

PROTECTING TOGETHER

Preventing, Mitigating, and Addressing Civilian Harm

A Framework for Evaluating Policy and Practice

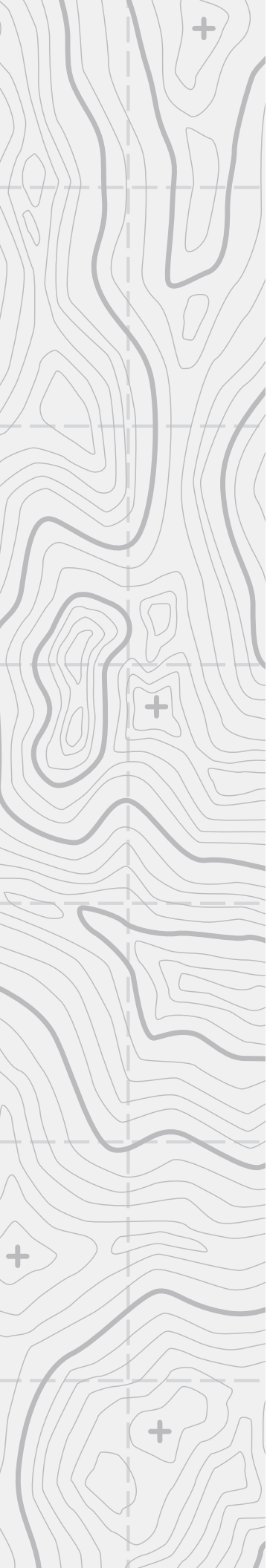


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Methodology:

This framework attempts to organize effective state practices in the prevention, minimization, and response to harm into four main categories and two supplemental categories using a catalogue of illustrative indicators. No framework for a topic as broad could be entirely exhaustive or complete, nor entirely representative of all steps necessary or best able to protect civilians from violence in all circumstances. In an effort to be thorough, if not exhaustive, the framework draws from recommendations in each of the Secretary General's Annual Reports on the Protection of Civilians from years 2009 to 2021, along with over 100 other reports and sources of guidance, to include those produced by the International Committee of the Red Cross, Center for Civilians in Conflict, PAX, Airwars, UN OCHA, International Peace Institute, the Stimson Center, Every Casualty, and many others listed in the appendix. The final framework is based on the analysis of the author, and any mistakes or omissions are those of the author's alone. The framework attempts to distill and organize repeated points of emphasis, common views, and areas of consensus, but makes no attempt to resolve every set of conflicting perspectives, nor do the authors believe that each of the cited organizations or those who spent time reviewing the framework would agree with each element of the content or its framing. The framework was adapted through practical application in partnership with WANEP and the Ukrainian Red Cross Society in Niger and Ukraine, the latter interrupted by the Russian invasion of Ukraine in the spring of 2022. Financial support from the Swedish Postcode Foundation (Svenska Postkodstiftelsen) made the development and publication of this evaluation framework possible.



INTRODUCTION

States have a wide range of options to adapt domestic law, policy, doctrine, training, procedure, and practice to better protect civilians from the effects of conflict.¹ This framework is intended to provide civil society and governments² both with a meaningful set of indicators that can be used to evaluate state's commitment to protect civilians by the measures it takes – or doesn't take – to prevent, mitigate, and address harm.³

Drawn from sources of international law, authoritative research, practical guidance, and the collective experience of organizations dedicated to the protection of civilians in war, the framework is divided into four categories that together represent a comprehensive approach to civilian harm prevention, mitigation, and response. Each category includes four to six “sub-categories” of analysis, which in turn include five “illustrative indicators”, or criteria, by which an area of practice can be more specifically assessed. While many of the indicators correspond with, and ideally reinforce practical implementation of obligations under international law, many others reflect policies or practices that governments and their security forces may elect to use to better prevent, minimize, and address harm.

The indicators are meant to provide an illustrative and, at best, representative set of end-states, but are by no means exhaustive nor applicable to every context. At the same time, given the fact that efforts to prevent, mitigate, and adequately address civilian harm are complementary and mutually reinforcing, the indicators (and categories) gain additional meaning when assessed in concert with others: a national policy framework without corresponding evidence of practice loses its value, and doctrinal measures to prevent harm are rendered less powerful in their protective effect if a government does little to nothing to investigate or address harm when it occurs.

- 1 This framework does not include measures by which to assess a state's capacity or interest in fulfilling its positive duty to protect people from threats of violence, except to ensure that any such measures are conducted in ways that minimize harmful side effects and protect individual human rights, consider the public's views and perspectives in the provision of security services, and consider alternatives to the use of force in so doing.
- 2 The term “government” is used instead of state in this framework to indicate the broadest entity subject to international law. “Government, in addition to population and territory, is one of the essential elements which qualify a State as a subject of international law (subjects of international law). It is the formative element, the organizational machinery which enables the State to enter into international relations and thus exercise its rights and fulfil its duties (States, Fundamental Rights and Duties).” *Max Planck Encyclopedias of International Law*, s.v. “Governments,” accessed May 4, 2022, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1048?prd=OPIL#>
- 3 This framework uses “prevent” to include any measures taken to reduce incidents or prevalence of harm; “mitigate” to include measures taken to minimize harmfulness before, during, and after operations; and “address” to include both measures taken to inquire into the cause and effect of harm, and to address harm with victims and communities.

Each category also provides a notional set of leadership “tiers”, intended to provide model language that can be used to gauge the overall performance of a government in the relevant category and sub-category of protection, or even to compare a government’s commitment to the category relative to other governments. These tiers, which can be adapted to local context, can also provide meaningful cues as to how a state or armed actor can aspire to become a leader in protecting civilians.

Leadership Tier Guide:

76-100	Leader: Proactive and effective. POC tools and capabilities largely integrated in law, policy, doctrine, and practice.
51-75	Emerging Leader: Proactive and effective at times, partial integration (policy, doctrine, practice) of POC tools and capabilities. Strong potential or emerging as a potential leader.
26-50	Uncommitted: <i>Ad hoc</i> or ineffective, rarely proactive, and POC tools and capabilities largely non-integrated across policy, doctrine, and practice.
0-25	Regressive: Antagonistic and opposed to protection of civilians practices; willfully blind or negligent in practice.



USING THE EVALUATION FRAMEWORK

The Evaluation Framework is designed to help assess a state's commitment to protect civilians by evaluating policy and practice across four main categories and at various stages of a conflict.

1. National Commitment and Enabling environment:

A the national system of laws, policies, and other political indications of government support for the success of protection of civilian practices. This category also includes the conditions necessary for ensuring security forces are accountable to national level policies, and that government activities are transparent and subject to public oversight, to include civil society engagement.

2. Preventing and Mitigating Harm:

The measures taken during planning and operations to prevent harm and to mitigate harm that occurs in the course of operations or as a result of presence and activities.

3. Civilian Harm Response (Reporting, Investigations, Tracking, and Recording):

The systems and procedures in place to detect, investigate, and track civilian harm.

4. Amends and Reparations:

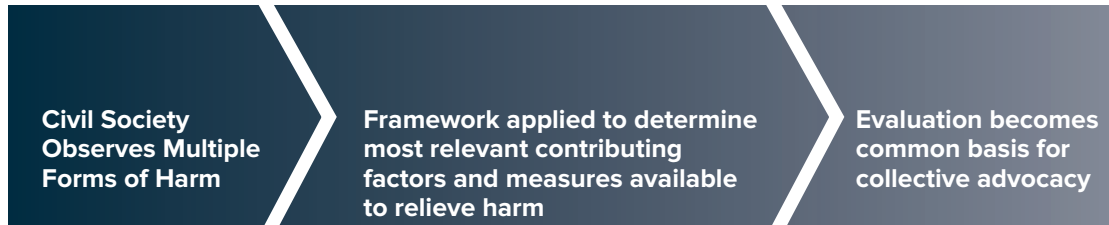
The means by which the state ensures appropriate and effective redress for harms that result from unlawful conduct, as well as the discretionary amends, including monetary and non-monetary expressions of condolence.

Each category also provides up to five “illustrative indicators”, or desired end-states that together constitute a meaningful reflection of a state's performance in that category. The indicators presented in this framework derive from a recurring emphasis in several authoritative sources of guidance on the protection of civilians and have been validated by the experts consulted for this toolkit. Although they are meant to provide a common basis for evaluating state practice, the indicators are by no means exhaustive of the measures states and their security forces should or can take to protect civilians. The user can determine if the indicators provided can be supplemented by additional, different, or more specific indicators or even replaced altogether. Moreover, the user may elect to focus on specific categories, rather than all of them. Finally, the evaluation framework provides the user with a notional basis for assessing the level of a state's commitment for each set of indicators, from being a “leader” in protecting civilians to being “regressive” and acting in ways that are contrary to the interest of protecting civilians.

Two approaches:

- 1 The framework can be used by the user or a coalition of users to identify ways to adapt state practice to better address one or more observable forms of harm or practices that create the risk of harm.

(1) Assessment of needs based on observable phenomena:

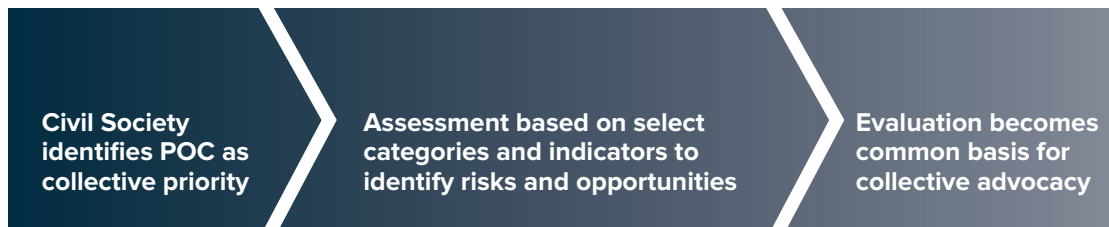


EXAMPLE

Civil society organizations that work on peacebuilding activities observe that civilians in areas where they work are commonly affected by security operations (such as curfews), whereas in other parts of the country, CSOs that focus on human rights are concerned that civilians are unable to report the harm they have experienced resulting from security operations in their area. Using the Evaluation Framework, a group of CSOs together identify the most important contributing factors and develop a clear set of shared priorities that all can promote regardless of sector.

- 2 At any time prior to, or even amidst a state's involvement in conflict, the framework can be applied to understand where gaps in state practice may present risks for civilians; or, conversely, to demonstrate leading practice in the protection of civilians in one or more categories - whether that state or its security forces ever enters a conflict or not.

(2) Evaluation of gaps and opportunities:



EXAMPLE

Several countries are actively planning to bolster the presence of international forces in an ad hoc coalition in partnership with local security forces to combat an armed opposition group. Civil society organizations use the evaluation framework to identify the most critical risks that stem from the status quo, and opportunities for the coalition to prevent and respond to harm.

