



UNODC

United Nations Office on Drugs and Crime



The Criminal Justice Response to
**Support Victims
of Acts of Terrorism**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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The Criminal Justice Response to Support Victims of Acts of Terrorism



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This publication is dedicated to the victims of terrorist acts worldwide.

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“[Terrorism] can affect anyone, anywhere... It attacks humanity itself. And it is for the sake of humanity that we must create a global forum for your voice and listen to you, the victims. Your stories of how terrorism has affected your lives are our strongest argument why it can never be justified. By giving a human face to the painful consequences of terrorism, you help build a global culture against it. You are the real heroes in the global struggle against terrorism. You humble the world by your strength and courage. You deserve support and solidarity. You deserve social recognition, respect and dignity. You deserve to have your needs addressed. You deserve to have your human rights defended. And you deserve justice.”

Ban Ki-moon
Secretary-General of the United Nations
Secretary-General’s Symposium on Supporting Victims of Terrorism
9 September 2008

Foreword

Executive Director United Nations Office on Drugs and Crime

In the 2005 World Summit Declaration, world leaders condemned terrorism in all its forms, committed by whomever, wherever and for whatever purposes — the first such high-level consensus. One year later, the unanimous adoption of the United Nations Global Counter-Terrorism Strategy represented a milestone in the multilateral counter-terrorism domain that laid the foundations for a comprehensive and integrated response to terrorism at the national, regional and international levels.

Following the adoption of the Global Counter-Terrorism Strategy, the United Nations has intensified system-wide efforts to foster multilateral action to prevent and combat terrorism. The Global Counter-Terrorism Strategy also reaffirmed the crucial role of respect for human rights and the rule of law as the fundamental basis of the fight against terrorism and stressed, in particular, the need to promote and protect the rights of victims of terrorism.

In 2008, the United Nations launched the first symposium that brought together victims of acts of terrorism from around the world, providing a platform for their voices to be heard and initiating a dialogue on how best to support their needs. This publication builds upon the themes explored in the symposium, and is intended to aid in the development of effective criminal justice mechanisms to support victims of acts of terrorism at the national level.

The elaboration of this handbook by the Terrorism Prevention Branch and the Justice Section of the United Nations Office on Drugs and Crime was made possible through the generous support of donor countries, in particular, Colombia, Cyprus and the Netherlands. UNODC is also thankful to the Foundation “El Nogal” for the support given towards the elaboration of this publication. The handbook draws on the national experiences of a broad range of geographically representative criminal justice experts regarding programmes of assistance and support for victims of acts of terrorism. This handbook is intended to share experiences related to support mechanisms for victims of terrorism, and to give policymakers and criminal justice officials practical insights into challenges faced, and good practices developed, by their counterparts at the national and regional level. Our hope is that this handbook will aid Member States in the development and implementation of programmes of assistance and support for victims of acts of terrorism within their respective criminal justice systems.

Victims have long played a secondary, and mostly silent, role in criminal trials. UNODC recognizes the importance of representing victims’ interests in criminal proceedings and the relevance of developing comprehensive programmes that effectively provide adequate treatment to victims of acts of terrorism. Effective criminal prosecution of alleged perpetrators is a crucial factor in reducing the perception of victimization and of impunity for terrorist acts. Granting victims equal and effective access to justice is also essential. In order to further integrate the perspective of victims into UNODC’s capacity-building

activities addressing the criminal justice aspects of countering terrorism, the role of victims and their surviving family members in criminal proceedings needs to be emphasized.

The publication of this handbook comes at a moment of great sorrow for UNODC and for the entire United Nations. On 26 August 2011, the United Nations office in Abuja, Nigeria, was the target of a terrorist attack that shocked the world and drew global condemnation. The car bomb that was detonated cut short the lives of twenty-four friends and colleagues working for the betterment of humanity. The attack targeted not only the United Nations presence in Nigeria, but also its universal values and global missions of peace. In the face of such heinous acts, we have responded with strengthened resolve to fight against terrorism and build a safer, more just and peaceful world for all. We dedicate this publication to our colleagues who lost their lives in Abuja, and in the increasing number of terrorist attacks on United Nations' premises in recent years, as well as to all victims of terrorist acts worldwide.

Yury Fedotov
Executive Director
United Nations Office on Drugs and Crime

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I. Introduction

1. The United Nations General Assembly, in its resolution 64/168, adopted on 18 December 2009, urged “relevant United Nations bodies and entities and international, regional and subregional organizations, including the United Nations Office on Drugs and Crime, within its mandate related to the prevention and suppression of terrorism, to step up their efforts to provide, upon request, technical assistance for building the capacity of Member States in the development and implementation of programmes of assistance and support for victims of terrorism in accordance with relevant national legislation.”

2. The Terrorism Prevention Branch (TPB) and the Justice Section (JS) of the United Nations Office on Drugs and Crime (UNODC) jointly convened two Expert Group Meetings¹ with the primary objective of developing a publication on an effective criminal justice response to support victims of acts of terrorism. The contributions of the participating experts were instrumental in the identification, collection and dissemination of national experiences of existing programmes of assistance and support for victims of acts of terrorism, or programmes for victims of crime applicable to victims of acts of terrorism, in accordance with relevant national legislation and international standards and norms. This publication is intended for use as part of UNODC’s capacity-building activities in the fields of criminal justice related to terrorism and counter-terrorism and human rights. Its purpose is to aid requesting Member States in the development and implementation of programmes of assistance and support for victims of acts of terrorism at the national level.

3. Victims have long played a secondary, and mostly silent, role in criminal trials. UNODC recognizes the call of the General Assembly as underscoring the importance of the victim in criminal proceedings and the relevance of developing comprehensive programmes that effectively provide adequate treatment to victims of acts of terrorism. Effective criminal prosecution of alleged perpetrators is a crucial factor in reducing the perception of victimization and of impunity for terrorist acts. Granting victims equal and effective access to justice is also essential. In order to further integrate the perspective of victims into UNODC’s capacity-building activities addressing the criminal justice aspects of countering terrorism, the role of victims and their surviving family members in criminal proceedings needs to be emphasized.

4. In order to fulfill its enhanced mandate, UNODC considers it of utmost importance to take stock of national experiences in the treatment of victims of acts of terrorism based on relevant national laws and practices; and on existing international standards and norms on victims of the gravest international crimes.² This endeavour contributes to the exchange of information on national experiences and practices. It also serves as a basis to assess the extent to which existing programmes of support to victims of crime

¹The first Expert Group Meeting was held in Vienna, Austria, on 26 and 27 May 2010; the second Expert Group Meeting was held in Bogotá, Colombia, on 26 and 27 January 2011.

²Technical assistance tools and publications related to the international legal framework against terrorism are available on UNODC’s website at: <http://www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html>.

sufficiently cover the needs of victims of acts of terrorism, or whether aspects related to victims of acts of terrorism justify the granting of specific support. To this end, chapter 3 on rights of victims presents general considerations regarding the status of victims in the criminal justice system, followed by examples of national practice and legislative provisions. Some countries have developed specific legislation on victims of acts of terrorism while, in others, victims are covered by legislation on victims of crime in general. The purpose of these examples, which are based on data provided by experts and on other available information, is the exchange of relevant information and experience. Reference to examples in the present publication should not be construed as an endorsement by the United Nations of the practices or legislation described therein.

5. Recognition of, and support to, victims is a key-component of a successful rule of law-based criminal justice response to acts of terrorism.

6. The effects of acts of terrorism extend beyond the immediate impact on the direct victims, as these acts indiscriminately target civilian populations or persons, regardless of their status or function, or public institutions, thereby affecting, more broadly, the society as a whole. It is with this perspective of protection of society that the criminal sanction is established. However, the criminal punishment of perpetrators is not enough. As with many criminal offenses, reparation should also be offered to victims. Especially within the framework of the fight against terrorism, the victims must not be forgotten, or regarded as collateral damage. Victims of acts of terrorism are victims of an offense that targets one or more States or one or more international organizations and attacks the highest interests of a State or the international community. It is absolutely essential to identify the rights and needs of victims of acts of terrorism, to support them and to provide reparation for the damage they have suffered and, in doing so, to grant them a central role in the criminal proceedings.

7. This publication endeavours to emphasize at the forefront victim-related aspects of the criminal justice response to terrorism, as well as to provide examples of national legislation and practices in the area.

II. Background: counter-terrorism efforts and existing international standards and norms related to victims of crime

8. The role of victims in the administration of criminal justice has for a long time been limited to that of a trial witness. Since the 1970s, victimology has played an important function in revitalizing the role of the victim, once described as the “forgotten party” in the criminal justice system. This tendency, confirmed by the adoption of several international standards and norms on victims of crime³ since the mid-1980s, has led to an ever growing number of national initiatives and experiences.

9. International standards and norms on victims of crime also apply to victims of acts of terrorism.⁴ Recent events involving terrorist acts have resulted in increased numbers of direct and indirect victims, and have been influential in the mobilization of governmental sectors and civil society in granting specific rights and affording comprehensive support to survivors of terrorist acts and their families, sometimes extending beyond those afforded to victims of crime in general. This is partly explained by the need to apply a differentiated approach to the handling of victims of criminal acts resulting in mass casualties — of which terrorist acts are a prime example. In some States, directing special attention to victims of terrorist acts may also be strategic to preventing those acts from achieving their goals.

10. The frequently transborder nature of acts of terrorism must also be taken into consideration in evaluating effective means of providing assistance to the victims of such acts, including the provision of adequate compensation.⁵ Cross-border issues may add a layer of complexity to the measures required to protect victims’ access to justice and/or compensation. For example, the location of the trial proceedings and its impact on the interests and involvement of the victim, as well as the chances for a successful trial, are factors that should be taken into account when applying the *aut dedere aut judicare* principle in the cross-border context. International cooperation is a pre-requisite for effective transnational proceedings and concerted international efforts are necessary to ensure the protection of victims’ rights in such cases.

³See, for example, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC resolution 2005/20); United Nations Convention against Transnational Organized Crime, Article 25; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Articles 6, 7 and 8; United Nations Convention against Corruption, Article 32. At the international level, the non-governmental organization World Society of Victimology works on fostering consensus on the development of a convention on the rights of victims.

⁴In this publication, the term “terrorism” refers in general to acts defined by the international legal instruments for the prevention and punishment of terrorist acts (<http://www.un.org/terrorism/instruments>). When referring to national examples, the scope of the definition of that term may vary, and does indeed vary, and more details should be sought in the specific domestic legal framework. It is imperative to note that while some countries face isolated acts of terrorism, in others the underlying situation appears to be one of continual and almost daily incidents. The national strategy to address these situations (and the treatment of perpetrators and victims) from a criminal justice and law enforcement perspective must take into account the context of the offences in order to be effective.

⁵Indeed, in many cases, a trial may take place in one country, whereas the alleged offender may be from a second country, while the victim may originate from a third country.

A. Normative references to the general international ban on acts of terrorism and the States obligation to criminalize them

11. In order to assess accurately the status and rights of victims of terrorist acts in criminal proceedings, it is important to recall, on the one hand, the existing international legal instruments that require States Parties to criminalize acts of terrorism considered by the Security Council of the United Nations as “a threat to peace and security,” and on the other hand, relevant rules of international criminal law.

12. Harmonization in the criminalization of acts of terrorism is essential to the remedial aspect of the criminal trial for the victims of such acts. Their place and role cannot be assessed in isolation from these instruments and should be analyzed in light of the principles governing the role of victims in criminal proceedings and compensation for their losses.

13. Acts of terrorism are prohibited in peacetime as in wartime. In peacetime, a number of international legal instruments, general and sectoral, address terrorism. These instruments require that States Parties criminalize certain acts and provide for universal jurisdiction. However, they are silent on the issue of the role of victims and the compensation to be granted to them. During wartime, acts of terrorism as a means or a method of warfare are prohibited by conventions and customary International Humanitarian Law (IHL). Breach of these provisions constitute a serious violation of IHL and may be qualified as a war crime under Additional Protocol II.⁶

14. A comprehensive analysis of the international instruments shows that their national implementation, in a harmonized and fair manner, is essential not only in response to universal criminal acts of international terrorism, but also to ensure equitable treatment of all victims of terrorist acts, irrespective of the nationality of the victim, perpetrator or sponsor, or the place of commission of the crime.

B. International standards and norms related to victims of crime

15. The “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” approved by the General Assembly in November 1985,⁷ constitutes the “soft law”⁸ basis for the international standards concerning the treatment of victims, and is “designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.”⁹

16. This Declaration recommends measures to be taken at the national, regional and international levels to secure access to justice and fair treatment, and to ensure

⁶Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, United Nations *Treaty Series*, vol. 1125, No. 17513, Article 85(3)(a).

⁷Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34).

⁸The expression is used in international law to identify instruments that contain provisions of a non-binding legal nature, with the character of recommendations.

⁹Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), para. 3.

restitution, compensation, and social assistance for victims of crime. It further outlines the main steps to prevent victimization linked to abuse of power, and to provide remedies for the victims of such offences.

17. The Economic and Social Council of the United Nations (ECOSOC) has adopted two resolutions to encourage the implementation of the Declaration.¹⁰ These resolutions provide guidance to countries on necessary measures to ensure full compliance with the Declaration, such as the review of legislation, training for criminal justice officials, establishment of victims' assistance services, research activities, and exchange of information. In order to support ECOSOC's resolutions, UNODC¹¹ has published a guide for policymakers on implementing the Basic Principles for Victims,¹² as well as a handbook on justice for victims on the use and application of the Basic Principles¹³ and a toolkit for professionals on assessing police, prosecutorial, and judicial policies and practices relating to victims and witnesses.¹⁴

18. In the area of providing remedies and reparation to victims, it is also worth noting 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," approved by the General Assembly in December 2005.¹⁵ Notwithstanding the high threshold for their application, these standards should be taken into consideration as a reference, in particular concerning the comprehensive coverage of rights of restitution and compensation.

19. New initiatives seeking to enhance the rights of victims are also being proposed by the academic and advocacy communities. In 2005, representatives of the World Society of Victimology (WSV)¹⁶ organized a workshop at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on the pressing need to transform the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power into a Victims' Rights Convention. As a result, the WSV, in partnership with the International Victimology Institute (INTERVICT)¹⁷ of Tilburg University and the Tokiwa International Victimology Institute (TIVI),¹⁸ developed a draft Convention on Justice and Support for Victims of Crime and Abuse of Power for Victims,¹⁹ which has not yet gathered sufficient support by governments.

¹⁰ECOSOC resolution 1989/57 of 24 May 1989 and ECOSOC resolution 1998/21 of 28 July 1998, including annexed Plan of Action, for the implementation of the Declaration of Basic Principles of Justice.

¹¹Formerly known as the United Nations Office for Drug Control and Crime Prevention.

¹²United Nations Office for Drug Control and Crime Prevention, *Guide for Policy-makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999).

¹³United Nations Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999).

¹⁴United Nations Office on Drugs and Crime, *Victims and Witnesses: Criminal Justice Assessment Toolkit* (New York: United Nations, 2006).

¹⁵Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law (A/RES/60/147).

¹⁶A non-profit, non-governmental organization with special category consultative status with ECOSOC and the Council of Europe. See <http://www.worldsocietyofvictimology.org>.

¹⁷See <http://www.tilburguniversity.nl/intervict>.

¹⁸See <http://www.tokiwa.ac.jp/~tivi/english/index.html>.

¹⁹Available at: <http://www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/undeclaration/convention.pdf>.

20. Although many countries have been criticized for their sluggish implementation of the Basic Principles for Victims, there is evidence that, on the whole, governments throughout the world have advanced in the field of protecting the rights of crime victims in their domestic legislation and practices, in comparison to the period that preceded the Declaration.²⁰ Still, much remains to be done, and it is of utmost importance to promote the implementation at the national level of those international standards and norms.

C. Regional norms on assistance and support to victims of acts of terrorism

21. In recent years, there has been a clear increase in the recognition for victims at a regional level. Without being exhaustive, this subchapter presents some of the recent progress.

22. Regional organizations have also begun to reflect the provisions put forward in the United Nations Basic Principles for Victims in their own legislative framework. The European Union (EU), for example, has moved to ensure that its Members have in place legislation with minimum standards to protect the rights of victims and guarantee their access to justice.

23. These efforts are rooted in the Tampere European Council held in October 1999, in particular point 32 of its conclusions, which states: “Having regard to the Commission’s communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims’ access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.”

24. Subsequently, two fundamental instruments entered into force:²¹

- *European Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings* (2001 European Council Framework Decision).²² This decision provides a legislative framework, similar to that outlined in the Basic Principles for Victims, to which all EU Member States are legally bound.²³ According to the European Council Framework Decision, crime victims have the right to be heard during proceedings as well as to supply evidence. In addition, victims must be given access to any relevant information and protection by the Member State in which they reside, even if

²⁰Canada, for example, incorporated many of the provisions of the Declaration into its “Statement of Basic Principles of Justice for Victims of Crime” in 2003, thereby modernizing the statement issued by the Federal, Provincial, and Territorial Ministers Responsible for Justice in 1988. These basic principles remain critical to the development of Canada’s federal, provincial and territorial policies, programmes, and legislation related to victims of crime.

²¹Issued by the European Council, the executive body of the European Union.

²²Council of the European Union, Framework Decision on the Standing of Victims in Criminal Proceedings, 2001/220/JHA, 15 March 2001. See also the Council Framework Decision on Combating Terrorism of 13 June 2002, which extended all victim-related provisions of the 2001 Framework Decision to all family members of the direct victim of a terrorist act, and Council Directive Relating to Compensation for Victims of Crime of 29 April 2004.

²³Dijk, J.J.M. van. Benchmarking legislation on crime victims: The United Nations Victims Declaration of 1985, in E. Vetere & D. Pedro (eds.), *Victims of crime and abuse of power: Festschrift in honour of Irene Melup* (2005).

the crime was committed in a different Member State. The decision also establishes an effective compensation system across all Member States. The subsequent European Council Framework Decision of 12 June 2002 on combating terrorism refers to the contents of the 2001 European Council Framework Decision.

- *European Council Directive 2004/80/EC of 29 April 2004 relating to Compensation for Victims of Crime* (2004 European Council Directive).²⁴ This directive refers, among other key points, to a victim's right to apply for compensation in the Member State in which he or she resides, independently of the Member State in which the crimes were committed. The directive also establishes standardized procedures for the transmission of applications and the designation of central contact points between relevant national authorities.

Both instruments have been assessed by the European Commission in recent years with different results depending on the Member State. The results of the report found that not all EU Member States have fully implemented the 2001 European Council Framework Decision and the 2004 European Council Directive.²⁵

25. More recently, the Council reiterated its commitment to the 2001 European Council Framework Decision, and reflected many of the provisions of the United Nations Basic Principles for Victims, in its "Council Conclusions on a strategy to ensure fulfillment of the rights of and improve support to persons who fall victim to crime in the EU."²⁶ Furthermore, the Treaty of Lisbon states that the European Parliament and the European Council may establish minimum rules relating to the rights of victims of crime by using all relevant Directives adopted in accordance with standard legislative procedure.²⁷

26. In several instances, the Stockholm Programme,²⁸ which sets out the EU's priorities for the area of justice, freedom and security for the period 2010-14, makes reference to crime victims and devotes a specific section to victims of crime, including acts of terrorism.²⁹ The Programme urges the European Commission and EU Member States to merge the 2001 European Council Framework Decision and the 2004 European Council Directive into a single legal instrument and the EU Member States to adopt a single strategy.

27. Recent EU efforts include the Directive on the Trafficking of Human Beings,³⁰ which was approved in 2011 and contains several sections on the protection of victims of such criminal acts, and the proposed Directive on the European Protection Order for

²⁴*Official Journal of the European Union*, L 261, 6 August 2004, p. 15.

²⁵European Union, DG Justice. "Member States' legislation, national policies, practices and approaches concerning the victims of crime — Final Study," Sofia, Bulgaria. July 2009. Available at: http://ec.europa.eu/justice/news/consulting_public/0053/bg_study_on_victims_07_2009_final_en.pdf.

²⁶European Council, Council Conclusions on a strategy to ensure fulfillment of the rights of and improve support to persons who fall victim to crime in the European Union, 2969th Justice and Home Affairs Council Meeting, Luxembourg, 23 October 2009.

²⁷Article 82(2)(c), Title V, Part III of the TFEU, Area of Freedom, Security and Justice.

²⁸*Official Journal of the European Union*, C 115 of 4.5.2010.

²⁹See *ibid.* at section 2.3.4.

³⁰Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011/36/EU).

Victims.³¹ The latter envisions that a judicial decision (within a criminal proceeding), issued by the competent authority of an EU Member State, containing protective measures shall have direct and immediate applicability in any other EU Member State.

28. Since the 1980s, the Council of Europe has integrated the victims' perspective in its work in the field of the fight against crime and has paid particular attention to States' capacity to restore the situation of victims of acts of terrorism. It has produced and updated a set of legal instruments to assist States in dealing with victims' needs, including:

- *Convention on the Prevention of Terrorism*,³² which establishes in Article 13 that parties shall adopt measures to protect and support the victims of terrorist acts committed within their own territory, including financial assistance and compensation for victims and their close family members.
- *Guidelines on the Protection of Victims of Terrorist Acts*,³³ which recognizes the suffering of victims of terrorist acts and their close family, and states that these persons should be shown material and international solidarity and support.

Moreover, Recommendation Rec(2006)8 of the Committee of Ministers to Member States on Assistance to Crime Victims,³⁴ outlines the responsibilities of States towards victims of crime, including victims of acts of terrorism. Nearly all of its provisions are applicable to victims of acts of terrorism.

29. Similar to the EU, the Commonwealth of Independent States (CIS) has established a legislative framework which, though not focused solely on supporting victims of acts of terrorism, includes provisions reflecting the need for their rights to be strengthened. On 25 May 2006, CIS Heads of State adopted a Concept on the development and improvement of social and medical services for victims of acts of terrorism, war veterans, and participants of local conflicts and peacekeeping operations in the CIS (2006–2010).³⁵ According to information provided by CIS, since 2006 49 legal acts, 12 presidential decrees, 22 government orders and 26 national programmes have been developed and adopted on the national level pursuant to this Concept.³⁶

30. The Organization for Security and Cooperation in Europe (OSCE) underlined in its Permanent Council decision No. 618 of 1 July 2004 the need to strengthen solidarity among participating States for victims of acts of terrorism.³⁷ In particular, participating States were invited to explore the possibility of introducing or enhancing appropriate measures, subject to domestic legislation, for support to victims of acts of terrorism and their families, including financial support. The need to strengthen solidarity was further

³¹This Directive is being developed. As of June 2011 it is still a proposal.

³²Council of Europe, Council of Europe Convention on the Prevention of Terrorism, 16 May 2005, ETS No. 196.

³³Council of Europe, Guidelines on the Protection of Victims of Terrorist Acts, Committee of Ministers, 917th meeting of the Ministers' Deputies, March 2005. See also Council of Europe: Committee of Ministers, Recommendation of the Committee of Ministers to Member States on Assistance to Crime Victims, 14 June 2006, Rec(2006)8.

³⁴Adopted by the Council of Europe Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies.

³⁵Available in Russian at <http://www.cis.minsk.by/webnpa/text.aspx?RN=N90600046>.

³⁶Available in Russian at <http://www.cis.minsk.by/webnpa/text.aspx?RN=N90600607>.

³⁷OSCE Permanent Council, Decision No. 618, Solidarity with victims of terrorism, 513th Plenary Meeting.

supported by some member States at the OSCE High-Level Meeting on Victims of Terrorism in September 2007, which recognized that internationally recognized minimum standards of support to victims of terror could be drafted.³⁸

31. The 2008 Santiago Guidelines on Victim and Witness Protection,³⁹ developed by the Ibero-American Association of Public Prosecutors, contain concrete recommendations for General Attorneys of the Association to facilitate the promotion of the conditions needed within prosecutors' offices to protect victims of crime. The Guidelines aspire to assist prosecutors in contributing to the effective recognition of the universally-recognized rights of victims and witnesses, and to assume a public and internal commitment in this regard.

32. Under the Guidelines, a victim is defined as any individual who has suffered harm as a result of a crime, and as such has varying levels of risk and protection needs. The Public Prosecutor's Offices shall seek to enhance the creation of victim care mechanisms that meet, at a minimum, certain standards established in the Guidelines. The Public Prosecutor's Offices must develop efficient mechanisms to provide protection to the victims during proceedings in such a way that a secondary victimization is prevented.

33. Pursuant to the Guidelines, victims must receive adequate information regarding their status, their rights, and the channels that they may use in order to receive the assistance to which they are entitled. Furthermore, they have the right to be heard in proceedings. The Public Prosecutor's Office must ensure the appropriate training and specialization of the personnel in charge of protection of the victims, and inform them of the means of redress that exist in their legal institutions in order to facilitate mediation and restitution agreements.

34. Guideline number 12 addresses victims of terrorism, war, social violence and similar offences. Although there is no single definition of the concept of such victims, they do share certain common elements that affect rights protected by criminal law. Additionally, an essential objective of the proceedings shall be the achievement of the reintegration of the victim to the conditions in place at the time of the crime. The drafters of the Guidelines also emphasized the importance of international cooperation.

35. The XIV Ibero-American Judicial Summit approved the "Brasilia Regulations Regarding Access to Justice for Vulnerable People." The Regulations offer recommendations to Member States to improve the access to justice of vulnerable people.

36. "Vulnerable people" are defined as people who find it especially difficult to fully exercise their recognized rights due to cultural, physical or psychological reasons, caused by, for example, "victimization." A "victim" is defined as any physical person who has suffered damages caused by a criminal offence, including the immediate family or the people in charge of the direct victim. The relatives of victims who died violently are considered "victims in a vulnerable situation" if they face limitations in avoiding or mitigating the damages derived from criminal offences (primary victimization) or in their contact with the justice system (secondary victimization).

³⁸Final Report on OSCE High-Level Meeting on Victims of Terrorism. 13-14 September 2007, available at: <http://www.osce.org/odihr/30781>.

³⁹See <http://www.aiamp.net/sistema/UserFiles/File/GUIAS%20Ingles.6%20de%20octubre.%20pdf.pdf>.

37. The Regulations recommend the promotion of a legal culture to provide both the basic information on the procedures and requirements to guarantee effective access to justice, and access to quality and specialized technical legal support, free of charge, if possible. This requires the training and specialization of judges, prosecutors, public defenders, attorneys and other civil servants who work in the Justice Administration System. In addition, the Regulations propose simplifying the requirements and forms, increasing the speed of proceedings, increased intra- and inter-institutional coordination, and the specialization of professionals.

38. During the proceedings, vulnerable persons shall be informed of all the aspects concerning them, including the risks that exist and that may endanger their security. They shall also receive professional assistance, including psychological support. Measures shall be taken so that the vulnerable person avoids contact with the accused person, and judicial proceedings shall be held in a timely manner. The privacy and data of the vulnerable person shall also be protected. International cooperation, research and the development of sectoral good practices handbooks, as well as the dissemination of the recommendations is encouraged.

D. United Nations Global Counter-Terrorism Strategy

39. The United Nations Global Counter-Terrorism Strategy,⁴⁰ adopted in September 2006, is a comprehensive instrument intended to enhance coordination of national, regional and international efforts to counter terrorism. The Strategy takes a holistic approach addressing four pillars: I) Measures to address the conditions conducive to the spread of terrorism; II) Measures to prevent and combat terrorism; III) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and IV) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

40. Support for victims of acts of terrorism is specifically highlighted under Pillars I and IV. The dehumanization of victims of acts of terrorism is covered in Pillar I. It encourages Member States to consider putting in place national systems of assistance that would promote the needs of victims of acts of terrorism and their families and facilitate the normalization of their lives.⁴¹ Pillar IV stresses the need to promote and protect the rights of victims of acts of terrorism.⁴²

41. The need to enhance Member States' support for victims of acts of terrorism is no longer simply a matter of good conscience and human solidarity, but also an inherent part of a global counter-terrorism policy. This includes enhancing the role and visibility of victims in the criminal justice response to terrorism as part of the larger United Nations effort to support victims of acts of terrorism.

