

VICTIM ASSISTANCE IN THE CONTEXT OF THE AP MINE BAN CONVENTION

Priorities and challenges during the period 2010-2014

Presented by the
Co-Chairs of the Standing Committee on
Victim Assistance and Socio-Economic Reintegration
(Belgium and Thailand)

29 May 2009

Introduction:

1. In legal terms, victim assistance is the least developed of the Convention's core aims. However, the States Parties have seized upon this as an opportunity not an obstacle. In doing so they have made great advances in formally elaborating understandings regarding what this aim means and how it should be pursued. Since the First Review Conference, there has been a concerted effort to apply these understandings.

2. Addressing the rights and needs of the victims of landmines is a long-term commitment which will require the coordinated efforts of affected States, international agencies, NGOs, the donor community, civil society, and survivors themselves. The challenge on the eve of Second Review Conference is to clarify the challenges that exist in 2009 and to develop sound strategies for the period following, based on the lessons learned and priorities identified since the First Review Conference.

3. On 22-23 May 2009, the Co-Chairs of the Standing Committee on Victim Assistance and Economic Reintegration (Belgium and Thailand) convened a victim assistance retreat bringing together 45 participants representing States Parties, international agencies, the ICRC, the IFRC, and the ICBL and other non governmental organisations. Experts include survivors, doctors, disability and human rights experts, representatives of relevant ministries and agencies in affected States, development agencies, and service providers.

4. This paper brings together the wealth of information generated by the States Parties through the intersessional work programme and at the national level in relevant States Parties in the development of objectives and national plans, together with input provided from regional workshops in Managua and Bangkok, the victim assistance retreat and parallel programme for victim assistance experts at the intersessional meetings from 25-29 May 2009, and the views of other stakeholders including civil society.

Background:

Evolution of the status of victim assistance in the context of the Convention

5. The Convention was the first disarmament treaty that aimed to assist the victims of the weapon(s) covered by such a Convention. It does so through the obligation in Article 6.3 that "each State Party in a position to do so shall provide assistance for the care and rehabilitation of, and social and economic reintegration, of mine victims (...)". Five years of intersessional work between the Convention's entry into force in 1999 and its First Review Conference in 2004 sought to clarify matters informally. At the First Review Conference in 2004, the States Parties consolidated the outcomes of this work by agreeing to a set of conclusions on the implementation of this aspect of the Convention. These included:

a. "Landmine victim" was defined as "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."

b. While a broad approach to what is considered a landmine victim was accepted, it was agreed that “quite naturally the majority of attention has been focused on providing assistance to those individuals directly impacted by mines.”

c. On the basis of a framework promoted by leading NGOs, the States Parties defined “victim assistance” as including work in the areas of: data collection to understand the extent of the challenges faced; emergency and continuing medical care; physical rehabilitation; psychological support and social reintegration; economic reintegration; and, the establishment, enforcement and implementation of relevant laws and public policies.

d. The States Parties “developed a clear sense of the place of assistance to mine victims in broader contexts”, concluding that “those individuals directly impacted by mines are a sub-group of larger communities of persons with injuries and disabilities.” In this regard, it was further concluded that “**victim assistance does not require the development of new fields or disciplines** but rather calls for ensuring that existing health care and social service systems, rehabilitation programmes and legislative and policy frameworks are adequate to meet the needs of all citizens — including landmine victims.”

e. The States Parties concluded that “providing adequate assistance to landmine survivors must be seen in a broader **context of development** and underdevelopment”, that “ensuring that a real difference can be made may require addressing broader development concerns”, and that “victim assistance should be integrated into development plans and strategies.”

f. It was agreed that victim assistance should be guided by principles that involve “**non-discrimination**”, “**national ownership**” and “**an integrated and comprehensive approach including a gender perspective.**”

g. The States Parties recognised that “victim assistance is more than just a medical or rehabilitation issue – it is also a **human rights issue.**”

h. It was agreed that all States Parties will “ensure **effective integration of mine victims** in the work of the Convention” and “ensure an effective contribution in all relevant deliberations by health, rehabilitation and social services professionals and officials.”

