

# Landmine Victim Assistance and Government Legal Obligation

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

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## 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.<sup>1</sup> The 1999 Landmine Monitor estimates that there are more than 300,000 landmine survivors worldwide, and that the cost of rehabilitating these survivors will exceed \$3 billion (U.S.) over the next ten years.<sup>2</sup> Article 6, paragraph 3 of the Mine Ban Treaty requires States Parties to provide mine victim assistance in order to reintegrate landmine survivors into society.<sup>3</sup>

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.<sup>4</sup>

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, such as 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 for landmine survivors, may similarly satisfy States Parties' commitment to victim assistance under the treaty.



■ Cambodian landmine survivors and Dr. Ken Rutherford—before his last and remaining leg was amputated.

## State Responsibilities Under the Mine Ban Treaty

*State signatories to the Mine Ban Treaty are bound by treaty law to provide landmine victim assistance.*<sup>5</sup>

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, State 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."<sup>6</sup> 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."<sup>7</sup> 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."<sup>8</sup> This means that States Parties can ask, or be asked, for survivor assistance. Specifically, Article 6, paragraph 7(e) grants states the right to request other States Parties to assist victims.<sup>9</sup>

The drafters of the Mine Ban Treaty

designed the treaty to prevent landmine injuries and to help rehabilitate mine-injured individuals and communities.<sup>10</sup> Treaty critics could claim, however, that the language of Article 6 paragraph 3 – "[e]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."<sup>11</sup> 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.<sup>12</sup> 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 assistant devices; social and economical reintegration; psychological and peer support; accident

prevention programs; and legal and advisory services."<sup>13</sup> 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."

## 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 assurance 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 rehabilitation, 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-



portunities, education and training, religious practice, sports and recreation, safe land and tenure of land; and to information and communication about available services. States can 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 Disabil-

ity Issues to address the needs of disabled citizens, including the victims of landmines. Cambodia has done this (although before the advent of the Mine Ban Treaty) by creating the Cambodian Disability 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.<sup>14</sup>

The Intercessional Standing Committee of Experts (ISCE) may provide guidance for the creation of National Councils. The ISCE, one of the few concrete results concerning victim assistance directly attributable to the Mine Ban Treaty, primarily aims to "help maintain

the international community's focus on the Mine Ban Treaty and its implementation."<sup>15</sup> The ISCE is organized into five Standing Committees (SCE) that meet twice a year (between annual state party meetings) to discuss a range of subjects, including victim assistance. The ICBL encouraged its members to participate in the ISCE meetings "to have maximum impact on the Second State Parties Meeting preparations."<sup>16</sup> This encouragement included specific action points for victim assistance, which states later incorporated into their discussions.<sup>17</sup> The ISCE is a continuation of the International Campaign to Ban Landmine (ICBL) model of joint NGO-Government collaboration to work toward the implementation of Treaty provisions.<sup>18</sup> Through its activities, the ISCE can help educate States Parties about various supportive activities for people with disabilities that require little if any money.

These three options demonstrate that all states can provide victim assistance, particularly when assistance is explicitly defined to include social re-integration. Methods of social re-integration, such as legislation, policy, exhortation and example, often do not require much financial assistance. Therefore, all States Parties can enact low cost, practical policies to support mine victims.<sup>19</sup> On a broad level, States Parties fulfillment of state obligations is essential to the functioning of the international relations system. State 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 ... respect for the obligations arising from treaties and other sources of international law can be maintained."<sup>20</sup> Moreover, Article 26 of the Vienna Convention on the Law 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.<sup>21</sup> 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."<sup>22</sup>

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 survivors. It is important to ground 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, and may be satisfied through other options, such as public policy initiatives promoting disability rights for landmine survivors. These understandings help 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

<sup>1</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and On their Destruction, Mar. 1, 1999, pmb., 36 I.L.M. 1507 [hereinafter Mine Ban Treaty].

<sup>2</sup> International Campaign to Ban Landmines, *Landmine Monitor: Toward a Mine-Free World: Executive Summary* 22 (1999).

<sup>3</sup> Article 6, paragraph 3 of the Mine Ban Treaty states that "[e]ach 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, through the United Nations system, international, regional, or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis." Mine Ban Treaty,

*supra* note 1, art. 6, para. 3, at 1510-1511. States Parties are those states that have either signed and ratified or acceded to the Treaty. States that have not signed the Treaty cannot ratify it. They become States Parties through accession. Accession has the same effect as ratification—States that accede are full States Parties. I would like to thank Lou Maresca of the International Committee for the Red Cross for highlighting this point.

