

## **Annex II: The Relevant Public Interest Factors Found in National Prosecutorial Guidelines**

- The gravity of the crime:
  - The nature and seriousness of the crime and the gravity of the corresponding sentence;<sup>1</sup>
  - The premeditated, planned and organised nature of the crime;<sup>2</sup>
  - The prevalent, continued or repeated nature of similar crimes and the need for deterrence;<sup>3</sup>
  - The targeting of the victim due to his/her actual or presumed identity (ethnic/nationality, gender, disability, age, religion etc.)<sup>4</sup>
  
- The circumstances of and the harm caused to victim(s):
  - The level and nature of the harm inflicted upon the victim;<sup>5</sup>
  - The vulnerability of the victim;<sup>6</sup>
  - The attitude of the victim towards prosecution;<sup>7</sup>
  - The likely effect on the victim of a decision to prosecute or not to prosecute;<sup>8</sup>
  - The impact of the crime on the community;<sup>9</sup>
  - The victim's entitlement to reparation if prosecutorial action is taken;<sup>10</sup>
  
- The circumstances of the perpetrator:<sup>11</sup>
  - The level of culpability of the perpetrator in the commission of the crime;<sup>12</sup>
  - Whether the perpetrator was coerced/subjected to duress in committing the crime<sup>13</sup>
  - Whether the perpetrator cooperated with the authorities in the investigation and prosecution of others;<sup>14</sup>
  - Whether the perpetrator abused his position of authority or trust;<sup>15</sup>
  - The age and infirmity of the perpetrator.<sup>16</sup>
  - The perpetrator's criminal history.<sup>17</sup>
  
- Other factors:
  - The delay between the commission of the offence and the prosecution,<sup>18</sup> taking into account:
    - i. The seriousness of the offence;<sup>19</sup>
    - ii. Whether the delay was caused or contributed by the suspect;<sup>20</sup>
    - iii. Where any delay was caused or contributed by a long investigation, whether the length of the investigation was reasonable in the circumstances;<sup>21</sup>
    - iv. Whether there is a real and serious risk of an unfair trial;<sup>22</sup>
    - v. Whether there is a specific prejudice caused to the alleged offender by reason of any delay or lapse of time;<sup>23</sup>
  - The availability of alternatives to prosecution;<sup>24</sup>
  - The need to maintain rule of law and public confidence in the criminal justice system;<sup>25</sup>
  - The existence of any circumstances that would prevent a fair trial from being conducted;<sup>26</sup>
  - Whether the likely length and expense of trial would be disproportionate having regard to the seriousness of the offence and the strength of the evidence.<sup>27</sup>

## ENDNOTES

<sup>1</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(a); **Ireland**, [Guidelines for Prosecutors](#), para. 4.8, 4.19, 4.20(a), 4.21(a); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(i), 4.14(i), 4.12(iii); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(a), 2.10(s)-(t); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), p. 5.8.1 – 5.9.1; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(2), (9); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(1)(a), (d); **Hong Kong**, [Prosecution Code](#), para. 5.9(a)-(b), (e), (k); **Georgia**: See Ministry of Justice of Georgia Order No. 181 (8 October 2010), cited in Givi Abashidze, [Prosecutor's Discretionary Powers on Carrying out Criminal Prosecution](#), 20 September 2019, pp. 228; **Kenya**: National Prosecution Policy, cited in ICTJ, [Guiding and Protecting Prosecutors](#), October 2019, p.11, 18; **Japan**, [Criminal Procedure Code](#), Article 248.

<sup>2</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b); **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(g), 4.20(e); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(vi), 4.13(iv); **New Zealand**, [Prosecution Guidelines](#), para. 5.8.8, 5.8.10.

<sup>33</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b); **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(b), 4.20(m); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(ix), 4.13(xviii); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(k); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), para. 5.8.6, 5.8.3, 5.9.3.; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(3); **Hong Kong**, [Prosecution Code](#), para. 5.9(l); **Georgia**: See Ministry of Justice of Georgia Order No. 181 (8 October 2010), cited in Givi Abashidze, [Prosecutor's Discretionary Powers on Carrying out Criminal Prosecution](#), 20 September 2019, pp. 228.

<sup>4</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(c); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(viii); **New Zealand**, [Prosecution Guidelines](#), para. 5.8.17; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(e)

<sup>55</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(a); **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(h), 4.21(b); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(xii), 4.14(ii); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(p); **New Zealand**, [Prosecution Guidelines](#), para. 5.8.2, 5.8.11, 5.8.12, 5.8.13, 5.9.12; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(2), (8); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(3)(b); **Georgia**: See Ministry of Justice of Georgia Order No. 181 (8 October 2010), cited in Givi Abashidze, [Prosecutor's Discretionary Powers on Carrying out Criminal Prosecution](#), 20 September 2019, pp. 229.