i. The States Parties “underscored that the ultimate responsibility for victim assistance rests with each State Party within which there are landmine survivors and other mine victims” and noted that “this is logical given that it is the basic **responsibility** of each State to ensure the well-being of its citizens, notwithstanding the fundamental importance of the international donor community supporting the integration and implementation of the policies and programmes articulated by States Parties in need.”

j. The States Parties concluded that “success and lessons learned from the work to implement the Convention have helped inspire further efforts at the international level to protect and promote the rights of persons with disabilities.” In 2004 this was certainly the case with respect to the Convention on the Rights of Persons with Disabilities. Since 2004, this has been illustrated most prominently in the manner in which the Convention’s practices regarding victim assistance became the basis for Article 5 of the Convention on Cluster Munitions.

Applying the understandings and framework for strategic action

6. Following the First Review Conference the States Parties still lacked a clear understanding of what could be or should be achieved by a certain point of time. By not knowing what needed to be done by certain key milestone dates like the Convention’s Second Review Conference in 2009, the

States Parties were setting themselves up for failure because there was no measure regarding what it means to have fulfilled their promise to mine victims.

7. Since 2005, efforts undertaken by all Co-Chairs of the Standing Committee on Victim Assistance and Socio-Economic Reintegration have been based on the logic that the ultimate responsibility of meeting the rights and needs of landmine survivors within a particular state rests with that state. No external actor can define for it what can or should be achieved by when and how in meeting the needs of these survivors. Others may have the ability to assist in understanding challenges and in developing and monitoring the effectiveness and implementation of plans and programmes. However, real and sustainable progress rests with sovereign states articulating in their own voices their challenges and plans to overcome them. In addition, what can or should be achieved by when and how is different for each State, given their unique characteristics.

8. The Co-Chairs recognised that the best way to assure progress is to work intensively, on a national basis with relevant States Parties. The primary focus of their work is to assist national authorities responsible for healthcare, rehabilitation, social services, employment or disability issues more generally in the process of setting their own specific and measurable objectives and developing and implementing plans of action, or when plans for the disability sector already exist ensuring that mine survivors have access to the services and benefits enshrined within those plans and that the relevant ministries are aware of their States' obligations under the Convention. Through the Convention's sponsorship programme, experts from relevant ministries and agencies participate in international meetings to advance understanding on the victim assistance issue.

9. Significant progress has been made in many instances to foster inter-ministerial interaction at the national level. Appropriate people from relevant State entities are now participating in the work of the Convention. These efforts have resulted for the first time in clear objectives having been established and national plans developed. Often for the first time the aim of assisting landmine survivors is being taken into account in broader disability and human rights approaches. Of course the most identifiable gains have been process-related and the real promise of the Convention is to make a difference on the ground, in the lives of individual survivors. Nevertheless, without the full involvement of the right governmental actors and without the application of coherent and realistic strategies, no meaningful, measurable or sustainable difference in the lives of individuals would be possible.

10. The systematic way in which relevant States Parties have articulated objectives and developed national action plans have provided a basis for more meaningful monitoring of the fulfilment of this aim of the Convention. NGO monitoring now has the potential to be more precise, measuring against clear benchmarks rather than unattainable ideals.

11. Also since 2004, the Convention of the Rights of Persons with Disabilities (CRPD) has entered into force, providing a more systematic and sustainable approach by bringing victim assistance into the broader context of policy and planning for persons with disabilities more generally. In addition, the AP Mine Ban Convention's work on victim assistance has helped ensure coherence across the spectrum of international instruments that concern the victims of conventional weapons. As noted, the AP Mine Ban Convention provided the basis for victim assistance to be treated in a comparable manner as legal obligations contained in the Convention on Cluster Munitions. Also, the AP Mine Ban Convention, not to mention relevant States Parties to it, inspired the adoption in 2008 of an action plan for victim assistance in the context of the CCW's Protocol V on explosive remnants of war.

