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Landmine Victim Assistance and Government Legal Obligation

What are a state's legal obligations to landmine victim assistance?

The major impetus for the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty) was to alleviate the negative humanitarian effects caused by landmines.1 The 1997 Landmine Monitor estimates there are more than 300,000 landmine survivors worldwide, and that the cost of rehabilitat- ing these survivors will exceed $3 billion (U.S.) over the next ten years.2 Article 6, paragraph 3 of the Landmine Ban Treaty requires States Parties to provide mine victim assistance in order to reintegrate landmine survivors into society.3

Victim Assistance and Government Obligation

Under the Mine Ban Treaty

State signatories to the Mine Ban Treaty are bound by treaty law to provide landmine victim assistance.4 In 1980, the attachment of the Landmine Protocol to the Convention of Conventional Weapons (CCW) signaled the international community's official recognition of the humanitarian harm caused by landmines. By adopting the protocol, States Parties intended to reduce harm caused by landmines by restricting their use to certain areas and under particular conditions. Nevertheless, the death and injury toll caused by landmines in the late 1980s and 1990s continued to increase. To stop landmine proliferation and alleviate the effects of landmine use, the international community created the 1997 Mine Ban Treaty.

With the entry into force of the Mine Ban Treaty in March 1999, the social and economic integration of landmine survivors became part of international treaty law. The Mine Ban Treaty is especially noteworthy because it is the first arms control and disarmament treaty to incorporate language supporting victims of the target weapon. In the treaty's preamble, States Parties express their wish to "do their utmost in providing assistance for the care and rehabilitation, including the social and economic rehabilitation of mine victims."5 To achieve this goal, Article 6, paragraph 3 of the treaty obligates signatory states to support victim assistance, stating that "[e]ach State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs."6 Based on these provisions, the treaty "implies a responsibility of the international community to support victim assistance programs in mine-affected countries with limited resources."7 This means that States Parties can seek, or be asked, for survivor assistance. Specifically, Article 6, paragraph 7(G) grants states the right to request other States Parties to assist victims.8

The drafters of the Mine Ban Treaty designed the treaty to prevent landmine injuries and to help rehabilitate mine-injured individuals and communities.9 Treaty critics could claim, however, that the language of Article 6 paragraph 3 - "[l]ach State Party in a position to do so shall provide assistance" - renders the argument that "all" States Parties are obligated to provide victim assistance untenable. Because one can read the provision to imply that some States Parties are not in a position to do so, these critics could also argue that such states are therefore not "obligated" to provide victim assistance. Such criticism is grounded in the belief that the obligation pertains exclusively to the more economically developed states, or to those states that do not have limited GDP growth and internal problems of their own. I counter that States Parties, irrespective of poverty, wealth or level of economic development, can provide for mine victim assistance. Specifically, if States Parties understand the definition and spirit of victim assistance they will better understand that they are in a position to provide victim assistance. This issue is discussed briefly below.

Overview of Landmine Victim Assistance

Article 6, paragraph 3 of the Mine Ban Treaty calls for States Parties to "provide assistance for the care and rehabilitation, and social and economic reintegration of, mine victims and for mine awareness programs." This assistance does not require the creation of formal programs necessarily. Rather, states can assist victims through programs and policy. The definition of victim assistance is comprehensive and is not restricted to the provision of medical treatment for initial traumatic injuries sustained from landmine explosions and the provision of prosthetics.10 Victim assistance also includes ongoing treatment to aid in physical therapy, and mental and emotional rehabilitation of survivors and their families. Landmine survivors themselves have defined victim assistance as "emergency medical, psychological and social services; access to prosthetics, wheelchairs and other assistive devices; social and economic reintegration; psychological and peer support; accident prevention programs; and legal and advisory services."11 These activities can take the form of continued rehabilitative care, psychological and social counseling, vocational training, broader public advocacy for disability rights, and judicial reform aimed at removing barriers that hinder persons with disabilities from integrating into society. For example, if a state does not have the financial resources to provide direct victim assistance, it can satisfy its obligation to assist victims through policy changes enabling survivors to be more fully integrated into society's economic and social realms.

Legislation and Public Awareness

States Parties can enact and enforce national legislation to promote effective treatment, care and protection for all disabled citizens, including landmine survivors. The legislation should ensure that disabled populations have legal protection against discrimination and access of an acceptable level of care and access to services. Moreover, states should provide landmine survivors access to a formal statutory complaint mechanism to address survivors' concerns and to protect their interests. Lastly, each State Party can accept responsibility for raising public awareness of the needs of its disabled citizenry and to counter the stigmatization of persons with disabilities. This type of policy implementation may include community education measures, such as a campaign to publicize the abilities of the disabled and the availability of rehabilitative and social services.

