# CONNECTING the DOTS:

## Victim Assistance and Human Rights

- Mine Ban Treaty
- Convention on Cluster Munitions
- Convention on the Rights of Persons with Disabilities

SURVIVOR CORPS
RISE ABOVE. GIVE BACK.

## About Survivor Corps

Survivor Corps is an international non-profit organization created by and for conflict survivors to promote individual recovery, rebuild communities and change policies and practices affecting survivors of conflict. Our approach is unique in the belief that those who were victimized by conflict are most motivated to make sure it doesn't happen again. In line with this core belief, Survivor Corps' programs in Latin America, United States, Europe, Asia, Africa and the Middle East are survivor-led and survivor-centered. Survivor Corps was born out of the International Campaign to Ban Landmines, co-recipient of the 1997 Nobel Peace Prize, and helped negotiate the Convention on the Rights of Persons with Disabilities and the Convention on Cluster Munitions.

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*We are all connected in our sorrows and our joys - in our mutual survivorship on this planet.*

*—Jerry White, founder of Survivor Corps*

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# Introduction

*Power consists in one's capacity to link his will with the purpose of others, to lead by reason and a gift of cooperation.*

—Woodrow Wilson

# Introduction

Over the past ten years, the world has seen significant developments in what might at first glance seem unrelated fronts: disarmament and human rights.

Two disarmament treaties have come into play – the 1997 Mine Ban Treaty (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction), and the 2008 Convention on Cluster Munitions.

In between these treaties came the Convention on the Rights of Persons with Disabilities, which was adopted in 2006.

**In fact, the three treaties are connected in language and spirit.** They are linked by their commitment to victim assistance for landmine and cluster munitions survivors, which is grounded in and informed by the Convention on the Rights of Persons with Disabilities (CRPD).

Survivor Corps has been at the forefront of connecting the dots between human rights and disarmament, by bringing the voices of landmine survivors to the CRPD negotiation table, and linking victim assistance within the disarmament discourse to the promotion of the rights of persons with disabilities.

This publication aims to familiarize the readers with the connections between the three treaties in a way that helps enhance the implementation of each one.

*Following are some of the connections that are explored and highlighted:*

- Core principles of victim assistance embedded in the understanding and implementation of the Mine Ban Treaty are now spelled out in the Convention on Cluster Munitions.

- The CRPD represents the human rights standard pertaining to persons with disabilities, including landmine survivors, and "has an explicit social development dimension,"[1] making it the appropriate framework through which to implement victim assistance.

- The more inclusive victim assistance programs are of persons with disabilities and other groups, the stronger and more sustainable the programs are.

- Similarly, the CRPD is strengthened by the Convention on Cluster Munitions which references it, and by victim assistance programs that uphold the human rights of persons with disabilities.

- Once the Convention on Cluster Munitions is in force, it is expected that, where relevant, victim assistance programs under the Mine Ban Treaty and the Convention on Cluster Munitions will align under one mechanism.

- Finally, such a victim assistance mechanism shares common components with the CRPD-mandated implementation mechanism and should closely align with it.

These connections point to the challenge ahead: the interwoven principles of victim assistance and the CRPD, deeply rooted in equality, respect for dignity, autonomy, and accessibility, as well as development, should inform how governments, international agencies, and civil society meet the needs and promote the rights of *all* victims of armed violence.

[1] *UN Secretary General, Report A 63/133.*

## In this booklet:

The first section, **The Development of Victim Assistance,** will outline the core principles of victim assistance that now constitute a norm, and demonstrate that its foundations have already been laid in the Mine Ban Treaty and the practice of its implementation. It ends with a commentary on the rights-based standard that has been consolidated in the Convention on Cluster Munitions.

Reading victim assistance in light of the principles of the CRPD reveals the human rights embedded in victim assistance and how victim assistance programs should look on the ground when perceived through the lens of the CRPD. The mutually reinforcing connection between victim assistance and the promotion of the rights of persons with disabilities will be explored in the second section, **Understanding Victim Assistance As Human Rights.**

The third section, **A Condensed Guide to Crafting Policies and Legislation on Select Victim Assistance Issues,** goes a step further toward implementation and offers practical guidance on how rights-based victim assistance should be embodied in laws and policies.

In the fourth and last section, **The Future of Victim Assistance,** we point at the challenge lying ahead of universalizing a rights-based victim assistance standard, through applying the standard that has emerged to additional disarmament instruments.

I

# The Development of Victim Assistance

*True progress quietly and persistently moves along without notice.*

—St. Francis of Assisi

# From the Mine Ban Treaty to the Convention on Cluster Munitions

## *Overview*

The appearance of provisions for assistance to mine victims in the 1997 Mine Ban Treaty was revolutionary for its day; it was the first such instance in a disarmament treaty. While mentioned only briefly in that treaty, the concept of victim assistance has since evolved into a comprehensive framework, through instruments such as the 2004 Nairobi Action Plan[2] and its implementation in close partnership between governments and civil society.

These accepted practices, developed in the Mine Ban Treaty processes, are now explicitly codified in the article on victim assistance and other related provisions throughout the Convention on Cluster Munitions.

The following principles, already embedded in the understanding and implementation of the Mine Ban Treaty, were consolidated within the Convention on Cluster Munitions, thus becoming part of the international legal framework:

- An inclusive definition of cluster munitions victims
- An express obligation for each state to provide assistance to victims under its jurisdiction or control
- A standard for victim assistance founded on, and informed by human rights standards
- Consultation with and meaningful involvement of survivors
- Detailed implementation guidance
- An obligation to report on progress

[2]*Final Report; First Review Conference of the States Parties to the Convention on the Prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, APLC/CONF/2004/5. 9 February 2005. Available at: http://www.nairobisummit.org/*

# Figure 1. Victim Assistance Provisions Across the Treaties: Building a Norm

Figure 1 provides an at-a-glance overview of the evolution of the victim assistance framework between the 1997 Mine Ban Treaty and the 2008 Convention on Cluster Munitions. It highlights a number of common elements that represent the foundations of an emerging norm for victim assistance.

