



Victim Rights and Assistance

June 2017

Frequently Asked Questions

With the release of Draft Convention on the Prohibition of Nuclear Weapons (CPNW) Mines Action Canada revisits some frequently asked questions about victim assistance.

We are negotiating a prohibition on nuclear weapons, why do we need to talk about victims?

As a treaty aiming to end the suffering caused by nuclear weapons, it is important to ensure people remain at the centre of the treaty. Victims of nuclear weapons continue to see the realization of their rights impeded by the detonation of nuclear weapons. Specific actions need to be taken to respect rights and ensure victims are able to participate in society on an equal basis with others. These actions would be considered victim assistance.

This treaty should build on work done in previous humanitarian disarmament treaties especially the Ottawa Treaty, the Convention on Cluster Munitions and the Convention on Conventional Weapons' Protocol V. All of these treaties contain provisions for victim assistance. New treaties should build on these important precedents. It will be a step backwards to not include victim assistance and victim rights in the nuclear ban treaty.

Provisions related to victim assistance are a concrete way for all states to demonstrate commitment to eliminating the humanitarian harm caused by nuclear weapons regardless of whether or not they are an affected state.

What is victim assistance?

At the most basic level, victim assistance is action taken to ensure that victims have their needs met and their rights respected. The field of victim assistance emerged from the Ottawa Treaty banning landmines and has developed through the Convention on Conventional Weapons – Protocol V and the Convention on Cluster Munitions. As mentioned in the CPNW's Article 6(1) assistance includes 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. It is important to remember that this type of assistance can take the form of specific initiatives as well as broader actions in support of human rights, disability, health, education, employment, development and poverty reduction.

Civil society has developed a number of principles and these principles could inform discussions about how victim assistance would be implemented in the context of the nuclear ban treaty.

Human rights based approach. 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.

- The first draft of the treaty text's mention of "applicable international humanitarian and human rights law" in Article 6(1) begins to ground the treaty in human rights.

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.

- Currently the participation of those affected is not an obligation in the draft text. This oversight should be rectified by states during the June/July negotiation session. Affected persons and communities' right to participation in the implementation of this treaty should be explicit.

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 as well as different physical, social, economic and cultural needs and face different challenges. A one-size fits all approach will not be effective.

- Article 6(1) currently requires that assistance should be age- and gender-sensitive. This requirement should remain in the treaty text as negotiations continue.

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 who have similar needs to those of persons affected by nuclear weapons use or testing.

- This principle needs to be affirmed in the treaty text. Non-discrimination is a key component of effective victim assistance. It contributes to affected persons' ability to realize their human rights while providing benefits to the community at large.

Who would be included in "individuals affected by the use or testing of nuclear weapons" mentioned in Article 6?

At the moment, there is not a comprehensive definition of individuals affected by the use or testing of nuclear weapons nor is the word victim used as it has been used in other disarmament treaties. Using the word victim and providing a definition could strengthen the treaty. Since there is currently not a definitions article, states may be reluctant to include an explicit definition. In that case, states should ensure that the diplomatic record reaffirms that "individuals affected by the use and testing of nuclear weapons" is based on human rights and "affected" is understood in the context of when the use or testing of nuclear weapons has an impact on the realization of human rights.

At a minimum, states should state clearly that that “individuals affected by the use or testing of nuclear weapons is analogous to the definition of a victim from the Convention on Cluster Munitions (CCM). In the CCM, 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.” Highlighting this understanding would ensure that this new treaty maintains the status quo and does not contribute to the weakening of international norms surrounding victim assistance.

Article 6(1) focuses on the use and testing of nuclear weapons. While parts of the nuclear supply chain may have similar health impacts, a disarmament treaty prohibiting nuclear weapons should concentrate on the impacts of nuclear weapon explosions. If these provisions are included in the treaty, persons and communities impacted by other parts of the nuclear supply chain could use the provisions as tools for advocacy on their own behalf.¹ In practice, the principle of non-discrimination will ensure that those with similar needs to victims of nuclear explosions receive the services they need.

A rights-based definition would be in line with the developing norms surrounding victim rights and assistance in humanitarian disarmament more broadly. Additionally, a rights-based understanding of “individuals affected by the use or testing of nuclear weapons” would be flexible enough to cover the breadth of impacts of nuclear weapons. It would be up to each state to determine how best to implement a rights-based definition in their own national context.

How could the victim assistance provisions in Article 6 in the draft treaty be improved?

The first priority for improving the provisions in Article 6 regarding assistance to individuals affected by nuclear weapons use or testing is to remove the phrase “in a position to do so” from Article 6(1). This phrase limits the responsibility of states towards their citizens and towards others under their jurisdiction or control. The phrase should be removed as a state’s duty towards ensuring the human rights of its citizens cannot not be negated by a lack of capacity. As discussed in subsequent questions, the treaty’s provisions on international cooperation and assistance should be strengthened to allow states to ask for assistance to meet these responsibilities rather than weakening states’ obligations towards their citizens.

Second, Article 6 should be amended to lay out key obligations without delving into specifics of implementation. The text of Article 5 of the Convention on Cluster Munitions could be used as a starting point for this addition.