⁴⁰Adopted in the form of a General Assembly resolution and annexed Plan of Action on 8 September 2006 (A/RES/60/288). It has been reviewed and updated by the General Assembly on 5 September 2008 (A/RES/62/272) and on 8 September 2010 (A/RES/64/297).

⁴¹United Nations Global Strategy, Annex, I, par. 8.

⁴²United Nations Global Strategy, Annex, IV.

42. The present publication focuses on the criminal justice response to support victims of acts of terrorism as a critical aspect of State support to victims, which also constitutes an integral part of the United Nations' system-wide work in support of victims, led by the United Nations Counter-Terrorism Implementation Task Force (CTITF), thus ensuring a holistic approach across the United Nations system.

43. The CTITF was established in 2005 to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations and consists of 31 United Nations entities and other international organizations, including UNODC. Mandated by the Strategy to support its implementation, CTITF has initiated a number of initiatives in support of victims of acts of terrorism.⁴³

44. Specifically, in September 2008, United Nations Secretary-General Ban Ki-moon convened a Symposium on Supporting Victims of Terrorism. The Symposium brought together for the first time victims, experts, and representatives of Member States, regional organizations, civil society and the media at the global level. The purpose of the Symposium was to give a face and a voice to victims of acts of terrorism, to provide a forum for discussing concrete steps to assist victims in coping with their experiences, and to share best practices.

45. The Symposium resulted in a report which set out eight recommendations by participants on how to improve support to victims of acts of terrorism:

- Provide a virtual networking, communication and information hub for victims of acts of terrorism, Government officials, experts, service providers and civil society.
- Strengthen legal instruments at both international and national levels, providing victims of acts of terrorism with legal status and protecting their rights.
- Establish easily accessible health services that can provide victims with comprehensive support over the short, medium and long term.
- Create an international rapid response team for victims' support.
- Provide financial support to victims.
- Improve the capacity of the United Nations to assist survivors and families of staff killed or injured in terrorist attacks against it.
- Engage in a global awareness campaign supporting victims of acts of terrorism
- Improve media coverage of victims of acts of terrorism.

This publication contributes to the implementation of the recommendation to strengthen legal instruments at both international and national levels in support of victims.⁴⁴

⁴³The report is available at: <http://www.un.org/terrorism/pdfs/UN%20Report%20on%20Supporting%20Victims%20of%20Terrorism.pdf>.

⁴⁴Furthermore, this publication will also complement the CTITF endeavours to develop a Compendium of Best Practices on Supporting Victims of Terrorist Crimes and other related Offences as defined by National and International Law. The compendium was conceptualized during an expert workshop co-organized by the CTITF and the International Institute of Higher Studies in Criminal Sciences (ISISC) in Siracusa, Italy, on 2-3 December 2010. In addition, the CTITF has commenced a study on financial support to victims of terrorism, as well as the preparation for the establishment of a web portal, as part of the main CTITF website for supporting victims of terrorism. Both initiatives are follow-ups to the Symposium.

E. Criminal justice response and broader assistance to victims of acts of terrorism

46. Of the various responses to terrorist acts, the criminal justice response is the only effective, long-lasting reaction, consistent with the rule of law, to a phenomenon that ultimately will not receive a name other than a criminal offence. In strengthening the effectiveness of their criminal justice systems, in particular regarding their ability to cope with large-scale crimes, Member States should pay specific attention to the support afforded to victims and to the particular challenges faced by victims of acts of terrorism.

47. This enhanced focus on victim support from a criminal justice point of view is not meant to reduce the importance of broader assistance to victims of acts of terrorism, but rather to foster, for example, the training of police and justice personnel to ensure proper and prompt aid compatible with the needs of victims. Effective victim support also requires, beyond criminal justice proceedings, that the necessary material, medical, psychological and social assistance, including information on available health and social services, is available at the national level.⁴⁵ The criminal justice system and its role in supporting victims of acts of terrorism should be part of a broader action for assistance and support to victims in all aspects.

48. It should be noted that issues pertaining to victims of acts of terrorism are included within the realm of victims of crime in general. Victims are not a homogeneous group of individuals that should receive a “fixed” package from the State. States offering assistance and support should endeavour to tailor measures to the needs of specific victims or groups of victims (individually or, where required, collectively). In this sense, the protection of their rights should be provided once the victims’ needs have been heard. It is important to emphasize the intrinsic role that the respectful treatment of victims of acts of terrorism plays in a national strategy to prevent or minimize further conditions conducive to terrorism and effects thereof, beyond the crucial role of victims in ensuring effective investigations and prosecutions of terrorist cases.

49. The relationship between victims of acts of terrorism, victims of abuse of power and, in particular, victims of human rights violations, is evident; nonetheless, these categories are not directly associated. At a minimum, national systems and schemes addressing these kinds of violence must complement and reinforce each other with a view to protecting individual rights. However, selecting the most appropriate protective regime would depend on the specific circumstances.

50. The similarity of the situation of victims of acts of terrorism with the victims of war must also be emphasized, not only with the regard to the nature of physical and psychological harm suffered, but also in terms of reparations arising out of criminal proceedings, since the prosecution of war crimes and crimes of terrorism must be implemented in compliance with national and international legal frameworks and relevant mechanisms. Furthermore, this similarity is particularly evident in the case of an act of terrorism committed in armed conflict since this act would be deemed a war crime.

⁴⁵Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), paras. 14-17.

51. Respect for the rights of victims of acts of terrorism in the criminal justice system encompasses not only the trial stage, but also the investigative and sentencing phases and beyond, with a view to preventing double victimization. Nonetheless, assistance to victims must also be tailored to the structures of the legal and social system of the relevant State. For instance, contributors to this publication emphasized that, in the event of a terrorist act, victims should have access to free medical treatment as evidence of State support for their human rights. However, in systems such as the United Kingdom's, where access to medical treatment is free for the population as a whole, any person requiring "Accident and Emergency" medical treatment would be entitled to it simply by virtue of the "free" National Health Service. In this regard, it could be discussed whether treatment should be given to all under the same conditions as a consequence of the principle of non-discrimination, or whether there might be a case for prioritizing the medical treatment of victims of acts of terrorism as a means of reflecting State support for their particular needs.

F. Different national legal systems and implications for victim support

52. The observation of national legislation and practice on the treatment of victims in the criminal justice system is obviously not an abstract exercise and must respect the specificities of national systems. The choice of predominantly adversarial or inquisitorial procedural models, for example, may determine the form of victim participation and, more generally, the role of victims in the criminal trial. Equally, the scope of application of the right to compensation varies considerably, taking into account the relationship with insurance law. Administrative law may complement criminal procedural law or even be the main normative framework on support to victims. The present publication focuses on criminal justice aspects, but may refer laterally to other legal areas to convey the choices of Member States in implementing international standards and norms on victim support.

53. It should be noted that many legal systems have statutory provisions concerning the rights of victims. This is the case, for example, in Canada and the United States, where there is also a civil society movement endeavouring to obtain constitutional rights for victims. In adversarial models, in particular, where the equality of arms between prosecution and the defense is of central significance, victim participation is limited in order to secure respect for the rights of the accused, which are often of constitutional rank, in conformity with international standards.⁴⁶ The present compilation of examples of national legislation shows that several Member States deal with victims' rights and enforcement mechanisms at the statutory level.

⁴⁶It must be observed that the United Kingdom does not have a written constitution and therefore the distinction between statutory and constitutional rights does not arise in England and Wales. It must be mentioned that its unwritten rules (i.e. case law) do not specifically acknowledge victims' rights. As case law, in this sense, is able to set precedents from which many subsequent judicial decisions flow, it must be noted that historically more attention has been given to the rights of defendants than to the rights of victims.

III. Incorporation of rights of victims of acts of terrorism in the criminal justice system at the national level

54. The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁴⁷ is the most relevant international document setting standards for the treatment of victims of crime and abuse of power. In legislation and practice, however, most of its provisions are still far from being fully implemented. In addition to the rights of victims of crime, during or related to criminal proceedings, that have traditionally been set forth in statutes by Member States, the present publication shows that not much practice dealing specifically with victims of terrorist acts has been collected as a result of the implementation of those rights. Even in regions of the world where specific procedural legislation in support of victims has been developed, there are no studies or data indicating to what extent and how those regional standards are implemented.

55. A quantitative or even qualitative survey of actual implementation of rights of victims of acts of terrorism would thus not be a realistic undertaking, in particular considering that most countries in the world adopt rather generic legislative frameworks. Therefore, this publication contains a collection of legislation and practice in a thematic area that should still undergo further development and in-depth examination.

A. Recognition of the status of victims within the criminal justice system

1. General considerations

56. A victim-centered approach to the criminal justice system is based on the assumption that prosecuting and punishing criminals, including suspects of acts of terrorism, is not sufficient to ensure that justice is served and that the response of the criminal justice system is appropriate. A system that merely punishes those persons convicted for criminal acts, while simultaneously ignoring the needs and interests of victims, cannot be considered as fulfilling its objectives in light of the current stage of international law and development. Additionally, support to victims of acts of terrorism is the most important contribution of States to counter the dehumanization of victims and may be seen as a central component of anti-terrorist strategies. Thus, integrating victims' needs and interests into criminal trials is critical. This recognition requires that policy and legislative decisions be adopted in order to grant certain persons the status of victims.

57. Considerations in this process include defining who is considered to be a "victim," as well as the meaning of "appropriate" recognition of this status. In cases of multiple victims and large-scale damages, it may not be a simple task to draw the line between direct victims and persons of the public which may have been negatively impacted in

⁴⁷United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly, 29 November 1985 (A/RES/40/34).

some way by the criminal act, but who would not necessarily have a role in criminal proceedings. The concept of indirect victims finds its place in several national legal provisions. Furthermore, certain terrorist offences are formulated as crimes against the State, which would turn the State into the direct “offended,” notwithstanding the fact that individuals suffering harm would still have an interest in the criminal investigation and trial.

58. In paragraph 1 of the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the term “victims” is defined as: “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 operative within Member States, including those laws proscribing criminal abuse of power.” This definition comprises all situations where people are victimized as a result of criminal offences committed by terrorist organizations and individuals.

59. When the victimization is caused by violations of human rights law, international humanitarian law, or refugee law, the definition provided in paragraph 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law is also relevant:

“[V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

60. Within the Council of Europe, Recommendation Rec(2006)8 of the Committee of Ministers provides a definition of a victim consistent with the United Nations standards, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It also provides a definition for repeated and secondary victimization, which is of particular importance in the context of assistance to victims of acts of terrorism.

61. Several pieces of national legislation utilize the term “victims” without defining it. This appears to be adequate only in non-complex situations in which the number of victims of a criminal offence is quantifiable and limited.

62. It should be noted that the normative framework of the International Criminal Court includes a broad definition of “victims,” describing them as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.” Victims “may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”⁴⁸

⁴⁸Rule 85, Rules of Procedure and Evidence of the International Criminal Court.

63. The scope of the definition of victims for the purpose of one's entitlement to rights under national legislation is a recurring question, since the scope may vary when it comes to participation in trial proceedings, access to information, protection or compensation. The example of the International Criminal Court, whose constitutive Statute has introduced innovative measures of support to victims of the crimes under its jurisdiction, illustrates the need for differentiated criteria to qualify as a victim for the purposes of intervention in trial, protective measures or eligibility for reparation.⁴⁹

64. As international and regional standards repeatedly state, the recognition of victims' rights does not prejudice any of the rights of defendants. It is self-evident that an accused person is entitled to a fair trial regardless of public outcry. It is of utmost importance to respect the presumption of innocence of accused persons. Defining victims of specific acts of violence implies, to a certain extent, a pre-judgment over the actual occurrence of those acts, which in most events is not even under discussion. However, it must not imply pre-judging the liability of certain persons or organizations.

65. The balance between the much-needed protection of the rights of the accused — including the presumption of innocence, equality of arms and access to good quality defence services — and the rights of victims must be given special attention in order to ensure a fair trial. It is also necessary to prevent secondary victimization, which “occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victims”.⁵⁰ Survivors of terrorist acts and family members suffer losses and become more vulnerable as a consequence of the criminal act. Therefore, the State's institutional framework, including its criminal justice system and its administrative organs tasked with assisting victims, must protect those victims from unnecessary additional burdens.

66. Generally, judicial authorities need to recognize that the person or persons in question have suffered harm as a direct consequence of the criminal conduct for which the accused is charged so that they can appear as victims in criminal proceedings, including trial. This recognition by criminal justice and law enforcement officials that victimization has taken place is the first step. While it can be expected that officials leading investigations or prosecutions may interrogate surviving victims of terrorist acts, this should not prejudice their status as victims or lead to secondary victimization. If an investigation is necessary to determine whether victims really suffered harm as a result of criminal acts, victims should be questioned in a careful manner. Furthermore, the question of the status of the victim should not be directly or solely dependent on the determination of guilt of the accused.

⁴⁹See Article 68 ICC Statute on the protection of the victims and witnesses and their participation in the proceedings, and Article 75, on reparation. For a more in-depth examination of the challenges posed by a large number of victims and their applications under the framework of the ICC, see Carsten Stahn, Héctor Olásolo and Kate Gibson, Participation of victims in Pre-Trial proceedings of the ICC (2006); and Anne-Marie de Brower and Marc Groenhuijsen, The role of victims in international criminal proceedings (2009). See also “Summaries of public ICC Decisions on Victims 2005-2009”, available at: <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Victims/Summaries+of+public+ICC+Decisions+on+Victims>. Finally, see the recently released manual of The Office of Public Counsel for Victims of the Court titled *Representing Victims before the International Criminal Court: A Manual for Legal Representatives*, available at: <http://www.icc-cpi.int/iccdocs/PIDS/tmp/Representing%20Victims%20before%20ICC.PDF>.

⁵⁰UNODC, *Handbook on Justice for Victims* (1999), p. 9.

67. To a great extent, specific legal recognition of victims of acts of terrorism has been limited to the area of compensation, rather than participation in criminal procedures or victims' protection (which follows a case-by-case approach), as can be observed in this publication.

68. For the purpose of compensation, a number of States have followed a model for victims of acts of terrorism along the lines of existing models of compensation for military and civilian victims of war.⁵¹ This may be regarded as a consequence of the more general duty of States to protect individuals on their territories, as well as a recognition of the value of the involuntary sacrifice of victims on behalf of the State, which is the most frequent target of terrorist acts. This kind of recognition for the purpose of reparation would coincide with other more symbolic modalities of support to victims not directly related to the criminal justice system, such as the establishment of remembrance days and the awarding of medals, which have proven to be effective means for comforting victims of acts of terrorism and for showing recognition by the State.

69. Of note is, for example, the French system, in which participation of victims of acts of terrorism in the criminal proceedings is absolutely disconnected from the compensation that may be granted for the injuries they have suffered. In addition, victims of an act of terrorism do not lose their status as a victim simply because they have received financial compensation. Moreover, the French system also considers as victims "those involved," i.e. people who witnessed an act of terrorism and who have suffered psychological trauma as a result.

2. National practice and legislative provisions

Algeria

70. Under Algeria's Code of Criminal Procedure, a victim is anyone who has personally suffered damage directly caused by a crime.⁵² A victim of an act of terrorism is defined as any person who has died or suffered damage to their person or property due to an act committed by a terrorist or terrorist group.⁵³ The victim of a national tragedy is also defined as any person reported missing in the context of a national tragedy.⁵⁴

Armenia

71. Articles 58 and 59 of the Armenian Criminal Procedure Code of 1998 address the injured party (the victim; the Code also deals with civil plaintiffs, defined in Article 60)

⁵¹That is the case of France, Italy and Spain, where separate administrative bodies have been put in place (see Albrecht and Kilchling, *Victims of terrorism policies: should victims of terrorism be treated differently?* p. 25). See also the Concept of Heads of State of the Commonwealth of Independent States of 2006 (available at: <http://www.cis.minsk.by/webnpa/text.aspx?RN=N90600607>), treating victims of terrorism on the same level as war veterans and participants in internal conflicts and peacekeeping operations, for the purpose of assistance. In France, the decision to grant victim status to civil war victims of terrorism was motivated by the desire to mark the "reconnaissance de la Nation" on them and the similarity of the nature of injuries suffered due to an act of terrorism with those suffered as a result of an act of war. In doing so, Article 26 of Law No. 90-86 of 23 January 1990 (*Official Gazette* No. 21 of 25 January 1990, p. 1009) allows victims of terrorism to enjoy the rights and benefits traditionally provided to victims of civil war. See paragraph 340 of this publication.

⁵²Algerian Code of Criminal Procedure, Article 2.

⁵³See Article 2 of Decree 99-47 of 13 February 1999.

⁵⁴See Article 27 of Ordinance No. 06-01 of 27 February 2006 on the implementation of the *Charte pour la Paix et la Réconciliation Nationale*.

and their rights and obligations. Under Article 58, the injured party is defined as follows:

1. The person is recognized as the injured, in respect to whom bases are available to suppose, that a moral, physical or proprietary damage has been caused to him/her directly by a deed forbidden by the Criminal Code. A person also is recognized as aggrieved, to whom moral or physical damage might be directly caused, if the deed, forbidden by the Criminal Code would have been finished.
2. The decision on recognition as an injured is passed by the body of inquiry, the investigator, the prosecutor or by the court.

72. Article 80 allows for the possibility for the body of inquiry — either the investigator, the prosecutor, or the court — to recognize close relatives of a deceased or incapacitated victim as successors of the injured party in cases in which they express the wish to exercise the rights and obligations of the victim during the criminal proceedings. The successor enjoys all rights and bears all obligations of the victim, except the right to give evidence and other rights which are personal to the victim.

Cameroon

73. Sections 385 and 386 of the Code of Criminal Procedure of Cameroon consider the victim as a civil party who has suffered injury as a result of the commission of an offence, and allow him or her to intervene in the procedure to seek compensation. The victim is entitled to make an oral or written application for damages in court. In addition, the Presiding Magistrate is obligated to ask the victim to exercise this right. If the victim chooses to withdraw or not to pursue the claim, he or she retains the right to bring a civil action.

Canada

74. In Canada, section 2 of the Criminal Code, for the purpose of interpretation, considers that victims “include the victim of an alleged offence.” Therefore, it is not necessary that there be a judicial finding of guilt against an accused for someone to be considered a victim of a terrorist offence. For the purposes of victim impact statements, a victim is defined in section 722 (4) of the Canadian Criminal Code as follows:

(4) For the purposes of this section and section 722.2, “victim”, in relation to an offence;

(a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

This definition has been applied broadly by Canadian courts to allow victim impact statements to be presented at the sentencing hearing by family members, in addition to the direct victim. The courts have interpreted this definition to include organizations.

75. The Corrections and Conditional Release Act (CCRA) which governs the Correctional Service of Canada (CSC), which is responsible for supervising federal offenders in custody and in the community, and the Parole Board of Canada, which decides whether to release offenders back into the community to serve the balance of his or her sentence, also contains a definition of victim. Section 2 of the CCRA, states that “victim:”

(a) means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence, and

(b) where the person is dead, ill or otherwise incapacitated, the person’s spouse, an individual who is cohabiting, or was cohabiting at the time of the person’s death, with the person in a conjugal relationship, having so cohabited for a period of at least one year, any relative or dependant of the person, or anyone who has in law or fact custody or is responsible for the care or support of the person.

Section 26(3) of the CCRA also allows CSC to consider persons as victims if they were harmed and a complaint was filed, even if the offender was not prosecuted or convicted of the offence.

76. In Canada, the delivery of victim services is the constitutional responsibility of provincial and territorial governments. Victims are defined broadly in provincial or territorial legislation to include both direct victims and members of their families.⁵⁵

Colombia

77. On 10 June 2011, the Colombian government enacted the Law on the Protection of Victims and Land Restitution. The Law, “by which assistance and reparation measures are established for victims of human rights violations and breaches of international humanitarian law,” constitutes a milestone in the efforts devoted to peacebuilding at a national and comprehensive level, and a complement to the existing legal framework related to the national armed conflict.

78. Previous legislation and national efforts in Colombia have historically focused on those responsible for human rights violations and armed conflict to overcome the conflict situation in the country. The Law on the protection of victims represents the recognition of the victim as a key player for progress in peace in the country, and implies protection and promotion of human rights for all victims related to the armed conflict, including reparation measures for some of them.

79. According to the international and transitional framework, the Law considers as victims people who have suffered human rights violations since 1 January 1985 within

⁵⁵ See, for example, Ontario’s Victims’ Bill of Rights which defines victims as the direct victim as well as the child, parent, dependant or spouse of a deceased direct victim, available at: http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/95v06_e.htm.

the armed conflict situation. The Law intends to create exceptional mechanisms to assist and provide reparation for victims who have been subjected to massive and systematic human rights violations and it does not intend to replace permanently the State's ordinary instruments that assist victims of other general crimes.

80. Article 132 of the Code of Criminal Procedure defines victim as, for the purposes of the procedural Code, "natural or legal persons and any other subjects of law that, individually or collectively, have suffered a direct damage as a consequence of the offence." The same provision determines that qualification as a victim is independent of the detention, prosecution or condemnation of the perpetrator, and of the existence of a family relationship with him or her.

81. The Law on Justice and Peace (Law 975/2005) was enacted in order to facilitate the demobilization of members of paramilitary groups in the country as well as armed groups outside the law. It seeks to achieve prosecution of members of armed groups that refused to demobilize, at the same time making efforts to consider the needs of victims.⁵⁶ According to the provisions of Law 975/2005, the right to truth is a fundamental and indispensable right that must be effective. Judicial investigations pursuant to this law must promote the investigation of facts involving the victims and inform their family members, with particular attention to the whereabouts of victims of kidnappings and forced disappearances. The Law also foresees the duty to maintain historical knowledge of the causes, developments and consequences of paramilitary actions (right to memory). As an exception to the right of public access to historical files, the law identifies: the need to secure the right to privacy of young victims and victims of sexual violence; the need to prevent additional unnecessary damage to victims, witnesses and other persons; and the need to prevent any danger to the security of victims. Law 975/2005 also discusses the right of victims to justice and follows the rights guaranteed in the Code of Criminal Procedure.

82. Colombia has been supplying humanitarian assistance and compensation, health assistance, housing, subsidized credit through second-tier banks (Bancoldex), education and insurance policies to cover the use of public service vehicles. In terms of health services, under Article 168 of Law 100 of 1993, all public and private entities that supply health services are obligated to provide initial emergency assistance to all people, regardless of their ability to pay. The costs of these services will be paid by the Solidarity and Guarantee Fund.

France

83. Insofar as victims are compensated through a Guarantee Fund, the civil action does not seek the payment of compensation, but rather is used as a tool to promote recognition of victims' rights and to fight against terrorism.

84. According to Article 2-9 of France's Code of Criminal Procedure "[a]ny association lawfully registered for at least five years on the date of offence proposing through its constitution to assist the victims of offences may exercise the rights granted to the civil

⁵⁶A decision of 18 May 2006 by the Constitutional Court of Colombia must be considered in the interpretation of this Law.

party in respect of the offences falling within the scope of Article 706-16, where a prosecution has been initiated by the public prosecutor or by the injured party.” The right of associations to intervene as a civil party on behalf of victims was initiated at the request of the association *SOS Attentat*.⁵⁷ It encompasses the right to be a civil party in all proceedings related to crimes related to terrorism (including murder, attempted murder and aiding and abetting and financing) as well as proceedings related to crimes of criminal association in connection with terrorist acts, such as terrorist networks.

85. *SOS Attentat*, *SOS Terrorisme*, supported the victims of numerous acts of terrorism by becoming a civil party with them in criminal proceedings and thereby allowed them better access to justice. By grouping the victims with the same lawyer, the association:

- Eased their access to information on the status of the process-fostered relations with the judge;
- Helped the victims become civil parties and in all other paperwork, for example, by centralizing applications for legal aid; and
- Organized information briefings both before the trial and during the trial.

The association also made available to victims a network of general practitioners and specialists including psychologists.⁵⁸

86. Also, in some cases the procedures have led to trials *in absentia*.⁵⁹ The French criminal justice system provides for trial by default. Although this mechanism cannot fully satisfy the victims of a terrorist act, the reconstruction of the crime in court adds to their recognition as victims.

87. The French Code of Criminal Procedure also provides for a system of extraterritorial jurisdiction of the French criminal courts for certain acts of terrorism specifically listed in Articles 689 to 693. In conformity with obligations under relevant international instruments, the implementation of this procedure allows for harmonized access to criminal proceedings for victims of the same act of terrorism, regardless of their nationality.

Indonesia

88. In general terms, regulations on witnesses and victims are not new within the Indonesian legal system, which recognizes, to a limited extent, the status of victims of crimes in general and the role of witnesses. For example, see Law No. 8/1981 on the Criminal Procedural Code, Law No. 39/1999 on Human Rights, Law No. 31/1999 on Anti-Corruption,⁶⁰ Law No. 26/2000 on Human Rights Courts,⁶¹ Law No. 30/2002 on the Commission on Corruption Eradication,⁶² among other legislation.

⁵⁷Granted by the Act of 6 July 1990 (Article 2-9 of the Code of Criminal Procedure).

⁵⁸For example, the association has accompanied more than 200 civil party victims to the trial of the authors of several bombings that occurred in Paris in 1995.

⁵⁹As in the case of conviction *in absentia* of six Libyan nationals in 1999 in the case of the UTA DC-10 (decision of the Court of Paris Assize).

⁶⁰See Article 31, Law No. 39/1999 on Human Rights, Law No. 31/1999 on Anti-Corruption.

⁶¹See Article 34, Law No. 26/2000 on Human Rights Courts.

⁶²See Article 34, Law No. 30/2002 on the Commission on Corruption Eradication.

89. Since 2003, Indonesia has adopted legal instruments specifically related to victims of terrorism, namely: Law No. 15/2003 on Combating Terrorist Acts; and Government Regulation No. 24/2003 on Procedures for Protecting Witnesses, Investigators, Prosecutors, and Judges in Criminal Acts of Terrorism. Law No. 15/2003 provides State protection for witnesses, investigators, prosecutors and judges, and their families.⁶³ This protection is to be provided against threats to the physical and mental well-being, and property of those individuals before, during, and after trial.⁶⁴

90. Currently, there is no specific definition of “victims” in the Criminal Procedural Code. The Code only provides for a definition of “witnesses” as those who can provide testimony about a criminal act that happened to the witness or that has been heard or seen by the witness. Nevertheless, the Code recognizes the concept of restitution and rehabilitation with regard to a criminal act for which suspects have been arrested, detained, and prosecuted before the court, but are later found not guilty by the final verdict of the court.

91. Article 1.2 of Law No. 13/2006 on Witness and Victim Protection defines victims as “people who have suffered from physical and mental harm, and/or economic loss due to a violation of criminal laws.” Although the aims of the Law are limited to “providing a sense of safety to Witnesses and/or Victims in presenting their testimony in a court proceeding,”⁶⁵ Article 3 of the Law states that this protection is based on respect for the inherent dignity and worth of a person, their sense of safety, access to justice, freedom from discrimination, and right to legal reprieve. This Law does not make a distinction between witnesses or victims based on their nationality. Therefore, in general, either Indonesian citizens or foreign citizens may be considered as witnesses and/or victims for the purpose of the law.

