

THE WAY FORWARD ON VICTIM ASSISTANCE:

**HANDICAP
INTERNATIONAL**

A CONSIDERATION OF THE VARIOUS ASPECTS AT PLAY WHEN INTEGRATING ASSISTANCE TO SURVIVORS INTO DISABILITY-INCLUSIVE DEVELOPMENT



INTRODUCTION

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It has long been recognized within the Mine Ban Treaty (MBT) and the Convention on Cluster Munitions (CCM) community that working on victim assistance (VA) only in the context of these two treaties is not sufficient and that integrating VA into development and human rights frameworks is essential if the rights of all mine and explosive remnants of war (ERW) victims are to be realized in a sustainable manner. It appears though that this concept is still not fully understood the same way by all actors and concrete results have yet to be demonstrated. The challenge appears to be turning it from concept into practice.

An important part of the complexity of understanding VA in broader contexts is related to the fact that the group of victims as defined under the MBT and the CCM is comprised of a diverse population, namely direct victims (people killed, those that are injured, survivors with disabilities and survivors without disabilities) and indirect victims (family members of survivors and of people killed, and those living in areas affected by mine/ERW). Whereas the VA provisions apply to this broad group of people with wide-ranging realities and related priorities, there is not one other treaty or framework that applies to all. The plight of survivors with a disability should be addressed through the Convention on the Rights of Persons with Disabilities (CRPD). However, survivors' needs, as well as those of family members of people killed or injured and affected community members, should also be responded to through a range of inclusive initiatives, such as poverty reduction measures.

Handicap International has written this paper as a complement to two other documents, namely the *Victim Assistance Factsheets* (HI, 2013) and the *Victim Assistance Issue Briefs: How to ensure mine/ERW survivors benefit from and participate in disability-inclusive development* (HI, 2014). While this paper explores the conceptual landscape – exemplified by some current and good practices – that ought to be considered when talking about integrating VA into broader frameworks, the factsheets provide guidance on how to ensure impact of **broad efforts** in the sectors that VA is an integral part of, and the issue briefs focus on the **specific efforts** required if an integrated approach to VA is to be effective.

The briefs shed light on the operational implications if the VA provisions, in as far as survivors are concerned, are to be successfully realized through disability-inclusive development interventions. These implications concern the need to make specific efforts, particularly when it comes to: * locating and identifying survivors, * ensuring their equal access to services, and * monitoring and evaluation to demonstrate progress. Recommendations on each of these three subjects are provided.

This paper is a first attempt to lay out the various elements at play when considering VA in light of the CRPD and disability-inclusive development. Your comments are very welcome.



BACKGROUND TO THIS PAPER

Realizing the rights and addressing the needs of mine/ERW victims requires a long-term commitment that needs to continue even after the completion of clearance efforts. The future of mine action is, in fact, victim assistance. Despite this, VA earmarked funding has been dramatically reduced in the last few years, constituting less than 6% of the overall humanitarian mine action budget during 2011 and 2012. This has led to a reduction or, in some cases, an ongoing or renewed absence of services available to mine/ERW victims in at least twelve countries and affected regions.⁽¹⁾

⁽¹⁾ ICBL-CMC. *Landmine and Cluster Munition Monitor reports 2011 & 2012*. www.the-monitor.org/

Dedicated VA funding may reduce even further in the coming years, with countries progressively completing their clearance obligations and affected countries, as well as donor countries, reducing or even stopping humanitarian mine action funding all together. The fact that clearance is in the process of being completed in many countries carries the risk of people thinking that there will be no more mine/ERW victims. Actually, while it is true that there should be no more new victims, countries that have met their clearance obligations will continue to be responsible for all victims that are living on their territory. Simply put: mine-free does not mean victim-free.

It has long been understood that the bulk of funding for activities considered part of VA comes from development funds. But even though it is assumed that people with disabilities – including mine/ERW survivors – and indirect victims are part of groups targeted by development efforts to improve people's access to health, rehabilitation, education, employment and social protection services, there is no evidence that they actually benefit from these initiatives. As such, we lack data on both the quantitative impact ('are victims accessing these?') and the qualitative impact ('are victims' specific needs adequately taken into account to enable an improvement in their quality of life?'). Knowing that people with disabilities often are not brought into a given development process, it can hardly be assumed that survivors would be able to benefit from services and opportunities provided. Disability-inclusive development efforts ought to also reach survivors, but today, we lack proof that their opportunities are indeed equalized as a result of such interventions. Hence, there is not sufficient evidence to justify the drastic reduction in dedicated VA funding, or to accept one country's stated intention to stop VA earmarked funding with the argument that mine/ERW survivors are included as part of broader disability-inclusive development programs without making sure that this country can demonstrate mine/ERW survivors are actually among the beneficiaries.

It is clear that VA is the one pillar of humanitarian mine action that can best be realized through frameworks over and beyond the disarmament conventions in which it was first conceived. Indeed, development and human rights frameworks provide the most sustainable avenue by which to realize the rights of survivors as well as those of the broader group of mine/ERW victims. In terms of realizing the rights of survivors with disabilities, this is made explicit in the text of the CCM. The treaty text begins with a preamble that makes reference to a human rights framework, namely the CRPD, thereby acknowledging the strong link between VA and disability:

Bearing in mind the CRPD which, inter alia, requires that States Parties to that Convention undertake to ensure and promote the full realisation of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability.⁽²⁾

The preamble goes on to state that States Parties need to be:

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...

With this, the CCM highlights the need for States to ensure coherence and efficiency in implementing the various obligations taken under a wide range of international treaties.

