

# An African Perspective on the Cluster Munitions Convention

On 30 May 2008, the international community adopted the *Convention on Cluster Munitions*.<sup>1</sup> It is little wonder that those who were against a convention of this sort are still reeling from the shock of it. Africa, on the other hand, can give itself a well-deserved pat on the back for having played a pivotal role in the adoption of a groundbreaking, legally-binding instrument of which posterity will judge the results.

by Sheila Mweemba [ Zambia Mine Action Centre ]

At the first meeting of the cluster-ban process in Oslo, Norway, in February 2007, there were four African countries present: Angola, Egypt, Mozambique and South Africa. Only three states, however, signed the Oslo Declaration at the end of the conference: Angola, Mozambique and South Africa. A little over a year ago, at the Lima Conference on Cluster Munitions, Africa's participation in the Oslo Process<sup>2</sup> began in earnest. There were 14 states present, and consistent with the continent's overall stance on general and complete disarmament, these states spoke out against the dreadful weapons.

Thereafter, more African countries began to participate in the cause. Ghana, Kenya, Malawi, Senegal, Sierra Leone, Uganda and Zambia became actively engaged in the Oslo Process. At the Livingstone African Conference on Cluster Munitions, held from 31 March to 1 April 2008, in Livingstone, Zambia, the countries of Libya, Namibia and Tunisia, never before part of the process, were in attendance. Thirty-nine African countries declared that the continent neither wanted the "continued uncontrolled proliferation of destructive weapons" on the continent nor to be the "dumping ground for weapons obsolete in other parts of the world."<sup>3</sup>

## Africa's Expectations for the CCM Negotiations

For Africa, the *Convention on Cluster Munitions* would address the negative humanitarian effects of these weapons. Since the continent is already plagued by crises—including inadequate health care and a lack of financial, technological and human-resource capacities—it was imperative that strong language be included, particularly on definitions, victim assistance and international cooperation and assistance (i.e., Articles 2, 5 and 6 respectively of the *Convention on Cluster Munitions*). Africa, in its deliberations during the Dublin Diplomatic Conference held in Ireland, felt that assistance in whatever form—technical, financial or human—was vital, especially for poor countries that lack these capacities. In addition, African representatives wanted to avoid the inclusion of a clause permitting a transition period or any tolerance of interoperability language (i.e., joint military operations with countries not adhering to the ban).

After a position was determined, the 38 participating African countries present spoke as one through Zambia. Four African states (Egypt, Eritrea, Ethiopia and Libya) also participated as observers, attending meetings and expressing their own views. Strategy meetings were held every day during lunch breaks and served as an opportunity for information exchange and feedback. Zambia, as the coordinator, had assigned different countries to take the lead for the African Group in different parallel informal sessions and report back to the full group meetings. For instance, Malawi was the lead for Article 21 (interoperability), Sierra Leone for Article 5 (victim assistance), Ghana for Article 2 (definitions)



Cluster Muniton Coalition campaign workshop held prior to the official Kampala Conference. North African CMC campaigners Ayman Sorour of Protection (Egypt), left, and Rachid Dahmani of Handicap International—Algeria.

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and Uganda for Article 4 (clearance) discussions. This system allowed Africa to be well represented and have its views effectively expressed.

**Definitions.** At the Livingstone Conference, Africa discussed contentious issues at length and agreed on common positions. On the issue of definitions, the African consensus was that the draft convention to be negotiated in Dublin should provide a categorical prohibition for the stockpiling, production and transfer of cluster munitions as a whole category, with no distinction over what type may be considered good or bad. This approach was deemed critical to making an effective convention for the protection of civilians. It was argued that this strategy would make cluster munitions a stigmatized weapon. Africa also preferred that Article 2(c) be deleted from the draft, as its presence provided for an opportunity for exceptions to be included.

