



## **The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses**

### **Introduction**

A strong and independent judiciary that fairly and expeditiously adjudicates terrorism and other national security offenses is critical for public confidence in the legitimacy of judicial institutions, is an effective deterrent to terrorism, and minimizes the risk of violations of fundamental human rights.

As it is commonly understood, the concept of judicial independence includes the duty and ability of a judge to decide each case according to an objective evaluation of evidence that is presented and an impartial application of the law without the influence of outside factors.<sup>1</sup> In doing so, judges also fulfill one of their primary responsibilities – ensuring that the fundamental rights of all parties to a case have been fully respected.<sup>2</sup> This is especially true in high profile cases, including those involving terrorism. These cases not only bring with them increased national and international scrutiny, they also present unique challenges to those tasked with adjudicating them.

The concepts of independence, impartiality, and fairness have both an objective and a subjective component. The authority of a judiciary to exercise its powers is frequently found in a given State’s constitution or similar founding document and the enabling legislation that supports it. Additionally, national courts often adopt rules to further clarify their operating procedures. Taken as a whole, these laws and procedural rules should create a comprehensive framework that consistently protects and advances an independent and impartial judiciary which upholds the rule of law and engenders public confidence in the exercise of its authority.<sup>3</sup> Nevertheless, the best constructed system on paper is not guaranteed to produce the legitimacy and trust that comes

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<sup>1</sup> The right to a competent, independent, and impartial tribunal is articulated in Article 10 of the Universal Declaration of Human Rights, U.N. Ga. Res.217 (December 10, 1948) [hereinafter UDHR] and Article 14 of the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (December 16, 1966) (hereinafter ICCPR).

<sup>2</sup> *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), paragraph 6.

<sup>3</sup> *The Basic Principles on the Independence of the Judiciary*, infra, outlines key elements and standards that can assist states in achieving an independent and impartial judiciary: a) Selection process for judges that is de-politicized, transparent and based on objective qualifying criteria; b) Defining length of the term of office and ensuring security of tenure during that term (appointments may be for “life” or to a mandatory age of retirement); c) Establishing remuneration for judges, including pensions, and clearly articulating objective evaluation criteria and a process for disqualification and removal of judges from office; d) Institutional guarantees of judicial independence related to the management of the courts and the assignment of cases; and, e) Providing an operating budget for the judiciary that is administered by the judicial system.

from the public's perception of its integrity. Rather, such trust derives more from actual practice than it does from formal legal requirements.

Recognizing that each legal system is unique and that actual practice is tied to a State's individual history, culture, national laws, and regulations, the Global Counterterrorism Forum's (GCTF) Criminal Justice and Rule of Law (CJ-ROL) Working Group nevertheless believed that a set of good practices on the role of the judiciary in handling counterterrorism (CT) and other national security cases within a rule of law framework, developed by senior judges and justice sector experts from around the globe, could support the development of a strong and independent judiciary in States, assist judges to more effectively adjudicate cases that involve terrorism while ensuring the rights of all parties involved in the cases, in particular the fair trial rights of the accused and the protection of victims and witnesses.

The good practices identified are: 1) the necessity for specially-trained judges; 2) the use of continuous trials in terrorism cases; 3) developing effective trial management standards; 4) the establishment of special measures to protect victims and witnesses; 5) the right of the accused to a fair trial with counsel of his choosing; 6) the necessity for rules regarding the use and protection of intelligence information, sources, and methods in trial; 7) effective courthouse and courtroom security; and 8) developing media guidelines for the court and trial parties. This memorandum elaborates on these good practices, all of which reinforce the United Nations' Global Counter-Terrorism Strategy.

