

Frameworks for Victim Assistance

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The Maputo Action Plan calls for activities addressing the specific needs of victims and also emphasizes the need to simultaneously integrate victim assistance into other frameworks including disability, health, social welfare, education, employment, development, and poverty reduction.¹ It also recognizes that in addition to integrating victim assistance, States Parties need to, in actual fact, “ensure that broader frameworks are reaching mine victims.”

Many of these frameworks have their own representative international administrations, guidance documents, plans, and objectives that may also be reflected in national-level activities that can reach survivors, families, and communities.

Since the emergence of victim assistance through the 1997 Mine Ban Treaty, other weapons-related conventions also have adopted this rapidly emerging norm. The 2008 Convention on Cluster Munitions codified the expanded principles and commitments of victim assistance into binding international law; these were introduced into the planning of the Convention on Conventional Weapons (CCW) Protocol V on explosive remnants of war (ERW) in 2008, and most recently included in the 2017 Treaty on the Prohibition of Nuclear Weapons.

Human rights and victim assistance

At the Mine Ban Treaty First Meeting of States Parties in Maputo in 1999, the international mine action community first articulated the notion that victim assistance is to be a part of broader contexts, including human rights approaches.² Subsequently, in the Mine Ban Treaty’s first Action Plan adopted in 2004, States Parties committed to ensuring that they effectively address the “fundamental human rights of mine victims” through national legal and policy frameworks.³

Adopted 70 years ago this year, the Universal Declaration of Human Rights (UDHR) established for the first time the fundamental human rights to be universally protected. The UDHR spells out the dignity and rights of each individual and sets out, among others, Article 3, the right to life, liberty, and security of the person. UDHR Article 2 specifies, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.”⁴

The UDHR speaks directly to the core of the Mine Ban Treaty and victim assistance. UDHR Article 3 encompasses elements of victim assistance and protection from victimization by landmines. The relationship between the right to life and the human impact of landmines was marked at early ICBL NGO conferences leading to development of the Mine Ban Treaty, with participants noting the need for human rights language to be used, for example stating, “it is a question of telling the military that they are massively violating human rights—the right to life.”⁵ There are also legal cases regarding the right to life and landmine victims. In 2017, for example, it was reported that Nigeria came to an out of court settlement for a lawsuit brought to the Economic Community of West African States (ECOWAS) court by 20 survivors on behalf of over 600 victims, alleging the violation of their fundamental human rights due to the failure of the government to clear landmines, improvised explosives, and other explosive remnants.⁶ The precedent of this right has also been an element contributing to cases of remedy and redress for mine victims in national and regional courts in states not party to the Mine Ban Treaty, including India and Russia.⁷

Regarding the element of protection and the right to life, the ICBL has previously submitted documentation to the UN Universal Periodic Review (UPR) on Myanmar, a state not party to the Mine Ban Treaty, regarding forced labor for mine clearance and portering in mined areas, on the basis that these activities constitute a threat to the right to life, liberty, and security of a person as stipulated in Article 3 of the UDHR.⁸

The Convention on the Rights of Persons with Disabilities (CRPD) is the international human rights legal instrument that has been most discussed in relation to the implementation of victim assistance. The linkages between rights-based victim assistance and the CRPD are particularly useful for implementation through integration and synergy. Only five States Parties to the Mine Ban Treaty with significant numbers of survivors are not party to the CRPD; three of those are signatories to the CRPD, Chad, Somalia, and Tajikistan. Tajikistan signed in March 2018 and Somalia in October 2018. Eritrea and South Sudan have not yet signed or acceded to the CRPD.

Victim assistance is very often linked with, or included in, the national CRPD coordination mechanisms of countries that are party to both the Mine Ban Treaty and the CRPD. Furthermore, some states initial reports submitted under Article 35 of the CRPD have referred to victim assistance and landmine survivors. Although the CRPD does not establish new human rights, it does provide much greater clarity to the obligations of states to promote, protect, and ensure the rights of persons with disabilities, and presents the concepts for those rights to become reality through implementation of the convention.