In Livingstone, Africa (apart from South Africa, which highlighted the military utility of the weapons in terms of their accuracy in point-targeting) opted for a total ban on cluster munitions. In the African view, no cluster munition causes acceptable harm to civilians. In Dublin, however, a compromise was reached to limit exceptions—essentially banning about 98 percent of cluster munitions currently in use. It was critical to Africa's position that this compromise was not used to exclude cluster munitions that had the same intolerable effects as cluster



munitions either at present or in the future. The burden of proof on why certain cluster munitions should be exempted was to be on the states proposing the exemption. Real evidence needed to be provided to prove that a particular weapon did not cause unacceptable harm to civilians during and after warfare. The focus was to remain on the effects of the weapons.

**Victim assistance.** Article 5 of the CCM, which relates to victim assistance, was also of great concern to Africa, particularly to states such as Sierra Leone that have a number of cluster-munition victims. The African consensus in Livingstone was that the draft text was strong and should be maintained or strengthened further. It was also agreed that reporting on victim-assistance programs should be mandatory for States Parties of the CCM—unlike similar humanitarian conventions that have left individual states to implement victim-assistance programs according to their capabilities (if at all). This has allowed states to either not implement any programs or have ineffective programs in place. The purpose of making assistance reporting mandatory is to ensure that victims are not forgotten as they have been for so long.

It was essential that past users be held particularly responsible for victim assistance. It was noted that, while victim assistance would be the primary responsibility of States Parties, international cooperation should be an integral part of their interventions.

**International cooperation and assistance.** Article 5 ties in closely with Article 6, which addresses international cooperation and assistance. Africa called for strong language to be reflected in Article 6, which would hold past users liable for any clean-up in the territory where they used the weapons. As expected, there was fierce opposition to such language. The reality remains that Africa lacks the capability to rid itself of these weapons without external assistance. The lessons learned from the shortcoming of such a lack of liability in the Anti-personnel Mine Ban Convention<sup>4</sup> made it imperative to hold past users liable in some way. The final language, which only “strongly encourages” past users to assist, is likely to have the same inadequacies as those of the Mine Ban Convention; furthermore, complexities attached to the appropriate methods of clearance that do not result in negative environmental consequences make it imperative that assistance be provided. In Livingstone, it was agreed that the CCM text needed to be strengthened in accordance with international law by obliging past users to provide financial, technical, material and human assistance to States Parties. In debating this article, Zambia and a number of other states emphasized the need for this inclusion in the final text. The provision of cooperation and assistance was also to apply to clearance, victim assistance and risk education.

**Interoperability.** Of all the contentious issues, that of interoperability was the most problematic. Countries on the opposite side of the debate, such as the United Kingdom and other NATO members, argued for the need for specific text regarding States Parties’ obligations in relation to the CCM during joint-military operations with non-States Parties. Article 21 will therefore be a thorn in of the side of the African contingent supporting the CCM; Africa will



The Kampala Conference on Cluster Munitions was held at the Imperial Royal Hotel.

be watching closely to ensure clauses are not used as loopholes by States Parties acting with non-States Parties. This issue will probably serve as the litmus test of the credibility of the convention.

**Transition periods.** The draft CCM convention text of Article 21, the basis of the negotiations in Dublin, did not allow for a transition period to use banned cluster munitions, and the African delegation agreed that this language should be retained in the final document. It was felt that allowing for a transition period would be defeating the main purpose of the CCM, which was to ban cluster munitions.

#### The Outcome of the Negotiations

Most of Africa should have been ecstatic that at least one whole category of weapons affecting many African states had effectively been banned; however, this was not so. African states at the Livingstone Conference, except for South Africa, wanted an absolute ban on these weapons, which would most likely end up in their territories that are prone to conflict and wars. The African consensus at the Dublin Conference, however, was to approve a convention that banned as many of the currently used cluster munitions as possible. More importantly, Africa’s consolation upon reflection on the process is that the use of cluster munitions is now effectively stigmatized.