92. Support for victims of acts of terrorism should not be limited to judicial measures; broader recognition is socially relevant, which depends on political will. In the 2002 Bali Bombings, the Indonesian Government worked with the support and assistance of international governments and organizations to immediately respond to the incident, including by locating and bringing survivors to safety, and carrying them to the closest medical facilities by any means available. NGOs and volunteers from all sectors of society, including tourists, also helped in hospitals to nurse and comfort the wounded victims. Basic needs such as food, clothing and shelter were provided, and trauma counseling was established for victims, their families and those affected by the bombing. A memorial was built on the site of the destroyed Sari places in Bali, dedicated to those who lost their lives in the bombing. A similar tragedy took place in Bali in 2005. Every year, commemoration services are organized at the site to remember the events.

Kenya

93. Kenya has no legislation on terrorism and therefore relies on provisions of the Penal Code to prosecute terrorism related offences. Victims of crime are recognized in

⁶³See Article 33, Law No. 15/2003 on Combating Terrorist Acts.

⁶⁴See Article 34, Law No. 15/2003 on Combating Terrorist Acts.

⁶⁵See Article 4, Law No. 13/2006 on Witness and Victim Protection.

the Criminal Procedure Code (CPC), especially in murder trials, where those affected are given an opportunity to address the court on how they have been affected by the crime. For the purposes of victim impacts statements, victims are defined in Article 329 A of the CPC as follows, when the offence results in the death of, or actual physical bodily harm to, any person:

“family victim,” in relation to an offence as direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim’s immediate family [...];

“member of the primary victim’s immediate family” means:

- (a) the victim’s spouse;
- (b) the victim’s de facto spouse, being a person who has cohabited with the victim for at least 2 years;
- (c) a parent, guardian or step-parent of the victim;
- (d) a child or step-child of the victim or some other child for whom the victim is the guardian; or
- (e) a brother, sister, step-brother or step-sister of the victim;

“personal harm” means actual physical bodily harm, mental illness or nervous shock;

“primary victim”, in relation to an offence, means:

- (a) a person against whom the offence was committed;
- (b) a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned, being a person who has suffered personal harm as a direct result of the offence;

“victim” means a primary victim or a family victim;

Mongolia

94. Article 42.1 of the Mongolian Criminal Procedure Law defines victim as “a person to whom moral, physical or property harm is caused by a crime.” In accordance with Article 5.1.9, victims and their representatives may participate in criminal trials, together with the suspect, accused, defendant, convict, his or her legal representative, defence counsel, civil defendant and civil plaintiff (which may also be a victim). If the victim is deceased or is not able to express his or her wishes, or is a minor, a close relative shall have the right to participate in the proceedings.⁶⁶ Article 18.1 sets forth the right of victims (as well as other participants) to receive legal assistance.

⁶⁶See Article 23.1, Mongolian Criminal Procedure Law.

Peru

95. In Peru, the criminal legislation acknowledges the rights of all victims with no distinction based on the nature of the criminal offence which resulted in them becoming victims. The Criminal Code of 1991 and the Code of Criminal Procedure (CdPP) of 1940 applied to the civil object (*objeto civil*) of the Peruvian criminal procedure. Based on these rules, the Peruvian criminal procedure system fulfils one of its main functions: to protect the victims and to guarantee civil redress of the rights violated by the crime committed. Title VI of the Criminal Code of 1991 regulates the Civil Redress (*Reparación Civil*) and Ancillary Questions. Title VI, Article 92, establishes that civil redress is determined together with the sentence, which means the sentence will be pronounced by the judge, taking into account the magnitude of the damage caused and the harm suffered. Consequently, not only does all crime lead to a sentence but it also establishes the perpetrator's civil liability. In addition, Article 93 determines the extension of the civil liability, including (a) the return of the goods and (b) the compensation for damages.

96. In this respect, the Peruvian Supreme Court's case-law established in Plenary Session No. 6-2006-CJ.116 explained that: "[t]he national criminal procedure, regulated by the Code of Criminal Procedure, combines the criminal claim with the civil claim. Therefore, the criminal procedure fulfils both a criminal and a civil objective. It is categorically stated by Article 92 of the Criminal Code, and the fulfillment of these objectives go beyond the victim's interest — the victims have the right to be compensated for the damages caused by the commission of the crime, while the Public Prosecutor has the authority to bring criminal charges against alleged perpetrators as provided in Article 1 of the Statutory Law (*Ley Orgánica*).

97. The Code of Criminal Procedure (CdPP) of 1940, which is essentially inquisitorial and is still in force in parts of the national territory, limits the action of the victim in criminal proceedings related to restitution. For this purpose, it requires prior formal recognition of the victim as a civil party. As stated in Article 54, the civil party may only be comprised of the injured party, his ancestors or descendants, spouse, collateral relatives to the second degree, and his parents or adopted children or his guardian or guardians. Those who do not exercise their rights in person may be represented by their legal agent. Consequently, the victim plays a secondary role in criminal proceedings. With the implementation of the New Criminal Procedure Code of 2004, there has been a move to establish a comprehensive system of victim protection in the framework of the new adversarial model.⁶⁷

98. Current criminal legislation is insufficient to effectively acknowledge the rights of the victims. Therefore it may be advisable to regulate these rights at an administrative level, as has been done in many countries in the region.

99. After more than 20 years of violence in Peru, the Commission for the Truth and Reconciliation was created by administrative provision. In its Final Report, this Commission recommended that the State implement a Complete Plan for Compensation for Victims of Terrorism, which was established in July 2005. The High-Level Multi-sectorial Commission (*Comisión Multisectorial de Alto Nivel*) will be in charge of this plan as well as

⁶⁷See Criminal Procedure Code of 2004, part 2.3.

of the actions and policies of the State in several levels: peace, collective compensation, and national reconciliation, as well as the programs and the coordination and supervision of the Complete Plan of Compensation. These programmes include:

- Programme for civil rights redress;
- Programme for compensation in education;
- Programme for compensation in health care;
- Programme for collective compensation;
- Programme for symbolic compensation;
- Programme for promotion and facilitation of housing access; and
- Other programmes that can be approved by the Multi-sectorial Commission, such as the Program for Economic Compensation for victims registered at the Single Registry.

100. In accordance with the Framework of the Comprehensive Plan for Reparations⁶⁸ (PIR), victims are individuals or groups of people who have suffered acts that violate standards of Human Rights, such as forced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention, forced conscription, torture, rape or death, as well as relatives of those killed or declared missing during the period from May 1980 to November 2000. Additionally, those victims not included in the PIR and who claim a right to compensation will always retain their right to resort to the courts. Finally, members of subversive organizations are not considered to be victims and therefore are not beneficiaries of the programmes mentioned above. The PIR considers a beneficiary to be the victim, the family of the victim, or groups who suffered violations of their human rights as individuals and those who suffered damage to their social structure through the violation of their collective rights. As such they will receive some benefit from the Comprehensive Reparations Plan recommended by the Truth and Reconciliation Commission.

101. According to the framework of the Comprehensive Plan for Reparations, the following are considered individual beneficiaries:

- Relatives of disappeared or deceased victims: includes the spouse or partner, children and parents of the disappeared or dead victim.
- Direct victims: includes those who are displaced, innocent people who have been imprisoned, torture victims, rape victims and hostages. Direct victims include members of the Armed Forces, the National Police of Peru and members of the Defense Commissions and Civil Authorities who were wounded or injured in actions violating human rights from May 1980 to November 2000.
- Indirect victims: include children of rape, people who were integrated to a Defense Committee as minors, people wrongly deemed fugitives due to terrorism and treason, and those who were undocumented.

⁶⁸Created by Law No. 28592 published in the *El Peruano Official Gazette* on 29 July 2005. See also Title V of Supreme Decree No. 015-2006-JUS, approving the Rules of Law No. 28592, published in the *El Peruano Official Gazette* on 6 July 2006.

102. Collective beneficiaries are comprised of:

- Peasant and native communities and other population centers affected by violence, presenting certain characteristics such as: concentration of individual violations, destruction, displacement, breakage or fracturing of the communal institutions, loss of family infrastructure and/or loss of community infrastructure.
- Organized groups of displaced non-returnees coming from the affected communities in their insertion sites.

103. Priority will be given to victims who are orphans, elderly, widowed and disabled people. Implementation of the Comprehensive Plan for Reparations will take place in State bodies at the level of Ministries, Regional Governments, Local Governments and designated entities.

Spain

104. In Spain, the generic definition of victims is individuals or legal persons who suffer damage to rights protected by law, most notably life, physical and mental integrity, property, honor and freedom. The concept of victim must be connected to the assumption that the damages are caused by human conduct described in the Penal Code, also when such damages result from accidents caused by human, mechanical or natural factors. Only very recent changes have introduced explicit reference to victims in the Code of Criminal Procedure.

105. Spain ratified the Council of Europe's European Convention on compensation to victims of violent crimes in October 2001. At the same time, the government and its branches began demonstrating an increased sensitivity to the needs of victims.⁶⁹

106. With the new Law 29/2011 of 22 September 2011 on the recognition and integral protection to victims of acts of terrorism, which entered into force on 23 September 2011, the Spanish legislator gathers in a single normative body the previously existing dispersed legislation. In order to implement the provisions of Law 29/2011, an exhaustive set of regulations needs to be developed, as foreseen by the law itself, within six months of its entry into force. Law 29/2011 provides for a quantitative and qualitative increase, with respect to previous legislation, in the assistance, support, honors and measures of protection to which victims of acts of terrorism are entitled. Its application is retroactive and covers those who suffered acts of terrorism from 1960 onwards. In this new Law, the Spanish legislator gives victims of acts of terrorism a political significance by expressly recognizing them as symbols of the defense of the democratic rule of law State vis-à-vis the terrorist threat. It also considers victims of terrorism as victims of human rights violations, a characteristic which strengthens the legal status of victims and creates binding legal obligations for the State, responsible for ensuring

⁶⁹Law 35/1995 of 11 December on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom, was a major milestone in the development of State legislation in support of victims. This Law does not only reflect the principle of solidarity, embracing a broad definition of victim (direct and indirect victims), but also lays the foundation for the implementation of the right to information, and for the assistance necessary for the victim of crime, which years later has been the object of broader and more robust regulation with respect to the victims of so-called gender violence. The Law, by the current standards, is certainly a brief, sparse law, but its importance for the purposes outlined above must be recognized.

integral reparation. The law seeks to provide victims with integral support and is inspired by the principles of memory, dignity, justice and truth.

107. At the European Union level, in developing the provisions of the Treaty of Amsterdam related to the creation of an area of freedom, security and justice, and of the European Council in Tampere, it is particularly relevant to take note of the fact that the 2001 European Council Framework Decision inspired many of the provisions of Law 38/2002, which amended the Code of Criminal Procedure. A draft Law on Criminal Procedure presented to the Council of Ministers in July 2011 foresees the incorporation in the Spanish legislation of all the aspects of the aforementioned framework decision.

United Republic of Tanzania

108. The Prevention of Terrorism Act of 2002 does not define victims of terrorism. Furthermore, there is no definition of victims in the procedural law (The Criminal Procedure Act). As a result, courts either define victims broadly to include persons directly affected by crimes, such as through loss of life or limb, and their dependants, or more narrowly to include only the former, depending on the case.

109. Tanzania has not prosecuted any terrorist acts. The perpetrators of the August 1998 bombing of the United States Embassy in Dar es Salaam were taken to the United States since the bombing was considered as having been committed on United States soil.

Netherlands

110. While there are no specific provisions relating to victims of acts of terrorism in Dutch law, there are several pieces of legislation specifically devoted to victims in general, such as the Terwee Victim Act of 1992 and the Victims' Rights Act of 2009.⁷⁰

United Kingdom

111. The Criminal Justice System in England and Wales⁷¹ is adversarial in nature. Over the course of the last decade, the police, Crown Prosecution Service (CPS) and Courts have made a demonstrative shift towards recognizing the centrality of victims in the criminal justice process.

When a terrorist incident occurs which involves a death, part of the police initial response is to identify the victims and their families. Having identified them, the police will appoint one or more Family Liaison Officers (FLO).⁷² The FLO has a number of functions that include:

⁷⁰For additional information on these Acts, see paragraphs 207 to 208 of this publication.

⁷¹The system in England and Wales differs from that of Northern Ireland and of Scotland. Each jurisdiction has its own law, law officers, judges, courts and practices. Whilst some statutes such as the Terrorism Act 2000 are designed to have effect in all United Kingdom jurisdictions, they achieve this (in many instances) by containing parts and sections dealing specifically with Northern Ireland and/or Scotland. The three aforementioned jurisdictions are the main ones. There are separate systems on some of the United Kingdom Islands such as the Isle of Man, Jersey and Guernsey.

⁷²For the role of the FLO, see Association of Chief Police Officers guidance at: www.acpo.police.uk/document/criminaljustice/2009/200909CJUFL001.pdf

- Providing information to the family via regular updates;
- Dealing with any fears and concerns the family may have as to their safety and, if need be, facilitating protection;
- Giving the family appropriate advice;
- Protecting the family from unwarranted media intrusion; and
- Facilitating access to medical/support services should the family need them.

The FLO will continue to provide information, advice and assistance to the victims and their families throughout the police investigation and any subsequent prosecution.

112. At the conclusion of a police investigation (or in some instances, during it), a decision on whether to charge suspects and therefore commence criminal proceedings is taken by the CPS, which is the principal public prosecution service for England and Wales. The CPS is headed by the Director of Public Prosecutions (DPP) who exercises his functions independently, subject to the superintendence of the Attorney General (AG). The AG is accountable to Parliament for the work of the prosecution service. The CPS will not prosecute a case unless there is sufficient evidence to provide a realistic prospect of conviction and a prosecution is in the public interest. The CPS conducts the prosecutions which result from its charging decisions, including those for terrorist offences.⁷³ Terrorist cases are dealt with by the Counter Terrorism Division (CTD) of the CPS.

113. The shift towards recognizing victims and their rights was evidenced by a Code of Practice for Victims of Crime which came into effect on 3 April 2006. It provided victims in criminal cases with a right to certain services as a minimum. The definition of “victim” within the code did not include bereaved relatives. One of the services provided under the Code was direct communication with the CPS.

114. In 2007, a Victim Focus Scheme (VFS) was launched. Under the VFS, prosecutors offer meetings to bereaved families in certain cases involving a death. The purpose of those meetings is to explain the role of the CPS, the legal basis of any charges, the court process, the progress of the case and the Victim Personal Statement scheme, described in detail below.

115. Since the implementation of the Code and VFS, the CPS has further emphasized the centrality and importance of victims and their rights in its Core Quality Standards (CQS).⁷⁴ The 12 CQSs identify the core business of the CPS and indicate how that business is to be conducted. CQS7 states that the CPS will assess the needs of victims and witnesses, keep them informed about the progress of the case and seek appropriate support (court orders, etc.) to help them give the best evidence they can.⁷⁵ CQS8 states that CPS will explain its decisions to victims when CPS dismisses cases or substantially alters charges.⁷⁶

⁷³The law defines a number of terrorist offences.

⁷⁴See www.cps.gov.uk/publications/core_quality_standards/.

⁷⁵See www.cps.gov.uk/publications/core_quality_standards/standard_7.

⁷⁶See www.cps.gov.uk/publications/core_quality_standards/standard_8.

116. Building on the CQS, the CPS has recently issued an updated Code of Practice for Victims of Crime.⁷⁷ The updated Code defines “victim” more broadly than before and includes any person who has made an allegation to the police or had an allegation made on his or her behalf, that they have been directly subjected to criminal conduct under the National Crime Recording Standard (NCRS). Also included are bereaved relatives or partners in homicide cases; parents where the primary victim is the child; police officers; a family; a family spokesperson; and businesses, with a named contact.

117. The services provided to victims under the Code include direct communication by the prosecutor (by letter or telephone) in the following circumstances: when a charging decision is taken; when a charge is discontinued or withdrawn; where no evidence is offered; and where there is a substantial alteration to a charge. The prosecutor must offer the victim a meeting in cases involving a death or hate crimes. The meeting is for the same purposes as that described in the VFS (see paragraph 114 above). However, the Code also states that such a meeting may be offered in any other case if the prosecutor thinks it appropriate. The Code applies time limits on communications and an expedited service is offered to victims and witnesses who are considered vulnerable or intimidated.

118. In summary, where a case involves or concerns a death, the bereaved family will generally be offered the services of a FLO, direct communication with the CPS and an opportunity to meet the CPS reviewing lawyer and have him or her explain the charges, process, progress and options.

119. As previously discussed, one of the purposes of the meetings is to explain the Victim Personal Statement. A Victim Personal Statement can be made by the victim (when able to do so) or by a family member. It is an opportunity to tell the court how the offence or the death of the family member has affected the victim and their family. A statement should not include reference to the judicial sentence which the victim feels is appropriate. It is a voluntary statement but if made it becomes part of the case file and, if the defendant is convicted, it will be shown to the judge, the defence and the prosecution before the defendant is sentenced.

120. The obligation to keep victims informed continues during a trial. In cases involving substantial incidents, CTD has used virtual courts and password protected websites to keep victims informed.⁷⁸ CTD also writes to each victim within 24 hours of the conclusion of a case to inform them of the outcome.

121. The shift towards recognizing victims, their interests and rights is also apparent in the Criminal Procedure Rules which must be applied by all criminal courts in England and Wales.⁷⁹ Judges are required to actively manage criminal cases to achieve the overriding objective, which is to deal with them justly.⁸⁰ The Rules direct that dealing with a case justly involves (among other things) respecting the interests of witnesses and victims and keeping them informed of progress.⁸¹

⁷⁷A table of contents with links to the various sections of the document can be found at: www.cps.gov.uk/legal/d_to_g/direct_communication_with_victims.

⁷⁸See later example relating to 7/7 trial.

⁷⁹A menu with links to the rules can be found at: www.justice.gov.uk/criminal/procrules_fin/rulesmenu.

⁸⁰The overriding objective is described in Criminal Procedure Rules, 1.1(1).

⁸¹Criminal Procedure Rules, 1.1(2)(d).

122. The Rules, Codes and guidance described above do not distinguish victims of terrorist offences from any other victims. However, CTD has built on them and developed specific procedures for dealing with victims and witnesses in terrorist cases.

United States of America

123. There is no single definition of a terrorism victim under United States federal law. Instead, one must combine the definitions of the crime of terrorism and the term crime victim to arrive at the definition of a terrorism victim.

124. The United States uses different definitions of terrorism for different purposes. Thus, the Department of State uses one definition for purposes of reports and statistics, while the Justice Department operates under different definitions for criminal justice purposes. There is great overlap between the definitions, so it is only in a small number of incidents that there is disagreement.

125. The statutes governing crimes make a distinction between domestic (within the United States) and international terrorism. The term “international terrorism” means activities that:

- (a) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State:
- (b) appear to be intended:
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (c) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum (...)⁸²

Pursuant to 18 U.S.C. § 2331(1), domestic terrorism is defined similarly to international terrorism but it involves acts that occur primarily within the territorial jurisdiction of the United States.

126. There are also several different legal definitions of the term “crime victim” for different purposes. For asserting rights during a prosecution, the Crime Victims Rights Act, 18 U.S.C. § 3771 et. seq., states that a crime victim is a “person directly and proximately harmed as a result of the commission of a Federal offense [which

⁸²See 18 U.S.C. § 2331.

terrorism is]...”⁸³ Accordingly, to determine who can assert victims’ rights during the prosecution, it is necessary to look at the offense being prosecuted and then identify those persons who were directly and proximately harmed as a result of the offense.

127. United States laws also require the government to provide crime victims in Federal cases with mandatory services. The definition of victim for the purpose of services is different from the definition for rights. Thus, for the provision of services, a victim is “a person that has suffered a direct physical, emotional, or pecuniary harm as a result of the commission of a crime.”⁸⁴ The services requirement starts immediately after the detection of the crime, and is in place during the initial investigation, before any offense is charged.

128. When the primary victim is deceased, incapacitated or under 18 years of age, United States laws allow for a representative victim who is usually a family member or other authorized representative to assert the victim’s rights and receive the mandated services. Anyone who is culpable for the crime is not considered a victim, even if that person is harmed by the crime.

Uzbekistan

129. Article 54 of the Penal Procedure Code (1994) of Uzbekistan states that “when there are evidences of a moral, physical or pecuniary damage caused to a person by a crime or by a socially dangerous act committed by an insane, the person shall be recognized as a victim. The decision thereof shall be processed as a finding of the court or a resolution by a prosecutor, investigator, or inquiry officer.” The same provision further reads that “if a victim is a juvenile or a person legally recognized as disable, he shall participate in the case together with his legal representative or be replaced by him.”

B. Access to justice for victims of acts of terrorism

1. General considerations

130. Notwithstanding the growing recognition of the victim in national criminal proceedings, their right to have access to criminal proceedings is still very limited, except in those cases in which public action depends on the initiative of the victim.⁸⁵

131. Access to justice is a fundamental right of all persons pursuant to Article 14 of the International Covenant on Civil and Political Rights, adopted in 1966. The Covenant, however, only goes into detail with regard to basic procedural rights that shall be afforded to accused persons.

132. Victims of terrorist crimes, as much as victims of crime in general, must be treated with compassion and respect for their dignity. They should be entitled to access to the

⁸³See 18 U.S.C. § 3771(e).

⁸⁴See 42 U.S.C. § 10607(e)(2).

⁸⁵See Cherif M. Bassiouni, *Victim’s rights: international recognition*, p. 577.

mechanisms of justice and to prompt redress, which should be provided in national legislation, for the harm that they have suffered. 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. As already observed in the UNODC *Handbook on Criminal Justice Responses to Terrorism*,⁸⁶ measures should be in place to respond to the needs of victims of terrorist crimes in order to provide the following:

- Inform victims of their role in the criminal justice process; the nature of the cooperation that is expected from them; and the scope, timing and progress of the criminal proceedings, as well as the outcome of the proceedings.
- Allow the views and concerns of victims 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 procedures of the national criminal justice system.
- Provide proper assistance to victims throughout the judicial proceedings.
- Minimize inconvenience to victims, protect their privacy when necessary, and ensure their safety and that of their families.
- Protect victims from potential intimidation and retaliation.
- Avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- Offer victims the necessary material, medical, psychological and social assistance through governmental, voluntary and community-based means.
- Offer victims access to restitution and compensation.

133. Ensuring formal access to justice regardless of the financial standing of the victim is only possible if the State puts in place legal aid mechanisms,⁸⁷ as legal representation is a condition in most legal systems for the victims to participate in a trial. As an alternative to providing legal aid to victims, States may opt for appointing a support person, not necessarily a lawyer, to assist the victim in the process. This may prove less costly to the State, and can be appropriate in procedural systems that do not allow for the direct intervention of victims in the criminal proceedings. The support person may assist the victim in obtaining information on the trial of alleged perpetrators, as well as on administrative and civil lawsuits potentially applicable to the particular victim.

134. Allowing victim participation in criminal proceedings and recognizing the right of victims to be informed of progress in the case, serves to rebalance a criminal justice system that would otherwise only address the relationship between the State and the offenders and rights of the defence. At a practical level, the right of victims to be informed of their rights and of the existence of procedures from which they can benefit is perhaps the most important concern. Those who come into contact with victims in the course of justice — police, social workers, defence attorneys, prosecutors and

⁸⁶UNODC *Handbook on Criminal Justice Response to Terrorism*, p. 109.

⁸⁷In France, for example, victims of terrorism receive assistance by a lawyer regardless of financial possibilities (Article 64 of Law No. 2002-1138 of 9 September 2002, *Official Gazette* of 10 September, 2002, p. 14934, text No. 1).

judges — should be required to brief victims of their rights and direct them to where they can obtain help when they need it.

135. The right to information encompasses access to relevant information about victims' rights in seeking redress through available judicial or administrative mechanisms (e.g. access to the assistance of a lawyer free of charge), and to information about the stages and outcomes of criminal proceedings. Information regarding their potential role in the criminal justice system is fundamental for the exercise of this role, and may encompass the possibility to intervene in the proceedings.

136. The direct contact of State organs with victims of terrorist acts or their family members must not be neglected. One of the rights of victims, and their families, is the right to information on judicial proceedings that outline the charges against the suspects being prosecuted. A good example of how to handle this relationship can be provided by the system of FLOs for bereaved families found in the United Kingdom. These officers provide regular updates on the progress of investigations and prosecutions, as well as other relevant information to the families. Where possible and appropriate, the use of innovative technologies may facilitate the contact with victims and their family members. For example, Canada, the United Kingdom and the United States utilized regularly updated and password-protected web pages to keep directly affected victims and families informed of developments in relevant criminal proceedings.

137. Where the right to intervene in the proceedings is available, it means the participation of victims or their family members by allowing their views and concerns to be presented and considered at appropriate stages of the proceeding and by assisting in the production of evidence.⁸⁸ In national legal systems, this may take the form either of replacing the prosecutor in cases of criminal proceedings through private initiative, of assistance to the prosecution, or even of participation as a third party. This lack of uniformity is not a problem in itself, as the choice of participatory model normally takes into consideration the characteristics of the procedural model of the country.

138. A very useful practice found in some common law countries such as Australia and Canada, where the victims cannot intervene as a party in the process, is the option for victims to issue impact statements, which allows for their point of view to be presented independently from the prosecutorial strategy (a trait that is essential in adversarial systems but which could also inspire other procedural models). This is probably the most effective practice to give victims a direct "voice" during criminal proceedings. It is important that victims be heard before relevant decisions are taken, including on release decisions or on whether to accept plea bargains, so that their statement may effectively impact on decisions.

139. In inquisitorial models, which are increasingly difficult to find in their pure form, victims are frequently allowed to participate as a third party at various stages of the investigation or trial. In general, this participation is only full-fledged in penal cases of private initiative or where the prosecutor has decided not to prosecute an alleged perpetrator.

⁸⁸In general terms, that is also the content of participatory rights of victims in the framework of the International Criminal Court.

140. Apart from access to legal advice, all persons in a criminal trial, defendants or witnesses, should have the right to the services of a free interpreter. This is considered to be part of the State's obligation to run its judicial system fairly. It would be desirable that such service be extended to victims and their families, irrespective of their possible role as witnesses, considering their interest in seeing justice being done.

141. Reference should be made to Article 4 (1) and (2) a-c, and Article 6 of the 2001 European Council Framework Decision. These provisions specify the measures to be taken at the regional level to guarantee the right of victims to information in criminal proceedings, including legal aid when it is possible for the victims to have the status of party.

142. In cases of harm caused to large groups of victims, it may be useful to allow for the presentation of class actions or for associations to represent victims and seek redress, as has been the case in Argentina and Spain.

143. In international jurisdictions, the normative framework of the International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR, respectively), largely based on a common law paradigm, do not envision the possibility of victims to intervene in the proceedings, except as witnesses. The normative framework of the International Criminal Court, in turn, has recognized "[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence."⁸⁹ In an example of mixed international jurisdiction that has borrowed procedural traits from national procedural laws, the framework of the Extraordinary Chambers in the Courts of Cambodia allows for the victim to participate in the proceedings as a *partie civile*.

144. Moreover, the Statute of the Special Tribunal for Lebanon established within the Registry a section for victims and witnesses.⁹⁰ It provides for their participation in the proceedings respecting the rights of the accused (Section III, Rights of the accused and victims⁹¹) and organizes their compensation.⁹² In addition, the Rules of Procedure and Evidence govern, inter alia, the participation of victims and their protection.⁹³

145. Furthermore, the aforementioned Recommendation Rec(2006)8 of the Council of Europe (see paragraph 28) and its explanatory memorandum address the role of public services in the process, in particular of the criminal justice agencies. Special reference should be made to the relevant case-law of the European Court of Human Rights of the Council of Europe. The Court recognizes that victims should be taken into consideration

⁸⁹Statute of the International Criminal Court (ICC), Article 68.3. See also the ICC's Rules of Procedure and Evidence, Rules 89 and 90.