Access

States Parties can also provide victim assistance by providing persons with disabilities better access to a variety of services and assistance. Full and open access to the physical environment, to rehabilitative, and to social and economic programs is a means of equalizing opportunities in all spheres of society. Access includes physical access to buildings and public places; access to first aid, emergency and continuing medical care, physical rehabilitation, employment op-
purtunities, education and training, reli-
gious practice, sports and recreation, safe
land and tenure of land; and to informa-
tion and communication about available
services. States also set affirmative action
policies designed to encourage the ed-
cation, recruitment, and hiring of landmine
victims and persons with dis-
abilities. Similarly, states can encourage
the inclusion of landmine survivors and
landmine-impacted communities in all
activities and initiatives that concern them.

**National Council on Disability Issues**

A third way for States Parties to pro-
vide victim assistance is through the cre-
atation of a National Council on Disability
issues to address the needs of disabled
victims, including the victims of landmines. Cambodia has done this (al-
though before the advent of the Mine Ban Treaty) by creating the Cambodian Disabil-
ity Action Council (DAC), a joint
government, international organization,
and NGO body mandated to oversee all
aspects of programs and policies relating
to persons with disabilities.16

The Intercessional Standing Com-
mittee of Experts (ISCE) may provide
guidance for the creation of National Councils. The ISCE, one of the few con-
crete results concerning victim assistance directly attributable to the Mine Ban Treaty, primarily aims to "help
mainten the international community's focus on the Mine Ban Treaty and its implemen-
tation.17 The ISCE is organized into five Standing Committees (SCC) that meet
twice a year (between annual state party
meetings) to discuss a range of subjects, including victim assistance. The ICRI,
encouraged its members to participate in the ISCE meetings "to have maximum
impact on the Second State Parties Meet-
ing preparations.18 This encouragement
included specific action required under victim assistance, which states later incorporated into their discussions.19 The ISCE is a
continuation of the International Cam-
paign to Ban Landmines (ICBL) model of joint NGO-Government collaboration to
work toward the implementation of Treaty provisions.20 Through its activi-
ties, the ISCE can help educate States
Parties about various supportive activi-
ties for people with disabilities that re-
quire little new effort.

These three options demonstrate that all states can provide victim assis-
tance, particularly if they are ex-
ploring ways to include social re-inte-
gration. Methods of social re-integration,
such as legislation, policy, exhortation and example (H7), are crucial to support
financial assistance. Therefore, all States
Parties can enact low cost, practical poli-
cies to support mine victims.21 On
a broad level, States Parties fulfillment of state obligations is essential to the func-
tioning of the international relations sys-
tem. State respect for international law is
one of the key components of inter-state
relations. In fact, one of the fundamen-
tal goals of the United Nations is "to es-
blish conditions under which... to expect for the obligations arising from treaties
and other sources of international law can be maintained.
 Moreover, Article 26 of the
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of Treaties specifies that every treaty in force is binding upon States Parties, and Ar-
ticle 31 (1) requires parties to perform
duties in good faith.22 The implication
is that the treaty's principles and goals
obligate all States Parties to support
landmine victim assistance because they are
all signatories to the treaty and, most
critically, are all "in a position to do so.22

In sum, all states, even the poorest,
can assist landmine victims within their

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1 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-
Personnel Mines and On Their Destruction, May 3, 1999, pub. 36ILM 1507 (hereinafter Mine
Ban Treaty).23

2 International Campaign to Ban Landmines, Landmine Monitor: Toward a Mine-Free World Execu-
 tive Summary 22 (1999).

3 Article 6. paragraph 3 of the Mine Ban Treaty states that "Each State Party in a position to in-
do so shall provide for the care and rehabilita-
tion, and social and economic reintegration, of
victims and for mine awareness programs. Such
assistance may be provided, inter alia, by the
United Nations system, international, regional,
or national organizations or institutions, the
International Campaign of the Red Cross and
Red Crescent Societies and their
International Federation, non-governmental
organizations, or on a bilateral basis."