The CCM includes one more reference to the need to ensure that VA is integrated into other frameworks, namely in Article 5 on VA, paragraph 2 (f), which states that:

Each State Party shall 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.⁽³⁾

And, Action 56 of the Vientiane Action Plan (VAP) to the CCM notes that:

All States Parties will take full advantage of VA, risk reduction education, clearance and other related efforts already undertaken within other frameworks and explore ways to facilitate closer cooperation and meet overlapping obligations in a way that maximizes efficiency and impact of efforts in areas such as plans, budgets, coordination, service provision, monitoring and reporting.⁽⁴⁾

Handicap International recognizes the willingness of States and civil society actors to find ways to support the realization of the VA obligations by way of frameworks other than disarmament ones; but safeguards will have to be put in place to ensure mine/ERW victims benefit from these efforts on an equal basis with others. This willingness, coupled with the Medellin "Bridges between Worlds Global Conference on Assisting Landmine and other Explosive Remnants of War Survivors in the context of Disability Rights and other Domains", organized in April 2014, as well as the Review Conferences on the MBT (2014) and CCM (2015), make this period a key one to go a step further in perspectives on this topic and to propose an effective way forward.

Building on the inspiring thinking and writing that has already been produced by various actors on the need to ensure synergies between the MBT, CCM and the CRPD⁽⁵⁾, this paper is a reflection from Handicap International's perspective – based on our policy and field experience over the last

⁽²⁾ Convention on Cluster Munitions (2008). www.clusterconvention.org/the-convention/convention-text/

⁽³⁾ Convention on Cluster Munitions.

⁽⁴⁾ Vientiane Action Plan (2010). www.clusterconvention.org/files/2011/01/VIETIANE-ACTION-PLAN-Final2.pdf

⁽⁵⁾ ICBL (2010): *Connecting the dots: Detailed Guidance – Victim Assistance in the Mine Ban Treaty and the Convention on Cluster Munitions and the Convention on the Rights of Persons with Disabilities*. www.icbl.org/index.php/icbl/Library/News-Articles/Work/VA-guidance-document/Connecting-the-Dots-Detailed-Guidance. Also Kenneth Rutherford, Nerina Čevra and Tracey Begley: *Connecting the Dots: The Ottawa Convention and the CCM*. <http://www.jmu.edu/cisr/journal/12.2/feature/rutherford/rutherford.html>; and Landmine and Cluster Munition Monitor (2013): *Frameworks for Victim Assistance: Monitor key findings and observations*. www.the-monitor.org/index.php/content/view/full/2506

three decades – on those concepts at play when looking at realizing the obligations of two treaties (MBT and CCM) in part⁽⁶⁾ by way of another, namely the CRPD and related efforts. To bring these concepts alive, common and good practices will be highlighted. This paper, in combination with the VA Factsheets and the VA Issue Briefs aims to contribute to realizing the rights of survivors by ensuring improvement in their quality of life and transforming societies into being more inclusive of their diverse members, including survivors and other people with disabilities and families of casualties.



SYNERGIES BETWEEN VA IN THE MBT/CCM AND THE CRPD

IN THE SPIRIT

Most persons who survive an accident with a mine or an ERW become disabled. As such, it is important to understand the concept of disability, one which has evolved significantly in the last decade. Disability is now understood as a human rights issue rather than a medical one, demanding a change from viewing people with disabilities as objects of the law to subjects that act as rights holders – a major shift in paradigm which was anchored legally by the CRPD. The human rights-based approach puts the responsibility to states to create and adapt inclusive societies with accessible environments, services with proper legal and policy frameworks that promote equity, sanction discrimination and provide reasonable accommodation to ensure all people with disabilities can enjoy their human rights on an equal basis with others. In the preamble of the CRPD, disability is defined as an evolving concept which:

...Results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.⁽⁷⁾

In other words, a person's impairment is not the cause of his/her marginalization but rather society must accommodate differences by reducing environmental, attitudinal and legal barriers that discriminate or prevent a person from participating on an equal basis with others.

The work done on VA contributed to the development of the CRPD. In fact, VA under the MBT and particularly the Nairobi Action Plan were advocacy tools in the development and promotion of the human rights of people with disabilities as reflected in the CRPD.

Subsequently, the CCM provisions on VA benefited from the existence of the CRPD, in particular to ensure that VA isn't viewed along the lines of the so-called medical model of disability, where disability is seen as the responsibility of the person and efforts to reduce the disability are limited to medical care and rehabilitation, but rather through a social and human rights lens.

IN THE TEXT

All VA provisions have their equivalent in the CRPD; the CRPD being much more precise and comprehensive in terms of its interpretation of the various elements, but also of cross-cutting issues such as participation of people with disabilities in decision-making processes, legal capacity, data collection, gender, monitoring and reporting, international cooperation, etc. As such, it is entirely logical that the CRPD is referenced in the preamble to the CCM, presenting it as the guiding framework with which to implement VA.

Both the CRPD and VA under the MBT Cartagena Action Plan (CAP) and the CCM underscore the importance of non-discrimination. The VA provisions specifically state that differences in treatment should be based on differing needs alone, and not on the basis of the cause of the impairment. On this subject, the CCM in article 5, paragraph 2 (e) states the following:

In fulfilling its obligations under paragraph 1 of this Article each State Party shall:

...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.⁽⁸⁾

In the CRPD, non-discrimination is a fundamental principle throughout the entire text of the convention. The wording of this human rights treaty was developed by different groups that represent the disability movement (gathering different interests related to different impairments). Significant effort was made to overcome differences of perspectives and to come up with a commonly agreed upon document. As such, the CRPD has a strong legitimacy across the disability movement, regardless of the type or cause of impairment.

⁽⁶⁾ This paper will explore how efforts taken to realize the vision put forth by the CRPD can advance the rights of survivors. As mentioned however, the CRPD is only one of the frameworks through which the VA obligations can be realized. Other frameworks and efforts, such as poverty reduction strategies and general development efforts, can also ensure greater quality of life of survivors, as well as of indirect victims.

⁽⁷⁾ Convention on the Rights of Persons with Disabilities (2006). <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁽⁸⁾ Convention on Cluster Munitions.