⁹⁰See Article 12, 4

⁹¹Statute of the Special Tribunal for Lebanon, Article 17.

⁹²*Ibid.*, Article 25.

⁹³Pursuant to Statute of the Special Tribunal for Lebanon, Article 28.

in criminal proceedings, as well as their right to bring civil proceedings in order to secure at least symbolic reparation or to protect their civil rights.⁹⁴ The Court also acknowledged that the investigation must be led with promptness and reasonable expedition and that there is a need for public scrutiny of investigation or their results.⁹⁵ The Court also recognizes that the close family of a deceased victim must be involved in the investigation to the extent necessary to safeguard his/her legitimate interests, failing to do so the investigation could not be considered “effective.”⁹⁶

2. National practice and legislative provisions

Algeria

146. In accordance with Section 154(1) of the Algerian Code of Criminal Procedure (1973), the victim of a crime generally initiates the criminal justice mechanism by giving information to the police. The complaint is expected to be in writing.

147. The victim may make a complaint to law enforcement, or to the public prosecutor against a person known or unknown for the alleged offences. The prosecutor, depending on the case, may go before the court’s instructions or trial jurisdiction to hear, or make an order by classification (which is always revocable). Victims must be informed promptly of any procedural development in relation to their case.⁹⁷

148. Algerian legislators recognize the right of the victim (aggrieved party) to initiate criminal proceedings.⁹⁸ The Public Prosecutor is responsible for transmitting the information to the Court. The investigation may be initiated by the Public Prosecutor or by a civil suit.⁹⁹ The civil party (victim) may, at any time during the investigation, request the presiding magistrate to take statements, to hear witness testimony or make a statement relevant to the “manifestation of the truth”.^{100, 101} A civil case may also be brought at any time during the trial.¹⁰²

149. Pursuant to Article 173 of the Algerian Code of Criminal Procedure, a civil party may appeal non-informed orders.¹⁰³ Victims can declare themselves as a “civil party,” and seek compensation for the injury caused by a crime, either before or during the hearing, in a statement recorded by the registrar or included in the conclusion of the deposition.

150. Article 28 of Law 71-57 relating to legal assistance, as amended and supplemented by Law 09-02, states that legal aid is granted automatically to victims of acts of terrorism. In this respect, the victims of acts of terrorism are exempt from paying the fees

⁹⁴Perez v. France, 12 February 2004.

⁹⁵See, for example, Finucane v. United Kingdom, 1 July 2003 and Mitimara v. France, 8 June 2004.

⁹⁶Slimani v. France, 27 July 2004; McKerr v. United Kingdom, 4 May 2001.

⁹⁷See Article 35 CPC.

⁹⁸See Article 1, Algerian Code of Criminal Procedure (1973).

⁹⁹See section 38, section 72, Algerian Code of Criminal Procedure (1973).

¹⁰⁰In the text: “manifestation de la vérité” any evidence concurring at the revelation of the credible facts.

¹⁰¹See Article 69 *bis*, Algerian Code of Criminal Procedure (1973).

¹⁰²See Article 74, Algerian Code of Criminal Procedure (1973).

¹⁰³Ordonnance de non-informé: informed refusal order issued by judge.

for lawyers, clerks, notaries, etc. The benefit of free legal assistance is also granted to the victim's dependents.

Argentina

151. The Argentinian legislation does not specifically contemplate the protection of the rights of victims of acts of terrorism. However, Articles 79, 80 and 81 of the Argentinian Code of Criminal Procedure outline the protection of the rights of victims and witnesses in general.

152. In accordance with Article 79, victims and witnesses have the right to be treated with respect and dignity; to have the costs of required transport covered; to have their physical and moral integrity protected, including that of their families; to be informed of the results of the proceedings in which they are participating; and to participate in the required proceedings from their residence if they are older than 70 years of age, pregnant or severely ill. Moreover, Article 80 guarantees that the victim of a crime has the right to be informed about the possible courses of action regarding criminal proceedings, especially the possibility becoming a "civil actor" or to appear as a plaintiff (*querelante*) in order to be a party to the proceedings; to be informed about the status of the case or the situation of the accused. When the victim is underage or incapacitated, the judicial organ will be able to authorize him or her to be accompanied by a person he or she trusts during the criminal proceedings, as long as it does not endanger the interest in obtaining the truth about the facts under examination. Furthermore, under Article 81, the victims or witnesses shall be informed of these rights upon being notified of their role in the proceedings.

153. One of the most important rights recognized by the Argentinian legislation is that victims have the ability to become a party in the proceedings through the adoption of the role of plaintiff and/or "civil actor." Both roles are provided for by the Argentinian Code of Criminal Procedure. On the one hand, Article 82 establishes that the right to become a plaintiff can be exercised by any person that has been affected by a public order crime, including their families and legal representative; or by registered associations for the collective interest in order to participate in the proceedings for crimes against humanity and human rights crimes. On the other hand, Article 87 establishes the right to become a "civil actor," which entitles a victim to become a party and to demand reparations and compensations that may arise from the proceedings.

154. Article 416 of the Argentinian Code of Criminal Procedure provides for a collective representation/class action suit (*unidad de representación*), in cases where multiple victims with a common interest exist. This suit requires the following characteristics: the common interest is not to be presumed from the mere existence of multiple victims; the representation of such collective entity has to be carried out by one of the plaintiffs and not by a third party; and the collective representation/class action suit must be brought within a specific time period, that is after the preliminary investigation phase has been completed and the date established for the oral and public hearing.

155. Finally, since the purpose of the creation of a collective representation lawsuit is to organize the proceedings in which a common interest exists, once such commonality

ceases to exist (as in the AMIA case discussed below), such collective representation may be fragmented.

156. The “Asociación Mutual Israelita Argentina” (AMIA) case is an ongoing judicial proceeding on the investigation of the 1994 bombing attack on the building of the AMIA. Collective representation has been applied to this case, allowing more than 100 victims to exercise their rights in the criminal proceedings. However, due to the differences in their points of view (such as the way in which the investigation was carried out due to different procedural strategies), the representation was divided into the present six plaintiff collective representations that are currently part of the proceedings.

Canada

157. The Canadian criminal system is a two party system wherein the State (Crown Attorney) undertakes prosecutions against accused persons. Victims may have standing in third party record applications or when applying for certain testimonial aids, but otherwise are witnesses and not parties to criminal proceedings. The Criminal Code provisions pertaining to victims of crime would apply to victims of acts of terrorism.

158. The Criminal Code requires the court to consider a victim impact statement at the time of sentencing an offender. The victim impact statement describes the harm done to or loss suffered by the victim. The form of the statement must be in accordance with procedures established by a victim impact statement programme designated by the Lieutenant Governor in Council of the province. Victim impact statements normally observe the following guidelines:

- The victim is permitted to read an impact statement at the time of sentencing if he or she wishes to do so;
- The judge is required to ask, before imposing sentence, whether the victim has been informed of the opportunity to prepare a victim impact statement;
- Adjournments to permit a victim to prepare a statement or to submit other evidence to the court about the impact of the crime may be provided;
- Victim impact statements shall be considered by courts and Review Boards following a verdict of not criminally responsible on account of mental disorder; and
- In proceedings to determine whether an offender sentenced to life in prison should have his or her parole eligibility reduced (section 745.6 hearings), the information provided by the victim may be oral or written.

159. An amendment to the Criminal Code, which is currently being considered by the Parliament, would specify that community organizations would have the ability to present Community Impact Statements. Community organization is currently not defined in the legislation.

160. To ensure that information is provided to victims about life sentences, the Criminal Code requires a judge to state for the record and for the benefit of surviving victims that an offender convicted of murder who has received a life sentence may apply for a

reduction in the number of years before he or she is eligible to apply to a court for parole after serving at least 15 years of the sentence. In addition, at proceedings to determine whether an offender should have his or her parole eligibility reduced (s. 745.6 hearings), the information provided by the victim may be oral or written, at the discretion of the victim.

161. The Corrections and Conditional Release Act (CCRA) recognizes that victims of crime have an important role to play in the criminal justice system. The CCRA gives victims an opportunity to participate in the federal corrections and conditional release process. It also entitles registered victims to request certain information about the offender who has harmed them and to be informed about some decisions made by the Correctional Service of Canada (CSC) and all Parole Board of Canada (PBC) decisions.

162. CSC, through the Victim Services Program, has dedicated regional Victim Services Managers and Victim Services Officers who are responsible for managing the provision of information and services to victims of offenders under federal jurisdiction. Furthermore, CSC has a legal obligation to gather relevant information about offenders from a variety of sources, including the courts and the police. If the victim has filed a Victim Impact Statement at sentencing, CSC is required by law to obtain a copy. This information must be used to:

- Assist in the evaluation of an offender's overall risk and programming needs;
- Make decisions on the institutional security level required to protect society; and
- Make decisions as to whether an offender should be released on a temporary absence or a work release.

163. Victim information is also taken into consideration when CSC makes a recommendation to the PBC regarding whether an offender should be granted a conditional release, such as parole.

164. In the absence of a Victim Impact Statement and if the victim wishes, a Community Assessment may be completed by a Parole Officer. A Community Assessment is a report that captures information that assists in monitoring the offender's progress. Moreover, victims may submit written material that is relevant to the offender's case to CSC or the PBC at any time.

165. CSC and the PBC do not automatically inform victims about an offender's case. The law specifies that this information only be given upon request, as some victims prefer not to receive any further information about the offender. A victim can ask for the following information:

- The offence the offender was convicted of and the court that convicted the offender;
- When the sentence began and the length of the sentence; and
- The eligibility and review dates of the offender for unescorted temporary absences, day parole and full parole.

166. More information may be released if the Commissioner of the Correctional Service of Canada (or delegated staff) or the Chairperson of the PBC determines that the interest of the victim clearly outweighs an invasion of the offender's privacy that could result from the disclosure. Such information may include:

- The location of the penitentiary in which the sentence is being served;
- The date, if any, on which the offender is to be released on unescorted or escorted temporary absence, work release, parole or statutory release;
- The date of any hearing for the purposes of an PBC review;
- Any of the conditions attached to the offender's unescorted temporary absence, work release, parole or statutory release;
- The destination of the offender when released on any temporary absence, work release, parole, or statutory release, and whether the offender will be in the vicinity of the victim while traveling to that destination;
- Whether the offender is in custody and, if not, why not; and
- Whether or not the offender has appealed a decision of the PBC and the outcome of that appeal.

167. The federal government and the provincial/territorial governments share the responsibility to respond to the concerns of crime victims and their role in the criminal justice system.

168. The federal government's responsibility toward victims of crime focuses on: criminal law reform of victim-related provisions in the Criminal Code and the Corrections and Conditional Release Act; PBC policy permitting victims to submit and present victim impact statements at parole hearings; prosecution of Criminal Code offences in the Yukon, Northwest Territories and Nunavut and the provision of court based victim-witness assistance; limited assistance to Canadians victimized abroad; and the ongoing mandate of the Policy Centre for Victim Issues (PCVI), including the administration of the Victims Fund.

169. The PCVI was established as a dedicated unit to provide the "victims lens" for all criminal law reform and criminal justice policy development for which the Department of Justice is responsible, and to collaborate with other federal departments to ensure a consistent approach to victim issues. The PCVI consults with victims, victim advocates and service providers, and others involved in the criminal justice system to identify issues of concern and to inform policy development and criminal law reform. The PCVI works closely with provinces and territories that have a key role in the administration of justice and provision of services for victims and supports the network of Directors of Victim Services. In addition, PCVI conducts research and funds surveys, develops public information, sponsors special projects (e.g. the use of technology to provide information to victims), sponsors National Victim Awareness Week and administers the Victims Fund (see paragraph 177).

170. Under the Corrections and Conditional Release Act (CCRA) the CSC and the PBC provide certain information to victims, upon request, such as the offender's name, the offence of which the offender was convicted and eligibility dates for conditional

release. Both CSC and PBC offer a number of services for victims and provide information to registered victims. For example, victims can obtain a copy of NPB decisions, attend parole hearings and present an impact statement. Public Safety Canada's National Office for Victims (NOV) is a central resource offering information and support on federal corrections issues. NOV operates a toll-free line which victims may call from anywhere in Canada or the United States of America; provides referrals to CSC and PBC for specific enquiries; ensures that a victim's perspective is included in national policy development; and develops information products for dissemination to victims, victims service providers and the general public.

171. The Office of the Federal Ombudsman for Victims of Crime, established in April 2007, promotes access to existing government programmes and services, reviews concerns regarding non-compliance with legislation or established policies (e.g. the provisions of the CCRA), and identifies emerging and systemic issues which impact negatively on victims of crime. The Ombudsman may make recommendations on specific matters to the Minister of Justice or the Minister of Public Safety, depending on the issue. The Ombudsman is required to report to, and be accountable to, the Minister of Justice but operates at arm's length from the federal departments responsible for victim of crime issues.

172. Victim services delivery is primarily the responsibility of provincial and territorial governments. Each of the provinces and territories has set up victim services to address the needs of victims. Not all provincial or territorial victims' services follow the same model. Some offer police-based services (services provided at the time of the crime by victim services that work with the police) or court-based services (services which assist victims and witnesses during court proceedings), while others offer system-based services which provide continuity of services throughout the criminal justice system. The specific services offered to victims vary but include: the provision of information; support and referral; short-term counseling; court preparation and accompaniment; assistance in the completion of victim impact statements; and corrections information.

173. The two official languages of Canada are English and French. Federal government information and services are provided in both English and French. In addition, information and services will be provided in minority languages to the extent possible. Similarly, within the provinces and territories, efforts are made to provide support and services to victims of crime in different languages, to the extent that resources permit.

174. In Canada, legal aid programmes are administered individually by each of the provinces and territories. In criminal proceedings, legal aid is available to financially eligible accused persons. In addition, some jurisdictions cover the legal expenses of victims who require assistance in third party record applications that arise in the context of criminal proceedings. It should be noted that except in very limited circumstances, victims do not have standing in criminal proceedings and therefore do not require independent legal representation.

175. There are many non-governmental organizations throughout Canada that advocate for, and provide support to, victims of crime. Two leading national organizations have done considerable work on behalf of victims of acts of terrorism.

The Canadian Coalition Against Terror (C-CAT) is a non-partisan advocacy body comprised of Canadian terror victims, counter-terrorism professionals and other individuals committed to enhancing Canada's counter-terrorism policies. It has been active since 2004 and has been involved in the national dialogue on terrorism and national security.

176. The Canadian Resource Centre for Victims of Crime is a non-profit victim advocacy group that lobbies for victims' interests and effective justice reform. The Centre has conducted research and consultations regarding the needs of victims of acts of terrorism.

177. NGOs may apply to the federal government for project funding in order to conduct research and consultations or to create new services for victims of crime where gaps exist. For example, the Victims Fund which is administered by the Policy Centre for Victim Issues at the Department of Justice provides grants and contributions for projects that encourage the development of new approaches, promote access to justice, improve the capacity of service providers, foster the establishment of referral networks and/or increase awareness of services available to victims of crime and their families. This funding allows NGOs to conduct valuable research and consultations in order to further their goals with respect to victims of crime. NGOs working on matters specifically related to victims of acts of terrorism may apply for such funding. NGOs may also apply to provincial governments for project funding.

Colombia

178. The Law on the Protection of Victims and Land Restitution intends to protect and guarantee victim's rights by focusing on three main aspects which are: (a) Right to Truth; (b) Right to Justice; and (c) Right to Reparation. Basically, the right to truth means that victims, their relatives and society have the irrevocable and inalienable right to know the truth about how victim's rights were violated. The construction of the historical memory of victims is also envisaged as part of the implementation of this new legislation. The right to justice consists of the State's duty to facilitate access to justice for victims and to conduct an effective investigation that leads to identification, capture, trial and punishment of people responsible for human rights violations and breaches of International Humanitarian Law, and to clarify the facts and to provide appropriate judicial reparation for victims. Finally, the right to reparation recognizes that victims have the right to obtain appropriate and effective reparation through restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in its individual, collective, material, moral and symbolic aspects.

179. Additionally, pursuant to Article 11 of the Code of Criminal Procedure, the State shall guarantee the access of victims to the administration of justice, as set forth in the Code. The same provision, as an extension of the right of access to justice, further enumerates other rights of victims:

(a) to be treated with humanity and dignity during the whole proceeding; (...)

(d) to be heard and to have facilitated their contribution to the collection of evidence;

(e) to receive from the first contact with public authorities information relevant to the protection of their interests and to know the truth about the facts involving the circumstances of the offence of which they were victims;

(f) to have their interests considered in the context of a discretionary decision on the actual prosecution of the offence;

(g) to be informed about a final decision about the criminal prosecution, to turn to the examining magistrate (*juez de control de garantías*), and to present appeal before the judge (*juez de conocimiento*) if applicable;

(h) to be assisted during the judgment and the plea of full reparation (*incidente de reparación integral*), if so required by the interests of justice, by a lawyer that may be indicated “de officio”;

(i) to receive full assistance (*asistencia integral*) for their recovery; and

(j) to be assisted free of charge by a translator or interpreter in case that the official language is not known, or cannot be understood.

180. These procedural rights are also affirmed in Law 975/2005, which seeks to handle and put an end to internal armed conflicts by keeping the victims involved in the procedure.

France

181. In France, the recognition of an effective place for victims of terrorist acts in criminal proceedings also depends on the conditions surrounding their access to justice, their being fully informed about their rights, and the effectiveness of the judicial, medical and psychological assistance granted to them.

182. In accordance with the provisions of Article 53-1 of the Code of Criminal Procedure, the officers and agents of the judicial police are responsible for informing the victims, in particular, of their right:

- To obtain compensation for the damage suffered;
- To bring a civil action if the public action is set in motion by the Public Prosecutor’s Office, or by directly summoning the perpetrator before the competent court, or by lodging a complaint with the Public Prosecutor;
- Should the victim wishes to bring a civil action, to be assisted by a lawyer of her/his choice or by, upon request, a lawyer appointed by the President of the Bar of the General Assembly of Lawyers of the competent jurisdiction, the costs will be borne by the victims unless they fulfill the requirements of access to judicial support or if they benefit from judicial insurance; and
- To be helped by a service inherent to one of several public authorities or by a certified association of victim support.

183. The victims of acts of terrorism receive the benefit of the assistance of a lawyer because they are eligible for legal aid, regardless of their economic situation.¹⁰⁴

184. The victims' rights are specified in the circular of the Keeper of the Seals No. JUS J 07 90 006 C of 9 October 2007, concerning the victims' rights within the criminal trial and their implementation,¹⁰⁵ namely:

- During the investigation, the right:
 - to be informed of the methodology of bringing a civil action from the beginning of the investigation;
 - to be informed of the follow-up procedure for a civil complaint; and
 - to be referred to victims' support associations.
- During the hearing:
 - to be granted access to the hearing, irrespective of whether she/he is brought as a civil party (securing); and
 - to be accompanied at the hearing.

India

185. According to Section 154(1) of India's Code of Criminal Procedure (1973), the victim of a crime generally sets the criminal justice mechanism in motion by giving information to the police who are expected to document the complaint in writing. While the victim of a crime may present a motion for the Government to appoint a special prosecutor for a given case, pursuant to Section 24(8), the Criminal Procedure Code does not foresee direct participation in the trial by a victim or informant or their lawyer. Similarly, Section 9 of the Evidence Act (1972) limits the intervention of the victim to the identification of the accused or of material objects related to the case, if applicable.

Indonesia

186. Law No. 13/2006 on Witnesses and Victims Protection recognizes the access to justice of victims as witnesses. In the context of offering testimony and information before criminal proceedings, witnesses and/or victims may receive legal advice. They are entitled to be informed of the development of cases and judicial decisions. In other contexts, the right to obtain legal advice is not yet regulated.

187. In the Indonesian legal system, court proceedings are generally open to the public, except for cases involving family crimes or other specific criminal cases. Therefore everyone, including witnesses and/or victims, could attend a hearing of court proceedings and be informed about a case. However, victims may have certain privileges in receiving information and updates about proceedings and court decisions. The relevant legal

¹⁰⁴See Article 65 of Law No. 2002-1138 of 9 September 2002, *Official Gazette* of 10 September 2002, p. 14934, text 1.

¹⁰⁵Circulaire de garde des sceaux No. JUS 07 90 006 du 9 octobre 2007, relative aux droits des victimes dans le procès pénal et à leur mise en œuvre.

officers or authorities will send them official letters informing them of pertinent matters, as requested by the victims. In practice, the Indonesian National Police has implemented this privilege, upon the request of witnesses and/or victims, by keeping them informed of progress on proceedings. Another right of witnesses and/or victims is that they may have access to records of the proceedings at any stage (pre-investigation, investigation, prosecution, trial proceedings) while the public in general is only allowed to receive information during trial proceedings.

188. Pursuant to Indonesian legislation, victims are not legally represented during criminal proceedings. Victims' rights and concerns are represented by State prosecutors, who are the officials authorized to prosecute criminal cases and decide which law is applicable to the case being presented before the court.

189. Victims of acts of terrorism may influence court decisions through their testimony before the court. Their testimony will be considered as evidence. They are not allowed to give their personal opinions regarding the case. Information provided by victims as witnesses is not considered to be an impact statement with direct influence on the decisions of the court. Victims may report criminal acts to a law enforcement officer and request that legal proceedings be initiated. With respect to cases of acts of terrorism, police may start pre-investigation and investigation, without the need of a report or request from victims.

Kenya

190. Section 329 of Kenya's Criminal Procedure Act allows for Victim Impact Statements to be issued, not only as an opportunity to provide information for the judge to consider at sentencing, but also allowing the victim to articulate the suffering caused by the offence and the financial consequences thereof.

191. The Kenyan Constitution has made it easier for all citizens (including victims) access to justice. Litigants are allowed to have legal counsels at State expense. The State Prosecutor is considered as representing the victims. Associations can take up cases on behalf of their members on any matter of public interest.

192. Right to information is also one of the fundamental rights recognized by the Constitution to all citizens and, in particular, to those involved in criminal proceedings.

Mongolia

193. In accordance with Article 42.3 of the Law of Criminal Procedure of Mongolia, the rights of the victim or his or her representative during a criminal trial are:

- To have a defence counsel;
- To present evidence;
- To submit a petition concerning the necessity of analyzing evidence;
- To participate in a court's hearing;
- To put forward questions to the defendant, witnesses, and experts;

- To appeal from the actions and decisions of an inquiry officer, investigator, prosecutor and the court,
- To speak in the own mother tongue or give testimony in a known language and make use of a translator or interpreter;
- To become familiar with all the materials of the case upon its completion;
- To require to be compensated from losses incurred due to the crime;
- To make a copy of court decree upon acquittal or sentencing and to present a complaint through an appeal and review procedure;
- To become familiar with the materials related to complaints or protests submitted by other parties with respect to a decision of the court, and to provide explanations; and
- To submit challenges to inquiry officer, investigator, prosecutor, translator, interpreter, judge, citizens' representative and secretary of a judicial session.

194. Concerning representation, the same law allows for family members or close relatives of a victim that died as a consequence of a crime, or who has become legally incapacitated, to have the same rights mentioned above.

195. The Law of Criminal Procedure recognizes the criminal liability of victims for refusing or intentionally avoiding giving testimony, or for giving false testimony.¹⁰⁶ Furthermore, Article 42.5 provides for victim's duties including:

- To appear as summoned by an inquiry officer, investigator, prosecutor, and court;
- To give truthful testimony with respect to a case;
- To keep the confidentiality of documents related to a case which become known to him or her; and
- To obey judicial orders during criminal proceedings.

Peru

196. In Peru, after several decades and as a prelude to the entry into force of the new procedural system, Article 57 of the CdPP was amended in 2004 by Legislative Decree 959, expanding the powers and activities of the civil party in criminal proceedings, to include the following:

- Present incidents of nullity in the procedure;
- Offer means of investigation and evidence;
- Participate in acts of investigation and evidence;
- Take part in the trial hearing;
- File the appeal remedies provided by law;
- Make requests to safeguard the legitimate rights and interests of the civil party;

¹⁰⁶See Article 42.6, Law of Criminal Procedure of Mongolia.

- Request and participate in the proceedings for the imposition, modification, extension or termination of measures that are coercive or limit rights, affecting, in one way or another, civil reparation and its legitimate interest in the results and effectiveness of the process with regards to its scope of intervention;
- The activity of the civil party will include participation in the clarification of the crime and the involvement therein of its perpetrator or participant, as well as establishing civil damages. The civil party is not allowed to request or refer to criminal sanctions; and
- The civil party is authorized to appoint counsel for the trial hearing and attend the hearing. Their attendance is mandatory when agreed by the Criminal Chamber.

Poland

197. Articles 53 to 58 of Poland's Criminal Procedure Code present the procedure for the victim to participate in the judicial proceedings as a subsidiary prosecutor, alongside the prosecutor or instead of him, in certain cases of public prosecution. Articles 59 to 61 enable the victim to take action against the offender as a private prosecutor.

198. Formal participation as a party is also possible if the public prosecutor decides to withdraw from the criminal proceedings, in such cases the victim may assume the role of private prosecutor. In instances where the criminal court decides to refuse civil claims (adhesion claim), the victim may initiate proceedings in the civil court.

Spain

199. The Spanish judicial system allows for those affected by a crime to take part in the process, to request and try, undertake criminal prosecutions and civil actions, to seek a criminal conviction for the alleged offender and reparations for the harm suffered. In addition, the Prosecution maintains a protective function, defined by Article 124 of the Constitution and Articles 1 and 3.10 of the Statutory Law of the Public Prosecutor, thereby reaffirming Article 773.1 of the Criminal Procedure Act, as an advocate for victims in criminal proceedings. The Prosecutor is obligated to initiate civil actions, in addition to criminal ones, aimed at providing reparation for the damage caused to the victims of any crime as appropriate.

200. The victim may become party to criminal proceedings in accordance with Article 101 of the Criminal Procedure Act, which establishes that all Spanish citizens may bring criminal action in accordance with the requirements of the Law. This provision is endorsed by Article 125 of the Constitution, and Articles 270 of the Criminal Procedure Act and 19.1 of the Statutory Law of the Judicial Power.

201. Together with the possible exercise of this class action, the party injured by the crime (the victim) is informed, once there is an open judicial process, of the possibility of appearing as a party;¹⁰⁷ he or she is exempt from providing bail¹⁰⁸ in sce-

¹⁰⁷See Article 109 of the Criminal Procedure Act.

¹⁰⁸See Article 281 of the Criminal Procedure Act.

narios of exercise of the criminal prosecution; he or she must be informed of all rights provided under applicable laws (including the right to reparation for damages) and of his or her right to appoint an attorney or to have counsel appointed for those who are entitled to legal aid; of his or her right to be informed of progress of the case; and to be informed that if he or she does not appear in the case and does not waive or reserve the right to civil action, this shall be exercised by the Prosecutors.¹⁰⁹

202. The victim can still appear in the criminal proceedings at a later time, thus supplying the lack of prosecution by the Prosecutor if applicable, when the process is in the intermediate phase in accordance with the provisions of Articles 782.2 and 800.5 of the Criminal Procedure Act. The victim is entitled to be informed of the date and venue of the trial,¹¹⁰ as well as to receive notifications of decisions made during the proceedings and which may affect his or her safety.¹¹¹ Finally, the victim must be notified of any sentence pronounced at the conclusion of the proceedings.¹¹²

203. Victims of acts of terrorism who do not have financial resources are entitled to immediate free legal assistance.¹¹³

204. The 2001 Framework Decision of the European Council urges Member States to ensure conditions for victims to testify immediately after the commission of the offense, using for that purpose, for hearing those witnesses living abroad, provisions on video conferencing and telephone conferencing provided in Articles 10 and 11 of the Convention regarding legal assistance on criminal matters between member States of the European Union of 29 May 2000. The Spanish Attorney General has issued Instructional messages regarding the use of videoconferencing to conduct criminal trials (Instruction 1/2002 of 7 February), and in connection with certain procedural acts (Instruction 3/2002 of 1 March).