4 Mine Ban Treaty, supra note 1, art. 6, paras. 1, at 1510-13. States Parties are those states that have either signed and ratified or acceded to the Treaty. States that have
not signed the Treaty cannot verify if they. They become
States Parties through accession. Accession has the
same effect as ratification-State that have not signed the States Parties. I would like to thank Lou Musca
for the International Committee for the Red Cross
in providing this point.

5 Article focuses on states and not
other international actors, such as international
organizations, NGOs and quasi-governmental au-
torities, because states are the main multilateral
and bilateral donors and, by definition, the only bilateral
donors. For example, in 1999 seventeen states con-
tributed more than $20 million dollars to mine
action programs, while the major non-state inter-
national states, the United Nations, spent only $11.9
million. International Campaign to Ban Landmines, supra note 3, at 36, M.

6 Mine Ban Treaty, supra note 1, para. 6, para. 1, at 1510-11.

7 Id. at 1507.

8 Id. at 3, para. 5, at 1510-11.

9 International Campaign to Ban Landmines, Landmine Monitor Report 1999, 24

10 See Mine Ban Treaty, supra note 1, para. 6, para. 1, at 1510-11. (States Parties may require the United

11 Nations, regional organizations, other States Part-
ies or other competent international or non-

governmental force to achieve its purposes in the

12 elaboration of a national demining program to de-

13 mcnal mines...14

14 Mine Ban Treaty Preparatory, para. one stating "[d]esigned to put an end to suffering and ca-

15 suations caused by anti-personnel mines, that

16 kill or maim hundreds of people" and propose

17 these stated "[l]eaving to do the answers in pro-

18 viding assistance for the care and rehabilitation,

19 including the social and economic rehabilitation of

20 mine victims." Mine Ban Treaty, supra note 1, at 1507.

21 Mine Ban Treaty, supra note 1, para. 6, para. 1, at 1510 (figures mine).

22 According to the International Campaign to Ban Landmines (ICBL), the definition of "landmine victims" includes "those who, either in

23 individually, or collectedly, have suffered physical, emotional, and psychological injury, economic loss or substantial impairment of their fundamental

24 rights through acts or omission referred to mine

25 utilization." International Campaign to Ban Landmines, supra note 3. Therefore, the

26 ICBL be

27 lies that "mine victims include directly impacted individuals (and their families), and communities affected


30 Jerry White & Ken Rutherford, The Role of the Landmine Survivors Network in U.S. Work With

31 The Global Movement to Ban Landmines, Personal Landmines, 100-104 (Maxwell A. Cameron

32 et al., eds., Oxford University Press 1999).


34 E-Mail from Stuart Walker, ICBL, Govern-

35 ment Relations Liaison, and Liz Bernstein, ICBL, Coordinator, to ICBL Coordination Committee,

36 National Campaigns and Campaigns (Apr. 21, 2000) (with file).

37 Working paper related to the Informal Con-

38 sultations on International Cooperation and assistance in accordance with article 6 of the

39 Committee of Ministers, Montreux, May 3-7, 1999. Meeting of the States Parties to the Convention on the Pro-

40 hibition of the Use, Stockpiling, Production and

41 Transfer of Anti-Personnel Mines and on their De-

42 struction (rel file with authors).

43 See International Campaign to Ban Landmines Web site, www.icbl.org, which

44 typasses to "cease" and then "SCC on Victim Assistance, Socio-Economic Reintegration and

45 Mine Awareness." For further information con-

46 cerning the NGOs role in implementing the Mine

47 Ban Treaty, see Kenneth R. Rutherford, NGO En-

48 forcement Of Armed Conflict Dynamics: The Case Of The Mine Ban Treaty, paper presented at the Con-

49 ference on Globalization and Security, Denver

50 Colorado, November 10-11, 2000 (on file with

51 author).

52 States Parties obligations to landmine vic-

53 tim assistance, however, require action above and

54 beyoud current work, dedication and data col-

55 ection. Data collection or survey work should not

56 substitute for direct mine victim assistance. Data col-

57 llection that could survive inquiries should be con-

58 cluded with compassion and care so that the Red

59 cross and or victims of survivors are not tarred.

60 International Campaign to Ban Landmines Work-

61 ing Group on Victim Assistance, Guidelines for the Care and Rehabilitation of Survivors, at http://

62 www.icbl.org/mine/goldline.php. The goal of all

63 information gathering must be to help govern-

64 ments work more effectively in making decisions.

65 U.N. Charter, publ.

66 Vienna Convention on the Law of Treaties,


68 Mine Ban Treaty, supra note 1, para. 6, para. 1, at 1510-11.

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