



# **High-level Meeting Victims of Terrorism**

## **Background Paper**

13-14 September 2007

Vienna

## INTRODUCTION

The United Nations Global Counter Terrorism Strategy<sup>1</sup> recognizes that acts of terrorism seriously impair the enjoyment of human rights and that there is a need to strengthen solidarity for victims of terrorism. Individuals who have suffered bodily injury or impairment of health, and dependants and family members of persons who have died as a result of such attacks, require support and assistance in accordance with each State's domestic law.

Article 8 of the UNGCT Strategy requires that States

*"...consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalisation of their lives... In this regard we [the General Assembly] encourage States to request the relevant United Nations entities to help them to develop such national systems. We also strive to promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation."*<sup>2</sup>

Pursuant to this recommendation, and obligations under OSCE Permanent Council Decision 618<sup>3</sup>, participating States are invited to explore the possibility of introducing or enhancing appropriate measures, including making provision for financial support for victims of terrorism and their families, subject to domestic legislation.

The OSCE High-level Meeting on Victims of Terrorism aims to put into effect such cooperation and information sharing; by clarifying what is meant by *solidarity with victims of terrorism*, and by exploring practical ideas for demonstrating such solidarity.

The first session of the High-level meeting will address the definition of *victims of terrorism*, comparing perspectives from political, social and legal fields, and considering whether any such definition should be exclusive or inclusive.

When members of the community suffer, solidarity requires that societies mitigate the pain and damage inflicted. Having identified the beneficiaries of such solidarity initiatives during the first session, discussions will move onto forms of assistance and support. The role of victims' assistance programmes will be the subject of the second session of the High-level meeting.

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<sup>1</sup> Adopted by the UN General Assembly on 08 September 2006.

<sup>2</sup> Section I. Measures to address the conditions conducive to the spread of terrorism.

<sup>3</sup> OSCE Permanent Council Decision 618 encourages participating States to co-operate with relevant institutions and civil society in expressing solidarity with, and providing support for, the victims of terrorism and their families. Further, Article 13 of the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 reads: "Each Party shall adopt such measures as may be necessary to protect and support the victims of terrorism that has been committed within its own territory. These measures may include, through the appropriate national schemes and subject to domestic legislation, inter alia, financial assistance and compensation for victims of terrorism and their close family members." The Council of Europe "Guidelines on the Protection of Victims of Terrorist Acts" (Adopted by the Committee of Ministers on 2 March 2005) is a series of minimum suggestions for how States should support victims of terrorism. Finally, since 2004, the European Commission finances projects to sustain the fight against terrorism, one of which is particularly dedicated to help victims of terrorist attacks. Each year on 11 March, the European Union dedicates a Memorial Day expressing its solidarity to all victims of terrorism.

Victims of terrorism are individuals who have suffered harm by unlawful acts. Criminal law and other branches of the legal system exist to prevent, punish and deter unlawful behaviour. In doing so, however, they remove from the individual both the responsibility and the right to take remedial or retributive action against alleged offenders. This removal of responsibility should not lead to negative consequences for victims, by hampering the opportunity to protect themselves from the offender, to obtain fair restitution, or to be fully informed about the procedures which will apply in their case. In demonstrating solidarity with victims, States should endeavour to promote, protect and fulfil the rights of individual victims during any legal proceedings relevant to their situation. This is the topic of the third session of the High-level meeting.

Increasingly, States are recognising that civil society can make a vital contribution to efforts to express solidarity with victims of terrorism. This may involve provision of support and services that can, perhaps, be better offered by non-governmental organisations: Support networks, advocacy and campaigning for the rights of victims are possible examples. The role of civil society is the subject of the fourth session of the High-level meeting.

Solidarity thus represents the *leitmotiv* of the High-level meeting on victims of terrorism. This event provides OSCE participating States with a forum to exchange ideas and practices in relation to defining the context of this solidarity and how to best demonstrate it in practical terms, whilst protecting the rights of victims before the law and encouraging citizens individually and collectively to become actively involved.

