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Has the CCM Accommodated Gender?

While the *Convention on Cluster Munitions* has taken steps to include gender, it missed the opportunity to mainstream gender into a disarmament treaty.

by Dalila Mahdawi [Independent journalist]



A MAG (Mines Advisory Group) deminer searches for buried cluster munitions in south Lebanon. MAG is one of a growing number of mine action organizations operating in Lebanon with both male and female deminers.

Photo courtesy of the author.

A number of scholars have written about the *Convention on Cluster Munitions* (CCM), but without much elaboration on its articulation of gender issues. The dearth of literature is perhaps unsurprising given the CCM's legal novelty; yet this contrasts with women's notable involvement in disarmament campaigns and scholarship on the gendered effects of militarization.¹

In the last decade, the U.N. has recognized the merits of incorporating gender considerations in all areas of policy-making, including mine action, and has noted that "mainstreaming gender in programming leads to better outputs."² Pre-existing gender-based norms can play a profound role in shaping the experiences of adults and adolescents affected by cluster munitions. Cluster munition casualties are highly gendered, with males representing 84 percent of direct victims, according to Handicap International.³ However, organizations like the International Committee of the Red Cross have said the repercussions of cluster munition accidents may more often disadvantage females.⁴ In many societies, female casualties are frequently left unreported.⁵ Injured females may not have access to adequate medical facilities and may be less informed than males about available services or treatment. Discrimination against disabled or disfigured women and girls may prevent marriage or result in abandonment or divorce. The wives of men who have been killed or disabled often struggle to economically provide for their families. The difficulty is exacerbated in areas where it is not culturally acceptable for a woman to work outside the home.⁶

The CCM relegates women to a special category, thereby reinforcing the overall androcentric nature of international law and treaty negotiation and showing only cursory interest in gender considerations. Nevertheless, even the limited steps the CCM took to include gendered provisions signal a departure from previous arms conventions; this budding awareness may herald a movement toward greater interaction with gender in the cluster munitions field.

Treaty Provisions

The CCM begins with 20 preambular clauses highlighting its purpose and underscoring the urgent need to protect civilians from cluster munitions. Of these clauses, two refer to the vulnerability of women as victims, while a third notes women's role in peace and security. In Paragraph 3, signatories express their concern "that cluster munition remnants kill or maim civilians, including women and children."⁷ This



Women and children on their way to a winter wedding in Bamyán, Afghanistan.
Photo courtesy of U.N. Photo/Aurora Alambra.

is followed in Paragraph 8 with States Parties “recognizing the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups.”⁷

Preamble 3: Women and Children

While the reference to civilian women and children is important in highlighting the disproportionate suffering of noncombatants, it is nevertheless problematic. Whether intentional or not, including women by reference to their vulnerabilities reinforces harmful gender hierarchies. As Karima Bennouna, a professor of law at the University of California Davis School of Law (U.S.), observed, the depiction of women as inherently violable pervades international law.⁸ Grouping women with children, the CCM denies both groups agency by bestowing an assumed passivity that simultaneously infantilizes women and feminizes children.⁹ Such a classification, which a 19th century philosopher and economist John Stuart

Mill labels “indefensible in principle and mischievous in practice,” conceives of women as nonsubjects and further disenfranchises them from their already marginalized position in international law while buttressing men’s superiority.¹⁰

However, the absence of any explicit mention of women or gender concerns would be equally troubling from a feminist perspective. The above preamble clause reveals the tension in using law to advocate for gender equality. On the one hand, if explicit references to women’s rights and experiences are not made, women are inevitably marginalized.¹¹ On the other hand, by distinguishing women as a separate category, international law disempowers them and reinforces the difference of “the second sex.”¹² Proof of this can be seen in the early days of the Committee for the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), which was granted fewer resources than other treaty bodies and led to the “ghettoization” of women from the human rights arena.¹³



A soldier from the U.N. Interim Force in Lebanon views undetonated cluster bombs not more than 10 m (11 yd) from the home of Aleye Al-Dor, a Lebanese woman who stayed throughout the conflict in Hiniya, Lebanon.
Photo courtesy of U.N. Photo/Mark Garten.