Challenges in fulfilling the Convention's promise to survivors

12. The challenges faced in 2009 are to a large extent identical to those faced in 2004 and likely will be the same as those to be faced in 2014. What is important is to ensure that measurable progress is made toward overcoming these challenges. The following constitutes a comprehensive accounting of the main challenges that stand in the way of the aim of achieving the full and effective participation and inclusion of mine survivors, including men, women, boys and girls, in the social, cultural, economic and political life of their communities. However, it should be noted that these challenges may or may not apply to varying degrees in affected States. Challenges also take on different degrees of relevance if the country is in a conflict or post-conflict situation.

- a. Disability often not seen as a priority by policy makers which can result in weak political will to affect change.
- b. Disability often regarded as a charity issue not a human rights issue due to weak capacity to address disability issues at all levels including within the governmental and non governmental sectors.
- c. Limited or lack of inclusion of persons with disabilities in decision making processes and in the planning, implementation and monitoring of plans and programmes.
- d. Limited disability-related data available on a national level for strategic planning of services and programmes.
- e. Appropriate, accessible and affordable services not meeting the needs in terms of both quantity and quality especially due to a lack of capacity of personnel, lack of professional recognition of trained staff, and the migration of capacities to the capital or outside the country.
- f. Lack of well-functioning mechanisms for monitoring and evaluation of services and reporting.
- g. Limited or lack of accessibility to services and opportunities in rural areas to build the capacity of survivors to support their economic and social participation, including through psychological support.
- h. Limited opportunities for social and economic participation due to the environment in which survivors live.
- i. Limited or lack of awareness of survivors about their rights and the services available.
- j. Lack of regard for the place of victim assistance in broader healthcare, rehabilitation, reintegration, development and human rights contexts.
- k. Weak State structures and hence weak bureaucratic, human resource, technical and financial capacity to develop, implement and monitor objectives, national plans, and legislation in a transparent manner.
- l. Weak State structures and inadequate resources to implement policies and operationalise legislation.
- m. Inadequate resources to build government capacity to provide services in rural areas and to understand legal obligations, due in part to the absence of budget lines for disability related activities.
- n. Limited collaboration and/or coordinated sustainable approach to programming among relevant stakeholders and service providers resulting in inefficient and ineffective use of resources and duplication in services.
- o. Lack of sustainability of national ownership, interest and will when governments, political leaders, individual officials or international advisors move on, or when faced with other competing priorities.
- p. Inadequate national ownership as a result of an overdependence on international NGOs and other international agencies to provide services.
- q. Inadequate long-term international cooperation and assistance in both the provision of financial resources and technical support and in linking of resources to identified needs.
- r. Lack of information on the type of cooperation that is needed and a clear understanding of priorities resulting in programmes based on donor priorities not real needs.
- s. Limited opportunities at the regional level for States Parties to develop partnerships, strengthen regional cooperation and share good practice in relation to victim assistance.

Ways Forward:

Actions to address the challenges in fulfilling the Convention's promise in the period 2010-2014

13. During the period 2010 to 2014, the States Parties should maintain a clear focus on the aim of their efforts being to achieve the full and effective participation and inclusion of mine survivors, including men, women, boys and girls, in the social, cultural, economic and political life of their communities. The understandings agreed to in 2004 continue to provide a solid foundation for ongoing work in this area. In some instances, however, the profile of various principles needs to be raised, some understandings need to be applied with greater vigour, and some conclusions drawn in 2004 could stand to be updated.

a. In 2004, the States Parties adopted a definition of landmine victim that includes individuals, families and communities, although logically focusing the majority of their attention on providing assistance to those individuals directly impacted by mines. However, the impact on the family of those killed or injured should be taken into account. In some situations it may be necessary to seek to address to a greater extent the needs of families, for example, in the area of psychological support, economic inclusion, and support for the education of children.

b. The States Parties have already accepted that an integrated and comprehensive approach is required, that a gender perspective is necessary and that victim assistance is a human rights issue. However, more attention need to be given to the application of these principles with a view to ensuring that efforts promote the full and effective participation of women, men, girls and boys and are integrated into the broader context of development. However, it may be necessary to apply a broader gender and diversity perspective to include for example, other persons in vulnerable situations including internally displaced persons, the elderly, and people living in extreme poverty.

