



INTERNATIONAL HUMAN RIGHTS CLINIC  
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

## VICTIM ASSISTANCE UNDER THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

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The Treaty on the Prohibition of Nuclear Weapons (TPNW) combines a comprehensive ban on nuclear weapons with obligations to assist victims and remediate the environment affected by use and testing. In so doing, the treaty aims both to prevent future harm and to address harm that has already occurred. Adopted in 2017, the TPNW is the most recent humanitarian disarmament treaty, meaning that it seeks to minimize the suffering caused by inhumane and indiscriminate weapons. This paper provides an overview of the victim assistance provisions in the TPNW, and guidance from other humanitarian disarmament treaties as to how they might be implemented.

### **What is Victim Assistance?**

Victim assistance is a positive obligation characteristic of humanitarian disarmament treaties. It responds to the needs of people harmed by certain weapons – particularly their long-term needs – and embodies the enduring commitment of states parties to work towards victims’ full and effective participation in society through the realization of their human rights. Victim assistance can come in a variety of forms, including not only medical care, rehabilitation, and psychological support, but also measures to ensure social and economic inclusion.

Victim assistance should not be viewed as charity. It is also not the same as financial compensation, although it does not preclude compensation. Rather, victim assistance is a tool for reinforcing victims’ rights and ensuring their needs are met.

### **Victim Assistance Provisions in Other Humanitarian Disarmament Treaties**

The TPNW encompasses key norms and standards of victim assistance developed under previous humanitarian disarmament treaties. The Mine Ban Treaty, adopted in 1997, was the first treaty governing weapons to contain a victim assistance provision. Under the umbrella of international cooperation and assistance, that treaty requires states parties “in a position to so” to provide assistance for victims. Protocol V of the Convention on Conventional Weapons, adopted in 2003, contains a similar reference to victim assistance.

Building on those two instruments and the 2006 Convention on the Rights of Persons with Disabilities, the 2008 Convention on Cluster Munitions goes even further. It places explicit obligations on states parties affected by cluster munitions to provide assistance to victims in their territory and provides detailed guidance on how those obligations should be implemented. The convention further requires states parties in a position to do so to help affected states parties meet their obligations.

## **Victim Assistance Provisions in the TPNW**

Drawing heavily from the Convention on Cluster Munitions, the TPNW imposes comparable obligations on states parties to provide assistance for nuclear weapons victims. The most relevant parts of the TPNW are as follows:

### **Article 6**

#### **Victim assistance and environmental remediation**

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. . . .

### **Article 7**

#### **International cooperation and assistance**

1. Each State Party shall cooperate with other States Parties to facilitate the implementation of this Treaty.
2. In fulfilling its obligations under this Treaty, each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties.
3. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.
4. Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices. . . .

The TPNW's victim assistance provisions require a holistic response to the human suffering caused by the use and testing of nuclear weapons. They address the physical and non-physical harms victims continue to experience and oblige states parties affected by nuclear weapons to dismantle barriers and ensure victims' full and effective participation in society.

Under Article 6, the primary responsibility for providing victim assistance rests with the affected state party. This approach respects the affected state's sovereignty by allowing it to address issues within its borders. It recognizes that the affected state is in the best position to assist because it has a more in-depth understanding of the problem and easier access than other states parties to its people. The approach also follows the legal precedent of past humanitarian disarmament treaties and international human rights law, which requires countries to ensure the rights of their own people.

An affected state party does not have to bear this responsibility alone, however. Article 7 entitles it to ask for and receive assistance from other states parties, and all states parties in a position to do are mandated to help it fulfil its obligations to victims. Since assistance can take a variety of forms – including financial, material, and technical assistance – every state party should be in a position to provide some sort of aid. Such assistance may be delivered directly to the affected state or indirectly through international and nongovernmental organizations. States parties that have used or tested nuclear weapons are specifically identified as having to provide assistance to affected states parties.

