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Recommendations for the victim assistance provisions in a treaty banning cluster munitions: a practitioners' perspective

This document is the result of an electronic discussion and workshop through which Handicap International and other civil society and international organizations found common recommendations for the victim assistance provisions in a treaty banning cluster munitions. The group sincerely hopes that the States will be inspired by this document to ensure that as negotiations go forward, redress for the humanitarian impact of cluster munitions on individuals and communities will be at the core of the process.



*The cover photo is that of Hamid,
an 11 years old boy from Afghanistan..
In 2003, an attack on a nearby military camp missed
its target and dropped its cluster bomb on
the playground where Hamid was playing soccer.
26 persons were killed; Hamid lost his right leg.
In spite of his difficulties, his school results are
very good; he dreams of becoming a doctor.
This will only be possible if access to assistance
is readily available to him, in all areas of his life.*

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**Recommendations
for the victim assistance provisions
in a treaty banning cluster munitions:
a practitioners' perspective**

Report from a discussion group and workshop

Paris, France

October 29th, 2007

EXECUTIVE SUMMARY

As the Oslo process to ban cluster munitions is successfully moving forward, the Cluster Munition Coalition and international organizations continue working alongside leading governments to ensure the treaty will be comprehensive and effectively respond to the expectations of those who have suffered from the consequences of cluster munition use around the world.

an electronic discussion forum and then meeting in a practitioners' workshop in Paris. Colleagues from Afghanistan, Cambodia, Iraq, Lebanon, Tajikistan and Uganda participated in these exercises along with practitioners from a variety of backgrounds experienced in working on victim assistance programs in mine and cluster munition affected countries.

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With the aim of contributing to the Oslo process, Handicap International launched an initiative with civil society and international organizations to find common recommendations for the victim assistance provisions in a treaty banning cluster munitions. Together we shared our experience in affected countries and our lessons learned, exchanging ideas through

This document presents what this group believes should be included in a future treaty to ensure that its implementation will respond to the needs and rights of cluster submunition victims. A summary of our main recommendations, which are detailed in the next sections of this document, is as follows:

RECOMMENDATIONS FOR THE VICTIM ASSISTANCE PROVISIONS OF A FUTURE TREATY BANNING CLUSTER MUNITIONS

1. Victim assistance should be recognized as a core obligation for State Parties. It should be addressed in a stand-alone article, the preamble, general obligations, definitions, international cooperation and assistance, and transparency measures.
2. The preamble should include a reference to the highest standards of international human rights and international humanitarian law, as well as to principles such as the full and effective participation of survivors, non discrimination, accessibility, equality of opportunity, equality between men and women, and linkages between victim assistance and development programs and policies.
3. Victim assistance is the primary responsibility of the affected State, which is responsible for the well-being of all of persons within its territory, and for establishing, enforcing and implementing laws and policies.
4. It should be explicitly recognized that the term "victim" refers to all those who suffer from the consequences of cluster munition use, including those injured or killed, their families and affected communities. Victim assistance should be conceived in a framework that responds to the needs of cluster submunition victims as well as those of other mine/ERW victims, war victims, and persons with disabilities.

5. The goal of victim assistance is for victims to enjoy all human rights and fundamental freedoms and to guarantee respect for their inherent dignity. Victim assistance elements include, without being limited to: data collection, emergency and long term medical care, physical rehabilitation, psychological support, social inclusion, economic inclusion, and establishment, enforcement and implementation of relevant laws and public policies.
6. Specific measures should be in place to ensure women, children and populations in situation of vulnerability, like internally displaced persons and refugees, have full access to all services provided to cluster submunition victims.
7. In developing victim assistance, no discrimination should be made in any manner between cluster submunition victims, other war-injured persons and persons with disabilities. States should build on existing standards and national infrastructure to address victim assistance.
8. Each affected State should have the primary responsibility for developing its victim assistance plan of action, and for undertaking resource mobilization at national and international levels for its effective implementation.
9. The international community should strongly support these efforts through cooperation and assistance including information, technical advice, financial and material support, training and awareness raising activities.
10. State Parties should have the obligation to monitor and report publicly on their plans for victim assistance and on their progress in implementing those plans. They should disseminate their reports in accessible formats both nationally and internationally and should assist civil society in their efforts for independent monitoring.

This group hopes that the States committed to the Oslo process will be inspired by these recommendations to ensure that as negotiations go forward redress for the humanitarian impact of cluster munitions on individuals and communities will be at the core of the process.

