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What is an
**effective judicial
response for victims
and their families**

who have been bereaved
or seriously injured in road
collisions?

IRVP Responds



Background briefing for the Post-Crash session at
the Fourth Global Ministerial Conference on Road
Safety in Marrakech, Morocco 18-20 February 2025.



Introduction

The Global Plan for the Decade of Action for Road Safety 2021-2030 actions include:

- Mandate investigations for crashes resulting in serious and fatal injuries to inform prevention strategies and apply **an effective judicial response for victims and their families**.

Justice was also in the first Global Road Safety Plan (2011-2020 Post Crash Response: Activity 5: Encourage a thorough investigation into the crash and the application of an effective legal response to road deaths and injuries and therefore encourage fair settlements and **justice for the bereaved and injured**.

The lack of action on the justice related activities led to the establishment of IRVP in March 2018. A partnership of over 160 victim organisations from all regions of the world, IRVP's mission is " to improve the Post Crash Response and to advocate for Road Victims' Rights Globally".

IRVP has conducted surveys of its members across the world and produced reports on key justice issues (Road Death Investigation, Victims Rights and Hit and Run). Its Writing a Guide for Families Bereaved by Road Crashes was translated into eight languages

Here, the International Road Victims Partnership (IRVP) summarises what victims believe an effective judicial response involves. This is intended to help improve the awareness of what is needed and what has been missing from the efforts to reduce road deaths and injuries and the associated devastation in the justice sector.

Even if the global road casualty reduction targets for the decade are met, over 600 thousand families are still expected to be bereaved in crashes in the year 2030 alone, with over 10 to 20 times as many devastated by serious injuries. The judicial response will be key to any chance of recovery for these families, and all of the families impacted over the years.

And IRVP believes that justice reform is required not only for victims, but also for the wider public. This is especially important for people walking and cycling (the active travel modes so promoted by governments around the world for multiple reasons). For they are the ones most likely to suffer death and serious injury in collisions with motor vehicles, and not the latter's occupants.

For a fairer and safer world, the judicial response to road crashes must be improved.

Donna Price (Ireland) & Viviam Perrone (Argentina)
Founders & Co Chairs of the International Road Victims' Partnership (IRVP)
IRVP is a Member of the UNRSC, GRSP and ETSC and has UN Special Consultative Status

Collision Investigation

Collision investigation produces the evidence base required to deliver criminal and civil justice, and help design appropriate injury prevention programmes.

An effective judicial response would mean thorough, unbiased collision investigations which left victims and the wider public with confidence in the police investigations.

Thorough investigations are needed as culpability is not always easy to identify. For instance, drink and drug driving are known risk factors but few countries ensure mandatory testing after a fatal crash for both the surviving driver and the deceased. Ireland is rare in having this legally required in fatal and serious injury collisions. And speeding, the biggest factor in determining risk of a collision as well as its severity, can require specialist training and advanced procedures to be calculated. Mobile phone use, so prevalent in many countries, can be even harder to prove. Global road safety performance indicators include reducing the involvement of drink/drug driving, speeding and mobile phones.

Collision investigation should also be unbiased. But police reflect society and often have biases. Young and old road users, as pedestrians or drivers, may be presumed to have made an error, as with cyclists of all ages.

Collision investigation should leave families with the assurance their loved ones death (or serious injury) was treated with proper respect and concern. Families should not have to fear their loved ones being blamed unfairly for the crash, nor that their loss was inevitable.

And the public deserves to be able to have confidence that the police do investigate thoroughly. This is especially important for those more at risk of being killed or injured in a collision.

Collision investigation is rarely a priority for police, despite the extent of loss of life, with investigations of intentional crimes taking precedent. This is the challenge. Road death investigations should be treated as homicides and investigated accordingly, unless and until the contrary is proven. Mandatory testing of all of the known contributory causes of these collisions should also be legislated for, as this evidence is crucial for both justice and prevention.

Criminal Justice

Despite the volume of road crime, it is often a low priority for the criminal justice system, which focuses on intentional harm. Not all road crashes involve criminal culpability (detection depends on thorough investigations). And when they do, it can range from law breaking caused by an unintentional error through to extreme and deadly risk taking.