**Figure 1**

| | **Mine Ban Treaty** as clarified in the Nairobi Action Plan and Report[3] | **Convention on Cluster Munitions** | **Emerging Norm** |
|---|---|---|---|
| **Definition of victim** | Those who individually or collectively have suffered physical or psychological injury, economic loss or substantial impairments of their fundamental rights by mine utilization (Nairobi Report para 64) | Those killed or who have suffered physical or psychological injury, economic loss, social marginalization or substantial impairments of their fundamental rights; Includes those directly impacted by the weapon as well as their affected families and communities (Article 2) | *Victims include those directly affected by the weapons, as well as affected families and communities.* |
| **Scope of obligation to provide victim assistance** | The ultimate responsibility for victim assistance rests with each State Party within which there are mine victims (Nairobi Report, para 81) | Each State must provide assistance to victims under its jurisdiction (Article 5) | *States are obligated to assist victims in their jurisdictions.* |

[3] *Id.*

| | **Mine Ban Treaty** as clarified in the Nairobi Action Plan and Report | **Convention on Cluster Munitions** | **Emerging Norm** |
|---|---|---|---|
| **Victim assistance and human rights** | Victim assistance is a human rights issue<br><br>(Nairobi Report para 68, Nairobi Action Plan Action #33) | Bearing in mind that the CRPD requires States Parties to ensure and promote the full realization of human rights…(Preamble);<br>Link to international human rights law<br><br>(Article 5) | *Victim assistance is an issue of human rights.* |
| **Inclusion in decision-making** | Recognizes the importance and benefits of the inclusion of landmine survivors in a substantive way in the work of the Convention at the international and national levels<br><br>(Nairobi Report, para 80) | States Parties shall closely consult with and actively involve cluster munitions victims and their representative organizations<br><br>(Article 5) | *States must consult with and involve victims in the planning and implementation of victim assistance.* |
| **What victim assistance includes** | • Medical care<br>• Rehabilitation<br>• Psychological support<br>• Implementation of national laws and policies<br><br>(Nairobi Action Plan Action #29-35) | • Data collection<br>• Age- and gender-sensitive assistance<br>• Economic and social inclusion<br><br>(Article 5) | *States must provide assistance in areas of life and in a manner which enable full inclusion into society.* |
| **Implementation measures** | Five year plans for national implementation<br><br>(Nairobi Action Plan) | Needs assessment, national plan for implementation, budget, time frames<br><br>(Article 5) | *States must design and execute a national plan for implementation.* |
| **Reporting** | Victim Assistance Questionnaire, Form J | Annual report to the Secretary General on status and progress in implementation<br><br>(Article 7) | *States must report on progress in their implementation of victim assistance.* |

# Victim Assistance in the Convention on Cluster Munitions

## *Commentary*

Victim assistance provisions in the text of the Convention on Cluster Munitions constitute a notable step forward in the evolution of legal obligations toward victims in weapons control instruments. It is important that they be interpreted in a way that is true to both precedents in international law and the intentions of the states negotiating the text.

This short commentary addresses the evolution of victim assistance since it first appeared in the text of the Mine Ban Treaty, with a focus on the norm emerging in the 2008 Convention on Cluster Munitions.

## Groundbreaking Progress

The 1997 Mine Ban Treaty (MBT) was the first weapons control agreement to include explicit provisions for assistance to the victims of a banned weapon. Its influence extended well beyond the scope of the treaty. The discourse that developed around the victim assistance provisions proved an important advocacy tool in the development and promotion of disability rights until the Convention for the Rights of People with Disabilities (CRPD) entered into force in May 2008. At the same time, it played a crucial role in shaping victim assistance under the Convention on Cluster Munitions (CCM).

The CCM codifies lessons learned from the ten years of MBT implementation and a common understanding of the standard for

victim assistance. It articulates state obligations to ensure the rights and dignity of victims. It takes victim assistance into the 21st century, by providing the opportunity to those victimized by the weapon to reclaim their lives and contribute to the rebuilding of their affected communities.

Due to stigmatization and exclusion, many landmine and cluster munitions survivors have been confined to the outskirts of the economic and social lives of their communities. In turn, society misses out on their talent and their potential, as well as the opportunity to engage *all* of society in the work toward recovery and more prosperous, peaceful communities. The victim assistance provisions in the CCM articulate the steps that states must take to ensure that cluster munitions survivors can enjoy their rights and be equal members of their communities.

A new player entered the arena of international law between the adoption of the MBT and the CCM. The CRPD, adopted in 2006, presents a key link between weapons treaties and human rights. The CRPD had a profound effect on the understanding of victim assistance as a process of respecting the human rights of victims. It outlines the rights-based approach to disability and provides a more progressive view of what it means to ensure equal access to enjoyment of human rights to all people in society. The CCM embodies this understanding.

## Main Components of Victim Assistance

At the time the MBT was negotiated victim assistance was a novel concept. The term "victim" was not defined, often resulting in a narrow interpretation by states of the population to which they owed assistance. **Article 2(1) of the CCM,** building upon other developments in the international legal discourse on victims,[4] appropriately acknowledges the reality of the broad effects of cluster munitions use on people and communities and **defines cluster munitions victims** as:

[4]*For example: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/ES/60/147 (Mar. 21, 2006).*

> "[A]ll 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..."

Thus, victims include individuals affected by the weapon as well as affected families and communities, and impact beyond the physical is recognized. An inclusive definition was supported by many states throughout the negotiating process. Indeed, there was common understanding that the definition also includes internally displaced persons, who often leave their communities due to contamination by cluster munitions. In order to ensure that the full effects of cluster munitions use can be determined, and their impact on families can be identified, the definition includes those killed by cluster munitions as well.

The inclusion of a separate article solely devoted to articulation of victim assistance and national level implementation measures speaks of the importance of victim assistance in the treaty. **Article 5 of the CCM is devoted wholly to victim assistance, articulating the elements of victim assistance and national-level measures for implementation.** Thus the CCM recognizes victim assistance as a core pillar of the treaty, on an equal footing with other treaty obligations.

The MBT placed victim assistance exclusively within the framework of international cooperation (Article 6), without clearly assigning state responsibility for providing assistance to the victims. **Article 5 of the CCM** affirms the understanding developed in the decade of implementation of the MBT that **each State Party to the CCM has an unequivocal binding obligation to provide support to victims of cluster munitions under its jurisdiction or control.** At the same time, negotiating states reaffirmed the importance of international

cooperation and the need for international support to affected states in the performance of their victim assistance obligations. Thus, the framework for international cooperation and assistance was retained in Article 6 of the CCM.

Ten years of implementation of the MBT have brought about the understanding that victim assistance is not only about medical treatment or rehabilitation, but is in fact an issue of human rights. States have committed to implementing it as such at the 2004 MBT Nairobi Review Conference, and have since continuously affirmed that mine victims should be seen as part of a larger group of persons with disabilities. They have endorsed the CRPD as an international framework that helps achieve the human rights of mine survivors. **The CCM Preamble and Article 5 codify these developments by expressly referencing the CRPD and by requiring that victim assistance be implemented in accordance with international human rights law, respectively.**

**Article 5 of the CCM obligates states to incorporate victim assistance into existing disability, development and human rights frameworks in the country,** thereby ensuring that national mechanisms for victim assistance are sustainable and cost-effective. It also aligns victim assistance with the broader political and social schemes, and with human rights in general, for example – the protection and promotion of the rights of persons with disabilities. Incorporating victim assistance into the human rights framework helps overcome the limitations of international humanitarian law, which applies only in situations of armed conflict; while weapons like cluster munitions are typically used during armed conflict, they continue to victimize people and communities for many years after use.

The obligation in **Article 5 to "closely consult and actively involve cluster munitions victims and their representative organizations"** will ensure that victim assistance best addresses the needs of victims.