## 1) DEFINING VICTIMS OF TERRORISM

*“Victims of terrorist acts are denied their most fundamental human rights. Accordingly, a counter-terrorism strategy must emphasize the victims and promote their rights. In addition, implementing a global strategy that relies in part on dissuasion, is firmly grounded in human rights and the rule of law, and gives focus to victims depends on the active participation and leadership of civil society.”*

- Former United Nations Secretary General, Kofi Annan<sup>4</sup>

Terrorist acts aim at demolishing democracy, human rights and fundamental freedoms. By expressing solidarity with victims of terrorism - by restoring the victims' ability to live freely, productively and in peace - we diminish the effects of terrorist acts and in so doing undermine the terrorists' *raison d'être*. Providing support and rehabilitation for victims of terrorism should therefore be an integral part of efforts to combat terrorism.

Defining “victims of terrorism” for the purpose of policymaking, however, is not straightforward. Some people feel that the term “victim” is important as a formal acknowledgement of the unlawful harm caused to them. Others may consider that the term carries negative connotations of weakness, disempowerment or vulnerability, and accordingly, they might prefer the term “survivor”. When considering basic terminology, it is therefore important at the outset to acknowledge individual sensitivities. It may be that to propose special protection for the rights of victims runs the risk of exaggerating the impression of vulnerability.

Further, by singling out victims of terrorism from victims for treatment above that ordinarily provided to individuals who have suffered harm inflicted by other causes, there may be a risk of creating unproductive distinctions between classes of victims, or even a “hierarchy of victims”. In post conflict regions in particular, such hierarchies can intensify social divisions and therefore be counterproductive.<sup>5</sup> Acts of terrorism should not be rewarded with intensification of social divisions, and as such caution must be exercised when considering the types of benefits victims of terrorism may receive as compared to those granted to other types of victims.

The notion of solidarity with victims should imply an obligation towards fellow-individuals, not mere charity. Efforts to express solidarity with victims of terrorist attacks should successfully empower the survivors whilst uniting public opinion against the terrorists.

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<sup>4</sup> Report of the United Nations Secretary-General: Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy. Presented at the sixtieth session of the United Nations General Assembly on 27 April 2006. Document A/60/825.

<sup>5</sup> In the particular case of Northern Ireland, this alleged hierarchy has been so described: “At the top of the hierarchy of victims were those deemed ‘innocent’ - usually women and children, usually killed by paramilitaries. At the bottom were members of those same paramilitary groups killed by state forces; they often attracted little widespread sympathy outside the communities from which they drew support”, Rolston, B., in Hamber, B., Kulle, D., Wilson, R., (Eds.), *Future Policies for the Past*, in “Democratic Dialogue”, 13, Belfast, 2001.

Existing definitions in international treaty law.

There is no definition of a “*victim of terrorism*” in existing international treaty law. Participants at this meeting are therefore encouraged to consider how this lacuna may be filled, mindful of the cross-border nature of most terrorist activities.

When attempting to draft such a definition for the purposes of affording individuals certain rights and benefits, the following points may be considered:

- Is the term “victim” appropriate terminology?
- Will a definition of the term “*victim*” be reliant upon a definition of a particular offence?
- Must a direct causal link with a terrorist act be established?
- Must the damage sustained have been intentionally inflicted?
- What level of damage or suffering must be sustained?
- Can groups as well as individuals be victims?
- What if the victim was also intentionally complicit in the terrorist attack or engaged in another criminal activity at the time of the incident?
- Could the occupation of a casualty of a terrorist act affect his/her status as a victim?

In regard of criminal acts more generally, a definition of “*victim*” can be found in the UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>6</sup> (hereinafter “the 1985 UN Declaration”), at Article 1:

*1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.<sup>7</sup>*

The 2005 UN Declaration of 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 (hereinafter “the 2005 UN Declaration”), states:

*“8. For purposes of the present document, victims 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*

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<sup>6</sup> Adopted by General Assembly resolution 40/34 of 29 November 1985.

<sup>7</sup> Article 1, UN General Assembly resolution 40/34. The 2005 UN Declaration of 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 follows this general definition (UN General Assembly resolution 60/147, para. 8).

*persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”*

Both of these documents ascribe a status of victimhood in relation to broad categories of criminal acts or abuses of power. The term “victims” can be applied to persons who have suffered harm “*individually or collectively*”, where victims of a shared category are defined in terms of the injury sustained or the circumstances of the attack, rather than on the basis of their personal or ethnic characteristics.

