

# Model Legislative Provisions

TO SUPPORT THE NEEDS AND PROTECT  
THE RIGHTS OF VICTIMS OF TERRORISM



Inter-Parliamentary Union  
For democracy. For everyone.



UNITED NATIONS  
OFFICE OF COUNTER-TERRORISM  
UN Counter-Terrorism Centre (UNCCT)



UNODC  
United Nations Office on Drugs and Crime



# Acknowledgments

The United Nations Office of Counter Terrorism (UNOCT), the Inter-Parliamentary Union (IPU), and the United Nations Office on Drugs and Crime (UNODC) wish to extend their gratitude to Member States, Members of Parliament, international and regional organizations, non-governmental and civil society organizations, victims' associations and victims who contributed through an open and inclusive consultative process to the drafting of the Model Legislative Provisions.

Professor Ben Saul and Professor Jeanne Sulzer, supported by Elise Lauriot Prevost, and Jürgen Schurr, assisted UNOCT, IPU and UNODC in the drafting of the Model Legislative Provisions, using as a basis, the contributions of virtual expert consultations that took place between July 2020 and June 2021 and utilised extensive desk research on the rights and needs of victims of terrorism, including by looking at existing good practices around the world.

UNOCT, IPU and UNODC are grateful to the members of the Expert Group for their comments and their contributions to the drafting of the Model Legislative Provisions: Fatima Ali Haider, Levent Altan, Khady Ba Faye, Odette Chesnot, Laura Dolci, Edward Flynn, James Freda, Samar Khamis, Seh Lih Long, Megan Manion, Fionnuala Ní Aoláin, Michael O'Donnell, Iman Sayed Taha.

UNOCT, IPU and UNODC are grateful to the participants of the expert group consultations who have provided valuable input and contributions for this work. These consultations had the participation of more than 220 expert panellists and other participants, including victims of terrorism, victims' rights advocates, judges, prosecutors, defence attorneys, law enforcement officials, women's rights advocates, Members of Parliaments, psychologists, witness protection experts, human rights experts, academic researchers, Member States, representatives of international organizations and regional parliamentary organizations.

The following staff members of the UN and IPU contributed to the development of the Model Legislative Provisions: Jee Aei Lee, Jo Dover, Anna Giudice, Martin Hemmi, Anika Holterhof, Samantha Irikidzai Munodawafa, Arianna Lepore, Tina Mykkanen, Roshni Peshavaria, Sven Pfeiffer, Alexandra Souza Martins, Hannah Tiefengraber.

The production of the Model Legislative Provisions was guided by Ambassador Mokhtar Omar, Senior Advisor of the IPU Secretary General, Mr. Masood Karimipour, Chief, Terrorism Prevention Branch UNODC, Mr. Mauro Miedico, Deputy Director and Chief of Special Projects and Innovation Branch (SPIB) UNOCT and UNOCT Parliamentary Hub.

The following personnel of the UN and IPU coordinated the production and drafting of the Model Legislative Provisions: David Alamos Martinez, Nicole Anderson, Cristina Barbaglia, Bouchra Bouchkouj, Carmen Elena Castillo, Roberta Di Pofi, Ulrich Garms, Olga Lanchenko, Arturo Laurent Gonzalez, Denise Lifton, Antonio Giovanni Luzzi, Louise Tripon, Erik van der Veen, Nikolaj West.

UNOCT, IPU and UNODC are most grateful to the following donors: Denmark, Kingdom of Saudi Arabia, National People's Congress of the People's Republic of China, State of Qatar and Sweden for providing the funding to enable the development of this publication.

## Abbreviations and Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESR	Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organization
GCTF	Global Counterterrorism Forum
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
IPU	Inter-Parliamentary Union
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Committee against Torture
UNCCT	United Nations Counter-Terrorism Centre of UNOCT
UNOCT	United Nations Office of Counter-Terrorism
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention on Transnational Organized Crime

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## Introduction

The Model Legislative Provisions presented in this document are intended to assist Member States in protecting the rights and supporting the needs of victims of terrorism in their national laws. Their purpose is twofold:

- First, to serve as a model for the review and modernization of existing laws and procedures related to victims of terrorism and the drafting of legislation where no legislation exists; and
- Secondly, to systematize existing good practices and promote the harmonization of legislation to support and protect victims of terrorism internationally, in line with recent advances on this topic.

The Model Legislative Provisions are based on the existing international normative frameworks pertaining to victims of crimes, gross human rights violations and serious violations of international humanitarian law. They aim at ensuring equal treatment between all victims and are geared towards addressing their needs as a result of the harm suffered, without distinction as to the root causes of their harm.

The Model Legislative Provisions are not intended to substitute for the national legislative drafting process or be incorporated directly into national legislation. Instead, they can serve as a guide and provide a basis for developing national provisions in line with the constitutional and legal frameworks of each State. The Provisions are accompanied by a Commentary which indicates legal sources and provides guidance on enactment, implementation and interpretation. When necessary, options for the formulation and phrasing of the provisions are suggested for different legal systems. The use of the term “model legislative provisions” is intended to indicate that provisions regarding victims of terrorism are not necessarily to be contained in a single statute (as the term “model law” could suggest), and do not necessarily have to be at the level of legislation. For some issues, regulation at a level below legislation may be sufficient or even more adequate.



## Background

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The United Nations General Assembly has adopted a number of important resolutions which acknowledge the rights of, and the need to provide remedies for, victims and survivors of terrorism, and which recognize the dehumanization of victims of terrorism as one of the conditions conducive to terrorism.

In Pillar I of the Plan of Action adopted in the United Nations Global Counter-Terrorism Strategy, Member States commit to “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 normalization of their lives. In this regard, we encourage States to request the relevant United Nations entities to help them to develop such national systems”.<sup>1</sup> In reviewing the Global Counter-Terrorism Strategy in 2018, the General Assembly urged the United Nations and other international and regional organizations “to step up their efforts to provide, upon request, technical assistance for building the capacity of Member States in the development and implementation of programmes of assistance and support for victims of terrorism”.<sup>2</sup> General Assembly resolution 73/305 of 28 June 2019 further emphasized Member States’ commitment to victims, particularly by calling for the development of comprehensive assistance plans for victims of terrorism, to address their immediate, short-term and long-term relief and rehabilitation needs.<sup>3</sup> The resolution also calls upon the United Nations Office of Counter-Terrorism (UNOCT) and the United Nations Office on Drugs and Crime (UNODC) to build the capacity of Member States to assist victims, including by providing technical assistance.

In his report on progress made towards supporting victims of terrorism in the UN system (A/74/790), the United Nations Secretary-General suggests that “Member States may also wish to consider developing national legislation that specifically addresses the rights, interests and needs of victims of terrorism” such as in the form of model legislation, good practices and lessons learned. It adds that the “United Nations continues to stand ready to support Member States in this regard, including through the development of model legislation”.<sup>4</sup> The report also emphasizes the importance of developing national assistance plans,<sup>5</sup> stresses the complementary nature of national legislation and establishing comprehensive national assistance plans to uphold victims’ rights and support their needs, while also providing options for funding mechanisms to support these efforts.<sup>6</sup>

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<sup>1</sup> UN General Assembly resolution 60/288 of 8 September 2006, “The United Nations Global Counter-Terrorism Strategy”, annex, Plan of Action, Pillar I, para. 8.

<sup>2</sup> UN General Assembly resolution 72/284 of 2 July 2018, “The United Nations Global Counter-Terrorism Strategy Review”, para. 60.

<sup>3</sup> UN General Assembly resolution 73/305 of 28 June 2019, “Enhancement of international cooperation to assist victims of terrorism”.

<sup>4</sup> Report of the Secretary-General on progress made by the United Nations system in supporting Member States in assisting victims of terrorism (A/74/790), 8 April 2020, para. 58.

<sup>5</sup> *Ibid.*, para. 13.

<sup>6</sup> *Ibid.*, section III.



The sixth and seventh review resolutions of the General Assembly (resolutions 72/284 and 75/291) on the Global Counter-Terrorism Strategy stressed the need for Member States to build their capacity to provide proper support and assistance to victims and their families immediately after an attack and in the long term to share best practices and lessons learned related to the support of victims of terrorism, including regarding the provision of legal, medical and psychosocial or financial support.

In 2015, UNODC published *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, which provides strategies to implement laws and to build institutional capacity to incorporate victims of terrorism into criminal justice investigations and prosecutions. UNODC also developed a handbook in 2011, *The Criminal Justice Response to Support Victims of Acts of Terrorism*. This resource takes stock of national experiences, programmes and legislation to support victims of acts of terrorism and addresses relevant international standards and norms.

In 2018, the United Nations Counter-Terrorism Centre (UNCCT) of the UNOCT published its *Handbook of Good Practices to Support Victims' Associations for Africa and the Middle East*. A second handbook on Asia and the Pacific is currently in development. The handbooks will provide a set of guiding principles and practices for victims' associations to better support victims of terrorism.

The Model Legislative Provisions were developed starting in 2020 under the Inter-Parliamentary Union (IPU)-United Nations Joint Programme on Countering Terrorism and Violent Extremism, which supports parliamentary actions on counterterrorism and preventing violent extremism through a "whole-of-society" approach. The project was implemented by the IPU, UNOCT and UNODC, in close cooperation with United Nations entities, victims, civil society organizations and regional parliamentary organizations, such as the Parliamentary Assembly of the Mediterranean, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe and the Inter-Parliamentary Assembly of Member Nations of the Commonwealth of Independent States.

**Methodology:** The partnership convened an online Expert Consultation on Model Legislative Provisions regarding victims of terrorism on 14-15 July 2020, followed by a series of virtual expert consultations gathering academics, parliamentarians, members of Government, civil society actors and victims of terrorism, from November 2020 until January 2021. These consultations highlighted good practices and challenges in approaching these issues by way of model legislative provisions. In practice, they identified additional matters to be addressed by model provisions, and suggested drafting language.

Two consultant drafters, Professor Ben Saul and Professor Jeanne Sulzer, assisted UNOCT, UNODC and IPU in the drafting of the Model Legislative Provisions. A group of experts in the field of victims' rights, from a variety of legal and geographical backgrounds, met in June 2021 to discuss and review the draft of the Model Provisions.



[OPTION] The use, if any, of a preamble and its content and purpose will vary according to the legal culture and the country context. The provisions here are drawn in part from relevant United Nations General Assembly and Security Council resolutions and other instruments related to victims of terrorism.

## Preamble

The [Parliament/Government] of [name of State],

*Deeply deploring* the suffering caused by terrorism to the victims and their families, expressing its profound solidarity with them, and stressing the importance of properly assisting them,

*Reaffirming* that promoting and protecting human rights for all and respect for the rule of law at the national and international levels are the essential bases for all measures to prevent and combat terrorism,

*Recognizing* that effective counter-terrorism measures and the protecting of human rights are not conflicting goals, but are complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex, of 21 March 2006),

*Recalling* the adoption of the United Nations General Assembly resolution 72/165 of 19 December 2017, entitled “International Day of Remembrance of and Tribute to the Victims of Terrorism” and Assembly resolution 73/305 of 2 July 2019 entitled “Enhancement of international cooperation to assist victims of terrorism,”

*Acknowledging the importance* of building the resilience of victims and their families as an integral part of a counter-terrorism strategy, including by upholding their rights, in accordance with international law; and of properly supporting and assisting them immediately after an attack and in the long term; and of sharing on a voluntary basis best practices and lessons learned related to their protection, including regarding the provision of legal, medical, psychosocial or financial support,

*Condemning unequivocally* all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, while emphasizing that terrorism and violent extremism conducive to terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

*Strongly condemning* all forms of sexual and gender-based violence perpetrated by terrorist groups, including abductions, trafficking in persons, rape, forced marriage, enslavement and all other forms of violence, especially that suffered by women and children, and stressing the importance of closing the impunity gap for perpetrators and increasing rehabilitation and reintegration measures for victims,

*Renewing its commitment* to hold accountable, in accordance with international law, including international human rights law, international humanitarian law and international refugee law, any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts; and to cooperate internationally to that end,

*Recognizing* that terrorism has a detrimental effect on and impedes the full enjoyment of the human rights and fundamental freedoms of victims, including civil, political, economic, social and cultural rights, and the rights of victims with additional vulnerabilities,

*Stressing the need* to promote and protect the rights of victims of terrorism in order to help them to rebuild their lives, including their rights to assistance, reparation, truth, protection, information, and access to justice,

*Recognizing* that all measures to support and assist victims of terrorism must be consistent with international law, including international human rights law, international humanitarian law and international refugee law,

*Stressing* the need to ensure that the suffering of victims must not be instrumentalized and expressions of solidarity with them must not be used to justify abusive or excessive counter-terrorism measures incompatible with international law,

*Emphasizing* that measures to support and assist victims of terrorism must ensure non-discrimination and equality among victims of all crimes to avoid creating any hierarchy among victims; and that any difference in treatment afforded to victims of acts of terrorism, as distinct from victims of other crimes, should be based upon their specific needs in accordance with international law,

*Highlighting the importance*, in supporting and assisting victims, of effective coordination and cooperation among relevant governmental authorities, civil society organizations, including victims', community-based and grassroots organizations, and private-sector providers,

*Recognizing* the decisive role that victims of terrorism, and as well as victims' organizations and civil society actors, can play in efforts to counter terrorism by making their voices heard, including in reducing tensions in society that might themselves contribute to conditions conducive to terrorism,

*Be it enacted* by the [National Assembly/Parliament/other] of [name of State] during its [number] session on [date]:



## Chapter I. General Provisions

### Article 1: [Title]

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This Law may be cited as [XXX] of [name of State] [year of adoption].

### Article 2: Commencement

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This [Law] shall come into force on [date].

### Article 3: General principles

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1. The purposes of this [Law] are:
  - a. To protect [respect, and ensure] the rights of victims of terrorism, including by ensuring:
    - i. Necessary assistance (medical, psychological, social, and material);
    - ii. Adequate, effective, and prompt reparation (including restitution, compensation, satisfaction, and truth), cessation, and guarantees of non-repetition;
    - iii. Protection of physical and psychological integrity, privacy and reputation;
    - iv. Access to justice in all criminal, civil and administrative proceedings and processes related to being a victim;
    - v. Access to information about the above rights and remedies.
  - b. To promote and facilitate national and international cooperation in order to advance the above purposes.
2. All measures in this [Law] shall be interpreted and applied in a way that is consistent with international law, including international human rights law, international humanitarian law, and international refugee law.
3. Victims of terrorism shall be free from discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status.
4. All measures in this [Law] shall be guided by:
  - a. A human rights-based approach ensuring non-discrimination and equal treatment of all victims, including victims of other forms of crime, human rights violations and conflict-related violence, as well as communities who are equally impacted by violence and in need of support.
  - b. A victim-centred approach, and adherence to the principle of “do no harm” with respect to the rights, dignity, and well-being of victims. Such approach should actively engage victims to fully understand the harms suffered and their rights and needs, and enable them to play



active and participatory roles in measures to support and assist them, without fear of stigma, reprisal or secondary victimization.

- c. Attention to victims' personal circumstances and intersectional vulnerabilities, including gender, age, disability, special needs, and social, economic and cultural circumstances, in particular through specialized and multi-disciplinary responses.
5. Specific attention should be given to vulnerable victims, including children, of sexual violence and trafficking in persons in all its forms. In particular, victims should not be punished or prosecuted for offences committed in the course, or as a consequence, of being trafficked, sexually enslaved, or born into a terrorist group; or for merely being perceived as associated with terrorist groups as spouses, partners or dependants of members of a terrorist group.
6. This [Law] shall be implemented in a manner that applies a gender lens to all provisions, emphasizing equality in relation to all gender-related impacts of terrorism.
7. The [competent authorities] shall ensure that all legal processes against alleged perpetrators (including investigation, detention, prosecution and sentencing, and related protective measures for victims) are gender sensitive, including by mainstreaming gender into all relevant policies, laws and procedures, programmes and practices.

## COMMENTARY

**Article 3, paragraph 1** helps identify the objectives of the Law (including by reference to the main issues addressed in other Chapters of the Law) and how it is to be applied. It may need to be adjusted to reflect how each state enacts this Law. In some legal systems, a statement of purpose or the identification of principles underpinning the legislation can be used to help inform the interpretation of its operative paragraphs.

**Paragraph 2** indicates that all measures to assist victims must be consistent with international law, particularly human rights law, refugee law, and international humanitarian law. Furthermore, the international framework on the rights of victims of crimes, grave human rights violations, and serious violations of international humanitarian law, applies *mutatis mutandis* to victims of terrorism. These include amongst others, key international treaties<sup>7</sup> and relevant United Nations resolutions,

<sup>7</sup> Such as the Convention on the Prevention and Punishment of the Crime of Genocide, of 1948; the four Geneva Conventions of 1949 and their two Additional Protocols of 1977; the International Convention on the Elimination of All Forms of Racial Discrimination, of 1965; the International Covenant on Civil and Political Rights, of 1966, and the International Covenant on Economic, Social and Cultural Rights, of 1966; the Convention on the Elimination of All Forms of Discrimination against Women, of 1979; the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 1984; the Rome Statute of the International Criminal Court, of 1998; the Convention on the Rights of Persons with Disabilities, of 2006; and the International Convention for the Protection of all Persons from Enforced Disappearances, of 2006.



including the 1985 United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the 2005 United Nations 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. The 2012 *Framework principles for securing the human rights of victims of terrorism* of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides further guidance on how to implement these frameworks.

Further, paragraph 2 implies that nothing in the Law shall be interpreted as providing a lesser degree of protection than that provided under international law, including applicable human rights conventions concerning the administration of and access to justice.

**Paragraph 3** affirms the internationally recognized principle of non-discrimination, which is subject to neither limitation nor derogation.<sup>8</sup> Aside from being unlawful, a discriminatory implementation of victim assistance measures may exacerbate the harm suffered; for example, by inappropriately denying specific types of services to victims of terrorism based on their religion, ethnicity, nationality, age or gender. For this reason, it is extremely important that States interpret and apply their domestic laws in a non-discriminatory and non-arbitrary way and subject to appropriate and effective supervision by relevant State authorities. An alternative example of wording to protect against non-discrimination under the Law is as follows: “The measures set forth in this Law shall be interpreted and applied in a way that does not discriminate against persons on any ground prohibited under international law, including that they are victims of terrorism.”

**Paragraph 4(a)** emphasizes that all victims of crime, including of international crimes and serious violations of human rights, are entitled to the protection of their rights without discrimination. This Law is not intended to create a hierarchy of victims or privilege victims of terrorism over others. Rather, it draws attention to certain characteristics of the experience of victims of terrorism which require specific legal treatment, and other victims may or may not share the need for some or all of these measures.

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<sup>8</sup> United Nations Human Rights Committee, General Comment No. 29, Article 4: Derogations during a State of Emergency, 2001, para. 8 (“According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”); Commission on Human Rights, report of the High Commissioner submitted pursuant to General Assembly resolution 48/141, Human rights: a unifying framework (E/CN.4/2002/18), 2002, annex, Proposals for “further guidance” for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001) (“For limitations of rights to be lawful they must: (i) Respect the principle of non-discrimination”); report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98), para. 48 (non-discrimination cannot be limited or derogated from, including in counter-terrorism; and referring also to UN General Assembly and Security Council resolutions on the issue).



**Paragraph 4(b)** underlines the need for States to take a victim-centered approach in addressing the rights and needs of victims of terrorism. The approach should include an analysis and full understanding of the harm suffered and of the victims' needs to be reflected in the support and assistance provided. Victims of terrorism should be enabled to play active and participatory roles in the process of obtaining support without fear of stigma and reprisals. In this regard, States should support and recognize the important role of victims' associations and other civil society organizations in advocating for victims. This Law further requires adherence to the principle of "do no harm", in order to uphold victims' rights, dignity and well-being. This may entail the implementation of security measures to protect against retaliation, and secondary victimization<sup>9</sup> (addressed in detail in Chapter VII).

**Paragraph 4(c)** focuses attention on victims' personal circumstances and particular intersectional vulnerabilities. The Law must be applied in a manner that is sensitive to factors such as gender, age, disability, special needs, and relevant social, economic and cultural circumstances. It is widely understood that the principle of non-discrimination requires consideration of how laws, programmes or policies may be neutral on their face but have adverse impacts on particular groups of individuals. In this context, an intersectional approach may be adopted which takes into account not only gender, but also other characteristics that interrelate with gender for ensuring that all victims' rights are protected.<sup>10</sup> The term "associated with" here is not to be used in a way that creates a perceived affiliation with terrorist groups when none exists, as is particularly the case of children born in terrorist-controlled areas.

**Paragraph 5** addresses the principle of non-punishment of victims of trafficking and sexual violence by terrorist groups. The right to non-punishment can be considered as "the beating heart" of victims' human rights protection at the international, regional and domestic level. It must be given high-level prominence since it relates to the unassailable legal right of the victim to be protected by law.<sup>11</sup> The punishment of victims of trafficking for crimes they committed directly related to their trafficking is a denial of justice and that it blames victims for crimes they would not have committed but for their status

<sup>9</sup> UNHCR, Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct (UNHCR/HCP/2020/04).

<sup>10</sup> UNODC, *Handbook on Criminal Dimensions of Criminal Justice Responses to Terrorism*, p. 62.

<sup>11</sup> UN Special Rapporteur on trafficking in persons, especially women and children, "The importance of implementing the non-punishment provision: the obligation to protect victims" (see <https://www.ohchr.org/EN/Issues/Trafficking/Pages/non-punishment.aspx>), 30 July 2020, para. 9.



as trafficked persons. To punish victims in such circumstances would depart from a long-established criminal law principle, common to most legal systems, that only those who freely choose to commit crimes should be punished. The principle is not intended to confer immunity on a victim merely because they are a victim, but because as a result of force or other coercion by traffickers the victim has acted involuntarily.<sup>12</sup> The non-punishment principle is contained in the OHCHR's 2002 Recommended Principles and Guidelines Principles and Guidelines on Human Rights and Human Trafficking, Principle 7: [t]rafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.<sup>13</sup>

**Paragraph 6** applies a gender perspective to implementation of the Law, to understand differences in status, power, roles and needs, and the impact of gender on people's opportunities and interactions. According to the definition of UN Women gender "refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age".

According to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, a gender-sensitive approach or perspective "involves the duty to consider and address the views, experiences, and needs of all individuals with

<sup>12</sup> UNODC, Guidance on the issue of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked, CTOC/COP/WG.4/2020/2, para 20, citing OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, p. 10 and referencing OHCHR, Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking (United Nations publication, Sales No. E.10.XIV.1), pp. 132–133.

<sup>13</sup> OHCHR, 2002 Recommended Principles and Guidelines Principles and Guidelines on Human Rights and Human Trafficking, Principle 7.





diverse sexual orientation and gender identities, while acknowledging the complexity and intersectionality of their experiences and maintaining a holistic and relational focus.”<sup>14</sup>

**Paragraph 7** specifically applies a gender lens to accountability for terrorism, based on the UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism, which states: “adopting a gender-sensitive approach to investigations is a key way of operationalizing gender mainstreaming principles”.<sup>15</sup>

## Article 4: Scope of application

This Law shall apply to all victims of terrorism, regardless of:

- a. Whether terrorism is domestic or transnational;
- b. Whether the perpetrator is identified, designated, apprehended, prosecuted, or convicted and irrespective of their perceived status or affiliation;
- c. Any familial or other relationship between the perpetrator and the victim; and
- d. Whether the victim initiates or cooperates with an investigation or any other accountability process.

### COMMENTARY

**Article 4** addresses the scope of application of the Law.

**Paragraph (a)** applies the Law regardless whether terrorism is domestic (for instance, committed in a single state involving only victims and perpetrators with the nationality of that state and still located there) or involves a transnational element of any kind. Security Council resolution 1373 (2001) requires States to criminalize all acts of terrorism, not only those which have a transnational dimension.

<sup>14</sup> See report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli (A/75/174), 17 July 2020, paras. 4-5.

<sup>15</sup> UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism, p. 62.



**Paragraph (b)** applies the Law regardless whether the perpetrator is identified or held accountable. This is supported at the international level by several UN General Assembly resolutions, including resolutions 40/34 of 29 November 1985: “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;”<sup>16</sup> and 73/305 of 28 June 2019, which “emphasizes that the granting of such assistance should be provided, in accordance with domestic law, to victims of terrorist acts regardless of whether the perpetrator of the terrorist act is identified, apprehended, prosecuted or convicted”.<sup>17</sup> It is also supported by the United Nations Committee against Torture, in its General comment No. 3, 2012<sup>18</sup> and regionally by the African Commission on Human and Peoples’ Rights, in its General Comment No. 4.<sup>19</sup>

**Paragraph (c)** applies the Law to victims regardless of any familial relationship to a perpetrator of terrorism. Victims of terrorism should not be deemed “guilty by association” with others involved terrorism and have their needs for assistance denied on that basis; victims’ rights must be guaranteed without discrimination.

**Paragraph (d)** recognizes that eligibility for victim assistance must not be conditioned on a victim’s cooperation with law enforcement authorities. Victims’ rights are inherent in the person because they are a victim, not as a reward for behavior which States may wish to encourage.

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<sup>16</sup> See A/RES/40/34, para. 2.

<sup>17</sup> See A/RES/73/305, para. 4.

<sup>18</sup> United Nations Committee against Torture, General Comment No. 3, 2012, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties”, 13 December 2012, para. 3.

<sup>19</sup> African Commission on Human and Peoples’ Rights, General Comment No. 4 on the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (Article 5), Adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights, held from 23 February to 4 March 2017, paras. 16-17.



## Chapter II. Jurisdictional application

### Article 5: Jurisdictional application

1. This [Law] applies to every victim of terrorism committed within the territory or subject to the jurisdiction of [name of State].
2. This [Law] also applies to every national [and habitual resident] of [name of State] who is the victim of terrorism committed outside the territory or jurisdiction of [name of State].
3. Where a victim under paragraph 1 [or paragraph 2] is not present in the territory or subject to the jurisdiction of [name of state], this [Law] shall apply to the victim to the extent necessary and possible.

#### COMMENTARY

##### **Paragraph 1: Victims of Terrorism Committed in a State's Territory or Jurisdiction**

**Territory and Jurisdiction:** The Law is grounded in the principle that, at a minimum, a State should assist and protect victims of terrorism committed in the State's territory. In addition, the Law applies to victims of terrorism committed in any areas beyond national territory where the State exercises jurisdiction, by analogy with the extraterritorial application of international human rights law.<sup>20</sup>

**"Every victim":** Application to "every victim" emphasizes that, with regard to acts of terrorism committed in the territory or jurisdiction of the state, the Law applies to all persons without discrimination, and must not be restricted to nationals, habitual residents, or persons lawfully present in the State's territory. The Law is grounded in human rights principles of equality and dignity, and the territorial/jurisdictional State will often be best or well placed to provide assistance, protection and reparation, including in the emergency phase immediately after an attack. Ordinary victims of crime schemes are also not necessarily restricted to nationals or residents.

##### **Paragraph 2 (Optional): Victims of terrorism committed abroad**

**Paragraph 2** enables the Law to be optionally applied to victims of terrorism committed outside of the State's territory or jurisdiction. States may wish to assist and protect

<sup>20</sup> See, e.g., ICCPR, art. 2(1).



their nationals, and habitual residents, when they are victims of terrorism abroad, as when visiting, working, or living in another State. Such persons may have acute ongoing needs; may not enjoy legal rights in the foreign State; or may not be able to practically access any available foreign support.

The Law does not preclude States from also, if they wish, protecting non-nationals or non-habitual residents who were victims of terrorism abroad, for instance where they are present in the state's territory (as opposed to helping all victims of terrorism world-wide *in absentia*). They could include foreign visitors or workers, other migrants (regular or irregular), refugees (including "war refugees") or Stateless persons, or persons who were evacuated from a neighboring State for medical, humanitarian or emergency reasons.

### **Paragraph 3: Continuity of assistance abroad**

The legal and functional capacities of a State to provide assistance, protection, reparation and access to justice, and the ability of a victim to receive them, will commonly depend on the victim's presence in the state's territory or jurisdiction, where the State can exercise its fullest governmental and regulatory authority. A State's capacities will evidently be greatest where a victim is within the State's territory, although where it exercises extraterritorial jurisdiction, the state may also be able to apply the Law to the extent of its jurisdiction.

**Paragraph 3** separately recognizes that the Law should continue to apply to the extent possible where an eligible victim is *not* (or is *no longer*) physically present within the State's territory or jurisdiction. This includes victims of terrorism committed in the State's territory or jurisdiction (under paragraph 1) or abroad (under paragraph 2) who have since left the State. In the case of nationals or habitual residents who were victims of terrorism abroad, it could also include where such persons have not returned from abroad since becoming victims.

Given the potential legal and practical challenges in helping victims who are outside the State's territory or jurisdiction, paragraph 3 is cast as a contextual duty to apply the Law "to the extent possible", rather than as a strict obligation to apply all provisions in full. Thus, for example, victims abroad could still be provided with information about their rights as victims (as under Chapter VIII of this Law), be paid compensation or a disability pension, receive restitution of local property, or enjoy rights to participate in legal proceedings. On the other hand, certain measures under the Law may be



impossible to fulfil for victims in absentia, such as provision of medical or psychological care or socio-economic rights, or access to services or service providers.

Depending on the measure, assisting victims abroad may depend on coordination and cooperation with the foreign State in which the victim is present. Article 6(2) addresses international cooperation.

The qualification to assist victims abroad “to the extent... necessary” acknowledges a victim’s rights will sometimes already be effectively guaranteed in the other State (where they are present), in which case there may be no need for both States to duplicate the same measures. Again, international cooperation will be an important means by which overlapping entitlements can be deconflicted and coordinated.



## Chapter III. Definitions

The definitions and their commentaries in this Chapter may assist legislators when enacting or applying this Law. Clearly drafted laws are critical to promoting the rule of law because they ensure that the victims can know the roles and responsibilities of the State and those who act on behalf of it and the rights, services and entitlements that are available. Some of the concepts in this Chapter are further elaborated in other Chapters of this Law, as are other key concepts not defined in this Chapter. Legislators are best placed to decide what terms should or should not be defined in their national laws.

**“Child” and “children”** refer to any person(s) under the age of 18 years.

### COMMENTARY

“Children” means human beings under the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child.<sup>21</sup>

**“Reparation”** means full, adequate, effective and prompt redress for terrorist harm suffered by a victim, proportional to the gravity of the terrorist act and the harm suffered. It includes: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

### COMMENTARY

This definition is based on 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law, paras. 15-23, annexed to Commission on Human Rights resolution 2005/35.

**“Secondary victimization”** means victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.

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<sup>21</sup> See also UNODC *Handbook on Children Recruited and Exploited by Terrorist Groups*, Introduction, p. 7.



## COMMENTARY

This definition is based on the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law, annexed to Commission on Human Rights resolution 2005/35, and Council of Europe Recommendation Rec (2006)8 of the Committee of Ministers to Member States on Assistance to Crime Victims, adopted 14 June 2006.

**“Victims of terrorism”** may have the following characteristics: a natural person who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, as a result of an act of terrorism. It also includes the immediate family or dependents of the victim who are affected by the harm to the victim, as well as persons who have suffered harm in intervening to assist victims or to prevent their victimization.

**Characteristics or elements of who may be a “Victim”:** While there is no agreed on international definition of the term “victim of terrorism”, as a working definition this Law adopts a definition of “victim” based on the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; the report of the Special Rapporteur (A/HRC/20/14); and the report of the UN High Commissioner for Human Rights (A/HCR/45/27).<sup>22</sup> The UNODC *Handbook on The Criminal Justice Response to Support Victims of Acts of Terrorism* notes that the 1985 Declaration definition “comprises all situations where people are victimized as a result of criminal offences committed by terrorist organizations and individuals.”<sup>23</sup>

**Meaning of “Terrorism”:** In the absence of a universally accepted definition of terrorism, States have the prerogative, in accordance with their international law obligations, to define “terrorism” and potentially designate individuals or groups as “terrorist” under their national legislation. Many States have been guided by the definition of acts of terrorism as included in the 19 international legal instruments to prevent terrorist acts, or in accordance with relevant Chapter VII resolutions of the Security Council, such as resolutions 1373 (2001), 2178 (2014), and 2396 (2017), although not all States have



done so. This leads to some inconsistencies as to what qualifies as terrorism, with definitions varying widely, further exacerbated by the practice of some States in trying terrorist suspects under broad and vague counter-terrorism provisions. Such practices may be inconsistent with the principles of legality, as well as with the indivisibility and universality of human rights and may result in discrimination and the imposition of other legal restrictions that have far-reaching impacts on civil society, humanitarian organizations, and political dissenters. These disparities may have a significant impact on how a state determines who qualifies as a victim and therefore on the effective exercise of their rights. It may also militate against efforts to harmonize bilateral or multilateral support for victims of terrorism.

**“Sexual and gender-based violence” (SGBV)** means any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females. Victims of SGBV include victims of:

- a. **sexual violence**, meaning any conduct of sexual abuse including but not limited to rape, sexual slavery, enforced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity, whether perpetrated against women, men, girls or boys;
- b. **trafficking in persons** for the purpose of sexual violence and/or exploitation: and
- c. **gender-based violence**, including non-sexual acts such as physical, psychological or socio-economic harm.

### COMMENTARY

Acts of sexual and gender-based violence constitute violations of international human rights law. The definition is based on the Inter Agency Standing Committee Guidelines on Gender-based Violence Interventions in Humanitarian Settings. Numerous international instruments note this, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and UN General Assembly resolution 48/104 of 20 December 1993, and the Declaration on the Elimination of Violence against Women. Furthermore, the definition of conflict-related sexual violence (CRSV) has evolved through a series of Security





Council Resolutions.<sup>22</sup> As highlighted by the CEDAW Committee in its General Recommendations 19 and 35, gender-based violence is a form of gender-based discrimination and such violence is different from other similar forms of violence because it is directed against a person because of that person's gender, or because it affects persons of a particular gender disproportionately.<sup>23</sup> Trafficking in persons is defined in article 3 of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (reproduced in the commentary to Chapter XIII of the Model Legislative Provisions).

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<sup>22</sup> UN Security Council resolutions 1325 (2000); 1820 (2009), 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015) and 2467 (2019).

<sup>23</sup> See also: OHCHR, Information series on sexual and reproductive health and rights, Violence Against Women.