This obligation is based on a core human right to participate in decision-making processes affecting one's life, which is established in the International Bill of Human Rights.[5] Most recently, the application of this right to persons with disabilities has been articulated in the CRPD Article 4:

> "(3) In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."

In another example of how the CCM builds upon the lessons learned from the MBT context, **Article 5 of the CCM** provides guidelines on how to ensure effective national implementation of victim assistance. It requires that **states assess the needs of the victims, develop an action plan with clear timelines, allocate and mobilize resources, and assign a focal point within the government for coordination of victim assistance efforts.**

**In Article 7, the CCM obligates states to report on the progress made in compliance with their obligation to provide victim assistance.** This provision codifies what has become the practice of States Parties to the MBT of reporting on the progress in their efforts. A legally binding obligation to do so will ensure more effective monitoring and greater accountability and transparency in the implementation of victim assistance. It will also encourage the inclusion and participation of survivors in the reporting process to make sure the most accurate information is obtained.

[5]*Universal Declaration of Human Rights, Art. 21; International Covenant on Civil and Political Rights, Article 25.*

II

# Understanding Victim Assistance as Human Rights

*A good motivation is what is needed: compassion without dogmatism, without complicated philosophy; just understanding that others are human brothers and sisters and respecting their human rights and dignities.*

— *Dalai Lama*

# The Convention on the Rights of Persons with Disabilities: The Human Rights Framework for Victim Assistance

Victim assistance programs and the Convention on the Rights of Persons with Disabilities (CRPD) must not live in isolation one from the other; each can have significant impact on the interpretation and implementation of the other. Understanding the overlapping content between victim assistance provisions and the CRPD will enable a State Party performing its obligations under one regime to also fulfill responsibilities under the other.

For example, if a State Party establishes health care services in accordance with the CRPD, in other words ensures, among others, their accessibility to persons with disabilities and availability as close as possible to people's communities including in rural areas, these services can likely be utilized by victims covered by weapons treaties. The same individuals would have been barred from enjoying the services were it not for their accessibility.

The Convention on Cluster Munitions (CCM) refers both explicitly and in spirit to the applicability of the CRPD as a framework for implementing victim assistance programs:

CCM PREAMBLE:

> "*Bearing in mind* **the Convention on the Rights of Persons with Disabilities** 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…"

CCM ARTICLE 5:

> "Each State Party…shall, **in accordance with applicable international…human rights law,** adequately provide… assistance…"

**The Convention on the Rights of Persons with Disabilities provides the applicable human rights standard, and should inform the way victim assistance is provided.**

The following figures illustrate how the CRPD complements and supplements the provisions on victim assistance in the Convention on Cluster Munitions.

**Figure 2** below reveals the human rights that are implicated in the victim assistance provisions in the CCM, and points to their parallel articulation in the CRPD.

**Figure 3** (which includes a number of diagrams) drills down further to understand the core components of victim assistance through the guidance provided by the CRPD.

**Figure 4** draws attention to the common components of the implementation mechanisms for victim assistance and the CRPD.

# Figure 2. Revealing the Human Rights in Victim Assistance

The following table demonstrates the parallel human rights articulated in the CCM and the CRPD. Not only does this format display similarities in state obligations, but the human rights framework provided by the CRPD also sheds a light on how victim assistance according to the CCM should look.

For example, the right to medical care in victim assistance provisions corresponds with the right to the highest attainable standard of health in the CRPD. According to the CRPD, this right includes providing accessible health care as close as possible to people's communities and ensuring that informed consent forms the basis of all care.

Similarly, economic inclusion in victim assistance corresponds to the right to work and employment. As provided by the CRPD, when vocational trainings are established, human rights are upheld by promoting full inclusion of survivors and persons with disabilities in the trainings and subsequently in the open labor market.

| Convention on Cluster Munitions | Human Right | Convention on the Rights of Persons with Disabilities |
|---|---|---|
| **Article 5 – Victim assistance**<br>**(1)**"[P]rovide…assistance, including **medical care,** rehabilitation and psychological support…"<br>**(2)(h)** "[I]ncorporate relevant guidelines and good practices including in the areas of **medical care…"** | **Right to the highest attainable standard of health** | **Article 25 – Health**<br>"[R]ecognize that persons with disabilities have right to the enjoyment of the highest attainable standard of health without discrimination…<br>[E]nsure access… to health services…<br>Provide…the same range… and standard of free or affordable health care… as close as possible to people's own communities, including in rural area…on the basis of free and informed consent… " |
| **Article 5 – Victim assistance**<br>**(1)** "[P]rovide… assistance, including… **rehabilitation…"**<br>**(2)(h)** "[I]ncorporate relevant guidelines and good practices including in the area(s) of… **rehabilitation…"** | **Right to rehabilitation** | **Article 26 – Habilitation and Rehabilitation**<br>"[E]nable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability…" through "extend [ing] comprehensive habilitation and rehabilitation services…" |
| **Article 5 – Victim assistance**<br>**(1)** "[P]rovide for… **economic inclusion."** | **Right to work and employment** | **Article 27 – Work and Employment**<br>"[R]ecognize the right of persons with disabilities to work, on an equal basis with others…by taking appropriate steps, including…to…<br>Prohibit discrimination…;<br>Enable… effective access to general… vocational guidance programmes… ;<br>[Assist] in finding… maintaining… employment;<br>Promote opportunities for self-employment…;<br>Ensure that the reasonable accommodation is provided…" |
| **Article 5 – Victim assistance**<br>**(1)** "[P]rovide for…**social... inclusion."** | **Right to full participation and inclusion in society** | **Article 3 - Principles**<br>(c) "The general principles of the present Convention shall be:…Full and effective participation and inclusion in society"<br>**Article 24 - Education**<br>"[E]nsure an inclusive education system"<br>**Article 30 – Participation in Cultural Life, Recreation, Leisure and Sport**<br>"[T]ake part on an equal basis with others in cultural life…" (including recreation, leisure and sport) and "enjoy access to cultural materials… and activities, in accessible formats" |

