



Victim Rights and Assistance

Frequently Asked Questions

We are negotiating a prohibition on nuclear weapons, why do we need to talk about victims?

As a treaty aiming to end the suffering caused by nuclear weapons, it is important to ensure people remain at the centre of the treaty. Victims of nuclear weapons continue to see the realization of their rights impeded by the detonation of nuclear weapons. Specific actions need to be taken to respect rights and ensure victims are able to participate in society on an equal basis with others. These actions would be considered victim assistance.

This treaty should build on work done in previous humanitarian disarmament treaties especially the Ottawa Treaty, the Convention on Cluster Munitions and CCW Protocol V. All of these treaties contain provisions for victim assistance. It will be a step backwards to not include victim assistance and victim rights in the nuclear ban treaty.

Provisions related to victim assistance are a concrete way for all states to demonstrate commitment to eliminating the humanitarian harm caused by nuclear weapons regardless of whether or not they are an affected state.

Who is a victim of nuclear detonations?

States will need to include a definition of victim in the new treaty prohibiting nuclear weapons in an article on victim rights and assistance or elsewhere in the treaty. A rights-based approach to determining who is a victim of nuclear weapons is most likely the best option. The definition of a victim from the Convention on Cluster Munitions may be helpful here. In the CCM, victim “means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.” A similar definition of nuclear weapons victim could be included in the ban treaty with a focus on the detonation of nuclear weapons.

Due to the expected nature of the new prohibition treaty, it may be in states’ best interest to focus the definition of victim as those impacted by nuclear detonations. While parts of the nuclear supply chain may have similar health impacts, a disarmament treaty prohibiting nuclear weapons should concentrate on the impacts of nuclear weapon detonations. If these provisions be included in the treaty, persons and communities impacted by other parts of the nuclear supply chain could use the provisions as tools for advocacy on their own behalf.¹ In practice, the principle of non-

¹ There may be specific instances of nuclear weapons victims related to accidents with nuclear weapons where the warhead itself did not detonate. Those cases presumably would be dealt with on a case-by-case basis by affected states.



discrimination will ensure that those with similar needs to victims of nuclear detonations receive the services they need.

A rights-based definition would be in line with the developing norms surrounding victim rights and assistance in humanitarian disarmament more broadly. Additionally, a rights-based definition of a nuclear detonation victim would be flexible enough to cover the breadth of impacts of nuclear weapons. It would be up to each state to determine how best to implement a rights-based definition of victim in their own national context.

What is victim assistance?

At the most basic level, victim assistance is action taken to ensure that victims have their needs met and their rights respected. The field of victim assistance emerged from the Ottawa Treaty banning landmines and has developed through the Convention on Conventional Weapons – Protocol V and the Convention on Cluster Munitions. Victim assistance includes emergency care, ongoing medical care, physical rehabilitation, psychological or social support and economic integration, all of which aim to support victims' full participation in society and realization of their rights. Victim assistance can take the form of specific initiatives as well as broader actions in support of human rights, disability, health, education, employment, development and poverty reduction.

Civil society has developed a number of principles and these principles could inform discussions about how victim assistance would be implemented in the context of a nuclear ban treaty.

Human rights based approach to international humanitarian law. A rights based approach to victim assistance takes into account human rights law and principles in its implementation. It seeks to address the needs of victims and alter the physical, legal and social environment that prevents the full realization of their human rights. Victim assistance can contribute to mitigating barriers to the full realization of human rights. Without the recognition that victims have specific rights, it will be difficult to ensure those rights are realized.

Participation, inclusion and close consultation. Victims' views should be heard and considered at all levels of decision-making from the international to the local. Victims are experts on their needs and the fulfilment of their rights.

Age and gender sensitive. Assistance to victims should be sensitive to diversity among victims and meet the needs of individuals. Men, women, girls and boys have different experiences as well as different physical, social, economic and cultural needs and face different challenges. A one-size fits all approach will not be effective.

Non-discrimination. Victim assistance programs should not discriminate against or between victims for any reason. Differences in services or treatment should only be based on the medical, psychological and socio-economic needs of victims. The principle of non-discrimination also applies to persons who have suffered injuries or disabilities from other causes.

