



Victim Rights and Assistance Memo #1:

A Humanitarian Approach to Nuclear Disarmament: Victim Rights and Assistance

The Vienna Conference on Humanitarian Impact of Nuclear Weapons brought a number of new concepts and ideas to the discourse on nuclear disarmament.¹ The Humanitarian Pledge recognized “that the rights and needs of victims have not yet been adequately addressed” and the International Campaign to Abolish Nuclear Weapons (ICAN) said that testimony from survivors and victims “illustrate the need for legal provisions to assist victims and to ensure the fulfilment of their rights.” These statements and others introduced a potentially life-changing concept: the need for future discussions about nuclear disarmament and in a new legal disarmament instrument to include the provision of support to victims of nuclear explosions and nuclear testing.

Publically raising the rights and needs of victims indicates a dramatic shift in nuclear disarmament discourse caused by the Humanitarian Initiative. Before Vienna, the rights and needs of victims had been briefly mentioned in the civil society publication “A treaty banning nuclear weapons”ⁱ and in survivor testimony to the two previous conferences on the humanitarian impact of nuclear weapons but had not received widespread attention beyond the evidence indicating that it will be impossible to provide assistance to any future victimsⁱⁱ. After Vienna, the concept was discussed in Article 36’s “Victim assistance in a treaty banning nuclear weapons” and was included in ICAN’s “Principles of a treaty banning nuclear weapons.” Despite these reports, there remains a need for deeper understanding of the topic.ⁱⁱⁱ This series of Campaigner Memos aims to inform the ongoing discussion about how a new legal instrument on nuclear disarmament could incorporate provisions to assist victims and ensure their rights are fulfilled.

Survivor Rights are Human Rights

At the most basic, the detonation of nuclear weapons threatens the right to life of those within the blast area and inhabiting areas contaminated by nuclear tests as outlined in presentations at the three humanitarian impact meetings.^{iv}

In Vienna, the Government of Kazakhstan noted that 25 years after the last nuclear test on their territory the “consequences still have an impact on the condition of the population’s health, ecology and the social development of the region.”^v That statement brings to mind the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and other such international agreements which form the basis of the international human rights regime which outline a number of rights possessed by all human beings. Nuclear weapons use and testing creates obstacles to the

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fulfillment of these fundamental human rights. The rights and needs of victims include a wider range of issues than emergency responses and trauma related medical care.

To ensure the fulfillment of these rights and others, states will have to implement policies and include legal protections. The purpose of victim assistance can then be seen as attempting to modify the physical, legal and cultural environment so that it no longer impedes the individual's participation in society or the fulfillment of their rights. An excellent starting place for those policies and legal protections is recognition of the rights of survivors in an international ban treaty. A more detailed discussion of survivor rights and victim assistance is necessary in the nuclear disarmament community, but to start we can begin to look for precedent in other international disarmament documents.

Victim assistance in disarmament

When it comes to weapons of mass destruction, the conversation about victims and their rights and their needs is new. Neither the Chemical Weapons Convention (CWC) nor the Biological Weapons Convention (BWC) mentions the victims of these weapons. The CWC does mention an international obligation to assist states facing chemical weapons attacks or the threat of chemical weapons use, but this obligation is to assist the state, not individuals. Part II of the Protocol to the Comprehensive Test Ban Treaty contains obligations to provide medical care to teams carrying out inspections within a state party but not to the victims of past nuclear weapons tests or other civilians.^{vi} In the contemporary context where victim rights and victim assistance are becoming a standard obligation, any new legal instruments should include victim centred provisions.

Victim assistance includes emergency care, ongoing medical care, physical rehabilitation, psychological or social support and economic integration.

To understand successful legal provisions to assist victims and ensure the fulfilment of their rights, we can look to the Ottawa Treaty banning landmines and the Convention on Cluster Munitions (CCM). The Ottawa Treaty was the first disarmament treaty to include provisions for victim assistance.² The pre-ambble outlines states' obligation "to do their utmost in providing assistance for the care and rehabilitation,

including the social and economic reintegration of mine victims." The Ottawa Treaty set a new precedent and a course for establishing of a norm for the protection of the rights and needs of victims. These victim assistance obligations have been clarified and strengthened through Action Plans drafted at Review Conferences in Nairobi (2004)^{vii}, Cartagena (2009)^{viii} and Maputo (2014)^{ix} which each contained specific actions states parties agreed to take in order to assist the victims.