Sweden

205. Sweden's Criminal Procedure Code concerning legal representation for crime victims¹¹⁴ determines that when an investigation of an offence begins, the "victim" of the crime shall be given legal representation in the investigation of specific crimes, "with consideration to the victims personal situation and to other circumstances where it could be assumed that a significant strong need for such legal representation exists".¹¹⁵ Pursuant to Section 3 of the same law, the victim's legal representation shall take care of the interests of the victims and be supportive of and helpful to the victim. The legal representative shall aid the victim and represent her or his case when she or he requires monetary compensation from the defendant for reasons based on the crime

¹⁰⁹See Article 771.1 of the Criminal Procedure Act.

¹¹⁰See Article 785.3 of the Criminal Procedure Act.

¹¹¹See Article 109.4 in conjunction with Article 57 of the Criminal Procedure Act.

¹¹²See Articles 789.4 and 792.4 of the Criminal Procedure Act.

¹¹³It is worth noting that if the lack of financial resources is not proven, the victim will have to cover the costs of the lawyer.

¹¹⁴Lag (1988:609) om målsägandebiträde.

¹¹⁵See Section 1(3), Lag (1988:609) om målsägandebiträde.

in question. However, monetary compensation for the victim cannot be the only purpose of the work of the legal representative.

United Republic of Tanzania

206. The Tanzanian Constitution guarantees access to justice to all the individuals who feel their rights have been infringed. The role of victims in criminal cases is that of normal witnesses. They are not parties to the criminal proceedings and therefore not entitled to have legal representation.

Netherlands

207. In the Netherlands, the Terwee Victim Act of 1992 incorporated a separate chapter in the Dutch Code of Criminal Procedure on the rights of the victim of crime acting in the capacity of aggrieved party. In 2005, the oral impact statement of the victim of crime was incorporated into the Code of Criminal Procedure.¹¹⁶

208. More recently, the Victims' Rights Act of 2009, which entered into force in 2011, amended the Code of Criminal Procedure and includes a chapter dedicated to the rights and the role of the victim. Additionally, it grants the victim, inter alia, procedural rights.¹¹⁷

United Kingdom

209. Victims and witnesses do not have a legal personality in the criminal courts of England and Wales. They are not legally represented in court. There are some exceptions to this:

- A private prosecution — a victim or their family can bring a private prosecution for most criminal offences in England and Wales.
- Where the defence seeks to have access to certain kinds of confidential record relating to the victim or witness (e.g. their psychiatric history), the victim or witness in question may be legally represented at a hearing to determine whether that access should be ordered.

210. It should be noted that prosecutions under the United Kingdom Terrorism Acts require the consent of the AG, if it appears that the offence in question may wholly or partly concern the affairs of a foreign State.¹¹⁸ The AG's consent is also required for prosecutions for race hate and explosives offences.¹¹⁹

211. A prosecution for an offence under the United Kingdom Terrorism Acts which does not concern the affairs of a foreign state requires the consent of the DPP. To grant consent the DPP and/or AG must be satisfied that there is sufficient evidence to

¹¹⁶See Article 302, Dutch Code of Criminal Procedure.

¹¹⁷See, for example, Articles 51a and 288a, Dutch Code of Criminal Procedure.

¹¹⁸See section 117 Terrorism Act 2000; section 19 Terrorism Act 2006.

¹¹⁹See section 27 Public Order Act 1986 and section 7 of the Explosive Substances Act 1883.

provide a realistic prospect of convicting the suspect of the offence or offences in question. They must also be satisfied that such a prosecution is in the public interest. In cases where consent is granted, the prosecution will almost certainly be conducted by the CPS.

212. The consent provisions effectively limit the scope for a private prosecution in a terrorist case. When a private prosecution is brought for an offence that does not require consent (e.g. murder), the CPS has the right to take over the prosecution and may discontinue or proceed with it.

213. There is no formal plea bargaining procedure in England and Wales; however, a defendant facing a multiple count indictment may offer pleas to some and not others. In such a case, the victim or their family will be consulted and their views obtained but the final decision on the acceptability of pleas will rest with the CPS.

214. If a victim or witness has to give evidence at a criminal trial, simple and practical measures can be taken to familiarize them with the court and to make their time there less stressful. Arrangements are often made for them to enter court via a separate entrance and to wait in a separate room. All courts also use the services of a NGO, the Witness Service. The service is staffed by volunteers who are trained in the court system and who speak to victims and witnesses to reassure them and provide practical information.¹²⁰ CTD also has a witness care unit that provides similar advice, information and reassurance prior to the court hearing.

215. Prior to giving evidence, a witness may refresh his or her memory from their written statement. Whilst they are giving evidence, the judge may permit them to refresh their memory again from their statement.¹²¹

216. Victims and/or their families are entitled to regular updates on the progress of the case and (in appropriate cases) to the services of a Family Liaison Officer (FLO). When a terrorist act occurs which involves a death, part of the initial police response is to identify the victims and their families. Having identified them, the police will appoint one or more FLOs.¹²² The FLO has a number of functions that include (but are not restricted to):

- Providing information to the family via regular updates;
- Dealing with any fears and concerns the family may have as to their safety and, if need be, facilitating protection;
- Giving the family appropriate advice;
- Protecting the family from unwarranted media intrusion; and
- Facilitating access to medical/support services should the family need them.

¹²⁰The list of services provided by the witness service is summarized at www.victimsupport.org.uk/help%20for%20witnesses.

¹²¹See section 139 Criminal Justice Act 2003: www.legislation.gov.uk/ukpga/2003/44/section/139.

¹²²For the role of the FLO, see Association of Chief Police Officers guidance at: www.acpo.police.uk/document/criminaljustice/2009/200909CJUFLO01.pdf.

- The FLO will continue to provide information, advice and assistance to the victims and their families throughout the police investigation and any subsequent prosecution.

217. During a trial, CTD employs various means to keep victims and their families updated. Some of the measures in question were used during the trials that followed the 7/7 London bombings.

The 7/7/2005 London Bombings

The bombings on 7 July 2005 in London killed 52 persons and injured many others. Afterwards, three persons were charged with conspiracy to cause explosions (together with the four bombers who died in the explosions).

The bereaved families of the victims did not fall within the definition of “victims” as set out in the Victim Focus Scheme (they would fall within the new definition of victims). However, it was immediately decided that given the high profile of the case and the individual devastation caused, it would be appropriate to implement the Victim Focus Scheme. As a result, once the families had been identified, they were treated as though they were victims. They were allocated a Police Family Liaison Officer (FLO) and the Crown Prosecution Service (CPS) lawyer met with representatives of the various families affected by the attacks.

It was also recognized that deciding who exactly were the victims and victims’ families was not straightforward. There was an awareness of, for example, the impact of such an incident on the emergency services. Those who cleared up the scene may not be victims within the definition (VFS or the new guidance), but may develop long term issues that need attention. It was considered necessary to be aware of their sensitivities, whilst recognizing there was no formal structure for this.

In the trial itself, no eye witnesses were called to give evidence in court. Their evidence, in statement form, was served on and accepted by the defence. The criminal process allows for written statements that have been served to be read to the court, if both the prosecution and defence agree. Therefore, there was no need to consider special measures.

One of the key initiatives used in this trial was a remote court in another town to which all the victims and their families had access. It was set up and treated as a proper court in all respects, with a court clerk (legal advisor) on-site. There was a live video and audio feed from the actual court where the defendants were being tried. Several monitors were set up to enable everyone to see what was happening. The work of the court was closely monitored to ensure that the remote court saw only those parts of the proceedings that would have been seen by the victims and their families had they attended the actual court. The FLOs were also present.

This initiative enabled the victims and their families to see what was happening in the actual court and helped to shield them from unwanted media attention. The financial cost was high but considered appropriate, given the nature of the case.

A further initiative was the setting up of a secure website. The site was password protected for the victims and their families. Its purpose was to enable those who could

not get to the actual or the virtual court to follow the progress of the case each day and see what was planned for the next day.

In addition, the CPS lawyer met with an organization called "Survivors' Group," which is an NGO that assists survivors of disasters. They advised the 7/7 survivors group. The lawyer explained the role of the CPS and set up a system which forewarned victims and their families when potentially upsetting evidence was to be called (e.g. the last video clip of a victim getting on the underground train prior to the explosion that killed them).

The exercise confirmed that victims and their families want information immediately after the event and continually throughout the investigation and trial.

United States of America

218. The United States criminal justice system is based on the adversarial model and, accordingly, crime victims are not considered a "party" to the proceedings. In 2005, however, the Crime Victims Rights Act (CVRA) was passed, which provides Federal crime victims with eight enforceable rights during the prosecution. Victims can be represented by an attorney in the criminal case, through whom the victims can assert their rights. The government does not pay for the attorney; however, the government does provide grants to non profit clinics that provide free representation to victims. The government can also assert the victims' rights.

219. Crime victims' rights in federal courts are listed in the Crime Victims Rights Act (CVRA).¹²³ Those rights are:

- (1) The right to be reasonably protected from the accused;
- (2) The right to reasonable, accurate and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding;
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole proceeding;
- (5) The reasonable right to confer with the attorney for the government in the case;
- (6) The right to full and timely restitution as provided in law;

¹²³See 18 U.S.C. Section 3771.

(7) The right to proceedings free from unreasonable delay;

(8) The right to be treated with fairness and respect for the victims' dignity and privacy.

220. Victims in cases of acts of terrorism generally have the same rights as victims in other cases. Victims can file motions requesting recognition of their rights before the court and victims can ask the appellate court to order the trial court to recognize victims' rights if the trial court has failed to do so. Victims can also file complaints against prosecutors and other Justice Department personnel who fail to provide the rights, and the personnel can be disciplined if the victims' complaint is sustained.

221. The victim may make submissions in writing or orally before court. Victims most frequently want to be heard at the sentencing hearing before the judge decides the defendant's sentence. In addition to the victim's statement, the court also reviews a pre-sentence report written by the probation office. This report contains a section about the impact of the crime on the victim, called the victim impact statement.

222. The Justice Department notifies most victims of case updates through an automated victim notification system which issues letters and emails. There is also a centralized webpage where victims can check on the status of cases. Large cases sometimes will have their own victims' website. When a case involves large numbers of victims, and there is not enough room in the courtroom for all the victims, sometimes the proceedings can be broadcast by close circuit television for victims to observe.

223. The United States also has laws that allow crime victims to file civil lawsuits against offenders. There are special laws for victims of acts of terrorism which allow them to sue terrorist organizations and countries that sponsor terrorism. These civil cases are separate from the criminal case.

Uzbekistan

224. Article 55 of the Penal Procedure Code of Uzbekistan (1994) sets forth rights and obligations of victims. The following rights of the victim are provided for therein:

- To give testimony;
- To introduce evidence;
- To file motions and challenges;
- To use his or her native language or to use the assistance of an interpreter/translator;
- To have a representative appearing for his or her interests;
- To participate, with the permission of the investigator or inquiry officer, in investigative actions;
- To get familiarized, upon inquiry or pretrial investigation, with the entire case file and write out required information thereof;

- To file notification of conciliation and to participate at the conciliation sessions, as well as of the court of the first instance, of appeal, cassation and supervision;
- To challenge the procedure or decision of the inquiry officer, investigator, prosecutor, judge and court;
- To prosecute in court, in person or through his representative;
- To get familiarized with the official records of court session and to submit comments on them; and
- To be informed about any complaints on the case, and challenge them.

225. Under the same provision, a “victim shall be obliged: to appear upon the summons of an inquiry officer, investigator, prosecutor and court; to give true testimony; not to impede the establishment of the issue by destruction or forgery of evidence, by persuasion of witnesses and by other illegal acts; to introduce evidence upon the request of the inquiry officer, investigator, prosecutor or the court; [and] to obey the order during the investigation and the court hearing.”

226. In criminal cases resulting in the victim’s death, the victim’s rights and obligations shall be passed to the victim’s immediate relative and/or other persons recognized by the pre-trial investigation agencies or the court as legal representatives of the deceased.

C. Protection during the criminal proceedings

1. General considerations

227. The protection of victims of acts of terrorism and their families against intimidation and threats is a practical matter faced by law enforcement agencies. The right to receive a suitable level of protection is also essential to avoid further victimization, and to ensure the results of the criminal procedure, in particular as regards their safety and protection of their privacy. Considering that many acts of terrorism are aimed at innocent civilians, the continued threat to victims, the survivors of terrorist acts, may be related to their ability to identify and give testimony against the perpetrators, as well as to contribute in any other manner to the collection of evidence for the purpose of conviction. Similar challenges are faced in trials involving organized criminal groups. In this sense, victims that actively contribute in criminal proceedings ought to be protected and treated with special care, for their contribution to unveiling the truth.

228. However, the concept of witness protection should not be confused with the one of victim protection. Witnesses are not always necessarily victims. Not all victims can contribute to the production of incriminating evidence; if this is found to be the case, a risk assessment should be conducted in order to determine whether special protection is necessary, in particular considering vulnerable targets. Victims should also be protected from being overly exposed in the media and being overlooked in judicial proceedings. Experience has shown that national authorities must pay due regard to the needs expressed by the victims, considering that protective measures against the will of the victims may be ineffective.

229. The purpose of protection should not be constrained to guaranteeing that evidence remains available. The concept of victim-centered criminal proceedings ultimately requires that protection of victims is an aim and function of the criminal justice system. Therefore, protection of victims should not be limited to the boundaries of the criminal trial; it should also be extended to the investigative phase. For instance, Spanish legislation provides examples of how criminal law may contribute to victim protection, such as by establishing penalties for approaching victims, as well as by establishing humiliation of the victims as a criminal offence.

230. Protective measures vary to a great extent, and can be applied cumulatively. In the application of procedural measures, due consideration should be given to balancing the witness' and victim's legitimate expectation of physical safety against the defendant's basic right to a fair trial. It has been observed that procedural measures to protect the victim-witness can be grouped into three general categories, depending on their immediate purpose:¹²⁴

(a) Measures to reduce fear through the avoidance of face-to-face confrontation with the defendant, including the following measures:

- (i) Use of pretrial statements (either written or recorded audio or audio-visual statements) as an alternative to in-court testimony;
- (ii) Removal of the defendant from the courtroom;
- (iii) Testimony via closed-circuit television or audio-visual links, such as videoconferencing;

(b) Measures to make it difficult or impossible for the defendant or organized criminal group to trace the identity of the witness, including the following measures:

- (i) Shielded testimony through the use of a screen, curtain or two-way mirror;
- (ii) Anonymous testimony;

(c) Measures to limit the witness' exposure to the public, and to psychological stress:

- (i) Change of the trial venue or hearing date;
- (ii) Removal of the public from the courtroom (in camera session);
- (iii) Presence of an accompanying person as support for the witness.

231. After terrorist acts, the attention of the media on the survivors and on family members of victims is overwhelming, and often their privacy is not duly preserved. While victims and their family members should be allowed to make voluntary statements to the media, there should be appropriate measures put in place to protect the privacy and photographic image of victims and their families as part of the court proceedings, as stated in Article 8.2 of the European Council Framework Decision of 15 March 2001. In particular

¹²⁴Victim support, witness protection and participation of victims in the criminal justice system and other activities in support of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Report of the Secretariat, United Nations doc. CTOC/COP/2010/5 of 16 July 2010, para. 27. See also, for details and further examples, UNODC, Good practices for the protection of witnesses in criminal proceedings involving organized crime (2008).

the use of new technological measures during court proceedings may be of great assistance in the protection of victims and witnesses from undue media exposure.

232. Concerning the relationship between the media and criminal justice proceedings, while freedom of press shall be the rule, national legislation should provide the means to enforce the secrecy of documents related to criminal proceedings, where necessary, inter alia due to the risks that publicity may pose to victims and witnesses, not only to their image but also to their life and physical integrity.

233. In general, international human rights standards concerning the right to respect for privacy and family life applies.¹²⁵ It is the responsibility of the prosecutor and the judge to be alert to any derogatory assertions that may be made about the victim during proceedings and particularly at the sentencing hearing. The judge and the prosecutor have the obligation to intervene in order to correct such assertions as appropriate, in particular when the victim is not legally represented.

234. For its Member States, the Council of Europe's Recommendation R(1997)13 concerning intimidation of witnesses and the rights of the defence, and Recommendation R(2005)09 on the protection of witnesses and collaborators of justice, provides useful guidance for the protection of the physical and psychological integrity of the victims.

2. National practice and legislative provisions

Algeria

235. In Algeria, Decree 99-48 of 13 February 1999 on the establishment of a foster care system provides for support for orphans of victims of acts of terrorism.

Argentina

236. The Argentinian Office of Integral Assistance for Victims of Crime (Oficina de Asistencia Integral a la Víctima del Delito) (OFAVI) is a unit belonging to the Office of the Public Prosecutor. Created in 1998, the OFAVI became the first national organization that provides protection and assistance to victims of criminal activities. OFAVI is comprised of professionals from different fields such as doctors, psychologists, psychiatrists, social assistants and lawyers in order to help victims to overcome the damage that they have suffered and to prevent double victimization. Its functions include providing legal assistance to victims, developing criminal studies — in order to identify those sectors of the population that are at risk of being victimized — and informing the victims about the existing means to access justice.

Armenia

237. In the Armenian Criminal Procedure Code, chapter 12 provides for protective measures for the persons participating in criminal proceedings (injured, defence

¹²⁵ For example, Articles 14.1 and 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention on Human Rights, Article 11 American Convention on Human Rights.

attorneys, witnesses, accused and other persons). Protection, at the request of the participant or by the initiative of the court, is mandatory and to be considered urgently if a participant or close relative was physically threatened in connection with the participation in the proceedings.

Canada

238. Canada's federal Witness Protection Program Act governs the Witness Protection Program which is administered by the Royal Canadian Mounted Police. It provides for assistance to persons who are providing evidence or information, or otherwise participating in an inquiry, investigation or prosecution of an offence. Protection under the Witness Protection Program may include relocation, accommodation, change of identity, counseling and financial support to ensure the witness' security or to facilitate the witness' re-establishment or ability to become self-sufficient.

239. The Criminal Code criminalizes intimidation of justice system participants, including victims and witnesses, in the following circumstances:

Section 423.1 — Intimidation

(1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in:

(a) a group of persons or the general public in order to impede the administration of criminal justice;

(b) a justice system participant in order to impede him or her in the performance of his or her duties;¹²⁶

(c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

(2) The conduct referred to in subsection (1) consists of:

(a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;

(b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;

(c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that person in a disorderly manner on a highway;

(d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and

(e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.

¹²⁶ "Justice system participant" is broadly defined, and includes victims and witnesses.

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

240. Concerning the consideration of victim's safety in bail decisions, the decision-maker, at various points in the administration of criminal justice, is required to ensure the safety and security of any victim of, or witness to, the offence including:

- That the responsible judicial officer (officer in charge, justice of the peace or judge) considers the safety and security of victims in any decision about an accused's bail;
- That where an accused is released pending trial, the judge considers including as a condition to bail that the accused abstain from any direct or indirect communication with any victim, witness or other person and any other condition necessary to ensure the safety and security of a victim or witness; and
- That the particular concerns of a victim, witness or any other person are considered and highlighted in decisions on the imposition of special bail conditions, including in firearms prohibitions and in criminal harassment offences.

241. The Criminal Code includes several provisions to facilitate the delivery of a victim's or witness' testimony. Those include:

- Discretion of the judge to exclude members from the courtroom when necessary for the proper administration of justice;
- Allowing a victim or witness to testify outside of the courtroom or behind a screen or device that would prevent a view of the accused (section 486.2 of the Code specifically provides that in the case of terrorism offences, the judge may order that any witness testify outside the court if necessary to protect the safety of the witness);
- Allowing the admission of videotaped testimony of a victim or witness who is under the age of 18 or who has a mental or physical disability;
- Permitting a support person to accompany a witness or victim made vulnerable by age or other factors; and
- Restricting personal cross-examination of victims by a self-represented accused.

242. In criminal proceedings, while the general rule is that all proceedings against an accused shall be held in open court, the Criminal Code sets out several exceptions to facilitate the victims' or witnesses' participation and to protect privacy. Complainants of sexual offences and young victims and witnesses are the primary beneficiaries of these special provisions (e.g. section 486.4 provides a mandatory ban on publishing the identity of a victim or witness).

243. A judge may order the protection of the identity of any victim or witness, or of any information that could disclose his or her identity, if the judge is satisfied that the order is "necessary for the proper administration of justice." Factors to be considered by the judge include:

- (a) the right to a fair and public hearing;
- (b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer significant harm if their identity were disclosed;
- (c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;
- (d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;
- (e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;
- (f) the salutary and deleterious effects of the proposed order;
- (g) the impact of the proposed order on the freedom of expression of those affected by it; and
- (h) any other factor that the judge or justice considers relevant.

244. Considering the post-trial phase and the right of victims not to be contacted by inmates, the Correctional Service of Canada (CSC) has a telephone monitoring system that can authorize or prevent communications between offenders and members of the public. Moreover, CSC monitors incoming and outgoing offender mail. Upon request, every effort will be made to prevent an offender from communicating with victims, or any member of the public, by telephone or mail. Any person who does not wish to be contacted by a federal offender can ask CSC to stop the unwanted communications.

245. When making decisions, the Parole Board of Canada considers information from victims that can help to assess whether an offender's release may pose a risk to society. Relevant information from a victim can help the Board members assess the:

- Nature and extent of harm suffered by the victim;
- Risk of re-offending the offender may pose if released;
- Offender's potential to commit a violent crime, for example by providing information about threatening or previous violent or abusive behavior;
- Offender's understanding of the impact of the offence;
- Conditions necessary to mitigate the risk to society which might be presented by the offender; and
- Offender's release plans.

246. Since July 2001, victims can read a statement to Parole Board of Canada members at a hearing, either in person or by audio or video. A statement provides the victims with the opportunity to present information directly to Board members about the continuing impact of the crime and about any safety concerns they may have. The statement must be submitted in writing prior to the hearing. A statement should provide information about:

- The continuing impact of the crime for which the offender was convicted. This could include information about the physical, emotional, medical and financial

impact of the crime on the victim or their children and family members and others who are close to them; and

- Concerns the victim may have for their safety, their family or the community's safety with regard to the offender, should he or she be released, explaining why the victim believes there may be a risk.

247. In addition to the provisions regarding pre-trial release, a number of sections of the Criminal Code allow for orders prohibiting contact by offenders against specific individuals or groups of individuals. The following provisions may apply in terrorism cases.

248. Where an individual is sentenced to a period of probation, courts often impose no contact conditions as part of the probation order. Similarly, a judge imposing a conditional sentence order, which is a sentence of imprisonment of less than two years that is served in the community subject to conditions, can include a condition prohibiting contact with the victim by the offender. Finally, a sentencing judge may issue an order prohibiting the offender from communicating, directly or indirectly, with any victim, witness or other person while serving the custodial period of a sentence.

249. For individuals not under sentence for a criminal offence, Criminal Code sections 810, 810.01, 810.1 and 810.2 peace bonds are available to protect individuals from harm by allowing courts to impose conditions against any individual where there is a reasonable fear that the individual may commit an offence. Section 810 peace bonds allow for conditions where there is a reasonable fear of property and other offences; section 810.01 targets organized crime and terrorism offences; section 810.1 targets sexual offences against children; and section 810.2 targets serious personal injury offences. No contact conditions are frequently included in these peace bonds to ensure the safety of the public.

France

250. Provisions to ensure protection of victims in criminal proceedings are contained in France's Criminal Code and the Code of Criminal Procedure. These provisions are applicable to all victims of crime. Article 434-15 of the Criminal Code criminalizes attempted bribery, which is defined as: "the use of promises, offers, pressures, threats, assault, maneuvers or devices during a procedure or with the goal for a legal defence to persuade others to make or issue a statement, declaration or misleading statement or to refrain from making or issuing a statement, a statement or a certificate." Article 434-5 of the Criminal Code also criminalizes threats or acts of intimidation intended to compel a victim not to complain or to retract. This protection is also ensured through the inclusion in the Code of specific aggravating circumstances. All offenses of assault are more severely punished if the victim is a "witness, victim, [or] civil party" and when the acts were committed "either to prevent him/her from denouncing the action, to complain or give evidence before the court, either because of the complaint, the denunciation or the statement".¹²⁷

251. During the preliminary examination, the need to protect victims or witnesses is one criterion for consideration in provisional detention of a person under investigation

¹²⁷Se, Articles 222-8 5, 222-12 5, 222-13 5 of the French Criminal Code.

when there is a risk of pressure or reprisals.¹²⁸ In addition, imposing certain restrictions such as ban on travel to certain places or meetings with witnesses, may contribute to this protection. Pursuant to Article 706-58 of the Code of Criminal Procedure, the witness may be allowed by the judge to testify anonymously if “the hearing is likely to seriously endanger the life or physical integrity this person, family members or relatives.” Witnesses may also be protected by not revealing their place of residence.¹²⁹ In addition, provisions on video conferencing and audio conferencing allow trial courts to hear the parties or witnesses without requiring them to physically appear before the accused.¹³⁰

252. Further, Law No. 2000-516 of 15 June 2000,¹³¹ on strengthening the protection of the presumption of innocence and victims’ rights, amended the Code of Criminal Procedure, in particular with respect to Title II “provisions strengthening the rights of victims”. The first chapter outlines “[p]rovisions criminalizing acts against the dignity of a victim”. In particular, Article 97 states:

The release, by any means whatsoever, and regardless of the medium, of the reproduction of the circumstances of a crime or misdemeanor, when such reproduction seriously undermines the dignity of a victim and that it is made without the consent of the latter, is punished by a fine of 100,000 francs.

The act of distributing by any means whatsoever, and regardless of the media, information concerning the identity of a victim of an assault or sexual abuse or the image of the victim when it is identifiable is punishable by 100,000 franc fine.

The provisions of this section shall not apply when the victim has given written consent.

Indonesia

253. In 2006, Law No. 13/2006 on Witnesses and Victims Protection was enacted in Indonesia and was followed by Government Regulation No. 44/2008 on Compensation, Restitution, Assistance to Witnesses and Victims. As mandated by Law No. 13/2006, the Government established a special agency or body responsible for protecting and securing witnesses and victims during all stages of court proceedings in criminal cases.¹³² In 2009, the Government established the Indonesian Witness and Victim’s Protection Agency (LPSK). In accordance with Law No. 13/2006, protection is defined as all efforts by the LPSK and other agencies in order to afford rights and assistance to ensure security for witnesses and/or victims.

254. Based on Law No. 13/2006, the LPSK is the agency authorized to decide the kind of support or protection to be afforded to victims and/or witnesses, and whether victims and/or witnesses are entitled to certain rights. In deciding the kind of protection or support to be provided to witnesses or victims, the LPSK is to consider the importance

¹²⁸See Article 144-2 of the French Code of Criminal Procedure.

¹²⁹See Articles 706-57, R 53-22 to R 53-26 of the French Code of Criminal Procedure.

¹³⁰See Article 706-71 of the French Code of Criminal Procedure.

¹³¹JORF No. 138 of 16 June 2000, p. 9038, text No. 1.

¹³²See Articles 8, 11 and 12.

of the testimony of victims/witnesses, and the kind and intensity of threats to the victims/witnesses.