Recognizing that States can only implement those aspects of any set of good practices that their legal systems allow for, all States are strongly encouraged to implement the below, non-binding good practices that are appropriate to their circumstances and consistent with their domestic law, regulations, and national policy, while respecting applicable international law. States are also encouraged to share their experiences implementing these good practices with the GCTF CJ-ROL Working Group and, where appropriate, other relevant multilateral fora. As is the case with the GCTF's [\*Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector\*](#) (*Rabat Memorandum*), these good practices for the judiciary focused on terrorism cases must be built on a functional criminal justice system that is capable of handling such criminal offenses while protecting the rights of the accused.

### **Good Practice 1: *Identify and Assign Specially Trained Judges***

States should consider the use of specially-trained judges to adjudicate terrorism and other national security offenses. In most instances it is preferable that such judges be assigned at the inception of the case, so that the assigned judge can be responsible for all phases of the case up to the final resolution in the form of a verdict. The development of a cadre of specially-trained

judges<sup>4</sup> and their assignment to individual high profile and/or complex terrorism or other national security cases has several benefits to a criminal justice system. For example, this helps:

- Create efficiency, consistency, and continuity in the operation of the court and the management of the individual case;
- Ensure that the judges are appropriately trained and prepared to address the complex and nuanced issues and challenges inherent in terrorism and other national security cases while, at the same time, ensuring the case is conducted within a rule of law framework with full respect for the human rights and fundamental freedoms of the accused person; and
- Implement specialized training and professional development related to handling the complex and sensitive issues particularly related to terrorism offenses and provide efficiencies to accommodate changes to the law.

### ***Good Practice 2: Support the Use of Continuous Trials in Terrorism and other National Security Cases***

A fair and expeditious criminal trial is a fundamental component of a functioning, effective justice system and an inherent right of the person charged.<sup>5</sup> However, in many legal systems, protracted legal proceedings and inherent delays remain a critical barrier to an effective, efficient, and just resolution of criminal cases. Delays also contribute to increasing community disillusionment with the justice system and decreasing satisfaction with the law. The negative impact of delays is shared by all of the participants in the judicial process: the accused, who is often detained pending trial; the victims and their family, who have been harmed by the offenses committed against them; and the community that demands justice, safety, and protection. For most judicial systems, the harm invariably includes taxing scarce judicial resources. The use of continuous trials provides for case management efficiency, lowering costs, and saving scarce resources.<sup>6</sup>

One of the significant factors contributing to delays in the justice system is the discretionary practice of non-continuous criminal trials, where evidence is heard by the court in piecemeal fashion, with cases effectively spread out over the course of many months or even years. While limited judicial or court resources and a shortage of available court time due to the volume of cases are often cited for the use of this discretionary practice, the costs of non-continuous trials to both parties and to the justice system as a whole can far outweigh the perceived benefits. The negative effects of non-continuous trials include the following:

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<sup>4</sup> Judges selected for such training should be experienced judges who have already handled serious cases and demonstrate the appropriate judicial temperament. The specialized training should be continuous throughout the time they are sitting on the bench.

<sup>5</sup> ICCPR, *infra*, Art. 14.3.c

<sup>6</sup> The GCTF *Rabat Memorandum* Good Practice 5 encourages States to adopt incentives for terrorist suspects and others to cooperate in counterterrorism investigations and prosecutions.

- Promoting a culture of delays and general tardiness in the justice system. This in turn, generally, results in a lack of focus on the case by both defense and prosecuting counsel. The lack of focus often results in modifications to charges or the defense theory over time causing further delays, or late or piecemeal production of evidence, potentially putting the accused in a disadvantageous posture<sup>7</sup> and increased potential for evidence to be misplaced or lost;
- A decreased incentive for both government and the accused to seek pre-trial resolution in systems where a pre-trial disposition mechanism exists;
- A failure of the courts to streamline the trial process through effective case management, such as not setting a pre-trial schedule with set dates and required performance and not identifying issues of contention that may be resolved prior to the commencement of a trial;
- Increasing the hardship on witnesses and victims by requiring multiple appearances. This generally increases the likelihood of work and personal conflicts which can act as disincentives for non-professional witnesses to cooperate;
- Magnifying the anxieties associated with participation and increasing the opportunities for intimidation or obstruction of justice caused by prolonged trial proceedings. All of which can cause witnesses and victims to become disillusioned with the justice system and not want to cooperate with authorities; and,
- An adverse impact on the ability of the accused to receive a fair trial, especially where the accused is detained during pre-trial and trial.

