



THE ARMS TRADE TREATY AND VICTIM ASSISTANCE – REVISED VERSION

**AMNESTY
INTERNATIONAL**



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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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EXISTING INTERNATIONAL STANDARDS¹

In 2006, after an international campaign led by Nobel Peace Laureates and NGOs from all regions of the world, including the Amnesty International movement, 153 states voted in favour of United Nations general assembly resolution 64/48 calling on member states to establish a “strong and robust” treaty and achieve an “effective” instrument with the *highest possible common international standards* for the import, export and international transfer of conventional arms. While the negotiation conference is to be held in July 2012, a number of issues relating to the possible content of the Treaty have already been discussed by States, including: the scope of the treaty, the criteria against which to assess the risks associated with a potential export or international transfer, implementation mechanisms and final provisions. A further issue that has been raised is whether victim assistance should be addressed within the Arms Trade Treaty (ATT).

Many types of conventional weapons, munitions, armaments and related equipment are often used in an illegal and illegitimate manner to violate national and international laws, including international human rights law, international humanitarian law, and national criminal laws.² Violations can often occur without the use of conventional arms as well. However, regardless of the manner in which the violation occurred, the contours of State responsibility for providing reparations to victims for acts or omissions attributable to the State³ that result in violations of international law are well established.

Over the last few decades, significant progress has been made in developing legal frameworks, establishing institutions and creating formal and informal mechanisms for providing protection, redress and justice for victims of a range of violations and abuses of international law, including, for example:

- victims of crime and abuse of power;
- victims of violations of international human rights law;
- victims of violations of international humanitarian law;
- victims of “collective” crimes (i.e. war crimes, crimes against humanity, genocide);
- victims of terrorist acts; and

¹ Amnesty International wishes to acknowledge the legal analysis and drafting of Clare da Silva in this report.

² Thus, all international transfers of conventional arms should be carried out in accordance with States’ international legal obligations, and with national laws and policies that implement those obligations. See, Amnesty International, ‘How to apply human rights standards to arms transfer decisions’ (Index: ACT 30/008/2008), 1 October 2008; International Committee of the Red Cross (ICRC), ‘Arms Transfer Decisions: Applying International Humanitarian Law Criteria’ (Geneva, 2007).

³ States are responsible for their failures to meet their international obligations even when substantive breaches originate in the conduct of private persons, as States are obligated to exercise due diligence to eliminate, reduce, and mitigate the harms and consequences of violations of human rights.

- victims of human trafficking.⁴

These frameworks and mechanisms have led to the establishment of widely accepted international standards concerning the treatment of victims. These standards articulate the full range of States' obligations in providing reparations to individuals.

Many types of conventional weapons, munitions, armaments and related equipment are often used in an illegal and illegitimate manner to violate national and international laws, including international human rights law, international humanitarian law, and national criminal laws. Violations can often occur without the use of conventional arms as well. Regardless of the manner in which the violation occurred, the contours of State responsibility for providing reparations to victims for acts or omissions attributable to the State⁵ that result in violations of international law are well established.

One of the first significant steps in victim's assistance at the international level was the *United Nations Declaration on the Basic Principles of Rights of Victims of Crime and Abuse of Power* (1985).⁶ More recently, this Declaration has been complemented by the *Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005).⁷

The Basic Principles are comprehensive and identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law with respect to victims.⁸ Specifically victims of gross violations of international human rights law and serious violations of international humanitarian law, are entitled to:

- **the right to an effective remedy including justice and fair treatment:** this includes a duty on the State to investigate, prosecute and punish those responsible for violations, equal access to an effective judicial remedy as provided for under international law;

⁴ Annex A provides some examples of the existing legal frameworks and mechanisms.

⁵ States are responsible for their failures to meet their international obligations even when substantive breaches originate in the conduct of private persons, as States are obligated to exercise due diligence to eliminate, reduce, and mitigate the harms and consequences of violations of human rights.

⁶ Annex A provides some examples of the existing legal frameworks and mechanisms.

⁷ The General Assembly approved the Basic Principles and Guidelines in 2005 after 15 years of their development.

⁸ According to the Basic Principles (2005) a person is a victim if they suffered harm or loss, regardless of whether a perpetrator is identified or whether he/she has a particular relationship with the victim; there are different types of harm or loss which can be inflicted, and these can relate to both positive acts or omissions; there can be both direct as well as indirect victims of violations, and indirect victims too may be entitled to reparations; and persons can suffer harm individually or collectively.

- **the right to reparations** that are proportional to the gravity of the violation, including:
 - a. restitution measures to restore the victim to his/her original situation before the violation;
 - b. compensation for any economically assessable damage as appropriate and proportional to the gravity of the violation;
 - c. rehabilitation, including appropriate medical and psychological care as well as legal and social services;
 - d. measures of satisfaction including, amongst others, the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and
 - e. guarantees of non-repetition from the State including measures to contribute to prevention.

ENFORCEMENT OF EXISTING RIGHTS

With a full range of legal rights for victims well established by the international community, efforts should and have turned to the better enforcement of those rights at the national level. Amnesty International reaffirms the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels. Amnesty International continues to rigorously advocate for the full realization by States of victims' rights as set out in the existing and comprehensive legal frameworks.

