



International Commission of Jurists

# Recommendations to strengthen the Council of Europe's draft Guidelines on Aid to and Protection of Victims of terrorism

12 October 2004  
AI Index: IOR 61/022/2004

# **Recommendations of Amnesty International and the International Commission of Jurists to Strengthen the draft Council of Europe Guidelines on Aid to and Protection of Victims of Terrorism**

12 October 2004

Amnesty International and the International Commission of Jurists submit the following recommendations aimed at strengthening the preliminary draft of the Council of Europe's Guidelines on Aid to and Protection of Victims of Terrorism, set out in Appendix III of the Report of the Meeting of 1-3 September of the Group of Specialists on Human Rights and the Fight Against Terrorism, DH-S-TER (2004) 007.

These comments are submitted in the context of Amnesty International's and the International Commission of Jurists' work to ensure the rights of all victims of human rights abuses and violations of international humanitarian law to access to justice, including reparations, without discrimination and to ensure that the measures taken by states to protect persons and prevent and prosecute acts of terrorism respect their obligations to protect the human rights of all persons.

The following recommendations draw upon existing international standards, such as the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, and standards being developed by the international community including the draft *Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law* and the *Set of Principles for the protection and promotion of human rights through action to combat impunity*, as well as on the case law of the European Court of Human Rights and other Council of Europe standards.

Amnesty International and the International Commission of Jurists urge the DH-S-TER to request that all Council of Europe member States consult relevant NGOs and national human rights institutions about the provisions of these draft Guidelines and inform their views on these Guidelines in the light of such consultations.

## **Preamble:**

Amnesty International and the International Commission of Jurists urge the Group of Specialists on Human Rights and the Fight Against Terrorism (hereafter, the DH-S-TER) to include in the preamble reference to the Council of Europe's European Commission against

Racism and Intolerance *General Policy Recommendation No. 8 on combating racism while fighting terrorism* of March 2004 and to relevant Recommendations of the Parliamentary Assembly of the Council of Europe.

**Guideline I: Acknowledgement of the status of victim of terrorist acts**

Amnesty International and the International Commission of Jurists urge the, DH-S-TER to adopt a modified formulation of Option1 which includes the principles set out in italics below:

States should acknowledge the status of victim to both the direct victims of terrorist acts and their families, *as well as to people who have suffered harm in intervening to assist victims or to prevent their victimization.*<sup>1</sup>

*The acknowledgement of the status of victim shall not depend on the identification, apprehension, prosecution or conviction of the perpetrator.*<sup>2</sup>

*States shall treat victims and their families with humanity, compassion and dignity with due respect for their privacy.*<sup>3</sup>

*These guidelines shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural*

---

<sup>1</sup> See the second sentence of Paragraph 2 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), ): “The term victims also includes. Where appropriate, (...) persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

<sup>2</sup> See Paragraph 2 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), ): “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (...)”. See also, Article 2(2) of the European Convention on Compensation of Victims of Violent Crimes which states: “Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished”

<sup>3</sup> See paragraph 4 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34): “Victims should be treated with compassion and respect for their dignity. (...)” and Article 2, paragraph 1, of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA): “Each Member State (...) shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.”

*beliefs or practices, property, birth or family status, ethnic or social origin and disability.*<sup>4</sup>

If the DH-S-TER agrees to include a definition of victim in the Guidelines, Amnesty International and the International Commission of Jurists urge that the definition incorporate the elements of Paragraphs 1-3 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

### **Guideline II: Emergency Assistance**

Amnesty International and the International Commission of Jurists recommend that draft Guideline 2 be amended so as to include the principles as reflected below:

#### **II. Emergency assistance**

1. States should ensure that *emergency* medical and psychological ~~emergency aid~~ *assistance* is available *and accessible* to any person having suffered mentally or physically following a terrorist act
2. States should ensure that adequate *emergency* financial, *material* and social ~~emergency aid (adapted according to the severity of each case)~~ is provided for victims of terrorist acts, as well as to their family ~~[next of kin]~~.
3. States should put in place the necessary infrastructure so that such emergency aid can be provided free of charge. *No one should be denied emergency medical care as a result of their inability to pay.*
4. *In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as their sex, language, nationality, ethnic or social origin, religion, cultural background or disability.*