MAIN CONCEPTUAL DIFFERENCES BETWEEN VA IN THE MBT/CCM AND THE CRPD

REACH OF THE CRPD *VERSUS* THAT OF THE MBT/CCM ON VA

The CRPD recognizes the important role of families, care givers and communities in the process of supporting people with disabilities to realize their participation at all levels⁽⁹⁾, and recalls that human rights are universal and apply to all.⁽¹⁰⁾ It is a comprehensive treaty that addresses the causes of discrimination experienced by people with disabilities themselves, but also recognizes the need for reasonable accommodation, other services and positive measures over and beyond non-discrimination.

VA under the MBT and CCM purports that States Parties have the obligation to support people injured, families of those killed or injured, but also communities affected by mine/ERW.⁽¹¹⁾ Hence, the added value of the MBT and the CCM, in particular to people living in affected areas, should not be minimized.

TERMS USED IN THE CONTEXT OF VA ARE NOT THE SAME AS IN THE BROADER HUMAN RIGHTS AND DEVELOPMENT WORLD

The pillar of VA was coined and elaborated by the disarmament community, well before the CRPD. As a result, the actual terms used, and their understanding, deviates from those held by the human rights community. As stated before, during the development of the CRPD there was a strong will to overcome the charitable and medical model of disability whereby people are being taken care of by others and seen as 'objects of charity' or 'assistance', and to make the shift to a human rights based model that recognizes the rights of all people with disabilities to enjoy their human rights on an equal basis with others. Therefore, the terms 'victim' and 'assistance' is not compatible with the spirit of the CRPD.

Another difference in terminology is evident from the way in which disarmament actors refer to economic inclusion: there appears to be a tacit understanding in this community that it includes a wide variety of domains, namely education, social inclusion, adequate standards of living, work and employment and social protection. Development actors, however, tend to refer to each of these separately and as such, it may not be clear that disarmament actors engaged in VA are actually working on the same domains.

The difference in conceptualization and language used in text related to VA and the CRPD hinders understanding and at worst, impedes concerted implementation efforts by actors as seemingly diverse as those working in disarmament and in human rights or development.

It is important for VA stakeholders to demonstrate that, despite the language – which can be explained by the origins of this pillar of mine action – they indeed work with an empowering, non-discriminatory perspective. To overcome language barriers in a context where terminology matters much, VA stakeholders must stress the fact that there now is a common understanding of the social and rights based model of disability and that the CRPD is the overarching framework to realize the human rights of people with disabilities, including those impaired by mine/ERW. Such language should be part of the official documents coming out of MBT/CCM meetings and decisions. It will also be important to align language, initially developed in a disarmament context with the one currently used by the majority of stakeholders in larger development and human rights contexts.



VALUE-ADDED OF VA TO THE CRPD AND OF THE CRPD TO VA

Both the CRPD and the VA provisions of the MBT and CCM bring their own specificities to the fore. The following section highlights the value that each adds to the other given changing contexts.

REALIZING THE RIGHTS OF SURVIVORS THROUGH THE CRPD

The CRPD is the framework of choice by which to advance the equalization of opportunities for all people with disabilities⁽¹²⁾; it sets the standards advocated by the disability movement and agreed by the international community to ensure people with disabilities, including mine/ERW survivors, enjoy their rights on an equal basis with others.

⁽⁹⁾ See for example CRPD article 28: *1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families (...) 28.2 / c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counseling, financial assistance and respite care.*

⁽¹⁰⁾ CRPD preamble, paragraph (x): *persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities.*

⁽¹¹⁾ Yet to date, the needs of affected communities have not really been addressed by efforts undertaken through VA earmarked funds.

⁽¹²⁾ The post-2015 development agenda as well as poverty reduction strategies, transitional justice mechanisms or any other framework, law, policy or strategy should be designed and implemented in a way that is compliant with the obligations and standards set by the CRPD. In countries affected by mines and ERW, the VA obligations laid out in the MBT and CCM should also be honored.

REALIZING THE RIGHTS OF PEOPLE WITH DISABILITIES THROUGH VA PROVISIONS

VA in the context of the MBT and the CCM places great emphasis on ensuring access to services for all, with the ultimate goal being improvement in the quality of life of survivors in a non-discriminatory manner in mine/ERW affected countries. VA has proven to be a means by which to improve the situation of people with disabilities in general as it presents an opportune doorway to address broader disability issues in mine/ERW affected countries that have ratified the MBT and/or the CCM but not the CRPD: implementation efforts in a non-discriminatory manner and annual reporting on VA efforts are required, as such benefiting the larger population of people with disabilities. This has for example been the case in Afghanistan and Cambodia. VA can also be used by civil society as leverage to pressure States not Party to the CRPD to accede to this Convention, such as was achieved in the Democratic Republic of the Congo.

In addition, even though it is now commonly recognized that the CRPD represents the highest standard to address the rights of people with disabilities, its comprehensive scope may make implementation complex, even for wealthy countries. In the meantime, efforts labeled VA, if respectful of non-discrimination, move the vision of the CRPD forward by benefitting not only survivors but also people disabled through other causes.

Therefore, in those contexts where States Parties to the MBT or CCM, and the CRPD, fail to provide adequate services and support to people with disabilities, the five concrete and time-bound VA obligations of the Vientiane Action Plan (see Annex I) developed by States Parties to the CCM⁽¹³⁾ ensure a “political” pressure for states to show progress. While the remaining eight actions in the Vientiane Action Plan, or the 11 actions in the Cartagena Action Plan related to VA, do not stipulate a deadline, the fact that these action plans are only valid until respectively 2015 and 2014 means that work to realize these actions needs to have at least begun during this time frame. As such, the implementation of national action plans on VA can advance the realization of the CRPD, particularly if these plans include indicators of the progressive realization⁽¹⁴⁾ of rights such as economic, social and cultural rights as outlined in the CRPD.