Because the framework is designed to assess state practice as a comprehensive framework of mutually reinforcing measures, the evaluation framework is **most useful for addressing multiple observable phenomena or developing advocacy strategies that cover more than one category.**

Once the basic approach has been determined, the evaluation framework can be used in one of several ways, depending on the local needs and context:

- 1. As the Basis for a Measurement Tool or Scoring Rubric:** Civil society can borrow from the categories and indicators to develop a tool by which state practice can be scored at the national, geographic, or thematic levels. To use the framework as a scoring tool, the user can select the relevant categories and indicators and assign values to each (e.g 5 or 10 points) and develop a score sheet for tabulating a final “score”. By “scoring” the state or its security forces, civil society can identify the areas most in need of additional attention in their advocacy efforts.

EXAMPLE

Humanitarian and human rights NGOs use the evaluation to “score” the policies and doctrine of a state and its security forces on a scale of 100 (25 points possible for each of four selected categories) to gauge the overall commitment of the national government on the protection of civilians and to identify both gaps and areas of opportunity.

- 2. As the Basis for Comparative Evaluation:** Users can use the evaluation tool to conduct comparative evaluation of state practice by one state relative to other states, or to compare state practice in certain geographies relative to others. Using common indicators and a consistent methodology for gauging practice, the user can identify relative strengths and weaknesses, and focus advocacy efforts on areas of greatest concern.

EXAMPLE

Civil society organizations from four different countries work together, using indicators from the evaluation tool and the “sample leadership levels” to conduct a comparative evaluation of state practice and to identify states that can be seen as “leaders” in certain categories - and those that are clearly “uncommitted” in others - in order to promote a higher standard of practice across all of them.

- 3. As the basis for qualitative or targeted evaluation:** Users can also use the evaluation framework in part or in whole as one of many resources available to conduct an independent, targeted analysis of one or more aspects of state practice.

EXAMPLE

An NGO coalition decides to assess the government’s policy and practice on investigating and providing amends for credible claims of civilian harm. Drawing from the assessment framework and references from the bibliography, the coalition conducts a qualitative assessment and produces a report with policy recommendations.

The background of the page is a topographic map with contour lines and a grid. A solid red horizontal banner is positioned across the middle of the map. The text 'CATEGORY 1' is in white, bold, uppercase letters, and 'National Commitment and Enabling Structures' is in white, bold, title case letters, both centered within the red banner.

CATEGORY 1 National Commitment and Enabling Structures

The success of efforts to prevent, mitigate, and address civilian harm often depends on a range of legal, political, and structural factors that enable efforts in other categories to succeed. These factors, when assessed together with the implementation of protection practices, can also help characterize a government's level of political commitment to protecting civilians and their rights.

The subcategories in this category include:

- 1. The National Policy Framework:** The national policy or system of policies, strategies, and guidance adopted by the executive branch of government and its organs (including security institutions) that establishes clear authorities, responsibilities, and guidance for the prevention, mitigation, and response to civilian harm.
- 2. International Leadership:** Efforts to demonstrate support for international norms and standards, and efforts to promote and model a higher global standard of protection.
- 3. Oversight of Security Institutions:** Means by which relevant security institutions and actors, and the decisions they make, are subject to mechanisms of internal and public oversight.
- 4. National Laws and Legislation:** Domestic laws and legislation relating to the prevention, mitigation, and response to civilian harm, to include any domestic laws that serve to implement international law.
- 5. Commitment to Transparency:** The extent to which the public has access to information and records necessary to evaluate practice and to protect the rights of victims.

National Policy Framework

1.1

The national policy or system of policies, strategies, and guidance adopted by the executive branch of government and its organs (including security institutions) that establishes clear authorities, and responsibilities, and guidance for the prevention, mitigation, and response to civilian harm. A national policy framework, when combined with effective implementation of its provisions, can be helpful for communicating a government's commitment to protect civilians.

National Policy:

The government has adopted a national policy framework for the protection of civilians and civilian objects.

Clear Policy Language:

The policy contains clear language and commitment to protecting civilians.

Clear Roles and Responsibilities:

Policy and implementation guidance includes clear roles and responsibilities.

Clear Implementation Guidance:

Policy includes, or delegates responsibility to develop, detailed implementation guidance.

Budget and Resources:

Funding, personnel, and time are given toward implementation of Protection of Civilians policies.

(1.1) Sample Leadership Tiers:

76-100	Leader: The government has a clear and comprehensive policy framework for the protection of civilians that addresses prevention, reduction, mitigation, and response (including remedy); with clear guidance for implementation, assigned roles and responsibilities, adequate resources for implementation, and political support without significant controversy.
51-75	Emerging Leader: The government has some elements of a national policy framework that provide a sufficient basis for preventing, mitigating, and addressing civilian harm when resourced and sufficiently motivated to do so. The government has assigned roles and responsibilities for various elements of civilian harm prevention, response, and remedy.
26-50	Uncommitted: The government has significant gaps or no policy framework for preventing, mitigating, or addressing civilian harm. Such a policy would encounter significant controversy or resistance, and/or would suffer from the lack of resources or adequate personnel in its implementation. The government may face severe constraints in the implementation of such a policy.
0-25	Regressive: The government is openly antagonistic or ambivalent about protecting civilians in armed conflict or has a record of deliberately harming civilians.

International Leadership

1.2

Efforts to demonstrate support for international norms and standards, and efforts to promote and model a higher global standard of protection through intergovernmental and multilateral bodies.

Binding Treaties:

Ratifies treaties relevant to the protection of civilians and incorporates them into national law.

Other International POC Agreements:

Supports and/or participates in other POC-related agreements and non-binding commitments (see illustrative examples in appendix.)

Support for International Human Rights Bodies and Accountability Mechanisms:

Participates in or supports work of relevant treaty-based and regional human rights bodies and accountability mechanisms.

Supports the POC Agenda at the UN:

Actively supports and prioritizes the protection of civilians (including civilian harm mitigation) at the United Nations and through UN intergovernmental bodies, for example through support for the protection of civilians mandate in UN peacekeeping operations; through resolutions that call attention to or address protection-related concerns; votes in favor of same; written or delivered statements supporting POC in relevant sessions; and/or by participating in the Group of Friends of the Protection of Civilians.

Regional or Sub-regional Leadership:

Demonstrates international leadership on the protection of civilians through regional or sub-regional bodies, e.g., the African Union or ASEAN.

(1.2) Sample Leadership Tiers:

76-100	Leader: The government has a significant record of both ratifying the relevant treaties without impermissible reservations, and supporting other significant international arrangements and declarations. The government supports and participates actively in regional and international human rights bodies or other formal or <i>ad hoc</i> multinational efforts to promote the protection of civilians. The government supports or at minimum avoids interfering in the work of international, national, or ad hoc accountability mechanisms. The government also regularly and actively supports advancement of the protection of civilians agenda at the United Nations and through UN intergovernmental bodies and forums and/or has established itself as a regional or sub-regional leader in protecting civilians.
51-75	Emerging Leader: The government has ratified most if not all of the relevant treaties, and mostly does so without impermissible reservation. The government has a mixed record of support or participation in other significant arrangements or declarations and in promoting or supporting the protection of civilians, but has not actively opposed them or interfered. The government generally supports the POC agenda at the UN but has not taken an active leadership role.
26-50	Uncommitted: Even if the government has an adequate record of treaty ratification, it has made very little effort to implement or abide by its treaty obligations. The government seldom if ever participates in other arrangements or has even at times opposed or interfered with them. The government is ambivalent toward the UN POC agenda.
0-25	Regressive: The government actively opposes key treaties or provisions or demonstrates flagrant indifference or defiance to their requirements. The government routinely interferes with or opposes the UN POC agenda.

Oversight of Security Institutions and Policies

1.3

Means by which relevant security institutions and actors, and the decisions they make, are subject to mechanisms of internal and public oversight. Oversight mechanisms can monitor security forces to ensure they operate in accordance with law and policy and are held accountable for the provision of security services and for their conduct.

Independent Oversight:

External or independent oversight bodies carry out oversight of the security sector and implementation of protection of civilians policies.

Internal Oversight: Security institutions include effective internal oversight and investigative bodies.

Supports for Oversight:

The government and security forces support the work of public and internal oversight and investigative bodies.

Support for Civil Society: The government, to include civilian and military, regularly or systematically engages with civil society to discuss and address protection policies, practices, and concerns.

Legislative Oversight:

Security institutions, policies, and practices, including security cooperation activities, are subject to adequate legislative (e.g. parliamentary or congressional) oversight, ideally through a dedicated sub-legislative committee, working group, or other similar body.

(1.3) Sample Leadership Tiers:

76-100

Leader: Security institutions and security actors are subject to effective forms of internal and external/public oversight to ensure public accountability, transparency, and service delivery. Security institutions have an established record of conducting effective internal investigations. Civil society plays an active role, and the government facilitates that role by providing the channels necessary to engage the government on relevant policies and concerns and by acting on recommendations or providing feedback on why decisions were or were not taken. The legislature plays an active oversight role, to include through a body specifically dedicated to focus on relevant issues of concern.

51-75

Emerging Leader: Security institutions and actors are subject to both internal and public oversight, but the exercise of oversight is unevenly or inconsistently applied, or some forms of oversight less effective or reliable than others. Civil society can engage on related policy matters without undue interference or restriction, but access to the government may be unpredictable or relationship- or issue-dependent. The legislature at times exercises oversight but does not focus or specifically allocate time or attention to related issues.

26-50

Uncommitted: Public oversight of the security sector is weak, and internal forms of oversight are corrupt (vulnerable to influence), non-existent, weak (e.g. lacking political support, resources, or power) and/or ineffective (e.g. unable to perform its tasks based on a lack of capacity). The legislature is indifferent or unhelpful in promoting higher standards for preventing, mitigating, or addressing harm or with respect to transparency. Civil society may face some restrictions or may not have any active channels for engaging the government on related policies.

0-25

Regressive: Security forces and actors are not subject to any form of effective public or internal oversight, and/or the government actively opposes and undermines the role of oversight bodies. Civil society faces severe legal restrictions or administrative burden or cannot engage on security policy at all.

National Laws and Legislation

1.4

Domestic laws and legislation (to include any domestic laws, bylaws, regulation that binds with the force of law, or other forms of implementing legislation) relating to the prevention, mitigation, and response to civilian harm, that serve to implement international law. Domestic laws can establish requirements for governments and their organs to comply with international law and to develop policies and practices that better prevent, mitigate, and address harm.

IHL Implementing Legislation:

Has adopted legislation to implement international humanitarian law.

Civil Society:

National laws enable and do not arbitrarily restrict participation of civil society in public policymaking processes, including security policy

Legislation on the Protection of Civilians:

Has adopted legislative measures to promote the protection of civilians, to include measures relating to prevention, minimization, response, remedy, and transparency.

War Crimes:

Has enacted legislation for the criminalization of war crimes and other serious violations of international law under domestic law and the prosecution of persons suspected of such crimes.

Authorization:

Military operations and security cooperation activities are subject to positive legislative authorization issued by a parliamentary body.

