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Victim Rights and Victim Assistance in Nuclear Disarmament:

A Necessary Discussion

A Working Paper Submitted to the Open-Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations by Mines Action Canada

Introduction

As the Open-Ended Working Group Taking Forward Multilateral Nuclear Disarmament Negotiations continues to discuss concrete legal measures, legal provisions and norms needed to attain and maintain a nuclear weapons free world, the rights of victims¹ should be recognized and legal provisions for assistance to the existing victims of nuclear detonations should feature in the discussions.

Survivors and victims of historical detonations have yet to see their rights fulfilled and it is those survivors who would benefit from the inclusion of victim assistance. The Humanitarian Pledge recognizes “that the rights and needs of victims have not yet been adequately addressed.”² This is part of the legal gap regarding nuclear weapons.

A nuclear ban treaty or any other legal instrument grounded in the humanitarian approach to nuclear weapons should logically include victim assistance provisions. 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. Typically, conversations about victims of nuclear weapons focus on Japan but testing in or near Algeria, Australia, China, French Polynesia, India, Kazakhstan, Kiribati, the Marshall Islands, North Korea, Pakistan, Russia, Turkmenistan, Ukraine, the USA and Uzbekistan have resulted in nuclear weapons victims around the world.³ Including victim assistance would acknowledge the rights of those affected by past nuclear detonations and put the humanitarian into humanitarian disarmament. Victim assistance is a way to address the harm caused by use of an inhumane weapon in accordance with the principle of acknowledgement of rights violations while a ban treaty in its entirety would embody the related principle of non-repetition of rights violations.

Legal provisions to assist victims and to ensure the fulfillment of their rights should not be viewed as requiring an admission of wrongdoing by states responsible for use of nuclear weapons, nuclear tests or accidents involving nuclear weapons. Instead, provisions to assist victims are a way to reaffirm the

¹ This paper will use the Convention on Cluster Munitions’ definition of victim. “Cluster munition victim means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.”

² Humanitarian Pledge,

http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14vienna_Pledge_Document.pdf

³ Article 36, “[Victim assistance’ in a treaty banning nuclear weapons.](#)” Briefing paper published January 2015, accessed 18 March 2016.

humanitarian focus of the future treaty and attempt to mitigate the impact of these indiscriminate weapons.

International Precedent on Victim Assistance

Conventional weapons disarmament instruments contain strong precedent for recognition of victim rights and the inclusion of victim assistance provisions in legal instruments. 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 set a new precedent and a course for establishing 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),⁴ Cartagena (2009)⁵ and Maputo (2014)⁶ 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 specific formal definition of victim and more explicit victim assistance obligations. The CCM codified what was called the 'new emerging norm' of comprehensive victim assistance. Under both treaties, victim assistance includes but is not limited to 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.

Experts at the three Humanitarian Impact Conferences outlined links between nuclear weapons use or testing and acquired impairments from injuries during the blast and from the long-term effects of radiation exposure and genetic damage. Due to the high rate of disability among victims of nuclear weapons, the Convention on the Rights of Persons with Disabilities (CRPD) can help form the basis for victim assistance under a human rights based approach. The CRPD has a number of relevant provisions such as the right to the highest attainable standard of health without discrimination on the basis of disability or Article 26 in which states agree "to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life through improved comprehensive habilitation and rehabilitation services."⁷ Since its adoption in 2006, the CRPD has strengthened the provision of victim assistance under the Ottawa Treaty and the CCM and based on current evidence it should be a consideration in discussions on victim assistance and nuclear weapons.

All states participating in this open ended working group are states parties or signatories to one or more of the three conventions discussed above⁸ indicating that they have already accepted the basic responsibilities which would underpin victim assistance provisions in a nuclear ban treaty.

Victim Assistance Principles

⁴ Nairobi Action Plan 2004-2009, <http://icbl.org/media/933290/Nairobi-Action-Plan-2005.pdf>

⁵ Cartagena Action Plan 2010-2014, <http://www.cartagenasummit.org/fileadmin/APMBC-RC2/2RC-ActionPlanFINAL-UNOFFICIAL-11Dec2009.pdf>.

⁶ Maputo Action Plan 2014-2019, <http://www.maputoreviewconference.org/fileadmin/APMBC-RC3/3RC-Maputo-action-plan-adopted-27Jun2014.pdf>.

⁷ United Nations Convention on the Rights of Persons with Disabilities, <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

⁸ There are nine states which are neither signatories nor states parties to the Convention on the Rights of Persons with Disabilities, however all nine are either states parties or signatories to the Ottawa Treaty or the Convention on Cluster Munitions.