In the same manner, the development of a VA national action plan has the potential to launch a national disability rights discussion that can lead to authorities developing a national action plan on disability and ultimately to efforts that ensure a more disability-inclusive society. VA has indeed proven to raise the status of disability issues⁽¹⁵⁾, such as was the case in Tajikistan, where “the VA program of the Tajikistan Mine Action Centre became a Disability Support Unit, recognizing a broadening of its mandate and reinforcing the understanding that VA is inclusive of other persons with disabilities.”⁽¹⁶⁾

Hence, VA represents an advocacy tool to ensure that the provision of services and support to people with disabilities remains high on the agenda of States with the responsibility for mine/ERW victims, and of donor States, international organizations and civil society stakeholders.



NON-DISCRIMINATION AGAINST AND AMONG SURVIVORS AND OTHER PEOPLE WITH DISABILITIES

Non-discrimination is a guiding human rights principle in the MBT, CCM and the CRPD. The CCM dedicates a paragraph to this important subject in the preamble, as presented earlier in the paper. It continues by stating that

States Parties are mindful of the need to [...] avoid discrimination among victims of various types of weapons.

The Cartagena Action Plan also makes reference to this principle:

States are resolved not to discriminate against or among mine victims, or between mine survivors and other persons with disabilities, and to ensure that differences in treatment should only be based on medical, rehabilitative, psychological or socio-economic needs of the victims.⁽¹⁷⁾

A thorough understanding of, and respect for, this principle is of fundamental importance. It effectively means that mine/ERW survivors should not receive greater benefits than people disabled through other causes, but also that they should not be forgotten and as such should be amongst the overall group of beneficiaries of development efforts.

The MBT CAP and the CCM state the obligation to not discriminate on the basis of the cause of the disability. The CRPD, however, more broadly states the obligation not to discriminate between people with disabilities and the rest of the population, by stating the following:

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.⁽¹⁸⁾

⁽¹³⁾ Vientiane Action Plan, section VI.

⁽¹⁴⁾ The concept of progressive realization acknowledges the fact that changes cannot be implemented immediately but recognizes that there is a need for states to move forward with implementation and show progress, ensuring there is no going backwards.

⁽¹⁵⁾ Examples of VA acting as a catalyst for the governments' involvement in disability issues are described in a recent publication by the MBT Implementation Support Unit (2013): *Five examples of the role of mine action programmes in integrating victim assistance into broader frameworks*. www.gichd.org/fileadmin/pdf/publications/Role_MA_in_VA.pdf

⁽¹⁶⁾ *Landmine and Cluster Munition Monitor report on Tajikistan* (2013): www.the-monitor.org/index.php/cp/display/region_profiles/theme/3083

⁽¹⁷⁾ Cartagena Action Plan, article IV, paragraph 14. www.cartagenasummit.org/fileadmin/pdf/review-conference-2nd/2RC-ActionPlanFINAL-UNOFFICIAL-11Dec2009.pdf

⁽¹⁸⁾ Convention on the Rights of Persons with Disabilities.

While non-discrimination is a key guiding human rights principle, this should not prevent stakeholders from discussing the specificities experienced by different groups and the various measures and accommodations that are necessary to address different forms of discrimination and exclusion. Rather, it should prompt an examination of the diversity of situations that may require specific intervention in order for different groups to enjoy their rights on an equal basis with others.

Certain services that are needed by survivors and family members of people injured and killed tend not to be provided for by existing services. The VA provisions reinforce action in response to the following common needs of mine/ERW victims, namely:

- **Access to a safe supply of blood and trauma surgery skills**

Survivors tend to have specific injuries as a result of the explosion: loss of limb(s) combined with massive loss of blood as well as damage to eye sight. In those countries where mines and ERW continue to cause high numbers of casualties, a safe supply of blood should be available in medical centers in affected areas and teams should be able to respond to the specific injuries that are caused by explosive devices, specifically when it comes to reducing infection of the injured limb, stump-saving amputations and sight-saving measures.

- **Post-traumatic stress disorder**

Survivors, as well as family members of people injured and killed, may face specific psychological difficulties, including post-traumatic stress disorder, as well as guilt from knowingly going to an affected area or touching a dangerous object. Peer support provided by victims for victims has proven to be an effective and affordable means by which to assist survivors and family members cope with the psychological after-effects of the accident. Not only because victims understand what another victim is going through, but also because they live in those areas where psycho-social support services tend to be non-existent.

- **Rehabilitation services including prosthetics and orthotics**

Survivors of an accident with a mine/ERW often require a prosthetic limb and, as such, access to prosthetic, orthotic and other rehabilitation services. Therefore, in mine/ERW affected countries, it is particularly important to ensure that these services are widely available to support survivors and other people with similar needs.

In line with the CRPD recommendations on specific measures necessary to accelerate or achieve de facto equality of people with disabilities (article 5.4) and reasonable accommodations, specific attention is required to ensure that mine/ERW survivors – who most systematically live in remote rural areas (while other people with disabilities live both in rural and urban areas where services usually are provided) and tend to be the poorest of the poor – are given the required attention. As such, the development of services in response to these particular needs, as well as enabling access to an inclusive system of services in those areas in which victims tend to live is vital if survivors and affected family members are to participate in the life of their communities. Unable to access necessary services, they risk becoming trapped in a vicious cycle of poverty and even risk falling victim twice to the same weapon.



COMMON AND GOOD PRACTICES RELATED TO THE INTEGRATION OF VA INTO DISABILITY-INCLUSIVE DEVELOPMENT AT THE FIELD, NATIONAL AND INTERNATIONAL LEVEL

This section zooms in on key concepts that ought to be considered if VA is to be effectively integrated into CRDP aligned interventions and describes common and good practices at the field, national and international level to bring these concepts alive.

FIELD LEVEL

DISABILITY-INCLUSIVE DEVELOPMENT

Common practice

Donor and affected states, as well as others supporting efforts spurred by the VA obligations, understand that VA does not require the development of a parallel system of services, but instead demands that services are made available to survivors and people disabled through other causes alike.