The basis of many elements of the CRPD that inform understandings of the components, or pillars, of victim assistance are found in the UDHR, including healthcare (and rehabilitation), employment, education, and participation.⁹

- Health: The right to the highest attainable standard of health in Article 25 UDHR is also expressed in accessible and inclusive terms in CRPD Article 25—Health,¹⁰ and further elaborated in the separate provision of CRPD Article 26—Habilitation and rehabilitation.
- Employment: “Everyone has the right to work” according to UDHR Article 23, as reflected in CRPD Article 27—Work and employment.¹¹ UDHR Article 23 also calls for “Just and favourable conditions of work” and “protection against unemployment.”
- Social protection: Social security is found in UDHR Article 22, whereas social protection is covered in Articles 23 (3) and 25 respectively. These correspond with CRPD Article 28—Adequate standard of living and social protection.¹²
- Education: The right to education is recognized under UDHR Article 26 (1).¹³ CRPD Article 24 affirms the right and adds the availability of inclusive and accessible education.
- Participation: UDHR Articles 20 & 21 include political rights, the basis of the broader concept of participation as found in CRPD Article 29—Participation in political and public life and a forbearer for the obligation to consult persons with disabilities as experts in their own right (Article 4 (3) CRPD), echoing the commitment to ensure the full and active participation of mine victims in all matters that concern them, found in Action 16 of the Maputo Action Plan.

Human rights accountability

The Optional Protocol to the CRPD is a separate treaty that establishes both an individual complaints procedure and an inquiry procedure. Such an inquiry can be conducted by the Committee on the Rights of Persons with Disabilities upon receipt of reliable information on serious, grave, or systematic violations by a State Party of rights set forth in the convention. Given the lack of technical provisions for investigation or follow up on national implementation of Mine Ban Treaty victim assistance commitments (in contrast to Mine Ban Treaty Article 8—Facilitation and clarification of compliance), the CRPD Optional Protocol could progressively provide a means to help increase states’ accountability for their responsibility to uphold the rights of mine/ERW survivors with disabilities.¹⁴

Many States Parties with responsibility for integrating assistance for mine survivors into relevant rights, health and development plans, policies, and frameworks also implement austerity measures. Structural adjustment programs regulating the fiscal parameters of health and social welfare spending policies have been reported

to adversely affect vulnerable populations. For many years however, the importance of protecting or increasing social expenditures during adjustment has been stressed.¹⁵ For the first time, the CRPD Committee has carried out an investigation on a State Party regarding complaints of human rights breaches. The enquiry by the committee under Article 6 of the Optional Protocol to the CRPD found grave or systematic disability rights violations in relation to the disproportionate impact of austerity budget cuts on persons with disabilities in the United Kingdom (UK).¹⁶

Global Disability Summit 2018

In July 2018, the UK government, the International Disability Alliance (IDA), and the government of Kenya co-hosted a Global Disability Summit. Several States Parties to the Mine Ban Treaty with responsibility for mine/ERW survivors and indirect victims attended the summit whereby each state submitted a set of specific, concise, individually tailored commitments to furthering the implementation of disability rights that are in many cases relevant to victim assistance.¹⁷ Disabled Persons' Organizations (DPOs) attended, and a landmine survivor leader and disability rights expert from Iraq also participated in the summit.

The rights of peasants and other people working in rural areas

In September 2018, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas was adopted by the Human Rights Council. The declaration states that particular attention shall be paid "to the rights and special needs of peasants and other people working in rural areas, including older persons, women, youth, children and persons with disabilities, taking into account the need to address multiple forms of discrimination." It contains several matters of particular relevance to mine survivors and indirect victims living in remote and rural areas with regard to vulnerability and gender. It also includes a stipulation relevant to displaced survivors and indirect victims of mines, affirming that peasants and other people working in rural areas who have been arbitrarily or unlawfully deprived of their lands—including in cases of armed conflict—have the right to return to their land and "to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions."¹⁸

The declaration is compatible with the implementation of Maputo Action Plan Article 15, which "entails removing physical, social, cultural, economic, political and other barriers, including expanding quality services in rural and remote areas and paying particular attention to vulnerable groups." State delegations that endorsed the declaration on the Rights of Peasants included Mine Ban Treaty States Parties with recorded mine/ERW victims: Algeria, Ecuador, El Salvador, Kenya, Nicaragua, Philippines, and new State Party Palestine.

