4).

**Graph 1** Subsidized Projects for 2011 and 2012



**Table 4** Subsidized Projects for 2011 and 2012

#### Assistance to victims

1. **Therapeutic wellbeing level.**— The first level is about the need for an immediate answer. Victimology work, based on immediacy, is defined by an institutional social response for attending the suffering of the victim. Immediacy is translated by the speed of treating the suffering of the victim, in the time and understanding of the specific criminal situation.
2. **Level of Guidance and information.**— Complements the wellbeing level directed at the victim and his family. It covers various moments (basic information of the rights of the victim, professional accompaniment, of relative or friends to hospitals, police, and criminal justice administration).

Fuente: elaborado por María Teresa Ambrosio Morales.

In social attention to victims the participation of a professional in Social Work is of the utmost importance. "The social worker is a decodifying link between the various disciplines involved. Being within an institution, he has social discourse and from here he can read the medical, legal and psychological discourse. At the same time, the social worker moving within the spaces where the family moves (home, school, neighborhood, etc) may provide information to the other operators" (Al-day, 2011).

The policy of victimology establishes, as part of the actions for the prevention of crime and victimization, attention to victims, nine basic services: intervention in the crisis; attention to victims; support for investigation of a crime, accusation and criminal trial; and support after the case is finished.

In order to provide specialized attention to victims, professional personnel with specific profiles are necessary in order to attain empathetic and caring attention to the victim.

**Table 5** Fundamental Needs of victims of crime, possible solutions and rights

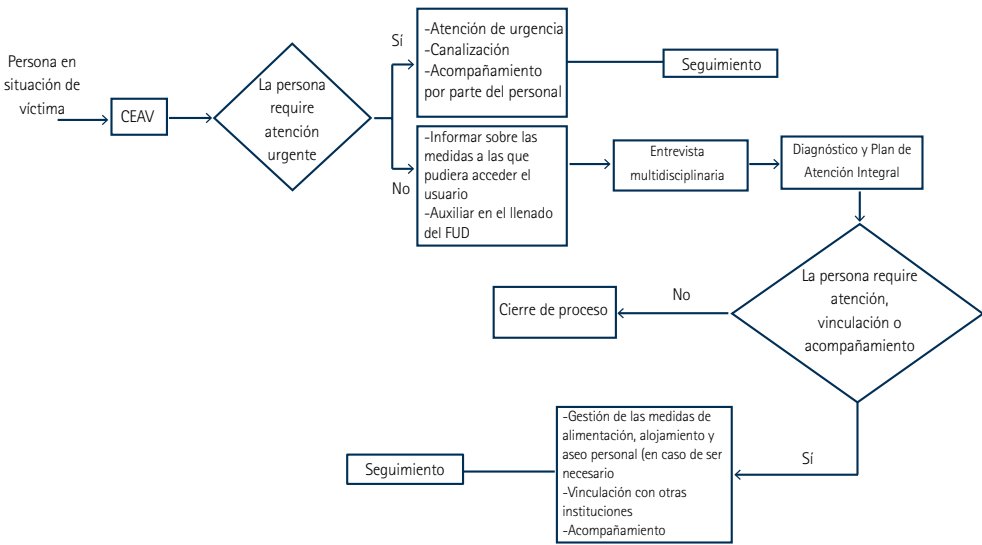
| Fundamental Needs of victims   | Rights of Victims   | Vinculación con la Ley General de Víctimas y su Reglamento            |                            |
|--|---|---|----------------------------|
|  |   | Ley General de Víctimas   | Reglamento de la LGV       |
| <b>Apoyo</b>   |   |   |                            |
| i. Reconocimiento y apoyo emocional.   | Derecho al reconocimiento de víctimas.  | Arts. 1, 4 y 6.   |                            |
| ii. Información sobre justicia penal, el caso, los servicios y los progresos personales. | Derecho a la información.   | Arts. 7, fracciones III, VII, IX, X y XII; 12, fracción I y 18 al 25. | Arts. 51 y 56.             |
| iii. Asistencia para obtener acceso a servicios prácticos, médicos y sociales.           | Derecho a la asistencia: remisión por la policía, a corto y mediano plazos, y asistencia especial debido a la edad, género, discapacidad, etnia.                      | Arts. 7, fracción VI; 9, 44 y 54.                                     | Arts. 6, 9, 10 y 11.       |
| <b>Justicia</b>  |   |   |                            |
| iv. Ayuda para pagar las cuentas generadas por la victimización.                         | Derecho a la reparación: indemnización por parte del delincuente, justicia restaurativa respecto de los derechos de las víctimas y compensación por parte del Estado. | Arts. 7, fracción II; 12, fracción II; 26 y 27.                       | Arts. 72, 76, 78, 82 y 88. |
| v. Seguridad personal y protección de los acusados.                                      | Derecho a estar protegida del acusado (víctimas, testigos y peritos).   | Arts. 7, fracciones IV y VIII; 12, fracción X.                        |                            |
| vi. Opción de tener voz en el ámbito de la justicia.                                     | Derecho a la participación y representación (acceso a la justicia y trato justo).   | Arts. 7, fracción XXV, XXII y XXVIII; 11 y 12.                        | Arts. 51, 56 y 60.         |
| <b>Buen gobierno</b>   |   |   |                            |
| vii. Mejor seguridad pública.  | Derecho a medidas efectivas para reducir la victimización.  | Arts. 7, fracción XIX; 74 a 78.                                       |                            |
| viii. Instrumentación.   | Derecho a la aplicación (cumplimiento).   | Art. 73.  |                            |