The principle of non-discrimination generally appears to be well-understood at the field level in terms of service provision by those engaged in efforts funded by VA earmarked funds. Applying this principle translates into the delivery of services for all; not only for mine/ERW victims. The Albanian experience of leveraging the mine issue to enhance medical and rehabilitation capacities in the Kukës region through collaboration with the Ministry of Health and other relevant actors⁽¹⁹⁾, in a manner that has benefitted not only survivors but the broader population as well, is an excellent point in case.

⁽¹⁹⁾ MBT Implementation Support Unit (2013): *Five examples of the role of mine action programmes in integrating victim assistance into broader frameworks.*

Today however, it is not clear whether this principle is equally understood by those implementing relevant disability-inclusive development initiatives in countries with mine/ERW victims. Given the fact that most victims live in rural and remote areas, their ability to access mainstream services is questionable. They often already belong to the most vulnerable; in fact, it is exactly this vulnerability that led to them being victimized by a mine/ERW in the first place. Marginalization presents as a strong predisposing factor to being victimized by an explosive device, as well as a barrier to accessing necessary services. To date, we lack evidence to show that disability-inclusive initiatives are indeed reaching survivors. Only the collection of disaggregated data⁽²⁰⁾ that allows for the identification of survivors amongst the broader group of beneficiaries of initiatives in those areas where most survivors live could provide an answer to the question whether the principle of non-discrimination is equally heeded by those involved in non-VA labelled disability-inclusive efforts.

In line with the now commonly accepted understanding that disability is the result of an interaction between the person and their environment, the conduct of barrier and facilitator assessments ought to be standard practice. This, however, appears to be rare phenomenon. Should data be collected, it tends to almost always be focussed on the person, rather than on the environment and the facilitators and barriers it presents to equal participation.

Good practice

In order to ensure that the goal of inclusion of victims at the social, economical, political, cultural level is reached, VA efforts need to be oriented in a twin-track approach to inclusive development.

Good practice is implementing a twin-track approach to “disability-inclusive” development that ensures all people with disabilities, including mine/ERW survivors, have their specific needs addressed and are included in society on an equal basis with others.⁽²¹⁾ The twin-track approach was originally developed by the UK Department for International Development (DFID) in the context of gender as a way to better address the inequalities between men and women. It was then taken up and adapted to facilitate the vision of a disability-inclusive society, or more generally, an inclusive society. Inclusive societies are capable of adjusting to the diversity of their members, regardless of their age, sex, living area, ethnic background, disability and cause of disability.

Handicap International proposes that the following is required for assistance to survivors to be effectively provided by interventions that take place in the context of broader frameworks:

- › **Broad efforts** to address their rights and needs under development and human rights frameworks (disability, health, rehabilitation, social services and social protection, education, employment, human rights, gender, development, and poverty reduction), including the development of a disability-inclusive system of services comprised of: relevant mainstream services (health, education), disability-specific services (such as peer support) and support services (sign-language interpreters for example), through awareness-raising, capacity building and the mobilization of adequate resources;

AND

- › **Specific efforts** to ensure survivors are reached and empowered to exercise their rights, in particular: * locating and identifying survivors, * ensuring their equal access to services, and * monitoring and evaluation to demonstrate progress.

In sum, these efforts combined ensure that mine/ERW survivors benefit from policy and legal frameworks, systems, services and funds developed for people with disabilities. This implies, for example, the incorporation of actions relevant for survivors into national and international human rights and development strategies, such as sector strategies, Poverty Reduction Strategy Papers, National Action Plans on Disability, and the development of needed services in those areas where most survivors live. In order to ensure that survivors are not lost track of as a subgroup in the larger group of people with disabilities, it is essential for mine/ERW affected countries as well as those organizations involved in disability-inclusive development in these countries to:

- 1) Collect disaggregated data by age, gender, disability and cause of disability to identify survivors amongst beneficiaries of VA earmarked funds.⁽²²⁾
- 2) Measure impact of these efforts on the lives of people with disabilities, including survivors, and verify whether they benefit on an equal basis with others.⁽²³⁾

Collecting disaggregated data and measuring impact on beneficiaries of any intervention is the only sure way to know **who** benefits **how** from **which** type of project in a given area. Such data allows States to track to what extent they are fulfilling their obligations under the treaties they joined, as well as under other commitments such as the post-2015 MDGs. Disaggregated data on disability, age and gender also gives states and policy-makers more information about the extent to which people with disabilities are accessing equal opportunities or not. It provides critical information on who is included in society and who is left out so that policy-makers can plan and allocate resources to ensure everyone is included on an equal basis with others⁽²⁴⁾.

⁽²⁰⁾ Data disaggregated by cause of disability should be used by States to prove they are fulfilling obligations under MBT/CCM. However, these are meant to be temporary measures until mechanisms are in place that demonstrate that all development interventions in mine/ERW affected countries are equally accessible to people with and without disabilities.

⁽²¹⁾ This approach proposes to ensure the inclusion of mine/ERW survivors and their family members, while recognizing that family members of people killed as well as affected communities would benefit from an approach to inclusive development that considers vulnerable populations more broadly.

⁽²²⁾ See footnote 20.

⁽²³⁾ For specific analysis and recommendations on this topic, please refer to: HI (2014) *Victim Assistance Issue Brief, Measuring Progress on the implementation of VA through disability-inclusive development: Monitoring and Evaluation*.

⁽²⁴⁾ For specific analysis and recommendations on this topic, please refer to: HI (2014) *Victim Assistance Issue Brief - Improving Access for Survivors and other people with disabilities to an inclusive system of services*.

NATIONAL LEVEL

COORDINATION OF VA

Common practice

There are still some examples of affected countries where VA continues to be coordinated by Mine Action Centres or Authorities, without consideration for broader disability issues and without engagement of the appropriate ministry responsible for disability issues (generally the Ministry of Social Affairs). This effectively stands in the way of victims being considered in the work of relevant ministries, as such impeding the development of a national sustainable response capable of assisting mine/ERW victims in the near, mid and long term future.