While all the underlying factors that have led many States to adopt the use of protracted proceedings cannot be addressed by the judiciary, a trial judge is responsible for safeguarding both the rights of the accused and the interests of the public in the administration of the criminal justice system. In all cases, the trial judge should:

- Seek to avoid delays, continuances, and extended recesses, except for demonstrated good cause;
- Be proactive in ensuring punctuality, the strict observance of scheduled court hours, and the effective use of working time to identify and resolve issues that may result in delays;

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<sup>7</sup> Production of evidence refers here to an obligation of the prosecution authority to disclose the evidence that it intends to use to prove the charges lodged and also includes exculpatory evidence that it may possess.

- Permit full and proper examination and cross-examination of witnesses, but also require such examination to be conducted fairly, objectively, and within reasonable time constraints; and
- Not permit unreasonable repetition or permit counsel to pursue clearly irrelevant or improper lines of inquiry.

It is recommended that where such authority does not now exist, States should ensure that judges have the authority to compel witnesses to appear at hearings or trial and otherwise have authority to manage the progress of a case. For example, some States have established guidelines for the length of time various stages of the trial process may take.

### **Good Practice 3: *Develop Effective Trial Management Standards***

As a general principle, judicial trial management is the key element to ensuring that the parties are prepared to proceed, the trial commences as scheduled, and proceeds to fair conclusion without unnecessary delays or interruption. Assigning a terrorism-related criminal case to a specific judge, once charges have been filed in a court of competent jurisdiction, and increasing continuity of trial days enhances the effectiveness of judicial management in expediting a criminal case. In support of effective judicial management of a complex or high profile criminal case, such as those involving suspected terrorists, the court should also develop trial management standards or rules that can consistently be applied. Good management practices and procedures begin with the scheduling of a pre-trial/trial management conference(s) as soon as possible as after the judge receives the case. Records of what was decided or ordered at each conference should be maintained in a manner consistent with domestic legal requirements.

At the conference(s) the judge and the lawyers for both sides should, *inter alia*, address:

- The schedule for various segments of the pre-trial process, including disclosure of evidence as required by applicable law;
- The timetable for the filing of documents or pre-trial motions with the court;
- The identification of special requirements or accommodations – especially that qualified interpreters are available as necessary; and
- The identification of any witness issues or other specific legal, evidentiary, or procedural complexities that may require court action or have the potential to delay proceedings.

Further, the trial judge, after consultation with the parties, should:

- Set a firm trial date, ensuring continuity and predictability;

- Outline the rules of court procedure, to include guidance on conduct of the parties, witnesses, and spectators to maintain appropriate decorum and the formality of trial proceedings;
- Review the scheduling of witnesses to ensure that there is continuity and review the nature of their testimony to avoid unnecessary duplication or determine if some evidence, if uncontested, may be presented with mutual agreement, such as through stipulations; and
- Be receptive to using technology, as may be available, in managing the trial and the presentation of evidence.

In sum, the characteristics that support a trial judge's ability to manage a courtroom effectively include: being decisive; being consistent; requiring punctuality; minimizing trial interruptions; and, developing knowledge of the applicable law.

***Good Practice 4: Support Special Measures to Protect Victims and Witnesses in the Trial Process***<sup>8</sup>

The traditional rules of procedure designed to support due process of law and the public perception of a fair trial process may not provide the appropriate protection in terrorism cases where witnesses fear that the revelation of their identity to the defendant, his/her associates, or the public may expose them, their friends, and/or family to serious harm. While the issue of witness protection is generally in the province of the investigating and prosecuting authority, the court plays an important role in protecting the rights of witnesses and victims in the trial process, thus encouraging their continued vital participation.