An effective judicial response would ensure that criminal offences reflect both the level of culpability involved and the harm caused. This is especially true with causing death and serious injury driving offences with victims having to fight to get deaths and serious injuries recognised in criminal offences. Slight injuries still fail to be recognised which helps perpetuate the myth that motoring offences are a victim less crime.

At court the challenges continue. There may be pressure to avoid a trial which results in downgrading to a less serious offence, leaving victims feeling failed by the justice system. Specialist prosecution teams are needed as they will be up against defence teams, often funded by insurance companies.

Sentences should reflect the crime. Sentencing aims to punish offenders fairly whilst also protecting the public, including with deterring re-offending. Sentences tend to be monetary fines. Prison is rarely used, even in culpable fatal crashes.

Disqualification, a punishment that does fit the crime, is often under-utilised and tends to be given with impaired drivers, rather than drivers who pose the same level of harm but by speeding or distracted driving. Victims are left feeling the State has not responded properly to death and injury caused by road crime.

Efforts to improve the judicial response are often hindered by a lack of transparency. It can be difficult to get data on the number of prosecutions and convictions and the sentences given. With so many crashes not resulting in a prosecution, it is also important to know the reasons why. Victims are left fearing this was due to a lack of investigation and lack of priority given to detecting criminal culpability in crashes.

"Besides work to prevent road crashes which has received most of the emphasis in recent times, a proper post crash response is necessary, it is intertwined with prevention. The post crash stage is presently being neglected and there is a dire need to expeditiously put an end to this neglect. Road crash victims often face significant challenges in accessing justice, support and compensation for their suffering."

MONICA B. DONGBAN-MENSEM, CFR, JP+, NIGERIA
Member of the board of IRVP.

Procedural Justice

Justice is often viewed through sentencing alone. But most crimes, including road crimes, do not result in a conviction, let alone a custodial sentence. The way people are treated by the justice system is important.

Procedural justice aims to ensure all service users of the criminal justice system, i.e., victims, witnesses and defendants, are treated fairly and with respect, and given the opportunity to be heard. So procedural justice is key to an effective judicial response. Here IRVP highlights its particular relevance to crash victims.

No one is prepared for a road crash to devastate their family. The impact is often aggravated by a lack of information from the police and justice system overall. The police will focus on identifying criminal culpability and how the crash occurred. Families can often be overlooked as they, most likely, will not have been at the scene, and have little information to provide about the crash.

But it is important that they are informed of the circumstances and not kept in the

dark about the investigation. Not knowing has been described as worse than knowing. Families are often revictimised by the criminal justice system.

Support services are often geared towards other victims of crime, with crash victims overlooked. Even after a prosecution has been started, they can fall through the cracks and receive less support than other victims of crime. This is true for even those bereaved by law breaking drivers. These deaths are not always seen as homicides, but a second class criminal death.

In addition to information and support, crash victims need to be heard and recognised by the justice system. Victims deserve the right to appeal decisions not to prosecute and the right to appeal lenient sentence. Crash victims often have fewer rights than other victims of crime. They should be allowed to give victim personal/impact statements at sentencing so the convicted, court and wider public can hear what suffering has been caused by road crime.

Promoting victims rights is a key aim of IRVP and its founding Manifesto had much to say about how crash victims should be treated. Road safety action plans should include reviews of the rights of those bereaved and seriously injured in crashes and how these compare to other victims of crime. Likewise with the support services available to them.

Civil Justice

Whilst justice discussions tend to focus on criminal justice and deterring offending, civil compensation can have a much more direct impact on victims. This will affect their ability to pay medical expenses or recover any lost income, etc. Civil claims are much larger than the fines imposed by the criminal justice system.

So any effective judicial response must include a civil compensation system that is fair and timely.

Most countries, but not all, have a civil compensation system based on presumed liability. This means drivers are presumed liable for deaths and injuries of pedestrians and cyclists in collisions. Victims are often unable to provide evidence and this approach reflects this vulnerability, as well as the fact that they pose much less risk with active travel promoted for multiple reasons.