Fuente: elaboración propia con base en Waller (2014), LGV y Reglamento de la -Ley General de Víctimas.

**Table 6** Diagram of an Integral Model of Attention to Victims

| Hecho victimizante (delito o violación a Derechos Humanos) | Medidas de atención  |  |                     | Recuperación del proyecto de vida |
|--|--|--|---------------------|-----------------------------------|
|  | Momento 1  | Momento 2  | Momento 3           |                                   |
|  | Ingreso al Registro Nacional/Estatal de Víctimas   | Resolución o determinación dictada por un órgano facultado | Reparación integral |                                   |
|  | Ayuda inmediata  | Medidas de asistencia                                      |                     |                                   |
|  | -Enfoque psicosocial -Enfoque de género, diferencial y especializado - Enfoque de derechos humanos |  |                     |                                   |

**Table 7** Flowchart of Social Work



Today all of the states in the country have services for victims, in the Attorney General's Office, the Federal and State Human Rights Commissions, the Systems for the Integral Development of the Family, the Federal and State Executive Commissions of Attention to Victims, Centers for Justice for Women, Federal, State and Local Women's Institutes.

It is important to point out that while there are apparently many and varied institutions which provide attention to victims, their action is insufficient and even

deficient in protection, and even more so in the results in matters of justice. Therefore it is important to redouble efforts so that by June 18, 2016 full attention is provided as established in the Criminal Reform of the *Political Constitution of the United Mexican States*.

**Conclusions**

It is of the utmost importance that the rights of victims consecrated in the reform of June 18, 2008 to the *Political Constitution of the United Mexican States*, be rendered fully effective by June 18, 2016 when

the adversarial criminal system takes effect in our country.

The bio-psycho-social attention to victims must be integral in order to comply with the commitments acquired by Mexico in matters of Human Rights, established in the constitutional reform of June 10, 2011.

Reparation of damages for victims must be integral, in keeping with restorative justice, being caring and of top quality.

Attend to victims in conditions of vulnerability in a specialized manner. These include boys, girls, adolescents, women, elderly people, people with disabilities, migrants and Indigenous people.