(1.4) Sample Leadership Tiers:

76-100	Leader: The government has ratified relevant treaties and enacted national implementing legislation, to include criminalizing war crimes and serious violations of international law; has also adopted other forms of legislation intended to improve the prevention and response to harm and public transparency. Has refrained from passing any legislation that would inhibit the ability of civil society to participate in public debate or engage the government on relevant concerns.
51-75	Emerging Leader: The government has ratified most relevant treaties, enacted national implementing legislation, and has adopted or is actively considering one or more forms of legislation governing the prevention, mitigation, and response to civilian harm and transparency. Has refrained from passing any legislation that would inhibit the ability of civil society to participate in public debate or engage the government on relevant concerns.
26-50	Uncommitted: The government has ratified some of the more important treaties and enacted implementing legislation but has taken no steps to adopt additional legislation on relevant issues governing the prevention, mitigation, and response to civilian harm or transparency. Civil society may be restricted by legislation from debating or engaging the government on relevant concerns.
0-25	Regressive: The government has elected not to ratify the most important treaties and ignores or tolerates war crimes or grave breaches of the Geneva Conventions by omitting them from domestic law. Civil society faces significant barriers to participating in the public policy process due to restrictive laws.

Commitment to Transparency

1.5

The extent to which the public has access to information and records necessary to evaluate government practice and to protect the rights of victims.

Discloses Legal Positions:

The government makes public and available the domestic and international legal basis for any use of lethal force that may result in civilian harm.

Public Reporting:

The government reports and makes available information about security operations, (including the rationale, status, and outcomes) that may result in harm.

Media and Journalists:

The rights of the media and journalists in reporting on conflict and protection of civilians are protected by law and supported in practice.

Security Cooperation:

The government discloses the nature and intent of its international security cooperation activities, to include arms transfers, hosting arrangements, binding and non-binding security cooperation or intelligence sharing agreements, training and technical assistance, and other forms of cooperation.

Freedom of Information:

Facilitates public's ability to seek and access public records, especially those necessary for the exercise or protection of their rights, and regularly publishes relevant information.

(1.5) Sample Leadership Tiers:

76-100

Leader: The government proactively discloses information about its legal positions and interpretations, shares information about its security operations and its security partnerships and has national legislation and policies guaranteeing the freedom of information, to include the ability to seek and access public records. Exceptions to the right to information are very narrow (e.g. court documents or information that would threaten public safety), and established precisely in law. The government actively shares information with the media and makes officials and records available to journalists. Under the rare circumstance that the government does not share public records or information necessary for the enjoyment or protection of rights, the public may seek remedy from the courts.

51-75

Emerging Leader: The government has demonstrated an increased willingness to share information compared with the past. The government has a recent history of transparency and increasingly shares significant details (e.g. those necessary for public debate) relating to its security operations, partnerships, and its legal interpretations and opinions with the public and the media. Exceptions to the right to information are very narrow (e.g. court documents or information that would threaten public safety) and established precisely in law. Where the government does not proactively share information necessary for the protection or enjoyment of rights, the public may seek remedy from the courts.

26-50

Uncommitted: In law, practice, or both, the government does not recognize a public right to information about security policies and practices. The government may share some information about its legal interpretations, security policies, or practices but places significant limitations and restrictions on the public's access to public records or information, not limited to information that would cause grave damage if disclosed. The media is restricted from reporting on certain aspects of security policy. The courts rarely, if ever, provide remedy.

0-25

Regressive: The government actively restricts all information about security policies and practices from public knowledge except that which is released for the purpose of public relations. The media and/or public face criminal or civil charges, which are not narrowly and specifically prescribed by law, for discussing or writing about security policies or practices.



CATEGORY 2 Civilian Harm Prevention and Mitigation

Through planning, doctrine, procedure, training, and even weapons development or procurement, governments have a range of available options to prevent civilian harm from occurring, and to mitigate the effects of harm (the “harmfulness”) of its operations. This category includes:

- 1. The Use of Force:** The ways in which the government uses force in combat operations during the conduct of hostilities or law enforcement operations to maintain or restore public security.
- 2. Planning for Operations:** Efforts made to prevent, mitigate, and address harm during the planning and preparation for security operations.
- 3. Community Engagement:** Meaningful forms of consultation with communities undertaken to prevent, mitigate, or address harm.
- 4. Mitigating the Impact of Operations:** Measures taken to reduce the overall impact and harmfulness of security operations.
- 5. Use of Explosive Weapons:** Policies and practices governing the procurement and use of mortars, rockets, artillery shells, and bombs.

Use of Force

2.1

Means by which the government ensures that the use of force in combat operations during the conduct of hostilities, or during law enforcement operations to maintain or restore public security, is consistent with international law and standards.

Legal Basis for the Use of Force:

Use of force policy based on accurate assessment of legal status of context and assessment of applicable body of international law.

Civilian Protection from Attack:

In armed conflicts, policy and practice clearly recognize that all persons are considered civilians unless they are members of the armed forces. Civilians may lose their civilian protection from attack if they are a member of an organized armed group playing a continuous combat function, or directly participating in hostilities for such time as they do so. In case of doubt whether a person is a civilian, that person shall be considered a civilian.

Rules of Engagement (Ground Forces):

Rules of engagement and other rules regulating the use of force are consistent with applicable body of law. Commanders regularly reinforce their importance in written and verbal forms of communications with forces. Forces are briefed and regularly tested on the rules of engagement, and forces carry an easy-to-use version of the rules of engagement.

IHL Compliance (Targeting):

Policies and Rules of Engagement, including targeting guidance support, are in compliance with, and integrate the principles of distinction, proportionality, and precautions at a minimum.

IHRL Compliance:

Policies and Rules of Engagement governing the use of force outside of the conduct of hostilities in an armed conflict, including firearms policies, adhere to and integrate international human rights standards.

(2.1) Sample Leadership Tiers:

76-100	<p>Leader: The government employs an effective, fact-based system for determining the applicable legal framework governing the use of force in accordance with international law. Government forces employ force correctly and in compliance with the applicable body of law, and government forces are properly and regularly trained in the lawful use of force. Government forces employ additional restraint and patience, using force as a last resort, where appropriate, to protect civilians. When in an armed conflict, the government considers all persons to be protected from attack unless they are correctly assessed as lawful targets; and under all circumstances other than the conduct of hostilities, use of force adheres to international human rights standards.</p>
51-75	<p>Emerging Leader: The government employs a fact-based system for determining the applicable legal framework governing the use of force in accordance with international law. Usually, government forces employ force correctly and in compliance with the applicable body of law, and government forces are properly and regularly trained in the lawful use of force. Government forces have at times shown the capacity to employ additional restraint and patience, using force as a last resort, where appropriate, to protect civilians. When in an armed conflict, the government considers all persons to be protected from attack unless they are correctly assessed as lawful targets; and under all circumstances other than the conduct of hostilities, use of force adheres to international human rights standards.</p>
26-50	<p>Uncommitted: The government has made faulty determinations of the applicable legal framework governing the use of force, or intentionally applies the wrong standard.</p>
0-25	<p>Regressive: Government demonstrates flagrant disregard for relevant international law; uses force wantonly or intentionally targets civilians; security forces regularly employ excessive force.</p>

Planning for Operations

2.2

Efforts made to prevent, mitigate, and address harm during the planning and preparation for security operations.

Prioritizes Protection:

The protection of civilians and civilian objects is prioritized in military planning and preparation, and communicated in clear language through doctrine, orders, and guidance. Military planners draw lessons about civilian harm from current and past operations to identify best practices and areas of improvement.

Assesses Civilian Objects and Critical Infrastructure:

Identifies, maps, prepares, and maintains an inventory of objects, installations, and facilities or areas with protected status prior to operations and limits operations that may impair or disrupt critical infrastructure and systems, to include dual-use cyber infrastructure, and civilian objects.

Anticipates Indirect Effects:

Forces anticipate and integrate consideration for indirect and reverberating effects, to include health-related effects and displacement, in military planning, training, and guidance, and especially when planning to use explosive weapons.

Training and Exercises:

Forces are trained in all procedures relating to civilian harm prevention, mitigation, and response. Training and exercises incorporate civilians, civil society, and humanitarian actors and their perspectives

Assessment of Civilian Environment or Civilian “Pattern of Life”, Cultural Practices, and Demographics:

Military planners incorporate accurate and current analysis of civilian behaviors and the presence or movements of vulnerable populations such as children or the disabled, or populations at particular risk for other reasons.

Inclusion of External Perspectives:

Forces proactively consult with and consider the perspective of affected civilians, community leaders, civil society organizations and international organizations.

(2.2) Sample Leadership Tiers:

76-100	<p>Leader: The government's strong commitment to protecting civilians is reflected clearly in the way it anticipates and prepares to prevent, mitigate, and address harm in operational plans, doctrine, and training. Civilians and civilian objects/infrastructure are prioritized in planning, to include through the identification of civilian infrastructure and routine updates to targeting restrictions based on new information and learning. Policies, plans, doctrine, and training integrate concern for the reasonably foreseeable effects of operations on civilians, civilian infrastructure, and other environmental or health systems. Perspectives of affected civilians and NGOs/IOs are sought and integrated in planning.</p>
51-75	<p>Emerging Leader: The government shows significant interest in protecting civilians through its planning and preparation, and/or has shown improvement in integrating concern for civilians and civilian infrastructure in planning. Security forces employ certain measures, such as the identification and inventory of civilian infrastructure, training, and behavioral assessments to reduce harm.</p>
26-50	<p>Uncommitted: The government shows little to no interest in integrating concern for civilians or civilian infrastructure in its planning and preparation.</p>
0-25	<p>Regressive: Government policy or practice suggests willful ignorance or wanton disregard for civilians or civilian infrastructure in planning and preparation for operations.</p>

Community Engagement

2.3

Meaningful forms of consultation with communities undertaken to prevent, mitigate, or address harm.

Community-Based Protection:

Forces are open to discuss protection concerns with communities. Security actors recognize civilians as experts of their situation and as viable agents and advocates on their POC concerns. Measures taken to (more) effectively protect civilians from threats of violence (by its forces or others) are based on needs expressed by affected communities and preferences, and in a way that protects the rights of individuals without discrimination.

Representative and Inclusive Engagement:

Community engagement is inclusive and representative, including by inviting participation from different sexes, ages, religions, ethnic groups, and persons with disabilities.

Respect for Independence or Neutrality:

Government actors respect and preserve preferences that community groups may have to remain independent or conflict-neutral (not formally associated with government actions.)

Informing Communities:

Government forces promptly share enough information about the roles, responsibilities, and structure of security/military forces in the area, along with information about the nature and purpose of operations and any possible disruptions to commerce, traffic, public transportation or otherwise with community representatives to ensure civilians understand the nature, character, and purpose of operations that affect them. Government forces provide feedback on any actions taken or not taken in response to community requests submitted by individuals or communities.

Do No Harm:

Security forces consider the potential risks of engagement with communities and take steps to mitigate or eliminate these risks.

(2.3) Sample Leadership Tiers:

76-100	Leader: The government prioritizes the interests, concerns, and preferences of communities when planning and conducting security operations and ensures that no harm is done through the act or method of engagement. Measures taken to protect presence or deter threats to civilians are taken at the behest of communities and according to community desires without discriminating against any community segments. Engagement is transparent, inclusive, and accessible.
51-75	Emerging Leader: The government has a strong record or can showcase several recent examples of effective community engagement. Security forces consider the potential risks of engagement and take effective steps to mitigate them.
26-50	Uncommitted: The government does little to shape its security plans or operations based on community needs, preferences, or interests. The government and/or security forces may place civilians or communities at risk of harm through the method or act of engagement.
0-25	Regressive: The government and/or its security forces actively harm communities through their operations or presence, or regularly expose communities to harm through the method or act of engagement.