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INTRODUCTION

The impact of cluster munitions

Cluster munitions are weapons that comprise multiple explosive submunitions dispensed from a container. These submunitions are designed to be dispersed in large quantities and explode before, on or after impact.

Cluster munitions have intrinsic properties which result in high failure rates: large numbers of them do not explode on impact, or soon afterwards, as designed. When they fail and remain on the ground following conflict, they have properties similar to anti-personnel landmines but with the potential to cause greater damage.

Cluster munitions have an impact in a wide area and do not discriminate between combatants and civilians; they are a direct cause of injuries, disability and death in affected countries, compromise the socioeconomic development of the areas they contaminate, and impede the safe return of displaced persons and refugees during the war and many years after. *Fatal Footprint: The Global Human Impact of Cluster Munitions*, a research report recently released by Handicap International, showed that 98% of identified casualties of cluster munitions are civilians, 27% of whom are children.

The Oslo Process and the Cluster Munition Coalition

The Oslo conference on cluster munitions organised by the Norwegian Ministry of Foreign Affairs on 22-23 February 2007 launched a process that aims to achieve “a legally binding instrument that will prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians” by 2008. The States also committed themselves to “ensure the adequate provision of care and rehabilitation to survivors and their communities”. As of November 2007, more than 80 States have already endorsed this commitment.

The Cluster Munition Coalition (CMC) is an international civil society movement committed to prohibiting cluster munitions. Today, it comprises more than 200 members in 50 countries. The Cluster Munition Coalition calls for the conclusion of an international treaty banning cluster munitions by 2008; urges States to join the Oslo process; take immediate national steps to stop the use, production and transfer of cluster munitions; and commit resources and capacities to assist communities and individuals affected by cluster munitions.

The Paris practitioners' workshop on victim assistance

As part of Handicap International's contribution to the Cluster Munition Coalition and the Oslo Process, and thanks to the Norwegian government's generous support, Handicap International initiated a task force of organizations and individuals with wide experience on victim assistance in countries affected by mines, cluster munitions and other remnants of war.

The goal of this initiative was to build on the field experience of all of us, the lessons learned from the Mine Ban Treaty and the Nairobi Action Plan and on the Convention on the Rights of Persons with Disabilities to agree on recommendations for the victim assistance provisions in a treaty banning cluster munitions. The initiative included a one-month electronic discussion, bilateral meetings in the international conferences part of the Oslo process, and a one-day workshop in Paris. We hope these recommendations will inspire States to ensure that the future treaty will respond effectively to field requirements, be in accordance with the highest human rights standards, and guarantee the immediate and long-term improvement in the life of all victims of cluster munitions.

I. PREAMBLE

A) The following international references should be included in the Preamble:

- The Universal Declaration of Human Rights and the International Covenants, that proclaim that every person is entitled to all human rights and fundamental freedoms without distinction of any kind;
- The International Convention on the Rights of Persons with Disabilities and its Optional Protocol, which provide a legal framework to effectively implement survivor assistance by articulating how all human rights apply to persons with disabilities;
- The 1983 ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, recognizing that cluster submunition survivors and other war-injured persons have repeatedly identified economic inclusion as the most urgent need in their daily lives;
- A recognition of the need to implement victim assistance in accordance to the highest standards of international human rights law and international humanitarian law. This intends to bring the attention of State Parties to the fact that victim assistance:
 - Covers all areas of life and is effectively linked to all human rights (economic, social, cultural rights, civil and political rights);
 - Should be in place both in times of peace and war; and in emergency, reconstruction and development phases;
 - Is linked to other obligations of States under international law.

B) The following principles should also be mentioned in the Preamble:

- The full and effective participation and inclusion of survivors in all victim assistance processes and decision-making;
- Non discrimination among survivors of cluster submunitions, other war-injured persons, and all other persons with disabilities in the implementation of victim assistance programs including through reasonable accommodations;
- All facilities and services should be accessible for cluster submunition survivors and other persons with disabilities, both in urban and rural areas. (This includes removing physical barriers and facilitating transport to access schools, housing, medical facilities, rehabilitation services, public administrations and workplaces; raising awareness throughout society, including at the family level, on the rights of persons with disabilities; and ensuring that high costs of services and transportation are not an impediment for survivors to access public services);
- Victim assistance should ensure equality of opportunity and equality between men and women in all aspects of life;
- Existing development plans, programmes, legislation and policies should include a disability perspective that will effectively work towards the implementation of victim assistance; at the same time, specific initiatives aiming to ensure access to services for persons with disabilities should be in place if necessary.