As a general good practice, the trial judge in cases involving terrorism or other national security offenses should have a flexible approach to address the unique demands or needs related to victims and witnesses as they arise. Upon the formal request of either party, the court may also adopt special measures to ameliorate any specific threat or general threat that is identified, if it supports a secure trial environment and does not unduly infringe on the fair trial rights of the parties. In determining whether special measures are warranted, the trial judge, in the exercise of his/her inherent jurisdiction to control the court proceedings, should consider the specific facts and circumstances of the case as well as the special or relevant circumstances of specific witnesses or victims that may diminish the quality of the evidence given due to the fear of testifying. Upon determining that protective measures are warranted, the trial judge should apply protective measures that address the specific concerns of the witness or victim without unduly infringing on the fair trial rights of the opposing party. Such protective measures might include:

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<sup>8</sup> This Good Practice is intended to complement the GCTF [\*Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately After the Attack and in Criminal Justice Proceedings\*](#).

- The redaction of a victim's or witness' name and address from written statements provided to the defense as a part of pre-trial disclosure;
- Imposing a ban on the publication of the name and address of the witness/victim in connection with the proceedings or in the alternative closing the courtrooms to the public for portions of the hearings or trial proceedings;
- When permitted by law and in exceptional circumstances, the trial court may allow witness anonymity. Such orders are frequently sought in instances when intelligence or security agents as well as undercover police officers are called to testify; and
- When permitted by law and where appropriate, one or more of the following special techniques: (i) use of a pseudonym (e.g., "Witness A"); (ii) concealing the physical appearance – allowing the witness to testify in light disguise, such as a wig, glasses, fake facial hair or facial distortion via a digital alternation of the image of the witness to make it unrecognisable in the public broadcast of the proceedings or testifying from behind a screen; (iii) voice distortion – digitally altering the witness's voice to render it unrecognisable in the public broadcast of the proceedings; (iv) expunging the public record – removing information from a publicly released court transcript about a protected witness that could lead to the witness' identification; (v) permitting video link testimony – allowing a witness to testify via a secure video-link and not be present in a courtroom; and/or (vi) permitting disclosure limitations – limiting the time when the prosecution or defense can have access to the identity of the witnesses of the other party and limiting as much as possible the circulation and subsequent potential for compromise of sensitive material.

***Good Practice 5: Supporting the Right of the Accused to a Fair Trial with Adequate Legal Representation***

The *UDHR* and the *ICCPR* identify a number of individual rights related to criminal prosecutions, including: (1) the right to a fair hearing without undue delay; (2) the right to a public hearing and pronouncement of judgement with limited exceptions; (3) presumption of innocence; (4) freedom from compulsory self-incrimination; (5) the right to be informed promptly and in detail of the accusation; (6) adequate time and facilities to prepare a defence; (7) the right to legal assistance; (8) the right to examine witnesses; (9) the right to an interpreter; (10) the right to appeal the conviction and sentence; and (11) freedom from ex-post facto laws.<sup>910</sup>

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<sup>9</sup> Article 14 of the *ICCPR* states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law.

<sup>10</sup> In addition the *UDHR* and *ICCPR*, other international instruments relating to the right to a fair trial may be applicable, e.g., the fair trial rights for vulnerable persons, such as children (article 12 of the Convention on the

Additionally, the Convention Against Torture (CAT) contains a wide range of measures to make more effective“ the prohibition against torture or other cruel, inhuman, or degrading treatment or punishment. Article 15 of the CAT requires that any information made as a result of torture shall not be admitted as evidence in a trial, and Article 14 requires that victims of torture obtain redress.<sup>11</sup>

The above rights are particularly vulnerable to abuse in terrorism cases where defendants may lack the means to provide for their defense. Moreover, given the nature of terrorism-related offenses, and the impact they can have on a nation, there is the very real potential for many to call for the abrogation of the rights of the accused persons. This highlights the particular need for judges to ensure the rights of the accused are fully respected. A key component of that process is effective legal representation of all accused persons in terrorism cases.