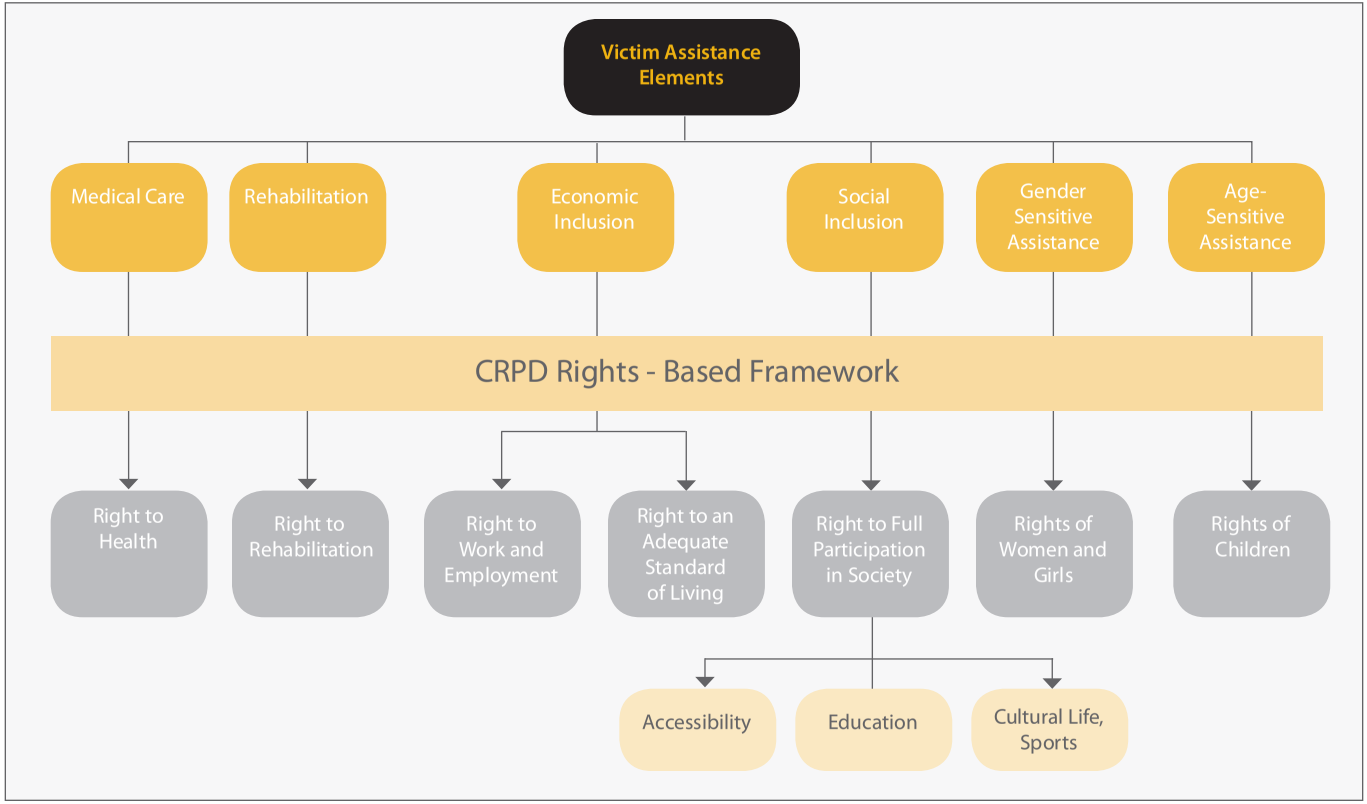
| Convention on Cluster Munitions | Human Right | Convention on the Rights of Persons with Disabilities |
|---|---|---|
| **Article 5 – Victim assistance (1)** "[P]rovide for… **economic inclusion."** | **Right to adequate standard of living** | **Article 28 – Adequate standard of living and social protection**<br>"[R]ecognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions… [and] …to social protection… including measures to ensure access to…poverty reduction programmes;… assistance… with disability-related expenses…public housing programmes…" |
| **Article 5 – Victim assistance (1)** "[P]rovide… **gender-sensitive** assistance…" | **Rights of women** | **Article 6 – Women with disabilities**<br>"ensure the full and equal enjoyment by [women and girls] of all human rights and fundamental freedoms…" |
| **Article 5 – Victim assistance** (1) "[P]rovide **age-… sensitive** assistance…" | **Rights of children** | **Article 7 – Children with disabilities**<br>"[E]nsure the full enjoyment by children with disabilities of all human rights and fundamental freedoms… [E]nsure that children with disabilities have the right to express their views freely on all matters affecting them… and to be provided with disability and age-appropriate assistance to realize that right." |

# Figure 3. Understanding Components of Victim Assistance In Light of the CRPD

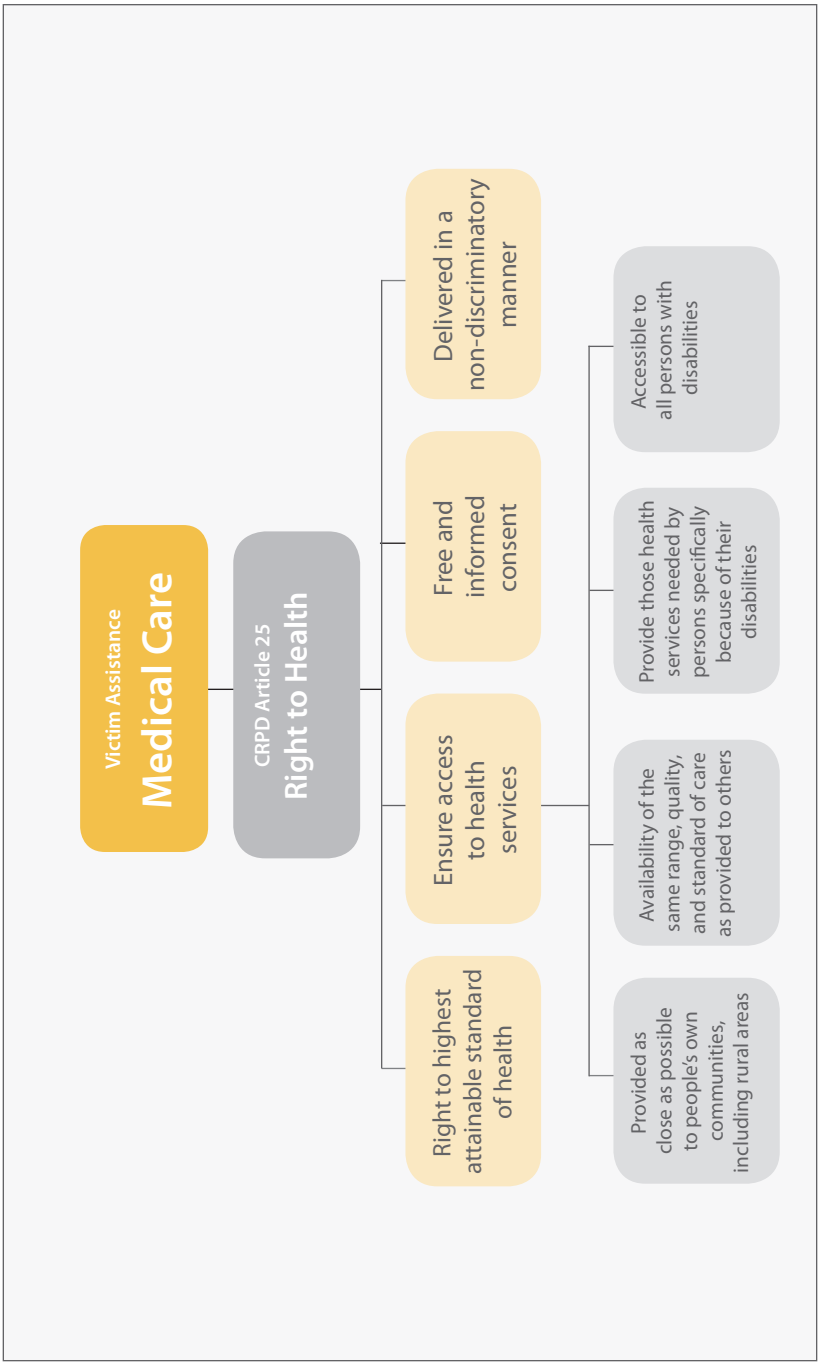
The following diagrams examine the elements of victim assistance through the lens of the CRPD's human rights framework. Each CRPD right that is identified as corresponding to an element of victim assistance is then broken down further into its essential components, thereby illuminating the essential components of victim assistance that are based on human rights.