## Chapter IV. Coordination, cooperation and oversight

### Article 6: Establishment of a coordination body for victims of terrorism

1. The [competent authority] shall establish a permanent coordination body for victims of terrorism composed of representatives from all relevant public authorities and civil society organizations, including non-governmental organizations, victims' associations, victims' advocates, and women's rights associations. The [coordination body] shall be provided adequate resources to enable it to effectively and independently perform its functions.
2. The [coordination body] shall coordinate the implementation of this [Law], including by:
  - a. Serving as a focal point for, and facilitating cooperation between, all relevant public authorities and non-governmental entities;
  - b. Administering a central referral mechanism to identify victims' needs and refer victims to service providers, including the Victim Registry under Article 7;
  - c. Fulfilling the tasks assigned to it under other provisions of this [Law];
  - d. Developing protocols and guidelines and ensuring their implementation, including through awareness raising and training;
  - e. Developing a comprehensive national plan of action involving concrete, measurable steps to implement all measures under this [Law];
  - f. Promoting research and best practices on the needs and rights of victims of terrorism;
  - g. Monitoring the implementation of measures under this [Law] by all relevant entities, including through:
    - i. collecting gender-disaggregated and intersectional data on victims and measures implemented under this [Law], to ensure there is no gender bias in identifying the harms suffered by victims and determining measures under this [Law]. Through this, the [competent authorities] shall conduct a gender analysis of harms suffered, including any explicitly gendered harms, including sexual and gender-based violence, loss of reproductive capacity or forced pregnancy; and of their differential impacts on all genders.
    - ii. reporting annually on its activities, implementation of the national plan of action, the number and intersectional characteristics of victims assisted, and the measures implemented under this [Law];
    - iii. establishing effective and independent monitoring and evaluation mechanisms to assess the human rights impacts, including from gender and intersectional perspectives, of measures under this [Law].
3. The [coordination body] shall coordinate cooperation under this [Law], including concerning assistance, protection, reparation, information and access to justice, between the [competent authorities and relevant entities] in [name of State enacting this Law] and the [coordination body,



competent authorities and relevant entities] in other states. International cooperation shall include:

- a. the exchange of information;
- b. the coordination of administrative and other measures;
- c. [OPTION] making concrete efforts to the extent possible to assist other States to ensure the rights of victims, such as through training, exchange of personnel, and material and financial support.

## COMMENTARY

**Article 6** establishes (paragraph 1) and sets out the functions of (paragraph 2) a coordination body to assist victims, including its functions in relation to international cooperation (paragraph 3).

### **Establishment of a coordination body**

**Paragraph 1** addresses the need for a [coordination body] which is considered as a good practice mechanism for developing comprehensive and coordinated measures for the benefit of victims of terrorism and to promote cooperation between the relevant governmental agencies and between governmental and nongovernmental agencies. Setting up a sustainable multidisciplinary structure will enhance an adequate response and enable the development of best practices.

The Model Legislative Provisions do not prescribe the nature of such an authority, which could be a terrorism-victims-specific agency or located within emergency management authorities, law enforcement agencies, welfare, or humanitarian assistance authorities. An advantage of using a criminal justice sector actor is that there will be synergies with the protection and support of victims throughout subsequent criminal investigations, prosecutions, and reparations processes.

### **Functions of the coordination body**

**Paragraph 2** addresses certain functions the [coordination body] shall exercise. This list is non-exhaustive. The coordination of information and support services is vital as to reduce the risks of overwhelming the victim and avoid the risk of the victim receiving contradictory information, hence mitigating the risk of secondary victimization. One-stop shops and centralized websites are also a supported good practice.

For example, Article 24.4 of the European Union Counter-terrorism Directive requires



Member States to envisage the coordination of relevant authorities, agencies, and bodies to be able to provide a comprehensive response to support services for victims of terrorism within the framework of their national emergency. This is supported by the *EU Handbook for Victims of Terrorism* which states that: “it is recommended that victims of terrorism [be] supported with a centralized, single contact point that coordinates the work of all those involved in the support and protection of victims. Additionally, a dedicated website, providing all relevant information, can act as – or be supported by – a one-stop-shop, a centre where a range of services (e.g., psychological, legal, medical and financial) is provided in the immediate aftermath of an attack”.<sup>24</sup>

**Paragraph 2(g)** The provision refers to the need to establish a fully independent, adequately resourced oversight mechanism to oversee and assess the measures covered by the present Law and to ensure their compatibility with international human rights and, as applicable, international humanitarian law. It should include the capacity to review all relevant materials, call witnesses and inspect the premises of organizations, have sufficient power to handle complaints, and be independent of the executive and government. The need to establish monitoring and evaluation mechanisms is enshrined in the UNODC Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework Handbook: “States should work closely with civil society organizations, including recognized and active non-governmental organizations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes, and training, as well as in monitoring and evaluating the impact of measures to support and protect victims of terrorism.”<sup>25</sup>

This paragraph insists on the importance of having gender-sensitive processes to establish measures and that the competent authorities should take a gender-sensitive approach to harm, as women and girls can experience “harm differently from men and boys, resulting in “gender-specific injuries”, which can shape what constitute appropriate reparations for each” and by analogy appropriate assistance and support measures.<sup>26</sup>

<sup>24</sup> *EU Handbook on Victims of Terrorism*, 2021, p. 11.

<sup>25</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, 2015, p. 54 See also S/2008/39, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

<sup>26</sup> See ICC, *The Prosecutor v. Bosco Ntaganda, “Second Expert Report”, Annex 2 to the Registry Transmission of Appointed Experts’ Reports*, 3 November 2020, ICC-01/04-02/06-2623-Anx2-Red2). See also UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism.



## International cooperation

**Paragraph 3** recognizes that international cooperation can be essential to protect victims' rights.<sup>27</sup> Much existing international cooperation focuses exclusively on facilitating criminal investigations and prosecutions, rather than addressing the specific rights and needs of victims.<sup>28</sup> The United Nations and other bodies have affirmed that cooperation should extend to protection, support, assistance and rehabilitation of victims of terrorism<sup>29</sup> (as well as victims of serious crimes in general<sup>30</sup>). This paragraph addresses some key forms of cooperation. Mutual legal assistance is separately addressed in Article 17; while consular assistance is covered by Article 27.

While the provision tasks the [coordination body] with coordination of international cooperation, actual concrete measures of cooperation will normally be carried out by the competent authorities or other entities (such as service providers or civil society organizations) with responsibilities in a given area. In this regard the provision indicates that relevant bodies should themselves cooperate in such matters, in addition to the [coordination body] coordinating such cooperation.

**Paragraph 3(a)-(b)** reflects a provision commonly found in transnational criminal cooperation instruments, namely inter-State cooperation through exchange of

<sup>27</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2011).

<sup>28</sup> See UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015), paras. 239-248, including good practices at pp. 59-60. On criminal cooperation see, e.g., 2005 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, arts. 4 (international cooperation in investigation and prosecution) and 5 (extradition and mutual assistance). See also UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System* (2017), p. 57 (international cooperation regarding child victims and witnesses).

<sup>29</sup> See e.g. United Nations General Assembly resolution 73/174 of 17 December 2018 (Terrorism and human rights), para. 7; Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, art. 26 (Rights of victims of terrorism resident in another Member State), cf. also art. 24 (3)(b) on advice, information and facilitation; Council of Europe Guidelines on the Protection of Victims of Terrorist Acts, art. V (2) (continuing assistance to non-residents through cooperation with the State of residence). For concrete recommendations see *Supporting Victims of Terrorism – Report of the International Network Supporting Victims of Terrorism and Mass Violence Symposium in Stockholm* (2018), pp. 59-61.

<sup>30</sup> European Convention on the Compensation of Victims of Violent Crimes (CETS No. 116) of 24 November 1983, Part II ("give the maximum possible assistance" to a requesting State on matters covered by the Convention); Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council framework decision 2001/220/JHA (directive 2012/29/EU), art. 26 (1) (cooperation to improve victims' access to rights, including through exchange of best practices, consultation in individual cases, and assistance to relevant networks); Council of the European Union Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (cooperation to facilitate cross-border access to compensation); Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (mutual recognition of protection measures); Recommendation Rec(2006)8 of the Committee of Ministers to member States on assistance to crime victims, art. 15 (1) (cooperation in assistance) and (2) (cooperation with state of residence in protection, reporting and judicial process).



information and coordination of administrative and other measures<sup>31</sup> (as distinct from formal cooperation through mutual assistance in legal proceedings). The provision applies such measures to other areas addressed by the Law: assistance, protection, reparation, information, and access to justice for victims. The provision is additional to any cooperation measures in those specific areas under the Law.

Cooperation could pertain, for example, to the identification of victims and relatives or of offenders and terrorist groups; the cross-border provision of information to victims; or the availability of, eligibility for, or receipt of assistance, protection or reparation; sharing of medical, assistance, protection, law enforcement or judicial records; or facilitating the repatriation of injured or deceased victims (for instance through provision of necessary travel and medical clearances and documentation). It will be particularly important where a victim in one State is applying for, or seeking to implement, rights to assistance, protection, or reparation in another state (including where the victim may also enjoy certain victim rights in the first State).

The provision leaves it to States to determine the modalities of information exchange and coordination, but this could be achieved through, for example, law enforcement cooperation (such as police, intelligence, security, border, immigration, customs and forensic agencies), diplomatic channels, dedicated communication channels<sup>32</sup> (which could include the coordination body under this Chapter), direct communications between victim service providers, the posting of liaison officers,<sup>33</sup> and modern technology. Bilateral or multilateral agreements could also be concluded to formalize such cooperation.<sup>34</sup>

***The optional provision in paragraph 3(c)*** encourages assistance to other States in need, based on relevant UNTOC provisions<sup>35</sup> as adapted to the context of victim rights under the Law. Such assistance aims to strengthen the capacity of other States to provide assistance, protection, reparation and access to justice to victims. The provision is

<sup>31</sup> See, e.g., 2000 United Nations Convention on Transnational Organized Crime (UNTOC), art. 27 (1)(f) (“To exchange information and coordinate administrative and other measures taken as appropriate or the purpose of early identification of the offences covered by this Convention”).

<sup>32</sup> See, e.g., UNTOC, art. 27 (1)(a).

<sup>33</sup> See, e.g., UNTOC, arts. 27 (1)(d) (law enforcement) and 29 (3) (training and technical assistance to facilitate extradition and MLA, through language training, secondments and exchanges between personnel in central authorities or agencies).

<sup>34</sup> See, e.g., UNTOC, art. 27 (2) (law enforcement cooperation).

<sup>35</sup> See, e.g., UNTOC, articles 30 (implementation of the Convention through economic development and technical assistance), 29 (2)-(4) (law enforcement training and technical assistance through cooperative measures) and 27 (1)(d) (law enforcement cooperation through exchange of personnel and experts and posting of liaison officers).



framed as a duty to make ‘concrete efforts to the extent possible’<sup>36</sup> rather than as a strict duty to actually provide technical assistance, given the different capacities of different States to make such contributions.

Assistance could be directed, for example, towards the drafting of laws to protect victims; the establishment, training, skilling or improvement of victim institutions or procedures (such as assistance service providers (medical or material), reparation or transitional justice mechanisms, legal aid, the courts, or protective measures); or measures to improve the accountability and responsiveness of victim frameworks. Assistance could involve the direct provision of skills or expertise (such as through training, secondments, or personnel exchanges<sup>37</sup>) or through material or financial assistance<sup>38</sup> (such as provision of equipment,<sup>39</sup> logistics, facilities, infrastructure, or salaries).

Assistance may be provided bilaterally or through multilateral mechanisms, including by concluding bilateral or multilateral agreements or arrangements.<sup>40</sup> Financial contributions could be made through, for example, adequate and regular voluntary contributions through United Nations funding mechanisms.<sup>41</sup> Assistance should, however, be without prejudice to existing foreign-assistance commitments or to other financial-cooperation arrangements at the bilateral, regional or international level.<sup>42</sup>

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<sup>36</sup> UNTOC, art. 30(2).

<sup>37</sup> See, e.g., UNTOC, art. 29 (3); see also art. 27 (1)(d) (exchange of personnel and experts, and posting of liaison officers).

<sup>38</sup> UNTOC, art. 30 (2)(b) (“To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully”).

<sup>39</sup> See, e.g., UNTOC art. 30 (2)(d).

<sup>40</sup> See, e.g., UNTOC, art. 30 (4) (on material and logistical assistance).

<sup>41</sup> See, e.g., UNTOC, art. 30 (2)(c).

<sup>42</sup> See, e.g., UNTOC, art. 30 (3).



### Article 7: Registry of victims

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Immediately after a terrorist act, the [coordination body] shall establish a Registry of Victims, the functions of which shall be to:

- a. Register individual and collective victims on the basis of their informed consent, unless the person is incapable of consenting;
- b. Take effective measures to promote and facilitate registration, and to avoid secondary victimization through registration, including through special measures:
  - i. for persons with particular vulnerabilities, including children, the elderly, persons with disabilities, victims of sexual and gender-based violence, minorities and indigenous peoples, displaced persons, and illiterate persons;
  - ii. to ensure victims can register safely, particularly in areas affected by conflict or insecurity.
- c. Identify victims requiring urgent assistance due to the nature or gravity of the harm suffered or particular vulnerabilities, including in situations under paragraph (b) of this Article.

#### COMMENTARY

**Article 7** addresses the creation of a Registry of Victims of terrorism to ensure that victims can be accurately identified and measures under the Law can be effectively provided. It is considered as a good practice by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence: “Individual and collective registries of victims are crucial in order to have realistic projections of the level of victimhood in States undergoing transitions. They help in estimating the cost of redressing the potential beneficiaries of the programme and in planning resource allocation. Registries could also facilitate reparation for victims in urgent need of attention, through urgent reparation programmes. They also constitute a key measure of acknowledgment, satisfaction and memory”.<sup>43</sup>

Procedurally, it is recommended good practice that the [competent authorities] develop a registration form in consultation with victims’ associations, limited to registering essential basic personal information, a statement of facts and harm suffered, any confidentiality concerns of the victim and/or beneficiaries, and, where appropriate, including supporting documents. Where relevant, specific forms may be used to clarify

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<sup>43</sup> UN Human Rights Council, report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the Promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/42/45), 11 July 2019, para. 47.





the range of collective victims, including the name of the community, the facts, and the harms suffered.

The Registry must comply with the provisions on privacy, confidentiality and protection of personal data in Article 21 of this Law.



## Chapter V. The right to assistance

### Article 8: Right to assistance

1. The [competent authorities] shall ensure that victims of terrorism receive the material, medical, psychological and social assistance that is necessary to meet their needs as victims. In particular:
  - a. Medical and psychological assistance provided by the [public health authorities and other entities] shall include:
    - i. Emergency, curative and rehabilitative treatment and services to address illness, injury and disability;
    - ii. Psychological treatment and counselling, and emotional support;
    - iii. Pharmaceuticals and medical or health items, including disability-assistance items and devices.
  - b. Material assistance provided by the [competent authorities or other entities] shall include measures concerning:
    - i. Basic needs, including food, water, housing, sanitation, clothing and essential services (such as energy, transport and communications);
    - ii. Employment, livelihood or other means of subsistence;
    - iii. Individual or communal property, resources and infrastructure;
    - iv. The environment.
  - c. Social assistance provided by the [competent authorities or other entities] shall include measures concerning:
    - i. Education and training;
    - ii. Social rehabilitation;
    - iii. Protection of family and child rights;
    - iv. Measures to ensure accessibility for persons with disabilities;
    - v. Protection of cultural and religious rights.
  - d. Assistance shall also include the provision by the [competent authorities or other entities] of:
    - i. Legal, professional and support services related to being a victim;
    - ii. Funeral and burial services;
    - iii. Any other relevant goods or services [including replacement of documents].
  - e. Humanitarian assistance shall be provided by the [competent authorities or other entities] without discrimination, including on the basis of gender or perceived status or affiliation, pursuant to the principles of humanity, neutrality and impartiality.
2. Assistance may be provided through governmental, voluntary, community-based or other means. Whatever means are used:



- a. The [coordination body] shall ensure that:
    - i. The necessary assistance is provided to victims;
    - ii. It effectively coordinates the provision of assistance [including through individual case managers where feasible].
  - b. The [competent authorities] shall ensure that:
    - i. All [providers of assistance] are effectively regulated to ensure respect for human rights and compliance with all quality and professional standards prescribed by this Law and other relevant laws, including through remedial measures and sanctions;
    - ii. Assistance is adequately funded.
3. Assistance may be proportionally reduced where a victim has received support or a remedy, under other chapters of this [Law], in relation to the same harm arising from the same terrorist act.

## COMMENTARY

The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognizes that all victims of crime should receive “the necessary material, medical, psychological and social assistance” to address the harm suffered.<sup>44</sup> Assistance complements other measures to support victims. Restitution aims to restore the victim to the original situation before the crime occurred where that is possible.<sup>45</sup> Restitution may, however, not be possible because of the irreversible consequences of a terrorist act,<sup>46</sup> as where victims’ property has been destroyed; their place of residence remains unsafe due to continuing conflict; or they have suffered injuries or disabilities of such a nature as to preclude the resumption of their former employment or livelihood.

Where restitution is not possible, compensation and assistance (including rehabilitation) aim to remedy the victim’s situation *as far as possible*. Whereas compensation does so through monetary payments, assistance usually involves direct (non-monetary) measures to support the victim (although it can also involve monetary payments, such as a disability or injury pension where a victim is no longer able to work). Assistance aids the victim to adjust to their new situation, including by providing substitutes, replacements, or alternatives for the rights or interests which were destroyed or rendered

<sup>44</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14.

<sup>45</sup> 2005 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, para. 19.

<sup>46</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, “Framework Principles for Securing the Human Rights of Victims of Terrorism” (A/HRC/20/14), 4 June 2012, para. 51.



inaccessible. Examples include medical or psychological care or rehabilitation to treat injuries; assisting a victim with disabilities to acquire a suitable new job where they can no longer perform their prior role; or providing replacement housing or land where a person's house or land was destroyed or is inaccessible.

### **Paragraph 1: Types of assistance**

The 1985 Declaration does not elaborate on the content of the categories of assistance but each encompasses a range of possible measures, reflecting the variety and breadth of terrorist harms that may be suffered. There are no types or levels of assistance which must be automatically provided to every victim. Article 5 is an obligation to provide, or to ensure the provision of, "assistance that is necessary" in the victim's circumstances,<sup>47</sup> reflecting that individual needs will vary depending on the nature of the crime and the personal characteristics and situation of the victim. Identifying the appropriate suite of measures necessarily requires an individual assessment of the needs of each victim, as Article 6 addresses. This should not be understood as undermining victims' non-discriminatory access to economic, social and cultural rights.

### **Medical and Psychological Assistance**

Paragraph 1(a) outlines the different components of medical and psychological assistance, based on international standards. Medical treatment must address both physical and mental/psychological harms<sup>48</sup> arising from a terrorist act. Medical care includes both curative (whether emergency or otherwise) and rehabilitative treatment, as well as the provision of essential drugs.<sup>49</sup> Psychological treatment should be understood broadly to include not only trauma counselling but also psychosocial interventions, as well as emotional support,<sup>50</sup> including, for example, at critical times such as notification of death or injury to relatives, identification of bodies or

<sup>47</sup> The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14, refers to "necessary" assistance.

<sup>48</sup> International Covenant on Economic, Social and Cultural Rights 1966, para. 12 (1); 2005 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, para. 20 (a); 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14.

<sup>49</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, para. 17.

<sup>50</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; UNODC, Handbook on Justice for Victims: On the Use and Application of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1999), p. 18.

attendance at interviews.<sup>51</sup> Medical goods must also be provided,<sup>52</sup> which, among other things, can include necessary medical equipment, items and devices, including quality disability assistance aids, devices and assistive technologies.<sup>53</sup>

Medical care or treatment must not be understood in a narrow clinical sense, but to also entail more comprehensive measures of *rehabilitation*.<sup>54</sup> Medical rehabilitation means “the process of medical care aiming at developing the functional and psychological abilities of the individual, and, if necessary, his compensatory mechanisms, so as to enable him to attain self-dependence and lead an active life”.<sup>55</sup> It is often closely related to measures of social rehabilitation, meaning “the process aimed at the integration or re-integration of a disabled person into society by helping him to adjust to the demands of family, community, and occupation, while reducing any economic and social burdens that may impede the total rehabilitation process”.<sup>56</sup> In this sense, medical measures under this provision may be related to measures of social and material assistance under paragraphs 1(b) and (c). The multidimensional nature of medical and social rehabilitation will typically require a multidisciplinary response, highlighting the need for central coordination of assistance overall (addressed in Article 6).

It should be emphasized that, under international human rights law, there are minimum standards in relation to medical care. In relation to health facilities, goods and services, *accessibility* entails non-discriminatory access; safe physical accessibility for all victims; economic accessibility (affordability); and information accessibility.<sup>57</sup> Acceptability means that health facilities, goods and services must be culturally and gender appropriate and respectful of medical ethics (including patient confidentiality). Good *quality* requires that health facilities, goods and services be scientifically and medically appropriate, involving skilled personnel, approved and safe equipment, and safe water

<sup>51</sup> UNODC, *ibid.*

<sup>52</sup> General Comment No. 14, para 17.

<sup>53</sup> Such as prostheses, hearing aids, spectacles, mobility aids (e.g. wheelchairs), guide dogs, and so on. See e.g. CRPD arts. 20 and 26 (3).

<sup>54</sup> See e.g. 2005 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, para. 21 (“Rehabilitation should include medical and psychological care as well as legal and social services”).

<sup>55</sup> WHO Expert Committee on Medical Rehabilitation, Second Report, Technical Report Series 419, (Geneva, 1969), p. 6.

<sup>56</sup> WHO Expert Committee on Medical Rehabilitation, second report, Technical Report Series 419, (Geneva, 1969), p. 6. See also Convention on the Rights of Persons with Disabilities 2006, article 26 (habilitation and rehabilitation); Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, “Ten areas of best practices in countering terrorism” (A/HRC/16/51), 2010, para. 25.

<sup>57</sup> *Ibid.*, para. 12 (b).



and adequate sanitation. Medical treatment must also be provided in a timely manner.<sup>58</sup> As Article 6 relatedly indicates, the timing of assistance in general (including medical care) will vary depending on the different phases of a victim's needs, whether at the emergency stage or in the short-, medium-, or long-term.

Medical treatment must be appropriately adapted to all groups with special needs, whether because of the nature of the harm and/or the victim's membership of a vulnerable or marginalized group.<sup>59</sup> These may include (in addition to persons with disabilities, mentioned above) ethnic minorities and indigenous populations, women, children, adolescents, older persons, and persons with HIV/AIDS.<sup>60</sup> Persons with disabilities are entitled to equal access in health care and should not incur additional costs.<sup>61</sup> In the context of terrorism, members of particular religious groups (whether minority or otherwise) could also have special needs. Sensitivity to special needs is further related to the selection and coordination of the appropriate (and suitably qualified) actor(s) for providing assistance whether through governmental, voluntary, community-based and indigenous means.<sup>62</sup>

### Material Assistance

Regarding material assistance, **paragraph 1(b)(i)** requires assistance to be available for basic needs,<sup>63</sup> which are grounded in internationally protected socio-economic rights (including an adequate standard of living), right to life, and freedom from cruel, inhuman or degrading treatment. The State must ensure that these are available, whether provided through, for instance, social security systems, charitable organizations, or humanitarian relief (particularly in situations of large-scale terrorist violence involving

<sup>58</sup> Ibid., para. 17.

<sup>59</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 17.

<sup>60</sup> See: 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 17, and CESCR, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, para. 12.

<sup>61</sup> CRPD, art. 35.

<sup>62</sup> See, e.g., 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; UNODC, The Criminal Justice Response to Support Victims of Acts of Terrorism (2012), para. 132. General Assembly 73/305 of 28 June 2019 in its preamble further highlights "the importance of effective coordination among relevant governmental offices and agencies and cooperation with civil society organizations providing support and assistance to victims and their families".

<sup>63</sup> See, e.g., UNODC, Handbook on Justice for Victims: On the use and application of the declaration on basic principles of justice for victims of crime and abuse of power (1999), pp. 17-18; Global Counter-Terrorism Forum (GCTF), Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings (2013), Good Practice 7 ("To the extent possible and depending on available resources, victims can be provided with basic survival benefits including temporary accommodation, food, and transport. These services foster the normalization process, can reduce victims' insecurity, and facilitate victim interaction with law enforcement investigators. Provision of such benefits to victims should not depend on cooperation with law enforcement investigators").

displacement of persons). Regardless of the means by which they are provided, they must ultimately be available, in order to ensure that the fundamental human rights of victims of terrorism are fulfilled. In some cases, assistance may be required long-term, as in the case of internally displaced persons who cannot safely return to their homes for protracted periods. In lieu of their direct provision, assistance for basic needs could also be provided through financial assistance.<sup>64</sup>

**Paragraph 1(b)(ii)** correlates in part with the human right to work (employment).<sup>65</sup> The aim of assistance is to assist a victim to find suitable replacement work where their prior position cannot be restored (by means of restitution), for instance, due to injury preventing the same work, or displacement precluding return to work at a particular place. The provision also encompasses economic notions broader than employment, namely livelihood or means of subsistence, meaning the means by which households access the resources necessary to ensure survival.<sup>66</sup> Livelihoods could be sustained through, for example, business, agricultural land, or access to resources such as fishing or forests. Terrorist acts may destroy or impair enjoyment of such opportunities. Restoration of such rights may be particularly important in certain rural, indigenous, or minority communities.

**Paragraph 1(b)(iii)** focuses on assistance related to property, resources and infrastructure (which include, but are not limited to, those linked to livelihood or subsistence). These are understood broadly to include private, community, and general public property; as well as property held by individuals or on a collective basis. Again, where restitution is not possible (as where property has been destroyed), assistance involves replacement or substitution in relation to ownership of property/resources/infrastructure as well as rights of access to them where they are owned by others (as through formal legal interests or customary rights (such as to access community or public land, forests, or waters)). Again, rural, indigenous and minority communities are particularly relevant; in turn, their livelihood and property/resources interests may be closely connected to other rights (such as cultural or religious rights (under **paragraph 1(c)(v)**) connected with ancestral land, or the environment (**paragraph 1(b)(iv)**). Reference to infrastructure includes public goods such as roads and essential utilities.

<sup>64</sup> UNODC, Handbook on Justice for Victims: On the Use and Application of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1999), p. 18.

<sup>65</sup> ICESCR, art. 6.

<sup>66</sup> On the right to livelihood see, e.g., Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v, Sudan, African Commission on Human and Peoples' Rights Communication No. 279/03–296/05 (27 May 2009).



**Paragraph 1(b)(iv)** concerns repair of the environment.<sup>67</sup> Terrorist acts which harm the environment are not “victimless” crimes: a safe, clean, healthy and sustainable environment is necessary in order to respect, protect and fulfil human rights,<sup>68</sup> including basic needs, livelihoods, and indigenous and minority rights. Certain victims of terrorism will be directly impacted by environmental harms, but the general public is also a wider victim.

### Social Assistance

**Paragraph 1(c)** addresses social assistance, including restoration or provision of educational and training opportunities (**paragraph 1(c)(i)**) which may be adversely impacted by terrorist acts, such as through attacks or violent threats against schools, teachers, or students; denial of education to girls; abduction, forced recruitment or enslavement of children; or the closure of schools due to the prevailing insecurity in a region.<sup>69</sup> Where restitution is not possible (for instance, the reopening of a school), restorative measures could include the construction of new schools, or enhanced security for schools, teachers and students. Replacement measures could further include moving students to other schools where their school remains unsafe, including through provision of scholarships or bursaries to fund living expenses away from home; or providing new vocational training opportunities which accommodate a victim’s newly acquired disability.

**Paragraph 1(c)(ii)** facilitates other measures of social rehabilitation of victims. For example, in some contexts victims of terrorism may be socially stigmatized by the general community, whether as perceived collaborators with terrorist groups or due to the perceived shame of experiencing sexual violence. Necessary restorative measures could include public awareness and education campaigns to sensitize all sectors of the community (from employers to the media to law enforcement) to the experiences and needs of victims.

<sup>67</sup> See, e.g., 2005 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, para. 10 (“In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community”).

<sup>68</sup> UN Special Rapporteur on human rights and the environment, John Knox, Framework principles on human rights and the environment (HRC/37/59), section II, Principle 1.

<sup>69</sup> See, e.g., UN Human Rights Council resolution 34/8 (23 March 2017): Effects of terrorism on the enjoyment of all human rights, preamble; OHCHR, Report on protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/28), 10 January 2019, para. 7; UN Secretary-General, Plan of action to prevent violent extremism (A/70/674), 24 December 2015, para. 16; UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 (2013) on Women in conflict prevention, conflict and post-conflict situations, para. 48.





**Paragraph 1(c)(iii)** ensures assistance to protect family and child rights. Measures could include assistance with child care<sup>70</sup> (for instance, where a parent or guardian is recovering from injuries or has ongoing disabilities), the provision of counselling and support to ensure the functional reintegration of family members (for instance after abducted children have been freed), or measures to protect children who have been separated or orphaned. (Measures to trace and reunify separated family members are separately covered under restitution.)

**Paragraph 1(c)(iv)** recognizes that persons with disabilities may require specialized assistance and support, including long-term care for permanent disabilities.<sup>71</sup> Assistance to persons with disabilities is not limited to medical treatment and devices (as under paragraph 1(a)). Particularly relevant measures may include those related to rehabilitation, living independently and being included in the community, and personal mobility.<sup>72</sup> Wider measures across society may be required to ensure accessibility to the physical environment, transportation, information and communications, and other facilities and services open to the public.<sup>73</sup>

**Paragraph 1(c)(v)** ensures restoration of cultural and religious rights (individual and group) affected by terrorist acts.<sup>74</sup> Such assistance could include the repair or reconstruction of buildings or sites destroyed or damaged by terrorists; the recommencement of activities banned in areas previously controlled by terrorists; special measures of protection for minority communities; or wider measures of inter-faith dialogue to repair sectarian divisions. (Return of objects stolen or trafficked by terrorist groups, or undamaged sites occupied them, is separately covered by restitution.)

<sup>70</sup> UNODC, Handbook on Justice for Victims: On the use and application of the declaration on basic principles of justice for victims of crime and abuse of power (1999), p. 17.

<sup>71</sup> See generally Convention on the Rights of Persons with Disabilities, 2006.

<sup>72</sup> Ibid., arts. 26 (rehabilitation refers to measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life), 19 and 20, respectively.

<sup>73</sup> Convention on the Rights of Persons with Disabilities 2006, art. 9.

<sup>74</sup> See, e.g., *The Prosecutor v Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15-171, Trial Chamber Judgment and Sentence, 27 September 2016 (conviction for the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion (such as mosques and mausoleums) in Timbuktu, Mali; Security Council resolution 2199 (2015) (highlighting that ISIL (Da'esh), the Al Nusra Front and other groups associated with Al-Qaida generate income from looting and smuggling of cultural heritage items in Iraq and Syria); see similarly International Commission of Inquiry on the Syrian Arab Republic, report (A/HRC/31/68), 11 February 2016, paras. 138-140.



### Other Assistance

**Paragraph 1(d)** covers certain other expenses incurred by victims, including services relating to being a victim, such as legal<sup>75</sup> and professional and other support services (**sub-paragraph (i)**). The latter could include support for applying for assistance (as well as compensation, insurance, or protection); interventions to ensure the continuity of the victim's credit, housing or employment; or reimbursement for time away from work or childcare responsibilities when a victim is participating in a legal proceeding.<sup>76</sup> Assistance could also be available for funeral and burial services (**sub-paragraph (ii)**). In addition, **sub-paragraph (iii)** emphasizes that the types of assistance mentioned in Article 5 are not exhaustive of all possible kinds of assistance; national law should be responsive to the needs of victims of terrorist acts as they arise or evolve. For example, it may be necessary for the State to replace important legal documents<sup>77</sup> destroyed in a terrorist act, such as identity or travel documents, or property ownership records.

### Humanitarian assistance

**Paragraph 1(e)** emphasizes the need to ensure humanitarian assistance where relevant, including but not limited to situations of armed conflict, without discrimination (including on the basis of perceived affiliation to terrorist groups) and in accordance with international principles of humanitarian action. This is based on the UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups: "Humanitarian assistance must be provided without discrimination and according to the principles of humanity, neutrality and impartiality, including to all individuals irrespective of their perceived status or affiliation".<sup>78</sup> See also the WHO summary on Mental health and Psychosocial Support for Conflict-related Sexual Violence: Principles and Interventions;<sup>79</sup> and Chapter XIV of this Law on armed conflict and displacement.

<sup>75</sup> See also 2017 UNODC Model Law on Legal Aid in Criminal Justice Systems.

<sup>76</sup> UNODC, *Handbook on Justice for Victims: On the use and application of the declaration on basic principles of justice for victims of crime and abuse of power* (1999), pp. 18-19.

<sup>77</sup> Ibid.

<sup>78</sup> UN, Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups, p. 5.

<sup>79</sup> WHO, Mental health and psychosocial support for conflict-related sexual violence: principles and interventions, 2012, p. 2. See also: OHCHR, Nigeria/Boko Haram: "The reintegration of women essential to the path towards lasting peace", 22 January 2016.

## Paragraphs 2 and 3: Responsibility, coordination, regulation and funding

The Law is not prescriptive about the form in which assistance must be provided.

**Paragraph 2** affirms the 1985 Declaration in recognizing that assistance may be provided by governmental, voluntary, community-based and indigenous means.<sup>80</sup> Non-governmental providers of assistance could include victims' associations, other civil society or non-governmental organizations (such as charities, local community groups or religious organizations), or private actors (such as employers, insurers or corporations).

**Paragraph 2(a)(i)** emphasizes, however, that whatever means, or combination of means are used, the State bears ultimate responsibility for ensuring that necessary assistance is provided, through oversight by the coordination body under Chapter IV. The same body is also charged with effectively coordinating assistance by different providers. Given that victims will frequently require multiple types of assistance, involving a variety of providers, **paragraph 2(a)(ii)** further requires the same coordination body to ensure that assistance providers are effectively coordinated, to ensure both efficiency and that all needs are met.

The scope of the duty to “ensure” assistance should be guided by international human rights law, including on economic, social and cultural rights (ESCRs) relating to health, an adequate standard of living (food, water, shelter and so on), education, work, and social security – which are central to this Article. It is not an absolute duty to provide all necessary assistance to victims. Rather, a State must (1) take steps to progressively realize ESCRs “to the maximum of its available resources”,<sup>81</sup> while (2) normally ensuring that the “minimum core” essential levels of rights are met (such as primary health care, basic shelter and housing, and basic education),<sup>82</sup> and (3) immediately applying certain elements of ESCRs.<sup>83</sup>

<sup>80</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14. Assistance is also recommended by UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2012), para. 302, and Council of Europe, *Guidelines on Protection of Victims of Terrorist Acts* (2017), p. 101.

<sup>81</sup> ICESCR, art. 2 (1).

<sup>82</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States Parties' obligations (article 2, paragraph 1, of the Covenant) (1990), para. 10.

<sup>83</sup> *Ibid.*, para. 5 (including effective remedies, non-discrimination, and arts. 3, 7 (a)(i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3)).



Where the State itself chooses to directly provide assistance, it may structure that assistance through procedures designed specifically for victims of terrorism, or channel it through existing rights, remedies or procedures available to similarly situated persons or the public at large. The latter could include, for example, assistance available through universal public health care, universal social security entitlements (such as for sickness, disability, employment injury, unemployment, widowhood, or family or child assistance;<sup>84</sup> and provision of, or subsidies for, basic needs such as housing, food, clothing or essential utilities); access to education and vocational training; legal protections of cultural and religious activities; measures to protect children and the family; public provision or remediation of public infrastructure and the environment; or humanitarian relief and assistance. It is necessary to ensure, however, that any unique needs of victims of terrorism be recognized and accommodated if other legal frameworks are used. For example, it may be appropriate to give priority medical treatment to victims of terrorist acts in certain circumstances,<sup>85</sup> where doing so is rationally justified and consistent with medical ethics, non-discrimination, and the non-hierarchization of victims.

