



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
DIREÇÃO-GERAL DE POLÍTICA EXTERNA

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3rd Review Conference of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention)

Maputo, 23 – 27 June 2014

Original: English

Compatibility between the Ottawa Convention and the Convention on the Rights of Persons with Disabilities - Working paper submitted by Portugal

Key points

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| <ul style="list-style-type: none">• To bring the Convention on the Rights of Persons with Disabilities to the discussions within the Ottawa Convention context, in particular as far as assistance to victims is concerned.• To ascertain the full compatibility of the two Conventions• To develop the understanding that the Ottawa Convention is more than a disarmament instrument and that it has had a very positive impact on Human Rights and Humanitarian law.• To revise the global approach to the concept of mine victim.• To include new actions in the Action Plan that may concur for the victims assistance, namely :<ul style="list-style-type: none">i. To adapt national legislation and/or to adopt national administrative measures in order to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.ii. To promote awareness-training programmes regarding persons with disabilities and their rights.iii. To promote training programs for staff working with persons with disabilities. |
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Working paper on implementation of the Action Plan

- The Ottawa Convention



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The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention), signed in 1997 and entered into force in 1999, has currently 161 States Parties. Only one signatory has yet to ratify the Treaty.

Although a disarmament treaty at its origin, it should also be understood as a humanitarian law convention and a Human Rights treaty. The assessment of the Ottawa Convention regarding the notion of victim highlights the values of life, dignity and equality (namely in its article 6, n.3), thus clearly recalling us the 1949 Universal Declaration on Human Rights (“inherent dignity and of the equal and inalienable rights of all members of the human family”). Moreover, the Ottawa Convention is the first disarmament treaty in which states committed to provide “assistance for the care and rehabilitation, including the social and economic reintegration” (PP. 3 of the Ottawa Convention) to those people harmed.

- Data

According to the Landmine Monitor Report 2013, in 2012, 3628 people were victims of mines and other explosive remnants of war (ERW), of which 1066 were casualties and 2552 wounded. Out of those 3628, 1593 were victims of anti-personnel mines. The exact number of disabled people that have been affected by mines still needs to be confirmed. Gathering accurate reliable data thus remains the first goal in order to proceed in solid ground, and the collaboration of States must be strengthened. Furthermore, it must also be retained that disability caused by mines can happen within very different scenarios (eg. Peace/War; combatants/civilians). Therefore, disability, for the purposes of this working paper, should be mostly assessed based on its cause – the mine blast – and less on the circumstances of its occurrence.

- Injuries

In most of the cases, wounded, injured or disabled persons in consequence of mines blasts are affected for life and they need permanent and continuous medical care – whether physical or psychological, or both.

The pattern of injuries depends on the type of mine and whether the mine was designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person¹ or was handled when it exploded. Each pattern has its different implications for the later forms of disability. The most severe wounds with which the victim might survive, and unfortunately these are the most common ones, result from buried blast mines. The injuries causing disability have an impact for life on the victims.

- Victim

The peculiarity of a personnel landmine is that it is a victim-activated device, which means that from the moment the device blasts-off it is very difficult that there is not a victim.

¹ Article 2, n. 2 of the Ottawa Convention.



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Victim is understood according to the definition in UNGA Resolution A/RES/60/147 of 2006².

- Complementarity

The Ottawa Convention should be taken in complementarity with other international instruments, as foreseen in action 65 of Cartagena Action Plan, namely the Convention of the Rights of Persons with Disabilities (CRPD), but always having in mind that the principle of complementarity is based on the compromise between the respect for the principle of state sovereignty³ and the respect for the principle of universal jurisdiction. The ownership of programs in support of mine victim assistance must remain primarily with the States, without prejudice to international and regional programs of action and cooperation.

- Convention on the Rights of Persons with Disabilities

The CRPD, signed in 2007, entered into force in 2008. It was signed by 158 States. Currently, 143 States are Parties to it. 122 States are Parties to both Conventions and there could be merit in importing into Ottawa's Convention Action Plans some of the aspects dealt with by the Convention on the Rights of Persons with Disabilities. It must be acknowledged that CRPD came to light 10 years later than the Ottawa Convention.

