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Understanding the Ottawa Convention's Obligations to Landmine Victims

The Ottawa Convention¹ is unique for a number of reasons, not the least of which being that the Convention has linked obligations concerning the use of a weapon with a requirement that Convention signatories assist a victim wounded by that weapon. When the Convention was adopted in September 1997, this aspect, while lauded by diplomats and activists,² was certain to be a challenge to implement. The real work began once the Convention entered into force and states had to act on this responsibility. This article discusses in particular the Convention's victim-assistance obligations.

by Kerry Brinkert | Geneva International Centre for Humanitarian Demining |

Article 6.3 of the Convention states that "each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims."¹ This provision gave currency to terms like mine victims, survivors and assistance in the context of mine action and



Many children who are victims of landmines spend time in the San Barnabé Refugee Center, waiting for medical attention. During Halloween they can play on the streets just like any other kids (Bogotá Colombia - 2005).

international law. However, given that these terms are not defined specifically in the Convention and "arguably the Convention does not impose an absolute legal obligation upon States Parties to assist mine victims,"³ the Convention's membership was challenged with figuring out exactly what to do.

Understanding the Convention's Obligations

The Convention's First Review Conference in 2004 concluded that "victims include those who either individually or collectively have suffered physical or psychological injury, economic loss or substantial impairment of their fundamental rights through acts or omissions related to mine utilization."⁷

States Parties acknowledged that such a broad construction in the definition of a landmine victim would help draw attention to the entire spectrum of landmine victimization. Yet the attention continues to focus on those physically injured by mines. It was also noted that "those individuals directly impacted by mines are a sub-group of larger communities of persons with injuries and disabilities."⁷ This important point helped the States Parties to understand the need for a more comprehensive and holistic approach to what the United Nations has defined as *mine action*.

The United Nations defines *mine action* as encompassing five core elements, one being victim assistance. However, there are important tactical, logistical, technical and medical differences between humanitarian demining and activities related to assisting in the care, rehabilitation and reintegration of landmine victims.

Humanitarian demining, developed as an area of expertise dealing with locating and neutralising of ordnance, is distinct from other humanitarian or development challenges and has developed as a relatively new and specialised discipline. In contrast, the matter of victim assistance does not require the development of new fields or disciplines but calls for ensuring that existing medical systems, social programs, and legislative and policy frameworks are adequate to meet the needs of all citizens—including landmine victims.

The problems faced by landmine victims are often identical to those faced by other persons with injuries or disabilities. Assistance to landmine victims should be viewed as part of a country's overall

public-health and social-services systems and human-rights frameworks.

The matter of victim assistance must also be addressed within the broader context of development. While a political commitment is required to advance the quality of life for mine victims, ensuring a real difference results will require addressing broader development concerns.

While addressing development concerns of a group (e.g., landmine survivors), we must always remember they are diverse individuals with equally diverse needs. The States Parties have recognized this point, declaring that victim assistance, as well as being a matter of collective concern, "is also a human rights issue."⁷

Another major advance made by the States Parties was to record an understanding of what exactly is meant by *victim assistance*. At the Convention's First Review Conference, the States Parties reached a consensus that victim assistance is generally understood to comprise six elements:

1. Understanding the extent of the challenges faced
2. Emergency and continuing medical care
3. Physical rehabilitation, including physiotherapy, prosthetics and assistive devices
4. Psychological support and social reintegration
5. Economic reintegration
6. Establishing, enforcing and implementing relevant laws and public policies⁷

Responsibility

Who ultimately has responsibility for assisting mine victims? The States Parties understand that "all States Parties in a position to do so have a responsibility to support mine victims—regardless of the number of landmine victims within a particular State Party."⁷ However, "the ultimate responsibility for victim assistance rests with each State Party within which there are landmine survivors and other mine victims." The logic for this position is grounded in the fact that "it is the basic responsibility of each State to ensure the well-being of its population, notwithstanding the fundamental importance of the international donor community supporting the integration and implementation of the policies and programs articulated by States Parties in need."⁷

The responsibility to support mine victims is "most profound in 24 States Parties in which these States Parties themselves have indicated there likely are hundreds, thousands or tens of thousands of landmine sur-

vivors."⁷ These countries are Afghanistan, Albania, Angola, Bosnia and Herzegovina, Burundi, Cambodia, Chad, Colombia, Croatia, the Democratic Republic of the Congo, El Salvador, Eritrea, Ethiopia, Guinea-Bissau, Mozambique, Nicaragua, Peru, Senegal, Serbia and Montenegro, Sudan, Tajikistan, Thailand, Uganda and Yemen.