The Preamble should also recognize that one of the aims of this treaty is to respond to the needs and rights of cluster submunition victims.

II. GENERAL OBLIGATIONS

Victim assistance should be mentioned in an article on general obligations to emphasize that victim assistance is as important and compulsory for State Parties as other obligations, like clearance or stockpile destruction.

III. DEFINITIONS

Victim

States should recognize that the word “victim” refers to all those who suffer from the use of cluster munitions. A definition may mirror the International Campaign to Ban Landmines (ICBL) understanding of the term “victim”, which was endorsed at the Nairobi Review Conference. It may read as follows: *“Victims of cluster munitions are all 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 cluster munition utilization.”*

This would include all those injured or killed as well as their family members, who suffer from psychological trauma and increased socioeconomic hardship as a result of having to compensate for the lost revenue of the injured/killed person, and by covering for the costs for the treatment of her injuries and rehabilitation. The children of those injured or killed often have to leave school to work to help support the family – therefore, they are also victims of the use of these weapons.

The treaty should recognize the devastating impact of cluster munitions on individuals, as well as in the community and country at large.

Victim assistance should be conceived in

a wide sense to respond to the needs of cluster submunition victims, as well as to those of mine/ERW victims, war victims, and persons with disabilities in general.

Victim assistance

Building on the Nairobi Action Plan, we recommend that a treaty banning cluster munitions recognizes that the main elements of victim assistance are, without being limited to:

- **Data collection** to understand the extent of the challenges faced, as well as for monitoring and planning purposes;
- **Emergency and long term medical care**, including medical surgery, post surgery care, early rehabilitation and pain management; as well as the development of first aid and pre-hospital networks and hospital trauma care services for all types of injuries in peace time;
- **Physical rehabilitation**, including physiotherapy, prosthetics, and assistive devices and community-based rehabilitation;
- **Psychological support**, including through professional and traditional networks, social workers, and peer support;
- **Social inclusion*** and access to social services, particularly inclusive education;
- **Economic inclusion***, including through access to vocational training, employment, self-employment and capital;
- **Establishment, enforcement and implementation of relevant laws and public policies**, including taking all appropriate

legal and administrative measures, to eliminate all forms of discrimination against persons with disabilities.

* Note that the word “inclusion” replaces the word “reintegration” used in the Mine Ban Treaty framework to indicate a State’s and society’s obligation to remove all physical, environmental and attitudinal barriers that prevent the full and effective participation of persons with disabilities in society, rather than placing responsibility strictly on the individual to adapt or “reintegrate” him/herself into existing systems. This concept is reflected in and in accordance with the International Convention on the Rights of Persons with Disabilities.

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Victim assistance programs should also include assistance to restore the well-being of the civilian population affected, and the community as a whole. Other than clearance of all devices, marking of dangerous areas,

and risk education, this would include reconstruction of damaged public and private property, development of socioeconomic alternatives for those denied access to their land, ensuring safe access to roads, water sources, schools and markets, and guaranteeing the safe return of internally displaced persons and refugees.

Working to improve the well-being of the community as a whole also means that survivors will improve their living standards in a sustainable manner, that cohesion within the community will not be challenged by creating special “categories” of victims, and that there will be coherence between victim assistance and other development and poverty reduction strategies.

IV. VICTIM ASSISTANCE ARTICLE

Recognizing that many cluster submunition victims were already in a situation of poverty before their accident, and that persons with disabilities are disproportionately represented among the most marginalized and poor of any given community, victim assistance should be a core obligation of the treaty, demanding the same level of commitment from State Parties as other obligations.

Victim assistance should be discussed in a detailed stand-alone article based on human rights. This would recognize that the primary responsibility for victim assistance lies within the State on which territory the victims live - indeed, it is this State that must establish, enforce and implement relevant laws and public policies. This would recognize a relationship between victims with specific rights and States with specific duties towards victims.

Goal

The goal of this article should be to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all cluster submunition victims, and to promote respect for their inherent dignity, for the effective implementation of the main elements of victim assistance, which include, without being limited to:

- Data collection
- Emergency and long term medical care
- Physical rehabilitation
- Psychological support
- Social inclusion, including inclusive education
- Economic inclusion
- The establishment, implementation and enforcement of laws and public policies

State Parties should be required to consult and actively involve victims, including women and children, throughout the planning, implementation and monitoring of victim assistance processes.