Special references to women and children as civilians who are vulnerable to cluster munitions pose an additional challenge. According to R. Charli Carpenter, an associate professor in the Department of Political Science at the University of Massachusetts-Amherst, the traditional humanitarian focus

on women and children as the innocent parties in conflict overlooks the fact that adult male civilians are often at greatest risk.¹⁴ In the CCM, the omission of men from the civilian category grossly distorts the realities of global cluster munition casualties, where the overwhelming majority of direct victims are noncombatant males.³ Such gender essentialism, says Carpenter, “situates women alongside children as innocent, dependent, and vulnerable, and ... draws attention away from the fact that adult men may also be members of the civilian population worthy of respect, concern and protection.”¹⁴ When referring to women and children, the CCM used the word including, which implies that men comprise the majority of casualties; however, this language presents the vulnerabilities of women and children as especially aberrant. Accordingly, the CCM underpins the helpless-women mythology that permeates international law and assumes for itself a masculine role as protector.

The CCM could have taken a more representative and gender-inclusive approach: to explicitly refer to all civilians harmed by cluster munitions, thereby drawing men into the category of vulnerable civilians and women and children out of their subordinate status.

Preamble 8

Paragraph 8 of the preamble calls for age- and gender-sensitive assistance. Initially, it appears to recognize the relationship between gender roles and the risk of exposure to cluster munitions as well as the need to tailor assistance for victims. Disarmament has not historically featured gender concerns on a large-scale, as the Swiss Campaign to Ban Landmines has noted.¹⁵ Arms-control conventions preceding the CCM were gender-blind and failed to elaborate on the different ways mines and explosive remnants of war can affect women, men, girls and boys. For example, the 1997 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction* (Anti-personnel Mine Ban Convention or APMBC) and the 1980 *Convention on Certain Conventional Weapons* scarcely refer to whom they protect, employing such gender-neutral terminology as victims or civilians.¹⁶ Although the CCM minimally references women and gender, any references at all are a departure from the “womanless world” of international law and disarmament treaties in particular.¹⁷

Nevertheless, paragraph 8 appears to lack a nuanced understanding of gender. It does not state who has special needs or belongs to a vulnerable group. Given the sentence’s emphasis on age and gender, and bearing international law’s andro-

centric history in mind, the reader can only assume it refers to women, children, the elderly and the disabled. That feminist efforts to use law for advocacy may have had the opposite effect is ironic, unwittingly “further entrenching women’s inequality” by reinforcing gender hierarchies that uphold males as the universal subject.¹¹ Additionally, the CCM does not define what it means by gender. With gender often understood as synonymous with women, its meaning in the CCM cannot be taken for granted.¹⁶

Preamble 15

Preamble 15 in the CCM is to be implemented “bearing in mind” U.N. Security Council Resolution 1325 on Women, Peace and Security (Resolution 1325), thereby making a clear normative link between women’s rights, gender, peace building and humanitarian disarmament. Adopted in October 2000, Resolution 1325 has been described as a “watershed political framework that makes women and a gender perspective relevant” in all areas of the council’s work on international peace and security.¹⁸ Its preamble remarks on the need to “ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls.” The CCM references the resolution, demonstrating a cognizance of the importance of gender in mine action. Nevertheless, the choice of action, “bearing in mind,” is less forceful than other verbs used in the preamble, such as resolved, determined or reaffirming, and does not oblige signatories to do more than pay lip-service to the resolution.

Substantive Articles

Despite the initial three clauses signaling gender awareness and women’s rights, the CCM does not follow up with detailed actions on how to advance them. The text relates to general obligations like timetables for land clearance or stockpile destruction; all but three articles are described without reference to gender. Concerning victim assistance, Article 5 requires states to “adequately provide age- and gender-sensitive assistance” without discrimination. Article 6(7) similarly urges States Parties with the means to do so to “adequately provide age- and gender-sensitive assistance” to affected countries, while Article 7(1)(k) obliges states to submit an annual report that details compliance with the treaty.⁴ Markus Reiterer, a former chair of the Standing Committee on Victim Assistance of the APMBC and former coordinator for victim assistance in the framework of the CCW, deems that while the CCM’s inclusion of age and gender is “an important marker,” it does not demonstrate an understanding of the different experiences of women and men, girls and



A Sri Lankan deminer with MAG.
Photo courtesy of MAG/Sean Sutton.