The effects of nuclear weapon detonations are extremely different from conventional weapons, how can we use the standards set by the Mine Ban Treaty and the Convention on Cluster Munitions as a framework for victim assistance in the ban treaty?

It is true that the mutagenic and tetragenic effects of nuclear weapons do not have a parallel in conventional weapons; however, the impact of these effects on a person's ability to fully realize their human rights is similar. If we take a rights-based approach to defining a victim of nuclear weapons, then only those who have experienced a substantial impairment of the realization of their rights caused by the detonation of nuclear weapons compared to the general public would be considered victims. This definition can continue to apply to future generations who experience physical effects, social marginalisation or face other barriers to realizing their rights due to their family connection to a nuclear detonation. One change when it comes to nuclear weapons is that someone who was not considered to be a victim could later in life experience health effects which would impact their human rights and meet the definition of victim.

Everyone on Earth has been exposed to radiation from nuclear weapon detonations, would states parties have to provide victim assistance to everyone?

Victim assistance is action taken to mitigate the impairment of a person's rights caused by nuclear weapons and to ensure they can participate in society on an equal basis to others. Unfortunately, some exposure to radiation due to nuclear weapons detonations is the baseline. Therefore, only persons who face barriers to realizing their rights compared to their state's baseline population due to nuclear detonations would be considered victims and eligible for victim assistance.

What would victim assistance look like under a treaty prohibiting nuclear weapons?

Exactly how victim assistance would be implemented under a treaty prohibiting nuclear weapons would be up to states with victims to determine which actions are necessary to meet the needs of their citizens and to respect their rights.

The new treaty could follow the model of the Convention on Cluster Munitions and lay out key obligations without delving into specifics of implementation. The text of Article 5 of the Convention on Cluster Munitions could be used as a starting point for a similar article in the nuclear ban treaty.

Article 5 reads:

1. 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.
2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:
 - a. Assess the needs of cluster munition victims;
 - b. Develop, implement and enforce any necessary national laws and policies;

- c. Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- d. Take steps to mobilise national and international resources;
- e. Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- f. Closely consult with and actively involve cluster munition victims and their representative organisations;
- g. Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
- h. Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

In the above text, the key obligations of states are clearly articulated but the exact method of implementation remains up to the individual states. As Paragraph 2(a) indicates states have the obligation to assess the needs of victims; this needs assessment would be the basis for all further victim assistance activities.

Additionally, states could consider including provisions regarding community assistance activities to address the breadth of humanitarian impacts to communities especially with regard to nuclear weapons tests. Such activities could include health assistance provision, as well as adequate support for lost livelihoods due to contaminated land.²

At the negotiation stage of the treaty, states should focus on outlining the key obligations in consultation with victims themselves. Since the exact methods of implementation will vary by state part, what concerns states and civil society now is what states need to do rather than how they would do it.

Won't victim assistance obligations place an undue burden on states parties?

A rights-based understanding of victim assistance requires states to ensure victims of nuclear detonations can realise their human rights. Ensuring the human rights of citizens is an obligation of all states so victim assistance obligations will just be making clear these pre-existing responsibilities apply to all citizens including those impacted by nuclear detonations.

The integrated approach to victim assistance is currently gaining prominence. In this approach, victim assistance is a combination of specific initiatives and more general development, humanitarian, social and health initiatives. An integrated approach to victim assistance should, of course, ensure that victims of nuclear weapons have access to the specific services they need but it

² TWR. Environmental Mechanics: Re-Imagining Post-Conflict Environmental Assistance, p. 61



should also ensure that they can also access broader services which form the basis of public services provided to citizens.

The new treaty prohibiting nuclear weapons should include a positive obligation of international cooperation which could be used to fund or otherwise support victim assistance activities in affected states.

Shouldn't the states that used or tested nuclear weapons be responsible for assisting the victims?

Victims of nuclear weapon detonations are first and foremost citizens. It is the responsibility of the state to ensure that all citizens can exercise their rights and to take action to eliminate barriers to full participation in society for any part of the population.

In a treaty that includes international cooperation provisions, all states parties in a position to do so have the responsibility to contribute to the treaty obligations. Such provisions would ensure that affected states which need support will be able to request assistance to meet their victim assistance obligations. States that have used or tested nuclear weapons will have the same responsibilities under international cooperation provisions when they join the treaty.