The CCM built on the Ottawa Treaty's language with a wider definition of victim and more explicit victim assistance obligations which will be discussed in further detail in an upcoming memo. The CCM codified what we now call the 'new emerging norm' of comprehensive victim assistance. Under both treaties, victim assistance includes emergency care, ongoing medical care, physical rehabilitation, psychological or social support and economic integration, all of which aim to support victims' full participation in society and realization of their rights. Together these two treaties indicate the victim assistance norm is progressing.

² In these two treaties, language is important when it comes to victims and survivors. Victim includes those persons directly impacted by the weapon as well as their affected families and communities while survivor tends to refer to the person directly impacted by the weapon. Victims is a wider category than survivor.

In both the Ottawa Treaty and the CCM, victim assistance is not an isolated requirement, not weapon-specific nor is it charity; instead it is a humanitarian obligation in line with the protection of civilians agenda. It is also a tool for reinforcing rights and improving services or policies such as increased accessibility of public buildings, improved health services and greater integration of marginalized populations into the community to the benefit all persons with disabilities and all citizens. Victim assistance is a way to recognize the harm caused by use of an inhumane weapon in accordance with the principles of acknowledgement and non-repetition of rights violations. The treaties and the idea of victim assistance are grounded in principles of international humanitarian law, namely the premise that civilians enjoy general protections. The landmine and cluster munition treaties demonstrate that including victim assistance provisions in a disarmament treaty is not only logical but both possible and beneficial. Victim assistance is what makes humanitarian disarmament humanitarian.

Nothing about us without us

There are many networks of nuclear weapons survivors and previous humanitarian disarmament treaties show the key role that these groups play in a treaty process. Survivors and victims have been at the forefront of the creation and implementation of the Ottawa Treaty and the Convention on Cluster Munitions and for the strong implementation of the victim assistance. The involvement of landmine and cluster munition survivors in the treaty processes contributed to the overall strength of the treaties, not just to the inclusion of victim assistance in the two treaties. Landmine and cluster munition survivor networks offer some of the most beneficial victim assistance programs in countries around the world combining reintegration programs with peer support. These same survivor networks work with nuclear weapons survivor networks to share experiences and to collaboratively promote the rights of all victims of indiscriminate weapons.^x The principle of ‘nothing about us without us’ underlies victim assistance in both treaties, meaning that states, international organizations and civil society organizations should not and cannot define victim assistance nor set the protection measures without involving the victims themselves.

Victims are the experts on their needs and the fulfilment of their rights. The idea of nothing about us without us is “about inclusion and rights for all, increasing representation and voice for those who could be affected significantly” in international processes.^{xi} This approach does not mean that allies are unable to contribute to these discussions but that survivors should have a say in policies, laws and programs that impact their lives. As the nuclear disarmament community moves towards new legal instruments that include reference to the rights and needs of victims, the victims, survivors and persons with disabilities must be included in the drafting process.

Conclusion

This first memo is an introduction to some of the concepts surrounding victim rights and assistance. Civil society, governments and stakeholders should continue and deepen this conversation about the need to ensure a ban on nuclear weapons incorporates provisions for victim assistance and how such language should be included. To ban a weapon without addressing the rights and needs of those affected by it is only a partial solution. Survivors and victims of historical detonations have yet to see their rights fulfilled and it is those survivors whom would benefit from the inclusion of victim assistance. The goal of the humanitarian initiative is no future victims of nuclear weapons, however, the rights and needs of existing victims need to be addressed. Including victim assistance would do just that, putting the humanitarian into humanitarian disarmament.

