

# Section 1: Definitions

## Article 1: Definitions

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1. *Accused* means a person against whom one or more counts in an indictment have been confirmed in accordance with the Model Code of Criminal Procedure.
2. *Child* means any person under the age of eighteen years.
3. *Convicted person* means a person who has been tried and found criminally responsible in a final court decision.
4. *Evidence* includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.
5. *Juvenile* means a child between the ages of twelve and eighteen years.
6. *MCC* means the Model Criminal Code.
7. *MCCP* means the Model Code of Criminal Procedure.
8. *Property* includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in, such property.
9. *Public official* means:
  - (a) a person who holds a legislative, executive, administrative, or judicial office, whether appointed or elected, whether temporary or permanent, whether paid or unpaid, irrespective of the person's seniority;
  - (b) a person who performs a public function, including one for a public agency or public enterprise, or provides a public service as defined under the applicable law; or
  - (c) any other person defined as a public official under the applicable law.

10. *State* includes an organized area or entity, such as an autonomous territory or a separate customs territory.
11. *Suspect* means a person against whom there exists a reasonable suspicion of his or her having committed a criminal offense.
12. *Territory* means the land, coastal seas, and water surfaces within the territory of [insert name of state], as well as the air space over these areas.
13. *Victim* means a person against whom a criminal offense has been committed. When a criminal offense is committed against a child, his or her parents or legal guardians are also classified as victims. When the person against whom a criminal offense is committed is killed or incapacitated, his or her spouse, parent, child, brother, sister, grandparent, grandchild, adopted parent, adopted child, adopted brother, adopted sister, adopted grandparent, adopted grandchild, or foster parent is classified as a victim, except if that person is accused of the criminal offense.
14. *Witness* means a person who is summonsed or has relevant knowledge and may be summonsed to testify before a court in the course of criminal proceedings.

## Commentary

**Paragraph 1:** The terms *accused* and *suspect* are both used throughout *Model Codes for Post-Conflict Criminal Justice* (hereafter, the Model Codes). A suspect is a person against whom there is a reasonable suspicion of him or her having committed a criminal offense, as defined in Paragraph 11. A *suspect* becomes an *accused* when an indictment against him or her is prepared, submitted to the court, and confirmed by it. After the confirmation of the indictment, the accused must stand trial before the court. Reference should be made to Chapter 9, Part 1, and Chapter 10, Part 2, of the MCCP.

**Paragraph 2:** The definition of the term *child* as contained in Paragraph 2 is taken from Article 1 of the United Nations Convention on the Rights of the Child. It is important to stress the distinction between the terms *child* and *juvenile*, both of which are used throughout the Model Codes. A juvenile falls within the definition of a child (that is, he or she is under the age of eighteen years). However, the term *juvenile* has a distinct meaning for the purposes of asserting jurisdiction over the person. Under the MCC, a court may assert criminal jurisdiction over a juvenile, meaning a child over the age of twelve, but not over a child. Reference should be made to Article 7 of the MCC and its accompanying commentary, which deals with personal jurisdiction over juveniles.

International human rights norms and standards provide that a child (and by necessary implication a juvenile) who is involved in criminal proceedings not only should be afforded the same guarantees and protections as an adult but also is entitled to additional protections on account of his or her vulnerable status. Rule 2(2)(a) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice specifically provides that a juvenile is a person who is tried “in a manner which is different from an adult.” The protective legal framework aimed at safeguarding the rights of children consists of international conventions (e.g., the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child) and a number of nonbinding instruments (e.g., the United Nations Standard Minimum Rules for the Administration of Juvenile Justice [the Beijing Rules], the United Nations Guidelines for the Protection of Juveniles Deprived of Their Liberty, and the United Nations Guidelines for the Prevention of Juvenile Delinquency [the Riyadh Guidelines]). The drafters of the Model Codes have sought to integrate these international norms and standards applicable to children into the codes’ substantive provisions. Reference should be made to Section 14 of the MCC, on juvenile penalties, and Chapter 15 of the MCCP, which specifically deals with the procedural rights of juveniles involved in criminal proceedings.

**Paragraph 5:** Reference should be made to the commentary to Paragraph 2.

**Paragraphs 6 and 7:** The Model Codes are a set of four model codes published in three volumes under the title *Model Codes for Post-Conflict Criminal Justice*. The Model Criminal Code and the Model Code of Criminal Procedure make up volumes I and II, respectively; volume III contains a Model Detention Act and a Model Police Powers Act. For a discussion of the origins, aims, and content of the Model Codes, see the User’s Guide at the beginning of this volume.

**Paragraph 8:** The definition of *property* in Paragraph 8 is taken from Article 1(b) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The definition is similar to that contained in the United Nations Convention against Transnational Organized Crime, Article 1(d), and the United Nations Convention against Corruption, Article 2(d). The only distinction is the omission of the terms *tangible* and *intangible*. The reason for this exclusion is that *tangible* (meaning property that is detectable with the senses, such as a painting or jewelry) and *intangible* (meaning property that cannot be detected with the senses, such as a claim to a bank account, a stock, or a bond) are already subsumed within the terms *corporeal* and *incorporeal*, which are found in the Council of Europe’s definition of property.