Ideally, and in most developed legal systems, a public defender service is established by statute and is maintained as an independent agency to ensure that it is free from any undue influence. With a dedicated budget and the support of legal aid commissions and bar associations, this arm of the criminal justice system has the ability to develop its own policies and practices, selecting and funding legal counsel to ensure that all defendants, including those who cannot afford legal counsel, have access to the legal services they need. However, where such does not now exist, the courts can support the efforts of government agencies and non-governmental bodies to provide legal representation for those accused of committing terrorism offenses in the short term and encourage the development of a viable long-term solution to ensure this critical right.<sup>12</sup> The courts or a trial judge may adopt the following good practices to ensure effective legal representation for those charged with terrorism offenses in all critical phases of court proceedings:

- Inform the accused of his/her right to counsel and legal aid services that might be available;
- Secure lawyer services to represent individuals appearing in court without a lawyer, along with qualified interpreters as necessary;
- Ensure that defense counsel is assigned and notified of appointment, as soon as feasible after arrest, detention, or request for counsel as mandated by applicable law;
- Ensure that qualified defense counsel is provided access to the accused as needed, and sufficient time in a confidential space within which to meet with the client;

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Rights of the Child) and people with disabilities (article 13 of the Convention on the Rights of Persons with Disabilities).

<sup>11</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Ga. Res. A/39/46, Arts. 14 and 15 (December 10, 1984); *see also ICCPR*, *infra*, arts. 3 and 7; *UDHR*, *infra*, arts. 5 and 8,

<sup>12</sup> In those countries where no public defender service exists, the bar associations are strongly urged to support the courts by creating a robust program to provide defense counsel for indigent defendants.



- Support the generally-recognized principle that, where possible, the same attorney should continuously represent the client until completion of the case; and
- Take appropriate steps to ensure that all aspects of the court's or trial judge's interaction support equal treatment between defense counsel and the prosecution as equal contributors to the justice system.

***Good Practice 6: Support the Development of a Legal Framework or Guidelines for the Use and Protection of Evidence from Intelligence Sources/Methods***<sup>13</sup>

One of the basic principles of a fair hearing is that the individual charged with a criminal offense be informed of the evidence that supports the allegations that have been formally lodged. In many legal systems, the government is required, either as part of the investigation or the pre-trial process, to disclose evidence to the accused person, especially that which might be potentially exculpatory or otherwise might have a negative impact on the weight of the evidence in the prosecution case, or may have been specifically requested by the accused to support a proposed defense theory. A significant exception to the requirement to disclose relevant material in its "original form" is when the information involved is from intelligence sources and methods and is either classified<sup>14</sup> or otherwise declared to involve national security concerns by the government. This issue arises frequently in cases involving terrorism charges.

Rabat Good Practice 6 recommends the development of an appropriate legal framework that outlines the rights and responsibilities of the parties involved as well as the procedures that are to be followed in these very specific circumstances.<sup>15</sup> The focus is to appropriately balance the national security concerns of a government and the fair trial rights of the accused. Those States that already have well developed legal frameworks and procedures to address this issue generally take one of two recognized approaches, which can, more or less, be viewed as the "common law" approach and the "civil law" approach. The primary difference between the two approaches is the point in the case at which they address the issue. Both approaches though have a common starting position, and that is to determine if the information can be declassified without harm to the sources, methods, witnesses or national security, so that it may be included with all other evidence or information in the case. If the information cannot simply be declassified, that is where the two approaches diverge.