Of the countries with the largest numbers of survivors eight⁴ are Parties to both Conventions, whereas three⁵ are Party only to the CRPD. Angola is Party to the Ottawa Convention. Sri Lanka, Vietnam and Libya are Parties to neither.

Of the 29 countries with less than 5000 survivors from mine blasts, but more than a thousand, 13 States⁶ are Parties to both Conventions. Of this group, six⁷ are Parties only to the CRPD, and another six are Parties to the Ottawa Convention⁸. Finally, Burundi, Lebanon and Palestine are Parties to neither Convention.

There seems to be some common ground on the assessment States make regarding the pertinence of both Conventions, even if they are originally rooted on two different segments of International Law.

² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law is also relevant: “[V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”. This definition encompasses the definition achieved at the First Review Conference, “those individuals directly impacted by mines are a sub-group of larger communities of persons with injuries and disabilities.” (“Review of the Operation and Status of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction 1999-2004”, Part II of the *Final Report of the 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*, 9 Feb. 2005).

³ As it is foreseen in INMAS Guidelines, Guideline 02.10.

⁴ Afghanistan, Bosnia and Herzegovina, Cambodia, Colombia, Ethiopia, Iraq, Mozambique, and Turkey

⁵ China, Iran and Lao PDR.

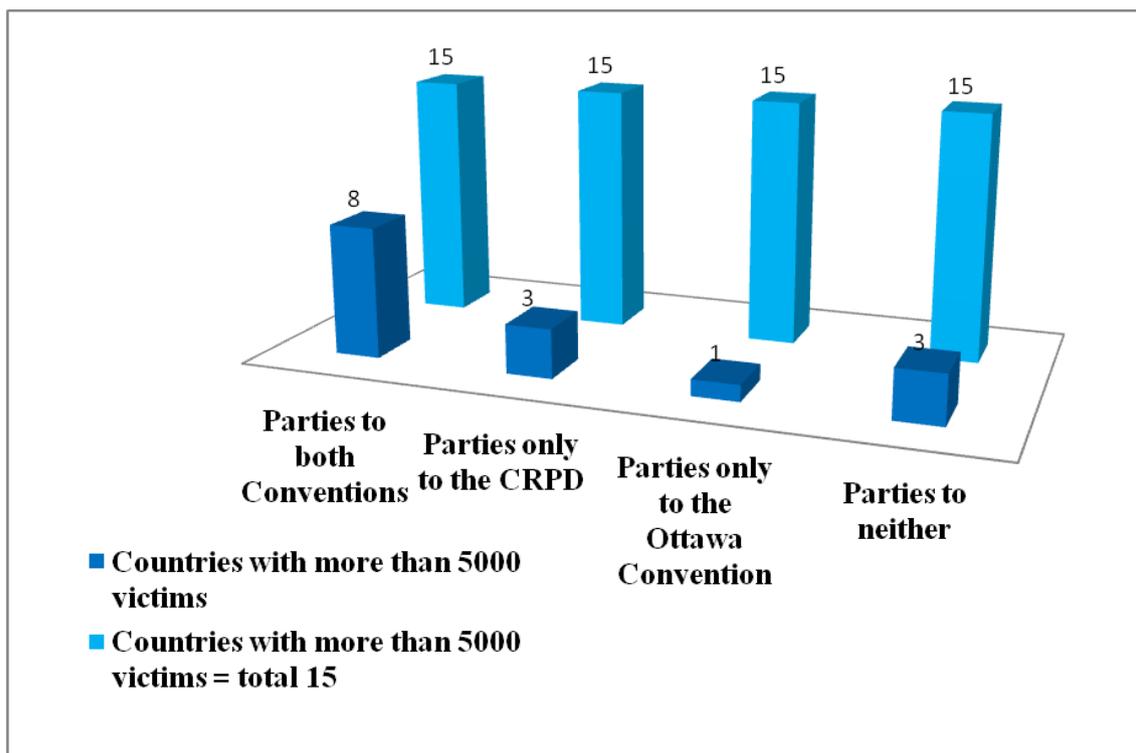
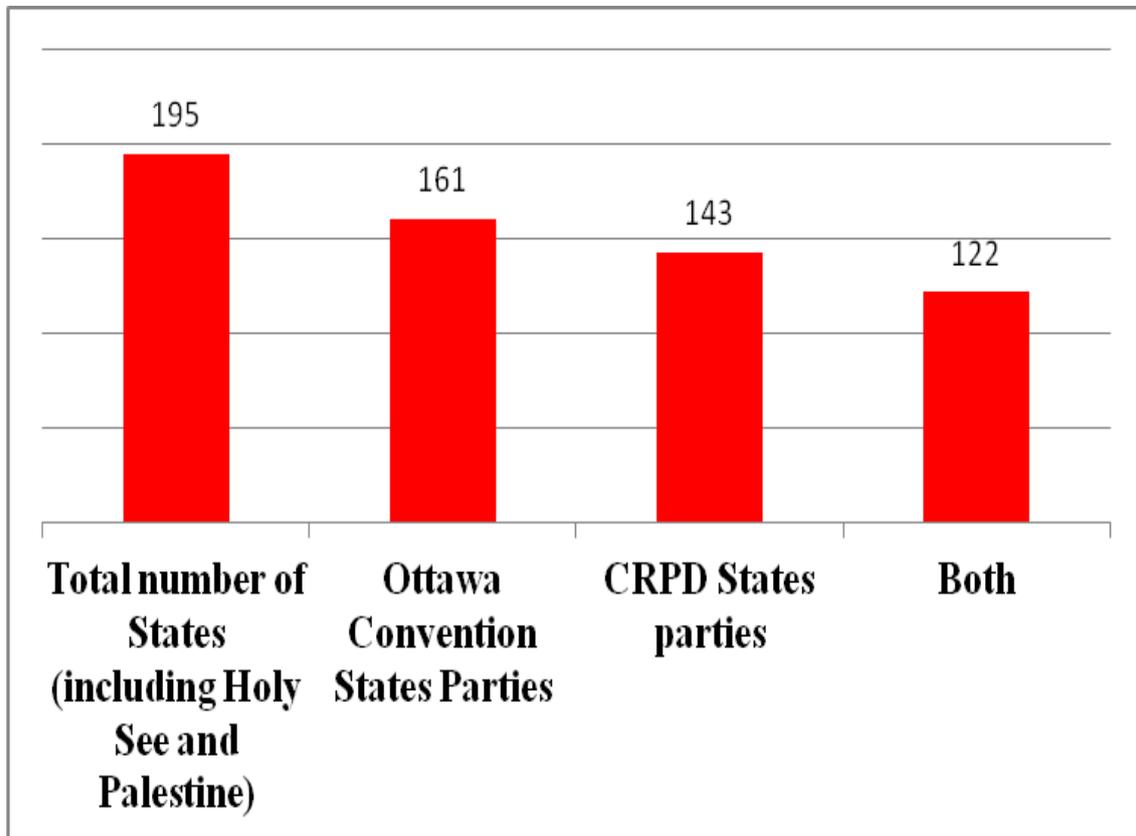
⁶ Algeria, Croatia, El Salvador, Kenya, Kuwait, Nicaragua, Poland, Serbia, Sudan, Thailand, Uganda, Yemen, and Zimbabwe.

⁷ Azerbaijan, Burma, India, Pakistan, Russian Federation, and the Republic of Korea.