In those countries without presumed liability, fair civil compensation will depend on thorough collision investigations. Evidence of civil liability needs to be identified, just as with criminal culpability.

Lack of investigation reduces the chance for fair settlements.

Compensation of hit and run victims deserve special mention. These claims will be determined by the state but can often be more complicated and lower than if victims were hit by an insured driver. This is yet another injustice endured.

Compensation needs to be timely as well as fair. Victims may have no financial security, especially the poor. Victims should not be pressured into accepting low offers just to be able to survive. Interim claims need to be available.

Deprived communities are known to be more at risk of road crashes. Civil compensation is a key way of helping victims already financially vulnerable and now bereaved or seriously injured.

Civil compensation, along with medical care and support, mitigates the suffering of victim, and is key to victims and their families having a chance to recover. In addition to their other suffering, including physical injury, they should not be financially devastated.

Medical care is regularly included in road safety strategies and plans. Civil justice is not. But it needs to be if the consequences of crashes are to be mitigated.

Social Justice

No one needs to die in a road crash. These deaths are unnatural and preventable. The tolerance society shows towards such risk factors as speeding, distracted driving, impaired driving, makes victims feel their loss does not matter.

An effective social justice response would mean that road deaths and serious injuries were not accepted as inevitable. They were not the price to be paid for motorisation. Lessons could be learned from their circumstances (this requires thorough investigations) and future risk reduced. Road crime would be a higher priority for police as well as for courts.

There is nothing fair about road death and serious injury. Pedestrians and cyclists pose little harm to others but are the ones to die or suffer disability in a collision with a motor vehicle – not the vehicle's occupants. Likewise in collisions with lorries/trucks and other large commercial vehicles, car occupants do not stand a chance.

Poor communities suffer more. Deprived areas have higher rates of road death and serious injury. So those least able to protect themselves are those most likely to get hurt. This inequity should make it an even higher priority for the State.

But data on road crashes is often based on what is collected at the scene or in the time shortly after the crash. The understanding of the contributory factors is regularly based on guesses by police officers at the scene with minimal training. Imagine if medical care was based on triage and not any follow up investigations.

The Safe Systems approach, so widely adopted around the world, aims to design out fatal and serious injury crashes – at least those caused by human error as it may not be possible to design out crashes caused by risk taking. But datasets on road crashes do not include justice outcomes, i.e., how many resulted in a prosecution and for which offence. We know how many crashes involve children, junctions, lorries, etc., but not how many involved criminal culpability. Road safety still treats all crashes as accidents and fails to recognise they include crimes.

The reason so many bereaved families campaign is so they can help spare others. IRVP members know this. They have lived through a road death and work to avoid the same plight befalling any other family. This will require recognising that many crashes are the result of criminal behaviour and the justice system must have a more active role in detecting and deterring road crime. Without this, road safety will continue to be in denial about a key cause of crashes.

Note: Written by Amy Aeron-Thomas, IRVP Justice Advisor, and Action Vision Zero Traffic Justice Coordinator, who also wrote the briefing *Justice and the Post Crash Response* in the UN Decade of Action for Road Safety.

Justice & Post Crash Response

What is an effective judicial response?

Collision Investigation

Thorough investigations — cornerstone of Justice

- able to detect culpability
- unbiased with accurate data for justice and prevention use
- quality assured and leave victims and public with confidence

Criminal Justice

Appropriate prosecutions and sentencing

- recognises victims and the harm done
- reflects the level of culpability involved
- is fair and proportionate punishment
- serves as a deterrent

Procedural Justice

Rights and respect for crash victims

- crash victims plight mitigated with information and support
- equal rights with other victims of crime

Civil Justice

Fair and timely compensation

- victims deserve to be financially compensated for their pain and suffering, including lost opportunity
- victims often need money immediately for medical expenses and lost income

Social Justice

Prevention

- death and injury not seen as price to pay for motorisation
- lessons learned so that others are spared

JUSTICE