This sense of responsibility was underscored in the *Nairobi Action Plan*, which noted the Convention's victim assistance obligations constitute "a vital promise for hundreds of thousands of mine victims around the world, as well as for their families and communities" and that "keeping this promise is a crucial responsibility of all States Parties," with it being "especially the case for those [24] States Parties where there are vast numbers of victims."⁸ Moreover, the States Parties recorded 11 commitments to this "vital promise." These commitments include that States Parties, "particularly those [24 nations] with the greatest numbers of mine victims," will do their utmost to proceed with specific action points related to all six defined areas of victim assistance.⁸

The States Parties' understandings provided a solid basis to consider that victim-assistance obligations of the Convention could be parallel to the more concrete obligations found elsewhere in the Convention. For example, with respect to the destruction of stockpiled anti-personnel mines, the Convention's obligations are very clear. *What must each State Party do?* It must destroy stockpiled anti-personnel mines under its jurisdiction or control. *For whom is this obligation relevant?* Every State Party that reports stockpiled anti-personnel mines under its jurisdiction or control must apply this portion of the Convention.

Following the development of fundamental understandings on victim assistance, it became much clearer to see what the victim assistance obligation entails and for whom it is most pertinent. However, while a sound basis was provided to treat victim assistance like other obligations, complications still existed.

Seizing the Opportunity Presented by Understandings on Victim Assistance

What States Parties still lacked following their First Review Conference was a clear understanding of what milestones could or should be achieved by a certain time. Millions of dollars had been generated between 1997 and 2004 for matters consistent with the aim of assisting landmine victims.⁹ However, activists were arguing



Marco Antonio Joaquín was a fisherman before the accident. Now, with the help of the local NGO FUNDEMOS, he is working in a bakery - Popayan - Colombia

that not enough was being done or being done well enough.

By not knowing what needs to be done by key dates or events, the Convention's States Parties were setting themselves up for failure. Following the First Review Conference, the Co-chairs of the Standing Committee on Victim Assistance and Socio-Economic Reintegration took this as their point of departure, advancing victim assistance provisions of the Convention as if they were other obligations.

Of course, victim assistance is generally unlike other obligations. It is not defined in the Convention, which means the conclusions recorded at the First Review Conference became extremely significant. The Convention has also not precisely identified with whom the greatest responsibilities for conducting victim assistance activities belong. This suggests it is important for the 24 States Parties with the largest significant number of survivors to take responsibility for their own victims. Following the First Review Conference, the task has been to assign deadlines for victim-assistance obligations paralleling the Convention's milestones for mine clearance and stockpile destruction.

In terms of the deadlines, perhaps both arbitrarily and logically, the Co-chairs

called for concrete progress to be made by the time of the Convention's Second Review Conference. In terms of clarifying the measures of effectiveness, the Co-chairs turned the matter over to the 24 States Parties in question. Clearly, what could be expected from, or what should be achieved by, any one of the 24 relevant States Parties would be different from all others given diversities in numbers and characteristics of survivors, bureaucratic and service-delivery capacity, geography, etc.

As the ultimate responsibility for meeting the needs of survivors rests with each state, it was understood they themselves must define what can and should be achieved, in concrete and measurable terms, as well as how those needs can be met. Others may have the expertise and capacity to assist in understanding problems, in developing plans to deal with these problems and in monitoring the efficacy and implementation of plans. Real and sustainable progress, though, cannot be made without the affected States Parties themselves "owning" the challenge and the authority for devising solutions to it.

Toward SMART Victim Assistance

The Co-chairs' approach to gauging and ensuring progress involved the distribution of a comprehensive questionnaire to the 24 relevant States Parties to help frame an understanding of concrete victim assistance objectives by 2009; plans to achieve these objectives; and means to implement these plans. The main aim of this questionnaire was to encourage the 24 States Parties in question to establish so-called *SMART* objectives:¹¹

- **Specific** objectives that should specify what these States Parties want to achieve
- **Measurable** objectives that would enable all to know whether objectives had been met
- **Achievable** objectives that are truly attainable
- **Realistic** objectives that could indeed be achieved with resources at the disposal of the State Party in question or with resources that could realistically be acquired externally
- **Time-bound** objectives that would be achieved by the time of the Second Review Conference

Initial responses to the questionnaire were presented at the June 2005 meeting of the Standing Committee on Victim Assistance and Socio-Economic Reintegration with all responses summarized in a lengthy annex to the Sixth Meeting of the States

Parties' *Zagreb Progress Report*. It provides the beginnings of a clearer road map regarding what needs to be done between 2005 and the Second Review Conference and how success pertaining to victim assistance will be measured in 2009.