**Paragraph 2(b)(i)** aims to ensure that providers of assistance are regulated to ensure compliance with human rights and any minimum quality standards<sup>86</sup> prescribed under the Law or any other relevant laws or regulations. Assistance is not an act of grace but designed to restore fundamental rights. As such, its delivery must be both effective in achieving that goal and itself be rights-compliant. The State should enact the necessary regulatory framework to establish quality and performance standards; proactively enforce those regulations (such as through periodic audits, reporting, and inspections); and be responsive to complaints made by victims through an effective procedure and remedies (on which, see also Article 9(4)). Where assistance does not meet minimum standards, enforceable corrective action, along with sanctions in serious cases, must be available, whether through administrative, civil (including contractual) or criminal penalties or remedies.

Whoever provides assistance, **paragraph 2(b)(ii)** emphasizes that the State is responsible to ensure adequate funding, including by funding non-State services where necessary. While the State must ensure that assistance is funded, the State is free to choose

<sup>84</sup> ICESCR 1966, art. 9; UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (Art. 9) (2008).

<sup>85</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2012), paras. 51, 299.

<sup>86</sup> See, e.g., Global Counterterrorism Forum (GCTF), *Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings* (2013), Good Practice 3.



the means by which funding is secured. Funding may be provided through the State budget,<sup>87</sup> whether as part of existing social security or healthcare systems, or through special mechanisms. Possibilities include funding from general revenue, special levies or taxes (for instance, on certain sectors of the economy), confiscated terrorist assets, or the proceeds of crime in general. Mandating private insurance is another possibility, although the State must supplement such schemes where gaps or inequities in insurance would deprive victims of necessary assistance. International financial assistance could also be sought to secure funding, whether through international organizations, other multilateral mechanisms, or bilaterally.

### **Paragraph 3: Relation to other remedies**

**Paragraph 3** enables assistance to be proportionally reduced where other chapters of the Law have already provided a victim with a remedy (such as compensation) or other support (such as regarding protection or access to justice), whether through judicial proceedings (criminal or civil) or any administrative process. The paragraph ensures that scarce resources be allocated with maximum efficiency, by preventing the duplication or multiplicity of assistance. Where restitution and compensation is sufficient in relation to some elements of the harm suffered, the Law does not require States to provide assistance in that area. It may be noted, however, that even if restitution by an offender, or compensation, is extensive, some measures of assistance not subsumed by these will usually be required by all victims, such as emergency medical care after an attack. Any reduction in assistance must also be proportional: assistance must cover the gaps where other support or remedies are insufficient to fully redress the harm.

It is not desirable for national law to precondition eligibility for assistance on the exhaustion of judicial or administrative compensation proceedings. The need for assistance will often be urgent and immediate, whereas criminal, civil or administrative proceedings, including the investigation of terrorist acts and offenders, are often protracted. Delay, and the inevitable uncertainty involved in judicial proceedings especially, can aggravate the harm suffered by victims. The autonomy of victims also demands that they be allowed a choice, so far as is possible, as to the means by which they seek remedies for the harm suffered. The right of the State to subsequently recover the costs of assistance from an offender where possible is provided in Chapter V on Reparation.

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<sup>87</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, "Ten areas of best practices in countering terrorism" (2010), para. 25.



## Article 9: Availability, accessibility, assessment, and accountability

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1. In relation to the timing of assistance to victims, the [competent authorities] shall ensure:
  - a. Emergency assistance is immediately available during and after a terrorist act;
  - b. Other assistance is available as soon as possible, taking into account victims' needs over the short-, medium- and long-term. Assistance shall be provided for as long as the victims need it and shall not be terminated based on automatic or absolute time limits;
  - c. Interim or prioritized assistance is provided to particularly vulnerable victims or those who require urgent specialized assistance, such as victims of sexual or gender-related violence, children, the elderly or persons with disabilities, to avoid irreparable harm and mitigate such harm as soon as possible.
2. The [competent authorities] shall ensure that all assistance is accessible and available, on a non-discriminatory basis, including to groups with special needs or vulnerabilities. Victims shall be entitled to be assisted by an interpreter or translator, legal representative and support person when seeking to access assistance; these shall be provided free of charge where necessary.
3. The [competent authorities or entities] shall assess a victim's needs for assistance and formulate and provide measures of assistance in a manner which:
  - a. Considers individual circumstances, including the personal impacts of terrorism and relevant intersectional factors, including by being gender-sensitive;
  - b. Is based on effective consultation with and the informed consent of the victim (unless the victim is unable to give consent); or, where assistance is provided collectively, involves adequate, informed prior consultation with and the consent of affected communities and their representatives;
  - c. Involves inclusive, effective and timely consultation with all relevant stakeholders (governmental, non-governmental and private);
  - d. Is comprehensive, multidisciplinary, integrated, coordinated and promotes victim resilience [including through individual case managers where feasible];
  - e. Is periodically reviewed to ensure that assistance remains responsive to victims' needs.
4. A victim is entitled to:
  - a. Effective review by the [name of court, tribunal or other competent independent and impartial authority] of any decision by a public authority, or entity exercising public functions, or to deny, limit, or withdraw assistance under this [Law] [and any implementing rules or regulations];
  - b. Effective remedies for any breaches of prescribed standards or human rights in the provision of assistance by any [provider of assistance].



## COMMENTARY

**Article 9** ensures that assistance is available and accessible to victims, including through appropriate processes to assess needs, and that providers of assistance are accountable to victims.

### Paragraph 1: Temporal Availability of Assistance

Both the assistance needs of victims, and the assistance capacities that may be reasonably expected of states, vary according to the different phases following a terrorist act. **Paragraph 1(a)** addresses emergency assistance needs during and immediately after a terrorist act, when victims typically face urgent medical and humanitarian needs, such as physical and psychological injuries, release of hostages, separation from family members, loss of income, or loss of housing and other essential needs in situations of displacement. It recognizes the importance of proactive, “immediately” available emergency assistance,<sup>88</sup> which can positively affect victims’ mental health and ability to cope.<sup>89</sup> It does not stipulate any a priori definition of what comprises emergency assistance, which will depend on the nature of the terrorist act, the characteristics of the victims, and the circumstances as a whole.

The availability of emergency assistance presupposes that the State has taken the necessary preparatory measures in advance of terrorist acts to ensure that rapid and adequate emergency response personnel (such as medical, rescue, fire, and law enforcement) are available, in the light of up-to-date terrorist risk assessments. The urgency of emergency assistance will affect the standards that may be expected as to the nature of decision-making and the procedures for providing assistance; later phases of assistance will have the advantage of time, thus enabling closer attention to individual needs for assistance and more specific planning for its provision.

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<sup>88</sup> See, e.g., Council of Europe Revised Guidelines on victims of terrorist acts (2017) art. III (emergency assistance); Directive (EU) 2017/541, art. 24 (2) (assistance “available for victims of terrorism immediately after a terrorist attack”); UNODC, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework (2015), para. 93; GCTF, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings (2013), p. 1 (assistance should be available “from the moment of the attack” and based on a principle of “immediacy—intervening as soon as possible”: Good Practice 1). Good Practice 7 indicates that “In the acute crisis stage, the State should focus attention on immediate victim needs and requests, addressing them in an orderly and prompt manner, and avoid burdening victims with elaborate administrative information that goes beyond what is strictly necessary during the emergency”).

<sup>89</sup> GCTF, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings (2013), p. 1.



Once emergency needs have been addressed, other assistance needs must be considered in subsequent stages, as **paragraph 1(b)** recognizes.<sup>90</sup> Initial assistance may require extension (such as where temporary displacement continues) or conversion into more permanent assistance (for instance, in the case of permanent disability, or permanent relocation of displaced persons who cannot return home); needs which could not be addressed in the emergency phase can now be addressed (such as re-establishing employment or schooling); and other assistance needs may emerge at future points in time (as where medical complications subsequently arise).

Since assistance often involves both continuing and changing needs over time, it is essential that assistance is available throughout the life cycle of a victim's needs, so that victims are not abandoned after initial assistance is provided. In general, procedures to proactively ensure the availability of assistance will need to be most intensive in the emergency and short-term periods after a terrorist act; once a victim has effectively accessed the assistance system, the system may be less intensive but must remain responsive to outreach from the victim.

The duration of assistance overall cannot be delimited by rigid time limits in advance but must be defined by the whole period over which a victim needs assistance.<sup>91</sup> Particular components of assistance may, however, be time-limited (for instance, for administrative or budgetary purposes), as long as renewal is possible upon the expiry of the time limit if further support is necessary, taking into account the victim's circumstances (individual assessment is addressed in Article 9(3)).

**Paragraph 1(c)** provides for interim or prioritized assistance to vulnerable victims or those who require urgent special assistance, as recommended by the Guidance Note of the Secretary-General addressing Reparations for Conflict-Related Sexual Violence, and given that more comprehensive redress often "requires time, resources, coordination, expertise and political will".<sup>92</sup> Such support may be necessary for children, the disabled,

<sup>90</sup> See, e.g., General Assembly resolution 72/284 of 26 June 2018, para. 14 (assistance "in the long term"); Council of Europe Revised Guidelines on victims of terrorist acts (2017), art. V (continuing assistance); Directive (EU) 2017/541, art. 24 (2) (assistance "for as long as necessary"); ASEAN Regional Forum Workshop on medium- to long-term support for victims of terrorism, 7-8 February 2017, Manila, Philippines; *Supporting Victims of Terrorism*, report of the INVICTM Symposium in Stockholm, 2018, p. 67 ("Continuity of needs and care").

<sup>91</sup> See e.g. Directive (EU) 2017/541, art. 24 (2) (assistance "for as long as necessary"); General Assembly resolution 72/284 of 26 June 2018, para. 14 (assistance "in the long term").

<sup>92</sup> Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, p. 12 ("make urgent interim reparations available to respond to the most urgent and immediate harm").



the elderly and victims of sexual violence, to mitigate suffering as soon as feasible.<sup>93</sup> Prioritization and interim measures could include “interim relief payments, fast-tracking... applications, or providing specific forms of payment for those who are vulnerable (e.g. an increased amount or a lump sum rather than periodic payments)”,<sup>94</sup> specialized health care, counselling and psycho-social support.<sup>95</sup> These could be administered through the coordination body or Registry of Victims under this Law.

## **Paragraph 2: Accessibility of Assistance**

Accessible, prompt and effective procedures for accurately assessing a victim’s assistance needs are essential preconditions for the effectiveness of all ensuing assistance measures. Accessibility means eliminating barriers to accessing assistance (such as based on discrimination, language or geography) as well as pro-actively taking steps to make it easier for victims to locate and engage with assistance services. For example, accessibility could be enhanced by making assistance: *convenient* to access, such as locating services or information at or near the scene of the attack, at a hospital where victims are being treated, at a central location (such as a hotel, school, government building, or trauma centre), or using communications technologies (such as hotlines, websites, social media or text messaging); *simple*, so as not to overburden traumatized victims; and *unified*, as by identifying a central official contact point.<sup>96</sup> The provision ensures in particular that victims receive external technical supports where necessary to effectively engage with assistance procedures, including an interpreter or translator, legal representative and support person, including free of charge as needed.

## **Paragraph 3: Assessment of and Responsiveness to Victim Needs**

**Paragraph 3(a)** emphasizes the paramount importance of ensuring that needs are assessed, and assistance is provided, on an individual basis, taking into account all

<sup>93</sup> Second Expert Report, “Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare”, Annex 2 to the Registry Transmission of Appointed Experts’ Reports, *Prosecutor v. Bosco Ntaganda*, 3 November 2020, ICC-01/04-02/06-2623-Anx2-Red2, p. 9.

<sup>94</sup> See, for example, the Report and Proposals for the Implementation of Reparations in Sierra Leone, ICTJ (2009); and in Tunisia - Article 11, Organic Law on Establishing and Organizing Transitional Justice 2013; see also Expert report on reparations for victims of rape, sexual slavery and attacks on healthcare in *The Prosecutor vs Ntaganda*, p. 9.

<sup>95</sup> For example, in Timor-Leste the CAVR put in place an urgent reparation scheme for those most affected that included victims of conflict-related sexual violence. See Chega Report, Part 10: Acolhimento (Reception) and Victim Support, 41., see also Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, p. 12.

<sup>96</sup> See GCTF, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings (2013).



relevant intersectional factors,<sup>97</sup> rather than offering undifferentiated assistance to all victims on a collective or generic basis. Personal factors could include, among others, age, gender, sexuality, ethnicity, culture, language, religion, political or other opinion, national or social origin, birth, disability, economic situation or other status. Only exceptional situations involving mass casualties or mass displacement, coupled with limited State resources, could temporarily justify providing assistance on a collective basis, as long as individualized assistance is provided as soon as the crisis phase is past and further resources have been mobilized.

In particular, assistance must be gender-sensitive. This requires, inter alia, that victims should not have to cooperate or participate in an investigation or any other procedure in order to receive assistance, as recognized in international standards such as the United Nations Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse,<sup>98</sup> the Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence,<sup>99</sup> and the UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism.<sup>100</sup> The same point is reiterated generally in Article 4 (d) of this Law.

**Paragraph 3(b)** relatedly emphasizes that the formulation and implementation of assistance measures must be done in consultation with, and with the informed consent of, the victim. Assistance is a right of the victim and cannot be imposed against the person's will. Departures from such requirements are only permissible in exceptional circumstances where informed consent is incapable of being given, as where a person is unconscious or has suffered mental incapacitation as a result of their injuries.

**Paragraph 3(c)** acknowledges that the effectiveness of assistance depends on taking into account the views and expertise of all relevant stakeholders, whether non-governmental, private, or governmental. Consultation must be informed, genuine and meaningful, rather than purely formal or procedural. It must also be timely, so that assistance is not delayed. The intensity and scope of consultation may vary depending on its timing; exigency may require consultation to be more limited during the emergency phase

<sup>97</sup> See also GCTF, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings (2013), Good Practice 7 ("Support services to victims should take into consideration any unique victim characteristics").

<sup>98</sup> United Nations Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse, 2019, para. 3.1.

<sup>99</sup> Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence, p. 13.

<sup>100</sup> UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism, p. 182.



immediately after a terrorist act, but it should expand commensurately as subsequent phases allow. Consultation is not, however, limited to a focus on specific terrorist acts, but should also occur prospectively, so that relevant stakeholders participate in advance planning for assistance in the event of a terrorist act.

Identifying relevant stakeholders will depend on the characteristics of particular victims, the types of harm involved, and the nature of the assistance measures envisaged. Where terrorist acts involve gender or child-related harms, the input of expert or representative women's or children's organizations may be required; where indigenous peoples or minorities are the targets of violence, consultation may be required with their representatives in accordance with their own representative structures; where mental health is concerned, expert medical organizations should be involved; where secondary victimization through publicity is an issue, the media should be consulted; and so on.

**Paragraph 3(d)** recognizes that effective assistance must be formulated and delivered in a comprehensive, multidisciplinary, integrated, and coordinated manner. *Comprehensiveness* means taking into account all harms suffered; *multidisciplinary*<sup>101</sup> ensures the appropriate expertise is harnessed to properly address multidimensional needs, and *integration* and *coordination*<sup>102</sup> ensure all needs are met, duplication is avoided, and sequencing is optimized; and a focus on victim *resilience* encourages coping strategies<sup>103</sup> and self-reliance. One means of ensuring these aims is through an individual case manager with sufficient training and expertise in dealing with victims of terrorism. Case managers could form part of the coordination body under Chapter IV, or be located within another competent authority, or in a non-governmental service (subject to appropriation).

**Paragraph 3(e)** ensures, through a requirement of periodic review, that assistance remain responsive to a victim's needs over time, such as where known injuries intensify (or improve), or where new harms emerge (such as the delayed onset of post-traumatic stress disorder). An individual case manager would be one appropriate mechanism for periodic review, although mechanisms independent of the case manager (such as the coordination body, or some other independent competent authority) could also provide a wider perspective, including as the adequacy of the management of their case by the

<sup>101</sup> Ibid., Good Practice 4. See also Good Practice 7.

<sup>102</sup> Ibid., Good Practice 1.

<sup>103</sup> Ibid., Good Practice 2.



case manager. If assistance is inadequate for any reason, corrective measures should be taken.

#### **Paragraph 4: Remedies and Accountability**

Since assistance is a right of victims, not a mere charitable or humanitarian act, **paragraph 4** provides that legal remedies must be available to challenge (a) decisions by public authorities (including the coordination body or other competent authorities) or entities exercising public functions to deny, limit or withdraw assistance, where the victim believes that he or she is legally entitled to assistance; and (b) failure by any service provider to meet human rights or prescribed quality standards.

Review is not an automatic requirement but must be available at the victim's request, and subject to any reasonable procedural requirements. Review must be effective in the sense of being able to afford binding remedies on the merits, such as by ordering the provision or reinstatement of assistance or the satisfaction of quality standards. Review must be conducted by an independent and impartial tribunal or other competent authority and must guarantee due process (including the right to know the reasons for the adverse decision, to provide reasons and evidence to contest the decision, to be legally represented, and to receive reasons for the tribunal's decision).



## Chapter VI. Right to reparation

### Article 10: General provisions

1. The [competent authorities] shall ensure the right of victims of terrorism to full, adequate, effective and prompt reparation for all harm suffered from terrorism, including where it is not available from a person or entity responsible for such terrorism. Reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
2. The [competent authorities] shall ensure that reparation is proportional to the gravity of the violation and the circumstances of the case and, whenever possible, reflects local cultural and customary practices, unless these are discriminatory, exclusive or deny victims equal access to their rights.
3. The [competent authorities] shall undertake outreach activities, including gender-inclusive programmes, and communicate with victims and their communities to ensure that reparation has broad and real significance.
4. The [competent authorities] should inform victims outside their territory or jurisdiction of any reparation measure available to them, in a language that they understand.
5. The [competent authorities] shall ensure that reparation [awards / measures / programmes] duly consider the needs of persons and communities similarly affected by conflict or violence but who do not qualify for reparation as victims of terrorism.
6. The [competent authorities] shall ensure appropriate collective measures of reparation for harm suffered by groups or communities, such as in relation to collective property, resources, infrastructure, services, and the environment, in addition to reparation for harm suffered by individual victims.

### COMMENTARY

**Article 10** sets out general principles relating to the right to an effective remedy in the form of reparation. **Paragraphs 1 and 2** recognize the general principle that victims of terrorism shall receive adequate, effective and prompt reparation for the harm suffered, on an individual or collective basis, including, as appropriate, compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition (concepts all defined in the 2005 Basic Principles and Guidelines). Similar types of reparation are recognized regionally.<sup>104</sup>

<sup>104</sup> See, e.g., Inter-American Court of Human Rights, *Massacres of El Mozote and Nearby Places v. El Salvador*, judgment of 25 October 2012 (Merits, reparations and costs), para. 305.



Given that the target of terrorist acts is often the State, “in the absence of identified perpetrators, or when they are not solvent”, in particular in light of large-scale injuries and damages, as is often the case in terrorism cases, “it is the responsibility of the State to repair the damage suffered”.<sup>105</sup> This is aligned with the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which mentions that third parties should make “fair restitution to their victims”.<sup>106</sup> Nonetheless, “when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation”.<sup>107</sup> At the international level this is emphasized by the High Commissioner for Human Rights: “[v]ictims of terrorism and their families have a right to an effective remedy and full reparation”,<sup>108</sup> a right that is “enshrined in international human rights law”.<sup>109</sup> The UN Special Rapporteur on human rights and counter-terrorism similarly encourages States to make reparation for terrorism committed by non-State actors.<sup>110</sup>

The 2005 Basic Principles and Guidelines provide that reparation needs to meet a minimum standard of being adequate, effective and prompt, and be proportional to the gravity of the violations and the harm suffered.<sup>111</sup> Reparation must also be “consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception”.<sup>112</sup> The Nairobi Principles further set out factors to ensure that reparation in cases of sexual violence is gender-sensitive and non-discriminatory. These include tailor-made measures “specifically adapted to their needs, interests and priorities, as defined by them; and that measures of access to equality (positive discrimination) are required in order to take into account

<sup>105</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2012), para. 93; Special Rapporteur, *Framework principles*, para. 53.

<sup>106</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, para. 8.

<sup>107</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, para. 12.

<sup>108</sup> OHCHR, *Terrorism and Human Rights*, report of the UN High Commissioner for Human Rights, (A/HCR/45/27), 9 September 2020, para. 42.

<sup>109</sup> *Ibid.*, para. 43.

<sup>110</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, *Framework principles for securing the human rights of victims of terrorism* (A/HRC/20/14), 4 June 2012, pp. 16-18.

<sup>111</sup> UN Basic Principles and Guidelines, para. 15.

<sup>112</sup> UN General Assembly, resolution 60/147 of 16 December 2005, *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*, para. 25.

the reasons and consequences of the crimes and violations committed, and in order to ensure that they are not repeated”.<sup>113</sup>

**Paragraph 3** addresses the need for reparation to be publicized through outreach activities, in order to inform victims and the wider community as to their availability and purposes, including to aid the social reintegration of victims. Consultations with victims and outreach activities are crucial for ensuring that reparation processes promote ownership by victims, prevent exclusion or marginalization, and have the intended impact and are perceived as such.<sup>114</sup> Such consultations and outreach activities should include gender- and ethnic-inclusive programmes<sup>115</sup> and consider “the legal, cultural, economic, and other obstacles victims may face in coming forward and expressing their views”.<sup>116</sup>

**Paragraph 4** seeks to ensure the effectiveness of reparation for victims of terrorism who are outside the State’s territory or jurisdiction (for instance, where a victim has left the State after a terrorist attack), by informing them of any reparation measures available to them in the state. This measure is related to the jurisdictional scope of the Law under Article 5(3).

**Paragraph 5** addresses the need for reparation to avoid aggravating the injustices or tensions which were present when the terrorist act took place. This is particularly relevant in contexts of armed conflict and inter-communal violence. The principle is reflected in the International Criminal Court’s *Ntaganda Reparations Order*<sup>117</sup> and *Lubanga Amended Reparations Order*.<sup>118</sup> Efforts may additionally be undertaken to avoid further stigmatization of or discrimination against victims.<sup>119</sup> The ICC’s *Al Mahdi Reparations Order* urged reparation to be non-discriminatory and gender and culturally

<sup>113</sup> Nairobi Principles, para. 7.

<sup>114</sup> Ntaganda Reparations Order, ICC-01/04-02/06, para. 47.

<sup>115</sup> Idem. See also Lubanga Amended Reparations Order, ICC-01/04-01/06-3129-AnxA, para. 31; UN Secretary-General, Guidance Note, ST/SG(02)/R425, p. 10.

<sup>116</sup> Ntaganda Reparations Order, ICC-01/04-02/06, para. 47.

<sup>117</sup> Ibid., para. 44. See also: Lubanga Amended Reparations Order, ICC-01/04-01/06-3129-Anx1, para. 17 referring to Nairobi Declaration, principle 2 and see *infra* Principles 1(iv) (Do no harm), 3 (ii) (Proportional, prompt, and adequate reparations) and 3 (iv) (Transformative reparations); Al Mahdi Reparations Order, ICC-01/12-01/15-236, para. 105; CLR2 February 2020 Submissions, ICC-01/04-02/06-2477-Red-Corr, paras. 16, 23.

<sup>118</sup> Lubanga Amended Reparations Order, ICC-01/04-01/06-3129-Anx1, p. 4, para. 17.

<sup>119</sup> Ntaganda Reparations Order, ICC-01/04-02/06, para. 44 and Lubanga Amended Reparations Order, ICC-01/04-01/06-3129-Anx1, p. 4, para. 17.



sensitive, so as to “not exacerbate – and in fact [to] address[es] – any pre-existing situation of discrimination preventing equal opportunities to victims”.<sup>120</sup> The ICC has further suggested that reparation should not distinguish “between persons in valuing the harm suffered by one person higher than that of his or her neighbor. Reparations should, to the contrary, be the antithesis to division; they should have a healing and restorative function.”<sup>121</sup> As such, reconciliation among communities can be one objective of reparation.<sup>122</sup> This provision also reinforces the same general principle under Article 3 (4)(a) of this Law.

**Paragraph 6** addresses the need for collective reparation for collective harms suffered by communities as a result of terrorism, in addition to that suffered by individuals. Such right is enshrined in the UN Basic Principles and Guidelines (“persons who individually or collectively suffered harm” (emphasis added)).<sup>123</sup> Regional human rights mechanisms have also recognized this obligation, including that collective measures should take into account the “sociocultural characteristics of the group affected by the violations.”<sup>124</sup> Such measures may include restitution of communal property or restoration of collective rights, establishment of health centers, development programmes for health or education, or other relevant collective measures.

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<sup>120</sup> Al Mahdi Reparations Order, ICC-01/12-01/15-236, para. 105, p. 41.

<sup>121</sup> Public Redacted Version of the “Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations”. CLR2 February 2020 Submissions, ICC-01/04-02/06-2477-Red-Corr, paras. 16, 23.

<sup>122</sup> Public Redacted Version of the “submissions by the common legal representative of the victims of the attacks on reparations”. CLR2 February 2020 Submissions, ICC-01/04-02/06-2477-Red-Corr, paras. 16, 23.

<sup>123</sup> UN General Assembly resolution 60/147, 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 (A/RES/60/147), para. 8; UN Committee against Torture, General Comment No. 3 on Article 12, UNCAT, para. 3.

<sup>124</sup> Inter-American Court of Human Rights, Case of the *Plan de Sanchez Massacre v Guatemala*, Judgment (Reparations) of 19 November 2004, para. 90.





## Article 11: Right to rehabilitation

Victims of terrorism have a right to rehabilitation to restore their physical and psychosocial well-being. The [competent authorities] shall develop a comprehensive rehabilitation programme comprising medical and psychological care and legal and social services, strategies and plans.

### COMMENTARY

**Article 11** addresses the right of victims of terrorism to rehabilitation. Rehabilitation for victims should “aim to restore, as far as possible, their independence, physical, mental, social and vocational ability, and full inclusion and participation in society.”<sup>125</sup> This article is based on international standards as reflected in article 14 of the UN Convention against Torture, the Convention on the Rights of the Child, the International Convention on the Protection of All Persons from Enforced Disappearances, the Convention on the Rights of Persons with Disabilities,<sup>126</sup> and the 2005 Basic Principles and Guidelines.<sup>127</sup>

This article identifies structural measures States can take to facilitate rehabilitation for victims of terrorism, along the lines of what is recommended in regards to victims of torture, where the Committee against Torture recommends the “adoption of a long-term, integrated approach and [to] ensure that specialist services for victims of torture and ill-treatment are available, appropriate and readily accessible.”<sup>128</sup> It is also good State practice to support victims of terrorism through collaborating with relevant civil society organizations, including in regards to “research and education programmes, and training”.<sup>129</sup>

Furthermore, rehabilitation programmes shall be intersectional and multidisciplinary. The Committee against Torture for instance has underlined that rehabilitation programmes must be holistic and multi-disciplinary to address different rehabilitative needs of victims, identifying that rehabilitation programmes may include medical, physical, and psychological services, re-integrative and social services, community and family-oriented assistance and services, vocational training, education and other measures. Specific measures of rehabilitation are also found in Article 8 (the right to assistance).

<sup>125</sup> UN Committee against Torture, General Comment No. 3, para. 11.

<sup>126</sup> Convention on the Rights of Persons with Disabilities, art. 26.

<sup>127</sup> UN General Assembly resolution 60/147, 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, para. 21.

<sup>128</sup> *Ibid.*, para. 13.

<sup>129</sup> UNODC, Good practices in supporting victims of terrorism within the Criminal Justice Framework, 2015, p. 54.



## Article 12: Reparation procedures

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1. Reparation may be provided through:
  - a. Legal proceedings against a person or entity responsible for terrorism under this Law;
  - b. Administrative measures provided by the [competent authorities], including the Compensation Fund under Article 15 and the [coordination body] under Chapter IV of this [Law];
  - c. Any other effective remedial mechanism which is sensitive to victims of terrorism, such as a victims of crime scheme, human rights mechanism or transitional justice process.
2. Reparation under paragraphs 1(b) and (c) of this Article shall be available where:
  - a. There is no responsible person or entity against whom to bring legal proceedings or a claim through any other effective remedial mechanism; or
  - b. A responsible person or entity ordered to make reparation, whether by a court or other effective remedial mechanism, would be unable to do so in whole or in part.
3. Where a responsible person or entity is criminally convicted of terrorism, the [court] may order that person or entity, in the same or a subsequent proceeding, to provide reparation to the victim.
4. A victim of terrorism has the right to bring civil proceedings in [name of court/tribunal] to claim reparation from a person or entity legally responsible for the terrorist act. The existence and/or disposition of criminal proceedings in respect of the same terrorist act shall not impair this right. [In determining reparation claims in civil proceedings [the court] shall consider the difficulty victims may face in obtaining evidence in support of their claim, due to the destruction or unavailability of evidence.]
5. The [court]'s reparation order shall at a minimum:
  - a. Be directed against and notified to the legally responsible person or entity;
  - b. Establish the liability of the legally responsible person or entity;
  - c. Identify the persons or class(es) of persons who are the victims;
  - d. Specify, and provide reasons for, the types and extent of reparation measures;
  - e. Identify the modalities for providing reparation and applicable deadlines.
6. The [court] shall provide reasons if it decides not to order reparation.
7. Any party to the legal proceeding has a right to seek review of a decision to award or deny compensation, before the [appellate court].

## COMMENTARY

**Article 12** outlines the mechanisms by which victims of terrorism can receive reparation. Victims have a right to an effective remedy, as detailed in many international instruments, including article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, and numerous regional instruments.<sup>130</sup> The right has both a substantive and a procedural meaning;<sup>131</sup> this article addresses the procedures. **Paragraphs 1(a) and 1(b)** draw on the UN's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which state that "[j]udicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress".<sup>132</sup> **Paragraph 1(c)** reflects that, in addition, other mechanisms may effectively be able to provide reparation. It is also supported by the UN 2005 Basic Principles and Guidelines, which indicate that victims of human rights violations should have access to other mechanisms in domestic law.<sup>133</sup> Non-exhaustive examples could include victims of crime schemes, human rights mechanisms or transitional justice processes.

**Paragraph 2** ensures that victims are able to receive reparation even when no legal person or entity has been found legally responsible, or if such person or entity is unable to provide reparation, i.e., is indigent. The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that States should "endeavour to provide compensation" when victims would not be able to receive reparation from the offender or others.<sup>134</sup> The mechanism in paragraph 2 is similar to that in the Rome Statute, which allows for victims to be paid through the ICC Trust Fund when the offender is unable to provide reparation.<sup>135</sup>

**Paragraph 3** specifies that a court may order a legal person or entity convicted of terrorism to provide reparation to victims. The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power notes that offenders should "make fair

<sup>130</sup> For a more complete list, including treatment of "effective remedy" by regional courts, see Theo van Boven, "Victims' rights to a remedy and reparation: The United Nations Principles and Guidelines", in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, Ferstman et al., eds. (Netherlands, Brill/Nijhoff, 2009).

<sup>131</sup> *Ibid.*, p. 22.

<sup>132</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 5.

<sup>133</sup> 2005 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, para. 12.

<sup>134</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 12.

<sup>135</sup> Rome Statute of the International Criminal Court, art. 75.



restitution to victims”.<sup>136</sup> This paragraph is flexible enough to operate in both common law and civil law jurisdictions, which may provide remedies to victims differently, whether through reparation proceedings connected with a criminal trial, or a separate civil and criminal proceedings. Paragraph 3 further emphasizes that a criminal proceeding does not inhibit victims from receiving reparation through separate civil proceedings. Indeed, victims have a right to bring proceedings for reparation, as supported by both the 1985 Declaration of Basic Principles and the 2005 Basic Principles and Guidelines.

**Paragraphs 5, 6 and 7** further facilitate the rights of victims to effective remedy, as discussed above. **Paragraph 5** enumerates the minimum elements a judicial reparation order must contain, to ensure its content is clear and specific and to ensure fairness. **Paragraph 6** requires the court to give reasons if it decides not to give an order for reparations, in order to enable review and satisfy the requirements of an effective remedy. **Paragraph 7** includes a right to appeal a decision by any party to the legal proceedings. There is a basis for this right in article 14 (5) of the International Covenant on Civil and Political Rights, which allows anyone convicted of a crime to appeal for a review. While paragraph 7 gives the convicted offender ordered to pay reparation the right to appeal, it also extends the right to the other parties to the trial.

### Article 13: Right to restitution

1. Where possible, [the court or competent authority] shall ensure that measures of restitution are provided to restore a victim to their original situation before they became a victim.
2. Specific measures of restitution may include restoration of:
  - a. Civil or political rights, such as liberty and security of person, place of residence, identity or citizenship and family life;
  - b. Social or economic rights, including work, education, health and social security;
  - c. Cultural and religious rights (including sites and objects);
  - d. Property (individual or collective);
  - e. The environment and public or community infrastructure and facilities.
3. Where the restoration of a victim’s original situation is not possible or desirable, other measures of reparation and assistance shall be available to remedy as far as possible the harm suffered.

<sup>136</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 5. See also Rome Statute, Art. 75.



## COMMENTARY

**Article 13** addresses the right of victims of terrorism to restitution. The United Nations 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognizes that, in order to remedy the harm suffered as a result of crime, victims of crime should receive restitution from an offender.<sup>137</sup> Restitution focuses on restoring the victim to the original situation before the crime occurred, where possible.<sup>138</sup> It can include, for example, restoration of liberty or other rights, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.<sup>139</sup> Where an offender is unable to provide restitution, it should be provided by the state where possible on a no-fault basis.

**Paragraph 2 (a)** provides for the restoration of civil and political rights (grounded in the International Covenant on Civil and Political Rights), with non-exhaustive examples given of such rights commonly affected by terrorism. Measures could include release of hostages from detention; return of abducted or displaced persons to their homes; or provision of identity (including birth registration) or citizenship documents where these have been destroyed as a result of violence. Concerning family rights, measures could include services for the tracing and reunification of family members separated by terrorism; or the provision of counselling and support to ensure the functional reintegration of family members, for instance after abducted children have been freed. There should also be other measures of social rehabilitation. For example, victims may be socially stigmatized by the community, whether as perceived collaborators with terrorists or due to the perceived shame of having experienced sexual violence. Restorative measures could include public awareness and education campaigns to sensitize all sectors of the community (from employers to the media to law enforcement) to the experiences and needs of victims.

**Paragraph 2 (b)** addresses restoration of employment, educational and training opportunities which may be adversely impacted by terrorist acts, such as through attacks or violent threats against schools, teachers, or students; denial of education to girls; abduction, forced recruitment or enslavement of children; or the closure of

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<sup>137</sup> 2005 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, paras. 18-19.

<sup>138</sup> *Ibid.*, para. 19.