And, at the national level in countries committed to international cooperation, VA being part of disarmament treaties has perpetuated the long-standing habit of it being handled by Ministries of Foreign Affairs only. As a result, there is little to no coordination between disarmament divisions and counterparts in development agencies and little to no knowledge of whether development funding in affected countries is actually reaching survivors.

Good practice

Good practice in terms of coordination is the progressive handing over of the responsibility to coordinate VA from a Mine Action Centre or Authority to the ministry responsible for disability issues in affected countries, and the department of international development in donor states.

Considering the CRPD as the overall framework, good practice is the comprehensive coordination of disability issues through the national level CRPD inter-ministerial and multi-stakeholder coordination & monitoring mechanism. Such a mechanism is often hosted by the disability line Ministry but preferably higher up, for example the office of the President/Prime Minister and includes Ministry level disability focal points (one of which is identified within the Ministry of Defense or whichever other authority with the responsibility for mine action). Such persons should have the authority to influence decisions & budget allocation. It also means that representatives from these ministries and departments participate in Meetings of States Parties and other meetings of the MBT and the CCM (instead of only people involved in mine action on the part of affected states, and ministries of Foreign Affairs of countries committed to international cooperation). On the reverse, good practice also implies that those involved in VA participate in meetings of the CRPD and other relevant mechanisms as such ensuring an ever stronger voice that calls for equal rights for all people with disabilities.

Good practice also is the quality collaboration amongst stakeholders working on VA and disability: between the government (Ministry of Foreign Affairs, development agencies, Ministries relevant on disability) and civil society organizations including Disabled People Organizations (DPOs) and Survivor Organizations (SOs), as well as international organizations for the purpose of developing a common understanding of the issues, the challenges and the approach to be taken to effectively implement the VA and CRPD obligations in an integrated manner. It also means that survivors and other people with disabilities are involved in all decisions that affect them – not just as beneficiaries, but as agents of change – from the planning stage until the evaluation of the impact of such efforts.

POSITIVE DISCRIMINATION AND POSITIVE MEASURES

Common practice

Only a few countries have developed legislation that could be defined as positive discrimination of victims of conflict, including mine/ERW survivors amongst the larger group of people with disabilities, providing benefits that allocate significantly higher pensions to those harmed by the conflict as compared to people disabled through other causes and allowing survivors to keep (part of) this pension when returning to work, while others lose their entitlement should they return to work. In these countries, it appears that these benefits are provided as a form of state "reparation", which creates division amongst the overall population of people with disabilities. The difference in treatment seems often based on the political history behind the conflict and the status of the person at the time of their accident.

Good practice

In those states where for historical or political reasons it is deemed necessary to redress the damage caused to those injured, a good practice in this regard has not been identified. A one-time compensation, following which the allocation of benefits for survivors follows the same rules as those for the rest of the population might be looked into as an option. Good practice in regards to the implementation of positive measures is those that do not result in any privilege offered to a particular group, but consist of measures that aim to accelerate or achieve *de facto* equality of people (CRPD article 5.4). Therefore, it is good practice to strive for positive measures that achieve equality without creating differences between people by privileging one group over another.

TENSION BETWEEN DISABLED PEOPLE’S ORGANIZATIONS (DPOs) AND SURVIVOR ORGANIZATIONS (SOs)

Common practice

While mine/ERW survivors generally do not receive extra benefits, they are frequently seen as a privileged group by other people with disabilities, receiving a lot of attention and associated funding from the international community due to the fact that specific legal frameworks address their needs. This carries the risk of the survivor movement being seen in a negative light by DPOs, thereby impeding the creation of a unified disability movement that can speak for all with one voice and demand universalisation and implementation of the CRPD, MBT and CCM on VA. Also, rather than joining an existing national disability movement, SOs operate in isolation in some countries, which can perhaps be explained by the fact that they identify strongly with being a ‘survivor’ and not with being a person with a disability. This lack of collaboration weakens efforts by civil society to call for a disability-inclusive society.

This tension is not unique to survivors as many groups within the disability movement that have different needs and varying demands also compete for access to limited resources. A typical and complex issue is whether resources should be allocated to a smaller group of those most discriminated against, as opposed to benefitting a wider group of people whose situation can significantly improve with relatively less support.

Good practice

A good practice on the part of civil society that allows for the rights and needs of survivors to be realized through CRPD aligned efforts is collaboration between organizations of disabled people and survivors for the purpose of working towards the goal of CRPD implementation and equal rights for all people with disabilities; for an inclusive society “built around the concept of accessibility, with the aim of making the mainstream work for everyone, rather than creating a parallel system.”⁽²⁵⁾ Sharing a common vision enables collaboration, and dismantles differences and misunderstandings between survivors and other people with disabilities. Working together, their voice is stronger and their ability to affect change greater. Building alliances and fostering a unified voice is an important lever for effectively demanding changes that move society to be ever-more inclusive.

To achieve this, it is good practice for States and international organisations to provide capacity-building to DPOs, SOs, other disability activists and grassroots movements. Supporting advocates with training and technical expertise in rights, policy reform, advocacy, lobbying, coalition building and leadership development, as well as capacity building on management, fundraising, planning, grant-making and partnership building and for the purpose of enabling shadow reporting on the CRPD, strengthens their ability to organize politically.

DISABILITY RIGHTS ARE NOT ON THE POLITICAL AGENDA

Common practice

On the part of both affected and donor states, interest in disability seems to mostly be lacking; it is not seen as a priority. Moreover, the political will to ensure that people with disabilities are not discriminated against is missing. This may be at the root of the continued lack of understanding, appropriate training of, and interventions that are inclusive of people with disabilities by both donor and affected states.

Good practice

Collecting data on the situation of people with disabilities, including mine/ERW survivors, as well as on barriers and facilitators in the environment that either limit or enable their participation, acts as a precursor to developing interest in disability and putting it on the agenda. This information allows determining relative levels of discrimination and resulting exclusions and enables both affected states and those committed to international cooperation to effectively prioritize necessary services and undertake specific efforts to ensure survivors’ access.