255. Pursuant to Article 5.1 of Law No. 13/2006, victims and witnesses have:

- (a) the right to obtain protection of their personal, family and property safety, against any threat which is related to the testimony which they will give, are giving, or have given;
- (b) the right to participate in selecting and determining the form of protection and security assistance;
- (c) the right to give information without any pressure;
- (d) the right to obtain the services of a translator or interpreter (particularly relevant for victims and witnesses not speaking Indonesian);
- (e) the right to be free from any misleading questions;
- (f) the right to be informed about the development of court proceedings (this right is meant to involve victims and witnesses in the case, as their role is often restricted to providing testimony);
- (g) the right to be informed about court decisions;
- (h) the right to be informed about the release of the offender;
- (i) the right to obtain a new identity;
- (j) the right to be relocated;
- (k) the right to obtain reimbursement for transport expenses as necessary;
- (l) the right to obtain legal advice; and/or
- (m) the right to obtain living expenses temporarily until the protection is terminated.

256. Witnesses and/or victims of acts of terrorism are entitled to receive protection during criminal proceedings related to their case, as stipulated in Law No. 13/2006. Further, Law No. 15/2003 on Combating Terrorist Acts provides that protection during criminal proceedings related to acts of terrorism shall be given not only to witnesses, but also to investigators, prosecutors and their families.

257. The protection is given to ensure the security and safety of witnesses so that they are able to freely deliver testimony before the court. Such protection is also given to ensure confidentiality and security of the testimony given by the witness. Protection is supplied at all stages of proceedings (before, during, and after the proceedings). In practice, witnesses and/or victims provide their testimony at the court proceedings without physically facing those accused of the commission of terrorist acts. Another form of protection to victims and/or witnesses during criminal proceeding is to relocate the court to conduct hearings and proceedings. Indonesia's state prosecutor and the Indonesian National Police have utilized this form of protection at court hearings in the Poso's case. They relocated the place of the hearing to a neutral and safer district court to secure the safety of witnesses and their families.

258. Law No. 14/2008 on Public Information Disclosure further states that every public agency is obliged to allow every public information applicant to access information, unless its disclosure could obstruct a case. Particularly, information that could obstruct the investigation and inquiry process of a criminal act and/or reveal the identity of the informant, reporter, witness and/or the victim who knows of the criminal act, may be exempt from disclosure. In this regard, media and journalists are prohibited from publishing and releasing the identity of witnesses and/or victims of crime to the public, if this may hamper the investigation or court proceedings, or if it may pose a threat to the safety of witnesses and/or victims. The media is also requested to consider the importance of protecting the confidentiality of witnesses' identities. The Ministry of Communication and Information plays a role in monitoring issues relating to the publication of victims and/or witnesses' identities, especially when related to highly sensitive cases. However, there are no specific laws or regulations in Indonesia that stipulate clear criteria for the media's obligation to ensure the confidentiality of the identity of witnesses and/or victims of acts of terrorism or for the evaluation of the sensitivity of the case.

259. In the 2009 bombings at the J.W. Marriot and Ritz-Carlton Hotels in Jakarta, LPSK received requests from relevant agencies to provide assistance and rehabilitation to the victims or the survivors of the bombings. In response, LPSK established a Special Team consisting of experts and officials to collect data and information on the survivors and to provide them with access to medical treatment and rehabilitation services. LPSK also considered the importance of keeping witnesses' identities confidential from the public and media a priority.

Kenya

260. In the Kenyan system, victims are protected when they are witnesses through the Witness Protection Act.¹³³ Article 4 of the Act deals with the "witness protection programme" that allows the relevant Government entity called "the Agency" to take such action as may be necessary and reasonable to protect the safety and welfare of the protected persons. Among those actions are the physical and armed protections of the witness; relocation; change of identity; or any other measure necessary to ensure the safety of a protected person.

261. The Agency may request the courts, in the framework of this programme, to implement protective measures during court proceedings such as holding in-camera or closed sessions; using pseudonyms; using video link; or employing measures to obscure or distort the identity of the witness. The Agency shall also put in place support measures to facilitate the integration of the protected person.

262. In the "Kikambala cases" (cases corresponding to the bombing of a Mombasa hotel in 2002), the Kenyan State Prosecutor, reported that because the Witness Protection Act had not come into force at the time, there was no proper protection of witnesses (protection was undertaken by the police). Witnesses were being intimidated and one of the witness refused to testify unless he was relocated, which was not done due to the absence of legal basis and proper system/structure to do it.

¹³³ In force since 1 September 2008.

Peru

263. In the context of Peru's Code of Criminal Procedure, there was a total absence of protective measures for victims of crimes until 1986, when the first programme to specifically assist victims of acts of terrorism was established.¹³⁴ Supreme Decree No. 007-86-JUS, created the National Council for Support of Victims of Acts of Terrorism, and established mechanisms to grant effective relief to the relatives of people who were victims of criminal acts of terrorism.

264. In the Judicial Sector, the role of the National Council for Support of Victims of Crimes of Terrorism was to coordinate and propose measures of assistance and protection to persons killed or injured as a result of terrorist acts, and to their relatives. This agency is chaired by the Minister of Justice and composed of representatives of the Ministry of Economy and Finance, the Ministry of Labour, the Interior Ministry and the Joint Command of the Armed Forces. It provides for the establishment of an Economic Grant Fund for Victims of Acts of Terrorism, which is made up of contributions from the Ministry of Economy and Finance and is administered by the National Council for Support of Victims of Acts of Terrorism and which should be applied to the subsidies established by the Supreme Decree.

265. In Peru, emergency anti-terrorism legislation was implemented based on the Criminal Law Reward System. Under this system, a perpetrator that acknowledged the criminal acts in which he or she participated, and provided sufficient information on how his or her criminal organization worked, was given a "reward" in exchange for this information. The reward consisted of exemption from penalty, reduction of penalty and other measures of protection.

266. Such legislation was in force only temporarily and subsequently new legislation was enacted. Currently, Law No. 27378 is in force, "which establishes benefits for effective collaboration in the scope of organized crime." This Law and Supreme Decree No. 035-2001-JUS "Regulations of Chapter III of Law No. 27378 on an effective collaboration process in the field of organized crime" establish protective measures not just for effective collaborators, but also incorporate the witnesses, investigators and victims involved in criminal law proceedings. Moreover, the prosecutor or the judge in charge of effective collaboration are empowered to expand the protection to the spouse or partner, the ancestors, descendants, siblings or people related to the collaborator under the criterion of rationally assessing a serious hazard.

267. The "Regulation of Measures for the Protection of Collaborators, Witnesses, Investigators and Victims," approved by Supreme Decree 20-2001-JUS, provides the following protective measures:

- Police protection, including designation of permanent police personnel at his home and in his daily journeys, change of residence and the concealment of his whereabouts for all purposes;

¹³⁴Published in the *El Peruano Official Gazette* on 16 July 1986.

- Confidentiality of the identity of the protected party in the investigations in which he takes part. In these cases, the assignment of a secret code will be permitted.
- Involvement of the protected party in the proceedings in which he must personally appear, using any means that makes his normal visual identification impossible;
- Establishing the office of the competent prosecutor, as domicile, for the purposes of summonses and notices.

268. Provision of documents containing a new identity and, if appropriate, of financial means to change his residence or workplace, in exceptional circumstances and of particular gravity, which is funded by the Special Fund for Management of the money obtained illegally against the State, FEDADOI — and in other cases by the Evaluation Commission of the Repentance Law.

269. In Peru the new Code of Criminal Procedure, which is accusatorial, has been progressively implemented since 1 July 2006. The Decision of the Prosecutor's Office No. 1558-2008-MP-FN, dated 12 November 2008, approved the Regulations of the Victim and Witnesses Assistance Program. It also provides for the structure of a Central Unit and District Units in each judicial district. This Regulation applies only in judicial districts where the new Code of Criminal Procedure is in force.¹³⁵

270. The new Code of Criminal Procedure grants the victims of any crime a set of rights that can be classified in three general categories:

- Right to be treated in their capacity as victims;
- Right to protection and assistance; and
- Right to compensation (*reparación*).

These rights are granted based on the fact that victims are considered as key actors in the criminal procedure. Indeed, if the victim is not willing to report the crime or to provide relevant information to elucidate the crime, the possibilities of pursuing the case and resolving it are minimal.

271. Similarly, the new Code of Criminal Procedure regulates the Protection Measures applicable to those acting as “witnesses, investigators, victims and collaborators involved in criminal proceedings,” and Title V establishes procedural rules, guidelines and requirements related to these measures. Therefore, on 13 February 2010, the Executive by Supreme Decree No. 003-2010-JUS, approved the “Regulations of the Comprehensive Protection Program of Witnesses, Investigators, Injured Parties or Collaborators involved in criminal proceedings,” ordering the Attorney General to launch this programme and the Prosecutor's Office to immediately establish the Central Protection Unit. The Central Protection Unit is a support agency of the Attorney General's office with the primary function of developing policies for the programme and issuing technical guidelines for efficient and effective performance. There are also District Units of Assistance to Victims and Witnesses.

¹³⁵Supreme Decree No. 016-2009, JUS.

272. Protective measures that are provided in this programme include:

- Police protection;
- Confidentiality of the identity of the protected party in the investigations in which he participates; and
- Use of mechanical or technological procedures to avoid endangering the safety of the protected party.

In addition, a Special Unit for Investigation, Testing and Protection was created within the National Police force. Its staff will be appointed by the Directorate General of Police with the approval of the Attorney General's Office.

273. Regarding terrorism, the Public Ministry created a Specialized Subsystem, "Superior National Criminal Prosecutor and Supraprovincial Criminal Prosecutors" operating under the coordination and supervision of the Superior Prosecutor Coordinator. The Superior Prosecutor Coordinator's powers are established in the "Regulation of functions of the Superior Prosecutor Coordinator of the Superior National Criminal Prosecutor's Office and the Supraprovincial Criminal Prosecutors," Directive No. 003-2005-MP-FN, adopted by Resolution of the Attorney General's Office No. 291-2005-MP-FN of 11 February 2005. These powers are further referred to in Law No. 27378.

Spain

274. Law 29/2011 has a title dedicated to the protection of victims and their families during the criminal proceedings. The law enshrines the principle of minimum damage during the criminal proceedings. This principle seeks to prevent victims from undergoing a second victimization. For example, direct visual contact with the defendants is avoided and victims are prevented from being exposed to any signs or statements that may denigrate or offend them. In accordance with this law, judges and courts are responsible for the protection of the dignity and physical security of the victims during the criminal proceedings. The law foresees the establishment by the Ministry of Justice of a victims support and information office within the National High Court which will offer personalized service with specialized staff members. Services to be provided include providing information on the status of the proceedings, offer accompaniment to the proceedings, promote the safeguarding and privacy of the victims and informing them about everything related with the execution of the sentence, in particular in what concerns the provision of benefits to the imprisoned or his or her leaving prison.

275. The Attorney General has provided specific policy guidance in the context of protection to the victim in the judicial process.¹³⁶ The most important one regarding

¹³⁶These include: Circular 1/1998 of 24 October on the involvement of the Prosecutor in the prosecution of abuse in the home and family; Circular 2/1998 of 27 October on government aid to victims of violent intentional crimes against sexual freedom; Circular 1/2003 of 7 April on procedure for the rapid and immediate prosecution of certain crimes and misdemeanors, amending the simplified procedure; Circular 3/2003, dated 30 December on procedural issues related to the protection order; Circular 4/2003 of 30 December on new legal instruments in the prosecution of domestic violence; Instruction 4/2004 of 14 June about protection of victims and the strengthening of the precautionary measures in relation to crimes of domestic violence; Instruction 2/2005 on accreditation by the prosecution of domestic violence situations; Instruction 7/2005, dated 23 June, prosecution against violence against women and the sections against violence of the Prosecutor; Circular 4/2005 of 18 July concerning the criteria for application of the Statutory Law on Integral Protection Measures against Gender Violence; and Instruction 8/2005 of 26 July on the duty of information in the care and protection of victims in criminal proceedings. These Circulars and Instructions are in full force and address specific policies regarding the protection of victims in criminal proceedings.

victims of acts of terrorism is Instruction 8/2005 of 26 July on the duty of providing information in the care and protection of victims in criminal proceedings.

276. The obligation to inform victims of their rights, as imposed by law, is without doubt the first requirement of protection and enforcement of victims' rights. But in a social and democratic Rule of Law State, it is also the duty of the Prosecutor, together with the rest of the criminal justice practitioners, and the support and coordination representatives from a wide range of disciplines unrelated to law, to give clear, effective and informed answers on topics such as legal, economic, psychological and medical issues.

277. As stated in Instruction 11/2005 of 10 November on the effective treatment of the principle of united action laid down in Article 124 of the Constitution: "Having overcome the fragmented vision of the prosecuting attorney, we must ensure that the detainees clearly receive the message that the Prosecutors are guarantors of the rights of everyone, but especially those who suffer the consequences of criminal conduct. The Prosecutor should be a close ally, a means of contact between his individual case and Justice with capital letters, an open door and, in short, the reasonable solution to their concerns." The above Instruction adds that, "[i]n fulfilling this mission, Prosecutors strive daily to defend these interests, often in an unknown functional environment, which is not achieved solely in the exercise of the penal and civil action, and which is not fully satisfied if, together with the material reparations, the injured parties do not obtain the moral satisfaction of achieving the restoration of the legal order which is disturbed by the crime."

Netherlands

278. The Netherlands' Witness Protection Act (1994, Articles 226a to 266f of the Code of Criminal Procedure — CCP) provides for the legal status of a protected witness for the entire criminal proceeding. In cases where witnesses have well-founded reasons to fear that they or their relatives could run a high risk to their life, health or safety, or a dissolution of their family unit, the status of an anonymous witness can be granted by the judge. Limited anonymity may be granted before the court in cases in which witness' deposition may have a negative impact on their personal or professional life, or, in case of persons that have anonymously given information to the police.¹³⁷

Tunisia

279. Section IX of chapter 1 of Tunisian Law No. 2003-75 of 10 December 2003 (on support to international efforts related to the fight against terrorism and the suppression of money-laundering) addresses mechanisms for victim protection. This law provides for protective measures, notably, for magistrates, police officers and other public agents that are responsible for enforcing the law on terrorist offences. This protection is extended to victims, witnesses and any other person that may be expected to alert the competent authorities, as well as their family members, where applicable.

¹³⁷See Articles 190 and 284 CCP.

280. Article 49 provides for the use of audio and visual communication technology in the interrogation and any other witness examination, with no need for the protected person to appear in court. Another protective measure established pursuant to Article 50, is the possibility for those persons subject to protective measures to establish their domicile with the Republic Attorney of Tunisia, where reference to their identity and residence is kept confidential.

281. Article 54 establishes as an offence endangering the life or property of the persons subject to protective measures and their family members, by deliberately revealing information that can help in identifying them.

United Kingdom

282. In the United Kingdom, if the police receive credible information that there is a serious and immediate threat to the life of an individual, they have a duty to take preventative operational measures to protect the threatened individual.¹³⁸ This obligation exists whether or not the person is a victim or a witness and regardless of the existence of criminal proceedings.

283. The steps that are appropriate to protect the individual will depend on the nature of the threat, its source, and an assessment of the risk involved. Often a warning to the individual will suffice.¹³⁹ However, in some instances, the police may be required to provide physical protection or to help the person relocate and change their identity.

284. Witness protection was put on a statutory footing under the Serious Organised Crime and Police Act of 2005.¹⁴⁰ Section 82 of the Act states that a “protection provider” (the police and various other law enforcement agencies) may make such arrangements that they consider appropriate to protect a person. However, section 82 only affords protection to a category of persons defined by schedule 5 of the Act. It includes persons who are, may be or have been witnesses in criminal proceedings, members of their families, persons living in the same household and those with whom they have a close personal relationship.

285. There are other legislative measures designed to protect victims and witnesses when they are giving their evidence, and to help them give the best evidence they can. They include:

*Anonymity — Section 88 of the Coroners and Justice Act 2009.*¹⁴¹ A court may order that a witness can give evidence anonymously but only if satisfied that:

- Such an order is necessary to protect the safety of the witness or to prevent serious damage to property; and
- The order is consistent with the defendant’s right to receive a fair trial; and

¹³⁸The obligation arises from Article 2 of the European Convention on Human Rights.

¹³⁹Known as an Osman warning after the case *Osman v United Kingdom* [1998] EHRR 101.

¹⁴⁰See www.legislation.gov.uk/ukpga/2005/15/contents.

¹⁴¹See www.legislation.gov.uk/ukpga/2009/25/section/88.

- The importance of the witness's evidence is such that it is in the interests of justice that they testify and they will not testify without an order; or
- There would be real harm to the public interest if the witness were to testify without the proposed order being made.

*Special measures — Sections 16 to 30 of the Youth Justice and Criminal Evidence Act 1999.*¹⁴² Special measures may be ordered to assist a witness in giving their evidence if:

- The witness is under 17 years of age; or
- The witness suffers from a disability or impairment that would diminish the quality of their evidence; or
- The court is satisfied that the quality of the witness' evidence would be diminished through fear or distress about testifying and that the special measures in question are likely to improve the quality of their evidence.

286. Special measures can therefore be ordered for vulnerable and intimidated adult witnesses. The special measures include:

- Giving evidence via pre-recorded DVD (may include examination in chief and cross examination)
- Giving evidence (examination in chief and cross examination) via a video link from outside the court
- Giving evidence behind a screen (the witness would only be seen by the judge, legal representatives and jury)
- Giving evidence by video link is also potentially available to people who cannot easily get to court in England and Wales if it is in the interests of the efficient or effective administration of justice.

United States of America

287. In the United States of America, there are two separate laws that address victims' protection. Under 42 U.S.C. § 10607, government officials have the mandatory obligation to arrange for the victim to receive reasonable protection from a suspected offender and those acting in concert with or at the behest of the suspected offender. In addition, under the Crime Victims Rights Act,¹⁴³ victims have the right to be reasonably protected from the accused.

288. There are several programmes available to enhance victims' security if they are witnesses in the criminal justice process. The most extreme option is the Federal Witness Security Program. This programme is only for situations where victims are essential witnesses in major prosecutions, and have received threats. Victims who enter the programme assume new identities. Another programme, the Emergency Witness Assistance

¹⁴²See www.legislation.gov.uk/ukpga/1999/23/part/II/chapter/I.

¹⁴³See 18 U.S.C. § 3771(a)(1).

Program (EWAP) provides temporary short term relocation to victims who are witnesses and have safety concerns about participating in the criminal justice system. EWAP funds can be used for several purposes including:

- (1) Transportation to enable a witness to leave his or her neighbourhood, city or state temporarily;
- (2) Temporary housing and moving expenses;
- (3) Temporary subsistence;
- (4) Emergency telephones so that witnesses can contact law enforcement and the prosecutor; and
- (5) Security systems and extra locks to make a current home safer. Relocation under this programme usually lasts for 30 days.

289. Terrorism cases are usually high profile and involve media attention. To assist victims in dealing with the media and protecting their privacy, the government provides information and help. The Federal Bureau of Investigation has developed a brochure that provides information for victims on how to interact with the media. It lets victims know how to interact with the media in a way that helps to retain dignity and privacy. Providing victims with advance notice of public announcements about the case can help victims to make informed decisions about interacting with the press. Where possible, Justice Department personnel will protect private victim information from public disclosure, although because defendants have a right to confront their accusers, victims who are witnesses may have some of their private information made public during the court process.

290. Special court accommodation is provided to vulnerable victims, particularly children. Children can testify through closed circuit television so that they do not have to be in the same room as the defendant. Some victims, such as children or elderly, can testify in a videotaped deposition, so long as the defendant has the opportunity to cross-examine them.¹⁴⁴

291. In a high profile case, the government can help victims secure seats in the courtroom and enter and leave it in a secure manner. Protecting victims' names, contact information and other identifying information can assist them in maintaining their privacy.

D. Integral reparation

1. General considerations

292. The right of victims to compensation is probably the right that, to varying extent, has received the most attention worldwide. While it remains a very important right, the interest of victims should not be reduced to that of simple pecuniary compensation, but

¹⁴⁴See 18 U.S.C. § 3509 for special protections for child victims during prosecutions.

it should rather be seen as part of a broader set of rights, as an element within the broader framework of reparation, which also entails restitution, rehabilitation, satisfaction and guarantees of non-repetition. Restorative justice is becoming more and more recognized. The extent of the measures that should be ensured by States goes beyond the satisfaction that can be obtained in formal judicial proceedings. Still, “there is no evidence in international or national law that there is a right to compensation, reparations, and redress other than as a consequence to the establishment of responsibility for the harm produced.”¹⁴⁵

293. In general, the recognition of rights to reparation is closely linked to the specific characteristics of the act of terrorism and State responsibility arising therefrom. This specificity finds its basis in the fact that an act of terrorism is often directed towards a State or group of States, affecting the civilian population, thus State responsibility is incurred. In the absence of identified perpetrators or when they are not solvent, it is the responsibility of States to repair the damage suffered by their nationals.

294. The disparity between national regimes dealing with reparation to victims of acts of terrorism could lead to discriminatory treatment, for example, based on the different nationality of victims of a same act. Therefore, national systems of reparation for victims of acts of terrorism should be harmonized in order to ensure same treatment to victims regardless of their specific circumstances, *inter alia*, by encouraging States to adopt uniform mechanisms or, in cases where they would be unable to guarantee full compensation, to resort to an international system. Objectivity versus subjectivity in reparation is a concept that needs to be further developed. Equal treatment of victims, regardless of their individual circumstances, is not only a way of improving the general support to victims and the enhancement of their rights but also a statement against terrorism. Objectivity should go hand in hand with ensuring that the assistance within the criminal justice response in support of victims is appropriately tailored.

295. In many countries, experience has shown that an effective way to address the many needs of crime victims is to establish programmes that provide comprehensive support and effectively help victims within criminal justice and social institutions. In addition to provisions allowing victims to bring civil claims against perpetrators, some countries have enacted national legislation recognizing victims’ rights to compensation and to participation in criminal proceedings. Those opportunities enhance recognition of the suffering of victims.

296. Based on the principle of equality, victims of acts of terrorism are not ontologically more deserving of compensation than victims of other crimes in proportion to the harm suffered. However, it must be recognized that the reality of certain criminal acts causing large-scale victimization requires a differentiated approach. Through relevant national procedures, financial compensation may be sought from the offender or other available sources, including, where applicable, national funds of compensation to victims.

¹⁴⁵Cherif M. Bassiouni, *Victim’s rights: international recognition*, p. 577. Professor Bassiouni proceeds to recognize that “an important distinction must be made between criminal and civil legal proceedings that are driven by the concept of responsibility as opposed to human and social solidarity reflected in social assistance and support programmes that are driven by other considerations”.

297. The scope of application of models of compensation varies considerably, but there is a consistent pattern of compensation schemes being provided at the national level; in some cases through a legal mechanism established a priori; or in other cases with ad hoc solutions, adjusting States' response to each case. There are significant differences in the amount of compensation provided, and also in the appropriate moment for victims to seek compensation. While some systems provide for the possibility of almost immediate assistance, independently of criminal proceedings, in other systems compensation would only occur once a final judicial decision has been reached. In these cases, compensation by the State is subsidiary to the duty of perpetrators to compensate the harm caused. In particular, considering the conduct of perpetrators in certain kinds of terrorist acts, and the extent of devastation they cause, the impossibility to recover for damages from the perpetrators is rather the rule than the exception.

298. Affirming the right of reparation entails the need to establish a corresponding administrative or judicial mechanism to allow the victim to present a claim or obtain an award. This may be complementary but independent to the participation of the victim in the criminal procedure (e.g. *partie civile* in France), or may be an autonomous mechanism. States should allow compensation, at least to a certain extent, to be independent from the result of criminal proceedings, which may take an extended period of time to reach their conclusion. Additionally, in view of the fact that civil procedures may take even longer to be concluded, and may not necessarily rely on evidence gathered in the criminal procedure, States should at least consider criminal judicial decisions to be a legitimate basis for compensation purposes. Although many States facing frequent terrorist attacks choose to have pre-established normative frameworks to deal with compensation for victims and their families, in other States ad hoc decrees are issued providing for compensation to victims (for example, in Egypt the Government issues grants as lump-sums, monthly remuneration or pension entitlements, depending on different factors). Most States set compensation mechanisms independently from the right of the victim to submit claims to a civil court.

299. Certain compensation models also refer to their national systems of insurance. Combining administrative and judicial mechanisms enhances the ability to provide victims of acts of terrorism with the best possible compensation. A well-established system of health and psycho-social assistance is of utmost importance, in particular immediately after a terrorist act occurs, in addition to general economic support which may become more important over time. An example of meaningful support that is not of a pecuniary character is priority access to public services, such as that provided for in Greece, which may prove a very valuable "remuneration in kind."¹⁴⁶

300. Resolution 27 of the Council of Europe, adopted by the Committee of Ministers on 28 September 1977, may be referenced as an early regional norm dealing with compensation for victims of crime. This resolution recommended that in cases where compensation could not be ensured by other means, the State should contribute to compensate: (a) anyone who has sustained severe bodily injury (covering at least all intentional crimes) as a result of crime; (b) the dependants of any person who died as a result of crime. According to that resolution, compensation could be brought into

¹⁴⁶Albrecht and Kilchling, *Victims of Terrorism Policies: Should Victims of Terrorism Be Treated Differently?*, p. 26.

effect either within the framework of the social security system, or by establishing a special compensation scheme, or by recourse to insurance, and it should include, in appropriate cases, at least the loss of past and future earnings, increase in expenses, medical expenses, expenses of medical and professional rehabilitation, and funeral expenses. This resolution formed the basis for the European Convention on Compensation of Victims of Violent Crimes of 1983, which, also contains a section on international cooperation.

301. The Council of Europe's research reflected in the publication "Victims — Support and Assistance," concluded that the practice, in terms of victim compensation, varies widely among States: sources of funding for State compensation schemes can be public funds, confiscation of perpetrators' assets, fines, a tax imposed on insurance contracts or other sources. In Recommendation R(2006)8, the Council of Europe encourages its member States to compare systems of compensation, including the origin of funding.

302. As for the forms of compensation, the Council of Europe took due consideration of this matter in Guideline VII of its Guidelines on the Protection of Victims of Terrorist Acts, which stipulate that "apart from the payment of pecuniary compensation, states are encouraged to consider, depending on the circumstances, taking other measures to mitigate the negative effects of the terrorist act suffered by the victims."

303. In 2007, the Group of Specialists on Remedies for Crime Victims (CJ-S-VICT) discussed, inter alia, non-criminal justice remedies, civil and administrative remedies, effective access to remedies, and reducing the risk of secondary victimization. The 2007 Final Report of the Group "Non-Criminal Remedies for Crime Victims" dedicated a section specifically to victims of acts of terrorism and underlined that some aspects (scale consequences and non-pecuniary measures) deserved special attention for the victims of acts of terrorism.

304. The European Union Council Directive of 29 April 2004 relating to compensation to victims of crimes outlines some points on the access to compensation for victims of crime in cross border situations:

- Victims of crime are entitled to apply for compensation in the Member State in which they reside, even if the injuries they have suffered were inflicted in a different Member State.
- The Commission has established standardized forms across the whole European Union for the transmission of applications and decisions relating to compensation to victims.
- The designation of central contact points in each Member State, whose fundamental mission is to promote cooperation and information exchange between relevant national authorities of the Member States in question. The aim is to solve problems that could arise during the application proceedings.