Victim assistance has grown as a norm in humanitarian disarmament since its emergence in the late 1990s and that increasing recognition continues to this day. Civil society has identified a number of principles that have developed and these principles could inform discussions about how victim assistance would be implemented in the context of a nuclear ban treaty.

Human rights based approach to international humanitarian law. A rights based approach to victim assistance takes into account human rights law and principles in its implementation. It seeks to address the needs of victims and alter the physical, legal and social environment that prevents the full realization of their human rights. Victim assistance can contribute to mitigating barriers to the full realization of human rights. Without the recognition that victims have specific rights, it will be difficult to ensure those rights are realized.

Participation, inclusion and close consultation. Victims' views should be heard and considered at all levels of decision-making from the international to the local. Victims are experts on their needs and the fulfilment of their rights.

Age and gender sensitive. Assistance to victims should be sensitive to diversity among victims and meet the needs of individuals. Men, women, girls and boys have different experiences, different physical, social, economic and cultural needs and face different challenges. A one-size fits all approach will not be effective.

Non-discrimination. Victim assistance programs should not discriminate against or between victims for any reason. Differences in services or treatment should only be based on the medical, psychological and socio-economic needs of victims. The principle of non-discrimination also applies to persons who have suffered injuries or disabilities from other causes.⁹

Victim assistance, as it is currently understood, is not charity; instead it is a humanitarian obligation in line with the protection of civilians agenda and principles of international humanitarian law. 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 citizens. The inclusion of victim assistance provisions in a legal instrument prohibiting nuclear weapons benefits all.

Specific issues to consider for nuclear weapons

Existing International Humanitarian Law including the Ottawa Treaty and the Convention on Cluster Munitions and international human rights conventions such as the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child create undeniable precedent for including victim assistance under a nuclear ban treaty. There are some specific areas of assistance that apply to victims of nuclear weapons particularly.

The extensive environmental contamination caused by nuclear detonations impedes the realization of rights in affected communities. In this regard, International Humanitarian Law, International Environmental Law and International Human Rights Law can contribute to discussions about how to most effectively recognize the rights of victims of nuclear weapons in a legal instrument prohibiting nuclear weapons.

The damage caused by nuclear weapons is not limited to one lifetime. Stigma against the children and grandchildren of survivors has been reported in many nuclear affected communities. The genetic damage

⁹ ICBL, Guiding Principles for Victim Assistance, <http://icbl.org/media/919871/VA-Guiding-Principles.pdf>

caused by radiation exposure may have an impact on future generations. This long term humanitarian impact likely will require a reaffirmation of the definition of victim as all persons “who have suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights”.¹⁰

Nuclear weapons testing took place disproportionately on indigenous land raising a new dimension to victim rights and assistance. Forced displacement of indigenous communities and contamination of traditional lands may impede indigenous communities’ freedom of religion, right to freedom of movement, right to food and perhaps indigenous treaty rights. Testimony in Vienna detailed the cultural and social impacts of long term displacement of Australian Aboriginal communities following nuclear testing in that country.¹¹ In addition to Australia, indigenous communities in North America, Central Asia, the Pacific and North Africa have suffered as a result of nuclear weapons detonations. Any discussion of victim rights and victim assistance in a nuclear weapons context will need to consider how to recognize the specific rights of indigenous communities as outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

Conclusion and Recommendations

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 and yet there is still a substantial legal gap. It is high time to finally address the devastating effects these weapons have on individuals, families and communities in an international legal instrument.

It is recommended that:

- **The participation of victims and survivors be ensured as the nuclear disarmament community moves towards new legal instruments.** Victims should have a say in policies, laws and programs that impact their lives including the open-ended working group.
- **The open-ended working group defines nuclear weapons specific dimensions of victim assistance.** Nuclear weapons detonations have long lasting wide-spread humanitarian impacts that impact the ability of affected communities to realize their rights.
- **Victim rights and victim assistance be included in a new legal instrument prohibiting nuclear weapons.** 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 provisions in a treaty banning nuclear weapons build on the existing understandings of victim rights and the guiding principles of victim assistance.** The most successful humanitarian disarmament treaties, the Ottawa Treaty and the Convention on Cluster Munitions, have set a precedent that should be followed.
- **The rights of indigenous people be recognized in a treaty banning nuclear weapons.** Indigenous communities have been disproportionately affected by nuclear weapons detonations making the recognition of their unique rights and needs necessary.

¹⁰ The Convention on Cluster Munitions, <http://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf>

¹¹ Coleman-Haseldine, Sue, *Statement in Vienna*, 9 December 2014, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/8Dec_Coleman.pdf.