As described in section III, victim assistance should also include assistance to restore the socioeconomic well-being of the civilian population affected and the communities where they reside.

No discrimination and link with other development and poverty reduction initiatives

In developing assistance for cluster submunition survivors, no discrimination should be made against other war-injured or persons with disabilities resulting from any other causes. Victim assistance must take place within the broader context of national development – particularly initiatives for rural areas- and within the context of assistance to other war victims and all persons with disabilities.

The treaty should aim for existing public services to meet the needs of all citizens, including cluster submunition survivors and other persons with disabilities. This will ensure victim assistance efforts will benefit a wider population, resulting in a more efficient use of limited resources. It will also facilitate coherence between victim assistance and other initiatives to guarantee access to all services to persons with disabilities, facilitating sustainability in the long run.

Gender perspective and attention to groups in vulnerable situations

A gender perspective should be included

in all victim assistance initiatives. Indeed, female survivors are subject to multiple discrimination, and this treaty should require specific measures to ensure that female survivors have access to all services provided to cluster submunition survivors. This includes analyzing the impact of programs and policies on women and ensuring that women can have equal access to those initiatives.

In addition, State Parties should ensure that victim assistance is available and accessible for children and for the elderly, as well as for displaced persons, refugees and other populations in situation of vulnerability such as ethnic or religious minorities.

Plans of Action

Meeting the victim assistance obligations can be facilitated by writing specific, measurable, achievable, realistic, and time-bound national plans of action which should be followed by the national and international mobilization of resources for implementation. These plans should be developed with the participation of all stakeholders involved at community, national, regional and community level, and with the full participation of victims themselves.

Where national victim assistance plan of actions already exist, such mechanisms should be expanded to include cluster submunition survivors and their communities. A Victim Assistance Plan of Action should include specific objectives, activities to achieve those objectives, organizations or institutions involved, and existing and required resources.

These plans should be linked with other emergency, reconstruction, development and poverty reduction initiatives, such as

Poverty Reduction Strategy Papers and United Nation Development Assistance Frameworks.

As of November 2007, nine countries affected by cluster munitions have already signed the Convention on the Rights of Persons with Disabilities. This Convention provides a framework that countries can use to fulfill their victim assistance obligations; this should be encouraged to avoid duplication of efforts.

Stakeholders

State Parties should recognize that, although the primary responsibility for victim assistance lies within the affected States, other States should provide cooperation and assistance for affected States to implement their obligations (see section V of this document).

This article should also recognize that in the implementation of victim assistance, States may be assisted by international and regional organizations, civil society organizations, and organizations of survivors and other persons with disabilities. In working with civil society organizations, which will include organizations of survivors and other persons with disabilities, State Parties should facilitate a capacity development component.

Resource mobilization

Based on the victim assistance plans of action mentioned above, affected State Parties should have the primary responsibility for resource mobilization at national and international level. The international community should respond to the requirements of affected States that lack resources to implement their plans of action (see section V of this document).

International human rights law recognizes that the implementation of certain human rights – and therefore, of victim assistance – has resource implications. This is why it allows for the progressive realization of these rights. While States are expected to implement all human rights progressively, they have the immediate obligations to:

- Not discriminate against cluster submunitions victims in any programs and policies,
- Take and demonstrate deliberate, concrete and targeted steps towards the full realization of the human rights of cluster submunitions victims,
- Monitor and report progress in the realization of these rights.

It is important to note that victim assistance also involves initiatives such as amending or passing legislation and ensuring public policies to eliminate discrimination against persons with disabilities.

The steps mentioned above are feasible for all States if the political will and commitment exist.

V. INTERNATIONAL COOPERATION AND ASSISTANCE

Definition of international cooperation and assistance

In their efforts to fulfill their victim assistance obligations, affected States should be supported by the international community. The treaty banning cluster munitions should include an obligation for the international community to provide assistance and cooperation through the provision of information, consultations, research, technical advice, financial and material support, training and awareness raising activities, as well as through the support for building national capacities in any other manner.

In all their international cooperation and assistance efforts and their funding for development and poverty reduction initiatives, all States should ensure that there is a disability perspective to ensure that cluster submunition survivors and other persons with disabilities will effectively benefit and participate in them. This disability perspective should be reflected in the full range of international community mobilization, from emergency response to reconstruction and long term development efforts.