## Bibliography

- Alday, M. A. (2001). *El Trabajo Social en el servicio de la Justicia*. Espacio.
- Andrade, S. E. (1997). *La justicia mexicana hacia el siglo XXI, Regulación de los derechos de la víctima*. México: Universidad Nacional Autónoma de México. Senado de la República.
- Briceño, L. R. (2002). *Morir en Caracas, violencia y ciudadanía en Venezuela*. Caracas: Universidad Central de Venezuela. Facultad de Ciencias Jurídicas y Políticas.
- Campos, M. J. (2004). Eficacia en la reparación del daño a la víctima del delito. En L. M. Álvarez, *Derechos Humanos y víctimas del delito*. México: INACIPE.
- Crosswell Arenas, M. B. (1996). "Estado de derecho y procuración de justicia". *Crónica Legislativa. Nueva Epoca*, no. 7 February-March.
- Duce, J. M. (2002). *Introducción al nuevo sistema procesal penal*. Chile: Escuela de Derecho Universidad Diego Portales.
- Ferrajoli, L. (2009). *Derechos y Garantías. La Ley del más débil*. Madrid: Trotta.
- García, R. S. (2004). "Consecuencias del delito: los substitutivos de la prisión y la reparación del daño". *Revista Latinoamericana de Derecho*, núm. 1, año 1, enero-junio, Universidad Nacional Autónoma de México, 224.
- García Pablos, A. (1990). *Criminología y derecho penal al servicio de la persona* (pp. 195-196). Instituto Vasco de Criminología.
- García Ramírez, S. I. (2006). "Los sujetos procesales en el nuevo proceso penal", *Nuevo Código Penal para el Distrito Federal*. México: Instituto de Investigaciones Jurídicas.
- Gaviria, L. V. (1999). "La víctima del delito frente a la reforma a la legislación penal colombiana". *Revista del Instituto de Ciencias Penales y Criminología*.
- INACIPE, I. N. (1975). *Leyes penales mexicanas*. México: INACIPE.
- Instituto de Investigaciones Jurídicas (ijj) (2006). *Constitucion Política de los Estados Unidos Mexicanos*. México: Instituto de Investigaciones Jurídicas de la UNAM.
- Joachim, S. H. (s/f). "La posición jurídica de la víctima del delito en el derecho y en el proceso penal". *Criminología y derecho penal al servicio de la persona*.
- Lima, M. M. (1992). "Protección a las víctimas". *Criminalia*.
- Mancilla, O. J. (2000). *Las garantías individuales y su aplicación en el proceso penal, estudio constitucional del proceso penal*. México: Porrúa.
- Marchiori, H. (2006). *Criminología la Víctima del delito* (5ª ed.). México: Porrúa.
- Mendelshon, B. (1974). "La victimología y las necesidades de la sociedad contemporánea". *Revista Jurídica Mesis*, vol. XIV, núm. 27.

- Rocillo, G. M. (1995). "La víctima, sus orígenes y evolución". *Revista Jurisdiccio*, vol. XIV, núm. 27.
- Rodríguez, M. L. (2004). *La crisis penitenciaria y los substitutivos de la prisión*. México: Porrúa.
- Rodríguez, M. L. (2007). *Victimología*. México: Porrúa.
- Ruiz, V. E. (1995). *Victimología*. Córdoba, Argentina: Centro de Asistencia a la Víctima.
- Simon C., F. E. (2004). *Evaluación de la reforma procesal penal desde una perspectiva de género (primera fase: Chile, Ecuador, Honduras, Guatemala)*. México: Centro de Estudios de Justicia de las Américas.
- Turvey, B. P. (2009). *Forensic victimology, examining violent crime victims in investigative and legal contexts*. Londres: Elsevier.
- Waller, Irvin (2014). *Control inteligente del delito*. Instituto Nacional de Ciencias Penales.
- Zuruerta, A. R. (1990). *La víctima de los delitos de querrela en el proceso penal mexicano*.