Both the 1985 and 2005 UN Declarations contain formulations which have the effect of broadening the definition of victim beyond an individual principle sufferer, and irrespective of the legal status of the perpetrator. In particular,

*“A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”<sup>8</sup>*

This formulation, taken from Article 2 of the 1985 Declaration, considers that the term “victim” can be applied irrespective of whether or not a perpetrator has been identified or convicted. Further, it suggests that individuals will be entitled to benefit from all rights accruing to victims irrespective of whether or not they suffered directly or indirectly as a result of the act, or whether the damage sustained was intentional. Spouses of individuals killed in a terrorist attack can therefore be classed as victims under these UN Declarations even though they themselves were not targeted during the incident.

Some occupations or activities implicitly confer an element of risk. If an individual was willingly engaged in an activity that exacerbated their injuries at the time of a terrorist incident, it is important to consider the impact this may have on their entitlement to assistance and compensation. For instance, should the entitlement for compensation be differentiated if an individual sustained injuries whilst they were on duty as an employee of the armed forces or emergency services? If an individual suffers harm at a time when they were engaging in a criminal activity related to the commission of the harmful act, should this preclude them from fully enjoying rights attaching to *bona fide* victims?

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<sup>8</sup> *Ibid* Article 2 of the 1985 Declaration. This wording is mirrored in Articles 8 and 9 of the 2005 UN Declaration.

## 2) GENERAL PRINCIPLES OF VICTIMS ASSISTANCE

When considering the forms that victims' assistance initiatives may take, it is important to consider first what victims need, before asking what resources State's may offer. Guidance in this regard can be found in the following documents:

- Council of Europe Guidelines on the Protection of Victims of Terrorism;
- UNODC Handbook on Justice for Victims; and,
- The European Forum for Victim Services *Declaration of the Social Rights of Victims of Crime*.

Participants at the meeting are invited to consider how these models may be modified or supplemented in the context of victims of terrorism and the UN Global Counter-Terrorism Strategy.

### 1. Council of Europe

In March 2005 the Council of Europe issued broad guidelines on the Protection of Victims of Terrorist Acts.<sup>9</sup> Under these guidelines, the Council of Europe recommended that,

*"1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act as well as, in appropriate circumstances, their close family can benefit from the services and measures prescribed by these Guidelines. These persons are considered victims for the purposes of these Guidelines.*

*2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.*

*3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment."*

The services and measures referred to are generally described and comprise of *inter alia*:

- Emergency assistance;
- Continuing medical, psychological, social and material assistance;
- Effective access to justice and the law;
- Fair, appropriate and timely compensation;
- Protection of the rights to privacy and family life;
- Protection of individuals' dignity and security;
- Information; and,
- Specific training to persons responsible for assisting victims of terrorist acts.

Section 1 of the document states that the granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.<sup>10</sup>

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<sup>9</sup> Adopted by the Council of Europe Committee of Ministers at its 917<sup>th</sup> meeting on 02 March 2005.



## 2. The United Nations Office for Drugs and Crime<sup>11</sup>

The UNODC Handbook on Justice for Victims<sup>12</sup> (hereafter the “UN Handbook”) is a detailed guide of more than 120 pages, which aims to give states practical, technical guidance on designing and implementing victims’ assistance programmes by elaborating on principles contained in the 1985 UN Declaration. It offers guidance to states on the practical support they should ideally give to victims of crime, resources permitting.

According to the UN Handbook, the goal of a victim assistance programme is to,

*“assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation and coping with problems associated with the victimization.”<sup>13</sup>*

Whilst the authors of the handbook note that not every recommendation contained therein will necessarily be appropriate or even possible in some situations<sup>14</sup>, they recommend that a comprehensive victims’ assistance programme should at least contain the following nine clusters of services:

- Crisis intervention;
- Counselling;
- Advocacy;
- Support during investigation of a crime;
- Support during criminal prosecution and trial;
- Support after case disposition;
- Training for professionals and allied personnel on victim issues;
- Violence prevention and other prevention services; and,
- Public education on victim issues.<sup>15</sup>

The UN Handbook stresses the on-going need for State authorities to consider the emotional trauma of the victims, encouraging programmes to adopt a systematic approach to take into account the severity of the victimizing event and its impact on the victim.<sup>16</sup> It suggests that in order to gain a general understanding of the need of victims in a jurisdiction, it is important to analyse the gaps in, and priorities of, existing victim services in order to identify what additional services are appropriate for the programme to implement. It is also important to include consideration of special aspects such as

<sup>10</sup> Section 1, entitled “Principles”, paragraph 2.