Stakeholders

In addition to affected States, which have the primary responsibility for victim assistance to their citizens, all other States in a position to do so should provide international cooperation and assistance for its implementation.

Cooperation and assistance may be done on a bilateral basis or through the United Nations system, other relevant international and regional organizations, and the civil

society at large, in particular organizations of persons with disabilities and cluster submunition survivors.

The treaty should recognize that States that have used cluster munitions and/ where cluster munitions have been produced bear a unique responsibility in ensuring that these general obligations of the international community are met.

Link with other international conventions

It should be noted that the implementation of the victim assistance provisions of this treaty will assist the international community to meet its stated commitment to the Millennium Development Goals, as well as those under the Mine Ban Treaty and the Convention on the Rights of Persons with Disabilities for those State Parties to those Conventions.

It is imperative for international cooperation and assistance efforts to be effectively coordinated and for them to build upon existing humanitarian mechanisms to avoid duplication of efforts.

The international community should ensure that start up and/or match funds are available in the short, medium and long term to assist national authorities in implementing the national action plans mentioned in section IV of this document. A procedure should be defined so that affected States can present to the international community their national action plans, clearly delineating existing national resources to be mobilized and identifying additional resources required. This would help ensure the sustainability and coordination of funding for victim assistance

activities in the emergency, reconstruction and development phases of affected States.

International cooperation and assistance does not absolve national responsibility for mobilizing national resources; rather, it is a complement to resource mobilization at a national level.

VI. TRANSPARENCY MEASURES

The treaty should recognize an obligation for State Parties to monitor and report on their plans for victim assistance and their progress in implementing those plans. To fulfill this obligation, State Parties should collect appropriate information which should also be used to formulate and implement policies that improve access to services for all victims - good impact indicators depend on good data.

For those States that are already Party to the Mine Ban Treaty and the Convention on the Rights of Persons with Disabilities, monitoring and coordination should be carried out in close linkages with existing obligations.

State Parties should assume responsibility for the dissemination of their plans of action and progress monitoring and reporting. This information should be widely available to the public within their country and in accessible formats for persons with disabilities.

Monitoring

State Parties should have an obligation to monitor their progress. Collecting data to monitor progress on a national victim assistance plan of action should be conducted routinely and systematically. This will allow State Parties to ensure and demonstrate that they are really making a difference to victims of cluster munitions, in accordance to their obligations under the treaty. Civil society, in particular survivors and other persons with disabilities, should be involved and participate fully in the monitoring process at national and international level. With regards to independent international monitoring, States should allow and assist civil society in its monitoring and assessment of national victim assistance projects and programs.

Such monitoring may build on existing initiatives such as the Landmine Monitor.

Reporting

Reporting should be based on the monitoring of specific, measurable, achievable, relevant and time-bound indicators included in the national victim assistance plan of action. The reports provided by State Parties should be disaggregated to show the fulfilment of the needs of male, female, elderly and children survivors and ensure populations in vulnerability situations within the particular context of each country have effective access to victim assistance, as described in section IV of this document. Reports should be submitted yearly by each country.

National coordination

Affected States Parties should designate or strengthen a coordination mechanism within each State Party to promote, protect, monitor and report on the implementation of the victim assistance provision of this treaty. This mechanism should facilitate coordination among the different sectors (health, social affairs, employment...) and at different levels, and be linked to national institutions for protection and promotion of human rights. A focal should be designed to take the leadership at a national level.

Linkage to other monitoring and reporting obligations

Data collection, monitoring and reporting of this treaty should be linked to census and to disability monitoring initiatives. Data collection related to cluster survivors should rely, if possible, on disaggregated systems already available, and be linked to disability monitoring mechanisms.

Those State that are party to the Mine Ban

Treaty framework should be encouraged to have a single focal point for victim assistance for both treaties; focal points that would be in close contact with the focal point or coordination mechanism for the Convention on the Rights of Persons with Disabilities. When States have signed all three treaties their obligations for monitoring and reporting may be facilitated by fulfilling their obligations under the Convention on the Rights of Persons with Disabilities, as long as survivors are part of the disaggregated data.

Obligations for monitoring and reporting on international cooperation and assistance

Donor States should have the obligation to report on all their international cooperation and assistance efforts. They should also monitor and report on how their emergency, reconstruction and development assistance in cluster-submunition affected countries includes a disability perspective, to ensure that cluster submunition survivors benefit and have access to all initiatives these States fund and support.