<sup>6</sup> **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(h); **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(c); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(xii); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(b); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(3)(c); **Hong Kong**, [Prosecution Code](#), para. 5.9(j); **Kenya**: National Prosecution Policy, cited in ICTJ, [Guiding and Protecting Prosecutors](#), October 2019, p.14.

<sup>7</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(c); **Ireland**, [Guidelines for Prosecutors](#), para. 4.22(e); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(o); **South Africa**, [Prosecution Policy](#), p. 7; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(8); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(3)(a);

<sup>8</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(c); **Ireland**, [Guidelines for Prosecutors](#), para. 4.22(f); **Northern Ireland**, [Code for Prosecutors](#), para. 4.14(vi); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), para. 5.9.5; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(3)€.

<sup>9</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(e); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(m), (g); **South Africa**, [Prosecution Policy](#), p. 7; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(2); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(1)(c); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(2)(b)

<sup>10</sup> **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(n); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(2)(c).

<sup>11</sup> **Japan**, [Criminal Procedure Code](#), Article 248.

<sup>12</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b); **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(d); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(iii); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(f); **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(4); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(a); **Hong Kong**, [Prosecution Code](#), para. 5.9(f), (g).

<sup>13</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b); **Ireland**, [Guidelines for Prosecutors](#), para. 4.8; **Kenya**: National Prosecution Policy, cited in ICTJ, [Guiding and Protecting Prosecutors](#), October 2019, p.16.

<sup>14</sup> **Ireland**, [Guidelines for Prosecutors](#), para. 4.22(h); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(r); **South Africa**, [Prosecution Policy](#), p. 7; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(6); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(f); **Hong Kong**, [Prosecution Code](#), para. 5.9(h); **Georgia**: See Ministry of Justice of Georgia Order No. 181 (8 October 2010), cited in Givi Abashidze, [Prosecutor's Discretionary Powers on Carrying out Criminal Prosecution](#), 20 September 2019, pp. 229.

<sup>15</sup> **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(c); **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(c); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(ii); **New Zealand**, [Prosecution Guidelines](#), para. 5.8.14; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(c).

<sup>16</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(n); **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b), 4.14(d); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(vii)-(viii); **New Zealand**, [Prosecution Guidelines](#), para. 5.9.6, 5.9.7, 5.9.9; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(7); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(g).

<sup>17</sup> **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(b); **Ireland**, [Guidelines for Prosecutors](#), para. 4.20(k); **Northern Ireland**, [Code for Prosecutors](#), para. 4.13(xvi); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(d); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), para. 5.9.8; **The United States of America**, [Principles of Federal Prosecution](#), 9-27.230(5); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(4)(h)-(i); **Hong Kong**, [Prosecution](#)

[Code](#), para. 5.9(i); **Georgia**: See Ministry of Justice of Georgia Order No. 181 (8 October 2010), cited in Givi Abashidze, [Prosecutor's Discretionary Powers on Carrying out Criminal Prosecution](#), 20 September 2019, pp. 228.

<sup>18</sup> **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(e); **South Africa**, [Prosecution Policy](#), p. 7; Hong Kong, [Prosecution Code](#), para. 5.9(d); **Kenya**: National Prosecution Policy, cited in ICTJ, [Guiding and Protecting Prosecutors](#), October 2019, p.17.

<sup>19</sup> **Northern Ireland**, [Code for Prosecutors](#), para. 4.14(v); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(b); **New Zealand**, [Prosecution Guidelines](#), para. 5.9.4

<sup>20</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 18, para. 4.25(a); **Northern Ireland**, [Code for Prosecutors](#), para. 4.14(v); **New Zealand**, [Prosecution Guidelines](#), para. 5.9.4; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(1)(e).

<sup>21</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 18, para. 4.25(c); **Northern Ireland**, [Code for Prosecutors](#), para. 4.14(v); **New Zealand**, [Prosecution Guidelines](#), para. 5.9.4; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(1)(e).

<sup>22</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 18, para. 4.25(d).

<sup>23</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 18, para. 4.25(f).

<sup>24</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(a); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(j); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(w); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), para. 5.9.13; The United States of America, [Principles of Federal Prosecution](#), 9-27.250; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(6)(b); Hong Kong, [Prosecution Code](#), para. 5.9(n).

<sup>25</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(c); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(g); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(u); **South Africa**, [Prosecution Policy](#), p. 7; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(1); **Canada**, [Prosecution Deskbook](#), 2.3.3.2(6)(a);

<sup>26</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(m)

<sup>27</sup> **Ireland**, [Guidelines for Prosecutors](#), p. 17, para. 4.22(g); **England & Wales**, [The Code for Crown Prosecutors](#), para. 4.14(f); **Northern Ireland**, [Code for Prosecutors](#), para. 4.14(xi); **Australia**, [Prosecution Policy of the Commonwealth](#), para. 2.10(q); **South Africa**, [Prosecution Policy](#), p. 7; **New Zealand**, [Prosecution Guidelines](#), para. 5.11; **Canada**, [Prosecution Deskbook](#), 2.3.3.2(6)(c).