<sup>139</sup> *Ibid.*



schools due to prevailing insecurity.<sup>140</sup> Restorative measures could include, for example, the reopening or reconstruction of schools, or enhanced security for schools, teachers and students.

**Paragraph 2 (c)** ensures restoration of cultural and religious rights (individual and group) affected by terrorist acts.<sup>141</sup> Such assistance could include the return of objects stolen or trafficked by terrorist groups; the repair or reconstruction of buildings or sites destroyed or damaged by terrorists; the recommencement of activities banned in areas previously controlled by terrorists; special measures of protection for minority communities; or wider measures of inter-faith dialogue to repair sectarian divisions.

**Paragraph 2 (d)** provides for the restoration of property, as provided by the 2005 Basic Principles and Guidelines;<sup>142</sup> property is protected in various ways under international law.<sup>143</sup> It could include the return of any form of property stolen by terrorists, whether real or personal, or immovable or movable, tangible or intangible, or individual or communal (such as buildings or assets (such as livestock) held in common). It could involve the restoration of property rights and/or possession as relevant, and should include formal registration or protection of title or ownership.

**Paragraph 2 (e)** concerns the restoration of the environment<sup>144</sup> and public or community infrastructure or facilities. Terrorist acts which harm the environment are not “victimless” crimes: a safe, clean, healthy and sustainable environment is necessary in order to respect,

<sup>140</sup> See, e.g., UN Human Rights Council resolution 34/8 of 23 March 2017: Effects of terrorism on the enjoyment of all human rights, preamble; OHCHR, report on protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/28), 10 January 2019, para. 7; UN Secretary-General, Plan of Action to Prevent Violent Extremism (A/70/674), 24 December 2015, para. 16; UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 (2013) on Women in Conflict Prevention, Conflict and Post-conflict Situations, para. 48.

<sup>141</sup> See, e.g., *The Prosecutor v Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15-171, Trial Chamber Judgment and Sentence, 27 September 2016 (conviction for the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion (such as mosques and mausoleums) in Timbuktu, Mali; and Security Council resolution 2199 (2015) (highlighting that ISIL (Da'esh), the Al Nusra Front and other groups associated with Al-Qaida generate income from looting and smuggling of cultural heritage items in Iraq and Syria). See, similarly, International Commission of Inquiry on the Syrian Arab Republic, report (A/HRC/31/68), 11 February 2016, paras. 138-140.

<sup>142</sup> 2005 Basic Principles and Guidelines, para. 19.

<sup>143</sup> UDHR, art. 17; ICERD, art. 5; CEDAW, arts. 15-16; Protocol I to the European Convention on Human Rights, art. 1; and as an aspect of non-interference with the home under ICCPR, art. 17.

<sup>144</sup> See, e.g., 2005 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, para. 10 (“In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community”).



protect and fulfil human rights,<sup>145</sup> including the fulfilment of basic needs, livelihoods, and indigenous and minority rights. Certain victims of terrorism will be directly impacted by environmental harms, but the general public is also a wider victim. Restoration of public or community infrastructure of facilities (other than cultural or religious property already addressed in paragraph 2 (c)) could include, for example, the repair or resumption of disrupted public utilities such as transport, drinking water, sanitation, electricity or communications.

**Paragraph 3** addresses the circumstance where a victim's prior situation cannot be restored (whether by the offender or through assistance), for example because their property has been destroyed; their place of residence remains unsafe due to continuing conflict; or they have suffered injuries or disabilities of such a nature as to preclude the resumption of their former employment or livelihood. Indeed, restitution will often not be possible due to the irreversible consequences of many terrorist acts. In such situations, the focus of assistance shifts to aid the victim to adjust to their new situation as far as possible, such as by providing substitutes, replacements, or alternatives for the rights or interests which were destroyed or rendered inaccessible. Rehabilitation can thus have a (no-fault) compensatory purpose, whether in non-pecuniary or pecuniary form.

Examples include medical or psychological care or rehabilitation to treat lasting injuries; assisting a victim with disabilities to acquire a suitable new job or vocational skills where they can no longer perform their prior role; providing replacement housing where a person's house was destroyed, or substitute land where the victim cannot return to their own land; replacement of destroyed public infrastructure, utilities, or facilities; generation of new community economic activities where prior means of subsistence have been destroyed; moving students to other schools where their school remains unsafe, including through provision of scholarships or bursaries to fund living expenses away from home. Measures could also involve monetary payments (thus overlapping with compensation, particularly no-fault compensation provided by the State where the offender is unable to provide it), such as State or employer provision of a disability or injury pension where a victim is no longer able to work, or reimbursement of relocation expenses where a victim is forced to move home. The Law draws no hard distinction between the categories in such cases, but contains provisions for managing any overlap.

<sup>145</sup> UN Special Rapporteur on human rights and the environment, John Knox, Framework Principles on Human Rights and the Environment (HRC/37/59), 2018, Principle 1.



## Article 14: Right to compensation

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1. Victims of terrorism have a right to compensation for any damage arising from terrorism, including:
  - a. Death, bodily injury, or impairment of physical or mental health;
  - b. Lost opportunities, including employment, education and social benefits;
  - c. Impairment of human rights or fundamental freedoms;
  - d. Material damages, including loss of earnings or earning potential;
  - e. Non-material damage, including moral injury, emotional distress, or pain and suffering;
  - f. Costs of medical, psychological, therapeutic, rehabilitative or disability care, treatment, services, items or devices, including medicines and disability aids and adjustments;
  - g. Costs of transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
  - h. Legal fees and other expenses incurred, including costs incurred related to the participation of the victim in the criminal process;
  - i. Funeral expenses;
  - j. Any other costs or losses incurred as a direct result of terrorism.
2. The right of victims to claim compensation does not depend on the existence or the outcome of criminal proceedings.
3. In assessing the amount of compensation to be awarded to a victim, the [court/compensation fund/other effective mechanism] shall, at a minimum, consider:
  - a. The nature of the harm suffered;
  - b. The duration of the harm;
  - c. The impact of the harm on the victim's health, life, and family and social relationships;
  - d. The likelihood of continuing or future damage;
  - e. The individual circumstances, characteristics and vulnerabilities of the victim.





## COMMENTARY

**Article 14** sets out victims' right to court-ordered compensation. This right is enshrined in international and regional instruments pertaining to the rights of victims, including the 2005 Basic Principles and Guidelines, General Comment No. 3 of the UN Committee against Torture and the equivalent comment of the African Commission on Human and Peoples' Rights.<sup>146</sup> While compensation is the most common form of reparation awarded, it is complex and challenging to determine. **Paragraph 1** outlines a range of material and non-material damages that compensation should cover to ensure it is adequate to fully redress the harm suffered by the victim, as also recognized in international and regional standards.<sup>147</sup>

**Paragraph 2** underlines that the right to compensation must not depend on the existence or the outcome of criminal proceedings. This is grounded in international standards, for instance in the practice of the UN Committee against Torture.<sup>148</sup>

**Paragraph 3** identifies a range of essential factors courts shall take into consideration when awarding compensation that is "fair and adequate", with purely symbolic amounts of compensation being insufficient.<sup>149</sup> What is adequate depends on the circumstances of the case and the harm suffered by the victim,<sup>150</sup> and international instruments outline a range of damages (material and non-material) that should be covered.<sup>151</sup> The guidance in this paragraph also helps to provide clarity, transparency and facilitate due process in the enforcement of compensation orders.<sup>152</sup>

<sup>146</sup> African Commission on Human and Peoples' Rights, General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Art. 5), 2016.

<sup>147</sup> UN Basic Principles and Guidelines, para. 20; African Commission on Human and Peoples' Rights, General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Art. 5), 2016; UN Committee against Torture, General Comment No. 3 (2012), Implementation of Article 14 by States Parties (CAT/C/GC/3), 13 December 2012, paras. 9-10.

<sup>148</sup> See for example, UN Committee against Torture, General Comment No. 3 (2012), Implementation of Article 14 by States Parties (CAT/C/GC/3), 13 December 2012, para. 26 ("a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding.... Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place").

<sup>149</sup> See for instance UN Human Rights Committee, *Bozize v Central African Republic*, Communication No. 449/1990; *Mjica v Dominican Republic*, Communication No. 449/1991; *Griffin v Spain*, Communication No. 493/1992.

<sup>150</sup> UN Basic Principles and Guidelines, principle 10.

<sup>151</sup> *Ibid.*, para. 20; see also UN Committee against Torture, General Comment No. 3 (2012), Implementation of Article 14 by States Parties (CAT/C/GC/3), 13 December 2012, paras. 9-10.

<sup>152</sup> See: Ntaganda Reparations Order, ICC-01/04-02/06, para. 23; Lubanga Judgment on Principles, ICC-01/04-01/06-3129, para. 32; Katanga Reparations Order, ICC-01/04-01/07-3728, para. 31; Al Mahdi Reparations Order, ICC-01/12-01/15-236, para. 38.



## Article 15: [Creation of a] State compensation fund for victims of terrorism

1. The [competent authorities] shall establish and/or maintain a Compensation Fund for victims of terrorism. The Fund shall pay compensation, in accordance with Article 14, to victims registered under Article 7 of this Law.
2. An entitlement under the Compensation Fund shall not affect a victim's right to bring legal proceedings to claim compensation, a court's competence to order it, or the liability of a legally responsible person or entity to pay it when ordered to do so by a court. Compensation from the Fund:
  - a. May be proportionally reduced where a responsible person or entity has actually paid compensation, whether pursuant to a court order or otherwise;
  - b. May be recovered by the Fund from a legally responsible person or entity where possible.
3. The Fund shall develop (in consultation with victims, victims' associations and other CSOs), adopt and publicize regulations specifying the procedures to access the Fund.
4. The [competent authority] shall designate the Administrators of the Fund, who shall raise funds to sustain the Fund from:
  - a. Funds allocated under the [relevant fiscal law(s)] or by court orders;
  - b. Confiscated proceeds of crime under national law;
  - c. Voluntary payments, grants or gifts, including international assistance;
  - d. Income, interest or benefits deriving from the Fund's investments; and
  - e. Any other source designated by the Administrators.

### COMMENTARY

**Article 15** addresses State-run compensation schemes. **Paragraph 1** requires the establishment of a Compensation Fund with the purpose of making compensation payments to victims of terrorism, as an alternative or supplement to individual judicial remedies, since compensation may not be recoverable from perpetrators (whether because they cannot be found or they are indigent).<sup>153</sup> At the international level this is supported by the UN General Assembly<sup>154</sup> and the 2005 Basic Principles and Guidelines

<sup>153</sup> See, for example, OHCHR, Report on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/8/13), 2 June 2008, para. 54: "It may also be inappropriate and unfair to condition compensation on victims' ability to obtain reparations from perpetrators or their estates. It is preferable for victims of terrorism to have the option to benefit from State-administered compensation and assistance schemes."

<sup>154</sup> UN General Assembly resolution 40/34 of 29 November 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 12-13 ("[t]he establishment, strengthening and expansion of national funds for compensation to victims should be encouraged").



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<sup>155</sup> and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity<sup>156</sup> (as effective remedies to provide reparation for mass atrocities). Regionally, the Council of Europe similarly calls on States to consider creating funds to address the challenges of victims seeking compensation directly from perpetrator(s) of terrorism.<sup>157</sup>

By way of good practice States should ensure that the Fund is a strong, central decision-making body with sufficient expertise and spending controls, with its performance monitored and evaluated over time.<sup>158</sup> One example of a fund is the French guarantee fund for victims of terrorism, which offers victims a full reparation system including “emergency payments and upfront payments, the subrogation in the victims’ rights to sue the offender and a single contact point to avoid [victims having] to launch different, complex and costly procedures and have to deal with different stakeholders”.<sup>159</sup>

**Paragraph 2** addresses the adherence to the non-pecuniary rights of victims and the issue that offenders won’t be relieved from their obligation to make reparations to victims through judicial processes. A victim’s request to be compensated through the compensation fund must not take away the victims’ right to seek compensation through judicial means. However, any compensation actually obtained through judicial means from the perpetrator of the terrorist act might be taken into consideration by the Fund when considering compensation requests directed by that victim to the Fund.

**Paragraph 3** underlines that regulations of the Fund should be developed in consultation with victims, victims’ associations and other civil society organizations. *Inter alia*, these should address:

- a. The application procedure and associated time frames;

<sup>155</sup> 2005 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, para. 16 (“States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations”).

<sup>156</sup> Economic and Social Council, Promotion and protection of human rights, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1), 8 February 2005, Principle 32.

<sup>157</sup> Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist 2017, section VIII (1).

<sup>158</sup> Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker. March 2019, p. 56.

<sup>159</sup> Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker, March 2019, p. 53.



- b. Eligibility for compensation;
- c. The bases on which compensation is calculated and the amounts payable;
- d. The information to be given to victims when deciding whether to accept payments;
- e. Special measures for victims with particular vulnerabilities;
- f. The modalities for the payment of compensation and associated time frames;
- g. The procedure for review or appeal of decisions.

Priorities for funding should be determined and published in advance following consultations with relevant stakeholders; and the application process should be accessible and user-friendly.<sup>160</sup> The Article does not explicitly address the possible methods of structuring compensation awards, such as whether on a “lump sum” basis or structured as regular payments over time as a pension. The appropriate method may depend on national legal traditions, the needs and preferences of the victim, and the interest in ensuring that funds are available for the duration of the victims’ needs and are not prematurely expended.

**Paragraph 4** addresses potential sources of income for the Fund, which should be sufficiently broad and varied to ensure adequate resources for it. A good State practice has been resourcing Funds through “proceeds derived from assets seized in accordance with legislative provisions from persons convicted of serious crimes related to terrorism or legal entities that have been restrained and forfeited, having been found civilly liable for financing terrorist activities”.<sup>161</sup> Other means could include “levies on life insurance policies or fines assessed or imposed by the courts when sentencing for criminal convictions”.<sup>162</sup>

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<sup>160</sup> Ibid.

<sup>161</sup> UNODC, Good practices in supporting victims of terrorism within the Criminal Justice Framework, 2015, p. 49.

<sup>162</sup> Ibid.

## Article 16: Right to satisfaction

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1. The [competent authorities] shall ensure a victim's right to satisfaction, including the right to truth, in order to acknowledge the harm done, repair the moral injury suffered, restore the victim's dignity, and preserve historical memory. Measures shall include, as relevant:
  - a. Public (including judicial) recognition of the harm suffered by a victim of terrorism and of the victim's name, character and dignity;
  - b. Commemoration or tribute, such as ceremonies, memorials or monuments;
  - c. Public acknowledgement of responsibility and apology.
2. The [competent authorities] shall take measures to ensure the right of victims, their families, and the public to know the truth about the terrorist act(s), including its facts and circumstances, causes, and the identity of the perpetrator(s). To this end the [competent authorities] shall:
  - a. Investigate, prosecute and punish those responsible for terrorism;
  - b. Collect, retain and preserve information or materials, from all sources, which record the truth of a terrorist act, its victims, and the response of the authorities;
  - c. Provide victims with all relevant information relating to the act of terrorism and to progress on legal proceedings where possible, unless victims indicate that they do not wish to receive such information;
  - d. Fully and publicly disclose the truth, to the extent that disclosure does not risk causing further terrorist harm, secondary victimization, or threaten the safety or interests of victims, their relatives, witnesses, or persons who assisted victims.
3. The [competent authorities] shall take effective measures to prevent the repetition of terrorism, including as appropriate:
  - a. Measures to ensure the cessation of continuing terrorism;
  - b. Addressing conditions conducive to terrorism [including prolonged conflicts, dehumanization of victims, lack of rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance];
  - c. Preventing, monitoring and resolving social conflicts;
  - d. Reform of laws, policies, practices and institutions;
  - e. Promoting the observance of codes of conduct and ethical norms, in particular reflecting international standards, by relevant public authorities [such as law enforcement, correctional, media, medical, psychological, social service and military personnel], economic enterprises and non-governmental organizations;
  - f. Education or training of responsible public officials [including law enforcement officials and military and security forces]; and ensuring that education and training materials at all levels include and accurately represent terrorism and its impacts on victims and are consistent with international law standards;



- g. Ensuring that all civilian and military [legal, administrative or disciplinary] proceedings abide by international standards of due process, fairness and impartiality;
- h. Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- i. Building a culture of respect for human rights across government and society.

### COMMENTARY

**Paragraph 1** provides for the right to satisfaction, a form of reparation which includes the right to truth, recognition, and remembrance. This article is based on international and regional standards as enshrined in the UN Basic Principles and Guidelines<sup>163</sup> and as identified by UN treaty bodies and regional courts as a key principle of victims' right to reparation.<sup>164</sup> Measures of satisfaction can be diverse and depend on the circumstances but should include components of justice for victims such as public acknowledgments of wrongdoing, truth, and accountability. Measures of satisfaction also have an important preventative effect through deterrence and the affirmation of the rule of law.

**Paragraph 2** concerns the right to truth – of victims, their families and the public – as enshrined in international instruments such as the Updated Set of Principles to Combat Impunity<sup>165</sup> and the 2005 Basic Principles and Guidelines,<sup>166</sup> and in the practice of international, regional and national mechanisms.<sup>167</sup> The UN Commission on Human Rights has resolved that the right to truth includes the right to know the “identity of the perpetrators and the causes, facts and circumstances in which such violations took place”.<sup>168</sup> It also extends to information about any ensuing investigation and other related judicial proceedings. Victims are, however, entitled not to receive information if they so wish. The UN High Commissioner for Human Rights considers the right to truth as non-derogable right and not subject to limitations.<sup>169</sup>

<sup>163</sup> 2005 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, para. 22; see also African Commission on Human and Peoples' Rights, General Comment No. 4, para. 44.

<sup>164</sup> Human Rights Committee, General Comment No. 31, The nature of the general legal obligation on States Parties to the Covenant, 2004, para. 16; Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (Rev. 9) as revised on 16 January 2015, Rule 23.

<sup>165</sup> Updated Set of Principles to Combat Impunity, Principles 2, 4 and 5.

<sup>166</sup> 2005 Basic Principles and Guidelines, Principle 24.

<sup>167</sup> For example, the Sierra Leone Truth and Reconciliation Commission, Witness to truth: Report of the Sierra Leone Truth and Reconciliation Commission, 2004, Vol. 1, pp. 44-45, para. 77.

<sup>168</sup> UN Commission on Human Rights, resolution 2005/66 on the Right to Truth, 20 April 2005.

<sup>169</sup> OHCHR, Study on the Right to the Truth (E/CN.4/2006/91), 8 February 2006 para. 38 and conclusions.



On a broader level, the right to truth should be understood to require States to establish institutions, mechanisms and procedures that are enabled to lead to the revelation of the truth, in order to contribute to the fight against impunity, deter future terrorism, reinstate the rule of law and advance reconciliation. In order to arrive at “the truth” of what happened, regional human rights mechanisms have, for instance, recommended the establishment of commissions of inquiry to “investigate the causes of the violence... and bring those responsible for the violations to justice”.<sup>170</sup> The Inter-American Commission on Human Rights found “the right to know the truth is a collective right that ensures society has access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims which affords a form of compensation”.<sup>171</sup>

**Paragraph 3** covers victims’ right to guarantees of non-repetition or non-recurrence as enshrined in international human rights law.<sup>172</sup> This is a crucial component of victims’ right to reparation that aims at giving victims, and society as a whole, the security and assurance that all is being done to prevent more terrorism from occurring.<sup>173</sup> According to the UN Human Rights Committee, relevant measures include making “changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations”.<sup>174</sup> According to the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, legal reforms that may be a part of a broad prevention framework should include the review of emergency, anti-terrorism and other security-related legislation to verify that it is fully compliant with human rights standards”.<sup>175</sup> The Special Rapporteur further observes that while countries have a duty to “guarantee the security of those within their territory”, in many countries “anti-terrorism legislation becomes an incentive for the violation of various rights”.<sup>176</sup> The Special Rapporteur identifies a range of measures the competent authorities should take to prevent and protect against future terrorist acts, in particular identifying the

<sup>170</sup> African Commission on Human and Peoples’ Rights, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication 245/02, Decision.

<sup>171</sup> Report No. 136/99, Case 10.488, *Ignacio Ellacuría et al. (El Salvador)*, 22 December 1999, para. 244.

<sup>172</sup> 2005 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, para. 23.

<sup>173</sup> UN Human Rights Committee, General Comment No. 31, The nature of the general legal obligation on States Parties to the Covenant, 2004, para. 16.

<sup>174</sup> *Ibid.*

<sup>175</sup> Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/72/523), 12 October 2017, para. 35.

<sup>176</sup> *Ibid.*



underlying root causes that may have contributed to the commission of the act, and the corresponding obligation to reform laws and institutional and administrative practices.<sup>177</sup>

Furthermore, the importance of training for relevant security, law enforcement and judiciary officials in international human rights and international humanitarian law is underlined, so as to ensure that responses to terrorism include an accurate account of the act(s) of terrorism that took place. This can help ensure a common understanding of what happened, any mistakes made in response and any lessons learned. This is important to ensure compliance with standards, increase the effectiveness of responses such as investigations and prosecutions and, if done holistically, to help prevent secondary victimization. The Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, of 2012, for example, recommends to “prevent secondary and repeat victimization within the criminal justice process by providing sensitivity training to judges and other participants in the criminal justice system.”<sup>178</sup> Training is also addressed in Chapter XV of this Law.

### Article 17: Mutual legal assistance

1. When facilitating requests for mutual assistance in criminal, civil or administrative matters in accordance with national and international law, [including in relation to orders for freezing, seizing or confiscation of assets,] the [competent authorities] shall pay due regard to the status, role and rights of victims of terrorism.
2. The [name of court] should recognize and enforce valid foreign legal judgments for reparation, in accordance with a final judicial or administrative decision, from an offender or other responsible legal person, in accordance with national and international law.
3. When acting on the request made by another State in accordance with this [Law], the [competent authorities] shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning any confiscated proceeds of crime or property to the requesting State so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.]

<sup>177</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), 4 June 2012, p. 15.

<sup>178</sup> Global Counterterrorism Forum, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, 2012, Good Practice 15.





## COMMENTARY

Mutual legal assistance (MLA) is an important element of the international legal response to terrorism. The international counter-terrorism conventions require States parties to provide MLA in relation to convention offences. Security Council resolution 1373 (2001) further requires all States to “[a]fford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to” terrorist acts, including in obtaining evidence.<sup>179</sup> While the focus of MLA is on criminal suppression, there is growing attention to the needs of victims of terrorism in such international cooperation.<sup>180</sup>

**Paragraph 1** requires the competent authorities dealing with an MLA request to duly take into account the status, role and right of victims in their decision-making about granting MLA and the manner in which it is provided. The provision is based on UNODC’s Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework (2015).<sup>181</sup> Article 17 does not impose any obligation on the State to provide MLA, but rather encourages a victim-centric approach where MLA (of whatever scope) is available under any applicable national and international laws. MLA can evidently further the interests of victims by ensuring that perpetrators are brought to justice.<sup>182</sup>

MLA in criminal matters is understood to refer to investigations, prosecutions and judicial proceedings in relation to criminal matters, including with respect to the freezing, seizing and confiscation of proceeds and instrumentalities of crime and terrorist property.<sup>183</sup> MLA is also possible in civil or administrative legal proceedings and Article 17 accordingly also applies to these forms of cooperation, given that the Law also addresses reparation for victims of terrorism through such non-criminal

<sup>179</sup> UN Security Council resolution 1373 (2001), para. 2(f).

<sup>180</sup> UNODC, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework (2015), pp. 57-60.

<sup>181</sup> Ibid., p. 60 (“When facilitating international cooperation requests, States should pay due regard to the status, role and rights of victims of terrorism, including those who are foreign nationals, within the criminal justice framework”).

<sup>182</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, 2012 Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), para. 67(b).

<sup>183</sup> UNODC, Model Law on Mutual Assistance in Criminal Matters 2007, section 3 (1); on cooperation on freezing, seizure and confiscation”, sections 23-26 of the Model Law.



processes. Standards and guidance are available on MLA in criminal matters,<sup>184</sup> civil matters,<sup>185</sup> and administrative matters.<sup>186</sup>

MLA can cover taking evidence or statements, effective service of documents, executing searches and seizures (including freezing of an offender's assets), examining objects and sites, providing information, evidentiary items and expert evaluations, providing original or certified documents, identifying or tracing proceeds of crime, or facilitating the voluntary appearance of witnesses.<sup>187</sup> MLA is understood not to apply to inquiries preliminary to the initiation of legal process; in those situations, Article 6(3) of the Law concerning informal international cooperation more generally could apply (including through information exchange and administrative and other coordination).

**Paragraph 2** ensures that the State recognizes and enforces a final foreign judicial or administrative decision awarding reparation to a victim, as in criminal, civil or administrative compensation proceedings against a terrorist offender or group. The 2005 Basic Principles and Guidelines state that: "States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements".<sup>188</sup>

The provision is expansively framed to apply to criminal, civil, and administrative decisions so as to enable the widest enforcement of victim rights. Decisions are, however, limited to reparation decisions awarded against an offender or other responsible legal person (such as an organizational or corporate entity which was complicit in the terrorist

<sup>184</sup> United Nations Model Law on Mutual Assistance in Criminal Matters 2007; Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters; United Nations Model Treaty on Mutual Assistance in Criminal Matters; and United Convention on Transnational Organized Crime 2000, art. 18.

<sup>185</sup> 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; Council Regulation (EC) 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; and Council Regulation (EC) 1206/2001 of 29 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

<sup>186</sup> 1977 European Convention on the Service Abroad of Documents relating to Administrative Matters; 1978 European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters.

<sup>187</sup> See, e.g., UNTOC 2000, art. 18(3).

<sup>188</sup> UN General Assembly resolution 60/147 of 16 December 2005, adopting the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 17.



offence and against whom enforcement of a compensation award is sought in the other State). Reparation decisions in such cases will normally involve attempts to enforce compensation judgments against assets in the other State, but could be wider than compensation in, for instance, enforcing a measure of restitution or satisfaction. The provision does not cover other measures under the Model Legislative Provisions, such as no-fault administrative entitlements to assistance or protection where there is no judicial or administrative finding of responsibility against a person in relation to whom enforcement action is to be taken. Since State practice on recognition and enforcement of foreign judgments is variable (including as regards subject matter, jurisdiction, and exceptions), the provision is subject to the proviso that it be “in accordance with national and international law”. For example, a State may decide not to recognize and enforce a foreign judgment which involved denial of due process, fraud, is incompatible with the State’s legal principles or public policy, or is inconsistent with a local judgment. International guidance may be found in international instruments such as the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters<sup>189</sup> (not yet in force).

**Paragraph 3** is based upon the Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (not yet in force).<sup>190</sup> The proposal to utilize confiscated assets for the benefit of victims is also enshrined in the International Convention for the Suppression of the Financing of Terrorism of 1999, which provides in Article 8 (4) that States “shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2(1)(a) or (b), or their families”.

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<sup>189</sup> Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (not yet in force).

<sup>190</sup> Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes, version of the 20 March 2020, Article 23 (4) (not yet in force).



## Chapter VII. Measures to protect the physical and psychological integrity and privacy of victims of terrorism

### Article 18: Protective measures

1. The [competent authorities, court, or other relevant entity] shall promptly identify any threats [risks] to the safety, security, psychological integrity and privacy of victims and their families, and assess individual needs for protection from such threats, taking into account the personal situation and vulnerabilities of each person; and take effective measures to protect them, in accordance with this chapter. Threats of violence shall be promptly and effectively investigated, prosecuted and punished.
2. A victim has the right to request protective measures from the [competent authorities or court] where the [competent authorities or court] do not initiate them as required under paragraph 1.
3. A victim shall be consulted by the [competent authorities and/or court] in all decisions about protective measures, including concerning their imposition, maintenance or proposed lifting. A victim shall be promptly informed of any decision to lift protective measures and thereafter measures shall not be lifted before a reasonable period has expired. A victim has the right to seek review of a decision to lift protective measures in the [court] before the measures are lifted and the measures shall not be lifted while proceedings are pending.
4. The [competent authorities] shall assist and protect victims who were associated with terrorist groups from all sources of ostracism, stigmatization, discrimination or other human rights violations based on their gender, including on their return to their country of nationality. Such measures shall include:
  - a. Assisting in their rescue and voluntary repatriation;
  - b. Supporting their disengagement, rehabilitation and reintegration, including through adequate social, psychological and educational measures which are sensitive to gender-specific traumas.
5. All measures to protect persons under this chapter shall be consistent with the right of a defendant to a fair trial in accordance with international human rights law.
6. The costs of protective measures shall be borne by the [competent authorities].



## COMMENTARY

**Article 18** recognizes that victims of terrorism and their families, and witnesses (including informants), may require protection from threats, intimidation or retaliation, before, during and after judicial, administrative or other proceedings that affect the interests of victims.<sup>191</sup> Threats are often related to victim or witness cooperation with law enforcement authorities or their participation in criminal or other legal proceedings (including preparation or the post-proceeding enforcement stage). Such threats may also be directed at those involved in assisting victims in such proceedings or processes (such as legal representatives, support persons, victim associations, and human rights defenders), or others involved in the administration of justice (such as judges, prosecutors, and law enforcement personnel). Threats may emanate from terrorist organizations as well as from their wider group of supporters or sympathizers. Protective measures may be a prerequisite for the fulfillment of other rights, including the right to effective remedies, the right to be heard and access to justice.

**Paragraph 1** emphasizes that State authorities should be proactive, based on their own sources of information (including the Registry of Victims under Article 7 of this Law), in identifying threats and vulnerabilities and assessing protection needs, rather than merely reacting to fears articulated or threats reported by individuals themselves. Protection needs should also be assessed on an individual basis, taking into account personal characteristics and particular vulnerabilities (including, for example, age, gender, disability, and ethnicity), rather than on an undifferentiated approach which treats all victims or classes of victims alike. Assessment should occur promptly after a person becomes a victim of terrorism, taking into account the exigencies of the circumstances, to ensure that a victim is not left vulnerable to threats in the aftermath of an attack.

**Paragraph 1** emphasizes that the State is responsible for providing the specific measures of effective protection under subsequent articles of this Chapter. The relevant authorities

<sup>191</sup> 2005 United Nations Basic Principles, Principle 24 (States should “ensure [victims’] safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims”); United Nations General Assembly resolution 73/305 of 28 June 2019 on the Enhancement of international cooperation to assist victims of terrorism; EU Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; Global Counterterrorism Forum, 2012 Madrid Memorandum, Good Practice 9; Global Counterterrorism Forum, Rabat Memorandum, Good Practice 6; 2017 Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts (“States must ensure the protection and security of victims and take measures, where appropriate, to protect their identity, in particular where they appear as witnesses”); EU Directive 2017/541 on combating terrorism (Member States should ensure “that measures are available to protect victims of terrorism and their family members”); ICC, Unified Protocol on the practices used to prepare and familiarize witnesses for giving testimony at trial, Victims and Witnesses Unit, ICC-01/05-01/08-972-Anx 25-10-2010.



may vary depending on the measure in question. Under Article 19, protective measures in legal proceedings will require close cooperation between the court, prosecutors, legal representatives, law enforcement, and non-State service providers. Many of these actors will also be relevant to protection outside of legal proceedings under Article 20, along with other relevant public authorities (such as those holding public records) or private actors such as security/alarm providers.

**Paragraph 1** further requires States to promptly and effectively investigate credible threats of violence against individuals, and where necessary to interdict such threats and apprehend, prosecute and punish the offenders. Such measures are closely related to the duty to take preventive measures to protect life under international human rights law, and are additional to the more specific protective measures articulated in Articles 19-21. Article 18 as a whole is not, however, limited to protection against physical violence or threats thereof, but safeguards against any forms of intimidation or retaliation, including psychological, social or economic.

**Paragraph 2** recognizes the right of victims themselves to request protection from the competent authorities or the court. While the competent authorities must proactively protect victims under paragraph 1, the further right under paragraph 2 enables victims to seek protection where, for example, the authorities are not yet aware of the victim or the threats to them, or where the authorities have failed to adequately fulfil their obligations under paragraph 1.

**Paragraph 3** requires consultation with victims in all decision-making about protection, not only to ensure the appropriateness, adequacy and effectiveness of measures but also to respect victims' dignity and autonomy. It also imposes procedural safeguards on protection decisions by requiring: (a) victims to be promptly informed of any decision to lift protection measures; (b) measures not to be lifted before a reasonable period has elapsed (to allow the victim time to consider whether to challenge the decision and/or to seek alternative measures to protect themselves); and (c) a right of independent review with suspensive effect.

**Paragraph 4** recognizes that some people apparently associated with terrorist groups may themselves be victims in need of protection, including family members and victims of trafficking or sexual and gender-based violence. The UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups emphasize that "criminal responsibility is individual. Nobody should be detained or prosecuted for crimes



committed by family members. Many women and children come into contact with United Nations listed terrorist groups through family links and should be treated in accordance with the principle of the presumption of innocence. It should not be assumed that such women and children are members of these groups or have carried out acts in support of such groups, and such a determination should be made on a case-by-case basis”.<sup>192</sup> Consequently, “[t]here must be individual assessment and screening to appropriately assess each case and determine each person’s affiliation and/or victimhood, while taking into account age and gender considerations”.<sup>193</sup> See also Chapter XI of this Law on child victims; Chapter XII on victims of sexual and gender-based violence; and Chapter XIII on victims of trafficking.

**Paragraph 5** affirms that any protective measures must be consistent with the defendant’s right to a fair trial under international law, whether in criminal, civil or administrative proceedings, including their right to know and challenge the case against them; restrictions will not be lightly presumed and should be narrowly construed or applied.

**Paragraph 6** recognizes that, as part of the public administration of justice, the funding of the protection of victims, witnesses and related actors is a core responsibility of the State, whether particular protective measures are provided by State authorities or private actors.

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<sup>192</sup> UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups, p. 7.

<sup>193</sup> Ibid., p. 5.



## Article 19: Protective measures in relation to legal proceedings

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1. Before, during and after any legal proceedings affecting victims, the [court or competent authority] shall:
  - a. Identify any threats [risks] to the safety, security, psychological integrity and privacy of victims and their families, [witnesses and informants and those assisting victims or involved in the administration of justice], including from any form of intimidation, retaliation or violence, and assess individual needs for protection from such threats;
  - b. Take effective measures to protect victims from any threats under paragraph 1(a).
2. The [court or competent authority] may order or provide protective measures in order to:
  - a. Support the psychological and emotional needs of persons before and during trial, such as through a support person or trauma counsellor;
  - b. Avoid secondary victimization by minimizing the need to repeat testimony, such as by coordination between actors involved in the legal process (including investigating and prosecutorial authorities, administrative bodies, lawyers, and victim support services);
  - c. Reduce fear and anxiety by avoiding face-to-face confrontation with a defendant, such as by the use of a screen, remote testimony (video or audio); sworn written statements in lieu of oral testimony, or separate waiting areas for victims and defendants;
  - d. Suppress intimidation of a person by a defendant or their lawyer, such as by regulating the manner of questioning, imposing measures of restraint on a defendant or other person [and punishing the intimidation of any person [or other interferences in the administration of justice affecting victims]];
  - e. Reduce anxiety, or ensure safety and security, by limiting the exposure of a person to the public, such as through the use of screens, remote testimony (video or audio), written statements in lieu of oral testimony, or closed or in camera proceedings which temporarily exclude the public and/or media;
  - f. In exceptional cases, when no other measure is sufficient to protect a person from retaliation, by concealing their identity, such as through anonymous testimony (including use of screens or face or voice distortion), use of aliases, and redaction or sealing of documents or records containing identifying personal information, consistent with any defendant's right to a fair trial;
  - g. [The judge or magistrate] shall vigilantly control the manner of questioning of a victim of sexual or gender-based violence, so as to avoid any harassment or intimidation.
3. Public or media access to (including reporting upon) a legal proceeding may only be restricted where it is strictly necessary to protect the rights of victims, proportionate to that aim, accompanied by independent safeguards to ensure the fairness of the trial, and consistent with a defendant's right to a fair trial. Judgments in criminal proceedings must be public, subject to any redactions necessary to protect the rights of victims or witnesses.