<sup>11</sup> Formerly known as the United Nations Office for Drug Control and Crime Prevention.

<sup>12</sup> See also Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers’ Deputies)

<sup>13</sup> 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, Chapter 2, published by the United Nations Office for Drug Control and Crime Prevention, 1999.

<sup>14</sup> “The handbook is not meant to be prescriptive but serves as a set of examples for jurisdictions to examine and test”, *Ibid.* Forward page v.

<sup>15</sup> *Ibid.* Chapter 2, page 16.

<sup>16</sup> *Ibid.* Chapter 2, page 15.



information about age, race, ethnicity, religion, marital status, geography, economic circumstances, education and culture.<sup>17</sup>

### *3. European Forum for Victim Services*

The European Forum for Victim Services<sup>18</sup> *Declaration on the Social Rights of the Victims of Crime*<sup>19</sup> (hereinafter “the European Forum Declaration”) is an attempt to recommend a list of social rights ascribable to victims of crime. Although the concept of assigning “rights” in this context may be contentious in some jurisdictions, the document serves as a useful guide in determining what victims’ needs may be, mindful of the trauma they have sustained. The European Forum Declaration states that victims of crime should be entitled to the following:

- Recognition by society of the effects of crime;
- Information regarding their rights and the services available;
- Access to health care services;
- Financial compensation where the crime results in a loss of income;
- Access to appropriate home security measures;
- Support and protection in the workplace and in educational establishments;
- Financial compensation for trauma;
- Access to free victim support services; and,
- To have their privacy protected.

Aside from requesting practical programmes of support to victims, the European Forum Declaration lays particular emphasis on issues related to communication between State authorities, victims’ groups and the media. It begins by claiming a right of recognition,<sup>20</sup> an article incorporated to emphasize that victims’ assistance initiatives cannot be fit for purpose if they have not been designed and implemented with adequate consultation with victims groups. The document suggests that public agencies have an obligation to provide adequate information to victims about services available, highlighting that staff require special training to understand the stress and trauma that victims suffer. The establishment of help lines and other forms of fast, reliable information for victims and their families may be considered.

#### *Notable Elements*

Each of the three models recognizes that victims’ assistance programmes should go well beyond providing only medical and psychological support. In particular, the issue of respecting the victims’ right of privacy is repeated:

*“While sensitive coverage of cases involving victims can be helpful and in some cases even healing, media coverage that is sometimes viewed as insensitive,*

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<sup>17</sup> *Ibid*, Chapter 2, page 12.

<sup>18</sup> The European Forum for Victim Services was founded in 1990 by national organisations in Europe working for victims of crime.

<sup>19</sup> 2001. Available at [http://www.euvictimservices.org/EFVSDocs/social\\_rights.pdf](http://www.euvictimservices.org/EFVSDocs/social_rights.pdf)

<sup>20</sup> “If victims of crime are to receive adequate recognition for the pain and suffering they have endured, society must first consider victims’ views and take these into account”,

*voyeuristic and uncaring can compound the emotional and psychological suffering of victims. Most crime victims have never before dealt with the news media. They can be thrust, often unwillingly, into the limelight solely because of the crimes committed against them. The news media are often viewed as a double-edged sword in their coverage of crime and victimization as regards the dichotomy of the public's right to know versus the victim's right to privacy".<sup>21</sup>*

There are a range of issues, such as publication of victims' identities, publicising the nature of injuries, reporting of trials, security matters, access to hospitals and other institutions, which may be especially sensitive in terrorist cases<sup>22</sup>. The European Forum's Declaration suggests that a regulatory charter could be produced to govern media coverage of victims' cases. Whilst victim support groups could consider developing public relations campaigns in order to raise public awareness about the nature of the crime and the needs of victims, media professionals may be offered training on how best to improve their sensitivity to victimisation.