c. The States Parties have categorized what they consider "victim assistance" within the six defined components which has worked well to provide a framework for action. New developments and understandings, such as the comprehensive manner in which the CRPD records what is required to promote the full and effective participation and inclusion of mine survivors in the social, cultural, economic and political life of their communities may provide guidance to all States Parties in meeting their responsibilities to persons with disabilities, including mine survivors, and their families. The CRPD has linkages to the six components of victim assistance, particularly through the promotion of: health, including emergency and continuing medical care; personal mobility, including physical rehabilitation and assistive devices; psychological support; education, including primary to tertiary education, vocational education, adult education and lifelong learning; work and employment; adequate standard of living and social protection; participation in cultural life, recreation, leisure and sport; inclusion; accessibility; inclusive development; awareness raising; statistics and data collection; and, legislation, policies and planning.

d. In and since 2004, States Parties¹ that identified themselves as being responsible for significant numbers of survivors have been the focus of attention within the work of the Convention. While all States Parties have a responsibility for mine victims in areas under their control or jurisdiction, this focus has provided a useful framework for the work of the Standing Committee on Victim Assistance and Socio-Economic Reintegration and support for the implementation of victim assistance obligations at the national level. We must retain some sort of clear focus after the Second Review Conference.

¹ Afghanistan, Albania, Angola, Bosnia and Herzegovina, Burundi, Cambodia, Chad, Colombia, Croatia, Democratic Republic of the Congo, El Salvador, Eritrea, Ethiopia, Guinea Bissau, Iraq, Jordan, Mozambique, Nicaragua, Peru, Senegal, Serbia, Sudan, Tajikistan, Thailand, Uganda, and Yemen.

14. Priorities for victim assistance, under various themes, could be addressed by focusing on two specific levels: priorities at the international level; and priorities at the national level.

Priorities at the international level

International cooperation and assistance

- Cooperation and assistance understood as financial, material and technical support, with those in a position to do so providing financial, material and / or technical assistance in support of enhancing national ownership and in response to the priorities for the recipient State.
- International and regional cooperation and assistance, including development cooperation, is inclusive of and accessible to persons with disabilities, including mine survivors.

Inclusion

- Continued inclusion and active participation of mine survivors in the work of the Convention at the international level.
- Continued involvement by relevant healthcare, rehabilitation, social services, employment and disability rights experts from affected States in the work of the Convention.

Coherence

- Coherent and efficient approaches, including coordination, to implementation and monitoring in cooperation with other relevant instruments of international law in relation to victim assistance.

Monitoring and reporting

- Efforts made to rationalize and ensure efficiency in international reporting obligations with a view to facilitating the work of administrations of relevant States and the need for clarity regarding progress made, challenges that remain and strategies to overcome them.

Priority areas at the national level

Inclusion

- Inclusion and active participation of mine survivors and other persons with disabilities in the development, implementation and monitoring of policies, plans, and programmes.
- Awareness raised on the rights and contributions of survivors to their communities among survivors and their families, communities, professionals and authorities at all levels to promote inclusion.

Legislation and policies

- National legislation and policies that promote and guarantee the rights of persons with disabilities, including mine survivors, enacted, implemented and monitored.
- Development and poverty reduction strategies, policies and programmes are inclusive of issues concerning persons with disabilities, including mine survivors.

Data and statistics

- National standardized mine victim data collection and/or injury surveillance mechanisms enhanced to support the needs of programme planners and resource mobilisation.
- Data on survivors fully accessible for all users and integrated into disability data collection mechanisms to enhance access to services.
- Needs and priorities of survivors and other persons with disabilities in affected communities assessed to enhance planning and programming.
- Situation analysis, including a mapping of who is doing what and where, undertaken to understand the current situation in all areas that may be relevant to mine survivors and other persons with disabilities, and the factors that favour or impede achieving the best possible quality of life and enjoyment of human rights for persons with disabilities.