## COMMENTARY

**Article 19, paragraph 1** recognizes, in the specific context of legal proceedings, the need for courts or the competent authorities to identify threats and assess protection needs (**sub-paragraph (a)**) and to take effective protection measures (**sub-paragraph (b)**). International standards support the provision of such protection.<sup>194</sup>

**Paragraph 2** illustratively categorizes common types of threats or risks and itemizes the corresponding range of protective measures (some of which overlap between the categories). Many measures relate to matters at court (including avoiding confrontation with a defendant,<sup>195</sup> such as through separate waiting areas<sup>196</sup>) but others are connected to the trial but extend beyond it (such as pre-trial psychological support to prepare for trial, or redaction of court documents, including judgments, to safeguard the identity and safety of a victim). Measures may be implemented by the court directly or in cooperation with other actors (such as service providers or competent authorities).

Protective measures must be consistent with a defendant's right to a fair trial. For example, anonymous witnesses (under **sub-paragraph (f)**) would only be permissible where (a) strictly necessary to protect the safety of a witness or other person, based on good evidence, and as a last resort where less restrictive measures would not suffice; (b) not result in the conviction of the accused "solely or decisively" on the basis of anonymous evidence; and (c) ensure sufficient steps are taken to safeguard the rights of the defense and a fair trial.<sup>197</sup> **Sub-paragraph (g)** is derived directly from Rule 72 of the Rules of Procedure and Evidence of the International Criminal Court.<sup>198</sup>

**Paragraph 3** reaffirms the right under international law of the public and media to access legal proceedings, including criminal trials, which is also related to the principles of openness and transparency in the administration of justice. Media access to courts, and reporting on proceedings, may only be restricted where it is strictly necessary to protect the rights of victims, and restrictions are proportionate to that aim; it would

<sup>194</sup> See, e.g., UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2012), para. 230.

<sup>195</sup> UNODC, *Human Rights and Criminal Justice Responses to Terrorism* (2014), pp. 157-159.

<sup>196</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, art. 19.1, 19.2.

<sup>197</sup> See, e.g., *Van Mechelen v Netherlands*, Application No. 26668/95, ECtHR Judgment, 23 April 1997; UNODC, *Human Rights and Criminal Justice Responses to Terrorism* (2014), section 5.7.4.

<sup>198</sup> ICC, Rules of Procedure and Evidence, Rule 72.



seldom, if ever, be justified to exclude the media or the public from all of a criminal trial. Any restrictions on media access must be consistent with the defendant's right to a fair trial. Judgments in criminal proceedings must always be public,<sup>199</sup> subject to any redactions which are strictly necessary to protect the rights of victims or witnesses.

## Article 20: Protective measures outside of legal proceedings

Protective measures outside of legal proceedings may include:

- a. Information about security risks and personal protective measures;
- b. Monitoring a person's communications services, with that person's consent, to identify and trace threats;
- c. Physical protection of a person or their place of residence, work, or education;
- d. Non-disclosure of personal identifying information;
- e. Change of identity;
- f. Provision of temporary secure accommodation;
- g. Change of residence or place of employment or education;
- h. Financial support for protective measures.

### COMMENTARY

**Article 20** non-exhaustively enumerates protective measures outside the court-room, whether related to or independent of any legal proceedings. They involve measures to facilitate a person's self-protection (**sub-paragraph (a)**); direct measures of physical protection (**sub-paragraphs (b)-(c) and (f)-(g)**); and related measures to enable protection (**sub-paragraphs (d)-(e) and (h)**), including to protect information which could reveal the person's identity or whereabouts.

The choice of measures will be dictated by the severity and likelihood of the threat and the need to minimize disruption to the lives of protected persons. The competent

<sup>199</sup> ICCPR, art. 14 (1).



authorities must ensure necessary protection is provided, but the actor responsible for providing particular measures of protection will vary according to the area, from law enforcement to other public authorities to non-State service providers.

Physical protection of a person or premises under **sub-paragraph (c)** could entail, for example, alarms, surveillance or guards, or provision of a telephone security response number. Non-disclosure of personal identifying information under **sub-paragraph (d)** could include the suppression or redaction of publicly available records. Change of identity measures under **sub-paragraph (e)** could include change of name, physical appearance, identity documents, and public records. Financial support under **sub-paragraph (h)** could include funds to re-establish a new life after change of residence, work or identity.

## Article 21: Protection of privacy

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1. Victims of terrorist acts shall be protected by law against arbitrary or unlawful interference in their privacy, family, home or correspondence, and against unlawful interference with their honour or reputation. Any interference with privacy must be legally authorized, necessary in pursuit of a legitimate aim and proportionate to that aim.
2. The [competent authority/service provider] shall:
  - a. Take effective measures to protect the privacy of a victim at the scene of a terrorist act and in subsequent investigations, proceedings, and assistance, including by: Take effective measures to protect victims from any threats under paragraph 1(a).
    - i. Conducting interviews with due respect for privacy and shielded from the public and media;
    - ii. Refraining from publicly disclosing or publishing the name, address or other identifying information (including images) of a victim;
  - b. Where feasible:
    - i. inform victims in advance of the potential uses of personal information and data collected from or about them (such as in criminal investigations and proceedings, or for assistance, protection or reparation purposes) and of the likelihood of such information becoming public, and
    - ii. obtain the free, specific and unambiguous consent of a victim to collect personal information and data from them and to store or use it;
  - c. Collect, process, store, transfer and use personal information and data about victims in conformity with national law on data protection and the right to privacy under international human rights law, including to ensure that:



- i. information and data is only used for the purposes for which it was collected;
  - ii. information and data (including medical data) is treated confidentially;
  - iii. information and data is protected against unauthorized access, modification, disclosure or deletion;
  - iv. victims have a right to access and know the content of information and data stored on them, to rectify inaccurate data, and to rectify or delete unlawfully stored data; and
  - v. there is effective internal and independent external supervision of all processes relating to information and data.
3. A victim whose privacy or reputation has been violated is entitled to an effective remedy. It is an offence, punishable by [insert penalty], for any person to unlawfully disclose to another person any information acquired in the course of their work concerning victims that enables or leads to the identification of a victim and/or witness.

### COMMENTARY

**Paragraph 1** reaffirms the victims' right to privacy and reputation under international law<sup>200</sup> (whether interference emanates from State authorities or from natural or legal persons),<sup>201</sup> as well as the test for their limitation. The privacy of victims can usually be fully guaranteed by State authorities in the course of investigating terrorist incidents, conducting legal proceedings and providing assistance to victims. Indeed securing the consent and cooperation of victims will enhance the effectiveness of law enforcement efforts. As such, it will seldom be necessary for the State to infringe upon the privacy of victims when pursuing the legitimate aim of criminal investigations. Where there are good reasons to intrude upon privacy, any interference must be both lawful (that is, under other State legislation authorizing the grounds or criteria for intrusion and applicable procedures) and non-arbitrary (that is, reasonable in the circumstances and in accordance with human rights as a whole),<sup>202</sup> necessary in pursuit of a legitimate aim, and proportionate to that aim. There could, for example, be circumstances where law enforcement authorities legitimately believe it is necessary to publicly disclose certain details about victims without their consent in order to further a terrorist investigation, where there are no other alternatives; or to conduct secret surveillance on a victim at risk of terrorist retaliation. Media intrusion on privacy is addressed in Article 22.

<sup>200</sup> ICCPR, art. 17.

<sup>201</sup> UN Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy): The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, 8 April 1988, para. 1.

<sup>202</sup> *Ibid.*, paras. 3-4.

**Paragraph 2(a)** emphasizes that measures to ensure privacy in general must be maintained from the moment a person becomes a victim of a terrorist act through to all subsequent measures related to their status as victims, including investigations, proceedings and measures of assistance. It is also intended to encompass both physical measures to ensure privacy (such as screens, barriers, or restricted areas at the scene of a terrorist act or in hospitals where victims are treated, to prevent invasive on-lookers) as well as measures to ensure the privacy of personal data collected by the authorities (addressed more specifically in subsequent provisions).

**Sub-paragraphs (b) and (c)** concern privacy, protection and security of victims' personal data. They are intended to cover personal information or data of all forms, including personal details, testimony, forensic samples, biometric data, digital information, images, recordings and so on. They apply regardless of whether the data is under the control of State authorities or private actors (such as private medical facilities or forensic laboratories, insurance companies, or private providers of assistance to victims).

Under **sub-paragraph (b)**, where feasible the authorities or other service providers must inform victims of the intended uses to which their data may be put before collecting it,<sup>203</sup> and any risks entailed; and obtain the "free, specific, informed and unambiguous consent"<sup>204</sup> of victims to collect, store or use it; information should also be provided as to policies on the retention and deletion of data. There may, however, be exceptional cases where data may be collected where a victim cannot be informed or consent is incapable of being given, as in an emergency medical assistance phase after an attack; where a victim is unconscious or severely injured or impaired; or where data is collected "about" but not directly "from" a person, as in the lawful exercise of law-enforcement investigative powers.

**Sub-paragraph (c)** requires the protection of information in conformity with national and international standards. The provision explicitly ensures that data must only be used for declared purposes,<sup>205</sup> unless subsequent specific consent is obtained from the victim for other uses; and that the principle of confidentiality is respected.

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<sup>203</sup> Report of the High Commissioner for Human Rights, "The right to privacy in the digital age" (A/HRC/39/29), 3 August 2018, para. 29.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.



Other relevant standards could include adequate security measures to protect against unauthorized access, disclosure, modification or deletion;<sup>206</sup> the right of a victim to access and know the data held on them, and to rectify or delete data that is unlawfully stored;<sup>207</sup> and internal and independent external supervision of data processing, which could involve measures such as data audits, data breach notification, privacy impact assessments, and adequate powers and resources to investigate breaches and impose sanctions.<sup>208</sup>

**Paragraph 3** affirms the right to an effective remedy under international human rights law of a victim whose privacy or reputation has been violated, whether by State authorities or private actors. Such remedies may include internal or external mechanisms for the supervision of personal data under paragraph 2, but are not limited to such mechanisms, which may only be mandated to take corrective action but not issue compensatory remedies. Effective remedies could include judicial proceedings or other binding procedures capable of fully vindicating and repairing the injured rights, as well as prosecution of persons responsible for data breaches. Remedial procedures need not be victim-specific where existing remedial systems (including human rights mechanisms) are sufficient.

Paragraph 3 also establishes penalties for data breaches,<sup>209</sup> where a person unlawfully discloses information acquired in the course of their work concerning victims which enables their identification.

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<sup>206</sup> Ibid.

<sup>207</sup> Ibid, para. 30.

<sup>208</sup> Ibid., paras. 31-32.

<sup>209</sup> See, e.g., UNODC, Model Law on Trafficking in Persons, art. 28.

## Article 22: Relationship between victims and the media

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1. The freedom of the media to receive and impart information, including on the impacts of terrorism on victims, and of the public to receive it, shall be balanced with the rights of victims [and witnesses], including rights to safety and security, psychological integrity, privacy and reputation, in accordance with the right to freedom of expression under international law. Restrictions on media freedoms, or on victim [or witness] rights, are only permitted when authorized by law, necessary in pursuit of a legitimate aim, and proportionate to that aim.
2. The [competent authority] shall encourage the media to adopt, and effectively implement, their own regulations to ensure sensitivity towards and respect for the rights of victims [and witnesses], both when interacting with them and reporting on terrorist incidents. The [competent authorities] shall recommend that guidelines provide that the media should:
  - a. Identify as media when engaging with victims [or witnesses] and request consent before interviewing them, and not harass those who do not wish to engage with the media;
  - b. Communicate honestly, sensitively and respectfully with victims [and witnesses]; and protect information given in confidence;
  - c. Not impede the medical treatment of victims [or witnesses] or the activities of emergency, rescue, law enforcement or security personnel;
  - d. Not publish any information likely to endanger the safety of victims [or witnesses];
  - e. Not publish images of deceased victims, victims being killed or injured, or hostages;
  - f. Not publish images of or communications from perpetrators of terrorist acts in a manner which glorifies them or their conduct;
  - g. Not publish any information likely to compromise lawful criminal investigations or legal proceedings (including any judicial orders suppressing the identity of any person or any evidence, and the presumption of innocence of an accused);
  - h. Adequately justify any intrusion on victim [or witness] rights, taking into account the public interest, the vulnerability of the person, the impact on other victims [or witnesses], alternative means of obtaining and/or reporting the information, and any prior media engagement by a victim [or witness];
  - i. Train media personnel to report sensitively on terrorism and victims of terrorism;
  - j. Establish procedures to handle complaints about violations of media guidelines and to provide effective remedies to victims of violations.
3. The [coordination body] shall ensure that victims [and witnesses] are provided with information and training about the dealing with the media, including in relation to the implications for themselves and their families, other victims [and witnesses], criminal investigations and proceedings, and access to assistance, protection, and reparation. Victims [and witnesses] shall also be assisted by communications professionals where necessary.
4. The [competent authorities] shall ensure that a victim [or witness] whose rights have been violated by media intrusion shall be entitled to an effective remedy.



### COMMENTARY

It is well recognized that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other human rights; it “constitutes one of the cornerstones of a democratic society”.<sup>210</sup> The public also has a corresponding right to receive media output.<sup>211</sup> In relation to terrorism, the media has a role in informing the public about terrorist acts, including the suffering caused and the socio-cultural and political contexts; informed debate can shape adequate political responses and prevent others from participating in terrorism.<sup>212</sup> The media also serves an accountability function in exposing the adequacy or inadequacy of State counter-terrorism measures, whether preventive or reactive. Excessive restrictions on access to information must also be avoided, and journalists should not be penalized for their legitimate activities.<sup>213</sup>

**Paragraph 1** recognizes that neither victim/witness rights nor media freedoms are absolute and that neither automatically takes priority over the other. Whether one set of rights may be restricted in favor of the other will depend on a careful assessment of the particular context and circumstances, and minimizing restrictions as far as possible. Media freedoms, as an aspect of freedom of expression, may be restricted to secure respect of the rights or reputations of others, or to protect national security, public order (*ordre public*) or public health or morals.<sup>214</sup> Any restrictions must be authorized by law, necessary and proportionate in pursuit of those legitimate aims.<sup>215</sup> Limitations may, for example, be justified to prevent the dissemination of “fake news” which blames or incites hostility towards victims.

Because the balancing of victim/witness rights and media freedoms is often highly context-specific, and in view of the importance of media freedoms to democracy and the undesirability of State censorship, it is difficult to legislatively prescribe in advance

<sup>210</sup> UN Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34), 12 September 2011, para. 13.

<sup>211</sup> *Ibid.*, paras. 13 and 22.

<sup>212</sup> Council of Europe Parliamentary Assembly, ‘Media and Terrorism’, Doc. 10557, 20 May 2005, para. 6; see <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10914>.

<sup>213</sup> UN Human Rights Committee, General Comment No. 34, para. 46.

<sup>214</sup> ICCPR, art. 19 (3).

<sup>215</sup> UN Human Rights Committee, General Comment No. 34, paras. 24-36.



the circumstances in which media freedoms should be restricted in favor of victims' rights. For example, while it may normally be desirable to limit publication of images of deceased or injured victims, on some occasions there may be a public interest in publication where, for instance, a State denies that anyone was killed or injured, or disputes the circumstances in which victims were harmed. A more flexible and rights-sensitive approach is to encourage the media to self-regulate,<sup>216</sup> as **paragraph 2** provides, with guidance and training provided by the State authorities. The paragraph suggests some of the matters which could be fruitfully addressed in media codes, drawing on good practice standards.<sup>217</sup>

Foremost is an injunction to deal transparently with victims and witnesses, including by disclosing their identity as journalists (**sub-paragraph (a)**) and not using clandestine methods or subterfuge,<sup>218</sup> so that individuals know that they are communicating with journalists and are thus able to make an informed decision about whether to engage with the media. All engagements must also proceed on the basis of consent.<sup>219</sup> Engagement must be sensitive and respectful (**sub-paragraph (b)**),<sup>220</sup> to take into account the effects of trauma and avoiding secondary victimization, including by desisting from pursuing victims or witnesses who do not wish to engage with the media,<sup>221</sup> and maintaining confidentiality where a person requests it.<sup>222</sup>

Other standards for media codes are concerned with not impeding the physical safety of victims or witnesses (**sub-paragraphs (c) and (d)**),<sup>223</sup> whether through physical obstruction or revealing sensitive law enforcement operational details. **Sub-paragraph**

<sup>216</sup> Council of Europe Parliamentary Assembly, "Media and terrorism", Doc 10557, 20 May 2005, para. 8 (i).

<sup>217</sup> See, e.g., UNESCO, *Terrorism and the Media: A Handbook for Journalists* (2017); Comité Supérieur de l'audiovisuel (CSA), "Précautions relatives à la couverture audiovisuelle d'actes terroristes", 25 October 2016. See also Independent Press Standards Organization (U.K.), Editors' Code of Practice, <https://www.ipso.co.uk/editors-code-of-practice/> (not terrorism-specific, but relevantly including standards on privacy (Clause 2), harassment (Clause 3), and intrusion into grief of shock (Clause 4), hospitals (Clause 8), and subterfuge (Clause 10). See also Council of Europe Parliamentary Assembly, "Media and terrorism"; Media Council of Kenya and International Media Support, *Handbook on Reporting Terrorism* (2016), <https://www.mediasupport.org/wp-content/uploads/2017/02/Kenya-Media-Council-Guide-on-Reporting-Terror-Oct.-2016-final.pdf>; and Dart Center for Journalism and Trauma, "Suggested ways news personnel can minimise further harm when working with victims and survivors", [https://dartcenter.org/sites/default/files/working\\_with\\_victims.pdf](https://dartcenter.org/sites/default/files/working_with_victims.pdf).

<sup>218</sup> Independent Press Standards Organization (U.K.), Editors' Code of Practice, para. 10.

<sup>219</sup> UNESCO, *Terrorism and the Media*, above, p. 51.

<sup>220</sup> See, e.g., Independent Press Standards Organization (U.K.), Editors' Code of Practice, Clause 4.

<sup>221</sup> *Ibid.*, Clause 3 (journalists must desist from "questioning, telephoning, pursuing or photographing victims or witnesses once asked to desist; not remain on property when asked to leave" and must not follow people without their consent; and not engage in intimidation, harassment or persistent pursuit of a victim or witness).

<sup>222</sup> *Ibid.*, para. 14.

<sup>223</sup> See, e.g., UNESCO, *Terrorism and the Media*, above, pp. 72, 74-77 (including mitigation by delayed broadcasts).



(e) is concerned with not publishing insensitive or degrading images of victims (which can also serve to further the aims of perpetrators to terrorize the public.<sup>224</sup> **Sub-paragraph (f)** urges not glorifying or unnecessarily publicizing terrorist conduct or messages,<sup>225</sup> so as to avoid secondary victimization (without prejudice to media efforts to report on terrorist grievances or conditions conducive to terrorism).

**Sub-paragraph (g)** aims to ensure the media do not compromise lawful investigative or judicial processes,<sup>226</sup> such as by contaminating crime scenes, naming confidential witnesses, or jeopardizing the presumption of innocence – and thus the prospects for justice for victims; all of this is without prejudice to the media’s right to expose unlawful law enforcement practices or to critically comment on legal proceedings. **Sub-paragraph (h)** sets out some of the issues that media should consider when potentially intruding on victim or witness rights,<sup>227</sup> so as to balance the public interest in journalism against the right of the individuals concerned.

**Sub-paragraph (i)** provides that media organizations should ensure that their personnel are trained to sensitively report on terrorism and victims,<sup>228</sup> including training in applicable self-regulatory codes and the risks of secondary victimization through the media. Media personnel may simply not be aware of the risks or how to mitigate them, given that terrorist incidents are typically unusual and exceptional, and that the training of journalists, the internal standards and ethics applied by different organizations, and financial pressures vary considerably. Training could be provided by media organizations themselves, or by victims’ associations, other civil society organizations, or relevant State authorities. The State authorities should also play a role in supporting such training where relevant, by whomever provided, including through technical or financial inputs, raising awareness, and public education. Trainings should be centralized, coordinated and repeated over time.

<sup>224</sup> See, e.g., Council of Europe Parliamentary Assembly, “Media and Terrorism”, above, para. 8(v) (“refrain from disseminating shocking pictures or images of terrorist acts which violate the privacy and human dignity of victims or contribute to the terrorizing effect of such acts on the public as well as on the victims and their families”).

<sup>225</sup> *Ibid.*, para. 8 (iv) (“avoid contributing to the aims of terrorists by adding to the feeling of public fear which terrorist acts can create or by offering terrorists a platform of high publicity”).

<sup>226</sup> UNESCO, *Terrorism and the Media*, above, pp. 78, 88-89

<sup>227</sup> See, e.g., Independent Press Standards Organization (U.K.), *Editors’ Code of Practice*, above, para. 2 (ii).

<sup>228</sup> *Ibid.*, para. 8 (ii); UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2012), para. 378.

**Sub-paragraph (j)** recognizes that to be effective and meaningful, media self-regulation should further involve redress procedures for handling and resolving complaints about media coverage of terrorist incidents and the treatment of victims and witnesses. Examples include press councils or media ombudspersons, which can provide the moral sanction of “critical adjudication” and shaming and the publication of retractions or apologies.<sup>229</sup> Such procedures are linked to the right to an effective remedy under Article 20(3), but are without prejudice to any binding legal remedies, for instance through the courts or human rights mechanisms.

These are just some of the victim-related matters which could be covered by media self-regulation. Further possibilities that could be addressed include:

- a. Coordination by media entities to reduce competitive demands for interviews with victims or witnesses;<sup>230</sup>
- b. Refraining from photographing victims or witnesses in public or private places where there is a reasonable expectation of privacy;<sup>231</sup>
- c. Not interviewing hostages;<sup>232</sup>
- d. A presumption against, or caution in, interviewing terrorist perpetrators;<sup>233</sup>
- e. Not acting as mediator between terrorist perpetrators and others<sup>234</sup> (such as the authorities or the employer or family of hostages);
- f. Not paying for interviews with victims or witnesses;<sup>235</sup> and not using material (such as images, recordings or statements) obtained from a third party (such as a member of the public) for a fee;
- g. Caution in republishing material from private sources such as social media or “citizen journalists”;<sup>236</sup>

<sup>229</sup> See, e.g., OSCE, *The Media Self-Regulation Guidebook* (2008), chapter 3, available at <https://www.osce.org/files/f/documents/1/d/31497.pdf>.

<sup>230</sup> Council of Europe Parliamentary Assembly, “Media and terrorism”, above, para. 8 (iii).

<sup>231</sup> Independent Press Standards Organization (UK), *Editors’ Code of Practice*, above, para. 2 (iii).

<sup>232</sup> UNESCO, *Terrorism and the Media*, above, p. 77.

<sup>233</sup> *Ibid.*, 77, 81-86.

<sup>234</sup> *Ibid.*, 77.

<sup>235</sup> *Ibid.*, 51.

<sup>236</sup> *Ibid.*, 75.



- h. Accurately reflecting the views of victims or witnesses in all coverage, including of legal proceedings;
- i. Being sensitive to choice of words in reporting;<sup>237</sup> and avoiding inflammatory or sensationalist coverage, and hate speech, which may aggravate social tensions underlying violence.<sup>238</sup>

**Paragraph 3** recognizes that many victims will have little or no experience in dealing with the media and may be thrust into the media spotlight rapidly and unexpectedly at a traumatic time, while media organizations themselves will typically be under great pressure to “get” the story, including directly from victims. The State or victims’ associations can mitigate these challenges by informing victims of the benefits and risks of engaging with the media<sup>239</sup> and by providing related training, advocacy and support. The aim of the provision is not to dissuade victims from speaking to the media, but to enable them to make informed choices. Some victims will be willing to tell their story and may find it cathartic. Engaging with the media can assist victims to receive recognition and acknowledgement of their experience. Victims may nonetheless wish to avoid or mitigate undesirable risks, including secondary victimization, exploitation, retaliation from terrorists, society or State authorities, or to jeopardize criminal investigations or future remedial processes. State provision of communications professionals may assist victims in managing media engagement where victims do wish to speak with the media.<sup>240</sup>

**Paragraph 4** reiterates the right of a victim or witness to effective remedies where the media has unjustifiably interfered with their rights, whether through self-regulatory media remedial procedures under paragraph 2 or through other methods of recourse, including the judicial or human rights procedures. Remedies which are particularly apposite to the media context include cessation of improper reporting, the issuing of corrections or apologies (as satisfaction), reparation and sanctions. Since self-regulatory remedies often do not impose sanctions such as fines or provide compensatory financial relief to victims, the availability of binding remedies (as for violations of legal or human rights to privacy, or freedom from inhuman or degrading treatment) may be particularly important to enable such forms of relief, but must be done in a way that does not unduly stifle freedom of the media.

<sup>237</sup> Ibid., 52-58.

<sup>238</sup> Council of Europe Parliamentary Assembly, “Media and terrorism”, above, para. 8 (vi) (“avoid aggravating through their news and comments the societal tensions underlying terrorism, and in particular to refrain from disseminating hate speech”).

<sup>239</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015), p. 40.

<sup>240</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015), p. 40.



## Chapter VIII. Right to information

### Article 23: Right to information

1. The [coordination body] shall ensure that victims are informed about the factual situation; about their rights under this Law to assistance, reparation, protection, and access to justice and how, where and when these rights can be exercised; and about other relevant matters. Such information should be:
  - a. Provided from the immediate aftermath of a terrorist attack to the long term, and at regular, frequent intervals;
  - b. Accessible, in a format and language which ensures the victim understands and take into account the intersectional characteristics of the victim. When necessary, victims shall be entitled to be assisted by an interpreter, legal representative and support person when being informed; these shall be provided free of charge where necessary;
  - c. Accurate, impartial, relevant and effective, to enable victims to access their rights;
  - d. Victim-oriented and delivered in an empathetic manner which is responsive to victims' emotions.
2. To facilitate and coordinate the right to information, [the coordination body] shall:
  - a. Effectively engage with victims, victim support services, victims' associations, other civil society organizations, and relevant government authorities;
  - b. Appoint [a family liaison officer or equivalent mechanism] to provide immediate and regular information to the immediate family and dependents of the direct victim and deal with any concerns the family may have about their safety and protection for as long as is necessary.
3. All competent authorities holding information about terrorist acts shall provide adequate and timely information to the public about the terrorist act, including by establishing open, accessible internal systems to ensure the public's right to request and receive information. Requests for information should be granted unless the information is subject to necessary exemptions prescribed by law. Non-disclosure decisions shall be subject to independent [judicial] review.



### COMMENTARY

**Article 23** recognizes the right of victims to information, as reflected in the 2005 Basic Principles and Guidelines: “States should develop means of informing... victims... of the[ir] rights and remedies... and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access”.<sup>241</sup> They should also be informed of the causes.<sup>242</sup> At the regional level it is supported by Article 4 of the European Parliament’s Directive 2012/29/EU entitled “right to receive information from the first contact with a competent authority”,<sup>243</sup> and article IV of the Council of Europe’s 3 Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts.<sup>244</sup>

**Paragraph 1** tasks the [coordination body] (under Chapter IV of this Law) with responsibility for ensuring the right to information of victims. Victims of terrorism can be provided with a range of information about: (i) the facts and circumstances of the attack; (ii) the condition of family members who are victims; (iii) how to deal with the trauma of the attack (including psychoeducation on normal reactions and practical suggestions to encourage healthy behaviour and coping mechanisms); (iv) their rights to assistance, reparation (including long term commemorative measures), truth and justice, protection, and access to justice, and how, where and when to access them; (v) any legal or administrative proceedings, including their participation and rights therein; and (vi) how to interact with the media. The general right to information in Article 23 is additional to more specific right to information in other Chapters of this Law.

**Paragraph 1(a)** provides that information should be available at all relevant times, from the immediate aftermath of an attack to the long term and at regular intervals in between.

**Paragraph 1(b) recognizes** that different groups have different needs for information and that information should be accessible to all and not be offered in a one-size-fits-all approach. Special attention shall be given to developing appropriate information for children and other people with additional vulnerabilities. Accessibility measures include the use of appropriate and diverse communications media, translation/interpretation,

<sup>241</sup> 2005 Basic Principles and Guidelines, para. 24.

<sup>242</sup> Ibid.

<sup>243</sup> Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, art. 6, p. 67.

<sup>244</sup> Council of Europe, Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts, 19 May 2017, art. IV.

disability-sensitive communication techniques, legal assistance or support persons (free where necessary), and outreach to geographically remote areas or communities.

**Paragraph 1(c)** emphasizes that care must be taken to ensure information is accurate, impartial, relevant and effective, rather than being (for example) too general, hastily prepared with errors, out of date or politicized. Information must also be victim-sensitive, both as regards its content and manner of delivery, to avoid secondary victimization (**paragraph 1(d)**).

**Paragraph 2 (a)** addresses the coordination of information, which is vital to avoid the risk of overwhelming victims or providing them with contradictory information, and hence avoid secondary victimization. “One-stop shops” and centralized websites are good practices, as recommended by the EU *Handbook for Victims of Terrorism*: “it is recommended that victims of terrorism [be] supported with a centralized, single contact point that coordinates the work of all those involved in the support and protection of victims. Additionally, a dedicated website, providing all relevant information, can act as – or be supported by – a one-stop-shop, a center where a range of services (e.g., psychological, legal, medical and financial) is provided in the immediate aftermath of an attack”.<sup>245</sup> **Paragraph 2(b)** recognizes that, since victims include immediate family members (see Definitions in Chapter II of this Law), a family liaison officer or equivalent mechanism should be appointed to provide information to immediate family members and dependents.

**Paragraph 3** addresses the need to provide information to the wider public, which is likely to be concerned or anxious about the attack and interested in its consequences for victims and accountability. This is a fundamental component of the right to freedom of expression enshrined in Article 19 of the International Covenant on Civil and Political Rights, namely the right of individuals “to seek, receive and impart information and ideas through any media and regardless of frontiers”.<sup>246</sup> Care should be taken when informing the wider population, to ensure that the risk of traumatizing third persons is reduced. The right includes access to information held by public bodies, regardless of the form in which the information is stored, its source and the date of production. The UN Human Rights Committee in its General Comment No. 34 has specified that States should proactively publish information of public interest and take steps to

<sup>245</sup> EU *Handbook on Victims of Terrorism*, 2021, p. 11.

<sup>246</sup> ICCPR, art. 19; see also UDHR, art. 19.



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facilitate access to information held by public bodies. Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. The right to information is subject to exemptions prescribed by law, however non-disclosure decisions shall be subject to independent [judicial] review based on internationally recognized standards.





## Chapter IX. Access to justice

### Article 24: Access to justice

Procedures for providing justice and accountability to victims under [the Law] shall be accessible, fair and expeditious. In particular:

1. The [police/prosecutor/court] shall receive and effectively investigate any report or complaint by a person that they are a victim of terrorism.
2. The [competent authority] shall promptly provide a victim with free and accessible information on the legal aspects of being a victim, including involvement in the criminal justice process, the possibility of claiming compensation through a civil action or administrative proceeding, and rights to assistance and protection.
3. In any legal proceeding affecting them as a victim:
  - a. The [competent authority or court] shall:
    - i. Inform the victim of any such proceeding; their role in, and the scope, timing and progress of such proceedings; and of the disposition of those cases;
    - ii. Inform the victim of their rights to legal assistance, advice and representation, including through legal aid services, and of how to access such rights;
  - b. The victim shall have the right to represent themselves in person or to be represented through legal counsel of their own choosing;
  - c. The [competent authority or court] shall ensure that effective legal assistance, advice and representation is provided whenever a victim has limited means to pay for it or if the interests of justice so require;
  - d. The victim, whether a party to the proceedings or not, shall have the right to attend and witness the proceedings in person or remotely. The [court or competent authority] shall take the necessary measures to accommodate the attendance of victims, such as by selecting a courtroom of adequate size, providing live video and audio feeds to a remote courtroom(s), the public television or radio broadcasting of proceedings, and translation. All measures shall be consistent with the rights of parties, witnesses and victims, and the interest of justice;
  - e. Where public broadcasting is not available, [the court] shall ensure that victims wishing to participate in or attend a proceeding can do so by:
    - i. Conducting the proceeding in multiple courtrooms connected by audio-visual communications technology, on the motion of victims or at the request of a party, and with the consent of all the parties; and/or
    - ii. Transmitting an audio-visual recording of the proceeding at a location(s) outside the court which is accessible to victims, with a [number]-minute delay, as appropriate. Such locations could be elsewhere in the [name of State] or abroad; while guaranteeing the



- confidentiality of the transmission or recording;
- f. An audio or audio-visual recording of the proceeding shall [should/may] be created for historical and archival purposes. The entire trial should be recorded, provided that doing so does not affect the trial procedure or the rights of the defendant(s) or victims. The [court] may order that the recording be freely reproduced and broadcast without delay, once all appeals have been exhausted and judgment (including sentencing) is final. Otherwise, after [number of] years the recording shall be made freely available for reproduction and broadcast.
  - g. The right to a fair hearing before a competent, independent and impartial tribunal, in accordance with international law, shall be guaranteed.
4. The [prosecuting authorities] shall ensure, in accordance with criminal procedure law, that:
    - a. Investigations are gender-responsive, take into account the full scope of the crimes, including their gender-related harms;
    - b. Charges brought against terrorist suspects reflect the full extent of their crimes, including sexual and gender-based violence; and
    - c. The status of a person as a victim is recognized where the person is also suspected of participation in terrorism.
  5. Where a legal proceeding affects a victim, the [competent authority] shall coordinate a comprehensive assessment of victim's legal, psychological, social, emotional, physical and cognitive situation and needs. Legal-aid providers and other professionals assisting victims (such as social workers, health providers, and civil society organizations) shall participate in such assessment and closely cooperate with one another and the [competent authority].
  6. In ensuring that victims of terrorism receive access to justice under this [Law], the [competent authorities] shall grant residence status to victims where necessary, such as by issuing a temporary residence permit for a period of at least [six months], with the possibility of renewal.
  7. Undue delay shall be avoided in the disposition of cases and enforcement of decisions.