Article 5 reads:

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights

¹ There may be specific instances of nuclear weapons victims related to accidents with nuclear weapons where the warhead itself did not detonate. Those cases presumably would be dealt with on a case-by-case basis by affected states.

law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:
 - a. Assess the needs of cluster munition victims;
 - b. Develop, implement and enforce any necessary national laws and policies;
 - c. Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
 - d. Take steps to mobilise national and international resources;
 - e. Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
 - f. Closely consult with and actively involve cluster munition victims and their representative organisations;
 - g. Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
 - h. Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

In the above text, the key obligations of states are clearly articulated but the exact method of implementation remains up to the individual states. CCM Article 5(1) is quite similar to the 22 May text's Article 6(1). Adding an equivalent to CCM Article 5(2) would significantly strengthen Article 6 of the draft text and ensure that the treaty does not weaken global norms around assistance to victims of indiscriminate weapons.

Additionally, states could consider including provisions regarding community assistance activities to address the breadth of humanitarian impacts to communities especially with regard to nuclear weapons tests. Such activities could include health assistance provision, as well as adequate support for lost livelihoods due to contaminated land.²

At the negotiation stage of the treaty, states should focus on outlining the key obligations in consultation with victims themselves. Since the exact methods of implementation will vary by state party, what concerns states and civil society now is what states need to do rather than how they would do it.

² TWR. Environmental Mechanics: Re-Imagining Post-Conflict Environmental Assistance, p. 61

How will victim assistance provisions contribute to states meeting other international obligations?

Assistance to “individuals affected by the use or testing of nuclear weapons” is more than a moral obligation on states. Implementing Article 6(1) of the draft text will help states parties meet or strengthen other international obligations and goals.

The clearest link is that Article 6(1), especially if amended as discussed above, will further the international work surrounding victim assistance under the Ottawa Treaty banning landmines, the Convention on Cluster Munitions and the Convention on Conventional Weapons Protocol V. The norms, policies and practices that have emerged over the last twenty years regarding assistance to victims of indiscriminate weapons need to be reiterated in this new convention. The principle of non-discrimination will allow states to ensure that services provided to individuals affected by nuclear weapons are available to others with similar needs.

By ensuring that the needs of affected persons are met and their rights are respected, this convention will contribute to work done under the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and other human rights documents. A rights based approach to assisting affected individuals will strengthen the implementation of these agreements.

Finally, Article 6(1) will contribute to reaching the Sustainable Development Goals (SDGs). In general, the prohibition treaty will be contributing to SDG 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” However, strengthened victim assistance provisions will not only increase the treaty’s contributions to SDG 16 but also create opportunities to contribute to other SDGs. Obligations regarding assistance to individuals affected by nuclear weapons use and testing will further contribute to the achievement of SDG 3 “*Ensure healthy lives and promote well-being for all at all ages*” and, if implemented in an age- and gender-sensitive manner, SDG 5 “*Achieve gender equality and empower all women and girls*” by addressing the current health impacts of nuclear weapons explosions which disproportionately affect women and girls.³

Disarmament treaties, human rights treaties and the SDGs will all be strengthened by strong victim assistance provisions in the new treaty. Additionally, previous disarmament treaties, human rights treaties and the SDGs provide the impetus for states to strengthen Article 6(1) in the draft text. Each of these documents outline states’ obligations towards their citizens – obligations that currently are not being met in regards to persons affected by nuclear weapons. Strengthening Article 6(1) will allow states to meet these obligations.

Won’t victim assistance obligations place an undue burden on states parties?

A rights-based understanding of victim assistance requires states to ensure victims of nuclear explosions can realise their human rights. Ensuring the human rights of citizens is an obligation of all

³ Dimmen, Anne Guro, “Gendered Impacts: The humanitarian impacts of nuclear weapons”, ILPI and UNIDIR, December 2014, <http://nwp.ilpi.org/wp-content/uploads/2014/12/No-5-Gendered-impacts.pdf>.



states so victim assistance obligations will just be making clear these pre-existing responsibilities apply to all citizens including those impacted by nuclear explosions.

The integrated approach to victim assistance is currently gaining prominence. In this approach, victim assistance is a combination of specific initiatives and more general development, humanitarian, social and health initiatives. An integrated approach to victim assistance should, of course, ensure that victims of nuclear weapons have access to the specific services they need but it should also ensure that they can also access broader services which form the basis of public services provided to citizens.

The new treaty prohibiting nuclear weapons should include a positive obligation of international cooperation which could be used to fund or otherwise support victim assistance activities in affected states.

Shouldn't the states that used or tested nuclear weapons be responsible for assisting the victims?

Victims of nuclear weapon explosions are first and foremost citizens. It is the responsibility of the state to ensure that all citizens can exercise their rights and to take action to eliminate barriers to full participation in society for any part of the population.

In a treaty that includes international cooperation provisions, all states parties in a position to do so have the responsibility to contribute to the treaty obligations. The 22 May draft text includes an article on International Cooperation. Article 8(1) outlines all states responsibility to cooperate to implement the obligations of the convention while Article 8(2) gives states the right to ask for and receive assistance. Article 8 is missing an obligation on states in a position to do so to provide that assistance. States should amend Article 8 to include this obligation in order to ensure that when states exercise their right to ask for assistance, it is available.

The Preamble of the CPNW frames nuclear weapons as an affront to humanity or an abrogation of humanity thus it is the responsibility of humanity as a whole to respond to the harm caused. The use and testing of nuclear weapons is not only a problem for the attention of the user state and the affected state but as a harm against the entirety of humanity, it is a problem for the global community to address.

States that have used or tested nuclear weapons will have legal responsibilities under international cooperation provisions when they join the treaty in addition to the moral imperative to assist the victims.