Holistic approach

- Victim assistance recognised as a process in which each component – emergency and continuing medical care, physical rehabilitation, psychological support, and social and economic reintegration – has specific objectives to ensure high quality standards, availability and accessibility of services to promote the ultimate aim of full and effective participation and inclusion.
- States, while acknowledging their responsibility to address the rights and needs of mine survivors through the implementation of plans of action, will increase efforts, as appropriate, to enhance coordination, collaboration and cooperation with international agencies, non governmental agencies, other service providers and organisations of persons with disabilities, to ensure a holistic approach to assisting survivors.
- Community based rehabilitation² recognised, if appropriate, as a tool to promote a holistic approach to assisting mine survivors and to promote their full and effective participation and inclusion.

Accessibility to services and facilities

- Accessibility understood at all levels to take into account the particular needs of women, men, girls and boys with disabilities including: physical, social, cultural, economic and political barriers, awareness raising, information and technologies, and location and type of services and facilities.

Inclusive development

- The “twin track” approach³ to disability is understood and implemented whereby victim assistance is mainstreamed into development activities but specialised services provided when needed to ensure that survivors are empowered to participate on an equal basis with others.

Capacity development and training

- Capacities, competencies and training needs of all relevant stakeholders, including government, DPOs, NGOs and other service providers, identified to improve access to quality services in all areas of assistance.
- Capacity development and training plans implemented to promote high quality standards and availability of services at all stages of victim assistance.

Planning and coordination

- An inter-sectoral and inter-institutional coordination mechanism, led by the ministry or agency responsibility for disability issues, established and functional which includes relevant government ministries and agencies, local authorities, international agencies and NGOs working in the disability sector, persons with disabilities including mine survivors, and their representative organisations.
- National plan of action for persons with disabilities, including mine survivors, developed, implemented and monitored with the full and active participation of survivors and other relevant stakeholders.

Resources and long-term sustainability

- National resources, including financial and human resources, are allocated to the implementation of plans of action and services for persons with disabilities, including mine survivors, by relevant ministries and agencies.

² Community based rehabilitation (CBR) focuses on enhancing the quality of life for people with disabilities and their families, meeting basic needs and ensuring inclusion and participation. CBR is a multi-sectoral approach and has 5 major components: health, education, livelihood, social and empowerment.

³ The “twin-track” approach to disability addresses inequalities between disabled and non-disabled persons in all strategic areas of work while at the same time supporting specific initiatives to enhance the empowerment of people with disabilities. This approach aims to ensure equality of rights and opportunities for persons with disabilities.

- Plans developed in collaboration with all relevant stakeholders to ensure the long-term sustainability of services for persons with disabilities, including mine survivors, and enhance national ownership.
- Specific requests for support from the international community based on identified gaps in resources available to implement national plans of action.

Monitoring and reporting

- Mechanism to monitor progress and implementation of national action plans developed and used.
- Reporting to the inter-sectoral coordination mechanism on the progress of implementation and progress of their plans of action, on a regular basis, including resources allocated to implementation and challenges in achieving their objectives to promote transparency and accountability.

The Cartagena Action Plan and victim assistance

15. The President-Designate of the Second Review Conference has indicated “the challenge now is to draft a new action plan that is relevant for the period 2010-2014 and that is based upon the reality of the Convention in 2009. The *Nairobi Action Plan* served its purpose well. However, the States Parties can learn from the experience of applying the *Nairobi Action Plan* to make a *Cartagena Action Plan* even more focused and action-oriented.” In addition, the President-Designate has proposed that the action plan be a tool to guide and improve implementation of the Convention.

16. Experts working on the victim assistance issue have suggested that all priorities outlined in this paper require the sustained attention of the States Parties in the period 2010-2014. However, within that framework key priority issues to be addressed within the *Cartagena Action Plan* 2010-2014 include: inclusion; a holistic approach; accessibility; coordination and planning; capacity building; and international cooperation and assistance. Experts stressed the importance of ensuring that the *Cartagena Action Plan* is fully implemented, particularly in rural areas to achieve the ultimate aim of victim assistance in the context of the AP Mine Ban Convention: the full and effective participation and inclusion of mine survivors, including men, women, boys and girls, in the social, cultural, economic and political life of their communities.