These recommendations are consistent with the prohibition of discrimination and Paragraph 4 of Recommendation No. R (87) 21 of the Council of Europe's Committee of Ministers to member States on assistance to victims and the prevention of victimisation, which recommends that the governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) emergency help to meet

<sup>4</sup> Paragraph 3 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34).

immediate needs (...)” and Paragraph 17 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>5</sup>

**Guideline III: Continuing ~~help~~ Assistance**

Amnesty International and the International Commission of Jurists recommend that draft Guideline III be strengthened in order to enshrine the principles set out below. This recommendation is consistent with Paragraph 4 of Council of Europe’s Committee of Ministers Recommendation No. R (87) 21 to member States on assistance to victims and the prevention of victimisation which recommends that governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) continuing medical, psychological, social and material help”, and Paragraph 14 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which states that “Victims should receive the necessary material medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.” Such assistance must not only be available, but must also be accessible.

<b>III. Continuing <del>help</del> Assistance</b>
---

States should <del>provide for</del> <i>ensure the availability, accessibility and provision of necessary and appropriate continuing <del>help</del> assistance, including (medical, psychological, legal, social and material) for the</i> to victims of terrorist acts as well as to their <del>[families]</del> <del>[next of kin]</del> .
---

**Guideline IV Investigation:**

Amnesty International and the International Commission of Jurists consider that Guideline IV on Investigation should be strengthened to reflect accurately the case-law of the European Court, including the cases of *Jordan v United Kingdom* and *Finucane v United Kingdom*.

---

<sup>5</sup> Paragraph 17 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states: “In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.” Paragraph 3 states: “The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”

#### IV. Investigation

1. Following a terrorist act, States have the obligation to open an official investigation. *The investigation must be prompt, thorough, effective and independent, capable of leading to the identification of the persons reasonably suspected of being responsible for such act. It must be aimed at determining who was responsible for the act.*
2. In this framework, special attention must be paid to the victims of terrorist acts and their families in this investigation. *They must have the right to present and challenge evidence and receive prompt information about the progress of the investigation, unless they specifically request not to. In addition the methods, scope and results of the investigation should be made public.*
3. In cases where it is decided to take no further action *following the investigation*, the victim and/or their family should have the right to have ~~ask for~~ this decision ~~to be~~ reviewed by ~~the~~ a competent *independent* authority. ~~The victim should also have a right of the victim to~~ institute proceedings against the presumed perpetrator(s) before the competent court *must be respected and protected.*
4. At all stages of the *investigation and any subsequent* proceedings, victims should be ~~questioned~~ *treated* in a manner which gives due consideration to their personal situation *and respects and protects* their rights and their dignity.

#### Guideline V: Effective access to the law and to justice

Amnesty International and the International Commission of Jurists urge the DH-S-TER to strengthen Guideline V by incorporating the elements contained in Paragraph 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in full in footnote 6, below.

*At a minimum* the existing text should contain the elements set out below:

#### V. Effective access to the law and to justice

1. States must ~~make every effort to~~ guarantee effective access to the law and to justice ~~for~~ to victims of terrorist acts and their [families] [~~next of kin~~]. In particular, ~~an~~ *information, aid and assistance* should be provided to ensure effective access to the law and to justice, notably to cover the costs that ~~starting~~ such procedures can entail[, including legal assistance].
2. States must make sure that victims of terrorist acts and their [families] [~~next of kin~~] have:

- (i) the right to bring a civil action before the competent courts in support of their rights, in particular their right to ~~redress~~ *reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;*
- (ii) an adequately recognised place in criminal proceedings, *in a manner that is consistent with the rights of the accused to a fair trial.*<sup>6</sup>

### **Guideline VI: Administration of Justice**

Amnesty International and the International Commission of Jurists urge the DH-S-TER to amend draft Guideline VI relating to bringing the suspected perpetrators to justice in a manner consistent with the requirements of Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Paragraph 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (set out in full in footnote 6, above) as well as Recommendation No R (85) 11 of the Committee of Ministers to member states on the position of the victim in the framework of criminal law and procedure. To these ends, the organizations recommend the following amendments:

---

<sup>6</sup> This recommendation is consistent with the obligation of all states to ensure that the accused receives a fair trial, in accordance with international standards, including Articles 5 and 6 of the European Court of Human Rights and Article 68 of the Rome Statute of the International Criminal Court, and that the victim receives reparation.