Mitigating Impact During Operations

2.4

Measures taken to reduce the overall impact and harmfulness of security operations.

Protects Civilians and Civilian Infrastructure:

Takes effective measures during operations to protect civilians and civilian objects, especially physical infrastructure critical to the functioning of health and medical services, telecommunications and cyber systems, water and sanitation, transportation systems; food systems; and education.

Minimizing Protection Risks During Specific Military Operations:

Military operations, such as cordon and search, checkpoints, and curfews, are conducted in a way that upholds rights and minimizes the impact on health care services, commerce, education, and food systems.

Continuous Assessment and Improvement:

Forces conduct continual assessment of impact of operations and presence of military objectives on civilians and use this information to adjust or even pause or stop operations. Military planners draw lessons about civilian harm from current and past operations (including via integration of views of affected civilians and relevant NGOs/IOs) to identify best practices and areas of improvement.

Clear Communications:

Warnings and instructions to civilians during operations are clear, accessible, and feasible to act upon.

Passive Protection:

To the extent feasible, armed forces maintain presence, facilities, and equipment away from civilian populations and conduct operations in way that put civilians at as little risk as possible.

(2.4) Sample Leadership Tiers:

76-100	Leader: The government's commitment to protecting civilians is clearly indicated by its policies and the efforts it makes to mitigate the effect of its operations on civilians, communities, and civilian infrastructure and systems. The government has a policy for, or regularly assesses the impact of its operations, including through community or civil society engagement where appropriate and takes effective steps to adjust its operations.
51-75	Emerging Leader: The government shows a strong if uneven commitment to protecting civilians through its efforts to mitigate the effects of its operations or has demonstrated recent improvement in doing so.
26-50	Uncommitted: The government shows little concern for the effects of its operations and makes little if any effort to adjust operations when presented with information about harm caused by operations.
0-25	Regressive: The government routinely harms civilians or damages civilian infrastructure or disrupts infrastructure systems (education, healthcare). It persecutes civilians trying to raise POC concerns.

Use of Explosive Weapons

2.5

Policies and practices governing the procurement and use of mortars, rockets, artillery shells, and bombs.

Selection and Acquisition:

Refrains from acquiring weapons when their normal or expected use would be prohibited by IHL or any other applicable body of international law, and takes the feasibility of mitigating civilian harm into serious consideration when acquiring or adopting weapons systems.

Availability and Use of Precision Weapons:

When involved in combat, armed forces employ lower yield and reduced fragmentation weapons systems and, where relevant, regularly review the use of precision weapons to assess direct and indirect/reverberating effects.

Explosive Weapons in Populated Areas:

Political leadership commits to avoid the use of explosive weapons with wide-area effects in populated areas, and operational guidance (e.g. Rules of Engagement) presumes against use of explosive weapons with wide-area effects in populated areas.

Mitigation Measures:

The military applies measures to reduce harm from explosives and munitions, such as limiting the use of air-delivered munitions and indirect fire, accurately assessing patterns of life, applying minimum safe distance, and using collateral damage estimation.

Explosive Remnants of War:

Forces take precautions to protect civilians from the risks of explosive remnants of war, including by recording and retaining information on their use of explosive ordnance to facilitate marking, clearance, removal, as well as by destroying, marking, and removing any unexploded ordnance in areas they control. If incapable itself, forces provide access to facilitate external organizations' efforts to help to locate and destroy ERWs.

(2.5) Sample Leadership Tiers:

76-100	<p>Leader: The government has made and demonstrates a commitment to avoid the use of explosive weapons with wide-area effects in populated / urban areas and supports international efforts calling on all governments to do the same. The military has acquired and has the requisite technical capabilities and targeting procedures necessary to limit harm to civilians and civilian infrastructure and regularly reviews the effects of precision weapons, where used, to ensure they are achieving the desired discriminatory effects. The military has adopted and skillfully employs other mitigation measures, to include limiting to the extent possible the use of air-delivered munitions; minimum safe distance; collateral damage estimation, etc.</p>
51-75	<p>Emerging Leader: The government has made a commitment to limit the use of explosive weapons in populated areas. When the military has some capacity to use precision-guided munitions, and skillfully employs other mitigation techniques and procedures to ensure they are achieving the desired discriminatory effect. Where the military is unable to procure precision weapons, other measures (such as targeting procedures and collateral damage estimation) are employed to limit the harm resulting from the use of explosive weapons.</p>
26-50	<p>Uncommitted: The government makes no commitment to avoid or even limit the use of explosive weapons in urban areas. The military acquires and maintains only conventional (“dumb”) munitions, and has few if any policies, techniques, or procedures intended to reduce harm.</p>
0-25	<p>Regressive: The government has used or uses explosive weapons in urban areas, and does not employ mitigation measures.</p>



CATEGORY 3 Civilian Harm Response (Reporting, Investigations, Tracking, and Recording)

Properly addressing harm when it occurs; learning from incidents of harm to adjust tactics and procedures; and ensuring the public is made sufficiently aware of civilian harm requires governments to have the systems and procedures in place to detect, investigate, and track civilian harm. These systems should also be complementary and compatible with public or international practices. This section consists of five related sub-categories:

- 1. Incident Reporting and Initial Assessments:** The mechanisms by which the government facilitates external reports and encourages internal reports and conducts initial assessments of fact and credibility.
- 2. Civilian Harm Investigations:** Formal inquiries (often in the form of administrative or criminal investigations) that can be used to elucidate facts, to understand the cause of harm, to identify relevant state and/or individual responsibilities, to facilitate the appropriate response and /or remedy, and even to exonerate.
- 3. Civilian Harm Tracking:** An internal (military or security force) process by which an armed actor gathers and analyzes data about civilian harm incidents in order to better prevent, mitigate, and address harm in the future.
- 4. Public Reporting and Transparency:** Systems and procedures to ensure that the public and institutions of public oversight are made sufficiently aware of civilian harm, and to protect the right of victims to pursue remedy.
- 5. Civilian Harm Recording:** Systems and processes for recording civilian harm (often death and injury) to account for the dead, injured, and missing in war, often involving public health institutions (such as morgues), non-governmental organizations, or international organizations.

Incident Reporting and Initial Assessments

3.1

The mechanisms by which the government facilitates external reports and encourages internal reports and conducts initial assessments of fact and credibility.

Facilitates Receipt of Reports:

The government facilitates receipt of information about incidents of harm from civilians, civil society, and other witnesses through established and transparent reporting protocols. The military consults with humanitarian and/or human rights organizations when assessing reports of harm.

Removes Barriers to Reporting:

Channels for external reports anticipate and account for challenges and barriers (including language, culture, and access) faced by individuals or organizations in making reports.

Internal Reporting:

Policy requires and encourages internal reporting of all incidents of civilian harm.

Assesses All Reports:

The military treats all reports of civilian casualties seriously and conducts initial assessments of all external reports.

Reports Passed to Competent Authority:

Reports of civilian harm and possible violations of law are passed to a competent authority for potential further investigation through a standardized process.

(3.1) Sample Leadership Tiers:

76-100	Leader: The government has a strong and established record of ensuring that any external (from outside sources) and internal reports of civilian harm are taken seriously and assessed for the need to investigate further and integrated into tracking and analysis of harm to discern patterns. Reporting is both encouraged and made feasible through established, transparent, and accessible reporting protocols, and augmented through proactive engagement with civil society.
51-75	Emerging Leader: The government is open to receiving external reports of harm, even if it does not actively facilitate receipt of reports; or has indicated a willingness to improve its reporting processes. External reports are assessed for credibility and actionable information, and most credible allegations of civilian harm are further investigated.
26-50	Uncommitted: The government does not encourage or facilitate internal or external reports of harm other than those that clearly meet a threshold of criminal misconduct. External reports or claims are routinely dismissed.
0-25	Regressive: The government fails to assess any reports of civilian harm, to include violations of law or even systematically retaliates against those who make reports.

Civilian Harm Investigations

3.2

Formal inquiries (often in the form of administrative or criminal investigations) that can be used to elucidate facts, to understand the cause of harm, to identify relevant state and/or individual responsibilities, to facilitate the appropriate response and/or remedy, and even to exonerate.

Investigates All Credible Reports:

Promptly investigates all credible reports of civilian harm, whether or not it is immediately clear that a violation of international law has occurred. Obtains relevant information from all internal, and, to extent feasible, all external sources.

Conducts Witness Interviews and Site Visits:

Investigating officers conduct site visits and/or conduct witness interviews or provides reason why doing so is infeasible.

Protecting Witnesses and Victims:

Takes effective measures to protect the privacy and security of witnesses, victims, and survivors during assessments, investigations, and trials. Persons making reports are not subject to any measure of punishment or reprisal as a consequence of reporting or participating in investigations.

Reports of Investigation:

Reports of investigation include a description of the process followed, the evidence consulted and included (including witness statements), information about its factual and legal findings, and recommendations for preventing a recurrence of civilian harm.

Criminal Investigations:

Incidents of a suspected criminal nature are referred to an independent, impartial investigative authority for investigating criminal violations.

(3.2) Sample Leadership Tiers:

76-100	Leader: The government demonstrates its commitment to answer for civilian harm through robust and effective (thorough and prompt) and adequately resourced administrative investigations and a well-established process for referring suspected criminal violations to an independent investigative authority. Policy calls for investigating any and all incidents of harm in order to prevent or suppress future incidents and to repress grave breaches of international law.
51-75	Emerging Leader: The government has a strong or improving record of conducting effective administrative investigations into reports of civilian harm and has a clear process and a history of referring suspected criminal incidents to an independent investigative authority.
26-50	Uncommitted: The government has no requirement to conduct administrative investigations of credible reports of civilian harm and/or has no history of conducting investigations.
0-25	Regressive: The government fails to investigate any reports of harm, to include violations of law and possibly retaliates against those who make allegations or reports.

Civilian Harm Tracking

3.3

An internal (military or security force) process by which an armed actor gathers and analyzes data about civilian harm incidents in order to better prevent, mitigate, and address harm in the future.

Tracking Mechanism:

The government has or plans for the capabilities, resources, personnel, and systems needed to track civilian harm, i.e. to systematically, collect and analyze harm and make recommendations to improve POC as a result.

Tracking to Reduce Harm:

The express and stated purpose of the tracking mechanism in policy and practice is to prevent, mitigate, and address harm.

Analysis:

The tracking mechanism produces, or is effectively designed to produce, meaningful analysis and insights that are used by military leaders to change tactics or procedures.

Coordination with Investigations and Recording:

Tracking mechanisms interact effectively with other civilian harm response mechanisms and procedures.

Records:

Tracking mechanisms have reliable access to accurate information and sufficiently detailed records about military operations (troop movements, air strikes, incident reports).

(3.3) Sample Leadership Tiers:

76-100

Leader: The government collects and analyzes incident reports to prevent or mitigate civilian harm through changes to policy, procedure, or tactics. Tracking is firmly established in policy and doctrine for current and future operations. Tracking mechanisms are adequately resourced, supported by leadership, and have suitable access to the necessary records. Tracking mechanisms(s) are in sync with processes for conducting assessments and investigations (criminal or administrative) and corresponding response mechanisms, e.g. amends and reparations.

