

The Convention on Cluster Munitions and State responsibility to gather data on deaths, injuries and wider negative economic and social outcomes resulting from armed violence.

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16 July 2008

The recently adopted Convention on Cluster Munitions (CCM)¹ contains obligations on States to “collect reliable relevant data with respect to cluster munition victims.” This relates to the obligation on all States Parties to provide “victim assistance” (Art 5, 1). Such an explicit obligation to collect data on victims of armed violence is new in international humanitarian law.

This obligation is reinforced in Article 7 on Transparency measures that requires States Parties to report annually on “the status and progress of implementation of its obligations under Article 5 of this Convention to ... collect reliable relevant data with respect to cluster munition victims,” as well as to provide “the name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph.”

The Cluster Munition Convention may be the first international humanitarian law instrument to provide a definition of the “victims” of armed violence. It is an inclusive definition – covering both conflict and post-conflict periods; combatants and non-combatants; and physical and psychological harm to the individual as well as wider aspects of social and economic deprivation to individuals, families and communities. For the purposes of the Convention:

“Cluster munition victims” means all persons who have been killed² 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;

Cluster munition victims are not only those that have suffered death, injury or deprivation in the post-conflict period as a result of “cluster munition remnants.” The Convention is also explicitly

¹ English language version available online at <http://www.clustermunitionsdublin.ie/pdf/ENGLISHfinaltext.pdf>

² It is important to acknowledge the role of the Philippines Campaign to Ban Landmines in promoting the explicit inclusion of the dead within the definition of “cluster munition victim”. Their 11 May 2008 paper, *Proposal on Art.2 Definition of “Cluster Munition Victims”* argued, amongst other things, that this inclusion was “Relevant to victim assistance and rights, these pertain not only to the surviving injured but also to the non-surviving dead. There are IHL rules for their search, collection and identification; for treatment with respect and dignity; for prevention of despoilment; for decent disposal in as much as possible individual marked graves; and for return to their families. (See esp. 1977 Additional Protocol I, Arts. 33(4) and 34; and 1977 Additional Protocol II, Art. 8.)

concerned with cluster munition victims caused at the time when cluster munitions are used. In the Preamble, States are:

Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,

It should also be noted that there is no distinction made in the definition of cluster munition victims as to whether these persons are military or civilian, combatant or non-combatant.

On this basis the Convention places an obligation on States Parties to collect reliable relevant data with respect to 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. Thus, in addition to data on the number and identities of people killed or having suffered physical or psychological injury by cluster munitions, data should also be gathered relating to economic losses and social problems caused by the use of these weapons. However, the Convention does not stipulate specifically what data must be collected and it will be important to monitor State practice in relation to this obligation in order to ensure that the broad definition of “cluster munition victim” is not interpreted too narrowly in practice.

The provisions on victim assistance in the Convention are to be implemented without discrimination on the basis of the type of weapon that has caused victimisation. This explicit reference to non-discriminatory practice in the implementation of the legal obligations is also an innovation in international humanitarian law. Thus in the Preamble, States are:

Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and *resolved* to avoid discrimination among victims of various types of weapons,

Furthermore, in fulfilling the primary obligations of Article 5, including the collection of data, States Parties “shall”:

(Art5, 2 (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;

In principle then, the obligation to collect data with respect to individuals, families and communities adversely affected by cluster munitions should be extended also to individuals, families and communities adversely affected by “various types of weapons.” The obligation to collect data on individuals also extends to those that have suffered injuries or disabilities from other, non weapon-related, causes. As a set of broad public health responsibilities, this is in line with the World Health Organisation’s core agenda item of “harnessing research, information and evidence” as a foundation

for setting priorities, defining strategies, and measuring results.³ Such data will also be an important basis for understanding the full impact of armed violence which in turn can provide an evidential basis for armed violence reduction and development programming.

The Convention on Cluster Munitions should support the future development of a norm embracing State responsibility to record deaths, injuries and broader psychological, economic and social costs from armed violence in areas under that State's jurisdiction or control. Progressive development of such a norm would strengthen international understanding regarding the actual impact of armed violence on combatants and non-combatants alike, as well as providing a basis for improving accountability by military actors. The development of such a norm should be adopted as an explicit policy goal for States working under the 2006 Geneva Declaration on Armed Violence⁴ to achieve, by 2015, "measurable reductions in the global burden of armed violence and tangible improvements in human security worldwide."

³ <http://www.who.int/about/agenda/en/index.html>

⁴ See <http://www.genevadeclaration.org/>