## Principles of Victim Assistance

It is too early to know exactly how victim assistance will be implemented under the TPNW because it has not yet entered into force. A number of principles have emerged, however, from the victim assistance provisions in the other humanitarian disarmament treaties. These principles should inform implementation of the victim assistance provisions under the TPNW:<sup>1</sup>

- **Human rights-based approach:** Victim assistance is not only a medical or rehabilitation issue; it is also a matter of human rights. A rights-based approach “seeks to address the needs of victims and alter the physical, legal and social environment that prevents the full realization of their human rights.”<sup>2</sup> Victim assistance should, therefore, respond to victims’ physical and psychological needs and enable victims’ full participation in society.
- **Inclusion of victims:** Victims are the experts on their needs. Their views should be heard and addressed in decision-making that affects their lives.
- **Tailored assistance that is age and gender sensitive:** Services for victims should be tailored to victims’ needs and take into account the age and gender of the victim. Barriers to recovery and inclusion in society can differ among groups; for example, women and children may face greater obstacles because they are disproportionately affected by nuclear weapons. States have an active duty “to ensure that victim assistance achieves substantive equality.”<sup>3</sup>
- **Non-discrimination:** “Victim assistance programs should not discriminate against or between victims for any reason.”<sup>4</sup>
- **Development of laws, policies, national plan, budget, and focal point:** To meet its victim assistance obligations, an affected state party should, at a practical level, develop, implement, and enforce any necessary national laws and policies. It should also incorporate relevant guidelines and good practices in the delivery of victim assistance, adopt a national plan and budget for victim assistance activities, and designate a government focal point to coordinate implementation.
- **Reporting obligations:** An affected state party should report on the status and progress of implementation of its victim assistance obligations and update that information regularly.

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<sup>1</sup> This list of principles is drawn from: Article 36 and Harvard Law School International Human Rights Clinic, “Victim Assistance in the Nuclear Weapon Ban Treaty: A Comprehensive and Detailed Approach,” June 2017, <http://www.article36.org/wp-content/uploads/2017/06/VA-ban-treaty-full.pdf> (accessed March 11, 2018); International Campaign to Abolish Nuclear Weapons (ICAN), “Victim Rights and Victim Assistance in a Treaty Prohibiting Nuclear Weapons: A Humanitarian Imperative,” UN Doc. A/CONF.229/2017/NGO/WP.14, March 31, 2017, <https://www.un.org/disarmament/ptnw/pdf/A%20CONF.229%202017%20NGO%20WP.14.pdf> (accessed March 11, 2018); International Campaign to Ban Landmines, “Guiding Principles for Victim Assistance,” <http://icbl.org/media/919871/VA-Guiding-Principles.pdf> (accessed March 11, 2018); Markus Reiterer and Tirza Leibowitz, “Article 5: Victim Assistance,” in Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary* (Oxford: Oxford University Press, 2010).

<sup>2</sup> ICAN, “Victim Rights and Victim Assistance in a Treaty Prohibiting Nuclear Weapons,” para. 10.

<sup>3</sup> Reiterer and Leibowitz, para. 5.86.

<sup>4</sup> ICAN, “Victim Rights and Victim Assistance in a Treaty Prohibiting Nuclear Weapons,” para. 10.

## Victim Assistance in the Context of Nuclear Weapons

The principles enumerated above apply broadly to victim assistance under humanitarian disarmament treaties. The challenges presented by nuclear weapons, however, differ in some ways from those presented by other inhumane and indiscriminate weapons, such as antipersonnel landmines and cluster munitions. TPNW states parties should take into account the following issues when implementing their victim assistance obligations:<sup>5</sup>

- **Intergenerational nature of the harm:** The harm from nuclear weapons is not limited to one lifetime. The children and grandchildren of survivors can also suffer health impacts and stigma.
- **Disproportionate impact on indigenous communities:** Nuclear weapon testing has disproportionately taken place on indigenous lands, resulting in cultural harm such as forced displacement from homelands and disconnection from indigenous ways of life.
- **Close link between environmental damage and harm to people:** The harm to people from nuclear weapons is closely linked to harm to the environment. Long-term environmental contamination adversely affects human health and a number of human rights, such as the right to water and the right to freedom of movement.

*For more information on environmental remediation, see Harvard Law School International Human Rights Clinic, “Environmental Remediation under the Treaty on the Prohibition of Nuclear Weapons,” April 2018.*

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<sup>5</sup> See ICAN, “Victim Rights and Victim Assistance in a Treaty Prohibiting Nuclear Weapons,” paras. 14-17.