Paragraph 6 of the UN Basic Principles of Justice for Victims of Crime and Abuse of Power states (emphasis added) :

6. “The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, **without prejudice to the accused** and consistent with the relevant national criminal justice system;
  - (c) Providing proper *assistance to victims throughout the legal process*;
  - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
  - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

See also paragraph 4 of Recommendation No. R (87) 21 of the Council of Europe’s Committee of Ministers to member States on assistance to victims and the prevention of victimisation which states that governments of member States should “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) assistance during the criminal process, with due respect to the defence”.

## VI. Administration of justice

~~[In the presence] [On request] of victims of terrorist acts or their [families] [next of kin]; States must should, in accordance with their national legislation, [strive to] take effective measures to bring individuals reasonably suspected of such acts to justice, and judge them within a reasonable time, in competent, independent and duly constituted civilian tribunals in proceedings which meet international standards of fairness.~~

*Victims and their families shall be informed of their role and the scope, timing and, upon their request, the progress and the disposition of such proceedings. Assistance shall be provided to victims and their families throughout such proceedings. Where appropriate, the state shall ensure adequate protection of victims, witnesses and their families.*

## Guideline VII: Reparation

Amnesty International and the International Commission of Jurists urge that Guideline VII on Reparation be amended to reflect the right of victims to reparations including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

## VII. [Reparation] [Compensation]

1. ~~{Victims of terrorist acts and their [families] [next of kin] should receive a fair and appropriate [reparation], including [compensation], restitution, rehabilitation for the damages that they suffered. When [reparation] [compensation] is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts committed [on their territory] [under their jurisdiction], States should introduce a mechanism on—to ensure compensation—to allow for fair and appropriate compensation of reparation to victims and [their family] [their next of kin]. [In cases where this [reparation] [compensation] is not ensured by this State, the national State of the victim should make sure to provide it].~~

2. ~~This mechanism on compensation for reparations should be easily accessible, involve a simple procedure and allow for compensation-reparation to be provided for rapidly.~~

3. ~~Member States should also facilitate [administrative] co-operation with the competent authorities of the member State on the territory of which a terrorist act was committed to facilitate access to compensation of reparations to their nationals.~~

[4. ~~Member States whose nationals were victims of a terrorist act on the territory of a non-member State should contact the competent authorities of this State with a view to cooperating in order to facilitate access to compensation of these persons.]~~



In making these recommendations, the organizations remind the DH-S-TER that Article 75 of the Rome Statute of the International Criminal Court requires that Court to establish principles relation to reparation to or in respect of victims of crimes falling within its jurisdiction. Amnesty International and the International Commission of Jurists also remind the DH-S-TER that these principles are enshrined in the *Set of Principles for the protection and promotion of human rights through action to combat impunity* and the *draft UN Basic Principles on the Right to Remedy and Reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, which are both currently being developed by the international community.

#### **Guideline IX: Information to Victims and their Families**

Amnesty International and the International Commission of Jurists urge the DH-S-TER to amend Guideline IX on Information and to place it much earlier in the text. The organizations consider that this Guideline should simply require States to promptly provide Victims and their families with information about their rights including to reparations and the services and assistance available to them and how to access such, in a language that they understand.

As noted above, the organizations considers that additional provisions relating to providing information to victims and their families (including in the context of Investigations and Criminal Proceedings against suspected perpetrators) should be incorporated into the relevant Guidelines.

#### **Guideline X: Training**

Amnesty International and the International Commission of Jurists welcome the inclusion of a Guideline on Training. The organizations recommend that this Guideline require states to ensure the training of law enforcement and judicial authorities and others who are likely to be responsible for providing assistance and services to victims and their families.

In drafting this Guideline, the organizations recommend that the DH-S-TER incorporate Article 16 of the UN Declaration of Basic Principles of Justice for Victims of Violent Crime and Abuse of Power which states:

“16. 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.”

*See also* the EU Council Framework Decision on the standing of victims in criminal proceedings of 15 March at paragraph 11 of the Preamble and Article 14.