Overcoming Remaining Challenges

While the effort undertaken in 2005 by relevant States Parties was impressive, the usefulness of the responses is in doubt. Few States Parties actually responded with *SMART* objectives. Some States Parties detailed at length their status. However, even



Jhon Ferney lost his leg in a landmine accident running from FARC guerrilla warfare. Three others died. (Medellin, Colombia - 2005)

though this should have provided a sound basis for setting objectives, very little was put forward in terms of what the desired status would be in 2009. Other States Parties failed to spell out what is known or not known about their status. In addition, some States Parties did not engage in the effort at all.

Another challenge identified in 2005 relates to the effort to develop victim-assistance objectives in conjunction with demining officials who have little interaction with the health and social services sectors. In some instances, the actual provision of assistance to landmine survivors appears to be the responsibility of mine-action structures, not health-care or social-service structures.

A further challenge related to fostering an understanding of victim assistance is

the idea that "providing adequate assistance to landmine survivors must be seen in a broader context of development and underdevelopment."⁷ Many States Parties have prepared poverty-reduction strategy papers or national development plans to overcome broader development challenges, with such documents containing objectives relevant to advancing the care, rehabilitation and reintegration of landmine survivors. However, in many instances, the preparation of victim-assistance objectives has not been considered in these broader national plans.

To overcome these challenges, the States decided the best way to ensure progress is to

work intensively, on a one-to-one national basis, with as many of the relevant States Parties as possible. The aim, quite simply, is to see the following at the September 2006 Seventh Meeting of the States Parties:

- Those with good objectives will have developed good plans
- Those with vague objectives will have developed more concrete objectives
- Those that have not engaged or have engaged very little in the process of developing objectives and plans in 2005 will have become more engaged

To achieve the Co-chairs' aim, some level of support is being provided to all 24 relevant States Parties in the form of advice each may wish to consider in improving on 2005 efforts to establish *SMART* objectives.

The "process support" procedure involves country visits featuring the following:

- One-on-one meetings with officials from relevant ministries to raise awareness of the matter and to stimulate inter-ministerial coordination
- Outreach to relevant international organisations and others to ensure that their efforts in support of the State Party in question are both incorporated into and incorporate mine-victim-assistance efforts
- Inter-ministerial workshops to bring together all relevant actors to discuss and consolidate improvements on objectives and the development of plans

It should be noted workshops are not considered as stand-alone activities or ends in themselves. Rather, workshops are part of a State Party's overall process of objective-setting, planning and implementing efforts to ensure progress by 2009. The ultimate aim is a true equalization of opportunities for landmine survivors and other persons with disabilities *vis-à-vis* countries' broader populations.

Conclusion

It would be unrealistic to think some of the world's poorest countries with some of the greatest challenges regarding the care,

rehabilitation and reintegration of landmine survivors would demonstrate perfection in the establishment of national victim-assistance objectives. Assistance exists to help countries at risk with these tasks; in accordance with the Ottawa Convention, those in a position to do so are obliged to provide it. However, outsiders cannot do it all, nor should they.

With perfection unattainable, it should be acknowledged that any degree of meaningful progress made by relevant at-risk states in taking charge of these matters will be a major advance. The Ottawa Convention, after all, was about expanding the traditional understanding of state responsibility, with states accepting they have important human-security responsibilities. Ensuring progress in victim assistance by key milestone dates, like the 2009 Second Review Conference, will help demonstrate the realism of this sense of responsibility. The work undertaken to date by States Parties suggests they are on the right track. However, efforts—and processes—will have to continue with vigor in order to make a real and sustainable difference. ♦

For additional references for this article, please visit <http://maic.jmu.edu/journal/10.1/notes/brinkert/brinkert.htm/#addlrefs>.

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News Brief

MASG Establishes Online Information Clearinghouse

In an effort to make information more readily available to the mine-action community, announcements and resources from the Mine Action Support Group are now available online. The Web site is an electronic clearinghouse for MASG newsletters and events, as well as quarterly reports prepared for MASG by the United Nations Mine Action Service, United Nations Development Programme, UNICEF and other organizations.

The United States currently heads the MASG, a group of 26 major donor countries providing resources for mine action around the globe. The U.S. Department of State has given the task of chairing the MASG to its Office of Weapons Removal and Abatement.

To learn more about MASG and view the new Web site, visit www.state.gov/t/pm/wra/c17719.htm.

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and efficiently plan their MRE program through data analysis, thereby reducing subjective approaches to program implementation. This project will also help move the surveillance system forward. Results of this pilot project will be available in May 2006 when UNICEF, with the Geneva International Centre for Humanitarian Demining, facilitates data analysis and effective programming for the government partners and RaDO. ♦

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