**Paragraph 9:** The definition of *public official* has been taken from Article 2(a) of the United Nations Convention against Corruption, currently the most comprehensive definition of public official in international and regional instruments. This definition is relevant to criminal offenses involving public officials, such as corruption involving a public official (Article 138), and trading in influence (Article 141), to name but a few, and to offenses that may be perpetrated against public officials, such as threat and

improper influence (Article 146). Furthermore, the definition of public official is relevant to the prohibition on holding a post as a public official, an additional penalty that may be imposed upon a public official under Article 65.

**Paragraph 10:** The precise legal definition of the term *state* is a subject of debate among scholars of public international law and is beyond the scope of this work. Paragraph 10 is intended not to provide a definitive statement of what a state is but instead to provide an inclusive definition of the term *state*. The purpose of doing so is to ensure that when the MCC refers to a state, other entities are included. The reform of post-conflict laws may take place outside the context of a recognized state—for example, in Kosovo and in the early stages of the peace operation in East Timor (before East Timor was recognized as an independent state at an international level). In some articles of the Model Codes, it will be obvious to the reader where the term could refer only to a state proper, such as with the signing of extradition treaties mentioned in Chapter 14, Part 2, of the MCCP, a function that may be conducted only by a recognized state. The inclusive definition contained in the MCC is inspired by the commentaries to the Organization for Economic Cooperation and Development’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which discuss the scope of the term *foreign country* as defined in Article 1(4)(b) of the convention.

**Paragraph 11:** Reference should be made to the commentary to Paragraph 1.

**Paragraph 12:** The definition of *territory* is important in determining whether a state possesses territorial jurisdiction over a criminal offense under Article 4. It is also relevant to the determination of extraterritorial jurisdiction under Article 5. The question of territoriality of coastal seas and air space is one that is regulated by public international law and should be determined on a case-by-case basis. With regard to coastal seas, the generally recognized rule is that the waters 12 nautical miles from the coast of a state are considered part of its territory. A state may have certain rights regarding seas up to 200 nautical miles from its coast as part of an “exclusive economic zone” designated for the purpose of exploitation of resources; the state, however, does not have criminal jurisdiction over these waters.

**Paragraph 13:** The drafters of the Model Codes originally considered using the definition of *victim* contained in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Principle 1). The declaration defines victims as “persons who, individually or collectively have suffered damage, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal law operative within Member States.” While this definition is both comprehensive and accurate in terms of defining victimhood in a general sense, it was decided to narrow this definition slightly for the purposes of drafting a legal definition of victim for use in the Model Codes. The intent of the drafters was to create a definition that is practical and workable. The interests of victims are protected throughout the Model Codes (see, for example, Chapter 5 of the MCCP), and the drafters were concerned that such rights should be enforceable in a practical sense. If the definition of

victim from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power were used in the MCC, a broad reading of it would require—for example, in Chapter 8, Part 1, of the MCCP (“Notification of Victims”)—that the police make efforts to inform every person in the state who has been personally or collectively affected by a criminal offense of the progress of the criminal proceedings. In theory, this requirement may impose an obligation upon the police to inform large numbers of individual “victims,” an impracticable task that may have the adverse result of depriving victims who are more closely related to the criminal offense of their rights. The definition of victim contained in Paragraph 13 was based on a comparative survey of national legislation and the legal definition of the term *victim* contained in that legislation. The definition that was constructed gives both the person against whom the criminal offense was committed and close family members of that person enforceable rights under the MCCP. A partner (meaning a person in a nonmarital committed relationship with the person against whom the criminal offense was committed) has not been included in the definition of victim. A state may wish to consider adding partner to the list of victims. Reference should be made to Chapter 5 and Chapter 8, Part 1, of the MCCP and their accompanying commentaries, which address the rights of victims.

In Articles 12(2), 51(1)(b), 51(2)(f), 51(2)(g), 51(2)(h), 51(2)(i), 97.1, 102.1(3), and 153.1(2) of the MCC, for example, the term *victim* refers only to the person against whom the criminal offense is directly committed.

Paragraph 13 refers to an adopted parent and an adopted child. In some legal systems, it is not possible to “adopt” a child in the sense that the child will take the name of the adoptive parents. Different terminology is used to describe a relationship that is akin to adoption but in which the child maintains his or her family name. In a state that does not recognize adoption, the definition of victim used in domestic legislation should include any relationships that operate similarly to adoption.

**Paragraph 14:** The definition of the term *witness* in Paragraph 14 is intentionally wide. This is because the drafters did not want to limit the definition of *witness* to persons who will testify during a trial. Persons who provide information on a criminal offense during the investigation of a criminal offense should also be included in the definition of witness.