## COMMENTARY

The *chapeau* to Article 24 sets out the general principles that justice and redress for victims under the Law should be accessible, affordable, fair and expeditious.<sup>247</sup> Article 24 is intended to apply not only to formal judicial proceedings under the Law (such as criminal and civil cases) but also to other legal and administrative procedures (including non-adversarial ones) which affect their legal rights as victims, whether statutory compensation schemes or the right to assistance. Access to justice necessarily also involves issues of due process, the absence or deficiency of which can adversely affect accessibility. The following seven paragraphs of Article 24 particularize the key elements of the general principles. It should be emphasized that all victims of violations of international law and of crime are entitled to access to justice, whether they are victims of terrorism or of excessive counter-terrorism measures by State authorities.

**Paragraph 1: Duty to Investigate.** A vital precondition of access to justice is that the authorities be responsive to a person who claims to be a victim of terrorism, enabling the machinery of justice to commence. Paragraph 1 thus provides that the authorities shall receive and effectively investigate any report or complaint by a person that they are a victim of terrorism. While the authorities themselves will often initiate an investigation even in the absence of complaints by victims, the provision is important in cases where the authorities may be unaware of a terrorist act, or have not initiated an investigation on their own. Investigation is also an essential element of the right to reparation.

**Paragraph 2: Right to Legal Information.** Many victims of terrorism will be unfamiliar with the legal system, including their rights as victims, the range of legal proceedings or other procedures which may affect them, and the procedures for vindicating their rights. The trauma of being a victim may also be disorienting when seeking to understand and access legal redress. **Paragraph 2** accordingly provides that, even before any legal proceedings have commenced, the competent authority shall provide victims with free and accessible basic legal information on possible legal proceedings and other procedures, including criminal justice and civil proceedings, other compensation mechanisms (such as

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<sup>247</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 4 (victims “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”) and para. 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”).



administrative or statutory processes), as well as rights to assistance and protection.<sup>248</sup> (Legal representation and legal aid in relation to legal proceedings are separately addressed in paragraph 3.)

Such information must be provided “promptly”, meaning as soon as possible after the person becomes a victim, which will usually be soon after the emergency response phase has passed. Article 24 does not require the provision of a legal representative within a privileged lawyer-client confidentiality relationship. Rather, a competent authority which could provide basic legal information could include designated State authorities (such as police or other front line responders,<sup>249</sup> or a central authority for the protection of victims), victim services agencies or non-governmental organizations.<sup>250</sup> The information must be accessible and could be provided in the form of written information documents, telephone advice services, on radio, television or the internet, or in face-to-face briefings; and should be provided in a language that victims understand. The provision is intended to apprise victims of basic legal rights, to serve as a springboard for more detailed legal advice, which may be later sought by a victim in connection with any specific legal proceedings. Whoever provides the information, the State remains responsible for ensuring the promptness and sufficiency of the information. The provisions here are closely related to Chapter VIII on Information and Chapter IV on Coordination.

### **Paragraph 3: Rights to Self-representation, Legal Representation, and Legal Aid.**

International human rights law recognizes the right of a defendant in criminal proceedings to defend themselves in person or through legal counsel of their own

<sup>248</sup> See, e.g., 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 5 (“Victims should be informed of their rights in seeking redress through such mechanisms”); 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48(c) (“Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation”) and 48 (d) (“Victims are promptly informed by the police and other front line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such right”); Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, article 24(3)(b) (“provision of advice and information on any relevant legal... matters”); Council of Europe Revised Guidelines on the protection of victims of terrorism (2017), section IV, para. 2 (States should (a) “set up appropriate information contact points for the victims, concerning in particular their rights, the existence of support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation”, and (b) “ensure that victims are provided with appropriate information in particular about the investigations, the final decision concerning prosecution, the date and place of the hearings, any opportunity in that context to introduce an action for damages, and the conditions under which they may acquaint themselves with the decisions handed down”).

<sup>249</sup> 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48 (d) (“Victims are promptly informed by the police and other front line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such right”).

<sup>250</sup> 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48(f) (“Victim services agencies and non-governmental organizations provide legal aid to victims”).

choosing and to be informed of this right;<sup>251</sup> and to have legal assistance (representation by a legally qualified person) assigned whenever the interests of justice so require, and without payment by them (legal aid) if they do not have sufficient means to pay.<sup>252</sup> Human rights law further recognizes that legal assistance in civil proceedings may be necessary to ensure a fair trial, to enable access to the courts or effective participation in proceedings.<sup>253</sup> **Paragraph 3** recognizes that it is good practice to extend such rights to all victims (and witnesses) of crimes,<sup>254</sup> whether in criminal or any other legal proceedings affecting their interests, so as to ensure their fullest access to justice.

**Sub-paragraph 3 (a)(i)** ensures that victims are made aware of the existence and nature of any specific proceedings affecting them, through a right to be informed of their role in and the scope, timing and progress of the proceedings and of the disposition of their cases.<sup>255</sup> It concerns information about specific proceedings rather than the more general legal advice about the range of potential legal processes under Article 24 (2) (before any proceedings have been initiated). **Sub-paragraph 3 (a)(ii)** more specifically requires victims to be informed of their rights to legal representation and legal aid in connection with any legal proceedings.<sup>256</sup> The right to be informed is essential for the effectiveness of a victim's other rights to choose whether to be self-represented, represented through legal counsel, or to obtain legal aid, under Article 24 (3)(b)-(c). Information about the disposition of their cases will be especially important where a victim has chosen not to participate in a proceeding but the outcome nonetheless affects their interests (whether morally or materially).

<sup>251</sup> ICCPR, article 14 (d)(1).

<sup>252</sup> ICCPR, article 14 (d)(2). See also General Comment No. 32, para. 38.

<sup>253</sup> UN Human Rights Committee, General Comment No. 32, para. 10.

<sup>254</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (c) ('Providing proper assistance to victims throughout the legal process'); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2021), Principle 4 (legal aid to all victims of crime). See also UNODC, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework (2015), p. 39; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), 2010, para. 24. On regional approaches see, e.g., Council of Europe Revised Guidelines on the protection of victims of terrorism (2017), section VII ('States must provide effective access to the law and to justice for victims by providing the right of access to competent courts in order to bring a civil action in support of their rights, including legal assistance and interpretation as required to this end'); Directive 2012/29/EU of the European Parliament and of the Council (25 October 2012) establishing minimum standards on the rights, support and protection of victims of crime, article 13 ('Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law'); Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, art. 24 (6) ('ensure that victims of terrorism have access to legal aid in accordance with Article 13 of Directive 2012/29/EU, where they have the status of parties to criminal proceedings').

<sup>255</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (a).

<sup>256</sup> 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48 (d). See also ICCPR, art. 14 (d) (1) (concerning defendants in criminal proceedings).



**Sub-paragraph 3 (b)** acknowledges the agency of victims in choosing whether to represent themselves (including by testifying) or to be represented through a lawyer; and to choose a preferred lawyer. The choice of a private lawyer enables victims to select representatives whom they are comfortable briefing and being represented by, and who have appropriate expertise in the relevant legal matters (albeit within the limits of affordability). It is implicit that persons assisted through a lawyer have the right to instruct their lawyer on the conduct of their case, within the limits of professional responsibility,<sup>257</sup> and without obstruction by the authorities.

**Sub-paragraph 3 (c)** recognizes the right to free legal aid where a victim lacks the capacity to pay for legal assistance, advice and representation (such as based on the application of a “means test”), or where the interests of justice otherwise require, and where the proceedings concern victim interests (such as reparation or the establishment of the truth about a terrorist act). Legal aid can relevantly encompass the provision of legal advice, assistance, information, representation and advocacy.<sup>258</sup> Where legal representation is provided by the State, it must be effective in the sense of being free from misbehaviour or incompetence;<sup>259</sup> judges must safeguard against such risks. The courts and the authorities must also refrain from hindering appointed lawyers from effectively fulfilling their tasks.<sup>260</sup> Legal aid can also, however, take the form of State subsidies to private lawyers chosen by the victim; it is not necessarily tied to direct selection and provision of a lawyer by the State. In all cases, access to legal aid must be non-discriminatory; an appropriate remedy must be available where access to it is denied, undermined or delayed; communications and consultations with legal aid providers must be subject to a right of confidentiality; legal aid beneficiaries should be exempt from court costs; and legal-aid providers must treat victims with respect for their human rights and dignity.<sup>261</sup>

**Sub-paragraph 3 (d)** acknowledges the importance to victims (whether parties or not) of having a right to attend and witness legal proceedings affecting them (whether a criminal trial, civil proceedings, or other relevant proceedings such as coroners’ inquests), in order that they may see justice being done, maintain confidence in the administration

<sup>257</sup> UN Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial (2007), para. 38.

<sup>258</sup> 2017 UNODC Model Law on Legal Aid in Criminal Justice Systems, art. 11.1.

<sup>259</sup> *Ibid.*, para. 38.

<sup>260</sup> UN Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial (2007), para. 38. See also *Arutyunyan v Uzbekistan*, UN Human Rights Committee, Communication No. 917/2000, para. 6.3.

<sup>261</sup> 2017 UNODC Model Law on Legal Aid in Criminal Justice Systems, art. 12.1.

of justice, and potentially experience any cathartic effects from close association with remedial processes. Under international human rights law, judicial proceedings in general must normally be public, absent exceptional reasons for closing the court.<sup>262</sup> Victims have a right as members of the public to attend, as well as a special claim to attend due to their victim status, even if they are not also participating as witnesses, parties, interveners or *amici*.

In cases where physical space in court facilities is limited, and there is intense public interest in attending proceedings, or there are large numbers of victims, it may be necessary to take special measures to accommodate as many victims (alongside others who wish to attend, from the general public to the media) as possible. Such measures could include, for example, provision of a larger court room, live video and audio feeds to a remote courtroom(s) accommodating additional victims, or the public television or radio broadcasting of proceedings, subject to the rights of parties, witnesses and victims (including non-disclosure of private, confidential, sensitive, or security information). Proceedings may require translation where the language of the court is not accessible, including to foreign victims or those attending remotely. The comprehensibility of proceedings, and thus access to justice, may further require that victims be accompanied by a support person (as from a victims' unit or CSO) to explain the proceedings, answer questions, and ensure necessary support is provided (such as psychological care).

**Sub-paragraph 3 (e)** establishes the right of victims to attend legal proceedings remotely. It is important for many victims to do so and providing for it is a satisfaction measure that the State should take.<sup>263</sup> Two possibilities are envisaged: (a) expanding the physical space of the court by use of multiple courtrooms, thus allowing more people to participate in or attend the proceeding; or (b) more informal use of non-judicial locations for disseminating the proceedings to a wider audience, with delay as needed. The latter method must be "accessible", *inter alia* meaning that victims should be able to follow the trial without taking on undue hardships.<sup>264</sup> Some victims, such as cross-border victims or those who are yet hospital-bound, may be unable to travel to a court room. In these situations, the State should take alternative measures to ensure that the victim can attend, such as establishing secure viewing locations appropriate for the victim with appropriate support. Both situations apply where public broadcasting is not available and thus the confidentiality of transmissions must be assured.

<sup>262</sup> ICCPR, art. 14 (1).

<sup>263</sup> 2005 Basic Principles and Guidelines, para. 22.

<sup>264</sup> 1985 Declaration of Basic Principles, paras. 6 (a), 6 (d).



**Sub-paragraph 3 (f)** connects with the long-term needs of victims, including the needs of the State which was the target of the attack. The paragraph requires the State to record the trial for posterity, in order that the injured State and victims will have documentation of the attack and the subsequent trial(s). It is necessary for the defendant to have a fair trial, as protected in international law, and thus the default is for the recording to not become public for a set period of time. While the recording can be published sooner, the delay must be such that the trial and all of its appeals are concluded, so as not to harm the defendant's rights to a fair trial.

**Sub-paragraph 3 (g)** affirms the general requirement of a fair hearing under international law. The elements of a fair hearing apply to proceedings involving all victims, not only victims of terrorism, and are not particularized here. However, reference can be made to article 14 of the International Covenant on Civil and Political Rights, addressing the components of fair trial in civil and criminal proceedings; the core features of which should be extended also to administrative proceedings involving victims.

**Paragraph 4** requires criminal investigations and prosecutions to be gender-sensitive, including by taking into account all gendered harms and reflecting these in the scope of investigations, selection of charges, and treatment of suspects who are also victims. This is based on UN General Assembly resolution 72/194, which encourages "mainstreaming gender perspectives into criminal justice responses to terrorism, in full compliance with human rights law, in order to ... promote the full protection of women and girls from any form of exploitation or violence perpetrated by terrorists".<sup>265</sup> This principle is further enumerated by the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*.<sup>266</sup>

### **Paragraph 5: Assessment of Victims' Needs and Cooperation between Actors.**

**Paragraph 5** aims to enhance the effectiveness of legal representation, legal aid and access to justice by requiring the competent authority to coordinate the assessment of a victim's needs in relation to the proceedings. Such assessment must involve the participation and cooperation of relevant actors such as legal aid providers, other professionals assisting victims, and civil society organizations (CSOs), to obtain a comprehensive understanding of the victim and a holistic assessment of their needs.<sup>267</sup>

<sup>265</sup> UN General Assembly resolution 72/194 of 19 December 2017, para. 15.

<sup>266</sup> UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, p. 1. See also the Guidance Note for UNODC Staff: Gender Mainstreaming in the work of UNODC and the Gender Equality Strategy for the United Nations Office on Drugs and Crime and the United Nations Office in Vienna (2018-2021).

<sup>267</sup> Paragraph 5 is based on the 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48 (g).





Such cooperation is necessary to ensure that the particular situation and vulnerabilities of each victim is properly understood and taken into account in the provision of legal advice and the resulting participation in legal proceedings, so as to ensure a victim's needs can be adequately met in legal processes and remedies.

**Paragraph 6: Temporary Residence Status.** *Paragraph 6* addresses the need for victims of terrorism who require it to be issued a temporary residency status, to ensure that they are able to access justice. This is based on Article 7 of the Trafficking in Persons Protocol which states: “[i]n addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases”.<sup>268</sup>

**Paragraph 7: Avoiding Unnecessary Delay.** *Paragraph 7* embodies the maxim that justice delayed is justice denied: unnecessary delay must be avoided in deciding cases and enforcing decisions.<sup>269</sup> International human rights law recognizes that fairness in criminal and civil proceedings<sup>270</sup> means that the proceedings as a whole must be expeditious<sup>271</sup> (through to final judgment<sup>272</sup> and effective measures of execution<sup>273</sup>), notwithstanding delays in particular phases.<sup>274</sup> Whether a delay is unreasonable must be assessed in the circumstances, taking into account:<sup>275</sup> the complexity of the case (including evidentiary difficulties<sup>276</sup> and the number of parties<sup>277</sup>); the conduct of the parties; the manner in which the case was dealt with by the administrative and judicial authorities; and any detrimental effects delay had on the legal position of the complainant. Delays caused by lack of resources should be addressed by additional funding for the administration of justice.<sup>278</sup>

<sup>268</sup> Trafficking in Persons Protocol, art. 7.

<sup>269</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (e) (“Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims”).

<sup>270</sup> Under ICCPR, art. 14 (1). Undue delay in criminal proceedings is additionally addressed by ICCPR, article 14 (3)(c).

<sup>271</sup> UN Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial (2007), para. 27.

<sup>272</sup> *König v Germany*, ECtHR, para. 98.

<sup>273</sup> *Robins v United Kingdom*, ECtHR, paras. 28-29; *Martins Moreira v Portugal*, ECtHR, para. 44; *Silva Pontes v Portugal*, ECtHR, para. 33; *Di Pede v Italy*, ECtHR, para. 24; *Estima Jorge v Portugal*, ECtHR, paras. 36-38.

<sup>274</sup> *Pretto and Others v Italy*, ECtHR, para. 37.

<sup>275</sup> *Vojnovic v Croatia*, UN Human Rights Committee Communication No. 1510/2006 (30 March 2009), para. 8.4.

<sup>276</sup> *Humen v Poland*, ECtHR (Grand Chamber), para. 63.

<sup>277</sup> *H v United Kingdom*, ECtHR, para. 72.

<sup>278</sup> UN Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial (2007), para. 27.



## Article 25: Participation of victims in criminal proceedings

1. The [police/prosecutor] shall provide victims with the effective opportunity to assert their rights, and to present their views or concerns for consideration, before and during any criminal proceedings relating to a terrorist offence, either directly or through his or her representative. Victims' right shall be respected, and their views shall be duly considered, in decisions whether to prosecute and concerning the conduct of the trial. Such opportunity shall be additional to any role they may have as a potential witness or civil party.
2. The [competent authority] shall also seek and consider the views and concerns of victims in relation to any proposal for parole, pardon or amnesty.
3. The [court/tribunal] shall recognize the right of a victim to:  
[SELECT OPTIONS]
  - a. Participate in proceedings as a civil party, with guarantees of due process;
  - b. Participate in proceedings to express their views and concerns (such as through a victim impact statement), and to have these duly considered by the [court];
  - c. Seek judicial review of a decision by the [police/prosecutor] not to prosecute;
  - d. Bring a private prosecution, or otherwise initiate criminal proceedings;
  - e. Appeal a judicial decision which sentences or acquits a defendant.[Where it is consistent with domestic criminal law principles to do so.]
4. Measures under this Article shall be consistent with a defendant's right to a fair trial under international law.

### COMMENTARY

Article 25 facilitates access to justice in criminal proceedings by recognizing the various means by which victims can participate in such proceedings. (The right to be informed of proceedings affecting them is addressed separately in Article 24. The roles permitted to victims of terrorism in criminal proceedings vary between legal systems.<sup>279</sup> Victims may variously have standing to initiate criminal proceedings, intervene in them as a distinct party to claim compensation (*parties civiles*), participate

<sup>279</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2011).



by assisting the prosecution, present views to or be consulted by police or prosecutors on the conduct of the case, provide victim impact statements, seek review of decisions not to prosecute, or appeal sentences or acquittals. In practice, victims' participation in terrorism trials can be narrower than in ordinary cases,<sup>280</sup> including because of the security dimensions of the trial or the large number of casualties. Victims have observed that this can result in a "depersonalization" or denial of the status of victim.<sup>281</sup>

Regardless of the nature of their legal system, as a matter of principle all States should ensure that the views and concerns of victims can be presented and considered at appropriate stages of criminal proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.<sup>282</sup> Allowing for the participation of victims serves a number of purposes. It enables criminal proceedings to take into account the different harms and needs, expectations, and priorities of individual victims,<sup>283</sup> including in relation to prosecutorial strategies, sentencing, reparation and measures of protection and assistance. It can also be an important part of recognizing the humanity of victims, thereby publicly reinforcing the human costs of terrorism<sup>284</sup> and potentially providing victims with a sense of recognition and even of catharsis.

**Paragraph 1** requires police and prosecutors to provide victims with an effective opportunity to assert their rights and to express their views, before and during trial, in relation to decisions whether to prosecute and how to conduct the prosecution, distinct from their role as witnesses or civil parties. It extends to the expression of views on matters such as charge or plea bargains, sentencing submissions and reparation. It further requires those views to be duly considered in such decision-making,<sup>285</sup> that is,

<sup>280</sup> UN Human Rights Council, Terrorism and Human Rights: report of the United Nations High Commissioner for Human Rights (A/HRC/45/27), 9 September 2020.

<sup>281</sup> United Nations, Recommendations from the Secretary-General's Symposium on Supporting Victims of Terrorism (2008).

<sup>282</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (b) and similarly United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 2, para. 48 (c). See also Council of Europe Revised Guidelines on the protection of victims of terrorism (2017), section VI, para. 6 (the position of victims must be adequately recognized in criminal proceedings).

<sup>283</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), 4 June 2012; UNODC, Modules: Topic 5 – Victims and their participation in the criminal justice process, July 2019.

<sup>284</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism, 4 June 2012 (A/HRC/20/14).

<sup>285</sup> See, e.g., United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990), articles 5.1 (consider victim rights in prosecutorial decisions) and 8 (consult victims on sentencing wherever appropriate).



to be taken seriously as potentially weighty influences on decisions. The aim of the provision is to ensure that prosecutions (or decisions not to prosecute) are adequately informed by and sensitive to victims needs and perspectives, including on the gravity of terrorist acts, the culpability of perpetrators, the need for and nature of punishment and reparation, and the appropriateness of prosecutorial strategies. Ideally such input from victims should be proactively sought through outreach by police and prosecutors, rather than only being reactively received upon the initiative of victims themselves.

**Paragraph 2** extends the principle of receiving and considering victims' views to the post-conviction decisions (whether executive or judicial) such as those relating to parole (early release from prison for good behavior), amnesty or pardon. It should be emphasized that amnesty is, however, prohibited for any terrorist act which also qualifies as an international crime.<sup>286</sup>

**Paragraph 3** requires all States to effectively recognize victims' interests, but allows each State to do so in a manner "consistent with domestic criminal law principles". It thus accommodates fundamental variations between legal orders in the role allowed to victims in criminal proceedings, by presenting a palette of optional measures (**sub-paragraphs (a)-(e)**) from which a State may choose when ensuring that victim participation is effective in its legal system. This "single list" approach recognizes that some measures are already found in both certain civil and common law systems (as well as in States which do not neatly correspond with any common or civil-law classification); and encourages all States to consider progressively adopting measures not already familiar to its national law.

**Sub-paragraph 3 (a)** provides a right of victims to participate in the proceedings as a civil party, including the trial and any subsequent reparations phase. Such right of intervention or participation, distinct from the interests of the public prosecutor, is normally associated with the rights of *parties civiles* in some civil law systems as well as before certain international criminal tribunals.<sup>287</sup> Civil parties may be entitled to participate in all phases of the trial (although their role may be particularly prominent

<sup>286</sup> UN Secretary-General, report on "The rule of law and transitional justice in conflict and post-conflict societies", (S/2004/616), 23 August 2004, para. 64 (c); ICRC Customary IHL Rule 159 (war crimes); *Prosecutor v. Morris Kallon and Brima Bazzy Kamara* (Appeals Chamber Decision on Challenge to Jurisdiction: Lomé Accord Amnesty), SCSL-2004-16-AR72(E) (13 March 2004), para. 73; *Prosecutor v. Anto Furundžija* (Judgment) IT-95-17/1-T (10 December 1998), para. 155; and *Barrios Altos v Peru* (Merits), IACtHR Series C No 75 (14 March 2001), para 41. Cf. *Prosecutor v Saif Al-Islam Gaddafi* (Admissibility Appeal Decision) ICC-01/11-01/11 (9 March 2020), para. 96; *Marguš v Croatia* [GC] ECHR 2014-III, para. 139; and the Belfast Guidelines on Amnesty and Accountability 2013, para. 7 (c)(i).

<sup>287</sup> Such as the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon.



at the reparation phase), with rights similar to the prosecution and defence. Particularly important forms of participation (in addition to involvement in any reparation phase) include the right to adduce and challenge evidence, to make submissions on points of law or procedure or on the conduct of the trial. Due process must be afforded to the extent that it relevant to the circumstances of a civil party, including fairness, equality of arms (including as regards evidence, time limits, and appeal rights), the right to know the other party's allegations and evidence, and the right to be heard (including to present one's own evidence and to contest adverse evidence).

**Sub-paragraph 3 (b)** recognizes that participation could take more limited forms than as civil parties, as where a court allows a party to express their views and concerns at relevant points in the proceedings (including the acceptability of charge or plea bargains through to the reparation phase).<sup>288</sup> A particular form of such participation is the victim-impact statement (oral or written), as in some common law countries. It allows a victim to present a victim impact statement (oral or written) to the court, independent of the prosecution, by which they can express in their own words, free of legal technicality and jargon, the personal impact of the terrorist act upon their lives.<sup>289</sup> Such statements are distinct from any role of the victim as a witness. Victim-impact statements may be particularly relevant to the court's assessment of the gravity of the crime, including by way of aggravating factors, and its evaluation of appropriate penalties and reparation. Forms of participation known as third party "intervener" and amicus curiae also fall within this provision.

**Sub-paragraph 3 (c)** provides a right of victims to seek judicial review of a decision by a public prosecutor not to prosecute<sup>290</sup> (alternatively, review could be done by some other independent and impartial competent body). This right enables victims

<sup>288</sup> As under the Rome Statute of the International Criminal Court Statute, art. 68 (3) (right of victims whose personal interests are affected to present their views and concerns and to have them considered by the Court at appropriate stages of the proceedings).

<sup>289</sup> See also report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), 4 June 2012.

<sup>290</sup> See, e.g., Council of Europe Revised Guidelines on the protection of victims of terrorism (2017), section VI, para. 5 ("In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should ensure that victims are able to ask for a review of this decision by a competent authority"). See also: UNODC, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework, 2015 and UNODC, Expert Consultation on Model Provisions Regarding Victims of Terrorism, Summary Report, 2020.



to hold public authorities accountable when discharging their duty under international law to bring to justice the perpetrators of terrorist acts.<sup>291</sup> It enables the correction of both inadvertently flawed prosecutorial decisions, as well as those motivated by impermissible considerations (such as politically motivated or discriminatory decisions) or attempts to confer disguised impunity upon perpetrators. Such a right is already found in some civil and common law systems, although not in certain other systems (particularly common-law ones) which regard such administrative decisions as non-reviewable or non-justiciable discretions (for instance, because they involve evaluative judgments about the strength of the evidence, prospects of conviction, allocation of resources, or public interest considerations).

**Sub-paragraph 3 (d)** confers a right of victims to bring a prosecution. Under common law, a “private prosecution” is initiated and executed by the private party, whereas in civil-law States an individual may initiate a prosecution but the conduct of it is then carried out by an investigating judge. In practice victims would usually only wish to bring a prosecution occur where the public authorities have failed to prosecute within a reasonable time. It should be emphasized that the provision is without prejudice to the international law obligation on all States to bring to justice perpetrators of terrorist acts,<sup>292</sup> regardless of whether a victim has complained;<sup>293</sup> in this sense prosecutions brought by victims are complementary to, but are not a substitute for, the discharge of the State’s own duty.

In some States the public authorities may be entitled to suspend or terminate private prosecutions if its own investigations are still underway; or if it wishes to initiate its own investigations, take over the conduct of the private prosecution as its own public one, or it believes that it is not in the interests of justice to prosecute. Where the authorities take over prosecutions, other measures in Article 27 must still be applied to ensure victim participation. Since victims typically lack the prosecutorial resources and expertise of the State, the (genuine) assumption of the case by the authorities may be desirable, prompted by the victims’ vital initiating role. The State’s assumption of a prosecution must be in good faith and not misused in order to terminate a prosecution which should proceed.

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<sup>291</sup> See, e.g., UN Security Council resolution 1373 (2001).

<sup>292</sup> Ibid.

<sup>293</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), 4 June 2012.

**Sub-paragraph 3 (e)** confers a right of a victim to seek judicial review of an adverse trial judgment, namely where the victim perceives an acquittal to be unjust or a punishment to be too lenient. As in all criminal appeals, it is not an unfettered right and national law may regulate matters such as the legal criteria or thresholds for any appeal, the application procedure, and time limits.

**Paragraph 4** emphasizes that victim's rights of participation in proceedings must be consistent with a defendant's right to a fair trial under international law,<sup>294</sup> including, for example, equality of arms.

In relation to Article 25 as whole, it should be noted that a victim's rights of self- or legal representation and legal aid under Article 24 apply to victim participation under Article 25. Further, it is noted that the participation of victims' associations in criminal proceedings is separately addressed in Chapter XVI of the Law.

## Article 26: Restorative justice

1. Where appropriate and to the extent permitted by other laws, the [court or competent authority] may use restorative-justice programmes at any stage of the criminal justice process, including at the request of a victim, where:
  - a. The parties have been fully informed of their right to participate, the nature of the process, their rights during it and the possible consequences of their decision to participate;
  - b. The parties acknowledge the basic facts of the case;
  - c. The parties have freely, voluntarily and expressly consented to participate;
  - d. Fundamental procedural safeguards and confidentiality are respected; fair, impartial and trained facilitators are used;
  - e. The interests of victims, including their safety and well-being, are protected.
2. Restorative outcomes must be arrived at voluntarily and contain only reasonable and proportionate obligations. The results of agreements should be supervised by [the court/competent authority] or incorporated into judicial decisions or judgments.
3. The case should be referred back to the [court/competent authority] and a decision as to how to proceed should be taken without delay where:
  - a. restorative justice processes are not suitable or possible;

<sup>294</sup> ICCPR, art. 14. See also United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2021), Principle 4 (legal aid to victims is "[w]ithout prejudice to or inconsistency with the rights of the accused").



- b. no agreement is reached between the parties;
- c. there is a failure to implement an agreement.

### COMMENTARY

Article 26 recognizes that restorative justice programmes may be used in the context of criminal proceedings, in appropriate circumstances. It is based on the 2000 United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters and other international standards.<sup>295</sup> States may wish to refer to those standards for definitions of key concepts such as restorative justice “programmes”, “processes” and “outcomes”.<sup>296</sup> The objectives of restorative justice include supporting victims by giving them a voice concerning the impacts of and the resolution of the crime, repairing relationships ruptured by the crime, denouncing crime and reaffirming community values, encouraging offenders to take responsibility, identifying restorative outcomes, reducing recidivism by encouraging behavioral change, and identifying factors conducive to the crime, future prevention and structural or institutional reform.<sup>297</sup> Restorative justice processes can empower individual victims by giving them more control over efforts to redress the terrorist crime, including so as to avoid secondary victimization.

Restorative justice should not undermine victims’ right to truth through retributive justice, or the State’s obligation to investigate and prosecute perpetrators of violent terrorist crimes, including sexual and gender-based violence. It should generally be a complementary not a substitute measure, by involving a process or outcome additional to criminal punishment, or which itself forms part of the criminal punishment.<sup>298</sup> In the

<sup>295</sup> 2002 United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters; UN General Assembly resolution 69/194 of 18 December 2014; ECOSOC resolutions 1999/26 (1999), 2000/14 (2000), 2002/12 (2002), and 2016/17 (2016); Directive 2012/29/EU of the European Parliament and of the Council (25 October 2012) establishing minimum standards on the rights, support and protection of victims of crime, art. 12; and EU Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings, art. 10.

<sup>296</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, paras. 1 (restorative justice programme), 2 (restorative process), 3 (restorative outcome). See also ECOSOC resolutions 2002/12 (2002), paras. 1-3 (restorative justice programme, restorative process, and restorative outcome respectively); and UNODC Handbook on Restorative Justice Programmes, pp. 14-15 (main categories of programmes are (a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; and, (e) reparative probation and community boards and panels), 29-20 (indigenous and customary justice). See also 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 7 (“Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims”).

<sup>297</sup> UNODC *Handbook on Restorative Justice Programmes*, pp. 10-11.

<sup>298</sup> *Ibid.*, p. 16.



context of States' obligations to "bring to justice" persons involved in terrorist acts,<sup>299</sup> the United Nations Security Council has urged States "to develop and implement comprehensive and tailored prosecution, rehabilitation, and reintegration strategies and protocols".<sup>300</sup>

While the use of restorative justice in response to terrorism is still developing, it can be very effective in challenging key aspects of violent extremism and widen access to justice for victims.<sup>301</sup> While violent extremism is nourished by social and political polarization, lack of empathy and the depersonalization or dehumanizing of victims, restorative justice is based upon connecting people through dialogue and presenting victims as living, suffering people. The process confronts perpetrators with the truth and emotion of victims' stories, experiences, questions and requests. Restorative justice can be particularly useful in terrorism cases involving large numbers of victims, whose complex individual and collective interests and needs may be difficult to fully accommodate solely within criminal proceedings. Such processes can also engage a wider case of participants (including a wider circle of "victims"<sup>302</sup>) in the community affected by terrorism and broaden the reach of justice, reparation, reconciliation and prevention of reoccurrence.

There are many possible restorative justice processes<sup>303</sup> and their use is context dependent (including as to the nature and scale of the terrorist acts; political, cultural and security factors; and the victims' characteristics). One common method is victim-offender mediation, which may lead to an agreement involving apology, reparation, compensation, and help restore relations; it may also provide an opportunity for victims to ask questions, hear from the offender, and reach closure.<sup>304</sup> It may or may not involve

<sup>299</sup> Under UN Security Council resolution 1373 (2001), para. 2.

<sup>300</sup> UN Security Council resolution 2396 (2017), para. 30. See also UN Security Council Counter-Terrorism Executive Directorate, Technical Guide to the Implementation of Security Council resolution 1373 (2001) and other relevant resolutions (2019), paras. 260-265; Madrid Guiding Principles, Principles 30-31; Addendum to the Madrid Principles, Guiding Principle 11.

<sup>301</sup> Tim Chapman, " 'Nobody has ever asked me these questions': Engaging restoratively with politically motivated prisoners in Northern Ireland", in Orla Lynch and Javier Argomaniz (eds.) *Victims and Perpetrators of Terrorism: Exploring Identities, Roles and Narratives* (Routledge 2018); Guido Bertagna, Adolfo Ceretti and Claudia Mazzucato (eds), *Il libro dell'incontro: Vittime e responsabili della lotta armata a confronto* (il Saggiatore 2015); Gema Varona, "Who sets the limits in restorative justice and why? Comparative implications learnt from restorative encounters with terrorist victims in the Basque Country" (2014), 4 *Oñati Socio-legal Studies*, p. 550.

<sup>302</sup> Ines Staiger, "Restorative justice and victims of terrorism", *Assisting Victims of Terrorism* (2009).

<sup>303</sup> See generally UNODC *Handbook on Restorative Justice Programmes*, pp. 13-32.

<sup>304</sup> *Ibid.*, pp. 18, 17.



direct contact between the parties.<sup>305</sup> It could involve individual victims or groups, and may also have a role to play in situations of large-scale violence against communities. It is also possible to apply restorative principles to the State's response to terrorism in situations where victim-offender dialogue is not possible, but where there are opportunities to rebuild relationships, enable stakeholder participation or repair harm.

**Paragraph 1** recognizes that restorative justice may be used at any stage of the criminal justice process,<sup>306</sup> including pre-charge, pre-trial, during trial, at sentencing, and in relation to post-conviction corrections.<sup>307</sup> Restorative justice may be considered by the court or competent authorities on their own motion, or at the request of a victim pursuant to established procedures. Attention to the proper use of police, prosecutorial and judicial discretion is important in the effective use of restorative justice.<sup>308</sup>

**Paragraph 1** also establishes important safeguards on resort to restorative justice, to protect the rights of victims, offenders, and the public. These are drawn principally from the 2000 United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, including as regards: (a) full prior information;<sup>309</sup> (b) acknowledgement of the facts;<sup>310</sup> (c) voluntary nature and consent;<sup>311</sup> (d) fundamental procedural safeguards,<sup>312</sup> confidentiality,<sup>313</sup> and the use of impartial, trained facilitators<sup>314</sup> (designed to control, for example, threatening behaviour, vengeance or domination by victims (including unconstructive shaming), power imbalances, or domination by individuals);<sup>315</sup> and (e) the parties' safety.<sup>316</sup> Procedural safeguards under (d) should more specifically include rights to legal advice and interpretation/translation, and the

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<sup>305</sup> Ibid.

<sup>306</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 6.