51-75

Emerging Leader: The government has some practice or a recent record of tracking civilian harm incidents or reports to change policies, procedures, or tactics. The government has demonstrated the commitment, through policy or doctrine, to incorporate an effective tracking procedure in any future operations.

26-50

Uncommitted: The government neither tracks civilian harm nor has established any plans to track civilian harm in future operations.

0-25

Regressive: The government actively conceals or obscures information about civilian harm.

Public Reporting and Transparency

3.4

Systems and procedures to ensure that the public and institutions of public oversight are made sufficiently aware of civilian harm, and to protect the right of victims to pursue remedy. Information may be limited or redacted due to privacy concerns for affected civilians, to safeguard other ongoing investigations, or for national security reasons, but these reasons should not be abused and should be subject to review.

Assessment Criteria:

The government has publicly disclosed the criteria by which it assesses the credibility of external reports of harm and makes public its credibility assessments whenever possible.

Information Sharing with Victims:

Shares information about the status of an investigation with victims or next of kin.

Public Disclosure of Process and Records:

Releases information about investigative processes and records to the public whenever possible. Shares criteria applied when a person that is harmed is considered a civilian. Shares information about the process used to assess whether operations met standards of proportionality.

Civilian Casualties Reporting:

Regularly issues and disseminates reports on civilian casualties resulting from military operations that includes an estimate of casualties, the source of harm, the type of harm experienced, and the location of the incident(s) and any reasons for discrepancies with estimates or accounts from other sources such as NGOs or the media.

Discloses Time and Location of Operations:

Makes public information, to include time and location, of operations including air strikes, except in circumstances when doing so would place civilians or security personnel at risk.

(3.4) Sample Leadership Tiers:

76-100

Leader: The government proactively shares information about its security operations and the processes it employs to assess and investigate harm, to include the criteria by which it assesses the credibility of external sources, and about any harm stemming from its operations.

51-75

Emerging Leader: The government discloses enough information about processes and procedures for the interested public to understand and has a recent record of disclosing suitably detailed information about specific civilian harm incidents.

26-50

Uncommitted: The government makes no effort to disclose information about the processes or procedures it employs for assessing or investigating reports of civilian harm (if it has procedures).

0-25

Regressive: The government actively conceals information about the process or procedures it employs to assess and investigate civilian harm.

Civilian Harm Recording

3.5

Systems and processes for recording civilian harm (often death and injury) to account for the dead, injured, and missing in war, often involving public health institutions (such as morgues), non-governmental organizations, or international organizations.

Government Recording:

National health and other government systems have capacity and system for recording injury and death.

Support to Independent Recording:

The government supports or facilitates independent or international efforts to record civilian casualties.

Compatibility of Standards:

Facilitates or participates in a system for recording conflict-related deaths that applies common definitions and data standards that enables verification, to include location of incident, date or time of incident, source, and number of people killed in the incident.

Applying Recording to Operations:

The government includes information from civilian harm recording sources in efforts to adjust policy or tactics and to measure the effects of mitigation.

Ascertaining the Fate and Whereabouts of the Missing:

The government takes measures to ascertain the fate and whereabouts of missing persons, to provide information to the families of the missing, and to identify, recover or return remains.

(3.5) Sample Leadership Tiers:

76-100

Leader: The government supports and resources public (e.g. health) systems that record civilian harm (including injury and death) using common/standard data. Government (e.g. military) tracking systems are compatible with external and international civilian harm recording processes, including those conducted by international and/or non-governmental organizations.

51-75

Emerging Leader: Public systems (e.g. health) have in place a process to record civilian harm using data standards that enable verification. Public systems are mostly compatible with those used by international and/or non-governmental organizations.

26-50

Uncommitted: State-administered systems do not exist for recording death and / or injury from conflict, and the government does not support or facilitate efforts by international or non-governmental recording organizations.

0-25

Regressive: No state-administered system exists for recording death and injury from conflict, and/or the government actively disrupts or obstructs efforts by public systems, and/or international or non-governmental organizations.

A topographic map with contour lines and a grid. A green banner is overlaid at the bottom of the map, containing the category title.

CATEGORY 4 Amends and Reparations

A government is obligated to provide full redress and to ensure accountability for harm that has resulted from violations of law. It may also elect to provide amends to those who have been harmed even during or because of otherwise lawful operations or by explosive remnants of war. A well-functioning reparations process can protect the rights of victims, partially restore loss, and give meaning to a government's commitment to accountability. Voluntary forms of amends, whether monetary or non-monetary, can signal acknowledgement of loss and respect for the dignity of those who have been affected by war, and can help recover from the losses incurred by violence.

This category includes the following sub-categories:

- 1. Post-Harm Amends:** Efforts to acknowledge and express condolence for harm, to include offers of monetary and non-monetary forms of post-harm assistance.
- 2. Reparation and Victims' Rights:** Systems and processes for providing effective and proportionate reparation for harm experienced as a result of violations of international law.
- 3. Assistance for Survivors and Victims of Explosive Remnants of War:** Assistance rendered to those who have been affected by remnants of explosives, such as mines or unexploded ordnance.
- 4. Repair and Restoration of Services and Infrastructure:** Efforts to restore or repair damage to infrastructure or services resulting from operations, activities, or presence of forces.
- 5. Criminal Accountability:** Systems and processes in place to hold perpetrators of international crimes, including war crimes, accountable.

Post-Harm Amends

4.1

Efforts to acknowledge and express condolence for harm, to include offers of monetary and non-monetary forms of post-harm assistance.

Process for Condolence:

The government implements a fair, effective, timely, and adequately resourced process to receive and process requests for monetary and non-monetary amends for incidental harm caused by lawful operations and/or where incidents have yet to be investigated on their compatibility with the law.

Acknowledgement:

The government publicly and/or privately acknowledges responsibility for harm to victims and survivors

Victim-Centered Condolence:

Policies governing the offer and provision of condolence payments (monetary and non-monetary) should be culturally appropriate and sensitive to local needs.

Comprehensive Amends:

Amends are broadly defined (in word or deed) by the government to include apologies, acknowledgement, and expressions of regret or contrition in addition to monetary or practical assistance.

Comprehensive View of Loss:

Monetary and non-monetary forms of condolence response take into consideration loss of life and injury, material and property loss, loss of income, psychological effects, and other immaterial loss.⁴

(4.1) Sample Leadership Tiers:

76-100

Leader: The government demonstrates contrition and regret for harm caused by otherwise lawful operations (or not yet determined unlawful) directly with those whom it has harmed through an effective, culturally-appropriate policy of offering amends (e.g. condolences) to those who have been harmed directly. Amends are not superficially limited to monetary or in-kind offers but determined through meaningful consultation with affected civilians.

51-75

Emerging Leader: The government has a record or has shown an increased commitment to offering amends for lawful (or not yet determined unlawful) harm.

26-50

Uncommitted: The government has no policy or only selectively expresses regret or issues apologies.

0-25

Regressive: The government refuses to acknowledge harm for which it is responsible.

⁴ Unlike legal reparations, condolence does not aim at providing full redress/remedy.

Reparation and Victim's Rights

4.2

Systems and processes for providing full and effective reparation for harm experienced as a result of violations of international law.

Claims Process for Reparations:

The government institutes a working process to receive claims and to provide full, effective and timely reparation to victims of violations of international law and disseminates information about the remedies available for victims of such violations.

Right to Full and Effective Reparation:

Victims of violations are provided with full effective including timely reparation, as appropriate and proportional to the gravity and circumstances of the case.

Right to Information:

Victims and claimants can access information about themselves and dependents and have the right to object to and rectify errors.

Trauma Sensitive Accountability:

Accountability processes uphold the dignity of victims and take measures to avoid re-traumatization of victims when possible.

Access to Evidence:

Refrains from invoking state secrets privilege or executive privilege to prevent victims of unlawful killing from establishing a violation (or prevent victims from seeking information about the circumstances that brought about harm).

(4.2) Sample Leadership Tiers:

76-100

Leader: The government effectively and consistently protects the rights of victims of violations, to include the rights to effective reparations and the right to information, and state accountability practices include measures to avoid re-traumatization.

51-75

Emerging Leader: The government has policies and laws in place that usually work to protect the rights of victims of violations, to include reparations.

26-50

Uncommitted: The government has few if any policies, laws, or procedures in place to protect the rights of victims; some policies and practices may limit the ability of victims to exercise their rights (e.g. secrecy laws).

0-25

Regressive: The government actively impedes the ability of victims to exercise their right to reparations and/or information.

Assistance for Survivors and Victims of Explosive Remnants of War

4.3

Assistance rendered to those who have been affected by remnants of explosives, such as mines or unexploded ordnance.

Comprehensive Assistance:

Assistance to survivors of war (including for those affected by explosive remnants of war and families of the missing) includes gender and age-sensitive emergency and continuing medical care, physical rehabilitation, psychological and psychosocial support, and social and economic inclusion

Alignment with Community Support:

Victims' assistance programs are aligned with other programs benefiting other marginalized or affected communities.

Assistance to Individuals and Families:

Assistance is provided to individual survivors and their families, and where possible for communities.

Information About Assistance Programs:

Information about victim's assistance, including eligibility for support, is made readily available and accessible.

(4.3) Sample Leadership Levels

76-100

Leader: The government actively supports comprehensive assistance programs for victims and survivors of war, to include those harmed by explosive remnants of war and their families. State victim's assistance programs are well-coordinated and aligned with other programs.

51-75

Emerging Leader: The government has some practice or a recent record of supporting victims and survivors of explosive remnants of war.

26-50

Uncommitted: The government has no record or current practice of supporting victims or survivors of war.

0-25

Regressive: The government is antagonistic and hostile to providing support to victims and survivors.

Repair and Restoration of Services and Infrastructure

4.4

Efforts to restore or repair damage to infrastructure or services resulting from operations, activities, or presence of forces.

Repair Damaged Infrastructure:

Repairs or otherwise provides adequate compensation for any damage or effects from use to infrastructure (e.g. roads or buildings) resulting from use, presence, or operations.

Remove or Destroy Unexploded Ordnance:

Forces mark and remove or destroy, or facilitate the removal or destruction of any unexploded ordnance.

Restore Critical Services:

Takes measures to restore health care, education, telecommunications, and other critical services

Facilitates Receipt of Claims:

Has an effective claims or consultative process for receiving, processing, and honoring requests for compensation or repair to infrastructure or interruption to services.

(4.4) Sample Leadership Tiers:

76-100

Leader: Security forces consistently and effectively repair or restore infrastructure and services from the effects of use, presence, or operations, and also ensures that any hazardous materials are destroyed or removed to prevent future harm.

51-75

Emerging Leader: Security forces regularly repair or restore or otherwise address harm to infrastructure or interruption to services from use, presence, or operations

26-50

Uncommitted: Security forces do nothing to restore services or repair infrastructure from use, presence, or damage.

0-25

Regressive: Security forces purposefully damage infrastructure or services or disrupt their use.