<sup>4</sup> This article focuses only on states and not other international actors, such as international organizations, NGOs and quasi-governmental authorities, because states are the main multilateral donors and, by definition, the only bilateral donors. For example, in 1999 seventeen states contributed more than \$210 million dollars to mine action programs, while the major non-state international actor, the United Nations, spent only \$11.9 million. INTERNATIONAL CAMPAIGN TO BAN LANDMINES, *supra* note 3, at 36, 38.

<sup>5</sup> Mine Ban Treaty, *supra* note 1, art. 6, para. 3, at 1510-11.

<sup>6</sup> *Id.* pmb., at 1507.

<sup>7</sup> *Id.* art. 6, para. 3, at 1510-11.

<sup>8</sup> INTERNATIONAL CAMPAIGN TO BAN LANDMINES, *LANDMINE MONITOR REPORT* 1999, 24 (1999).

<sup>9</sup> See Mine Ban Treaty, *supra* note 1, para. 7(e), at 1510-11 ("States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia ... [a]ssistance to mine victims.")

<sup>10</sup> Mine Ban Treaty Preamble, paragraph one stating "[d]etermined to put an end to suffering and casualties caused by anti-personal mines, that kill or maim hundreds of people" and paragraph three stating "[w]ishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic rehabilitation of mine victims." Mine Ban Treaty, *supra* note 1, at 1507.

<sup>11</sup> Mine Ban Treaty, *supra* note 1, art 6, para. 1, at 1510 (italics mine).

<sup>12</sup> According to the International Campaign to Ban Landmines (ICBL), the definition of "landmine victim" includes "those who, either individually, or collectively, have suffered physical, emotional, and psychological injury, economic loss or substantial impairment of their fundamental rights through acts or omissions related to mine utilization." INTERNATIONAL CAMPAIGN TO BAN LANDMINES, *supra* note 3. Therefore, the ICBL believes that "mine victims include directly impacted individuals, their families, and communities affected by landmines." International Campaign to Ban Landmines, *Victim Assistance: Contexts, Principles, and Issues*, at <http://www.icbl.org/wg/va/position.php3> (last visited Mar. 11, 2001).

<sup>13</sup> Jerry White & Ken Rutherford, *The Role of the Landmine Survivors Network*, in *TO WALK WITHOUT FEAR: THE GLOBAL MOVEMENT TO BAN ANTI-PERSONNEL LANDMINES*, 99, 103-104 (Maxwell A. Cameron et al. eds., Oxford University Press 1998).

<sup>14</sup> International Campaign to Ban Landmines, *Landmine Monitor Report* 2000, 399 (2000).

<sup>15</sup> E-mail from Susan Walker, ICBL Govern-

ment Relations Liaison, and Liz Bernstein, ICBL Coordinator, to ICBL Coordination Committee, National Campaigns and Campaigners (Apr. 21, 2000)(on file with author).

<sup>16</sup> *Id.*

<sup>17</sup> Working paper related to the Informal Consultations on International cooperation and assistance in accordance with Article 6 of the Convention, Maputo, Mozambique, May 3-7, 1999. Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (on file with author).

<sup>18</sup> See International Campaign to Ban Landmines Web site, [www.icbl.org](http://www.icbl.org), then visit hyperlink to "treaty" and then "SCE on Victim Assistance, Socio-Economic Reintegration and Mine Awareness." For further information concerning the NGO role in implementing the Mine Ban Treaty, see Kenneth R. Rutherford, *NGO Enforcement Of Arms Control Agreements: The Case Of The Mine Ban Treaty*, paper presented at the Conference on Globalization and Security, Denver Colorado, November 10-11, 2000 (on file with author).

<sup>19</sup> States Parties obligations to landmine victim assistance, however, require action above and beyond committee work, declarations and data collection. Data collection or survey work should not substitute for direct victim assistance. Data collection that entails survivor interviews should be conducted with compassion and care so that the expectations and/or trauma of survivors are not raised. International Campaign to Ban Landmines Working Group on Victim Assistance, *Guidelines for the Care and Rehabilitation of Survivors*, at <http://www.icbl.org/wg/va/guidelines.php3>. The goal of all information gathering must be to help governments make timely, informed and life saving decisions.

<sup>20</sup> U.N. Charter, pmb.

<sup>21</sup> Vienna Convention on the Law of Treaties, May 23, 1969, art. 2, para. 2, U.N. Doc. A/39/28 (1980), 8 I.L.M. 679 (entered into force Jan. 27, 1980).

<sup>22</sup> Mine Ban Treaty, *supra* note 1, art. 6, para 3, at 1510-11.

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Landmine victim assistance advocate Diana, Princess of Wales greets landmine survivor Dr. Rutherford upon her arrival in Sarajevo, Bosnia-Herzegovina.