INTERNATIONAL LEVEL

PLIGHT OF SURVIVORS NOT TAKEN UP BY ACTORS OTHER THAN THOSE IN THE MBT/CCM COMMUNITY

Common practice

At the international level, VA is only discussed in the context of the MBT and the CCM. Little effort has been made to date to create linkages between VA in a disarmament context and other frameworks such as the CRPD, or to find allies in UN and other international agencies over and beyond those involved in mine action. Experience has shown that mainstream development stakeholders do not pay the required attention to people with disabilities in development efforts, despite the fact that 20% of the poorest people have some form of disability.⁽²⁶⁾ Therefore, besides the overall invisibility of people with disabilities in development, stakeholders know little about the particular realities experienced by mine/ERW survivors,

⁽²⁵⁾ UNICEF (2013) *The State of the World’s Children – Executive Summary*. http://www.unicef.org/sowc2013/files/SOWC2013_Exec_Summary_ENG_Lo_Res_24_Apr_2013.pdf

⁽²⁶⁾ *Fact Sheet on Persons with Disabilities*. UN – Enable. Available at: <http://www.un.org/disabilities/default.asp?id=18>

whose situation often implies cumulative discriminatory factors, including living in isolated rural areas, already being part of the poorest of the poor prior to being victimized, being an object of stigma and experiencing psychological trauma, to name only a few.

Good practice

Good practice is those traditionally working on VA taking up the plight of survivors in other fora, as well as it being taken up by those actors generally not involved in this pillar of mine action at all. This implies that diverse actors advocate for the plight of mine/ERW victims in fora over and beyond disarmament ones, such as the post-2015 framework and Sustainable Development Goals, as well as armed violence processes. UN agencies, such as the United Nations International Children's Emergency Fund, the World Health Organization, the Human Rights Council, or the International Labor Organization are brought into the discussion on the integration of VA into broader frameworks (such as during the Medellin conference in April 2014) and understand that they have a role to play in contributing to holding States Parties accountable to the obligations laid out by the MBT and the CCM.

Exploring synergies in terms of state reporting on VA under the MBT and the CCM, and state reporting under the CRPD and the Universal Periodic Review, as well as civil society shadow reporting on the CRPD also facilitates increased synergies amongst efforts made under different frameworks. In particular, under article 7 reporting in the context of the MBT (voluntary form J) and CCM (compulsory form H)⁽²⁷⁾, States include information that shows how national and international cooperation & assistance to VA and broader development efforts contributes to:

- 1) The development of an inclusive system of available and accessible services
- 2) Improvement in quality of life of mine/ERW survivors and other people with disabilities.

USE OF FUNDS EARMARKED FOR VA AND FUNDS DEDICATED TO SUPPORT DISABILITY-INCLUSIVE DEVELOPMENT

Common practice

VA dedicated budget lines are included in the humanitarian mine action envelop of many donors and to a lesser degree, in those of states with a responsibility for victims. Most commonly, these funds appear to spearhead efforts that benefit survivors, other people with disabilities and the broader population living in mine/ERW affected countries as well. However, even though it now seems well-understood that efforts supported with VA earmarked funds ought to benefit victims and other people with disabilities alike, some dedicated funding does not respect this principle of non-discrimination and limits beneficiaries of VA dedicated funds to mine/ERW survivors only, or stipulates that a certain percentage of beneficiaries should have been injured by a mine or an ERW. This practice appears to be exceedingly rare though.

As for funds provided to facilitate disability-inclusive development, current practice shows that it is assumed that survivors are among the beneficiaries, even though to date proof of such has not been provided.

Good practice

Where services exist, VA earmarked funds, as well as those provided by countries committed to international cooperation and whom fulfill their obligations towards survivors through disability-inclusive development efforts, are used to ensure those services required by survivors exist and can be accessed⁽²⁸⁾ by survivors in those areas where they live. Should this not be the case, funds are committed to:

- 1) undertake **broad efforts** to make the system of services inclusive of people with disabilities, including survivors, through the development and strengthening of relevant mainstream services (health, education), disability-specific services (such as peer support) and support services, (sign-language interpreters for example) AND
- 2) undertake **specific efforts** to:
 - a) locate and identify survivors and other people with disabilities⁽²⁹⁾;
 - b) enable access to an inclusive system of services⁽³⁰⁾;
 - c) measure progress to ensure survivors are benefitting from broader disability-inclusive development efforts in those areas where victims live.⁽³¹⁾

No matter how VA funds are put to use, a non-discriminatory approach is applied. This means that not only survivors and the broader group of victims should benefit, but people disabled through other causes and the broader population living in mines/ERW affected countries as well. And, that disability-inclusive interventions in mine/ERW affected areas benefit survivors as well as people disabled through other causes.

⁽²⁷⁾ UNOG Disarmament Article & reports. Available at: <http://unog.ch/80256EE600585943/%28httpPages%29/88E41D6ACBB90D8EC125781F003C2544?OpenDocument>

⁽²⁸⁾ In other words, do these services meet the six criteria of access to services', namely: availability, accessibility, acceptability, affordability, accountability and good technical quality.

⁽²⁹⁾ For specific analysis and recommendations on this topic, please refer to: HI (2014) *Victim Assistance Issue Brief - Locating and identifying survivors and other people with disabilities*.

⁽³⁰⁾ For specific analysis and recommendations on this topic, please refer to: HI (2014) *Victim Assistance Issue Brief - Improving access to an inclusive system of services for survivors and other people with disabilities*.

⁽³¹⁾ See in annex II the figure showing a decision-making tree that can be followed when determining on how to use funds earmarked for VA and disability-inclusive development in countries affected by mine/ERW. For specific analysis and recommendations on this topic, please refer to: HI (2014) *Victim Assistance Issue Brief - Measuring progress on the implementation of victim assistance through disability-inclusive development: monitoring and evaluation*.