Sustainable Development Goals

The Sustainable Development Goals (SDGs) are highly complementary to the rights-based aims of victim assistance under the Mine Ban Treaty. They also offer opportunities for bridging between relevant frameworks. The SDGs, a set of 17 aspirational goals with corresponding targets and indicators that all UN member states are expected to use to frame policies and stimulate action for positive change in 2015–2030, are designed to address the economic, social, and environmental dimensions of sustainable development. Their emphasis is on reaching the most marginalized persons, commonly phrased as "leaving no-one behind."

Persons with disabilities are referred to directly in the SDGs: education (Goal 4), employment (Goal 8), reducing inequality (Goal 10), and accessibility of human settlements (Goal 11), in addition to including persons with disabilities in data collection and monitoring (Goal 17). With an emphasis on poverty reduction, equality, and inclusion, the SDGs also recognize the need for the "achievement of durable peace and sustainable development in countries in conflict and post-conflict situations."

Conflict and humanitarian emergencies

An Inter-Agency Standing Committee (IASC) Task Team on Inclusion of Persons with Disabilities in Humanitarian Action established in 2016 continued to develop and refine implementation guidelines related to the charter on the Inclusion of Persons with Disabilities into Humanitarian Action in 2018.¹⁹

Two States Parties with significant numbers of survivors and ongoing conflict, the Democratic Republic of the Congo (DRC) and Yemen, had a Level-3 IASC system-wide response activated in 2017–2018. Such an activation occurs when a humanitarian situation suddenly and significantly changes, and it is clear that the existing capacity to coordinate and deliver humanitarian assistance and protection does not match the scale, complexity, and urgency of the crisis.²⁰ Syria, a state not party to the Mine Ban Treaty, was the only other country to have a Level-3 response active in the period.

In Yemen, the ongoing conflict dramatically increased demand for emergency and ongoing medical care beyond the capacity of the medical system. Additionally, the mine action center had to suspend victim assistance activities in 2018.

A UN strategic review for 2018 reclassified Afghanistan from a post-conflict country to one in active conflict.²¹ Movement restrictions due to conflict in Afghanistan were among the persistent obstacles to victim assistance in some parts of the country. Conflict continued to cause damage and disruption to social healthcare services, while trauma, physical injuries, and mass displacement increased the need for those services. Security constraints prevented some rehabilitation outreach services from operating. Other States Parties where conflict and unstable security situations similarly impacted implementation of victim assistance included Iraq, Palestine, South Sudan, and Somalia. In Somalia, insecurity was widespread and the indistinct nature of conflict front lines hindered delivery of assistance by many international humanitarian agencies, particularly to areas under the control of non-state armed groups.

NOTES:

- ¹ Maputo Action Plan Actions #12 to #18.
- ² "MAPUTO +15: Declaration 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," adopted 27 June 2014, www.maputoreviewconference.org/fileadmin/APMBC-RC3/3RC-Maputo-declaration-adopted-27Jun2014.pdf.
- ³ Nairobi Action Plan, 2004–2009, Action #33.
- ⁴ UN General Assembly Resolution 217 A, [www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)).
- ⁵ ICBL, "Second NGO Conference on Landmines: Report of Proceedings," Geneva 9–11 May 1994, p. 118.
- ⁶ Community Court of Justice of ECOWAS, "Parties Given 30th October Date to Report on Efforts at Amicable Settlement of Suit Related To Civil War Bombs," ECW/CCJ/APP/06/12, www.courtceowas.org/site2012/index.php?option=com_content&view=article&id=385:parties-given-30th-october-date-to-report-on-efforts-at-amicable-settlement-of-suit-related-to-civil-war-bombs.
- ⁷ ICBL-CMC, "Country Profile: India: Casualties and Victim Assistance," updated 21 June 2010, www.the-monitor.org/en-gb/reports/2010/india/casualties-and-victim-assistance.aspx; and in the 2010 case of *Gulzar Mir v. India*, while recognizing that it was not unlawful per se for the state to use landmines, the court found that India had breached its duty to protect Mir's right to life and liberty. In 2009, in the case of *Albekov and Others v. Russia*, the European Court of Human Rights similarly recognized the responsibility of the state to protect people from landmines and found that its failure to do so adequately was a violation of the victims' right to life. See, Megan Burke and Loren Persi-Vicentic, "Remedies and reparations," *Weapons under International Human Rights Law*, ed. Stuart Casey-Maslen (Cambridge: University Press, 2014), p. 562.
- ⁸ ICBL, Special Campaign on Myanmar, "Myanmar: Submission to the UN Universal Periodic Review," 10th session of the UPR Working Group of the Human Rights Council, July 2010, http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/ICBL_InternationalCampaigntoBanLandmines_eng.pdf.
- ⁹ The following is drawn from, Marianne Schulze, "Understanding the UN Convention on the Rights of Persons with Disabilities," *Handicap International*, September 2009.
- ¹⁰ The right to health is found in Article 25 UDHR and in Article 12 of the Covenant on Economic, Social and Cultural Rights (CESCR). Both the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)—Article 12, and the Convention on the Rights of the Child (CRC) —Article 24—also contain a specific right to health.
- ¹¹ The right to work is reflected in CESCR Article 6 and in CEDAW Article 11.
- ¹² Social security is included in Article 23 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and CESCR Article 9, CEDAW Article 11, CRC Article 26, and Article 27 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW).
- ¹³ As well as CERD Article 5 (e)(v), CESCR 13 (1), CEDAW 10, CRC 28 (1), and Article 30 CRMW.
- ¹⁴ ICBL, *Landmine Monitor 2013*, "Casualties and Victim Assistance," footnote 101, www.the-monitor.org/en-gb/reports/2013/landmine-monitor-2013/casualties-and-victim-assistance.aspx#footnote-5835-101.
- ¹⁵ See for example, IMF, "IMF Conditionality," 6 March 2018, www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality.
- ¹⁶ For details of the inquiry and reporting see, CRPD, "Inquiry Procedure," undated, www.ohchr.org/EN/HRBodies/CRPD/Pages/InquiryProcedure.aspx; In October 2018, the UK responded to earlier CRPD comments regarding those issues. See "Policy paper: Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland: initial government response," updated 3 October 2018, www.gov.uk/government/publications/disabled-peoples-rights-information-following-the-uks-first-periodic-review/concluding-observations-on-the-initial-report-of-the-united-kingdom-of-great-britain-and-northern-ireland-initial-government-response.
- ¹⁷ See, UK, "National Governments: Global Disability Summit commitments," 23 July 2018, www.gov.uk/government/publications/national-governments-global-disability-summit-commitments.
- ¹⁸ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Human Rights Council, 39th Session, 10–28 September 2018, A/HRC/39/L.16, 26 September 2018.
- ¹⁹ "Charter on Inclusion of Persons with Disabilities in Humanitarian Action," undated but 2016, <http://humanitariandisability-charter.org/>.
- ²⁰ Based on an analysis of five criteria: scale, complexity, urgency, capacity, and reputational risk. IASC, "L3 IASC System-wide response activations and deactivations," 4 April, 2017, bit.ly/IASCL3.
- ²¹ UNOCHA, "2018 Afghanistan Humanitarian Needs Overview," 1 December 2017, www.humanitarianresponse.info/en/operations/afghanistan/document/afghanistan-humanitarian-needs-overview-2018.