If UN Member States agree that victim rights should be addressed within the ATT, a reaffirmation of such existing rights could be included in the text of the ATT as follows:

Each State Party undertakes to take steps to meet its existing obligations to ensure the provision of effective remedies and reparations to victims of violations of international law, including gross violations of international human rights law and serious violations of international humanitarian law. Remedies include the victim's right to the following as provided for under international law:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered;
- Access to relevant information concerning violations and reparation mechanisms.

ANNEX A

EXAMPLES OF EXISTING LEGAL FRAMEWORKS SETTING OUT REMEDIES AND REPARATIONS

VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

Universal Declaration of Human Rights, Article 8:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

International Covenant on Civil and Political Rights:

Article 2(3):

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Convention on the Elimination of All Forms of Racial Discrimination, Article 6:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Article 7:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.

African Union, Protocol on the Rights of Women in Africa, Articles 4:

States Parties shall take appropriate and effective measures to:

f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.

Convention on the Rights of the Child, Article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

United Nations, Set of Principles to Combat Impunity (2005, E/CN.4/2005/102/Add.1.), Principle 31:

Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.

REGIONAL HUMAN RIGHTS CONVENTIONS

African Charter on Human and Peoples' Rights, Article 7:

Every individual shall have the right to have his cause heard...

American Convention on Human Rights, Article 25:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

European Convention on the Compensation of Victims of Violent Crimes, Article 2:

When compensation is not fully available from other sources the State shall contribute to compensate:

- a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;
- b. the dependants of persons who have died as a result of such crime.

Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

The Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), Article 3:

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, Article 91: A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Rome Statute of the International Criminal Court, Article 75:

The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79...

“VICTIMS OF CRIMES”

The UN Office on Drugs and Crime (UNODC) has done much of the work relating to victims of crime. Efforts to increase the focus on victims of crime within UNODC by civil society has led to the development of a Draft UN **Convention on Justice and Support for Victims of Crime and Abuse of Power** which civil society actors are continuing to work on increasing support from States on such a treaty. The draft treaty also frames the whole scope of rights of victims in line with the Victims Declarations and contains provisions on:

- Access to justice and fair treatment (including protection of victims, witnesses and experts, and Information
- Assistance, including the necessary material, medical, psychological and social assistance to victims, provided through government, voluntary, community-based and indigenous means.
- Restorative justice

- Restitution including reparation
- Compensation

United Nations Declaration on the Basic Principles of Rights of Victims of Crime and Abuse of Power, Article 4:

Victims should be treated with compassion and respect for their dignity. They 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.

“COLLECTIVE” CRIMES

The adoption of **the Rome Statute governing the International Criminal Court (ICC)** marked the first time that an international criminal body was authorized to award reparations, including restitution, compensation, and rehabilitation, against individual perpetrators of mass atrocities for the benefit of their victims.

The Rome Statute creates two separate reparative mechanisms for the benefit of victims of crimes within the jurisdiction of the Court (crimes against humanity, war crimes, genocide and aggression). The first is case-based reparations governed by Article 75 of the Rome Statute, which provides, in paragraph 1, that the Court **“shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”** Article 75 goes on to say that, on the basis of these principles, the Court may make an order of reparations “directly against a convicted person” to, or in respect of, victims.

The second reparative mechanism is unconnected to any individual case before the ICC. An independent Trust Fund for Victims has been established and it is to use its resources “for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.” This second mechanism, which is a situation based reparations scheme, is an important complement to the case-based reparations scheme envisioned under Article 75, as the ICC will only have the time and the resources to prosecute a limited number of perpetrators for a limited number of crimes. The Fund, which may receive voluntary contributions from governments, international organizations, and private donors, has been implementing at least thirty-one projects (as of 2010), outside of the context of case-based reparations, targeting victims of crimes against humanity and war crimes in the Democratic Republic of Congo and Uganda.

International Law Association, Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict, Article 6:

Victims of armed conflict have a right to reparation from the responsible parties.

VICTIMS OF TERRORIST ACTS

United Nations Global Counter-Terrorism Strategy 2006, Section I, paragraph 8:

“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. We will also strive to promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation. This could include exploring at the General Assembly the possibility of developing practical mechanisms assistance to victims.”

UNODC addresses both victims of crime and terrorists acts. UNODC has been contributing to UN Counter Terrorism Implementation Task Force (CTITF's focus on supporting victims of terrorist crimes by spearheading a study on criminal justice responses to supporting victims to be published in mid-2011. This study will form a part of UNODC's specialized technical assistance tools and will complement CTITF's media training programme for victims, as well as a study on financial support for victims of terrorism.

VICTIMS OF HUMAN TRAFFICKING

Convention on Trans-national Organized Crime in 2000 and its optional protocol in 2002 on trafficking includes specific sections for victims;

Protocol Article 6(2):

Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- (a) Information on relevant court and administrative proceedings;
- (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence...

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society...

WEAPONS SPECIFIC TREATIES

Recent weapon specific treaties have also emphasized the need to provide medical care, rehabilitation and psychological care assistance to victims of injuries resulting from a specific type of weapon that has been banned under an international treaty (landmines, cluster munitions) or to provide specific support to victims from a type of weapon used in armed conflict that has especially profound impacts on civilians (explosive weapons).

Cluster munitions convention:

Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

Landmines Convention, Article 6(3):

Each State Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of mine victims, and for mine awareness programs. Such assistance may be provided *inter alia* through the United Nations system, relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003, Article 8(2):

Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war. Such assistance may be provided *inter alia* through the United Nations system, relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

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