CONCLUSION

This paper presents Handicap International's perspective on the conceptual issues at play in the drive to integrate VA into CRPD aligned interventions. This experience teaches us that the across-the-board application of the principle of non-discrimination by those engaged in VA, development and human rights efforts has the potential to be a catalyst in integrating VA into broader frameworks.



ANNEX I: TIME BOUND OBLIGATIONS ON VA IN THE VIENTIANE ACTION PLAN

ACTION 20:

Increase in 2011 their capacities to assist cluster munition victims on the basis of plans and proposals presented at and following the First Meeting of States Parties, as national and international resources become available.

ACTION 21:

Designate a focal point within the government to coordinate the development, implementation, and monitoring of victim assistance policies and plans in accordance with Article 5(2), within six months of the Convention's entry into force for that State Party and make sure that the focal point has the authority, expertise and adequate resources to carry out its task.

ACTION 22:

Collect all necessary data, disaggregated by sex and age, and assess the needs and priorities of cluster munition victims within one year of the Convention's entry into force for that State Party. Such data should be made available to all relevant stakeholders and contribute to national injury surveillance and other relevant data collection systems for use in programme planning.

ACTION 23:

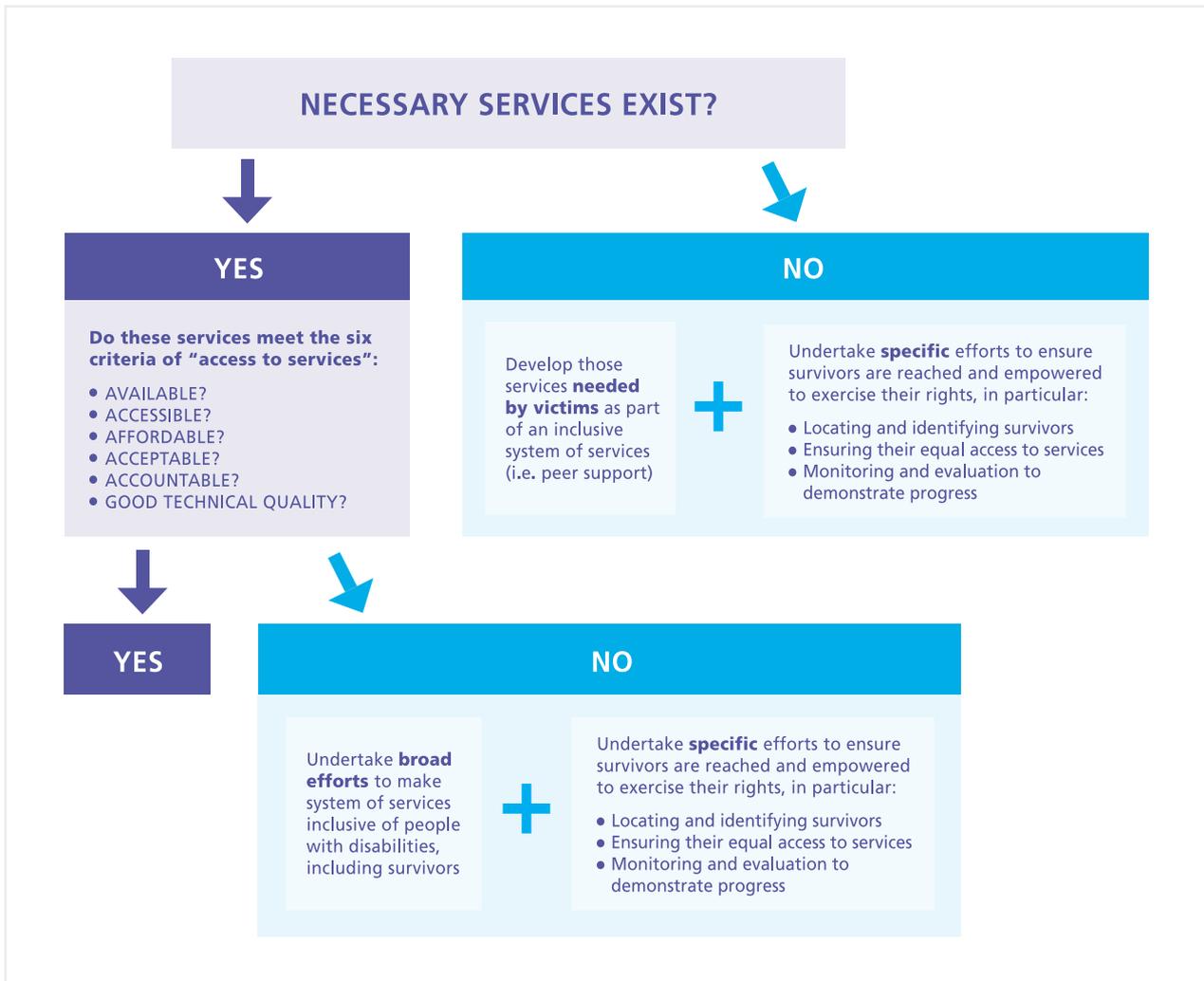
Integrate the implementation of the victim assistance provisions of this Convention in existing coordination mechanisms, such as coordination systems created under the CRPD or other relevant Conventions. In the absence of such mechanisms, establish such a coordination mechanism actively involving cluster munition victims and their representative organizations as well as relevant health, rehabilitation, social services, education, employment, gender and disability rights experts within one year of the Convention's entry into force for that State Party.

ACTION 26:

Within one year of the Convention entering into force for that state, review national laws and policies, with a view to meeting the needs and protecting the human rights of cluster munition victims, ensuring that national legal and policy frameworks do not discriminate against or among cluster munition victims and those who have suffered injuries or disabilities from other causes. Implement relevant national laws and policies, which were newly developed or modified as needed, no later than the First Review Conference of the Convention.



ANNEX II: HOW TO USE FUNDS EARMARKED FOR VA AND FOR DISABILITY-INCLUSIVE DEVELOPMENT?



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