Despite noticeable shortcomings in the final document, which the African contingent agreed to provided no other delegations reopen the text, Africa was pleased with many provisions in the convention. African negotiators were particularly pleased with the comprehensiveness of Article 5, which deals with the long-neglected issue of victim assistance. In Livingstone, the African contingent was expected to set a new standard that would look at the plight of the victims of explosive remnants of war in general and cluster munitions in particular. States Parties would be required to do more than ever for the victims of conflicts. To say that the final convention language is ambitious is an understatement, and Africa is certainly satisfied with it. Affected countries like Sierra Leone will undoubtedly be able to do more for their people because of this convention.



CMC campaign workshop in preparation for the Kampala Conference.

#### Developmental Impact

ERW contamination has an adverse impact on development. Landmine and ERW contamination continues to be a major hindrance to economic development on most of the African continent; cluster munitions would exacerbate this situation even further. Ethiopia and Eritrea certainly face these challenges in their post-conflict reconstruction. The one area in which the weapons were used in Zambia remains contaminated and unutilized over 20 years after munition deployment. Africa, therefore, could not stress enough the necessity of international cooperation and assistance and will use Article 6 as one measure of the convention’s success.

The omission of transition periods, though not much of a bargaining chip, was a major consolation to African countries that felt that many concessions had been given without reciprocal goodwill. Such a provision would have permitted the continued use of cluster munitions after the convention had entered into force, thus defeating the purpose of the ban.

The CCM is largely a convention on whose final outcome Africa can proudly claim to have had considerable influence. Africa had one of the largest blocs at the Dublin Conference, and therefore its position on any issue was critical. Had Africa insisted on a total ban—a position held by most Latin American and other lesser-developed countries—there would have been a deadlock. This was an undesirable outcome, which was avoided by the conference’s Irish

Presidency, by holding several informal consultations on the sidelines with all participants, including African states. That in less than two years, the Oslo Process was able to achieve what the Convention on Certain Conventional Weapons<sup>5</sup> had failed to do in almost a decade is a great accomplishment in itself.

#### Which Way Forward?

What remains to be seen is how well implementation of the convention will turn out. Africa, for its part, remains determined to continue leading, ensuring that momentum is maintained and that national implementation measures are put in place well before entry into force of the CCM. To this end, a second African conference on cluster munitions was held in Kampala, Uganda, 29–30 September 2008.<sup>6</sup>

At the end of the two-day meeting, the Kampala Action Plan was adopted by acclamation by the over 40 African countries present. The Kampala Action Plan prescribes a number of actions the states are encouraged to undertake before and after the Oslo Signing Conference scheduled for 2–4 December 2008. All the states agree to travel to Oslo to sign the CCM, to publically signal their intent to sign, to ratify the CCM as soon as possible, to immediately undertake interim internal measures to ensure the effective implementation of the Convention, and to engage civil society, nongovernmental organizations and international agencies such as the United Nations and

the International Committee of the Red Cross to ensure public awareness and support for the CCM.<sup>7</sup> Only South Africa expressed reservations as it was still in the process of reviewing its own internal policies regarding the matter.

The issue of banning cluster munitions has also been taken up by the African Union, which has urged its Member States to support the initiative.<sup>8</sup> States that were not in Dublin for the adoption of the CCM are also being encouraged to get on board and be present for the signing in Oslo in December 2008. With the extensive participation of Africa in the ban process (if in Oslo 30 states sign and ratify the CCM simultaneously, as some have indicated they would endeavor to do), it would be enough for the convention to enter into force by mid-2009 even if no other states signed and ratified it. During informal African contingent deliberations at the Dublin Conference, there were suggestions that the group could even go a step further and declare Africa a “cluster munitions-free zone” by developing an African convention banning the weapon on the continent. ♦

*See Endnotes, page 110*

*The views expressed in this article are the views of the author and do not in any way represent the official view of the government of the Republic of Zambia or the rest of Africa.*



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