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<sup>13</sup> This Good Practice is designed to complement Good Practice 6 of the GCTF *Rabat Memorandum*, as well as the recommendations on the implementation of *Rabat Good Practice #6* being developed by a group of experts under the GCTF Criminal Justice and Rule of Law Working Group (CJROL). Those recommendations will be published as the Frankfort Memorandum when formally adopted.

<sup>14</sup> While the definitions of "classified information" varies from legal system to legal system, the term is commonly understood to have the following components: (1) information that an authorized official of a government has identified; (2) pertaining to a particular subject or subject matter; (3) that is within the custody or control of the government in question (4) and by the authority and assessment of that government official/agency, may cause damage to the national security or foreign relations of the country if disclosed to unauthorized recipients.

<sup>15</sup> In developing these legal frameworks, States should recognize that classified intelligence or other sensitive national security information may also be relevant and necessary in criminal cases other than terrorism cases.

The civil law approach generally addresses this issue in the investigative phase of the case. Most States that follow the civil law approach cannot include intelligence information in the file as evidence. Rather intelligence is provided to prosecutors, police, or magistrates/investigating judges for lead purposes so that a law enforcement investigation may be developed to produce the necessary evidence. Where it appears classified information needs to be turned over, some States following the civil approach have developed different means to obtain an independent review of the intelligence. For example, one State uses an independent commission to review the relevant intelligence and decide if it can be declassified and turned over. Another State uses a national level terrorism prosecutor – who is not involved in the case - to review all relevant intelligence and decide what should be turned over.

The “common law” approach generally addresses the issue with the trial court in the pre-trial phase of the case. The prosecutor, working with the relevant intelligence agencies, identifies what classified or otherwise sensitive national security information is relevant to the case. The prosecutor then files a motion with the trial court or other appropriate court *ex parte* advising the court that there is classified information involved in the case and the prosecution is requesting an *ex parte, in camera* hearing to address the proposed redactions, summaries, or substitutions for the classified information. The judge’s primary role at this stage is to ensure that the information that will be turned over to the defense still provides the accused with the essence of the case against him or that which is exculpatory or otherwise favorable to the accused, thus ensuring the accused’s right to a fair trial is secure while still addressing the national security concerns.<sup>16</sup> If the prosecuting authority objects to the position of the court and, in its opinion, a proposed alternative does not mitigate the threat to national security, the prosecution authority should have the option to terminate the prosecution or to proceed in the case without the use of the evidence that would have supported a conviction or withdraw the charge(s) to which the potential exculpatory information would have been relevant. If the decision is made to proceed, the court may request that the prosecuting authority modify the charges in accordance with its ruling.

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<sup>16</sup> In reaching its determination, the court should determine: (1) whether the information is relevant and necessary for the government’s case; (2) whether the relief sought by the government infringes on the accused’s right to a fair trial; (3) in the event that the information in question has been requested by the defense, the court may determine whether the information is reasonably available and whether its significance outweighs the difficulty, expense, and/or delay that might result in requiring the government to disclose it in a form that allows the government to declassify the information so that the defense may use it. If the court determines that the information is relevant and disclosure necessary, the court should consider the following alternatives/options in striking an appropriate balance in protecting both parties’ interests: (1) redacting some or all of the classified or sensitive information from documents before requiring their production; (2) substituting unclassified descriptions of the classified or sensitive information or a summary of the entire document; (3) substituting a statement or other form of the information, admitting the relevant facts the classified information would tend to prove. Throughout this process the court must maintain an appropriate record to satisfy its legal obligations and support an accused’s appellate rights.