The UNODC Handbook recommends that professional crisis interviewers, including police investigators, consulate staff, prosecutors, welfare and trauma counsellors, must always consider whether or not the victim feels safe to talk:

*"A parallel concern should be whether the victim feels safe. The victim may not feel safe in the following circumstances: (a) the victim can see or hear the assailant being interviewed by police; (b) the victim is being interviewed in the same area where an attack took place; (c) the victim is not given time to replace torn or lost clothing; (d) the victim is hungry, cold and uncomfortable; (e) the assailant has not been apprehended and has threatened to return; (f) the perpetrator is known to the victim; or (g) the victim's family or friends or witnesses are threatened. Any of these situations may make the victim feel unsafe even if there are police officers or security personnel present."<sup>23</sup>*

Where compensation is being paid, any means-testing or trauma assessment applied to quantify compensation should be appropriately and sensitively conducted, giving due regard for the needs of the children and families of victims, of foreign or migrant victims, and of child victims.

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<sup>21</sup> *Ibid.* Chapter 3, page 78.

<sup>22</sup> *Ibid.* Page 10.

<sup>23</sup> *Ibid.* Chapter 2, page 21.

### 3) VICTIMS IN LEGAL PROCEEDINGS

In the aftermath of a terrorist incident, public opinion exerts pressure on State authorities – in particular the police and judiciary – to swiftly convict key suspects. Victims, however, gain nothing from miscarriages of justice. Trials must be open and fair to ensure that the correct individuals are suitably brought to justice. Any expression of solidarity with victims should not undermine the accused's presumption of innocence. The solidarity should therefore be *with* the victims and not *against* the alleged terrorists.

Due process regarding criminal justice and compensation matters tends to focus on formal criminal or civil court procedure. In certain jurisdictions, however, the role of restorative justice as an alternative to formal criminal justice systems may be considered.

The 1985 UN Declaration describes basic standards of treatment that should be afforded to victims during legal proceedings:

*"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*

*5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.*

*6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:*

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;*
- (b) Allowing 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 national criminal justice system;*
- (c) Providing proper assistance to victims throughout the legal process;*
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;*
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims..."*

The UN Handbook, in elaborating on these general principles, advises that all victims should have access to the justice system, including customary justice, traditional proceedings, juvenile proceedings, administrative and civil proceedings, and international tribunals. Victims should be supported in their efforts to participate in the justice system through direct and indirect means (for example as a witness for the prosecution or as an *amicus* of the court); timely notification of critical events and decisions, provision in full of information on the procedures and processes involved; support of the presence of victims at critical events; and assistance when there are

opportunities to be heard. The structure of the justice system should take into account the obstacles which many victims encounter in seeking such access, owing to factors such as culture, race, language, resources, education, age or citizenship.<sup>24</sup>

The European Forum for Victims Services', in their Statement on Victims' Rights in the Process of Criminal Justice (hereafter "The European Forum Statement") endorses these ideas, proposing that during the course of legal proceedings, victims should be entitled to the following:

- Respect and recognition at all stages of the criminal justice proceedings;
- Receive information and explanation about the progress of their case;
- Provide information to officials responsible for decisions relating to the offender;
- Have legal advice available, regardless of their means;
- Protection both for their privacy and for their physical safety; and,
- Compensation both from the offender and from the State.<sup>25</sup>

The European Forum Statement proposes that victims, when reporting a crime, should be given the opportunity to 'opt in' to procedures for being kept informed at the earliest opportunity of all developments relating to their case, including the arrest of the offender, the decision to prosecute, dates of hearings, bail, final decisions, and any release from a custodial sentence.<sup>26</sup> In terrorist cases considerations of security, the need to protect sources and other sensitive aspects may restrict the ability to give wholly detailed information to victims, but this makes it all the more important that the channels of communication to victims are kept open; if it is not possible to communicate certain information, then victims can be told the reasons why.

