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Landmine Victim Assistance and Government Legal Obligation

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Landmine Victim Assistance and Government Legal Obligation

Introduction

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. The 1997 Landmine Monitor estimates that there are more than 300,000 landmine survivors worldwide, and that the cost of rehabilitative care for these survivors will exceed $3 billion (U.S.) over the next ten years. Article 6, paragraph 3 of the Mine Ban Treaty requires States Parties to provide mine victim assistance in order to re-integrate landmine survivors into society.

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

This provision marks the first time in the world's history that a treaty banning or controlling weapons entitles victims to assistance from States Parties. Both the plain language and spirit of the Mine Ban Treaty commit States Parties to victim assistance. To meet this obligation, States Parties can undertake a range of victim assistance activities and initiatives. States Parties can provide such assistance through bilateral exchanges, non-governmental organizations (NGOs) and International Committee of the Red Cross (ICRC) victim assistance programs, or through donations to multilateral institutions, including the United Nations (UN), earmarked for mine victim assistance. Thus, mine victim assistance need not entail the creation of an actual "program." Other options, such as public policy initiatives promoting disability rights laws, can increase the accessibility for landmine survivors, may similarly satisfy States Parties' commitment to victim assistance under the treaty.

State Responsibilities Under the Mine Ban Treaty

State signatories to the Mine Ban Treaty are bound by treaty law to provide landmine victim assistance.

In 1980, the attachment of the Landmine Protocol to the Convention on 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.

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. 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 and medical care; access to prosthetics, wheelchairs and other assistive devices; social and economical reintegration; psychological and peer support; accident prevention programs; and legal and advisory services." 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 become more fully integrated into society's economic and social realms. Described below are three specific policy examples of victim assistance, whose implementation did not require "programming."
FEATURE

The Future of Mine Action

Portunities, education and training, religious practice, sports and recreation, safe land and tenure of land; and to information and communication about available services. States also set affirmative action policies designed to encourage the education, recruitment, and hiring of landmine victims and persons with disabilities. Similarly, states can encourage the inclusion of landmine survivors and landmine-infested communities in all initiatives and activities that concern them.

National Council on Disability Issues

A third way for States Parties to provide victim assistance is through the creation of a National Council on Disability. The ICCL and the ICBL have sponsored conferences and workshops to consider the creation of such councils.

Landmine victim assistance advocate Diane Brandeau, Wales greenland survivor Dr. Rutherford upon her arrival in Sarajevo, Bosnia-Herzegovina.

Victim Assistance and Government Obligation

The ISCE is organized into five Standing Committees (SCs) that meet twice a year (between annual state party meetings) to discuss a range of subjects, including victim assistance. The ICRI encourages its members to participate in the ISCE meetings "to have maximum impact on the Second State Parties Meeting preparations." This encouragement included specific action points on mine victim assistance, which states later incorporated into their discussions.2 The ISCE is a continuation of the International Campaign to Ban Landmines (ICBL) model of joint NGO-Government collaboration to work toward the implementation of Treaty provisions. Through its activities, the ISCE can help educate States Parties about various support activities for people with disabilities that require little or no funding.

These three options demonstrate that all states can provide victim assistance, particularly at low cost. The ISCE is exploring ways to include social re-integration, methods of social re-integration, such as legislation, policy, exhortation and example (II.7), which are known to secure greater financial assistance. Therefore, all States Parties can enact low cost, practical policies to support mine victims.21 On a broad level, States Parties fulfillment of state obligations is essential to the functioning of the international relations system. States respect for international law is one of the key components of inter-state relations. In fact, one of the fundamental goals of the United Nations is "to establish conditions under which...expectation for the obligations arising from treaties and other sources of international law can be maintained."22 Moreover, Article 26 of the Law of Conferences on International Law and the Convention of Treaties specifies that every treaty in force is binding upon States Parties, and Article 31 (1) requires parties to perform duties in good faith.23 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."24

In sum, all states, even the poorest, can assist landmine victims within their territory and jurisdiction. Compelling arguments exist, under both international humanitarian law and the Mine Ban Treaty, that a State has a duty to assist mine victims. It is important to note that the claim that states are obligated to provide victim assistance in international law rather than appealing to and relying on strictly emotional arguments. For example, state support of landmine victim assistance is a rapidly emerging norm of customary international law, as the growing recognition by all states, including non-signatory states, of their victim assistance obligations suggest. Both the plain language and spirit of the Mine Ban Treaty commit States Parties to victim assistance support, which can entail a range of victim assistance activities and initiatives. States Parties' obligations to mine victim assistance under the treaty need not entail the creation of an actual program, as long as they are satisfied through other options, such as public policy initiatives promoting disability rights for landmine survivors. States Parties should ensure that states fulfill their obligations to landmine survivors under the Mine Ban Treaty.

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All photos courtesy of the author.

Endnotes


4 Article 6, paragraph 3 of the Mine Ban Treaty provides that "(a) Each State Party in a position to do so shall provide for the care and rehabilitation, and social and economic reintegration of mine 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 Committee of the Red Cross and Red Crescent societies and their National Federations, non-governmental organizations, or on a bilateral basis.

20http://commons.lh.jmu.edu/ujs-journal/vol3/iss1/1