***Good Practice 7: Contribute to the Development of Enhanced Courthouse and Judicial Security Protocols and Effective Courtroom Security***<sup>17</sup>

Given the history of violence and acts of intimidation that have accompanied terrorism cases in many countries, providing the necessary security for judges,<sup>18</sup> court personnel, victims, and witnesses, is essential to ensure a fair and effective criminal justice system that is free from intimidation, retaliation, and obstruction of justice. It also increases the likelihood that victims and witnesses will more consistently trust the criminal justice system to resolve disputes and protect those already traumatized by acts or threats of violence. Although the potential for disruptions, intimidation, and violence cannot be eliminated altogether, it has become clear that the most effective approach is to have all parts of the justice system coordinate their operations and function in a collaborative effort to address the issue of security. The judiciary has the opportunity to facilitate this interaction in many ways, contributing to the development of appropriate procedures and practices that balance the need for a secure environment with one that is transparent, accessible, and which supports the due process of law rights of those accused of criminal conduct.

While security solutions for courthouses vary in complexity and are tied to available resources, judges can contribute to the development of basic rules that may promote a secure environment in their respective courthouses, for the just and orderly adjudication of criminal offenses. For example, they can assist in the development of rules for applying enhanced safety measures in the courthouse through coordination with responsible security/court officers and request sufficient funds to make the courthouse as safe as necessary from the appropriate authorities. Once developed, the security policy and accompanying procedures should be triggered when charges involving terrorism or other national security offenses are filed in the jurisdiction. Enhanced security, as appropriate, may include: (1) increased police or other security staff both in and outside the courtroom; (2) the strategic use of security checkpoints and screening procedures; (3) the use of metal detectors, x-ray scanning devices, and other screening technology at the public entrance(s) to the courthouse and courtroom; (4) prohibiting the possession of cell phones and other electronic devices in the courthouse and courtrooms; and (5) separate and secure parking and entrances for judges, prosecutors, and court personnel.<sup>19</sup>

In addition, strong judicial leadership is essential to successful implementation of rules of procedure and conduct in the individual courtrooms to ensure a secure and fair trial environment. This leadership is particularly important in terrorism cases because the heightened tensions and emotional atmosphere that accompany such cases have the potential to impact the conduct of the judicial proceedings. While judges alone cannot initiate change, their support and leadership are critical to reforming court practice.

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<sup>17</sup> Good Practices 4, 7, and 8 are intended to complement GCTF Rabat Good Practice 1.

<sup>18</sup> States should also give consideration to extending security measures for judges and their families outside of the courthouse.

<sup>19</sup> States are strongly encouraged to have security assessments of all court facilities conducted by experts and to implement the necessary security measures as soon as possible.

Like all effective leaders, judges must have a vision for what can and should be accomplished in their respective trial environments. This vision should be clearly communicated by the words and actions of the presiding judge to court personnel, the litigants, and the victims and witnesses who may participate in the trial process.

For example, trial judges can:

- Assist in the adoption of courtroom rules supporting a secure trial venue that can be consistently applied in all cases; these courtroom rules should clearly outline courtroom requirements for the litigants, for those actively participating in the trial process, and for observers in the courtroom. The rules should be reinforced by the judge/court security as appropriate throughout the duration of the case;
- Discuss court security with the litigants, including the accused, during pre-trial conferences and meetings and prior to the beginning of court proceedings. These conduct guidelines should be highlighted daily and consistently applied throughout the proceedings; and
- Take steps to reduce the risk of threats, intimidation, and confrontation involving victims and witnesses and to increase their safety. These may include: (i) designating seating arrangements for victims, witnesses, and family members to help reduce opportunities for intimidation within the courtroom; (ii) ordering staggered departures of the various groups and parties; and, where possible, (iii) providing secure waiting areas for victims and witnesses and separate entrances and exits to and from the courtroom for court personnel, the accused, and witnesses. Judges should be thoughtful in their approach, exercising discretion in fashioning appropriate security solutions for threats that are identified.