In elaborating on a right to provide information, the European Forum Statement declares that,

*"Victims frequently feel that they have information which is ignored by the authorities because it does not form part of the specific evidence needed to prove the case... Victims should be free to include any information they wish, although they should recognise that the information will be disclosed to the defendant and can be challenged if necessary."<sup>27</sup>*

The degree to which this may be a problem may differ between adversarial and inquisitorial justice systems. In some jurisdictions a formal victim statement to the court is encouraged before sentencing so that the judge may better appreciate the damage inflicted. It may be important for prosecutors to speak to victims in order to understand the wider context of the particular offence brought before the court. The official

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<sup>24</sup> UNODC Handbook on Justice for Victims, Chapter 2, page 34.

<sup>25</sup> The full text of the document is available at:

[http://www.euvictimservices.org/EFVSDocs/criminal\\_justice\\_rights.pdf](http://www.euvictimservices.org/EFVSDocs/criminal_justice_rights.pdf) See also, Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, 28 June 1985. And also CoE Guidelines on the protection of victims of terrorist act, especially IV ("Investigation and prosecution"), V ("Effective access to the law and to justice") and VI ("Administration of justice").

<sup>26</sup> *Ibid.* Page 6.

<sup>27</sup> *Ibid.* Page 7.

procedure should provide the opportunity to exercise this right so that no victim feels the need to rely on unofficial means of communication or publicity.

The European Forum Statement advocates the provision of free or subsidised legal aid to victims who may be required to give evidence.<sup>28</sup> This can be problematic in jurisdictions that only provide legal aid to defendants in criminal proceedings. Indigent victims who wish to give evidence in criminal trials may require financial aid for transportation to court hearings. Similarly, the provision of legal aid may be problematic in civil proceedings where matters of restitution or compensation are at issue, or where the Government may be the defendant in a case.

Rights of protection and privacy are especially important in terrorist cases.<sup>29</sup> In some States, victims and other witnesses have been allowed to testify under protective measures; anonymously, from behind screens or by video or audio link. The significance of public appearance and cross-examination may vary between jurisdictions based on an inquisitorial or adversarial system. In either, however, the principle of justice being transparent and public and the principle of protecting a victim from further victimisation must be balanced with the rights of accused to challenge the evidence put against them.

Witness protection programmes may be a vital part of counter-terrorism efforts in persuading people that they will be safe testifying against alleged terrorists. They do represent, however, a significant and long-term commitment of resources. In some cases, it may also be necessary to provide systems of protection to victims or potential victims of terrorist acts. This may include physical security at home, guards, subsidised housing or even relocation. Access to such systems of protection must be based on objective, transparent and consistently applied criteria. Special provisions should be made available for child victims.

The European Forum Statement proposes that victims should have the right to apply for compensation – one possibility being to compensate from assets seized from those convicted of the criminal acts. The UN International Convention for the Suppression of the Financing of Terrorism suggests that States shall consider establishing mechanisms whereby the funds derived from forfeitures are utilized to compensate the victims of terrorist offences. While such sources of funding doubtless have their appeal, the level of compensation for victims of terrorism should not be solely dependent on the vagaries of how much money could be extracted from individual terrorists or their organisations. State compensation schemes should be based on consistently applied methods of calculation, taking into account compensation for injuries, emotional distress and loss of earnings.<sup>30</sup>

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<sup>28</sup> *Ibid.* Page 7

<sup>29</sup> “Consistent with the principles of justice, the privacy of victims and other witnesses should be protected. The names of victims should not be published in the press or media, and details which would identify them should be withheld. The address of victims and other witnesses should not be made available to the defendant or read out in open court, unless the address is of specific relevance to the charge.” Principle 5: Protection. *Ibid.* Page 8

<sup>30</sup> *Ibid.* Page 9

#### 4) THE ROLE OF CIVIL SOCIETY

Advocating for improved education and public awareness programmes, the UN Global Counter Terrorism Strategy encourages initiatives that promote a culture of peace, justice, tolerance, social inclusion and human development. Civil society organisations therefore have a vital role to play in expressing solidarity with victims of terrorism; not only by providing practical support to the injured, but more broadly by raising awareness about terrorism and the plight it causes among victims, in denouncing the ideology of terrorists, and in helping to heal wounds between communities.

In many States there are non-governmental support groups working with victims. These may exist at national level, sometimes as federations of smaller groups, and at regional and local level. They may be supported by justice ministries or police and may rely on the work of volunteers. Typically, they offer immediate support to those victimised, help with making claims for assistance and compensation, accompany witnesses at court and advise on personal security. Such organisations might require extra support to work effectively with victims of terrorism and to raise awareness within their communities.