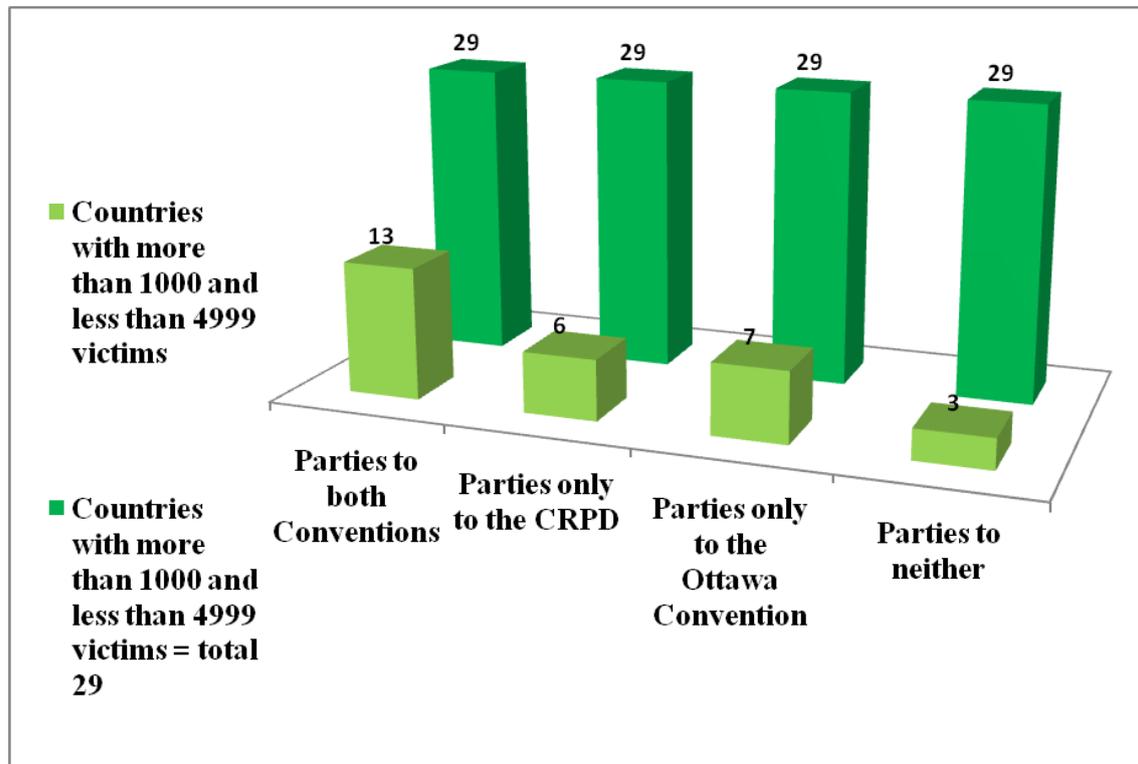
⁸ Chad, DR Congo, Eritrea, Guinea-Bissau, Somalia, and South Sudan.

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- Comparison between the status of the two Conventions



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- Mines and disability

The Cartagena Action Plan⁹ endorsed some of the concerns consecrated in the Convention on the Rights of Persons with Disabilities, and Maputo Action Plan could develop them even further, namely by raising the issue of long term sustainability of medical support programs to mine victims and by ensuring that non-discrimination is explicitly and permanently uphold regarding mine victim¹⁰.

The speech by the UN High Commissioner for Human Rights, Ms. Navi Pillay, who has strongly raised the issues of the two Conventions in December 2012 must be recalled here.

⁹ Cartagena Action Plan: “Action #29: Ensure the continued involvement and effective contribution in all relevant convention related activities by health, rehabilitation, social services, education, employment, gender and disability rights experts, including mine survivors, inter alia by supporting the inclusion of such expertise in their delegations”; Action #39: Support the national efforts of those States Parties with clearly demonstrated needs to develop their capacities to provide assistance to mine victims and other persons with disabilities by providing where possible multi-year financial, material or technical assistance in response to the priorities of the affected State to facilitate long-term planning, implementation and monitoring of victim assistance-related activities;

¹⁰ Cartagena action plan, para. 14 - States Parties 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.



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As the principle of non-discrimination is already well confirmed in the Cartagena Action Plan, concrete follow-up actions could be considered in the Maputo Action Plan, for instance, in terms of national legislation, access to education, access to the labour market¹¹, or by establishing comprehensive TMP (Training Management Packages) in which the disability issue could be deeply developed in order to ensure that a full empowerment of initially diminished communities is guaranteed, this would also be a way to ascertain ownership to local communities towards persons with disabilities.

¹¹ By doing so, Action #33 of the Cartagena Action Plan (“Raise awareness among mine victims about their rights and available services, as well as within government authorities, service providers and the general public to foster respect for the rights and dignity of persons with disabilities including mine survivors”) could be implemented.