Criminal Accountability

4.5

Systems and processes in place to hold perpetrators of international crimes within the jurisdiction of the state, including state and non-state armed groups, accountable.

Rejects Amnesty:

Rejects amnesties and targeted immunities for war crimes and serious violations of international law.

Investigative Authority:

An independent and impartial investigative authority is available to carry out criminal investigations into suspected war crimes

Criminal Investigations:

Conducts effective (prompt and thorough) investigations of alleged crimes perpetrated against civilians in accordance with international law.

Prosecutions:

Prosecutes or extradites persons credibly alleged to have committed international crimes, including war crimes, in compliance with obligations under international law.

(4.5) Sample Leadership Levels

76-100	Leader: The government has strong and well-resourced institutions, policies, and regulations in place for independent, effective and fair investigations and prosecutions of suspected war crimes.
51-75	Emerging Leader: The government has institutions, policies, and regulations in place for investigating and prosecuting war crimes.
26-50	Uncommitted: The government has weak or non-existent institutions, policies, or regulations in place for investigating or prosecuting suspected war crimes.
0-25	Regressive: The government supports amnesties or immunity for war crimes and other serious violations of international law.



ANNEX A: Support Relationships (Partnered and Coalition Operations, Security Assistance, and Arms Transfers)

Many governments choose to cooperate with other governments in their security policies and practices. Cooperation may take one of several forms, to include providing or receiving training, advising, and other forms of assistance; active partnerships between two or more governments that conduct operations together; sharing intelligence; providing transport or logistical support; and the sale and/or transfer of weapons between governments. Governments should structure their policies and practices to ensure that support relationships reinforce measures to prevent, mitigate, and address harm – and avoid exacerbating the risk of harm. This category includes the following sub-categories:

- 1. Selection and Conditions:** The pre-requisite conditions for working with partner governments, or measures governments require of one another in order to partner.
- 2. Due Diligence:** The process of evaluating and mitigating the risks involved with partnership.
- 3. Monitoring:** Systems and protocols in place for governments to evaluate the effects of their support or partnership, to include any associated harms.
- 4. Joint Protocols:** Measures or practices governments adopt together to prevent, mitigate, and address harm in the context of a security partnership.
- 5. Technical Assistance for Preventing, Minimizing/Mitigating and Addressing Harm:** Training, advising, or other forms of assistance provided with the express intent of improving a partner's capacity to better prevent, mitigate, and/or address harm.

Selection and Conditions (Security Assistance or Arms Providers)

A.1

The pre-requisite conditions for working with partner governments, or measures that governments require of one another in order to enter into or continue a partnership.

Pattern of Abuse:

Refrains from providing support to countries with a pattern of misuse, or where support is likely to be used to commit or facilitate serious violations of international humanitarian or human rights law.

Civilian Harm Prevention, Mitigation, Response Policies:

Support and lethal assistance are contingent on the adoption of policies and practices for effectively preventing, mitigating, or addressing civilian harm.

Civil Society:

Refrains from providing substantial forms of lethal security assistance to countries that unduly restrict civil society, and specifically human rights organizations.

Security Governance:

Limits the provision of lethal armaments or any technical assistance that could enhance the lethal capacities of security forces to only those locations with effective controls on the use of force and systems of accountability or public oversight.

Due Diligence and Monitoring:

Arms transfers and security assistance is provided only on condition of facilitating due diligence, to include risk assessments and vetting, and continuous or conditions-based monitoring.

(A1) Sample Leadership Tiers

76-100	Leader: The government limits eligibility for most lethal forms of security assistance and arms transfers to recipients with demonstrated capacity and intent to abide by international humanitarian and human rights law, those that are subject to effective public and internal oversight, and those that have adopted measures to prevent and address harm.
51-75	Emerging Leader: The government has effective measures in place to reduce the risk of harm resulting from security assistance and arms sales, and limits the provision of lethal assistance to governments with a record of human rights or international humanitarian law violations or patterns of civilian harm.
26-50	Uncommitted: The government has few or weak controls on the transfer of arms or the provision of lethal security assistance.
0-25	Regressive: The government routinely and knowingly provides support to governments that commit war crimes or gross violations of human rights, or even intentionally aids and abets the commission of violations through the provision of arms or assistance.

Due Diligence (Providers, Co-Equal Partners, and Recipients)

A.2

The process of evaluating and mitigating the risks involved with partnership.

Alignment of Interests:

The partners have a common vision of the political goals served by the partnership and share perceptions of the security environment and any threats; both or all partners place shared strategic emphasis on protecting civilians from harm.

Risk Assessment:

Providing forces conduct preliminary risk assessment of all security forces. (Recipient forces facilitate the risk assessment of their forces.)

Risk Assessment Criteria:

Risk assessment includes IHL and human rights records, accountability measures and systems, feasibility of active monitoring, risks inherent to the operation being supported, risks inherent to the form of support.

Civil Society Consultation:

The supporting government and partner informs, consults, supports, or involves civil society, to include human rights groups in the design, implementation, and evaluation of security partnerships.

Screening or Vetting:

The supporting government conducts vetting or screening of units and individuals. The supported government facilitates and submits to screening and vetting.

(A2) Sample Leadership Tiers

76-100	Leader: The design and implementation of security assistance and cooperation relationships is founded on a strong due diligence policy, in which both or all parties agree to and support a risk assessment and risk mitigation plan based on a shared commitment to protecting civilians and their rights.
51-75	Emerging Leader: Providers and recipients of assistance or arms transfers have in place at least a basic and effective risk assessment and mitigation plan
26-50	Uncommitted: Security assistance providers have weak or no process to assess or manage risk; recipients ambivalent or resistant to risk assessment and/or mitigation measures.
0-25	Regressive: Security assistance providers are willfully blind to risks and/or take no steps to manage clear risks; Recipients are openly antagonistic toward risk assessment and mitigation.

Monitoring

A.3

Systems and protocols in place for governments to evaluate the effects of their support or partnership, to include any associated harms.

Civil Society:

Parties inform, consult, involve, or support civil society in each of the countries in which it carries out security assistance and cooperation activities, where civil society so-consents.

Mutual Agreement to Monitoring:

Partners agree to protocol for monitoring activities and operations for potential IHL and human rights violations or civilian harm resulting from lawful conduct. Partners together monitor and evaluate the effects of operations and support on civilians, where possible with the aid of independent monitoring bodies.

Incident Response:

Partners have agreed to pre-determined procedure for addressing IHL and human rights incidents linked to civilian harm when they occur.

Off-ramps and On Ramps:

Providers of security assistance develop and apply tripwires that require re-evaluation and possibly termination of a security assistance relationship and conditions for resuming support.

(A3) Sample Leadership Tiers

76-100	Leader: Providers and recipients agree to, and actively support, robust monitoring protocols, to include plans for addressing civilian harm as a fundamental part of their security partnerships.
51-75	Emerging Leader: Providers and recipients include or submit willingly to basic but effective monitoring protocols.
26-50	Uncommitted: Providers or recipients do not have any active protocols or only have weak or ineffective protocols for monitoring security assistance or arms transfers.
0-25	Regressive: Providers and/or recipients actively resistant or opposed to any effective form of monitoring.

Joint Protocols (“Interoperability”)

A.4

Measures or practices governments adopt together to prevent, mitigate, and address harm in the context of a security partnership.

Legal Basis for Partnership: The governments share interpretations of international legal obligations and publicly disclose the legal basis and any bilateral arrangements governing the role and conduct of international forces. Partnered arrangements do not tacitly or explicitly permit the use of force or other conduct in a manner that would violate international and/or domestic law or that would provide immunity for violations of law.

Joint Response: Partners or coalition members develop joint protocols for facilitating receipt, assessing, investigating, and tracking, reports of civilian harm or other complaints arising from the partnered activities and for tracking and responding to allegations.

Roles and Responsibilities: Formal and informal partnership arrangements clearly delineate roles and allocate responsibilities to prevent, mitigate, and address civilian harm.

Disengagement Risk Management: Disengagement from the partnership includes measures to minimize disruption to the protection of civilians.

Joint Planning: Partners jointly assess risks of combined or partnered operations and integrate measures to mitigate those risks into shared plans and procedures.

(A4) Sample Leadership Tiers:

76-100

Leader: Partners actively seek to maximize the “interoperability” of measures taken to prevent, mitigate and address civilian harm and to otherwise comply with applicable international law.

51-75

Emerging Leader: Partners have some joint protocols in place, such as training or mutual support to investigations, to ensure that partnership activities result in a higher standard of protection.

26-50

Uncommitted: Partnership arrangements lack any joint or mutually-supported protocols for preventing, mitigating, or addressing harm.

0-25

Regressive: Partners actively collude to harm civilians or to impede accountability for harm.

Technical Assistance for Preventing, Minimizing/Mitigating and Addressing Harm **A.5**

Training, advising, or other forms of assistance provided with the express intent of improving a partner’s capacity to better prevent, mitigate, and/or address harm.

Use of Weapons Systems:

Arms transfers include baseline and continuous technical assistance and testing to ensure the appropriate and lawful use of weapons systems.

Civilian Harm Prevention, Mitigation, Response Assistance:

Provides (or seeks and accepts) support, advising, or assistance in preventing, mitigating, and addressing (including investigating) civilian harm.

Policy and Tactical Alignment:

Capacity building intended to improve protection of civilians , such as IHL and human rights training, is aligned with a demonstrated political commitment by both/all partners to reduce or prevent harm, and evidenced by the willingness and ability to sufficiently address harm when it occurs and evidence of practical measures taken to implement protection policies and procedures.

Mainstreaming:

Civilian harm mitigation, including the application of IHL principles and the protection of human rights are mainstreamed in training (including regular joint trainings). These trainings and education efforts also comprise scenario-based exercises using operational vignettes and testing.

(A5) Sample leadership tiers:

76-100	Leader: As part of a shared political and strategic commitment to preventing, mitigating, and addressing harm, security partnerships include technical assistance or mutual exchanges relating to protecting civilians; and they are mainstreamed in other kinds of technical assistance or capacity building.
51-75	Emerging Leader: Providers of security assistance or the source of arms transfers include some form of technical assistance relating to civilian harm prevention, mitigation or response as part of a genuine effort and commitment to protecting civilians (not as a means of obscuring accountability gaps or patterns of harm.)
26-50	Uncommitted: Providers of security assistance or the source of arms transfers neglect civilian harm prevention or response in assistance relationships or provide tactical training in international humanitarian law or human rights while also providing lethal assistance to partners where a high risk of civilian harm or serious violations persist, or where impunity for past violations is left unaddressed.
0-25	Regressive: Security assistance providers or the source of arms transfers conducts training or technical assistance in a way that is likely to exacerbate the risk of harm or serious violations.

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ANNEX B: Humanitarian Action

Governments must take action to ensure that civilians in need are able to receive humanitarian aid in a conflict, both by taking steps to facilitate the delivery of aid and by taking steps to protect the delivery of aid, while respecting the neutrality, impartiality, and independence of humanitarian organizations. This annex contains two sub-categories:

- 1. Facilitates Humanitarian Assistance and Response:** Measures taken to ensure that humanitarian aid can reach civilians in need, to include refraining from taking any steps to inhibit aid.
- 2. Protects Humanitarian Response:** Policies and protocols for creating a protective environment for the delivery of humanitarian aid.