The first diagram is an overview of this breakdown. The following diagrams will dissect each victim assistance element to arrive at an even more detailed picture.

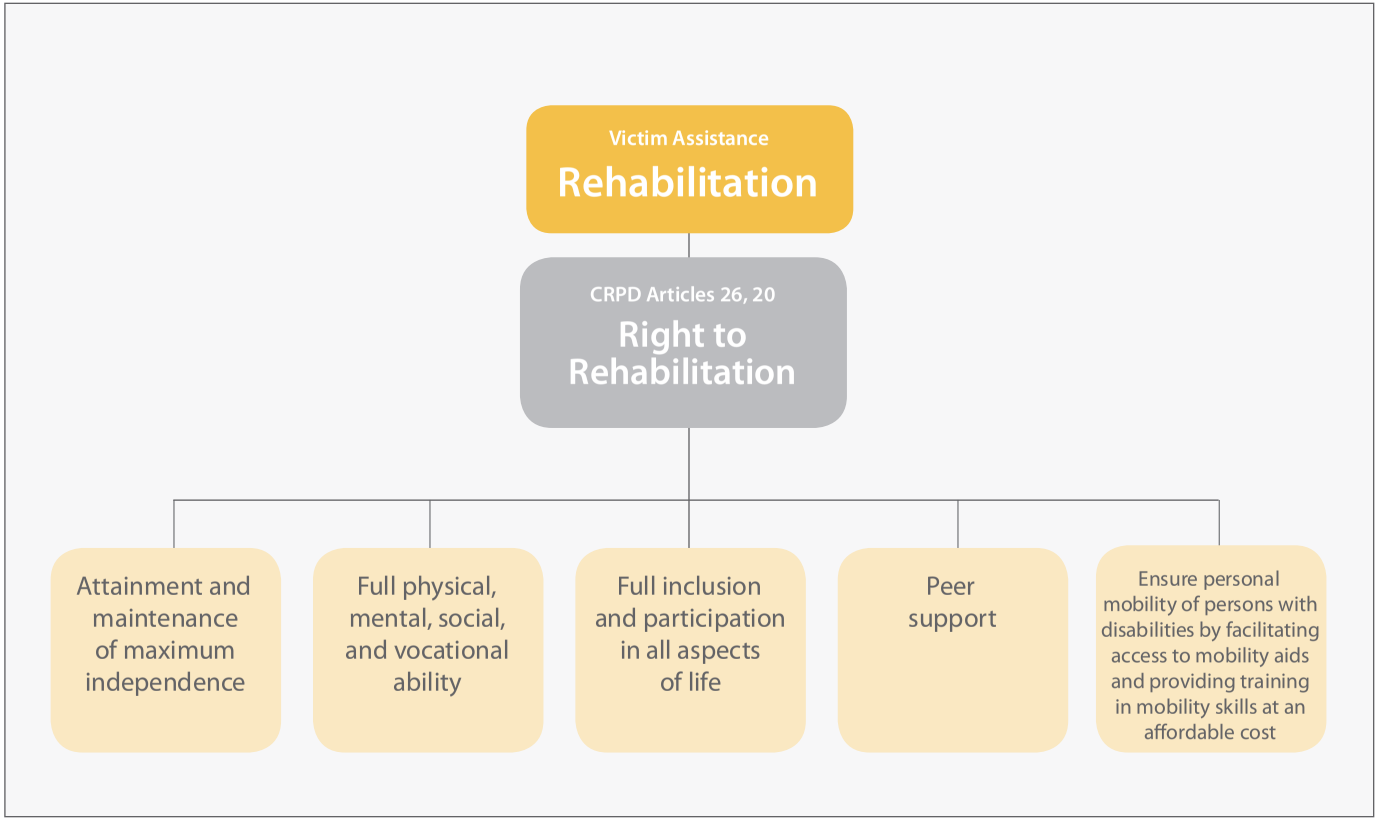
Overview of victim assistance elements and corresponding rights in the Convention on the Rights of Persons with Disabilities.



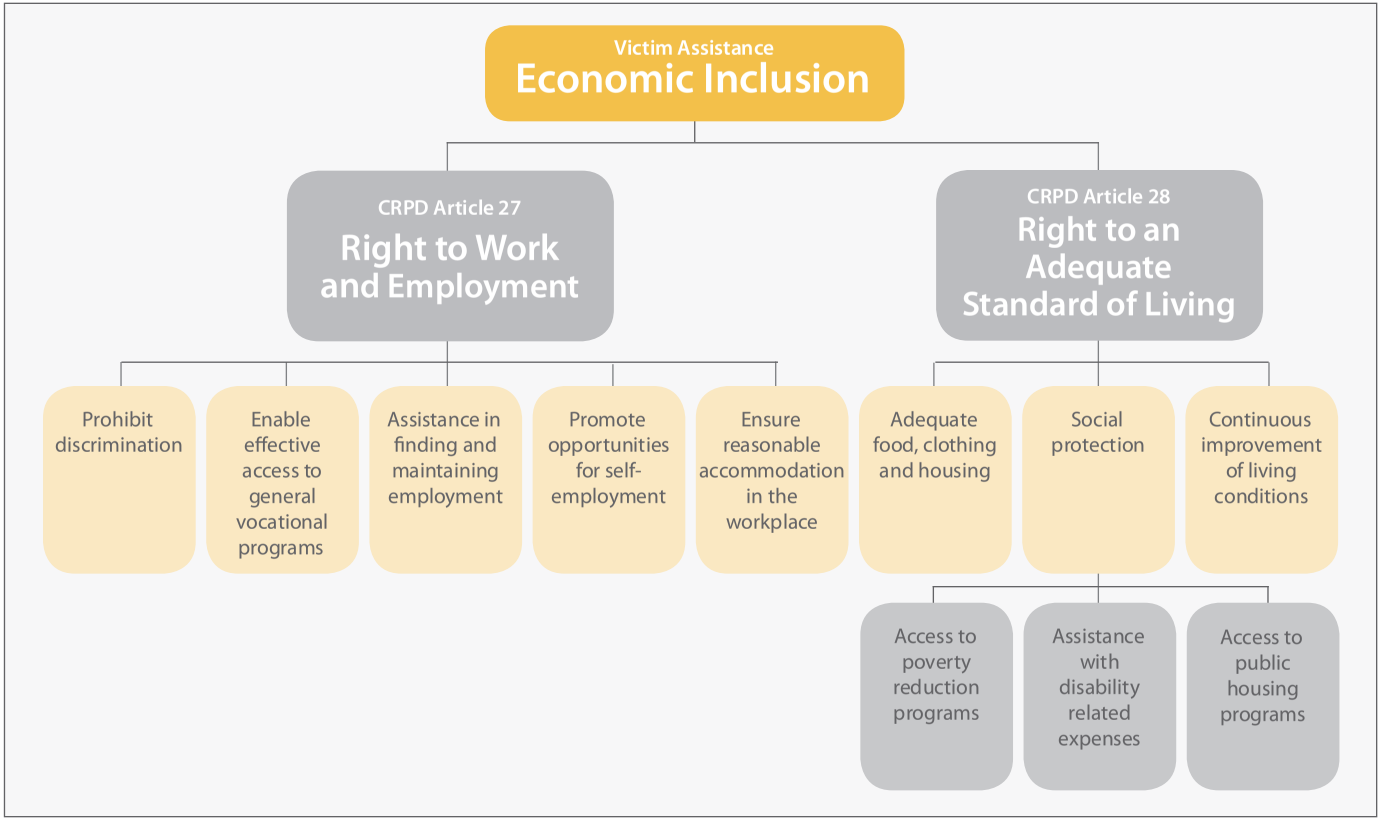
Medical Care, as an element of victim assistance, translates into the right to health and its components, as articulated in the CPRD:



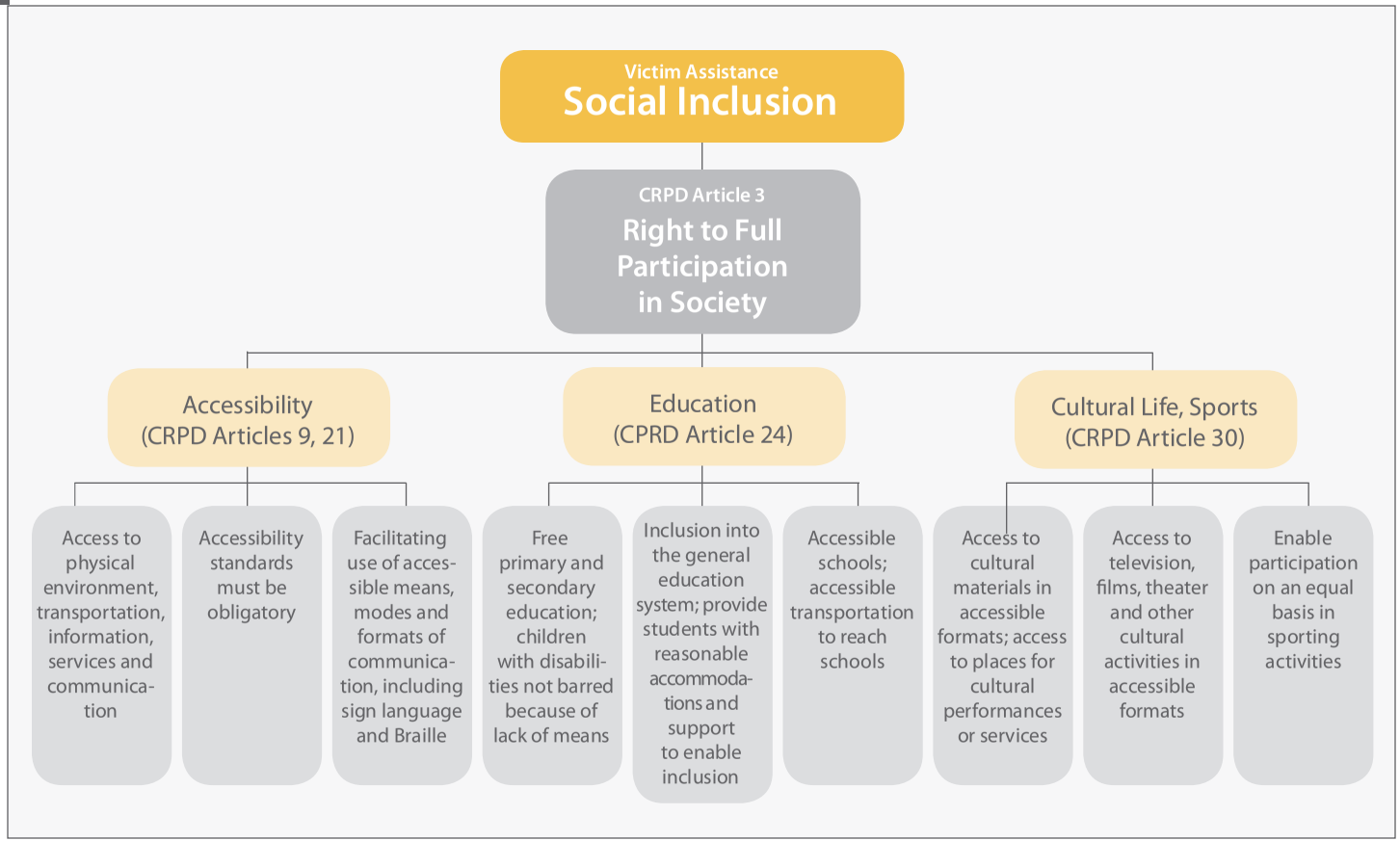
Rehabilitation, as an element of victim assistance, translates into the right to rehabilitation and its components, as articulated in the CRPD:



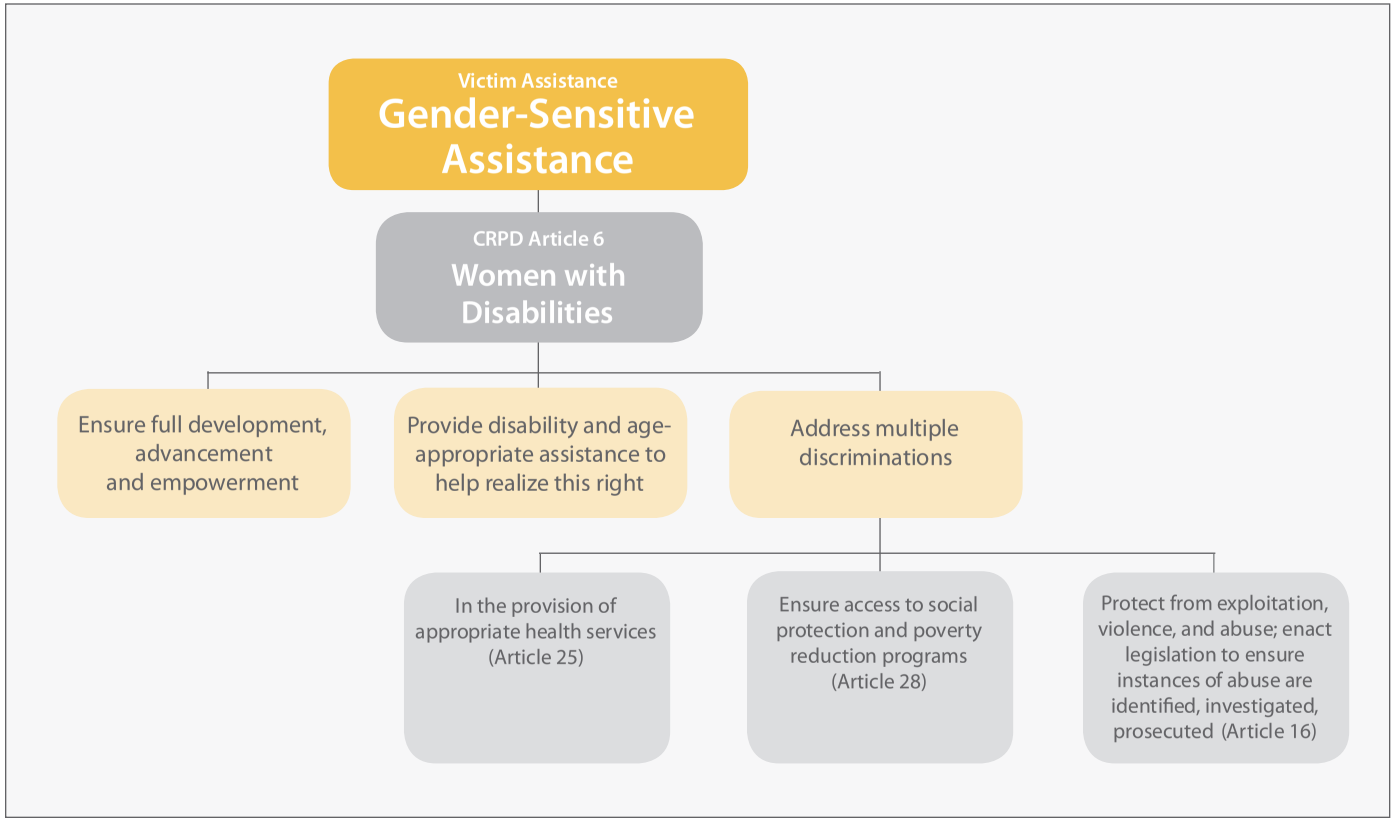
Economic Inclusion, as an element of victim assistance, translates into the right to work and employment and the right to an adequate standard of living and their components, as articulated in the CRPD:



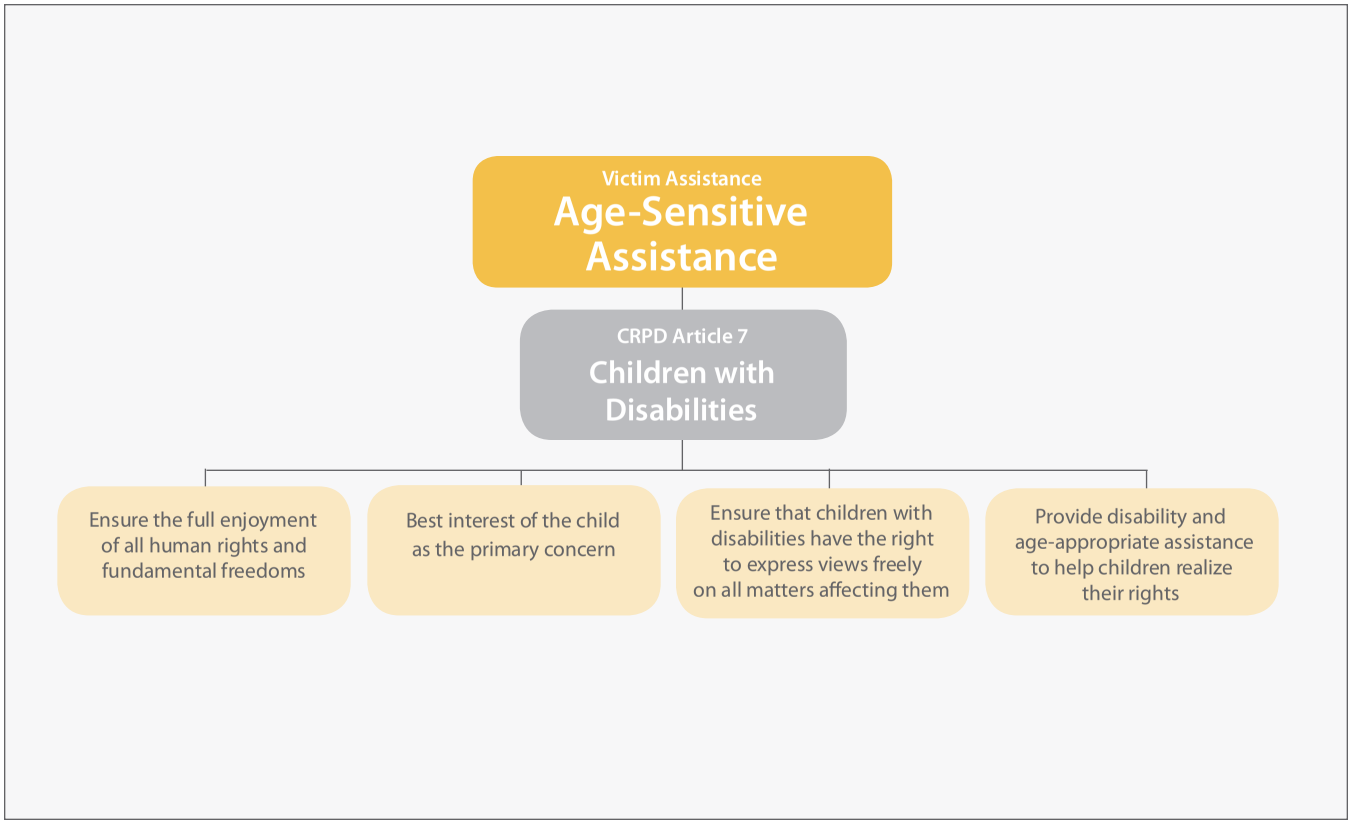
Social Inclusion, as an element of victim assistance, translates into the right to full participation in society and its components, as articulated in the CRPD:



Gender-sensitive Assistance, as a component of victim assistance, translates into the rights of women with disabilities and their components, as articulated in the CRPD:



Age-sensitive Assistance, as a component of victim assistance, translates into the rights of children with disabilities and their components, as articulated in the CRPD:



# Figure 4. Comparing Implementation Measures

The chart below shows the corresponding implementation measures of the CCM and the CRPD, demonstrating similarities and highlighting the underlying human rights standards relevant to implementation.