<sup>307</sup> UNODC *Handbook on Restorative Justice Programmes*, p. 13.

<sup>308</sup> Ibid., pp. 72-73.

<sup>309</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/2000/INF/2/Add.2), p. 35, annex, para. 12 (b).

<sup>310</sup> Ibid., para. 8.

<sup>311</sup> Ibid., paras. 7 (consent) and 3(c) (no coercion or unfair inducement to participate).

<sup>312</sup> Ibid., para. 12.

<sup>313</sup> Ibid., para. 13 ("Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties" or as required by national law).

<sup>314</sup> Ibid., paras. 2, 18 and 19 (impartial, trained, culturally competent facilitators which respect the dignity of the parties and ensure respect between the parties).

<sup>315</sup> UNODC *Handbook on Restorative Justice Programmes*, p. 68.

<sup>316</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 10 (safety).

assistance of minors by parents or guardians,<sup>317</sup> as well as due process.<sup>318</sup> As a matter of good practice, other factors relevant to the appropriateness of restorative justice may include the gravity of the terrorist act, the culpability of the individual, and the public interest;<sup>319</sup> power imbalances;<sup>320</sup> the risks of secondary victimization and support available to victims;<sup>321</sup> whether the offender's participation is genuine or insincere;<sup>322</sup> and the likelihood of a human rights-consistent resolution of the matter.

**Paragraph 2** emphasizes that restorative outcomes must be voluntary.<sup>323</sup> This is to protect the agency and rights of the parties, but also because the effectiveness of agreements may depend on the offender's good faith consent and commitment to implement and comply with the agreed measures. Agreements or outcomes must also contain only reasonable and proportionate obligations.<sup>324</sup> By this it is meant that measures must be proportionate to not only the harm done but also the capacity of the offender to fulfil them;<sup>325</sup> in addition, all measures must respect the civil rights and dignity of individuals.<sup>326</sup>

As a matter of good practice, to ensure agreements are effective and lawful (including rights-respecting), the results of agreements should be judicially supervised or incorporated into judicial decisions.<sup>327</sup> The judicial quality of outcomes also means that they may be appealed by the offender or prosecution.<sup>328</sup> Further good practice suggests that a restorative agreement should not prejudice the availability to victims

<sup>317</sup> Ibid, para. 13 (a).

<sup>318</sup> Ibid.

<sup>319</sup> See, e.g., United Nations Security Council Counter-Terrorism Executive Directorate, Technical Guide to the Implementation of Security Council resolution 1373 (2001) and other relevant resolutions (2019), para. 265 (c) (in the context of prosecution, rehabilitation and reintegration strategies); addendum to the Madrid Principles (2018), Guiding Principle 11 (c).

<sup>320</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 9 ("disparities leading to power imbalances" and cultural differences between the parties: age, maturity or intellectual capacity) (in addition, see UNODC *Handbook on Restorative Justice Programmes*, p. 68 (adding age, intellectual capacity, racial, ethnic or cultural factors, or any other attribute that may significantly compromise a person's ability to participate equally) (the latter arguable include gender and psychological state).

<sup>321</sup> UNODC *Handbook on Restorative Justice Programmes*, p. 66.

<sup>322</sup> Ibid., p. 68 (manipulation by the offender).

<sup>323</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 7.

<sup>324</sup> Ibid.

<sup>325</sup> UNODC *Handbook on Restorative Justice Programmes*, p. 36.

<sup>326</sup> Ibid., pp. 34, 35.

<sup>327</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 15.

<sup>328</sup> UNODC *Handbook on Restorative Justice Programmes*, p. 34.



of other procedures for vindicating their rights, where those other procedures (such as civil or administrative compensation) address rights or interests not addressed by the restorative justice process.<sup>329</sup> For example, if a restorative process is limited to establishing truth, an apology, or reconciliation, an agreement to those ends should not exclude the victim's right to launch civil compensation proceedings against the offender.

**Paragraph 3** addresses situations where it is determined at any stage that restorative justice is not suitable or possible<sup>330</sup> or, where restorative justice proceeds, no agreement between the parties be reached<sup>331</sup> or a party fails to implement an agreement.<sup>332</sup> In all three situations the case should be referred back to the criminal justice authorities and a decision as to how to proceed should be taken without delay.<sup>333</sup> These provisions aim to ensure that victims' redress and perpetrator accountability are not thwarted. There may, of course, be cases where restorative justice is unavailable or ineffective and criminal prosecution would not succeed to conviction at trial, despite the *prima facie* sufficiency of the evidence to commence a prosecution; indeed such doubts about trial may be one reason why a matter is referred to restorative justice in the first place. In all cases however these provisions require the criminal justice system must consider the matter to determine whether the criminal process can be used in some way to ensure redress.

As a matter of good practice, where no agreement is reached in a restorative justice process, the failure to reach agreement should not be used in subsequent criminal proceedings,<sup>334</sup> for instance whether as evidence of a lack of the perpetrator's responsibility, as an aggravating factor because of the perpetrator's perceived unwillingness to take responsibility, or as a basis for drawing adverse inferences about a victim. Further, where there is a failure to implement an agreement (other than judicial ones), such failure (that is, by an offender) should not be used as justification for a more severe sentence in subsequent criminal proceedings,<sup>335</sup> for instance as regards the likelihood of reoffending based on that failure to implement.

<sup>329</sup> See UNODC *Handbook* above (desirable to maintain "accessibility to conventional methods of dispute/case resolution (including the courts)").

<sup>330</sup> 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, para. 11.

<sup>331</sup> *Ibid.*, para. 16.

<sup>332</sup> *Ibid.*, para. 17.

<sup>333</sup> *Ibid.*, paras. 11, 16-17.

<sup>334</sup> *Ibid.*, para. 16.

<sup>335</sup> *Ibid.*, para. 17.

## Chapter X. Consular assistance and protection

### Article 27: Consular assistance and protection

1. Where a victim of terrorism committed in [name of State enacting this Law] is not a national of [name of State enacting this Law] and is present in [name of State enacting this Law]:
  - a. A victim and consular officers of the victim's State of nationality shall be free to communicate with and have access to each other. Such rights shall be exercised in accordance with the laws and regulations of [name of the State enacting this Law] and international consular relations law;
  - b. Consular officers of the victim's State of nationality may address the [competent authorities] when protecting and assisting victims, in accordance with international consular relations law;
2. Where a victim of terrorism committed in another State is present in that State and is a national of [name of State enacting this Law], the [competent authority] should provide effective assistance and support with a view to protecting the victim's rights, in accordance with international law.

#### COMMENTARY

Victims of a terrorist act in a foreign country ("the territorial State" on whose territory the terrorist act took place) may face additional challenges, particularly where they are not habitual residents with rights equivalent to nationals of the territorial State, and including because of unfamiliarity with the local legal system, language barriers, and other impediments to accessing justice. It may be recalled that Article 5, paragraph 1, applies the Model Legislative Provisions to every victim (national and foreign) of a terrorist act in the State's territory or jurisdiction who is still present in that State. The present Chapter outlines a number of special, additional measures to enhance the rights of such victims which are unique to their situation.

**Paragraph 1(a)** establishes the right of a victim to receive, and of the State of nationality to provide, consular assistance in the form of communication with and visits by consular (or diplomatic or other appropriate officials) of their State of nationality.<sup>336</sup> It is based on existing international consular relations law applicable in all situations (not only victims of terrorism or victims of crime), which requires both that consular protection must be

<sup>336</sup> 1963 Vienna Convention on Consular Relations (VCCR), art. 36 (1)(a).



exercised in accordance with the laws and regulations of the receiving state, but also that such laws must themselves “enable full effect to be given” to consular rights.<sup>337</sup> which also requires the receiving State’s law.

Consular assistance and protection are rights related to nationality as defined by national law. States may wish to additionally recognize consular protection by the State of habitual residence of a stateless person, or indeed any person, or of some other State exercising protection functions (such as a State exercising consular functions on behalf of a third State),<sup>338</sup> but this is not required by international law. The provision does not address the situation of dual or multiple nationality, but the principles of general international law apply. First, any State of nationality may exercise diplomatic protection against a third State.<sup>339</sup> Secondly, and progressively, a State of nationality seeking to exercise protection against another State of nationality may do so where its nationality is relatively “predominant”<sup>340</sup> (without necessarily also being “effective” or “dominant”<sup>341</sup>).

**Paragraph 1(b)** affirms the international law right of consular officials to address the territorial State’s authorities when exercising their functions,<sup>342</sup> which include protecting and helping and assisting their nationals; issuing passports and travel documents; safeguarding the interests of minors or others lacking full capacity; and arranging legal representation in legal proceedings.<sup>343</sup> Such interaction should be in accordance with international consular-relations law, namely that consular offices may address the competent local authorities of their consular district as a right, and the central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.<sup>344</sup> Such communications cannot be seen as an intrusion in the domestic affairs of the territorial

<sup>337</sup> VCCR, art. 36 (2).

<sup>338</sup> As under the VCCR, art. 8, or under bilateral or multilateral agreements: VCCR, art. 5 (m). Such arrangements may arise due because the State of nationality lacks the resources to maintain its own consular missions, or because it lacks diplomatic relations with the custodial State.

<sup>339</sup> International Law Commission (ILC), Draft articles on diplomatic protection, article 6; *Yearbook of the International Law Commission, 2006 (A/61/10)*, vol. II, Part Two.

<sup>340</sup> *Ibid.*, art. 7; see also *Merge Claim*, Italian-US Conciliation Commission, 10 June 1955, Reports of International Arbitral Awards (UNRIAA), vol. XIV, p. 236.

<sup>341</sup> ILC, Draft articles on diplomatic protection, 2006, commentary to art. 7.

<sup>342</sup> *Ibid.*, art. 38.

<sup>343</sup> *Ibid.*, art. 5 (a)-(e), (d), (h), and (i), respectively.

<sup>344</sup> *Ibid.*, art. 38 (a)-(b), respectively.



State. Such representations may naturally flow from the communications and visits between consular officials and their nationals under paragraph 1 (a).

The exercise of consular (or wider diplomatic) protection is a right but not a duty of the protecting State under international law. **Paragraph 2** goes beyond existing consular law by encouraging (not requiring) the protecting State to provide effective assistance and support with a view to protecting the victim's rights, such as in relation to the provision and sharing of information, access to justice (including legal representation<sup>345</sup>), assistance, protection and reparation. This could occur through its diplomatic or consular officials, or other competent authorities at home or abroad; and any necessary legislative or regulatory measures must be put in place to enable such assistance to be provided. The effectiveness of such measures will normally depend on working cooperatively with the territorial State to give effect in their territory to any measures of assistance or support. Protection must be exercised in accordance with international law, which includes respect for the foreign State's sovereignty and law, but also a right to exercise protection in relation to violations of international human rights or unlawful injuries for foreign nationals (including failure to diligently protect foreign nationals from private, including terrorist, violence).

**Other issues.** The article does not require the territorial State to respond affirmatively to requests by the State of nationality to substantively assist their national in particular ways (for instance, concerning information, access to justice, assistance (including emergency payments, travel assistance, or contact with family members, or repatriation of injured and deceased victims), protection, reparation. The article guarantees a right to make requests, but not to have them fulfilled.

In this respect, Article 6 (2)(3) addresses international cooperation generally, including through information exchange and administrative coordination, across the spectrum of measures in the Model Provisions. Likewise relevant are the provisions on access to justice under Chapter IX, including the provision of information, translation/interpreting, and the right to attend proceedings (such as through remote access to proceedings for victims overseas,<sup>346</sup> or assistance to travel to do so).

<sup>345</sup> International law guarantees consular officials a right to arrange legal representation only where a national is in detention: 1963 Vienna Convention on Consular Relations, art. 36 (1)(c).

<sup>346</sup> See, e.g., report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), 4 June 2012.



## Chapter XI. Child victims

### Article 28: Child victims

Where a child is a victim of terrorism, in addition to the provisions in this [Law] the [competent authorities and other relevant entities] shall apply international standards and norms regarding child rights and child victims of crime, including the following:

1. The child's best interests, and their right to be heard and have their views duly considered, shall be primary considerations.
2. All measures for child victims under this [Law] shall be provided by specially trained professionals and in accordance with their special needs.
3. Child victims, their parents or legal guardian, legal representative or support person, should be promptly and adequately informed about the justice process and the child's rights from the child's first contact with the process and throughout that process, to the extent feasible and appropriate.
4. All information provided to child victims shall be provided in a child-sensitive way, including in a language that they use and understand and in a manner that they understand.
5. Interviews, examinations and other forms of investigation of child victims shall be conducted by specially trained professionals in a child-sensitive way, including in a suitable environment and in a language that the child uses and understands and in a manner that they understand, in the presence of his or her parents, legal guardian, legal representative or support person.
6. The privacy of child victims, including any information relating to their involvement in the justice process, shall be protected. Measures shall be taken to avoid secondary victimization and protect child victims' right to privacy and undue exposure to the media or public, including by:
  - a. Conducting court proceedings *in camera*, away from the presence of the media or public;
  - b. Providing for child victims to give evidence or testify in court out of sight of the defendant, unless doing so would be inconsistent with the defendant's right to a fair trial or contrary to the proper administration of justice.
7. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such.
8. If the victim is an unaccompanied child, the [competent authorities] shall:
  - a. Appoint an independent legal guardian responsible for safeguarding the best interests of the child from the moment the child is identified by the authorities, if the child's parents or those with parental responsibility are unable to undertake that role;
  - b. Take all necessary steps to establish the child's identity and nationality;
  - c. Make every effort to locate the child's family when this is in his or her best interests.



## COMMENTARY

Article 28 recognizes that children who are victims of terrorism present additional vulnerabilities. One of the reasons is that children perceive violence and death differently and are often the most vulnerable to the effects of terrorism.<sup>347</sup> Children are still developing physiologically, socially, emotionally, neurologically and cognitively. They differ from adults in their social and emotional maturity, and their ability to make judgements and decisions and this means they are unlikely to understand the impact of their actions or to comprehend criminal proceedings.<sup>348</sup>

Neuroscience has revealed that there are peak changes in brain development across childhood and adolescence with important implications for how they assess risk and regulate their behaviour. The prefrontal cortex, which is responsible for decision-making, judgement, impulse control and cognitive control, is among the last parts of the brain to mature and is not fully developed until at least the age of 20. This means that children are not equipped to understand criminal justice procedures in the same way that adults may be able to, as they can have short attention spans and a limited vocabulary and lack the ability to relate events in a chronological order. They may have overwhelming feelings of shame, fear, distress or guilt arising from their experiences. Many children may simply not understand the complexity or seriousness of the situation they find themselves in and be puzzled by legal terminology and procedures.<sup>349</sup> This necessitates the special protections and treatment children are entitled to under international law, in particular when coming into contact with the law.<sup>350</sup>

**Applicable International Standards.** Acknowledgment of the victim status of children is a precondition for them having access to rights as victims of crime, especially as participants in legal proceedings and concerning their rights to reparation and rehabilitation; it may also assist them in their efforts to achieve reconciliation with their communities.<sup>351</sup> Crucially, all actions undertaken in relation to child victims, including those considered

<sup>347</sup> See OCT *Handbook* and UNICEF, “Silent Shame: Bringing out the voices of children caught in the Lake Chad crisis” (2017).

<sup>348</sup> See Committee on the Rights of the Child, General Comment No. 24, Children’s rights in the child justice system (CRC/C/GC/24), 18 September 2019, para. 22.

<sup>349</sup> See UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (Vienna, 2019), pp. 53-54.

<sup>350</sup> See Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system (CRC/C/GC/24).

<sup>351</sup> See UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups (2017), Chapter 2; available at [https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook\\_on\\_Children\\_Recruited\\_and\\_Exploited\\_by\\_Terrorist\\_and\\_Violent\\_Extremist\\_Groups\\_the\\_Role\\_of\\_the\\_Justice\\_System.E.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf).



child victims of terrorism under this Law, shall be based on the principles set out in the Convention on the Rights of the Child and the 2005 United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>352</sup>

In particular, as **paragraph 1** of this article affirms, *the best interests of the child* must be a primary consideration in all actions involving the child;<sup>353</sup> this includes the right to protection and to a chance for harmonious development.<sup>354</sup> Paragraph 1 further emphasizes the child's *right to participation*,<sup>355</sup> including the right (subject to reasonable national procedural law) to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life. This includes decisions in any judicial processes. Further, their views must be taken into consideration according to the child's abilities, age, intellectual maturity and evolving capacity.

Reference in the *chapeau* of Article 28 to "international standards and norms" further means that child victims of terrorism must be treated in accordance with the other general principles in Article 8 of the 2005 Guidelines (in addition to the best interests and participation principles), which mirror provisions in international instruments, particularly the Convention on the Rights of the Child. These notably include the principles of:

*Dignity*:<sup>356</sup> Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

*Non-discrimination*:<sup>357</sup> Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

As the key reference document, the 2005 Guidelines provide extensive good practice

<sup>352</sup> See ECOSOC resolution 2005/20.

<sup>353</sup> See also United Nations Convention on the Rights of the Child (1989), art. 3.

<sup>354</sup> 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principle 8 (c)(ii).

<sup>355</sup> See also Convention on the Rights of the Child (1989), art. 12; and 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principles 8 (d) and 21.

<sup>356</sup> United Nations Convention on the Rights of the Child (1989), art. 37 (c); 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principle 10.

<sup>357</sup> United Nations Convention on the Rights of the Child (1989), art. 2; 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principle 15.

based on the consensus reflected in international and regional norms, standards and principles. They aim :

- To provide a practical framework to assist in the design and review of national laws, procedures and practices, with a view to ensuring full respect for the rights of child victims and witnesses of crime and implementing the Convention on the Rights of the Child;
- To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process, consistent with the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and
- To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.<sup>358</sup>

Further assistance in adapting national legislation to the Guidelines and other international instruments is provided by the UNODC Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime (2009).<sup>359</sup> In this regard it is recommended that if States do not have legal provisions concerning the rights of child victims of crime, such provisions should be adopted to benefit all child victims of crime and not only child victims of terrorism.

**Association with Terrorist Groups.** Even where children are allegedly involved in criminal or terrorism-related acts, including association with terrorist groups, they should be considered and treated primarily as victims and are entitled to security, protection and special assistance, in line with the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles, 2007). This was also highlighted by the UN Secretary-General's Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to UN-listed Terrorist Groups 2019.<sup>360</sup>

<sup>358</sup> See also UNODC Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime (2009), available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

<sup>359</sup> See also UNODC Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime (2009); *Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Prosecutors and Judges and Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Law Enforcement Officials* (2015), available at: [https://www.unodc.org/documents/justice-and-prison-reform/Training\\_Programme\\_on\\_the\\_Treatment\\_of\\_Child\\_Victims\\_and\\_Child\\_Witnesses\\_of\\_Crime\\_-\\_Prosecutors\\_and\\_Judges.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Prosecutors_and_Judges.pdf); and at [https://www.unodc.org/documents/justice-and-prison-reform/Training\\_Programme\\_on\\_the\\_Treatment\\_of\\_Child\\_Victims\\_and\\_Child\\_Witnesses\\_of\\_Crime\\_-\\_Law\\_Enforcement.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Law_Enforcement.pdf).

<sup>360</sup> See Secretary General's Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to UN listed Terrorist Groups (2019), available at: [https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key\\_principles-april\\_2019.pdf](https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf).



Based on international standards, UNODC has developed comprehensive guidance on the issue of children recruited and exploited by, and children associated with terrorist and violent extremist groups.<sup>361</sup> Most notably, the UNODC Roadmap on the Treatment of Children Associated with Terrorist and Violent Extremist Groups, 2019, provides further guidance in three interconnected areas of work: prevention, rehabilitation and reintegration, and justice for children in the context of counter-terrorism on this issue. It sets 10 overarching principles for the treatment of these children that are aligned with the Secretary-General's 2019 Key Principles and all relevant international law.<sup>362</sup>

**Other Provisions in Article 28. Paragraph 2** provides that child victims should be assisted by trained professionals.<sup>363</sup> Training, education and information for professionals should aim to improve and sustain specialized methods, approaches and attitudes to protect and deal effectively and sensitively with child victims.<sup>364</sup> Training should include human rights; ethical duties; signs and symptoms of crimes against children; crisis assessment skills; impacts of trauma on children; special measures to assist children in the justice process; cross-cultural and age-related linguistic, religious, social and gender issues; adult-child communication; interview techniques to minimize trauma and maximize quality information; child-sensitivity skills; methods to protect and present evidence; and roles of and methods used by professionals.<sup>365</sup>

**Paragraph 3** ensures the right of child victims, their parents or guardians and legal representatives to be promptly and adequately informed of legal processes, to the extent feasible and appropriate, reflecting the Convention on the Rights of the Child<sup>366</sup> and the 2005 UN Guidelines.<sup>367</sup> Such information could relate to procedures, including the role of child victims, the importance, timing and manner of testimony, and ways in which “questioning” will be conducted; support mechanisms; the place and time of hearings

<sup>361</sup> See UNODC *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups* (2017); UNODC, *Prevention of Child Recruitment and Exploitation by Terrorist and Violent Extremist Groups: The Role of the Justice System: A Training Manual* (2019); UNODC, *Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups: A Training Manual* (2019); and UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual* (2019).

<sup>362</sup> See UNODC Roadmap on the Treatment of Children Associated with Terrorist and Violent Extremist Groups (2019), available at: [https://www.unodc.org/pdf/criminal\\_justice/endVAC/Roadmap/UNODC-ENDVAC\\_Roadmap\\_EN.pdf](https://www.unodc.org/pdf/criminal_justice/endVAC/Roadmap/UNODC-ENDVAC_Roadmap_EN.pdf).

<sup>363</sup> 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principles 22 and 40-42.

<sup>364</sup> *Ibid.*, Principle 40.

<sup>365</sup> *Ibid.*, Principle 42 (a)-(l).

<sup>366</sup> United Nations Convention on the Rights of the Child 1989, art. 40 (2)(b)(ii).

<sup>367</sup> 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principle 19.

and events; availability of protective and assistance measures; rights of review; the child's rights; the progress and disposition of the case; and opportunities for reparation.<sup>368</sup>

**Paragraph 4** relatedly provides that all information provided to child victims (whether in the justice process or more broadly) is given in a child-sensitive way, including in a language that they use and understand and in a manner that they understand.<sup>369</sup>

**Paragraph 5** aims to ensure that children are treated with dignity and compassion by requiring interviews, examination and other investigative processes to be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner;<sup>370</sup> and are conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity.<sup>371</sup> They should also take place in a language that the child uses and understands,<sup>372</sup> and in the presence of their parents, legal guardian, legal representative or support person.<sup>373</sup>

**Paragraph 6** guarantees that child victims should have their privacy protected as a matter of primary importance, including the protection of information relating to a child's involvement in the justice process.<sup>374</sup> This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child victim in the justice process. Thus, it may be necessary to take measures to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, consistent with the defendant's right to a fair trial.

**Paragraph 7** establishes a presumption that a victim is a child where their age is uncertain and there are reasons to believe the victim is a child.<sup>375</sup>

<sup>368</sup> Ibid., Principles 19 (a)-(g) and 20.

<sup>369</sup> Ibid., Principle 14.

<sup>370</sup> Ibid., Principle 13.

<sup>371</sup> Ibid., Principle 14.

<sup>372</sup> Ibid.

<sup>373</sup> United Nations Convention on the Rights of the Child 1989, art. 40 (2)(b)(iii) (for accused children). See also 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Principle 24 and 25; and 2009 UNODC Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime, arts. 15 and 16 (support person), available at: [https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_in\\_matters...pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf).

<sup>374</sup> 2005 Guidelines, Chapter X.

<sup>375</sup> Committee on the Rights of the Child, General Comment No. 24, Children's rights in the child justice system (CRC/C/GC/24), 18 September 2019, paras. 24 and 34.



## Model Legislative Provisions

TO SUPPORT THE NEEDS AND PROTECT THE RIGHTS OF VICTIMS OF TERRORISM

**Paragraph 8** provides for the appointment of an independent legal guardian for unaccompanied children, to safeguard their best interests, where a child's parents or those with parental responsibility are unable to undertake that role.<sup>376</sup> All necessary steps must also be taken to establish the child's identity and nationality and to locate the child's family, when the preservation of family unity is in the best interest of the child.<sup>377</sup>

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<sup>376</sup> United Nations Convention on the Rights of the Child 1989, arts. 18 (2) and 20 (1); See also Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin (CRC/C/GC/2005/6), 1 September 2005, paras. 20-21 and 33-38; UNODC Model Law on Human Trafficking, art. 22 (d).

<sup>377</sup> United Nations Convention on the Rights of the Child 1989, arts. 8, 9 and 20. See also Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (CRC /C/GC/14), 29 May 2013, paras. 58-70.



## Chapter XII. Victims of sexual and gender-based violence by terrorist groups

### Article 29: Victims of sexual and gender-based violence by terrorist groups

1. All victims of sexual and gender-based violence committed by members of terrorist groups must be recognized as victims irrespective of their perceived status or affiliation with such groups. They are entitled to all relevant measures under this [Law] and international law, including gender-sensitive and victim-centred assistance, reparation, protection and access to justice.
2. The [competent authorities] shall ensure that individuals working with victims receive appropriate professional training on the provision of gender-sensitive and victim-centred support to victims, including a common, multidisciplinary component for all individuals and specific modules tailored to particular professions.

#### COMMENTARY

**Paragraph 1** ensures that the rights of a victim who has suffered or is at risk of sexual or gender-based violence committed by members of terrorist groups are not affected by their perceived status or affiliation with a terrorist group; and that all measures under this Law are applied to them in a gender-sensitive and victim-centred manner. Acts of sexual and gender-based violence are violations of international human rights, as recognized by United Nations General Assembly resolution 34/180 of 18 December 1979 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>378</sup> The definition of conflict-related sexual violence (CRSV) has evolved through a series of UN Security Council resolutions.<sup>379</sup> Council resolution 2467 (2019) stresses that:

acts of sexual and gender-based violence in conflict can be part of the strategic objectives and ideology of, and used as a tactic by certain parties to armed conflict, including non-State armed groups, designated as terrorist groups and therefore affirms that victims of sexual violence, committed by certain parties to

<sup>378</sup> See also UN General Assembly resolution 48/104 of 20 December 1993, proclaiming the Declaration on the Elimination of Violence against Women.

<sup>379</sup> UN Security Council resolutions 1325 (2000); 1820 (2009), 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015) and 2467 (2019).



armed conflict, including non-State armed groups designated as terrorist groups, should have access to national relief and reparation programmes, as well as health-care psychosocial care, safe shelter, livelihood support and legal aid and that services should include provisions for women with children born as a result of sexual violence in conflict, as well as men and boys who may have been victims of sexual violence in conflict including in detention setting; contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts.<sup>380</sup>

These views are also enumerated in UN General Assembly resolution 73/174 of 17 December 2018.<sup>381</sup> It is further affirmed by the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, which states that terrorist groups such as ISIL, Boko Haram, Al-Shabaab, Ansar Eddine, the Taliban and Al-Qaida use sexual and gender-based violence in a tactical manner, including for: increasing recruitment, terrorizing populations into compliance, forcibly displacing persons from strategic areas, generating revenue from human trafficking, generating intelligence from torture, achieving conversion through forced marriage, and altering the composition of targeted communities.<sup>382</sup>

**Paragraph 2** ensures that all persons who interact with victims (whether State authorities or other service providers) undergo gender-specific training in the aim of minimizing the risks of secondary victimization. There should be common training for all persons in addition to training adapted to particular professions working with victims (whether medical, psychological, legal and so on). Gender-specific training is encouraged by Security Council resolution 2106 (2013), which:

*Requests* the Secretary-General and relevant United Nations entities to assist national authorities, with the effective participation of women, in addressing sexual violence concerns explicitly in: [...]

- b. security sector reform processes and arrangements, including through the provision of adequate training for security personnel, encouraging the inclusion

<sup>380</sup> UN Security Council resolution 2467 (2019), para. 28.

<sup>381</sup> UN General Assembly resolution 73/74 of 5 December 2018, on Terrorism and human rights, “[expresses] deep concern that acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups and are used as an instrument to increase their power through supporting and financing recruitment and through the destruction of communities”.

<sup>382</sup> UNODC, *Handbook of Gender Dimensions of Criminal Justice Responses to Terrorism*, Chapter 5, pp. 127-128 which cites documents S/2015/203, S/2017/249 and S/2016/361/Rev.1, paras. 19 and 21.



of more women in the security sector and effective vetting processes in order to exclude from the security sector those who have perpetrated or are responsible for acts of sexual violence;

- c. justice sector reform initiatives, including through legislative and policy reforms that address sexual violence; training in sexual and gender-based violence of justice and security sector professionals and the inclusion of more women at professional levels in these sectors.<sup>383</sup>

This paragraph is also based on Guideline 9 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems concerning measures that can be adopted to ensure women's right to access to legal aid.<sup>384</sup> Chapter XV on Training of this Law is also relevant.

## Article 30: Specific assistance needs

1. The [competent authorities] shall ensure that all victims of sexual and gender-based violence committed by terrorist groups, including women with children born from wartime rape and victims of trafficking, are provided tailored, comprehensive, and quality multi-disciplinary assistance and protection, including:
  - a. Urgent and long-term sexual and reproductive healthcare services, including clinical management of rape, emergency contraception, safe termination of pregnancy, specialized gynecological care, and free optional confidential testing for all sexually transmitted diseases and associated prevention, treatment, and awareness-raising;
  - b. Counselling and psychological assistance support, on a confidential basis and with full respect for the victim's privacy, in a language that the victim understands;
  - c. Interim relief payments for victims in vulnerable situations where necessary.
2. When engaging with victims under this Chapter, the [competent authorities and other relevant actors] should properly assess the risks of additional physical or psychological harm resulting from the stigmatization, social exclusion and marginalization of victims; and take measures to minimize these harms, such as by providing:
  - a. Psychological services;
  - a. Specialist programmes for rehabilitation, reintegration, and community support.

<sup>383</sup> UN Security Council resolution 2106 (2013).

<sup>384</sup> United Nations Principles and Guidelines provides measures that can be adopted to ensure women's right to access to legal aid, Guideline 9. See also UNODC, Model Law on Legal Aid in Criminal Justice Systems, 2017, art. 5.



### COMMENTARY

**Paragraph 1** addresses the specific assistance and protection needs of victim of sexual and gender-based violence by terrorist groups, including displaced persons who face additional vulnerabilities. It is based on Security Council resolution 2331 (2016), which “emphasizes that survivors should benefit from relief and recovery programmes, including health care, psychosocial care, safe shelter, livelihood support and legal aid and that services should include provision for women with children born as a result of wartime rape, as well as men and boys who lay have been victims of sexual violence in conflict, including when it is associated with trafficking in persons in armed conflict”.<sup>385</sup> Protection needs are also addressed by the WHO Summary on Mental Health and Psychosocial Support for Conflict-related Sexual Violence: Principles and Interventions;<sup>386</sup> and the Guidance note of the Secretary-General on reparations for conflict-related sexual violence, which explains that: “Urgent interim reparations might be provided in a variety of ways”.

They aim at providing victims with immediate assistance, for example in the field of health or if the State might institute an administrative programme to respond to immediate needs of victims. Victims of conflict-related sexual violence often face serious mental and physical health problems as a consequence of the crimes committed against them, and often do not have access to health services. For example, women and girls as well as men and boys, as applicable, could suffer serious genital, vaginal and/or anal or other bodily injury, serious sexual mutilations, fistulas or uterine prolapse, among other harms, that would seriously affect not only their reproductive systems but also their urinary and digestive systems. Furthermore, they may have also contracted serious diseases like HIV/AIDS. They require access to immediate medical treatment and medication and other services. When assessing the consequences of violations on victims and determining appropriate reparations measures that could help victims to effectively overcome those consequences, courts have found that some characteristics of the victims need to be taken into consideration. This is particularly relevant in cases where the victim (or victims) is a woman, child, or member of an indigenous group and he or she is therefore affected differently by the violations or obstacles that makes it

<sup>385</sup> UN Security Council resolution 2331 (2016), Maintenance of international peace and security, para. 10.

<sup>386</sup> WHO, Mental health and psychosocial support for conflict-related sexual violence: principles and interventions, 2012, p. 2. See also: OHCHR, Nigeria/ Boko Haram: “The reintegration of women essential to the path towards lasting peace”, 22 January 2016.

more difficult to recover, exercise rights, or benefit from the reparations measures that are ordered.<sup>387</sup>

Paragraph 1 is also closely linked to Chapter V of this Law on Assistance, Chapter VII on Protection, and Chapter XV on Training (since a gender-sensitive approach is necessary to avoid secondary victimization).

**Paragraph 2** addresses an important obstacle to justice for victims – the social stigma associated with sexual and gender-based violence. As highlighted by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, victims are too often ignored, stigmatized and marginalized, resulting in exclusion from remedies and support for victims of terrorism.<sup>388</sup> Psychological services can include psychosocial interventions such as discreet private forums; women’s hearings; self-help groups; one-to-one therapy sessions; or forum theatre.

## Article 31: Specific evidentiary standards and procedures

In cases of sexual violence and gender-related violence, the [court] shall be guided by and, where appropriate, apply the following principles:

1. No corroboration of the victim’s testimony shall be required.
2. Consent cannot be inferred from:
  - a. Any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent;
  - b. Any words or conduct of a victim where the victim is incapable of giving genuine consent;
  - c. The silence of, or lack of resistance by, a victim.
3. Credibility, character or predisposition to sexual availability of a victim cannot be inferred from their prior or subsequent conduct.
4. No adverse inference may be drawn solely from any delay between the commission of an act of sexual or gender-based violence and its reporting.

<sup>387</sup> Guidance note of the Secretary-General on reparations for conflict related sexual violence, p. 12.

<sup>388</sup> A/72/495, para. 29.



### COMMENTARY

This article addresses the principles that should guide legal proceedings involving sexual and gender-based violence by terrorist groups. Its paragraphs are all based on the Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-related Sexual Violence,<sup>389</sup> the Rules of Procedure and Evidence of the International Criminal Court<sup>390</sup> and of the International Criminal Tribunal for the Former Yugoslavia.<sup>391</sup> Evidentiary standards are also addressed in the ICC's *Ntaganda* Reparations order<sup>392</sup> and in the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*:

'[s]pecific evidentiary rules [...] may need to be adopted [...]. Victims may encounter significant challenges in meeting stringent evidentiary requirements, including in cases in which acts of sexual and gender-based violence are committed in armed conflict [...] or as a result of the time that has passed since the commission of the crime and the destruction of evidence. These concerns should be taken into account when establishing the required standard of proof, without prejudice to the rights of the accused.'<sup>393</sup>

The enactment of provisions on evidentiary standards as part of a victims of terrorism law may be unnecessary where such provisions already exist in national law.

**Paragraph 1** indicates that a victim's credible but uncorroborated testimony is sufficient to establish the facts to which the victim testifies. Although victims may suffer from some degree of trauma as a result of conflict-related sexual violence, there is no automatic or necessary adverse effect on their credibility or liability. Assumptions should be avoided about how a victim or survivor will react. Traumatized individuals can be both credible and reliable.