Non-governmental and private sector organisations can make valuable contributions to victims' assistance programmes. Private insurance companies and charitable foundations may have roles in terms of compensation. Businesses will have roles as employers and corporate donors and some may have responsibility for security related matters.

States should not relinquish their responsibility to take the lead in solidarity with victims of terrorism, but in certain circumstances non-governmental organisations can deliver services more effectively than statutory agencies for the following reasons:

- They may be less bureaucratic and hence capable of more flexible and timely responses;
- Where there are particular sensitivities or hostility to the State, they can get closer to recipients and their support may be better accepted;
- They may be better able to pilot innovative ways of fulfilling unmet needs;
- Through networking and campaigning, they may be able to advocate victims needs and interests more effectively; and,
- Their "*self-help*" ethic can motivate and empower victims.

Traumatised victims will have a range of needs (medical, psychological, emotional and social), some of which can best be met through self-help or specialist groups. Loss of self-confidence is a common result of trauma, as is a loss of trust in surrounding society. Being able to come to a safe place, to meet with people who have suffered similarly and to receive professional support in a familiar and comfortable setting are needs that can be met by self-help groups. Many victims' associations were set up as a response to particular incidents, by groups motivated to assist victims with specific mental or physical requirements.

Some of the services deliverable by self-help or specialist victims' groups may be:

- Befriending;
- Training;
- Advice;
- Adult education;
- Counselling;
- Complementary Therapies;
- Art and Play Therapies;
- Holidays;
- Respite support;
- Drop-in Centres;
- Advocacy – individual and collective; and,
- Story-telling and remembering.

These services should be seen as complementary to basic State provision, even though, to varying degrees, they may be reliant upon State financial assistance.

Victims' assistance groups should be able to campaign for social changes that would be necessary to properly protect and fulfil victims' rights, especially those established by victims of terrorism themselves, without hindrance from state authorities. By networking, convening public meetings and developing contacts with the media, victim's assistance groups can highlight the social damage inflicted by acts of terrorism and diminish public support for terrorist groups. State authorities could lend their support to such endeavours by, for instance, facilitating the availability of meeting venues or access to public service broadcast and media enterprises. This is particularly important where such advocacy involves perspectives that express some opposition to current government policy.



## 5) CONCLUSION

Solidarity is a concept that contains elements of both self-interest and altruism. Solidarity should neither be an abstract call to charity, nor a narrow appeal to self-interest, but an understanding that it is possible and necessary to combine individual and collective interests.

In practice, the application of this principle means that victims are not seen as passive recipients of philanthropy but as potential activists in the re-assertion of their resilience. The United Nations Global Counter-Terrorism Strategy speaks of the “*dehumanization of the victims of terrorism*” as one of the factors conducive to the spread of terrorism.<sup>31</sup> Solidarity with victims combats this perceived dehumanisation, reasserting their status and self-confidence. As such, it can also be understood to diminish the longer term impact of terrorist attacks whilst counteracting the terrorists’ aim of dividing societies.

The discussion in the preceding pages has identified numerous, legal, social and political issues that require consideration if solidarity with victims is going to be adequately demonstrated. Addressing these concerns could require a range of changes in legislation, policy and practice. Non-governmental organisations can make a vital contribution to States’ programmes of victims’ assistance, but to be effective, they will require cooperation and support.

The purpose of this meeting is to gather together governmental and non-governmental stakeholders from across the OSCE region to share practices and ideas, understanding that it is in the interests of all to be working from a common perspective and to share responsibility. Accordingly, participants are encouraged to explore potential areas of mutual cooperation and assistance, with a view to developing coordinated, multi-disciplinary responses in the future.

To achieve solidarity with victims of terrorism, States must endeavour to implement a unified, coherent approach, utilizing contributions from all interested parties. Initiatives that aim at solidarity should empower victims, not only by offering them the practical support they require, but by ensuring that when the trauma is finally over, they can be proud to call themselves survivors.

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<sup>31</sup> UN General Assembly resolution A/60/L.62, 6 September 2006, Plan of Action, section I.