| Method of Implementation | Victim Assistance Obligations Under the Convention on Cluster Munitions | Rights of Persons with Disabilities Under the Convention on the Rights of Persons with Disabilities |
|---|---|---|
| **Data Collection** | Collect reliable relevant data with respect to victims (Article 5.1) | Collect appropriate information, including statistical and research data; use to help assess implementation of obligations; ensure confidentiality; comply with ethical principles in collection (Article 31) |
| **Inclusion in Decision-Making** | Closely consult with and actively involve victims (Article 5.2) | Consult closely with and involve persons with disabilities in development and implementation of legislation and policies (Article 4(3)) |
| **Implementation** | Designate a focal point for implementation (Article 5.2) | Designate one or more focal points within the government (Article 33) |
| **Budget** | Develop a national plan and budget (Article 5.2) | Regarding economic, social, and cultural rights, take measures to the maximum extent of available resources to achieve progressively the full realization of rights (Article 4(2)) |
| **Incorporating Plans into Existing Frameworks** | Incorporate the national plan and budget within the existing national disability, development, and human rights frameworks and mechanisms (Article 5.2) | Establish a coordination mechanism within government to facilitate related action in different sectors/ levels (Article 33) |
| **International Cooperation and Assistance** | Provide other states with assistance for implementation of victim assistance obligations (Article 6.7) | Undertake measures among states, including providing technical and economic assistance, sharing technology, increasing capacity-building through the exchange of information, experiences, training programs, best practices; ensure that international cooperation is inclusive of persons with disabilities (Article 32) |
| **Reporting** | States will report to the Secretary General on status and progress of implementation (Article 7.1) | States will submit a report to the Committee of Experts on implementation and involve civil society in monitoring (Article 35) |

III

# A Condensed Guide to Crafting Policies and Legislation on Select Victim Assistance Issues

*Thought is the blossom;*
*language the bud;*
*action the fruit behind it.*

—*Ralph Waldo Emerson*

# A Condensed Guide to Crafting Policies and Legislation on Select Victim Assistance Issues

## What laws/policies should be in place to ensure social and economic inclusion of landmine survivors?

Experience gained from more than 12 years of victim assistance implementation and work with survivors and their organizations on the ground has made it clear that the following areas are of paramount importance to landmine survivors in their path to social and economic inclusion:

- General accessibility for persons with disabilities to places and services
- Equal access and opportunity to employment
- Equal access and opportunity to education

National legislation is a major indicator of whether rights are recognized and opportunities provided in each of these areas.

*Here is a list of such indicators to begin with:*

### Does your country have a law protecting and promoting the rights of persons with disabilities?

- Does the law **ensure equality** to persons with disabilities?
- Are there **sanctions** for non-compliance and **remedies** for the violation of rights?

## Does the law on accessibility address reaching public places and maneuvering within, using public transportation, accessing services, and receiving information?

- Does it refer to **obligatory accessibility standards?**
- Are standards concrete, **translating accessibility into numbers and technical requirements** *(instead of vague guidelines such as "make it easy for persons with disabilities to enter")*?
- Is there an **obligatory timeframe** for achieving full accessibility *(instead of open-ended aims)*?

## Does the law on employment prohibit discrimination on the grounds of disability?

- Does it require employers to make **reasonable accommodations** in the workplace?
- Does it provide economic incentives for employers to employ persons with disabilities, such as **state contribution to the cost of making the workplace accessible?**
- Does it provide for **opportunities for vocational training, assistance in finding employment, self employment?**
- Does it require that **employment services** ***(vocation training, job placement services, etc.)*** **be accessible** to persons with disabilities?
- Does it require that the **public sector take special measures** to employ persons with disabilities?

## Does the law on education ensure free primary and secondary education?

- Does it ensure that **children with disabilities are not excluded** from the general education system, and that they can access **inclusive education with their peers?**
- Does it require that schools be **accessible?**
- Does it provide for either an accessible school nearby or accessible transportation in cases in which a student **needs accessible transportation to reach school?**
- Does it require that the education system provide students with reasonable **accommodations and support** to enable them to study in inclusive settings?
- Does it facilitate the learning of Braille, orientation and mobility skills, and sign language for children with visual or hearing disabilities?
- Does it ensure that students in families whose livelihoods have been affected by landmines **are not barred from school because of their family's lack of means,** and that they are supported in attending school?

IV

# The Future of Victim Assistance

*One never notices what has been done; one can only see what remains to be done.*

—*Marie Curie*

# The Future of Victim Assistance

Acknowledging that *people* are at the core of weapons treaties will help ensure that the purpose of these treaties – reducing harm to people – is attained. In its holistic approach to victim assistance, the Convention on Cluster Munitions (CCM) comes closer then ever before to capturing this objective.

The next step is to fill in the gaps on the way to addressing the full spectrum of the human rights of people victimized by weapons and violent conflict.

The Protocols of the Convention on Conventional Weapons (CCW), for example, should incorporate victim assistance provisions in line with the CCM. Victim assistance must also be part of the developing arms trade treaty discussions. Participation of survivors in the process must be accompanied by articulation of their interests in the treaty text. This will be accomplished by including measures to assist victims in meeting their needs and ensure their dignity; in short – by guaranteeing their human rights.

The experience gained through the Mine Ban Treaty (MBT) and CCM frameworks can contribute significantly to the development of victim assistance in other arenas. The form that it takes will have be tailored to the context. At the same time, a set of principles has crystallized through the implementation of victim assistance in the MBT and the CCM, which should inform any future discourse. These principles include: an obligation on the state to provide assistance to victims in its jurisdiction,

a plan founded on and informed by human rights standards, meaningful survivor participation in determining the standard and its implementation, guidance on implementation measures, and obligatory reporting procedures.

Inclusion of a victim assistance standard in other instruments of weapons control will promote coherence across treaties and strengthen the standard. The need for such coherence has been highlighted in the recent discussions among experts on implementation of victim assistance in the MBT and CCM.[6] In furtherance of that goal, any discussion related to weapons control, including an arms trade treaty, must address assistance to victims in a rights-based way and from a survivor-centered perspective.

[6] *See for example the recommendations by the International Committee of the Red Cross and the Norwegian Red Cross, at: http://www.icrc.org/web/eng/siteeng0.nsf/html/mines-recommendation-cartagena-280909*

# Annex

## Victim Assistance Provisions in the Convention on Cluster Munitions:

## EXCERPTS

### Preamble

…*Determined* also to ensure the full realisation of the rights of all cluster munition victims and *recognising* their inherent dignity,

*Resolved* to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,

*Recognising* the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,

*Bearing in mind* the Convention on the Rights of Persons with Disabilities 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,

*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…

## Article 2 – Definitions

2.1 **"Cluster munition victims"** means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization 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;…

## Article 5 – Victim Assistance

5.1 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 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.

5.2 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.

## Article 6 – International Cooperation and Assistance

6.7 Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, *inter alia,* through the United Nations system, international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organisations or on a bilateral basis.

## Article 7 – Transparency Measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:…

(k) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender- sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims; …

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