<sup>389</sup> Office of the Special Representative of the Secretary-General on conflict related sexual violence, model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence, 18 June 2021; see <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2021/06/report/auto-draft/OSRSG-SVC-Model-Legislative-Provisions-ENG.pdf>.

<sup>390</sup> ICC, Rules of Procedure and Evidence, Rule 70.

<sup>391</sup> ICTY, Rules of Procedure and Evidence, Rule 96.

<sup>392</sup> ICC, *Ntaganda* Reparations order, ICC-01/04-02/06, 8 March 2020, para. 67. See also: Lubanga Judgment on Size of Reparations Award, ICC-01/04-01/06-3466-Red, n. 376. 173. See CLR1 Final Submissions, ICC-01/04-02/06-2632, para. 101, referring to. 174 Lubanga Judgment on Size of Reparations Award, ICC-01/04-01/06-3466-Red, para. 203; Lubanga Judgment on Principles, ICC-01/04-01/06-3129, para. 81.

<sup>393</sup> UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, p. 182.



**Paragraph 2** precludes consent to sexual activity from being inferred from the victim's words or conduct where the victim is under any form of coercion (**subparagraph (a)**) or is incapable of consenting (**subparagraph (b)**), for example, where the victim is a minor or is unconscious or drugged); or where the victim does not object or resist (**subparagraph (c)**).

**Paragraph 3** precludes adverse inferences being drawn as to the credibility, character or predisposition to sexual availability of a victim from their prior or subsequent conduct.

**Paragraph 4** precludes adverse inferences being drawn from a delay in reporting the act, given that the trauma and perceived shame of sexual violence, or fears of retribution or of the legal process itself, may discourage victims to come forward to the authorities; and victims may choose to report it at a later time.



## Chapter XIII. Victims of trafficking by terrorist groups

### Article 32: Victims of trafficking by terrorist groups

1. A victim of trafficking in persons for reasons related to terrorism shall not be held detained, held legally liable, or punished penalized for:
  - a. [Offences or unlawful acts] committed by him or her, to the extent that such involvement is a direct consequence of their situation as a trafficked person;
  - b. Immigration offences under national law.

This article is without prejudice to general defences available under national law to a victim.

2. In ensuring that victims of trafficking receive effective protection in accordance with [this Law], the [competent authorities] shall consider the following measures:
  - a. Providing immediate protection, including by removing victims from exploitative situations, and all necessary forms of assistance, including health services, counselling, and shelter;
  - b. Releasing the trafficked person from any form of detention for being victims of trafficking;
  - c. Non-confiscation of property, such as identity and travel documents;
  - d. Recognition of legal identity and citizenship;
  - e. Pathways to legally remain and/or regularize their migration status in [name of State enacting this Law];
  - f. Safe and voluntary repatriation to their country of origin;
  - g. Prevention of recurrence of trafficking; and
  - h. Measures to reduce the stigma and backlash faced as victims of trafficking and/or terrorism, to ensure their full social inclusion and rehabilitation.

#### COMMENTARY

**Definition of Victim of Trafficking.** “Victim of trafficking” for the purposes of this Law means any natural person who has been subject to trafficking in persons, or whom [the competent authorities, including the designated non-governmental organizations where applicable] reasonably believe is a victim of trafficking in persons, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. It relies on the definition of trafficking in persons in article 3 of the 2000 Protocol to Prevent,

Suppress and Punish Trafficking in Persons, Especially Women and Children, as follows:

- a. “[t]rafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. [t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; ....

Thus the key elements that must be met for trafficking in persons (adults) to exist are: (i) action (recruitment, ...); (ii) by specified means (threat, ...); and (iii) for a specified purpose (exploitation).<sup>394</sup>

International law provides a different definition for trafficking in children (i.e., persons under 18 years of age), where the “means” element is not required and it is necessary to show only: (i) an “action” such as recruitment, buying and selling; and (ii) that this action was for the specific purpose of exploitation. Accordingly, “trafficking of a child will exist if the child was subjected to some act, such as recruitment or transport, the purpose of which is the exploitation of that child”.<sup>395</sup>

**The terrorism-trafficking nexus.** This chapter addresses the nexus recognized in Security Council resolutions 2331 (2016) and 2388 (2017) between trafficking in persons, sexual violence, and armed conflict and terrorism, which can prolong and exacerbate conflict and instability or intensify its impact on civilians. In resolutions 2253 (2015) and 2368 (2017), the Council further recognized the connection between trafficking in persons by ISIL, Al-Qaida, and associated individuals and groups, which may support such actors financially, and the perpetration of sexual violence by these actors.

**Paragraph 1** reaffirms the status of trafficked persons as victims of terrorism, and not as accomplices of terrorist organizations, despite often having to perform certain

<sup>394</sup> OHCHR, “Human rights and human trafficking”, Fact Sheet 36, p. 3.

<sup>395</sup> Ibid.



tasks for them. It is based on Security Council resolution 2388 (2017), which urges Member States to consider, in line with domestic legislation, not prosecuting or punishing victims of trafficking for unlawful activities they committed as a direct result of having been subjected to trafficking.<sup>396</sup> It further urges States to assess the individual situation of persons released from the captivity of terrorist groups so as to enable prompt identification of victims of trafficking and facilitate their treatment as victims of crime.<sup>397</sup> The paragraph is further in line with resolution 2331 (2016)<sup>398</sup> and the view of the UN Working Group on Trafficking in Persons.<sup>399</sup> The principle of non-criminalization of victims of trafficking is also enshrined in regional instruments, such as Article 26 of the Convention on Action against Trafficking in Human Beings.<sup>400</sup>

***The last sentence of paragraph 1*** provides that paragraph 1 is without prejudice to other defences available under national law; for example, duress could be relevant to a victim coerced to commit crime.

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<sup>396</sup> UN Security Council resolution 2388 (2017), para. 17.

<sup>397</sup> Ibid.

<sup>398</sup> UN Security Council resolution 2331 (2016), para. 10 (“victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism” and not held liable for unlawful activities related to having been trafficked).

<sup>399</sup> United Nations, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009 (CTOC/COP/WG.4/2009/2) (non-punishment or prosecution of trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such acts).

<sup>400</sup> Council of Europe, Convention on Action against Trafficking in Human Beings, CETS No. 197, 2005, Art. 26 (States shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, in accordance with the basic principles of their legal system). The provision is understood to create a positive obligation to adopt measures on the non-liability of victims of trafficking: Council of Europe, Committee of the Parties Council of Europe Convention on Action against Trafficking in Human Beings, Meeting Report of the 7th meeting of the Committee of the Parties (Strasbourg, 30 January 2011), THB-CP (2012) RAP7 (Strasbourg, 9 February 2012), Appendix II, para. 7.





## Chapter XIV. Armed conflict, displacement and migration

### Article 33: Armed conflict

Victims of terrorism in situations of armed conflict are entitled to the protections of international human rights law, international humanitarian law, and international refugee law without adverse distinction, without prejudice to more favorable provisions in [this Law] insofar as they can apply in armed conflict. This [Law] shall not affect impartial humanitarian (including medical) action protected under international humanitarian law or other rights under international law.

#### COMMENTARY

Assistance, protection and justice for victims of terrorist acts may face additional challenges in exceptional situations involving armed conflict, displacement, or post-conflict reconstruction. Such situations may involve large numbers of victims of not only terrorist acts but of mass or systematic international crimes and other serious human rights violations. The regular justice system may have been weakened and/or lack the capacity, expertise and resources to address the scale or nature of the crimes or to ensure access for displaced victims. There may be threats of continuing violence or the resumption of violence. There may be sensitive political and economic issues to navigate in the context of negotiating or implementing peace agreements or peacebuilding measures.

At the same time, international law contains specialized regimes adapted to addressing these situations, including international humanitarian law (“IHL”), standards on displacement (including international refugee law and human rights law), and guidance on transitional justice mechanisms and processes. While such standards apply to all similarly situated persons (such as civilians in armed conflict, all refugees or internally displaced persons, or all victims of international crimes or serious human rights violations), this Article reaffirms the importance of their application to victims of terrorist acts in these situations.

Security Council resolution 2482 (2019), paragraph 16, emphasizes that all counter-terrorism measures must comply with the obligations of States under international humanitarian law, including by taking into account “exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”.



### Armed conflict

**The phrase of the first sentence** of this article reaffirms the full, non-discriminatory<sup>401</sup> application of IHL to all victims of terrorist acts in situations of armed conflict. The existence of an armed conflict (international or non-international) is determined by IHL itself. It is sufficient to note that in certain circumstances terrorist acts may be committed by the parties to an armed conflict, or by other persons whose conduct has a nexus to the conflict. For the purpose of this Law, compliance with IHL may be relevant to the activities of State authorities, CSOs, private service providers, individuals, and non-State organized armed groups.

In giving effect to the first sentence, there are certain rules of IHL which may be particularly relevant to victims of terrorism. These include, firstly, the customary IHL rules on **medical care**, in particular full and prompt medical treatment of the wounded and sick;<sup>402</sup> respect and protection of medical personnel, units, and transports,<sup>403</sup> non-punishment of medical personnel for medical duties,<sup>404</sup> and the prohibition on attacking protected medical personnel and objects.<sup>405</sup> (These are without prejudice to the fuller scope of the right to health under international human rights law.) The IHL rules explicitly recognize that medical personnel, units and transports may lose their protection if they engage in, outside their humanitarian function, acts harmful to the enemy.

Secondly, they reaffirm the customary IHL rules on **humanitarian relief**, the free movement of humanitarian personnel, and respect and protection of such personnel and humanitarian objects.<sup>406</sup> Again, the full customary rules include important further conditions, namely that consent to humanitarian relief operations must not be arbitrarily withheld;<sup>407</sup> the parties have a right to control the passage of humanitarian relief,<sup>408</sup> such as through the search of consignments or their supervised delivery, but such

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<sup>401</sup> ICRC Customary IHL Rule 88 (no adverse distinction based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria).

<sup>402</sup> ICRC Customary IHL Rule 110.

<sup>403</sup> ICRC Customary IHL Rules 25, 28 and 29.

<sup>404</sup> ICRC Customary IHL Rule 26.

<sup>405</sup> ICRC Customary IHL Rule 30.

<sup>406</sup> ICRC Customary IHL Rules 55, 56 and 31, respectively.

<sup>407</sup> ICRC Customary IHL Rule 55, Summary.

<sup>408</sup> ICRC Customary IHL Rule 55.

measures must not impede relief.<sup>409</sup> (In addition, if humanitarian personnel participate in hostilities, or humanitarian objects are misused for military purposes, they may be subject to military targeting by the adversary, or security measures such as detention of personnel.)

Thirdly, “**fundamental guarantees**” for all persons recognized by IHL are especially relevant.<sup>410</sup> These include rules on physical threats to the person such as murder and torture and other ill-treatment;<sup>411</sup> against arbitrary detention and regulating the duration and conditions of detention;<sup>412</sup> on a fair trial;<sup>413</sup> on treatment of vulnerable groups;<sup>414</sup> and on respect for family life and religion.<sup>415</sup>

Fourthly, customary IHL contains rules on **deceased persons**, which are important for maintaining a victim’s dignity but also to ensure closure for relatives and enable possibilities for accountability. The measures include the collection and evacuation of the dead; protection from despoliation or mutilation; return of remains and personal effects to next of kin; respectful disposal of bodies and respect for graves; recording of information before burial and marking of graves; and accounting for missing persons and informing their families.<sup>416</sup>

Fifthly, customary IHL rules on **criminal accountability** relevantly require investigation and prosecution of war crimes,<sup>417</sup> and best efforts to cooperate to the extent possible with other States in investigations and prosecutions<sup>418</sup> (that is, through mutual legal assistance or extradition). (Other areas of international law address other international crimes.) Reference to jurisdiction “other” than nationality or territorial jurisdiction includes where a State is required to, or has voluntarily established, universal jurisdiction over international crimes. Such rules reinforce other articles of the Model Legislative

<sup>409</sup> Ibid., Summary.

<sup>410</sup> ICRC Customary IHL Rule 87; Additional Protocol I of 1977, article 75 (reflecting custom).

<sup>411</sup> ICRC Customary IHL Rules 88 and 90, respectively.

<sup>412</sup> ICRC Customary IHL Rules 99, 128, and 118, respectively.

<sup>413</sup> ICRC Customary IHL Rule 100.

<sup>414</sup> ICRC Customary IHL Rules 134 (women), 135 (children) and 138 (elderly, disabled, infirm).

<sup>415</sup> ICRC Customary IHL Rules 105 and 104, respectively.

<sup>416</sup> ICRC Customary IHL Rules 112-117, respectively.

<sup>417</sup> ICRC Customary IHL Rule 158.

<sup>418</sup> ICRC Customary IHL Rule 161.



Provisions which require prosecution of terrorist acts by facilitating the prosecution of such acts as international crimes where a terrorist act also qualifies as such.

**The second phrase of the first sentence** emphasizes that, in the context of this Law, IHL comprises *minimum* international standards and is not an exclusive regime; it does not affect more favourable treatment under other chapters of the Provisions. The Law is thus intended to not only incorporate but complement and supplement IHL, “insofar as they can apply in armed conflict”. This caveat recognizes that a State’s capacity to fully apply all of the Law may be impaired by the exigencies of a conflict (for instance, as regards the promptness of criminal investigations and trials, or the procedural capacity to administer or fully fund reparation procedures in the midst of conflict), but the State must nonetheless apply them as far as possible, giving due weight to the human rights and needs of victims.

**The second sentence** of this Article emphasizes that this Law is without prejudice to the provision under IHL of impartial humanitarian and medical action (including relief, assistance and protection) to persons who are not victims of terrorism. States must not, therefore, seek to restrict the provision of assistance under IHL to victims of terrorism or other preferred beneficiaries, since IHL ensures that assistance must be provided impartially on the basis of need. Security Council resolution 2482 (2019), para. 16, emphasizes that, to comply with IHL, States should “take into account the potential effects of counterterrorism measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”.

### Article 34: Internal displacement and international migration

In addition to protection under this Law:

1. Where victims are internally displaced, for reasons related to terrorism or otherwise, the [competent authorities] shall ensure their protection and treatment in accordance with their rights under national and international law, including international human rights law and international humanitarian law, as reflected in the United Nations Guiding Principles on Internal Displacement.
2. Where victims are non-nationals, including asylum seekers, or refugees, or migrants, the [competent authorities] shall ensure their protection and assistance in accordance with international refugee law, international human rights law, and international humanitarian law, including the principle of *non-refoulement*.



## COMMENTARY

**Paragraph 1** recognizes the special vulnerabilities of victims who are internally displaced, whether as a result of the terrorist act, counter-terrorism operations, or other causes such as armed conflict or generalized violence. Displacement can lead to difficulties accessing assistance, protection, legal proceedings and reparation (as well as in realizing other rights of citizens or residents, and human rights more generally), and sometimes involve the stigmatization of or discrimination against victims.

Paragraph 1 requires competent authorities to ensure the rights of displaced victims under national and international law, which may require special measures (for instance, in making legal, administrative, assistance, protection and reparation procedures more accessible, as in the context of displacement camps or other temporary settlements). International standards are reflected in the United Nations Guiding Principles on Internal Displacement, which are specifically mentioned in paragraph 1 as critical guidance and which particularize to the situation of displaced persons the application of international humanitarian law and human rights law. The Guiding Principles address the three main phases of displacement, including prevention of displacement, assistance during displacement, and assistance during return, resettlement and reintegration and States should pay close attention to their detailed provisions in formulating measures for displaced victims.

**Paragraph 2** emphasizes that the Law is without prejudice to the rights of non-nationals under international law, particularly international human rights law and international refugee law. Under the principle of non-refoulement, all States are required not to return a person to another State where they face a real risk of persecution or other serious violation of human rights, including arbitrary deprivation of life or torture or cruel, inhuman or degrading treatment or punishment. The 2009 Note by the Secretary-General on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism also asks states to “guarantee the right to asylum”.<sup>419</sup>

Paragraph 2 must be read in conjunction with Chapter III on the jurisdictional application of the Law. Chapter III, paragraph 1, applies the Law to all victims of terrorist acts committed within a State’s territory or jurisdiction. As such, migration status is irrelevant to the full application of the Law to them. The Law does not, however, apply to non-national victims of terrorism committed outside the State enacting the Law. In both situations, however, international law still applies in full, including in relation to expulsion.

<sup>419</sup> UN General Assembly, Note by the Secretary General on the protection of human rights and fundamental freedoms while countering terrorism (A/64/211), 2009, para. 53 (p).



## Chapter XV. Training

### Article 35: Victim-sensitive training

The [coordination body] shall promote and support victim sensitivity training for all [competent authorities and other actors] dealing with victims of terrorism. Training should:

- a. Enable such persons to acquire the skills and knowledge with which to identify and understand the needs of victims and to deal with them in an impartial, respectful, professional and intersectional manner, taking into account their specific vulnerabilities;
- b. Include sensitization on the risk of secondary victimization and ways to reduce it;
- c. Be gender-responsive and ensure that women and men equally benefit from it;
- d. Be at a level appropriate to the nature of a person's contact with victims;
- e. Be provided by specially trained professionals or other suitable persons. The [coordination body] should encourage and fund training by non-governmental actors, including victims' associations and CSOs.

#### COMMENTARY

This Article requires the competent authorities to ensure victim-sensitive training for persons responsible for assistance to victims of terrorist acts, particularly victim-sensitive training.<sup>420</sup> This is supported by the UN General Assembly's 1985 Declaration which provides that "police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid".<sup>421</sup> It is also reflected at the regional level, for example in the 2012 European Union's Victims' Rights Directive.<sup>422</sup>

**Paragraph (a)** indicates that training should promote victim sensitivity and impartial, respectful, and professional treatment of victims, including by addressing stereotypes, misconceptions or stigmas that may be commonly held about victims or certain

<sup>420</sup> Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorism, 2017.

<sup>421</sup> United Nations General Assembly resolution 40/34 of 29 November 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 16.

<sup>422</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Article 25 (a).

categories of victims. Awareness should also be raised on intersectional issues (described in Article 3 (4)(c)), including the interaction of gender.

**Paragraph (b)** emphasizes that training should address risks of secondary victimization and how to mitigate it, as recommended by the UNODC *Handbook on Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*<sup>423</sup> and in Good Practice 15 of the Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings.<sup>424</sup> Secondary victimization means “the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim”.<sup>425</sup> Regionally, the Council of Europe outlines that training should include awareness of the negative effects of crime on victims; skills and knowledge required to assist victims; awareness of the risk of causing secondary victimization; and the skills to prevent this.<sup>426</sup> The EU Fundamental Rights Agency states that, to be effective, “training needs to cover both the need for a sensitive approach to victims, especially regarding particularly vulnerable groups, and specialized knowledge, again with an emphasis on certain groups”.<sup>427</sup>

**Paragraph (c)** outlines the need for training to be gender mainstreamed, to ensure that it is victim sensitive, and reduces the risk of secondary victimization. It addresses the need for both women and men to be trained, which will ensure the best possible outcome for victims of terrorism.

**Paragraph (d)** requires training to be appropriate to the nature of a person’s engagement with victims. While certain fundamental elements of training may be relevant to all trainees, other elements should be adapted to the professional or other context in which interaction with victims will occur. Personnel who should be trained under this Chapter include, among others, law enforcement and other governmental authorities (national, regional, local), judicial authorities (including investigators, judges, and prosecutors), health professionals and social services, NGOs, witness coordinators or advocates,

<sup>423</sup> UNODC *Handbook on Good Practices in Supporting Victims of Terrorism Within the Criminal Justice Framework*, 2015, p. 27 (“States should ensure that investigators, prosecutors and any other professionals dealing with victims receive specific victim-sensitive training on the needs of victims, strategies for appropriately dealing with them and the need to prevent secondary victimization”).

<sup>424</sup> Global Counterterrorism Forum, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, 2012, Good Practice 15 (“prevent secondary and repeat victimization within the criminal justice process by providing sensitivity training to judges and other participants in the criminal justice system”).

<sup>425</sup> UNODC, *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*, New York, 1999, p. 9.

<sup>426</sup> European Parliament, “How can the EU and Member States better help the victims of terrorism?”, p. 107

<sup>427</sup> Strengthening victims’ rights: from compensation to reparation: for a new EU Victims’ rights strategy 2020-2025, pp. 50-51.



victim support professionals, and consular and embassy personnel. This element is further elaborated in Article 35.

**Paragraph (e)** provides that trainers themselves must be trained professionals or otherwise suitable as trainers (for instance, because of their practical experience of engaging with victims). While this Article requires the competent authorities to promote and support training, trainers themselves could be drawn from State authorities<sup>428</sup> as well as non-State actors. Training organized and provided by non-State actors, including victims' associations and CSOs is widespread,<sup>429</sup> and States should grant the necessary resources to this effect,<sup>430</sup> including for training them as well as drawing upon their experience for training others. CSOs and national authorities should work together as CSOs are well placed to provide victim sensitization training for criminal justice officials, legal teams and police.

### Article 36: Specialized training

The [coordination body] shall ensure that appropriate, specialized victim-sensitive training is provided to all persons:

- a. Who are first responders at the scene of a terrorist attack and immediately after the attack, to ensure the well-being of themselves and victims and their families;
- b. Providing health and psychological care to victims;
- c. Involved in assessing or providing protection to victims;
- d. Involved in legal processes affecting victims;
- e. Working with women victims, and other victims of sexual and gender-based violence, including training on gender-sensitivity and responsiveness, particularly on the needs of different genders, the effects of sexual and gender-based violence and trauma, and the need to avoid secondary victimization and stigmatization.
- f. Working with child victims;
- g. Working with persons with disabilities;
- h. Dealing with cross-border victims.

<sup>428</sup> Concluding Observations on the second periodic report of Namibia (CAT/C/NAM/CO/2), 1 February 2017 (concerning training of law enforcement).

<sup>429</sup> Strengthening victims' rights: from compensation to reparation: For a new EU Victims' rights strategy 2020-2025, pp. 50-51.

<sup>430</sup> Revised Guidelines of the Committee of Ministers of the Council of Europe on the Protection of Victims of Terrorism, 2017.



## COMMENTARY

This article non-exhaustively lists personnel who should receive specific training. It reflects standards in the Model Law for Justice in Matters Involving Child Victims and Witnesses of Crime<sup>431</sup> and UNODC guidelines on victims of terrorism specifically.<sup>432</sup>

**Paragraph (a)** addresses the need to train first responders, as recommended by the Madrid Memorandum.<sup>433</sup> This is particularly important as secondary victimization can occur when an individual is exposed to people who have been traumatized themselves. Special pre-incident preparedness training is required, which helps first responders build personal resilience and take care of their mental health after responding to a terrorist attack.<sup>434</sup>

**Paragraphs (b) and (c)** address the training of health care workers and persons involved in the protection of victims. This is important as victims present specific health care and protection needs and specialized training reduces the risk of secondary victimization.

**Paragraph (d)** concerns training of personnel in the legal system, including judges, court staff, prosecutors, investigators and lawyers. Regionally, the training of judicial personnel is reflected in the European Union's Victim's Rights Directive.<sup>435</sup>

**Paragraph (e)** ensures that authorities who interact with victims undergo gender-specific training, including to minimize the risks of secondary victimization. Professionals working with victims of sexual and gender-based violence in particular should receive appropriate training, including a common, multidisciplinary component for all professionals and more specific modules addressing particular professions. This is supported by Guideline 9 of the United Nations Principles and Guidelines.<sup>436</sup>

**Paragraph (f)** provides that all persons who come in contact with child victims and witnesses should have special training on how to interact with children. The 2005 UN

<sup>431</sup> UNODC, UNICEF, Model Law for Justice in Matters Involving Child Victims and Witnesses of Crime, 2009, see commentary of Article 8 on Training.

<sup>432</sup> UNODC, *Handbook on Criminal Justice Responses to Terrorism*, 2009, p. 116.

<sup>433</sup> Global Counterterrorism Forum, Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, 2012, Good Practice 1.

<sup>434</sup> Annex to the EU Handbook on Victims of Terrorism, Chapter 2, p. 5.

<sup>435</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, art. 25.

<sup>436</sup> United Nations Principles and Guidelines provides measures that can be adopted to ensure women's right to access to legal aid, Guideline 9.



Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also recommend that “each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls”; and that “[p]rofessionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services”.<sup>437</sup> This is because “children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs”.<sup>438</sup>

For instance, interviews, examinations and other forms of investigation should be conducted by specially trained professionals;<sup>439</sup> and professionals interviewing children who have been associated with terrorist and violent extremist groups should have specific knowledge of the impact of extreme violence and trauma on children’s behaviour and development”.<sup>440</sup> See also Chapter XI on child victims.

Legal-aid providers representing children should also be trained in and be knowledgeable about children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.<sup>441</sup> According to UN Principles and Guidelines on Access to Legal Aid, all legal-aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them; training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups; and training on available measures for promoting the defense of children who are in conflict with the law.<sup>442</sup>

The UNODC *Handbook for Professional and Policymakers on Justice in Matters Involving Child Victims* further recommends that training should be centralized in a single

<sup>437</sup> Economic and Social Council resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005, paras. 4, 7 (b) and 41.

<sup>438</sup> Ibid.

<sup>439</sup> UNODC Model Law Model Law against Trafficking in Persons, p. 61.

<sup>440</sup> UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*, p. 55.

<sup>441</sup> UN Principles and Guidelines on Access to Legal Aid, para. 58 (d), pp. 22-23.

<sup>442</sup> UN Principles and Guidelines on Access to Legal Aid, para. 58- (d), pp. 22-23.



institution that can monitor whether all categories of professionals are reached, in order to ensure effective awareness of all professionals who share the responsibility of protecting child victims.<sup>443</sup>

**Paragraph (g)** addresses the need for specific training for personnel working with victims of terrorism who have disabilities. This is based on the Convention on the Rights of Persons with Disabilities: “to promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights”.<sup>444</sup>

**Paragraph (h)** highlights that cross-border victims are often vulnerable as they may struggle to manage a system – legal, administrative, health care and so on – with which they are not familiar. The personnel to be trained includes, inter alia, consular, diplomatic, border and immigration, and law enforcement officials, and interpreters and translators. Consular and embassy staff are often the first points of contact a cross-border victim will have with their home State.<sup>445</sup>

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<sup>443</sup> UNODC, *Handbook for Professional and Policymakers on Justice in Matters involving Child Victims*, p. 111.

<sup>444</sup> Convention on the Rights of Persons with Disabilities, 2006, article 4 (1)(i).

<sup>445</sup> International Network Supporting Victims of Terrorism and Mass Violence, *Supporting victims of terrorism*, Report of the INVICTIM Symposium in Stockholm, 2018, p. 55.



## Chapter XVI. Organizations representing the interests of victims of terrorism and other civil society organizations

### Article 37: Organizations representing the interests of victims of terrorism

1. Victims of terrorism, like other persons, have the right to create any form of association or organization to represent and advocate for their interests, protect their rights or assist and support their needs.
2. The exercise of fundamental freedoms of association and expression through victims' organizations, and other civil society organizations assisting victims of terrorism, can only be subject to restrictions that are prescribed by law, non-discriminatory, necessary in pursuit of a legitimate public interest and proportionate to that aim. These principles apply to all administrative requirements imposed on organizations, including those concerning official registration, internal rules, reporting, auditing or inspection.
3. Victims' organizations and other civil society organizations have the right to an effective remedy before the relevant [court or tribunal] of any decision made by public authorities which adversely affects their interests.

#### COMMENTARY

This article recognizes that civil society organizations (CSOs), whether in the form of victims' associations or other organizations, have a pivotal role in the protection, implementation and awareness raising of the rights of victims of terrorism. The 2019 General Assembly resolution 73/305 on "Enhancement of international cooperation to assist victims of terrorism" recognizes the valuable roles that civil society and the private sector play in supporting victims of terrorism, including by identifying their needs, designing appropriate measures to assist them, assisting with the victim-sensitive provision of assistance and medical, legal and psychosocial support services, advocating on behalf of victims, and raising public awareness of the human impact of terrorist acts. Such activities can also contribute to the prevention of conditions conducive to terrorism and the building of resilience and social cohesion.<sup>446</sup>

<sup>446</sup> United Nations General Assembly resolution 73/305 of 28 June 2019 on "Enhancement of international cooperation to assist victims of terrorism", para. 11.



**Paragraph 1** affirms the right to associate with others who share similar priorities and concerns to take joint actions. This is a fundamental right enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (article 22). It includes the right to create or take part in formal and informal groups, such as charities, NGOs, political movements and parties, religious groups, and community-based groups. Freedom of association is also an important enabling factor for the enjoyment of other fundamental rights, notably freedom of expression (ICCPR, article 19) and freedom of assembly, including the right to criticize public authorities. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism affirms that “victims of terrorism have the right to form representative organizations whose rights to freedom of association and expression must be fully guaranteed”,<sup>447</sup> a view supported by UNODC.<sup>448</sup>

**Paragraph 2** provides that any State interference in freedom of association must be assessed through the lens of permissible limitations under international human rights law,<sup>449</sup> mirroring the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>450</sup> The stringent test for limitations applies to administrative or procedural requirements on civil society organizations, including to prevent their abuse in countering terrorism.

**Paragraph 3** relatedly provides that organizations should have unimpeded access to an independent and impartial court or tribunal with power to overturn the restriction, as required by international law and recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>451</sup>

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<sup>447</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/20/14), Framework principles for securing the human rights of victims of terrorism, p. 20.

<sup>448</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, para. 225.

<sup>449</sup> Human Rights Committee, General comment No. 34 (2011), para. 34.

<sup>450</sup> Framework principles for securing the human rights of victims of terrorism, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, para. 47.

<sup>451</sup> *ibid.*



## Article 38: Support for and engagement with victims' organizations and other civil society organizations

1. The [competent authority] shall take effective measures to protect members and representatives of victims' organizations and other civil society organizations under this Chapter, including against the risk of reprisals and any attempt, from any source, to intimidate or silence them. Such measures shall include providing persons at risk with strategies and training to ensure their safety and security.
2. At the request of a victims' organization or other civil society organization, the [competent authority] shall assist it with training to recognize, understand and respond sensitively to the signs of traumatization and secondary victimization in victims with whom they interact.
3. A victim of trafficking in persons for reasons related to terrorism shall not be held detained, held legally liable, or punished penalized for:
  - a. assistance, protection, reparation, information, access to justice and training;
  - b. related policy making, research and education;
  - c. monitoring and evaluating measures for victims under this [Law].

### COMMENTARY

**Paragraph 1** recognizes the need to protect victims' associations and CSOs, as recommended by the Special Rapporteur.<sup>452</sup> Protection may be required from threats, intimidation or retaliation, before, during and after judicial, administrative, or other proceedings, or other administrative measures, that affect victims' interests. Threats may emanate from terrorist organizations as well as their supporters or sympathizers. Protective measures may be a prerequisite for the fulfillment of associations' rights of association and expression. Challenges in sufficiently protecting victims' associations and CSOs may arise due to uncertainty as to who is responsible for ensuring protection (for example, the State or the organizations themselves). Challenges may also stem from financial constraints; or from new threats such as cyber intimidation or attacks.

Many of the protective measures for individual victims under Article 20 of this Law, with necessary adaptations, are relevant for victims' associations or other CSOs, including as regards provision of information, security hotlines, physical protection measures, protection of personal information, and financial support. The State should fund the necessary costs of protective measures.

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<sup>452</sup> Ibid.



**Paragraph 2** addresses the need for the competent authority to assist CSOs with training if requested. For more information on different types of training, and how it can be done in a victim-sensitive manner, see Chapter XIV on Training.

**Paragraph 3** underlines the importance of all relevant state authorities cooperating with victims' associations and CSOs (including through engagement, participation, and consultation) and provides examples for beneficial cooperation. Victims' organizations have a right to participate and the State has the obligation to facilitate participation, including in relation to (a) relevant measures under this Law, (b) related policy making, research and education; and the monitoring and evaluation of measures under this Law.

It is based on recommendations made in the UNODC *Good Practices in Supporting Victims of Terrorism Within the Criminal Justice Framework*.<sup>453</sup> At the international level it is supported by General Assembly resolution 73/305, which encourages the strengthening of "engagement with relevant civil society organizations to assist and support victims of terrorism in protecting their rights and needs, including the need to have public recognition and to keep their memory alive".<sup>454</sup> The importance of victims' associations and CSOs is also highlighted in the 2020 report by the UN Secretary-General, which states that "civil society is uniquely placed to understand the needs and interests of victims of terrorism and to raise victims' concerns. Victims' associations can play a key role in facilitation, advocacy and collaboration with and between victims and national government actors".<sup>455</sup> CSOs can support victims throughout the process of recovery, from practical help to initiatives for victims to come together to support each other. Regionally, the Council of Europe's Guidelines on the Protection of Victims of Terrorism similarly provides that: "States are encouraged to co-operate with and facilitate as much as possible the actions of civil society representatives, and especially those of the associations for the protection of victims".<sup>456</sup>

<sup>453</sup> United Nations Office on Drugs and Crime, *Good Practices in Supporting Victims of Terrorism Within the Criminal Justice Framework*, 2015, p. 54.

<sup>454</sup> United Nations General Assembly resolution 73/305 of 28 June 2019, on "Enhancement of international cooperation to assist victims of terrorism", paras. 10-11.

<sup>455</sup> See A/74/790, para. 57. See also: Handbook of Good Practices to Support Victims' Associations in Africa and the Middle East (UNOCT/UNCCT, 2018); General Assembly resolution 72/180, para. 24; report of the UN Conference on Human Rights and Victims of Terrorism (UNCCT, 2016), p. 18 and Recommendations to Support Associations of Victims of Terrorism; and Security Council resolution 2129 (2013), para. 16.

<sup>456</sup> Council of Europe, Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts, 2017, section XIII, Co-operation with civil society.



### Article 39: Participation of victims' organizations and other civil society organizations in judicial proceedings

1. The [competent authorities] shall grant victims' organizations and other civil society organizations access to the proceedings of [courts/tribunals], in order to monitor them and support the access and participation of victims in them.
2. Where it is consistent with domestic criminal law principles to do so, the [court/tribunal] shall recognize the right of victims' organizations to:
  - a. Participate in proceedings as a civil party, with guarantees of due process;
  - b. Participate in proceedings to express their views and concerns (such as through a victim impact statement), and to have these duly considered by the [court/tribunal].

#### COMMENTARY

**Paragraphs 1 and 2** address the need for victims' associations and CSOs to have access to terrorist trials: "[u]nder international human rights law, judicial proceedings in generally must normally be public, absent exceptional reasons for closing the court".<sup>457</sup> As described by UNODC, recognized good practice includes: "the right of victims' associations to intervene as a civil party on behalf of victims (...) encompasses the right to be a civil party in all proceedings, in certain legal systems, in connection with crimes related to terrorism (including murder, attempted murder, aiding and abetting, and financing), as well as in proceedings related to crimes of criminal association in connection with terrorist acts, such as terrorist networks".<sup>458</sup> For more detail, see the commentary on the participation of victims in Chapter IX on Access to Justice.

<sup>457</sup> ICCPR, art. 14 (1).

<sup>458</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, paras. 233-236.