305. The Statute of the International Criminal Court addresses in detail with the issue of reparation to victims of the crimes under its jurisdiction (genocide, crimes against

humanity and war crimes).¹⁴⁷ Article 75 of the Statute provides for reparation to victims, and Article 79 creates a Trust Fund, which shall implement Court-ordered reparation awards against a convicted person, and use voluntary contributions to provide victims and their families with physical and psychological rehabilitation. Furthermore, at the discretion of the Board of Directors of the Trust Fund for Victims, funds can be made available to complement the assets seized from convicted persons to support reparation orders. The Rules of Procedure and Evidence of the Court present the procedural steps of reparation proceedings, assessment of reparations, mechanisms for ordering on awards for reparation from the Trust Fund, as well as international cooperation and protective measures for the purpose of forfeiture of property to guarantee orders of reparation against convicted persons.¹⁴⁸

2. National practice and legislative provisions

Algeria

306. In Algeria, notwithstanding any reparation that may be decided by different courts for victims of acts of terrorism in the processing of cases related to terrorist acts, victims may receive compensation sanctioned by state legislation including:

- The laws of finance, including Law No. 93-01 of 19 January 1993 and Law No. 93-18 dated 29 December 1993 and its implementing decrees, which have introduced the principle of compensation to all victims of terrorist acts.
- Law No. 99-08 on the rétablissement de la concorde civile, 13 July 1999, states that the victims of terrorist acts, as defined in Article 87a of the Criminal Code, or their dependents, are able to declare themselves as “civil actors” and seek compensation for damages.¹⁴⁹
- Decree No. 99-47 of 13 February 1999 was established for the compensation of various categories of victims. The state supports any type of compensation by the creation of a “compensation fund for victims of terrorism”
- Ordinance No. 06-01 relating to the implementation of the *Charte pour la Paix et la Réconciliation Nationale*, established a compensation scheme for victims of the national tragedy, which can be delivered in different forms including: a service pension, a monthly pension, a capital global¹⁵⁰ or capital unique.¹⁵¹
- Ordinance No. 06-01 also established assistance for needy families with relatives affected by terrorism providing spouses, dependents and parents with

¹⁴⁷On 11 June 2010, the Review Conference of Rome Statute (held in Kampala, Uganda) adopted by consensus amendments to the Rome Statute which include a definition of the crime of aggression and a regime establishing how the Court will exercise its jurisdiction over this crime. The conditions for entry into force decided upon in Kampala provide that the Court will not be able to exercise its jurisdiction over the crime until after 1 January 2017 when a decision is to be made by States Parties to activate the jurisdiction.

¹⁴⁸See also the manual of the Office of Public Counsel for Victims of the Court titled *Representing Victims before the International Criminal Court: A Manual for Legal Representatives*, available at: <http://www.icc-cpi.int/iccdocs/PIDS/tmp/Representing%20Victims%20before%20ICC.PDF>.

¹⁴⁹Law No. 99-08 on the rétablissement de la concorde civile, 13 July 1999, Article 40.

¹⁵⁰Capital global: amount paid by the compensation fund to the dependents of victim (other than officials and civil servants) corresponding to 120 times.

¹⁵¹Capital unique: amount paid by the national fund retirement to the dependents of victims of terrorism who died or disappeared, when the victim is retired or in a position to retire at death or disappearance. The amount is twice the annual amount of pension of the deceased.

compensation in the form of a monthly pension or capital global. This norm has revolutionized the very principle of the status of victims of acts of terrorism, to include the families of persons impacted by terrorism as victims of acts of terrorism entitled to state assistance.

Argentina

The AMIA case

The Argentinian government has implemented some measures designed to secure the compensation of victims or their families. Two such provisions are the dispensing of subsidies provided by the Argentinian Executive Power, and the preventive seizure of the property of the defendant in order to secure the compliance with the financial aspects of the judicial sentences related to the aforementioned case.

The subsidies were provided by the Argentinian government as a response to the "Asociación Mutual Israelita Argentina" (AMIA) bombing attack, which caused the death of 85 people and injured hundreds. The then President issued Decree 1216/94 (complemented by the Decree 1452/94), which entitled the victims, or their families, to receive a subsidy, the amount of which varies depending on the level of damage suffered by the victims.

After a non governmental organization sued the Argentinian government in the Inter-American Commission on Human Rights, the government issued Decree 812/2005 in which it recognized, due to the failure to comply with its preventative function, its responsibility for the violation of the rights of the victims, guaranteed in the American Convention on Human Rights, including the rights to life, physical integrity, fair trial, and effective judicial protection. It also provided for compensation to be paid to the victims, or their families, independently of the subsidy established by Decree 1216/94. Since then, several legislative proposals have been presented at the Parliament.

In order to ensure the protection of the victims of the AMIA case, the Argentinian government supports the passing of a bill that is already in debate in its Legislative Branch, which envisions compensation for the families of the victims who died in this attack.

307. The preventive seizure of property is related to the compensation for the damages caused by the defendant and aims at securing compliance with the result of the proceedings. This has been applied between 2008 and 2009 against the defendants in the AMIA case, whose implementation had, moreover, a high symbolic value for the victims and their families.

Armenia

308. Article 16 of the Law of the Republic of Armenia on the fight against terrorism (2005) contains provisions on the compensation for damage caused by an act of terrorism. As defined in this law, such damage is to be reimbursed from the State budget in accordance with provisions set forth in the Code of Civil Procedure, including

compensation from the perpetrator to the budget. Such means of compensation is extended to damage caused to foreign citizens on Armenian soil, and to organizations that were harmed by terrorist acts.

309. Article 17 provides for the social rehabilitation of persons who suffered from an act of terrorism, with the purpose of returning the victim to normal life, and includes legal, psychological and medical assistance, professional rehabilitation, and potentially also the provision of housing. These forms of support shall also be covered from the State budget. There are specific provisions in this Law extending social and legal support to persons — mainly State agents and persons providing direct assistance — engaged in the struggle against terrorism.

Bulgaria

310. Articles 20 to 26 of the Crime Victim Assistance and Financial Compensation Act regulate the provision of compensation to victims of crime. The National Council for Assistance and Compensation to Victims of Crime was established to oversee the payment of financial compensation to victims; to assist Bulgarian nationals who are victims of crime in other European Union Member States in completing and forwarding their financial compensation applications to the competent authorities in the other Member States; to conduct victimological research and to coordinate other research programmes in the field of crime victim assistance; and to carry out international cooperation in the field of crime victim assistance.

Canada

311. The Canadian Criminal Code's victim surcharge is an additional penalty automatically imposed on offenders at the time of sentencing unless the accused successfully seeks waiver due to undue hardship. The surcharge is collected by the provincial and territorial governments and used to help fund programs, services and assistance to victims of crime within their jurisdictions. The minimum surcharge is 15 per cent of any fine imposed on the offender, or if no fine is imposed, \$50 in the case of an offence punishable by summary conviction and \$100 in the case of an offence punishable by indictment.

312. Restitution may be ordered by the court to cover readily ascertainable pecuniary damages, including pecuniary damages resulting in loss of or damage to property, or arising from bodily or psychological harm.

313. The Criminal Code includes purposes and principles of sentencing. Section 718 provides that the fundamental purpose of sentencing is to contribute along with crime prevention initiatives, to respect for the law, and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- To provide reparations for harm done to victims or the community; and
- To promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

314. Under the Canadian Constitution, the provinces and territories are primarily responsible for programmes and services for victims of crime including compensation (financial assistance from the government to eligible victims of crime). As noted above, some provincial or territorial legislation which establishes the Victim Services in that jurisdiction provides a broad definition of “victim” to include the family of the direct victim where the direct victim is deceased, ill or otherwise incapable of exercising the rights guaranteed by the Act. Similarly, as described in greater detail below, each of the provinces has established their own eligibility requirements for compensation or financial assistance, as well as available amounts of compensation.

315. The Provinces and Territories’ programmes focus on where the crime occurred. For example, if the crime occurs in Alberta, the victim must seek compensation from the Alberta programme. The assistance is not limited to Canadians or to residents of the particular province. Generally, the nationality of the offender is not a factor in determining eligibility for compensation. These programmes do not cover victims expenses as a result of criminal activity committed outside that province or territory.

316. While no specific financial compensation scheme for victims of acts of terrorism has been established in Canada, a victim of a terrorist act committed in Canada may be eligible for compensation from an existing provincial or territorial programme if it is determined that the act is a crime committed within that province or territory, thereby satisfying the basic eligibility criteria. However, the victim would be subject to the other criteria and conditions of that programme, including the eligible losses and maximum amounts. For example, in Alberta the “Financial Benefits Program” provides a lump sum payment of a fixed amount based on the nature of the physical injury suffered. Compensation for pain and suffering or loss of income is generally not available. Nova Scotia’s programme would only provide compensation for counseling and therapeutic services provided to the victim to assist them to deal with their trauma.

317. The compensation programmes in British Columbia, Quebec and Manitoba provide a lump sum and/or periodic payments to cover a wider range of expenses incurred as a result of the crime including rehabilitation costs, loss of income and dependents benefits. Most provincial programmes provide for funeral expenses up to a set amount.

318. Administered by the federal Department of Justice’s Policy Centre for Victim Issues, the “Victims Fund” has three components:

- *Provincial and Territorial Implementation.* This component includes funds for provincial and territorial governments to implement victim legislation, particularly Criminal Code provisions; financial assistance for victims to attend sentencing hearings and present Victim Impact Statements; enhanced services for underserved victims, such as Aboriginal victims, seniors, visible minorities and disabled victims; and a Northern Victims of Crime Emergency Fund.
- *Projects and Activities.* Grants and contributions are made available to governmental and non-governmental organizations to support innovative projects, public legal education initiatives, enhanced assistance to victims, and training.

- *Financial Assistance.* Financial assistance is provided to individual victims of crime or surviving family members, including victims facing unusual or extreme hardship due to criminal victimization; to victims and victim support persons for travel to attend Parole Board of Canada hearings; to Canadians victimized abroad to cover expenses incurred in returning to Canada or traveling to the country where the crime occurred to attend court proceedings; and to surviving victims and family members for expenses related to attending Criminal Code section 745.6 early parole eligibility hearings for murders sentenced to life in prison.

319. As noted before, the “Victims Fund” provides financial assistance to Canadians victimized abroad. As of 1 April 2007, emergency financial assistance is available to individual Canadians who are victims of specific serious violent crimes in a foreign jurisdiction for emergency situations of undue hardship where no other source of financial assistance is available. The crimes specified are homicide, sexual assault and aggravated assault or assault with serious personal violence, including against a child. This financial assistance could be available to Canadian victims of terrorist acts that take place outside of Canada.

320. Any Canadian may apply to the Department of Justice for emergency financial assistance if he or she is:

- The victim of a violent crime in a foreign jurisdiction;
- The family member of a victim who is dead, ill or incapacitated due to their victimization in a foreign jurisdiction; or
- In the case of a child, a parent or the person responsible for the care and support of the child.

321. The Victims Fund may help cover the following expenses, where the victim has no other source of financial assistance:

- Travel expenses to return to the country where the crime occurred in order to attend the preliminary hearing and/or the trial or equivalent process;
- Travel expenses to return to the country where the crime occurred in order to testify at the preliminary hearing and/or trial if the host country is unwilling or unable to pay;
- Travel expenses for a support person to be with a Canadian victimized abroad, during the immediate aftermath of the crime;
- Expenses for a Canadian victim of crime to return to Canada;
- Out-of-pocket expenses due to being a victim of a violent crime; and
- Upon return to the victim’s home province or territory, financial assistance for professional counseling that would otherwise be covered by the province or territory if the crime had occurred in that jurisdiction.

322. The federal Victims Fund provides limited financial assistance to individual victims of crime or surviving family members, including victims facing unusual or extreme

hardship due to criminal victimization; to victims and victim support persons for travel to attend Parole Board of Canada hearings; to Canadians victimized abroad to cover expenses incurred in returning to Canada or travelling to the country where the crime occurred to attend court proceedings; to surviving victims and family members for expenses related to attending Criminal Code section 745.6 early parole eligibility hearings for murderers sentenced to life in prison; and via the provinces and territories, financial assistance for victims to attend sentencing hearings and present Victim Impact Statements.

323. The terrorism-related provisions of the Criminal Code include sections 83.14(5.1) and (5.2), which provide authority for the federal government to enact regulations allowing proceeds arising from the disposal of forfeited terrorism-related property to be used to compensate victims of terrorist acts. However, no such regulations have been enacted to date.

324. Currently in Canada, victims of acts of terrorism can use the civil courts to pursue redress for damages arising from terrorist acts. However, lawsuits would have to be pursued in accordance with the relevant domestic law.

Colombia

325. Colombia's Law on the Protection of Victims and Land Restitution establishes a new institutional framework through the creation of the National System of Assistance and Reparation for Victims, which consists of all public government institutions responsible for formulating and implementing plans, programmes, projects and specific actions aimed at care and full compensation of victims. The National System will also collect the coordinating powers in Law 387 and Law 418 of 1997; Law 975 of 2005, and other rules governing the coordination of policies to satisfy the rights to truth, justice and reparation for victims.

326. In addition, other than existing judicial reparation, the Law establishes an administrative procedure by which victims can seek to receive reparation without a previous judicial process or a conviction.

327. Pursuant to Article 11(c) of the Code of Criminal Procedure, victims have the right to swift and comprehensive reparation of damages incurred by the perpetrators of the offence or other liable persons.

328. The right to reparation, also affirmed in Law 975/2005,¹⁵² follows the same process as an incident in the criminal proceedings (*incidente de reparación integral*),¹⁵³ and the amount shall be determined by the competent judicial authority. The acts of reparation provided for under Law 975/2005 include the following:

- Forfeiture of property illicitly obtained for the purpose of reparation;
- Public declaration re-establishing the dignity of victims;

¹⁵²See Article 8 and Articles 43 to 56.

¹⁵³See Law No. 975/2005, Article 23.

- Public recognition of having caused harm to the victims, public declaration of repentance, solicitation of forgiveness directed to the victims and promise of non-repetition; and
- Effective collaboration for locating kidnapped or missing persons, as well as the corpses of victims.

329. In this sense, there is legal recognition in the law that reparations may be offered both to compensate for quantifiable losses, to the extent possible, or for symbolic value. The latter would aim to ensure the preservation of historic memory, non-repetition of victimizing acts, public acceptance of facts, public forgiveness, and the affirmation of the dignity of the victims.

330. The institutions for reparation to victims provided for pursuant to Law 975/2005 are as follows:

- *National Commission of Reparation and Reconciliation.* Its functions are to guarantee victim participation in judicial proceedings and the effectiveness of their rights; to present a public report on the root causes and evolution of illicit armed groups; to follow up on the proceedings of demobilization; to follow up on and periodically evaluate reparations and give recommendations for their appropriate execution.
- *Regional Commissions for Restitution of Goods.* Their function is to facilitate claims over property and possession of goods.
- *Fund for Victims Reparations.* It consists of property forfeited from members of illicit organized armed groups, by the national budget, and donations, and is administered by the Presidential Agency for Social Action and International Cooperation (ACCIÓN SOCIAL).¹⁵⁴
- *Presidential Agency for Social Action and International Cooperation.* It has the main function of paying judicial orders for compensation and of administering the fund for victims' reparation. Furthermore, it also implements a compensation programme for victims of acts of terrorism on the basis of Law 418 of 1997 and Decree 1290 of 2008.

331. Below is a brief description of the programmes of the Presidential Agency for Social Action and International Cooperation:

- *Compensation programme for victims of violence.* Based on Law 418 of 1997, extended by Law 548 of 1999, extended and amended by Laws 782 of 2002, 1106 of 2006 and 1421 of 2010 the Government gives solidarity aid through administrative compensation (delivered until 1998 through life and personal accident insurance policies). ACCIÓN SOCIAL issued Resolution 7381 of 2004, which addresses victims of violence.
- *Individual compensation programme through administrative procedure.* Based on Decree 1290 of 2008, the Government carries out administrative compensation to victims, as a component of the National Plan for Compensation, devel-

¹⁵⁴The Presidential Agency for Social Action and International Cooperation (ACCIÓN SOCIAL) was created by Decree 2467 of 2005.

oped by the National Commission for Reconciliation and Compensation. ACCIÓN Social conducts the respective technical studies.

- *Fund for the compensation of victims.* ACCIÓN SOCIAL administrates the fund for the compensation of victims, created by Article 54 of Law 975 of 2005. The assets of the Fund consist of the goods delivered by the offender, funding from the National General Budget and national as well as international donations. Its purpose is the enforcement of judicial decisions of the Justice and Peace Chambers of the Courts.

In addition, Colombia established 9 April as the National Day for Victims.

France

332. In France, victims of acts of terrorism can apply for compensation from a special fund called “Fund for the Victims of Terrorist Acts and other Offenses” (FGTI). Created by Law No. 86-1020 of 9 September 1986 on the fight against terrorism and attacks on state security, the fund aims to provide full reparation for damages resulting from personal injury suffered by victims of acts of terrorism regardless the existence of any criminal proceeding or the identification, prosecution or potential solvency of the perpetrator.

333. Upon the occurrence of an act of terrorism, the public prosecutor of Paris, if the attack takes place in France, or the diplomatic or consular authority, if the attack takes place abroad, promptly notifies the FGTI of the circumstances of the event and the identity of the victims. Any person perceiving her/himself as victim of an act of terrorism is entitled to contact the FGTI directly.

334. The FGTI measures the terrorist nature based on the evidence submitted by prosecutors and, if it has the characteristics of terrorism, opens a file for each victim and directly contacts the person concerned, or his or her family, to immediately pay a first advance on account for the losses suffered. Additionally, the fund contributes to compensation for victims of criminal offences of a serious nature.

335. The FGTI is recognized as a legal entity and its funds are supplied by a deduction on property insurance contracts;¹⁵⁵ the contribution rate is fixed yearly;¹⁵⁶ and

¹⁵⁵Included are the branches 3 to 9: 3. Land vehicles body (other than railway): any damage inflicted to: a) motorised land vehicles; b) non motorized land vehicles / 4. Railway vehicle body: any damage inflicted to railway vehicles / 5. Air vehicles body: any damage inflicted to air vehicles / 6. Maritime, lacustrine, fluvial vehicles body: any damage inflicted to: a) fluvial vehicles; b) lacustrine vehicles; c) maritime vehicles / 7. Goods in transit (including merchandise, baggage and all other property): any damage to cargo or baggage, independently of the means of transport / 8. Fire and natural: any damage to property (other than property included in classes 3, 4, 5, 6 and 7) caused by: a) fire; b) explosion; c) storm; d) natural elements other than storm; e) nuclear energy; f) subsidence of land / 9. Other damage to property: any damage to property (other than property included in classes 3, 4, 5, 6 and 7) when such damage is caused by hail or frost, and any event such as theft, other than those included in class 8.

Benefits paid by the organisms, institutions and services managing a compulsory social security plan and those mentioned in sections 1106-9, 1234-8 and 1234-20 of the Rural Code, the benefits listed in section II of Article 1 of the Ordinance No. 59-76 of 7 January 1959 relating to actions of the State Civil Service and certain other public entities, are paid to reimburse the cost of medical treatment and rehabilitation, wages and fringe benefits maintained by the employer during the period of inactivity following the event which caused the damage, sickness benefit and disability benefits paid by group insurance governed by the Code of mutuality, provident institutions governed by the Code, Social Security or the Countryside Code and insurance companies regulated by the Insurance Code.

¹⁵⁶3.30 Euros by contract for 2010 non-exclusively dedicated to the compensation of victims of terrorism acts, this fund having other missions.

includes the revenue from the adjudged financial and patrimonial sanctions against the persons found guilty of terrorist acts. The FGTI has subrogated rights to the rights of the victims against the person responsible of the damages.

336. When the terrorist acts are committed within the national territory, all the victims as well as their beneficiaries, regardless of their nationality and of the legality of their presence on French territory, are entitled to receive compensation. When the terrorist acts are committed abroad, the victims of French nationality and their dependents, having their habitual residence in France, or usually residing outside France but being legally registered with a consular authority, regardless of their nationality, are entitled to compensation. Hostages and their families may be compensated by the FGTI during their captivity.

337. The FGTI assures the full reparation of damages resulting from an injury to the person. The compensation offer takes into account the benefits stipulated in Article 29 of Law No. 85-677 of 5 July 1985, aimed at improving the situation of victims of traffic accidents and the acceleration of compensation procedures.¹⁵⁷ Compensation for property damage follows the model of insurance policies for fire damage.

338. The FGTI assists the victims with the completion of their compensation file. The first installment to the victim is due within one month of completion of the application for compensation, or in case of death of the victim, to his/her beneficiaries. The FGTI should present any victim with a compensation offer within three months from the date of receipt of the damages justification, even in the case of aggravated damages. Delayed or manifestly insufficient offers allow the victim to claim for additional monetary damages.

339. Article 706-103 of the Code of Criminal Procedure specifically addresses protection of the material interests of the victims of terrorism and provides protection similar to that afforded to victims of organized crime. In order to guarantee their compensation, the Code of Criminal Procedure provides for the judge to take measures, if necessary, regarding property seized during the investigation or prosecution. Additionally, victims of acts of terrorism benefit from fiscal advantages (exemption of transfer taxes) similar to those of victims of war.¹⁵⁸

340. Victims of acts of terrorism committed on French soil benefit from the provisions of the Code for military pensions and victims of war applicable to civilian war victims. Equally, the same benefits apply to French nationals habitually residing in France or habitually residing outside of France and registered with the Consular Authority who suffer a terrorist attack abroad.¹⁵⁹

- *Entitlement of civilian victim of war.* The pension can not be combined with the compensation paid primarily by the Guarantee Fund for Victims of Acts of Terrorism and other Offenses or under other plans. In case of the death of the victim, her/his dependents may receive a pension.

¹⁵⁷Tendant à l'amélioration de la situation des victimes d'accidents de la circulation et à l'accélération des procédures d'indemnisation.

¹⁵⁸See Article 796, 7 of the General Code on Taxes, Law 90-1169 of 29 December 1990.

¹⁵⁹This status, created by Article 26 of Law No. 90-86 of 23 January 1990, is applicable retroactively to victims of acts of terrorism committed after 1 January 1982.

- *Free medical care and assistive devices.* Victims can opt for a plan of medical care case management by the administration in charge of war veterans under their social security plan or work injury medical coverage. This option is initiated by individual request at the victim's local Interdepartmental Directorate for War Veteran. Upon receipt of the request, a register of free medical care is delivered to each victim. It assures victims unrestricted choice of their medical specialist, exemption from advance payment for medical and pharmaceutical services, including the *ticket modérateur*,¹⁶⁰ and treatment of certain medical conditions beyond the insured disability. Victims are also entitled to case management services related to any necessary devices required by a resulting disability, such as a prosthesis, orthosis or wheelchair. In the case of incapacitation of at least 85 per cent, victims who were not part of the social security system will automatically become part of it.
- *Access to the National Institute for Invalids*¹⁶¹ (INI), which provides hospital facilities and services for victims and also offers out-patient consultations and treatment.
- *Entitlement to the social assistance granted by National Office for War Veterans and Victims*¹⁶² (ONAC). ONAC is a nationwide public administrative institution, under the Ministry of Defence, with legal personality and financial autonomy. ONAC provides victims with information as well as emergency financial assistance during the waiting period for the first installment of compensatory payments from the FGTI. This assistance is provided in close partnership with additional stakeholders. In medium-term, ONAC coordinates or follows up with State procedures; receives requests for civilian victims of war pension¹⁶³ and transmits them to the interdepartmental direction; organizes professional assistance for re-training and re-employment; and provides other administrative assistance. On a long-term basis, ONAC provides individual help such as financial assistance and guidance.¹⁶⁴
- *The status of Ward of the Nation (Pupille de la Nation)*¹⁶⁵ may be granted to the children of victims or to minor victims (less than 21 years old at the time of the attack) of French nationality, delivering additional and specialized protection, and strengthening pre-existing familial assistance. This status confers a range of benefits including subsidies for maintenance, upbringing, education, holidays (in the case the resources of the family are insufficient), assistance in finding first employment, exemption from military service and exemption from payment of university tuition. The request is filed with the victim's local Tribunal de Grande Instance, and is carried out by the legal representative of the minor or the victim her/himself when she/he reaches majority. The decision is pronounced by the Tribunal de Grande Instance.

¹⁶⁰The *ticket modérateur* is inherent to the French system of reimbursement of medical and pharmaceutical care to patients.

¹⁶¹Institution Nationale des Invalides.

¹⁶²Social Assistance granted by the National des Anciens Combattants et Victimes de Guerre (ONAC).

¹⁶³War civil pension.

¹⁶⁴An invalidity card that allows for obtaining rights of priority and price reductions in certain means of transport can also be granted to victims.

¹⁶⁵The status of Pupille de la Nation was established pursuant to a law of 24 July 1917, which decreed that the French nation "adopted" the child of any French soldier who had been killed in battle.

Indonesia

341. Based on practice in Indonesia Criminal Procedure Code, victims of acts of terrorism may request financial restitution by a statement in a “letter of prosecution” prepared by the state prosecutor or in the course of a civil lawsuit against the offender. Subsequent to the establishment of the LPSK Agency, victims of acts of terrorism may also request restitution from the state.

342. The Law on Witnesses and Victims Protection stipulates that witnesses and/or victims are entitled to receive medical support and psycho-social rehabilitation support. In practice, the Government of Indonesia, through the Ministry of Health, provides free medical treatment and psycho-social rehabilitation for victims of terrorist attacks (in the cases of the 2002 Bali bombing and the 2009 J.W. Marriott Hotel bombing, among others), as long as the medical treatment takes place in Indonesia.

343. Articles 36 to 42 of Law No. 15/2003 on Combating Terrorist Acts deal with compensation, restitution and rehabilitation for victims of acts of terrorism. In particular, Law No. 15/2003 provides that each victim of an act of terrorism has the right to obtain compensation or restitution, the amounts of which will be determined by the court. Compensation is to be paid by the State and restitution is to be paid by the perpetrator.

344. Law No. 13/2006 addresses compensation, restitution and assistance to witnesses and victims of crime. For the purposes of this law, compensation is an indemnity provided by the State because the offender is not able to fulfill his or her restitution responsibility. Restitution is an indemnity provided by the offender or third party to the victim or their families, in the form of return of property, payment for loss or suffering, or reimbursement of certain expenses.

345. According to the Law on Witnesses and Victims Protection, rights and support shall be provided to victims and/or witnesses of crimes including in the case of corruption, trafficking of narcotic and psychotropic drugs, terrorism, and others types of offence. In general, victims of these kinds of crimes are entitled to receive restitution from the perpetrator not from the State or government. However, in the case of crimes against human rights, victims are entitled to receive compensation from the State.

346. Under Law No. 13/2006, compensation may be given to victims of gross violations of human rights (human rights crimes) upon a request to the Special Court for Human Rights submitted by the LPSK, which represents victims, families or their proxy. The Special Court for Human Rights later decides on whether to grant or deny the request for compensation.

347. Restitution may be given to the victims of criminal offenses based on a request submitted by the LPSK to the District Court seized of the case. The request for restitution may be filed after the final and binding judgment in the case, or before prosecution of the perpetrator has taken place. The decision to grant or deny the request for restitution rests with the District Court.

348. Government Regulation No. 44 of 2008 outlines the procedures for providing assistance to the witness and/or victim. Such assistance may be provided in the form of medical assistance and psycho-social rehabilitation programmes. Witnesses and/or victims or their proxy may submit a request to obtain a court ruling regarding assistance. Assistance can also be provided by the LPSK, at the discretion of its Head. Victims and/or witnesses or their proxy may submit a request to the LPSK in order to obtain such discretionary assistance. The submission should include a letter from the relevant hospital, physician, psychiatrist or psychologist or centre of medical rehabilitation.