boys.¹⁹ As Charlotte Bunch, a professor at Rutgers University and an American women’s rights activist, has remarked, adding women or gender into the existing legal cauldron will not bring about the necessary changes in mentality and policy to which gender mainstreaming aspires.²⁰ Arianna Calza Bini, program manager at the Gender and Mine Action Programme, said: “A gender perspective ... is about thinking and seeing things through ‘gender glasses,’ understanding the implications of a gender approach in terms of a whole system that structures societies, and thus, also the affected countries and communities.”²¹

Like the APMBC, the CCM “lacks the extensive implementation, verification and compliance components of other major treaties.”²² The state reports mandated under Article 7 are descriptive in nature, and, although Article 8 empowers States Parties to submit a Request for Clarification regarding compliance by other treaty parties, gender considerations do not yet appear to have been factored into such requests.⁷ However, Article 7 could be useful for gender mainstreaming, as it encourages states to demonstrate how they implement the treaty’s humanitarian goals. But given the lack of reporting

guidelines, quality fluctuates wildly. According to Mary Wareham, a consultant to the Arms Division of Human Rights Watch who was instrumental in campaigning for the CCM, “Some countries give hundreds of pages for their Article 7 report, and others give a paragraph ... sometimes in the longer ones, you’ll find information about women.”²³

The CCM has taken a more expansive approach than previous disarmament treaties by comprehensively defining victims. Article 2 defines victims as “all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights caused by the use of cluster munitions.”²⁷ Besides those directly affected, the CCM also recognizes “their affected families and communities.”²⁷ According to Calza Bini, such a comprehensive definition recognizes that cluster munitions have substantial repercussions beyond the individual directly affected, as “accidents involving male family members impact on both the direct and indirect victims and often result in severe changes in gender roles and responsibilities of all family members.”²¹

Strengthening Gender in the CCM

The CCM does not operate in isolation. Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* and Article 2(1) of the *International Covenant on Civil and Political Rights* prohibit gender-based discrimination, sharing a common Article 3 guaranteeing equal rights of women and men to its provisions.^{24,25} Similarly, the CEDAW obliges States Parties to end discrimination against women (Article 2) and to enact “temporary special measures” to that effect (Article 4).²⁶ The CCM also acknowledges the 2008 *Convention on the Rights of Persons with Disabilities*

(CRPD) in preambular Paragraph 9.⁷ The CRPD makes eight separate references to disabled females and states they are more likely than males to experience gender-based discrimination (preamble and Article 6).²⁷

The 1995 Beijing Platform for Action meanwhile includes an article stating that “women and children are particularly affected by the indiscriminate use” of mines.²⁸ The U.N. Secretary General has also acknowledged the “invaluable contribution” mine action plays in realizing the Millennium Development Goals (MDG).²⁹ Goal 3 of the MDG promotes gender equality and women’s empowerment. Harmonization with gender provisions in other treaties will lead to a stronger, more strategic understanding of the relationship between gender mainstreaming, mine action and human rights protection as a whole. Moreover, it should also result in information exchange on best practices for gender mainstreaming and the formulation and diffusion of norms on gender in mine action.

The CCM could strengthen gender mainstreaming by elaborating the gender dimensions of each substantive article, as many U.N. human rights treaty bodies have done through general recommendations or comments.³⁰ These recommendations have recognized women as full legal subjects, dismantling protective representations of women by specifying how states can achieve gender equality. Since the CCM does not have a treaty body, this work could be accomplished at the annual Meeting of States Parties and during intersessional meetings.

An additional way to advance gender is to measure how States Parties implement the Vientiane Action Plan, created at the First Meeting of States Parties in Laos in 2010 to realize the CCM’s provisions.³¹ The 66 actions in the plan commit States Parties to fulfill the CCM’s

obligations and mentions gender concerns in seven points, demonstrating that the CCM can accommodate gender.

The U.N. *Gender Guidelines for Mine Action Programmes* is perhaps the most valuable tool for integrating gender concerns into mine action. Offering the most thorough explanation of appropriate practices on gender in mine action, these guidelines help diffuse gender policy norms in a traditionally gender-blind sector. States Parties should be urged to emphasize how they use these guidelines in their Article 7 reports. Guidelines also should be produced to standardize Article 7 reports in ways that oblige States Parties to meaningfully engage with gender concerns. 

See endnotes page 66



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