**Good Practice 8: *Develop and Articulate Media Guidelines for the Court and Parties***

Trials involving the prosecution of terrorism offenses are generally high profile by their nature, inviting scrutiny from the general public and the media.<sup>20</sup> As a general rule, timely access to accurate information of court proceedings increases transparency and public confidence in the fairness of the justice system. The judiciary should develop rules and procedures for media coverage of public judicial proceedings, with good practices including the following:

- Providing the trial judge with latitude to control the conduct of the proceedings to:  
(i) maintain decorum and prevent distractions; (ii) guarantee the safety of any court official, party, witness, or juror (where applicable); and (iii) ensure the fair and impartial

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<sup>20</sup> In states where terrorism and other national security offenses are not tried in a public court or are otherwise closed to the public, close media coverage is limited because of a lack of access and in some situations, may be prohibited by law.

administration of justice in the pending case.

- Where the media is seeking special or additional coverage of the case, the court should establish a consistent policy that requests by representatives of the media for such coverage are made in writing to the trial judge, prior to the scheduled trial date or specific trial event. Written requests for specific or enhanced coverage may be supported by affidavits as appropriate. Notification that the media has requested such coverage should be provided by the court to the attorneys of record in the case, with the parties provided an opportunity to object.<sup>21</sup>
- Before denying, limiting, suspending, or terminating media coverage, the trial judge may hold a hearing, if such a hearing will not delay or disrupt the judicial proceeding or receive affidavits to consider the positions of the parties.
- Any finding that media coverage should be denied, limited, suspended, or terminated should be supported by a finding of the court that outlines the underlying justifications for its actions.
- The court may prohibit the use of any audio pickup, recording, broadcast, or video close up of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, and between counsel and the presiding judge held at the trial.
- When more than one request for media coverage is made and the trial judge has granted permission, the court may request that the media select a representative to serve as a liaison and be responsible for arranging "pooling" among the media if such is required by limitations on equipment and personnel as a result of courtroom space limitations or as directed by the court.<sup>22</sup>
- Where non-print media is covering a trial, the judge may impose additional guidelines which limit the use of photographic and audio equipment to that which does not produce distracting sound or light and may limit or prohibit the use of moving lights or flash attachments.

**Good Practice 9: *Ensuring Victims of Terrorism Access to Justice***

The GCTF's [\*Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately After the Attack and in Criminal Justice Proceedings\*](#), sets forth good practices aimed at providing victims greater access to justice. These good practices empower victims and

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<sup>21</sup> Examples may include requests to use video or still cameras or other electronic recording or broadcast devices

<sup>22</sup> "Pooling" arrangements include procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge may exercise discretion and exclude all contesting media personnel from a proceeding.

emphasize their intrinsic human value. Providing victims a voice throughout the justice process, allows victims' stories to be heard and thereby raises awareness of devastating human effect and impede future recruitment of terrorist cells. Including victim views in the process can also lead to more confidence in the judicial system on the part of victims and the public. The end result is a safer, more secure world for everyone.

Victim participation in prosecutions as witnesses who can provide crucial evidence increases the likelihood of successful prosecutions. By also providing a face to the suffering caused by the violent acts of the terrorists, victims help ensure that convicted terrorists will be appropriately punished. Successful prosecutions and appropriate sentences not only remove individual terrorists from the population but disrupt the activity of cells and reduce future recruitment.

The trial judge plays a vital role in protecting victims' rights by ensuring that victims are treated with dignity and respect through court proceedings. Therefore, courts should consider the following:

- Taking precautions to safeguard them from secondary and repeat victimization during court proceedings;
- Ensuring that prosecutors or victim witness professionals have advised victims of their rights under the law;
- Providing victims adequate advanced notice of all hearings and continuances so that victims have the opportunity to exercise any rights that they have under national law; and
- Unless prohibited by law or impossible for safety reasons, allowing victims to attend court hearings. If attendance is not possible, ensuring that victims receive notice of any pertinent outcomes or rulings that occur during the proceedings.

Consistent with national law, providing victims with opportunities to have their views heard and considered by the court either in person or in writing through the submission of a victim impact statement.