Facilitates Humanitarian Assistance and Response

B.1

Measures taken to ensure that humanitarian aid can reach civilians in need, to include refraining from taking any steps to inhibit aid.

Humanitarian Coordination:

Assigns point of contact to engage with humanitarian protection cluster or working groups. Civilian-military advisors support civil authorities with contingency planning.

Prompt Access:

Facilitates humanitarian response and assistance through prompt issuance of visas and exemptions from fees, duties, and taxes.

Counterterrorism Measures and Sanctions:

Refrains from adopting legislation or policy, including counterterrorism measures or other sanctions against entities, groups, or individuals that would inhibit the delivery of humanitarian aid and includes explicit humanitarian exemptions in counterterrorism measures. Ensures safe space for humanitarian engagement with armed opposition groups.

Freedom of Movement and Access:

Does not hinder humanitarian access, or civilians' freedom of movement, including through burdensome administrative requirements, denials of humanitarian access, or excessive physical limitations of movement for humanitarian actors or civilians.

Facilitates Delivery of Critical Goods and Services:

Facilitates the delivery of commercial and humanitarian goods critical to the survival of a population (e.g. food, fuel, and other important commodities). As last resort, directly itself provides HA when external humanitarian actors cannot access and/or operate in theatres requiring HA,

Respects Neutrality and Independence:

Ensures that humanitarian activities are free from political or military interference and that they can be carried out in full compliance with the principles of humanity, neutrality, impartiality and independence;

(B1) Sample Leadership Tiers

76-100	<p>Leader: Actively supports and facilitates the delivery of humanitarian assistance without undue administrative burden, and without measures that would compromise the ability of humanitarian organizations to deliver aid while preserving humanitarian principles of neutrality, impartiality, and independence.</p>
51-75	<p>Emerging Leader: Has an overall record or recent history of supporting and facilitating the delivery of humanitarian assistance.</p>
26-50	<p>Uncommitted: Allows the delivery of humanitarian assistance but imposes significant administrative burden or restricts assistance through sanctions, counterterrorism measures, or by imposing requirements that could expose humanitarian organizations to risk or compromise their neutrality, impartiality, or independence.</p>
0-25	<p>Regressive: Actively restricts, inhibits, or impedes the delivery of humanitarian assistance through active and passive actions.</p>

Protects Humanitarian Response

B.2

Policies and protocols for creating a protective environment for the delivery of humanitarian aid.

Notification

Protects the delivery of humanitarian aid by coordinating with humanitarian organizations (e.g. humanitarian notification).

Investigates Attacks:

Condemns, investigates, and prosecutes attacks on humanitarian workers or deliberate denials of access for humanitarian operations.

Explosive Remnants of War:

Protects humanitarian workers and organizations from explosive remnants of war.

(B2) Sample Leadership Levels

76-100	Leader: Actively protects the delivery of humanitarian assistance through effective humanitarian notification systems and through policies and practices that serve to prevent attacks or harm to humanitarian workers or organizations, while preserving and respecting humanitarian principles.
51-75	Emerging Leader: Has an overall record or recent history of protecting those involved with the delivery of humanitarian assistance from harm.
26-50	Uncommitted: Takes insufficient measures to protect the delivery of humanitarian assistance through an absence of effective coordination mechanisms and processes or by failing to condemn or hold accountable those responsible for attacks.
0-25	Regressive: Presents a threat or actively harms those involved with the delivery of humanitarian assistance.

APPENDIX:

Sources in International Law and Additional Resources

Category 1: National Commitment and Enabling Structures

Sources in International Law:

Both treaty and customary international law obliges governments to align their policies and laws with international human rights law and international humanitarian law.

- All parties to a conflict must respect and ensure respect with international humanitarian law, which governs the use of force, protection of civilians, and means and methods of warfare.⁵ This obligation requires *inter alia* for governments to pass effective domestic legislation and ensure practical implementation of international humanitarian law provisions.

Governments must also respect and ensure international human rights, including taking necessary steps to adopt such laws or other measures as may be necessary to give effect to these rights.⁶ International human rights, which include the right to life and human dignity, the right to a fair trial, and freedom from torture, ill-treatment, and arbitrary detention, apply both during and outside of armed conflicts.⁷

Illustrative examples of international treaties and other agreements on the Protection of Civilians

International law treaties govern the conduct of hostilities and protections of civilians in armed conflict.⁸ The following is a non-exhaustive list of treaties which are of particular relevance to the protection of civilians and civilian objects:

- *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277
- *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287
- *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5
- *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137
- *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171
- *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3
- *American Convention on Human Rights ("Pact of San Jose")*, 22 November 1969, 1144 UNTS 123
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3

5 Common Article I to the four Geneva Conventions of 1949, 75 UNTS 31, 75 UNTS 85, 75 UNTS 135, nd 75 UNTS 287; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3, Article 1(1); ICRC, *Customary International Humanitarian Law Database*, Rule 139.

6 See *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, Article 2; UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 29 March 2004, CCPR/C/Rev.1/Add.13, para 7.

7 UN Human Rights Committee, *General Comment No. 31*, para 11.

8 A list of international humanitarian law treaties is available at <https://ihl-databases.icrc.org/ihl>. The ICRC Advisory Service on International Humanitarian Law provides advice and documentation to governments on national implementation of these treaties.

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609
- *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85
- *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3; *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, 2173 UNTS 222
- *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997) ("Ottawa Convention")*, 18 September 1997, 2056 UNTS 211
- *The Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3
- *Protocol V of the Convention on Certain Conventional Weapons on Explosive Remnants of War*, 28 November 2003, 2399 UNTS 100
- *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, 2716 UNTS 3
- *Convention on Cluster Munitions*, 30 May 2008, 2688 UNTS 39
- *Arms Trade Treaty*, 24 December 2014, 3013 UNTS 3

Non-binding Political Declarations also enhance the protection of civilians in armed conflict by showing a commitment to achieving specific protection goals.⁹ These include:

- *Declaration on Anti-Vehicle Mines*, 16 November 2006
- *Geneva Declaration on Armed Violence and Development*, 7 June 2006
- *Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups*, 5-6 February 2007
- *Oslo Commitments on Armed Violence*, 12 May 2010
- *Declaration of Commitment to End Sexual Violence in Conflict*, 24 September 2013
- *G8 Declaration on Preventing Sexual Violence in Conflict*, 11 April 2013
- *Safe Schools Declaration*, 29 May 2015
- *Join Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)*, 28 October 2016
- *Political Declaration on the Protection of Medical Care in Armed Conflict*, 31 October 2017
- *Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences that can arise from the use of Explosive Weapons with Wide Area Effects in Populated Areas*, January 2021

Other Resources:

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⁹ See Human Rights Watch and International Human Rights Clinic, *A Commitment to Civilians: Precedent for a Political Declaration on Explosive Weapons in Populated Areas*, (New York: Human Rights Watch, 2019).

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Category 2: Civilian Harm Prevention and Mitigation

Sources in International Law:

Binding sources of international law enumerate standards to prevent civilian harm and protect civilians during armed conflict. International humanitarian law, enshrined in both custom and treaty, centers on several general and fundamental principles: the distinction between civilians and combatants, the prohibition on causing unnecessary suffering, and the principles of necessity and proportionality as a limit to military action.¹⁰

Treaties expound upon the general and specific protection of civilians obligations of parties to both international and non-international armed conflicts. Many principles established in the Geneva Conventions of 1949 and their Additional Protocols also have the status of customary international law, rendering them binding on governments that are not parties to the Conventions.¹¹

- The Fourth Geneva Convention of 1949 and its Additional Protocol I of 1977 contain extensive requirements for the protection of civilians during wars between governments.¹²
- For non-international armed conflicts, Common Article 3 of the four Geneva Conventions of 1949 requires the humane treatment of all persons taking no active part in hostilities, and Additional Protocol II to the Geneva Conventions of 1949 expand on the treatment and protection of civilians in non-international armed conflicts.¹³

10 International Committee of the Red Cross (ICRC), "Fundamental Principles of IHL," The ICRC Online Casebook, <https://casebook.icrc.org/glossary/fundamental-principles-ihl>.

11 The ICRC has set up and regularly updates a customary international humanitarian law database to provide information on the customary status of different international humanitarian law provisions. See generally: <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

12 *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3, Articles 48-84.

13 Common Article 3 to the four Geneva Conventions of 1949, 75 UNTS 31, 75 UNTS 85, 75 UNTS 135, 75 UNTS 287; *Additional Protocol I*, Articles 13-18.

Use of force in armed conflicts may be governed by international humanitarian law and/or international human rights law.¹⁴ Governments therefore need to assess the applicable legal framework(s) in determining lawful use of force. Rules of Engagement provided to soldiers should ensure compliance with the applicable domestic and international laws, as well as operational and policy considerations.

- International humanitarian law governing the conduct of hostilities includes the principles of distinction, proportionality, and the obligation to take precautions in attack.¹⁵ These rules have implication on the way governments and their militaries plan for attacks, make targeting decisions, and decide on means and methods of warfare.
- International human rights law standards governing law enforcement include an assumption of protection of individuals, and generally restricts the use of lethal force to situations when it is strictly and absolutely necessary to protect life.¹⁶ Alternative methods, such as arrest, must therefore be used where possible.¹⁷

The general obligation to take constant care in the conduct of military operations implies an obligation to mitigate the overall impact and harmfulness of military operations on the civilian population.¹⁸

- Those involved in the planning of military operations must take all feasible precautions to avoid and minimize civilian harm.¹⁹
- There is an obligation to give effective advance warning of attacks which may affect the civilian population unless circumstances do not permit.²⁰
- Damage to critical infrastructure is likely to cause reverberating or indirect effects which are devastating to the protection of the civilian population. It is increasingly clear that parties to a conflict must consider reverberating effects that are foreseeable in the circumstances in assessing expected incidental civilian harm of an attack.²¹
- There is also an obligation on parties to a conflict to take feasible precautions to protect civilians under their control from attacks, including by avoiding locating their own military objectives near populated areas.²²

Treaty and customary international law also regulate the use of weapons and their effects on civilians, including direct and indirect provisions on the use of explosive weapons.

- Parties to a conflict must take feasible precautions in choosing the means and methods of warfare, avoiding or minimizing civilian harm, and may not use weapons that do not sufficiently distinguish between combatants and civilians.²³

14 ICRC, *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (Geneva: ICRC, 2013), p. 1.

15 ICRC, *Customary IHL Database*, Rules 1-24, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>; ICRC, *The Use of Force in Armed Conflicts*, p. 7.

16 UN Office of the High Commissioner for Human Rights (OHCHR), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 7 September 1990, Principle 9; UN OHCHR, *UN Code of Conduct for Law Enforcement Officials*, 17 December 1979; ICRC, *The Use of Force in Armed Conflicts*, p. 7.

17 ICRC, *The Use of Force in Armed Conflicts*, p. 7.

18 *Additional Protocol I*, Article 57(1); ICRC, *Customary IHL Database*, Rule 15.

19 *Ibid.*

20 *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, Article 26; *Additional Protocol I*, Article 57(2)(c); ICRC, *Customary IHL Database*, Rule 20.

