

Article36

Weapons, casualty recording and victims' rights

Comments by Richard Moyes, at a side event to the Convention on Cluster Munitions (CCM), Intersessional Meeting 15 April 2013

Building on what previous speakers have said, I wanted to use this opportunity to situate the work of casualty recording in the broader context of our community of operational and diplomatic practice.

My background, many years ago now, was working on mine action operations and one of my first jobs for Mines Advisory Group back in the mid 90s was analyzing data on landmine and UXO casualties from Battambang Province in Cambodia.

This was at a time when systematic data on these incidents was only really being gathered for the first time, and the availability of that data, on where incidents were occurring and what people were doing at the time of the incidents made a huge difference to our ability to target operations and risk reduction efforts.

And then some ten years later the more comprehensive data gathering systems that had developed from those early efforts helped us to build the evidence-based humanitarian arguments for why cluster munitions needed to be banned.

So I am highlighting this because the mine action sector, in its broadest terms, provides a good example of how data on victimisation is vital both for operational work and for the processes of policy and legal reform that are needed to reduce the impact of violence on society.

Data on victimization from weapons have been important to international efforts that have established stronger policy and legal protections for civilians.

Before specialist data gathering systems were established, data from field hospitals in Afghanistan and other countries in the late 1980s early 1990s provided NGOs and organisations like the ICRC with information that could be put in front of policy makers as evidence for the need for legal change.

This data wasn't a complete picture of the landmine problem internationally – it probably wasn't even a complete picture of the harm in the local area – but it was enough to start building recognition of the humanitarian imperative for a ban.

Similar data, on victimisation and on wider socio economic impacts underpinned calls for legal change regarding explosive remnants of war, which led to Protocol V of the Convention on Conventional Weapons, and on cluster munitions as we have heard – an effort that brought us here under the framework of the CCM.

Similarly, data on victimisation from weapons has also been important in other areas

too. The Control Arms campaign that recently worked with states towards a vote in agreement of the Arms Trade Treaty also called for action in response to the people killed by armed violence.

And emerging issues of concern are also built upon casualty recording data. The growing concern internationally at the impact of use of explosive weapons in populated areas, especially explosive weapons with wide area effects, has developed based on data of the harms being caused.

Action on Armed Violence has gathered data from international newswire reports which show a pattern of harm internationally. That when these weapons are used in population centres the levels of civilian harm are greatly elevated - with approximately 20,000 civilians being killed and injured from the use of explosive weapons in populated areas every year.

Of course direct deaths and injuries are only one component of the harm caused. We shouldn't see direct casualty recording as the only indicator of harm. The use of heavy explosive weapons for example, destroys hospitals, schools, housing, water and sanitation systems etc which all have further impacts on the population.

On other issues, such as the health risks from toxic remnants of war, the impact of incendiary weapons and even on the likely humanitarian consequences of nuclear weapon use, information or analysis of likely victimisation is a central concern.

So data on victimisation tends to be a central component of calls for reform. Disaggregated data in particular allows us to bring together different constituencies and communities to focus on a common problem.

And there are issues of responsibility bound up in this. In conflict and post-conflict settings it is often international organisations and NGOs that take on the work of documenting casualties from violence. A central component of the political debate on the acceptability of cluster munitions, in the mid 2000s, centered on UK Government claims that they had "carefully weighed" the humanitarian threat from these weapons against the military benefit they provided and concluded that they were fine. But when Ministers were asked in parliament what civilian casualty data they had examined from Kosovo and Iraq, where we had used these weapons, it turned out they hadn't looked at any. And so the "careful weighing" could be seen to be a rhetorical sham.

As both Loren (Landmine and Cluster Munition Monitor) and Serena (AOAV) have highlighted and as I noted with respect to mine action, casualty data is a starting point for operational activities. And it is also a starting point for efforts to reform policy and law to better protect people in the future.

And these efforts to control weapons have also provided a framework for developing our understanding of the rights of victims and the responsibilities of states to ensure assistance.

In the CCM Article 5, and the Plan of Action on Victim Assistance under CCW Protocol V, it is recognized that data on victimization is a requirement for ensuring victims' rights. This latter instrument is significant because despite not being legally binding it makes it clear that the rights of victims being articulated do not stem from

the illegality of the weapons addressed through the particular instrument, but rather are a specific formulation of rights more generally held.

Elsewhere, under the framework of the Oslo Commitments on Armed Violence (2009) and the Outcome Document of the 2nd Review Conference to the Geneva Declaration on Armed Violence and Development (2011), states have accepted the need to recognize and ensure the rights of victims of armed violence and to measure and monitor the incidence and impact of armed violence.

Of course the obligation to document victimisation from cluster munitions is in large part a precursor to assistance – it is a means to an end – the full realisation of further rights. But I think, if we consider this more personally, we might feel that the recording of victimisation is itself also on its own terms fundamental to a victim's rights.

People here come from diverse backgrounds – but I imagine that many of us would take it for granted that if one of our loved ones, our family members, was killed violently – it be recorded by our society. There would be police reports, medical reports, death certification...

This is a responsibility I straightforwardly expect of my government. But of course in many countries there are weaknesses in the capacity to provide that casualty recording – perhaps because social functions are impaired by the very violence that needs to be recorded.

But as we have found in relation to specific weapon systems, there are efforts that can be made to document that harm even if the capacity for full death certification is not in place.

And in many countries, the process of casualty recording goes on long after the violence, with graves exhumed and forensic techniques applied in order to ensure victims are eventually identified.

So in conclusion we would like to see states making explicit their recognition that they have a broad obligation to record all casualties from violence. Because the broad community that we work within has recognised through its various instruments that this work is vital to ensuring the rights of victims of violence, for undertaking effective operations, of all kinds, and for enabling us to work together for reforms to policy and law that will better protect people in the future. This community has the capacity to strengthen international recognition that casualty recording is a fundamental obligation.