Kenya

349. The Kenya Penal Code (Article 24) includes the payment of compensation as a possible punishment for a crime:

24. The following punishments may be inflicted by a court:

(a) death;

(b) imprisonment or, where the court so determines under the Community Service Orders Act, 1998, community service under a community service order;

[...]

(e) fine;

(f) forfeiture;

(g) payment of compensation;

[...]

350. The Criminal Procedure Code has provisions on compensation to victims of crime as may be ordered by the court. Sections 171 and 174, which deal with “cost and compensation,” are applied broadly by courts to order compensation to victims of crimes and specify how the compensation shall be paid. The relevant articles provide as follows:

171. (1) A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that:

(i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court; and

(ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint. to order costs against accused or private prosecutor. 5 of 2003, section 77.

174. (1) Sums allowed for costs awarded under section 171 shall in all cases be specified in the conviction or order.

[...]

351. The Witness Protection Act (the Act) has established the “Victims Compensation Fund” (the Fund).¹⁶⁶ The Fund is made up of several funding sources such as moneys derived from any property forfeited to the Government “in connection with a crime referred to in subsection 4;” grants, gifts, donations or bequests made to the Fund by any person and received by the Agency with the approval of the Minister.

352. The Fund is used to ensure: (a) restitution to a victim, or to the family of a victim of a crime committed by any person during a period when such person is provided protection under this Act; (b) compensation for the death of a victim of a crime committed by any person during a period when such person is provided protection under this Act, to the family of such victim; and (c) reimbursement of any moneys required to meet expenses relating to any other matter incidental to or connected with the matters stated in paragraphs (a) and (b).¹⁶⁷

Spain

353. Law 35/95 establishes a network of victim assistance offices (the “Office of Victim Services”) aimed at ensuring comprehensive assistance to victims. Pursuant to Law 35/95, Offices of Victims Services are located in “all those sites of Courts or in those Prosecutors Offices where needed”.¹⁶⁸

354. While the Government began the implementation phase of this legislative provision in 1998, there have been challenges in doing so in a timely manner and without overlapping with the parallel creation of offices providing similar services by the Autonomous Communities within the framework of their powers. In fact, the phenomenon of establishing offices or services for victims has spread, characterized by different names, but which ultimately have the same goals and responsibilities, and depend on the various administrations: national, regional, provincial and local. This phenomenon can certainly be seen as positive if these services can ensure their effective coordination, information exchange and appropriate allocation of resources.

355. The tasks assigned to the Offices of Victims Services, which today encompass services to all victims, not just limited to those explicitly referenced under the Law 35/95, can be summarized as follows:

¹⁶⁶See Article 31(2), as amended in February 2010.

¹⁶⁷See Article 31(4).

¹⁶⁸See Law 35/95, Article 16.1.

- To inform direct and indirect victims of their rights and to facilitate protection after the crime to prevent secondary victimization;
- To inform victims on how to file a complaint, location, content and form of the same, and the court process;
- Assistance to victims who request judicial proceedings;
- Information and processing of financial aid that may be applicable;
- Information on, and access to, social resources to meet the needs of victims;
- Ensure access to medical, psychological, social, legal and criminological treatment to people who have been victimized by their circumstances or are in a situation that could be considered potentially hazardous;
- Strengthen coordination between institutions (including judges, prosecutors, the security forces of the State, autonomous regions, municipalities, public or private associations, NGOs);
- Coordination with the Bar Associations of the cities where offices are located under the agreement signed by the Ministry of Justice and the General Bar Council, to provide victims of domestic violence with expert legal assistance as well as specialized social and psychological care, related to the case.

356. In the case of victims of acts of terrorism, there is extra protection, with an array of services from the National High Court (competent court on terrorism) during the processes, and comprehensive financial compensation, based on the principle of solidarity.

357. Law 29/2011 unifies previous legislation on compensation and entails a qualitative and quantitative increase. Introduces indemnification for exceptional assistance for damage suffered abroad.¹⁶⁹ Title IV of the Law addresses a set of measures denominated “social protection regime”, which aim at dealing with all types of needs that may arise throughout life for victims of acts of terrorism. It is worth noting that the retroactivity of the law tries to avoid different responses to similar situations, and thus the application of the law to those who suffered a terrorist attack from 1960 onwards means that, if necessary, they would receive additional compensation in order to match what they would be entitled to under the 2011 Law.

358. The current legislation on compensation to victims of criminal acts of a terrorist nature constitutes the culmination of a long journey in search of an appropriate compensation for the damage that such individuals have suffered and continue to suffer in terms of their morale, psychologically, physically and materially in the aftermath of such serious criminal acts. This legislation is characterized by the progressive improvement in the wide variety of aid offered, in cases ranging from death and bodily injury to property damage, due to the gradual adjustment of the bases of calculation, first making the calculations objective and, secondly assessing the special circumstances that occur, and lastly due to the reduction of procedural formalities.

¹⁶⁹For recognition as victim, the principle of territoriality is combined with the principle of citizenship. The incorporation of the citizenship principle entails assistance and compensation, albeit in inferior amounts, to Spanish citizens suffering terrorist attacks outside Spain, even if the attacks were not committed against Spanish interests or were carried out by groups that do not operate in Spain.

359. Today the legislation offers individualized comprehensive care, emphasizing educational assistance and psychological counseling. The admiration and respect for the sacrifice of victims, due to the damage in itself and the nature of the causation, lead the State to assume the payment of civil liability *ex delicto* due to the victims, in order to ensure that they are effectively compensated, without relying on a conviction, or the solvency of the convicted, or enforcement proceedings. However, there is still a long way to go, ensuring that the criminal proceedings in each case are not an incomprehensible world for victims, who find themselves waiting endlessly for news on the question of whether their rights are being defended, and that victims' desire or fear of participating as a witness are taken into account.

360. To this end, the Prosecutor's Office has initiated contacts with the Directorate General for Support to Victims of Terrorism of the Ministry of Interior, which has a wealth of experience in dealing with victims' needs, and the State Bar, which exercises civil actions in which the State is subrogated, for the development of a Collaboration Protocol for Custody, Care and Support for Victims of Terrorism. This protocol recognizes that cooperation in achieving the aims of these three institutions will be a new step in the progressive improvement of public policy for people who have suffered such severe and indiscriminate damage.

361. Furthermore, a database on the domestic cases involving terrorist acts has been completed to the extent possible, and is updated regularly with the new proceedings. For these reasons, a section or office has been created in the Prosecutor's Office, equipped with the necessary personnel and financial resources to provide personalized contact with direct and indirect victims of terrorist acts, and provide legal support and contact with the administration of justice from the first moment they are identified.

Netherlands

362. As to the attention to and improved position of the victims of crime in general, the following should be mentioned:

- A scheme for state compensation was set up as early as 1975 (*Schadefonds Geweldsmisdrijven*).
- The Legal Aid Act of 1994 offers victims with limited resources state-subsidized legal aid.
- Various amendments to the CCP have been introduced, in particular on the basis of the Terwee Victim Act (1992/1995), pursuant to which the victim may seek compensation through a civil action attached to a criminal trial or by means of a compensation order, the so-called adhesion procedure.
- There is a governmental agency (*Slachtofferhulp*) specialized in giving aid to victims, including those of crime, such as information on compensation and legal procedures/insurances, administrative, jurisdictional, psychological as well as social support. In addition, the agency acts as an advocate for victims in the media and stimulates research and lobbies politically in order to strengthen the victims' position.

Turkey

363. In July 2004, Turkey adopted a law that directly addresses victims of terrorist acts, the “Law on Compensation of Damages that occurred due to Terrorism and the Fight against Terrorism”. The objective of this Law is to provide principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror. The Law compensates for the following:

- Damages incurred from death and injury;
- Damages to movable and immovable property;
- Agricultural damages; and
- Damages resulting from the inability of citizens to access their assets as they relocate due to terror.

364. A total of 51 Compensation Commissions that are charged with determining and giving the necessary compensation have been set up, and 43 have completed their work. Seventy five per cent of the applications made to these Commissions from July 2004 to November 2010 have been finalized, and 60 per cent of the finalized applications have been granted compensation.

United Kingdom

365. Victims of terrorist attacks which occurred in the United Kingdom are entitled to free medical treatment and ancillary services. Compensation can be claimed after a conviction via the criminal court. If sought and if the court considers it appropriate, an order will be made when the Court sentences the defendant. However, the sums are limited and the process is not generally an adequate remedy to compensate for injuries, loss of life, future earnings or expectations or for any form of psychological suffering.

366. Victims can make an application to the Criminal Injuries Compensation Authority¹⁷⁰ whether or not there has been a prosecution. Compensation is awarded on a tariff basis and the sums are not high. The scheme applies to all victims of criminal conduct which results in injury and is not specific to victims of acts of terrorism. An applicant may occasionally qualify for legal aid to present their case. This can be important as the resulting compensation often depends on the evidence provided and particularly the medical evidence. The sum is a lump sum payment with no provision for a regular income.

367. A “Victims of Overseas Terrorism Compensation Scheme”¹⁷¹ now exists and covers incidents occurring on or after 18 January 2010. To qualify, the victim must be a British citizen or long term resident who has suffered death or injury as a result of a terrorist act abroad. The sums which can be claimed are to be set by the Secretary of State.

¹⁷⁰See www.cica.gov.uk.

¹⁷¹From the Crime and Security Act 2010: www.legislation.gov.uk/ukpga/2010/17/contents.

368. A further way to claim compensation is to sue the perpetrator for damages in the civil courts. This can be a lengthy process and must generally be commenced within three years of the incident giving rise to the claim. The standard of proof required is “on a balance of probabilities” and is therefore lower than that required in the criminal courts. However, if the perpetrator possesses insufficient property, then the action may be unfruitful. Where many people have been injured as a result of the same criminal conduct, a “group action” may be successful and keep costs down.

United States of America

369. In the United States, violent crime victims, including victims of acts of terrorism, may qualify for compensation for the out of pocket expenses caused by the crime. Every state has a compensation programme for crimes that occur in that state. The programmes are usually funded by fines and fees that convicted offenders must pay. Fines collected in federal cases are deposited into the Crime Victims Fund which is administered by the Justice Department’s Office for Victims of Crime, and distributed to the states through grants. Typically all victims regardless of their nationality can receive compensation for crimes that occur in that state. The costs that compensation programmes cover differ across states but typically include medical costs, mental health counseling, funeral and burial costs, and lost wages or support. Most states have a limit on the amount of funding a victim can receive. Compensation is usually available only when other financial resources, such as private insurance and offender restitution, do not cover the loss. Some expenses are not covered by most compensation programmes, including theft and property loss. State programmes will typically cover terrorism crimes that occur in that state.

370. While some States cover their own citizens when victimized in foreign countries, others do not. In recent years, the United States Congress established a compensation programme for United States nationals and United States government employees who are victims of acts of terrorism in foreign countries. The programme is called the “International Terrorism Victim Expense Reimbursement Program” (ITVERP), and is administered by the Justice Department’s Office for Victims of Crime. ITVERP operates as a reimbursement programme for victims of terrorist attacks in foreign countries dating back to 1983. Victims can receive reimbursement for out of pocket expenses for medical care, counselling, funeral and burial, and other miscellaneous expenses. The maximum amount that a victim can receive under this programme is US\$150,000. Foreign citizens (other than United States government employees) are not eligible for this programme, even if they were victimized in the same attack as the United States nationals and United States government employees.

371. Victims of acts of terrorism may obtain restitution from an offender through a criminal prosecution, although most offenders, if captured, do not have significant financial or other assets. Under the Crime Victims Rights Act, 18 U.S.C. § 3771(a)(6), a crime victim has the right to full and timely restitution as provided in law. The Mandatory Victim Restitution Act of 1996 (MVRA) requires that restitution be imposed in a wide variety of circumstances. Other statutes also authorize the imposition of restitution as part of a criminal sentence. Under 18 U.S.C. § 3663A, most prosecuted Federal offenses, including terrorism offenses, require the mandatory imposition of the full amount of restitution.

372. Victims of acts of terrorism can also sue civilly in United States federal court for monetary damages against foreign terrorist organizations and against countries that sponsor terrorism. When victims of acts of terrorism sue foreign countries under this provision, the country must be on the United States State Department's list of countries that sponsor terrorism. This law is an exception to the sovereign immunities laws that prevent individuals from suing foreign governments in United States court. Many times when victims sue under this type of law, the other side, whether it be a terrorist organization or a country, does not appear in the case and the victims obtain default judgments. Collecting money on these judgments is very difficult and often times victims are not able to recover the amount awarded by the court.

IV. Improving the criminal justice system's response to support victims of acts of terrorism

A. Main aspects of support to victims of acts of terrorism, beyond support to victims of crime in general

373. The distinction between victims of acts of terrorism and victims of crime in general remains the subject of lengthy debate. Current international standards and norms, as well as most regional initiatives, do not differentiate between types of victims. Accordingly, the criminal justice response to support victims of acts of terrorism is often times not different from the response to support victims of other serious crimes. In both cases, the response is guided by the concrete needs and vulnerability of the victims on a case-by-case basis. This approach has been extensively illustrated in the preceding sections related to victim protection and compensation.¹⁷²

374. However, there are many States which, after establishing general policies for victims of crime, have opted to take a further step and have developed specific policies to address the needs of particular groups of victims, such as victims of terrorism, of trafficking in persons or of sexual violence. The category of victims of acts of terrorism is considered by many to be deserving of provisions specifically tailored to address the needs arising out of the unique characteristics of terrorist acts. Such bespoke mechanisms are particularly crucial in States where acts of terrorism occur on a frequent basis. For example, several European countries that had recurrent experiences of acts of terrorism in the 1960s and 1970s, consequently developed national legislation providing for specific treatment for victims of such acts.

375. Any difference in treatment afforded to victims of acts of terrorism, as distinct from victims of other crimes, should be based upon their specific needs. Acts of terrorism often share certain characteristics. Most acts considered as terrorism inflict large-scale human and material devastation, which requires an exceptional level of preparedness for a rapid and effective response. These acts impact not only the direct victims, who may be physically injured or killed, but may also have lasting effects on indirect victims, such as their dependents or relatives, as well as vicarious victims, which may include members of the broader public.

376. In order to respond to the needs of the broad, and potentially numerous, group of resulting victims, significant resources and coordination may be required. The

¹⁷²For example, in France, two epidemiological studies conducted by the association *SOS Attentat* have been able to identify the specific harm suffered by victims of acts of terrorism compared to other victims of crime. Furthermore, it has been established that the injuries suffered by victims of acts of terrorism are similar to those of civilian war victims, they may even be graver. The first study was conducted on 313 people, victims of attacks committed between 1982 and 1986, and helped change and improve the rules on compensation for victims of attacks. Thus, the Guarantee Fund has created a new position of prejudice, the "post-traumatic syndrome specific" became "prejudice the specific acts of terrorism." The amount represents 40 per cent of the rate provided under adverse physical and psychological (PPI). The second study was conducted on 251 people, victims of a wave of bombings 1995/1996, for assessing the physical, sensory and functional, psychological disorders and their impact on quality of life of these victims.

establishment of targeted support agencies, equipped with the appropriate personnel and funding to respond to mass-victimization, would therefore be recommended. It could also be argued that government-sponsored support agencies would be beneficial for all cases of crime resulting in large-scale devastation. Similarly, within the context of criminal proceedings related to terrorism cases, the collective advocacy, the counseling and the support services offered by victims' associations may have a beneficial effect on the administration of justice and thus on the victims.¹⁷³

377. The unique psychological impact of acts of terrorism on survivors, family members of victims, and potentially also on members of the public, is a crucial element to be taken into account in order to provide effective victim support also within the context of the criminal proceedings. The State's response should include prompt and tailored psychological treatment, consistent with the extraordinary circumstances involved, and as part of a social welfare policy. Other key measures to ensure adequate reparation to victims of acts of terrorism should include, where appropriate, the provision of: comprehensive medical, legal and social services (to address immediate, medium- and long-term needs), material support (such as housing), safety and security planning (including relocation), compensation for economically assessable damages, recognition of the physical and moral harm inflicted on the victim and institutional support and solidarity.

378. The use of the media is another area for development. Too often, victims of acts of terrorism are reduced to statistics in the media, while attention focuses instead on extensive coverage regarding the perpetrators of the acts. This unequal treatment may result in depersonalization of victims and the consequent undervaluation of the impact of the events on the victims and their families.¹⁷⁴ Accordingly, it is essential to provide journalists with adequate training on the moral and ethical considerations involved in covering of acts of terrorism, and the importance of balancing sensitive media treatment with respect for freedom of information. The role of the media in forming public opinion on terrorism should not be underestimated. The media can also be employed as an instrument to delegitimize and isolate terrorists and to communicate reassurance to the public.

B. The importance of the jurisdictional reach of national law on support to victims of acts of terrorism

379. The last two decades have propelled terrorism from being primarily a national phenomenon, to an offence of heightened international concern. Cross-border considerations may further complicate the arduous task of implementing the rights of victims and their family members. As with any transnational offence, effective investigation and prosecution of acts of terrorism frequently require the cooperation of national judicial and law enforcement agencies in multiple States. Additionally, an aspect that is often overlooked is that an increasing number of victims of acts of terrorism are foreign

¹⁷³It is worth noting the recognition of the relevant role of victims' associations found, for example, in Article 64 of Spain's Law 29/2011 on Recognition and Integral Protection to Victims of Acts of Terrorism.

¹⁷⁴See *Supporting Victims of Terrorism* (United Nations, 2009). While the treatment of victims in the media is an important consideration, it is a topic that falls beyond the topic of this publication, which focuses on the criminal justice response to support victims of terrorism, and accordingly, is not discussed in detail.

citizens with limited links to the territories where the offences occur. Similarly, family members entitled to victim support services are frequently located in different countries.

380. Due to the transnational effects of acts of terrorism, it has become increasingly important to establish cross-jurisdictional links that facilitate the functioning of victim support mechanisms, such as those related to compensation, beyond national boundaries. Equitable considerations also underscore the need for States to be aware of the various elements of compensation implemented in other States, in order to better direct domestic policies and programmes, including for compensation, to situations which do not fall under existing schemes for victims.

381. By the same reasoning, the establishment of a broad range of bases for exercising jurisdiction over offences related to acts of terrorism allow for more effective and expeditious international cooperation in criminal matters. Keeping in mind the rights of victims of acts of terrorism to participate in criminal proceedings and receive compensation, mutual legal assistance and cooperation are of the utmost importance.¹⁷⁵ Because judicial cooperation often requires the adoption of coercive measures by the requested State, the observance of the principle of double criminality is often necessary.

382. In addition to the jurisdictional principle of territoriality, many States invoke the passive personality principle as a jurisdictional basis to enable them to investigate and prosecute offences committed abroad against their nationals. Furthermore, the protective principle would allow the judicial organs of a State to establish jurisdiction over offences committed against certain national interests. Equally, States should be discouraged from restricting any rights of victims due to the fact that they are not nationals of the State where the proceedings take place.

383. It is not difficult to imagine the obstacles for victims or their families to follow proceedings that are taking place abroad. The use of technology between authorities of different countries may greatly contribute to bringing the victims closer to criminal proceedings, if they so desire (for example, via video and audio link and Internet). States would have to make additional efforts to extend the support usually available to victims domestically to victims residing abroad,¹⁷⁶ or to victims residing in their territory who have been victims of offences abroad. The experience of foreign victims of the bombings in Indonesia in 2004 illustrates some of the cross-border challenges faced. While under the Indonesian framework regarding treatment of victims and witnesses, there was no obstacle for foreign victims to seek restitution; one difficulty encountered by a foreign victim that sought medical treatment in a third country was that the legislation of neither Indonesia nor the country of nationality of the victim provided for coverage in those circumstances.

384. Most States with a specific framework of assistance for victims and witnesses do not differentiate between nationals and non-nationals. Notwithstanding that, it could

¹⁷⁵For instance, effective and expeditious mutual legal assistance and international cooperation for the purpose of confiscation are relevant tools in relation with compensation.

¹⁷⁶See, for example, section 2.4.2 on the United Kingdom and its 2010 statutory scheme (retroactive to 2002) allowing for compensation to be made for British citizens having suffered a terrorist attack abroad.

be of great importance to collect information on national focal points for support to victims of acts of terrorism, to make this information readily available to victims and their families, and to foreign services. This could prove a very basic but crucial element to facilitate rapid responses to terrorist acts, considering that even within one country there may be different regulations in place (for example, the provinces of Australia and Canada).

At the regional level, reference may be made to European Union Council Directive 2004/80/EC, of 29 April 2004, which *inter alia* deals with access to compensation in cross-border situations.

C. Measures to improve the criminal justice system's response to victims of acts of terrorism

385. This publication is intended to be used as both a reference tool for practitioners and as a source of suggestions for the consideration of Member States seeking to improve the response of their criminal justice system when dealing with the complex matters related to the treatment of victims of acts of terrorism. The preceding sections were primarily aimed at sharing national criminal justice norms and practices related to supporting victims (including recognition during criminal proceedings, access to justice, protection during proceedings and integral reparation afforded) as a means of supporting States wishing to review their existing arrangements both at the normative and the practical level.¹⁷⁷ In this section we present additional considerations and measures highlighted by contributing experts, which also deserve policy makers and practitioners' attention.

386. In devising measures to counter terrorism there is a clear need to ensure respect for human rights, encompassing the guarantees of the rights of alleged perpetrators, as well as the rights of victims. It has been noted that international human rights law has been explicit in specifying procedural rights of the accused, which are a necessary requirement for fair trial proceedings. Regrettably, the main binding international instruments on human rights do not focus on the importance of the formal and substantive rights of victims in the context of criminal proceedings. However, to varying degrees, there is growing recognition at the international, regional and national level of the relevance of emphasizing the role of victims in criminal proceedings.

387. In the case of rights of the accused, in contrast to other civil and political rights, "procedural guarantees are not directed at requiring State's parties to refrain from doing something but rather require them to undertake positive measures to ensure these guarantees. The right of equal access to a court in Article 14(1) [of the International Covenant on Civil and Political Rights] obliges States parties to set up independent, impartial courts and to give them such an institutional and financial structure that they are able to conduct a fair trial in all types of civil and criminal matters and to accord all accused

¹⁷⁷For example, the Committee of Ministers of the Council of Europe, in its Recommendation R(2006)8 to Member States on assistance to crime victims, encourages comparative research for example on the effectiveness of the existing protective measures (procedural and practical) and the organization of immediate assistance to victims.

persons the minimum guarantees enshrined in Article 14 (2) to (7)."¹⁷⁸ Building up a comprehensive structure of integral support, and making it readily available to victims, also requires positive action and significant efforts, and it is often the case that financial implications discourage States from prioritizing the much needed inclusion of a comprehensive system of support for victims in State policies.

388. It is of paramount importance to undertake a thorough assessment of all criminal justice aspects related to support to victims in national systems in order to improve existing efforts and increase the coherence of the institutional response. The *Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, prepared by the United Nations in 1999, includes a comprehensive chapter on building up victim assistance programmes at national level.

389. As observed in UNODC's *Handbook on Criminal Justice Response to Terrorism*, "criminal justice officials and policy makers can help ensure that criminal justice systems are responsive to the needs of victims and respectful of their rights by doing the following:

- Assessing the needs of victims, in particular victims of acts of terrorism or counter-terrorism measures, and assessing how those needs are addressed;
- Assessing the availability of existing resources to meet victims' needs and the capacity of existing agencies to provide effective protection and assistance to victims of crime;
- Reviewing existing national policies, procedures and laws for dealing with victims of crime, abuse of power and violations of human rights;
- Reviewing how existing practices in every aspect of the criminal justice system are affecting victims of crime and how those practices can be improved;
- Assessing and improving as necessary access by victims to justice and redress and the conditions of that access;
- Assessing and improving as necessary access by victims to legal counsel in seeking redress and access to justice;
- Assessing the various forms of compensation, if any, victims of crime and victims of violations of human rights may have access to and improving existing compensation mechanisms as necessary;
- Assessing specifically how victims of abuse of power, are treated and what recourses and access to redress available to them;
- Reviewing and enhancing national legal frameworks, including how they specifically address the rights of victims of abuse of power and victims of violations of human rights;
- Developing national policies for victim assistance and victim protection;

¹⁷⁸Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (2005), p. 307.

- Developing the capacity of existing institutions and agencies to offer assistance services for victims;
- Providing training for law enforcement and justice officials in human rights and the rights of victims;
- Providing training in the use of testimonial assistance techniques to protect the safety, privacy and identity of victims who testify as witnesses in court;
- Providing training for and supporting assistance workers and professionals working with victims and witnesses;
- Developing court-based and police-based assistance services for victims and witnesses;
- Supporting non-governmental organizations involved in providing assistance and support to victims of crime and victims of violations of human rights;
- Developing the capacity of local authorities to cooperate internationally in the protection of victims, compensation for the harm suffered by victims and the safe repatriation of victims when necessary.”

390. The set of recommendations that arose from the Symposium on Supporting Victims of Terrorism¹⁷⁹ is also still valid and of crucial importance. Some of the following recommendations would provide for an enhanced response of the criminal justice system in support of victims of terrorism:

- Giving victims a face and a voice: treating victims as individuals by giving them a face and a voice to counter their depersonalization. This should also be emphasized throughout the entire criminal process.
- Protecting victims’ dignity: reinforcing and protecting victims’ dignity following an act of terrorism by acknowledging that they have been victimized as well as providing concrete support on administrative, medical and social issues, which would also include all aspects related to the criminal process.
- Giving victims legal status and defending their legal rights: the legal status of victims varies from State to State. Defending victims’ rights to legal assistance, to participation in criminal trials and to be informed of the progress of court trials and, of course, bringing the perpetrators of terrorist acts to justice. There is a close correlation between legal status, legal access and actual defence of victims’ rights.
- Facing the transnational nature of terrorism through advocating the counter-terrorism conventions and resolutions of the United Nations to enhance international police and judicial cooperation while, at the same time, developing regional approaches and cooperation.
- Providing medical and psycho-social support for victims: it should be structured, systematic, free of charge, easily accessible and available beyond the immediate post-event period.

¹⁷⁹First Global Symposium on Supporting Victims of Terrorism, convened by the United Nations Secretary-General, held on 9 September 2008 in New York, United States of America.

- Providing financial assistance to victims: institutionalizing the assistance through the development of a compensation policy.
- Building solidarity with victims of terrorism through a multipronged approach that would benefit from experience and resources available at the international, national and local levels. For example, days commemorating victims of terrorism are demonstrations of solidarity, as would be the establishment of such an international day.
- Improving media coverage of victims: educating and training journalists is essential.
- Including victims of terrorism in the counter-terrorism efforts of States has proven successful.

391. This publication contains various illustrative examples on how many of the aspects dealt with in these recommendations are being addressed by international and regional organizations and also at the national level in domestic legislation, with some innovative approaches. International legal instruments and national legislation should be strengthened and regularly reviewed.

392. The principle of objectivity versus subjectivity in reparation needs to be further developed. Equal treatment among all victims of terrorism, regardless of their individual circumstances, is not only a way of improving the general support to victims and the enhancement of their rights but also a statement against terrorism. Objectivity should go hand in hand with ensuring that the assistance within the criminal justice response in support of victims is tailor-made.

393. There is typically no direct connection between perpetrators and victims of acts of terrorism. This characteristic obliges the State, which is responsible for protecting individuals on territories under their jurisdiction from violence, to adopt a response based on solidarity, and on the comprehensive treatment of victims, of which the criminal justice response is an important, but not sole, component.

As an essential component of State support to victims of acts of terrorism, the criminal justice response needs to be fully-integrated and well-established within the broader system of support to victims of acts of terrorism.

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