21 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts Report* (Geneva: ICRC, October 2015), p. 52.

22 *Additional Protocol I*, Article 58; *ICRC Customary Study*, Rule 22.

23 *Additional Protocol I*, Article 51(4); *ICRC Customary Study*, Rule 71.

- They must also ensure that the use of any new weapons that are developed or acquired comply with international humanitarian law.²⁴
- Specific treaties regulate the use of explosive weapons.²⁵
- It is increasingly clear that governments should not use explosive weapons with a wide impact area in densely populated areas.²⁶

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24 *Additional Protocol I*, Article 36.

25 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (“Ottawa Convention”)*, 18 September 1997, 2056 UNTS 211; *Convention on Cluster Munitions*, 30 May 2008, 2688 UNTS 39; *Amended Protocol II of the Convention on Certain Conventional Weapons*, 3 May 1996, 2048 UNTS 93; *Protocol V of the Convention on Certain Conventional Weapons*, 28 November 2008, 2399 UNTS 100.

26 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts Report* (Geneva: ICRC, October 2011), p. 42; ICRC, *Challenges Report*, October 2015, p. 48.

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Category 3: Civilian Harm Response (Reporting, Investigations, Tracking, and Recording)

Sources in International Law:

Reporting, investigating, tracking, and recording civilian harm helps parties to conflicts fulfill their obligations under international humanitarian law. Although all civilian harm does not necessarily result from the commission of war crimes or other violations of international humanitarian law, tracking civilian harm helps governments determine whether violations may have occurred. It can also help prevent violations and mitigate civilian harm in future operations.

- There are obligations under international humanitarian law for military commanders to report violations of IHL.²⁷ In order for governments to properly monitor their compliance with IHL, it is also necessary to set up broader mechanisms for internal and external reporting of incidents, as well as effective assessment mechanisms which can initiate investigations where necessary.²⁸
- Under treaty and customary international law, governments have an obligation to effectively investigate war crimes over which they have jurisdiction, including war crimes that involve civilian harm.²⁹ There is also an obligation to carry out some form of investigation into all violations of international humanitarian law other than war crimes.³⁰
- Other bodies of law also require investigations into violations in armed conflict.³¹ The UN Basic Principles on the Right to Remedy and Reparation observe that governments are obliged to investigate serious violations of international humanitarian law “effectively, promptly, thoroughly and impartially.”³² Investigations can also be a part of effective remedy and reparation for violations of international law.

While there is not an express legal rule requiring the tracking and recording of civilian harm in armed conflict, doing so is key to ensure ongoing compliance with international humanitarian law.

- Evaluating civilian harm in military operations helps parties to a conflict assess the quality of their precautionary measures, as well as the accuracy of their targeting decisions for both the principles of distinction and proportionality.³³

27 *Additional Protocol I*, Article 87(1); ICRC, *Customary IHL Database*, Rule 153.

28 ICRC/Geneva Academy of International Humanitarian Law and Human Rights, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice* (Geneva: ICRC, 2019), Guidelines 4 and 5.

29 *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, Article 49; *Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, Article 50; *Geneva Convention (III) Relative to the Treatment of Prisoners of War*, 12 August 1949, Article 129; *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, 18 October 1907, Article 146; *Additional Protocol I*, Article 85; ICRC, *Customary IHL Database*, Rule 158.

30 *Guidelines on Investigating Violations of IHL*, para 16.

31 See *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 89, Article 6; International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Article 12; UN Human Rights Committee, *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 10 October 2018, CCPR/C/GC/36, paras 27-29; *Rome Statute of the International Criminal Court*, 17 July 1998, Preamble, para 6.

32 United Nations General Assembly resolution 60/147, *Basic Principles and Guidelines on the Right to Remedy and Reparation*, Principle II.3.b.

33 Action on Armed Violence, *The United Kingdom’s Obligation to Investigate, Record and Report Civilian Casualties in Armed Conflict*, March 2021, 57-69.

- Authoritative UN reports reflect the importance of civilian harm tracking and investigations.³⁴
- Other international legal requirements also imply post-action investigations regarding civilian harm.³⁵ For example, parties to a conflict must take all possible measures to search for, collect and evacuate the wounded, sick, and dead, including civilians.³⁶ This implies the assessment of injuries and deaths among civilians after operations.
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34 UNSC, *Protection of civilians in armed conflict – Report of the Secretary-General*, 7 May 2019, UN Doc S/2019/373, para 56; UNSC, *Protection of civilians in armed conflict – Report of the Secretary-General*, 6 May 2020, UN Doc S/2020/366, para 60.

35 See *Additional Protocol I*, Article 10; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, Article 8; *ICRC Customary Study*, Rule 109.

36 ICRC, *Customary Study*, Volume II, Chapter 35, Section A.

37 *Geneva Convention IV*, Article 26; *Additional Protocol I*, Articles 33-34; *International Convention for the Protection of All Persons from Enforced Disappearance*.

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Category 4: Amends and Reparations

Sources in International Law

It is a general principle of international law that governments must provide full reparation for violations of international law.³⁸

- Governments have treaty and customary obligations to provide effective remedy for violations of international human rights law, including during situations of armed conflict.³⁹

38 UN International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10), chp.IV.E.1 (2001), adopted by the UN General Assembly in Resolution A/RES/62/61 (8 January 2008), Article 31.

39 See *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, Article 2; *American Convention on Human Rights* (“Pact of San Jose”), 22 November 1969, 1144 UNTS 123, Article 25; *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, Article 13; United Nations General Assembly, *Basic Principles and Guidelines on the Right to Remedy and Reparation*, 21 March 2006, A/RES/60/147.

- Under international humanitarian law, governments responsible for violations of international humanitarian law, including unlawful civilian harm, must make full reparation for the loss or injury caused.⁴⁰ Although the scope of this obligation to individual victims of violations of international humanitarian law is under development under international law, it is increasingly recognized that victims of serious violations of international humanitarian law have a right to adequate, effective, and prompt reparation for harm suffered.⁴¹

Governments and military commanders have obligations to investigate and prosecute serious violations of international humanitarian law including war crimes.⁴² Governments must also investigate and prosecute serious human rights violations.⁴³

- This means they must have adequate legislation and infrastructure to carry out effective investigations and prosecutions.
- Failure to effectively investigate and prosecute serious violations of international humanitarian law and international human rights law can lead to aggravated responsibility of governments, and potential involvement of international actors, including the ICC in some circumstances⁴⁴
- The effective investigation and prosecution of criminal perpetrators of violations of international law can in itself constitute part of a reparation for such violations⁴⁵
- Governments may not pass amnesties for perpetrators of serious violations of international humanitarian law or international human rights law.⁴⁶

Although there is no explicit duty to make amends for civilian harm resulting from lawful acts of governments, it is recognized that the provision of amends enhances the protection of civilians in many ways.

Assistance for those affected by explosive remnants of war is governed by various treaties and agreements.⁴⁷ These include provisions for the marking and clearance, removal or destruction of explosive remnants of war, for risk education to civilian populations, and for the care and rehabilitation and social and economic reintegration of victims.⁴⁸

There is no direct international legal obligation to restore and repair damage to infrastructure resulting from military operations. However, it could constitute part of effective reparation if such damage is the result of violations. For damage resulting from lawful acts, restoring and repairing damage to infrastructure may be a part of providing adequate amends for such harm.

40 *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, 26 March 1999, Article 38; ICRC, *Customary IHL Database*, Rule 150.

41 United Nations General Assembly, *Remedy and Reparation*, Principle VII.

42 GCII Art 49; GCII Art 50; GCIII Art 129; GCIV Art 146; API Art; API Art 85; *ICRC Customary Law Study*, Rule 158.

43 See *Convention Against Torture*, Article 6; *International Convention for the Protection of All Persons from Enforced Disappearance*, Article 12; UN Human Rights Committee, *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 10 October 2018, CCPR/C/GC/36, paras 27-29; *Rome Statute of the International Criminal Court*, 17 July 1998, Preamble, para 6.

44 *Rome Statute*, Article 17.

45 *Basic Principles on the Right to Remedy and Reparation*, Principle III.4.

46 See e.g. UN Human Rights Committee, *General Comment No. 20 (Article 7 of the International Covenant on Civil and Political Rights)*, 10 March 1992, para 15; *ICRC Customary Study*, Rule 159.

47 *Protocol on Explosive Remnants of War*, 28 November 2003, 2399 UNTS 100; *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, 18 September 1997, 2056 UNTS 211; *Convention on Cluster Munitions*, 30 May 2008, 2688 UNTS 39; *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996*, 2048 UNTS 93.

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Annex A: Support Relationships (Partnered and Coalition Operations, Security Assistance, and Arms Transfers)

Sources in International Law

In some cases, governments have obligations under international law regarding support to other states or non-state entities. In particular, international humanitarian law, international law of state responsibility, and the Arms Trade Treaty each contain principles relevant to support relationships as they relate to the protection of civilians.

Governments have a general obligation to respect and ensure respect with international humanitarian law.⁴⁹

49 Common Article I to the four Geneva Conventions of 1949.

- This includes an obligation not to encourage, aid or assist in violations of international humanitarian law.⁵⁰
- There is also an implied due diligence obligation to take reasonable proactive steps to influence parties to conflict and bring them to an attitude of respect for international humanitarian law.⁵¹
- Governments have broad discretion in choosing the means to exercise such influence.⁵²

Governments that provide support to another government may be liable for a recipient government's violations of international humanitarian law.

- Under customary international law, a government that assists or aids another government in the commission of an internationally wrongful act is responsible for that act if: 1) the assisting government has knowledge of the circumstances of the internationally wrongful act, and 2) the act would be internationally wrongful if committed by the assisting government.⁵³
- Violations of customary international humanitarian law, which are binding on all states, or violations of treaties to which both the assisting government and the recipient government are parties would satisfy the second requirement for the assisting government's responsibility under international law.

The Arms Trade Treaty includes provisions governing international transfers of conventional arms.

- Under Article 6 of the Treaty, state parties cannot authorize the transfer of specified arms when the state has knowledge that the arms "would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party."⁵⁴
- Article 7 further obliges state parties to not authorize the export of arms if there is "there is an overriding risk" that the arms could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law.⁵⁵
- The Treaty requires state parties to carry out risk assessments regarding the above obligations prior to potential transfers.⁵⁶

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Annex B: Humanitarian Action

Sources in International Law

International humanitarian law includes various measures to facilitate the provision of impartial humanitarian assistance to civilians during armed conflicts.

- Treaty and customary international humanitarian law requires parties to a conflict to allow and facilitate humanitarian aid for civilians in need, including by ensuring the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions.⁵⁷
- Although offers to conduct humanitarian aid require the consent of the state in whose territory it is carried out, it is generally accepted that such consent may not arbitrarily be withheld.⁵⁸

International humanitarian law also generally provides for the protection of humanitarian assistance personnel and objects:

- Treaty and customary international law provide for the protection of humanitarian relief personnel and objects.⁵⁹ Parties to an armed conflict may not direct attacks or commit other forms of violence against them or take them hostage.
- Medical humanitarian relief operations also benefit from further protections under international humanitarian law.⁶⁰

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