Addressing the needs of the victims of nuclear weapons and ensuring the fulfillment of their rights may be a new dimension in the discourse surrounding nuclear disarmament; yet, it is a dimension that will be very important as we move towards a ban on nuclear weapons. The relative novelty of this topic means that at the moment this discussion may focus mostly on questions and concerns. Legal provisions to assist victims and to ensure the fulfillment of their rights should not be viewed as restitution to victims or an admission of wrongdoing by states responsible for nuclear detonations or nuclear tests. Instead, provisions to assist victims are a way to reaffirm the humanitarian focus of the treaty and attempt to mitigate the impact of these horrific weapons.

Nuclear weapons are one of the most regulated categories of weapons in the world with two test ban treaties, multiple nuclear weapons free zone treaties and a non-proliferation treaty. It is long past time to address the devastating effects these weapons have on individuals, families and communities in an international legal instrument.

Provisions to assist victims are a way to reaffirm the humanitarian focus of the treaty and attempt to mitigate the impact of these horrific weapons

Including provisions to address the rights and needs of victims in a treaty banning nuclear weapons may require many discussions, but these provisions must be included to

fully address the humanitarian harm caused by nuclear weapons. Two of the most successful disarmament treaties of the past 20 years prove that including victim assistance provisions is expected, possible and beneficial. Negotiating a ban treaty may not be easy but previous treaty processes have demonstrated that with strong commitment from campaigners including survivors, a comprehensive ban treaty with strong victim assistance provisions is an achievable goal. During negotiations on a new international instrument to fill the legal gap regarding nuclear weapons, there will be a time when we must choose between what is easy and what is right – acknowledging and addressing the rights and needs of victims is the right thing to do.

ⁱ Acheson, Ray, Richard Moyes and Thomas Nash, “A treaty banning nuclear weapons: Developing a legal framework for the prohibition and elimination of nuclear weapons” May 2013

(<http://www.reachingcriticalwill.org/images/documents/Publications/a-treaty-banning-nuclear-weapons.pdf>)

ⁱⁱ Maurer, Peter, President ICRC, “Who will assist the victims of a nuclear weapons?” 4 March 2013, Oslo:

<https://www.icrc.org/eng/resources/documents/statement/2013/13-03-04-nuclear-weapons.htm>.

ⁱⁱⁱ Article 36, ‘Victim Assistance’ in a treaty banning nuclear weapons, January 2015, <http://www.article36.org/wp-content/uploads/2015/01/victims-nuclear-weapons.pdf> and International Campaign to Abolish Nuclear Weapons, *Principles of a treaty banning nuclear weapons*, April 2015, <http://www.icanw.org/wp-content/uploads/2015/04/principles-2.pdf>

^{iv} See for example, Haines, Andy, 4 March 2013, Nuclear Weapons: Catastrophic Impacts on Health, from the Oslo Conference on the Humanitarian Impact of Nuclear Weapons

https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/hum_haines.pdf.

^v Government of Kazakhstan, 10 December 2014,

http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Statements/HINW14_Statement_Kazakhstan.pdf.

^{vi} The Comprehensive Test Ban Treaty, <http://www.ctbto.org/fileadmin/content/treaty/treatytext.tt.html>

^{vii} Nairobi Action Plan 2004-2009, <http://icbl.org/media/933290/Nairobi-Action-Plan-2005.pdf>

^{viii} Cartagena Action Plan 2010-2014, <http://www.cartagenasummit.org/fileadmin/APMBC-RC2/2RC-ActionPlanFINAL-UNOFFICIAL-11Dec2009.pdf>.

^{ix} Maputo Action Plan 2014-2019, <http://www.maputoreviewconference.org/fileadmin/APMBC-RC3/3RC-Maputo-action-plan-adopted-27Jun2014.pdf>.

^x Survivor Networks, “Survivor Networks Join Nuclear Victims’ Call”

<https://survornetworks.wordpress.com/2014/01/23/joining-nuclear-victims/>

^{xi} White, Jerry and Kristen Young, “Nothing About Us Without Us: Securing the Disability Rights Convention” in Williams, Goose and Wareham eds. *Banning Landmines: Disarmament, Citizen Diplomacy and Human Security*, 2008, p 253.