



Protecting civilians from the use of explosive weapons in populated areas

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Humanitarian harm from the use of explosive weapons in populated areas

Civilian harm from the use of explosive weapons in populated areas has been highlighted as a top humanitarian priority¹ following the increase in recent years of conflicts taking place in urban settings resulting in high levels of civilian casualties. Data shows that when explosive weapons are used in populated areas, approximately 91% of those reported killed and injured are civilians.² In 2016, over 32,000 civilians were recorded killed or injured by explosive weapons, with Syria, Iraq, Yemen, Afghanistan, and Turkey having the highest numbers of civilian deaths and injuries, and with incidents of explosive violence taking place in 70 countries.³

Long-term harm and suffering

Beyond those killed and injured, an even greater number of civilians are affected as a result of damage to essential infrastructure and services. The bombing and bombardment of towns and cities destroys homes leaving people without shelter. Hospital buildings are damaged hampering the provision and quality of medical care to civilian populations in desperate need of it, making it additionally difficult to manage treatable injuries and diseases at a time when the civilian population is in desperate need of medical care.⁴ Damage to sanitation systems create additional problems around maintaining basic levels of hygiene, which can cause further onset of illness and diseases. In Yemen, the conflict has facilitated the onset of a severe cholera epidemic.⁵ The destruction of commercial buildings and transport infrastructure impedes access to, and availability of, vital provisions including food.⁶ Humanitarian access can be hampered, or stopped entirely, as humanitarian and relief organisations struggle to access particularly violent areas.⁷ Damage to electricity, energy, power further compound such problems, and in some instances prevents the civilian population from fleeing the area.⁸ The use of explosive weapons in populated areas represents one of the main causes of forced displacement. Countless civilians are driven from their homes and displaced, and suffer from psychological distress and trauma.⁹

Why is this issue a concern for African states?

¹ See for example UN Office in Geneva, 'World at a turning point: Heads of UN and Red Cross issue joint warning,' October 2015, <http://bit.ly/2v16jOc>

² Action on Armed Violence, 'Patterns of Harm: Five years of explosive violence 2011 – 2015', June 2016 <http://www.inew.org/site/wp-content/uploads/2016/08/Patterns-of-Harm.pdf>

³ Action on Armed Violence, 'Explosive Truths: Monitoring Explosive Violence in 2016, April 2017, <http://bit.ly/2waipCV>

⁴ See for example ICRC, 'Explosive weapons in populated areas: The consequences for civilians,' June 2015 <http://bit.ly/2weUp0u>, and Harvard Law School and PAX, 'Operating under fire: The effects of explosive weapons on healthcare in the East of Ukraine', May 2017, <http://bit.ly/2i41s8d>

⁵ ICRC, 'Yemen: Health system at breaking point as cholera epidemic spreads at unprecedented rate', June 2017, <http://bit.ly/2uLZWfx>

⁶ Landmine Action, 'Explosive violence: The problem of explosive weapons,' August 2009, <http://bit.ly/2vLJSrC>, and Handicap International, 'The use of explosive weapons in populated areas – it's time to act', 2016, <http://bit.ly/2x7WLvq>

⁷ See Insecurity Insight, 'Aid in Danger' <http://www.insecurityinsight.org/aidindanger/explosives/>

⁸ See for example ICRC, 'Explosive weapons in populated areas: The consequences for civilians,' June 2015 <http://bit.ly/2weUp0u> and Landmine Action, 'Explosive violence: The problem of explosive weapons,' August 2009, <http://bit.ly/2vLJSrC>

⁹ Article 36, 'The impact of explosive weapons on mental health and psycho-social wellbeing', September 2013, <http://bit.ly/1ATCBSO>

A number of African states have experienced the devastating impacts of armed violence, including the humanitarian harm resulting from the use of explosive weapons in populated areas – be it from incidents of state use, or non-state use, including air strikes in Libya, improvised explosive devices in Somalia, and the storage of explosive weapons in cities in the Republic of Congo and Mozambique, to name but a few examples. As one of the fastest urbanizing regions in the world, this is an issue of great importance to African states. In other processes established to address the humanitarian harm from the use of specific types of explosive weapons, such as antipersonnel landmines and cluster munitions, African states have played a leading role in the political processes that have sought to set new standards to prevent the harm from these weapons.

According to data gathered by AOAV, seventeen (17) countries in Africa have been affected by incidents of explosive violence in 2016: Burundi, Cameroon, Chad, Democratic Republic of the Congo, Egypt, Kenya, Libya, Madagascar, Malawi, Mali, Nigeria, Somalia, South Africa, South Sudan, Sudan, Tunisia, Uganda.

Explosive weapons with wide area effects

Most types of explosive weapons – which include, among others, aircraft bombs, artillery shells, rockets, grenades, missiles as well as improvised explosive devices - are designed for use in open battlefields, and not towns and cities where there is a concentration of civilians. Whilst there is a pattern of harm associated with explosive weapons in populated areas in general, the risk to civilians is most severe when the weapons have wide area effects. Wide area effects may result where an individual weapon has a large blast or fragmentation radius (for example heavy aircraft bombs), where multiple explosive munitions are launched at an area (for example multi-barrel rocket systems), where a weapon is not delivered accurately to the target (such as indirect fire mortars), or a combination of these factors. Use of such weapons puts civilians at a heightened risk of harm and is likely to result in the destruction of, or damage to buildings and infrastructure.

Explosive weapons and international law

International humanitarian law (IHL) sets out legal standards of behaviour for parties to armed conflict which must be applied even in the most desperate circumstances. Under IHL, direct attacks on civilians and civilian objects are prohibited, indiscriminate and disproportionate attacks are prohibited, and parties to an armed conflict are required to take feasible precautions in attack in order to avoid or minimize civilian harm.

There are, however, limitations to the extent that IHL can provide sufficient protection to civilians from the use of explosive weapons in populated areas. IHL guides states towards preventing direct death and injury to civilians in specific attacks, but it does not address the long-term, and indirect effects that the use of explosive weapons in populations has on the civilian population, including from the impact to buildings, infrastructure and services, which is both foreseeable and a cause of widespread harm to civilians. It is also focused on rules over individual attacks. As such, it is incumbent on states to assess the risk of harm to civilians on a case-by-case basis, rather than providing an explicit standard of behaviour, and subject to varying interpretation by states. IHL rules on the conduct of hostilities do not reflect detailed agreement on how the risk of harm from blast and fragmentation effects can be effectively addressed and reduced.¹⁰

Military policy and practice

Clearer guidance to states on this matter, could be developed in the form of national-level operational policies and procedures, which would not only help to reduce humanitarian harm and civilian suffering, but would also help to avoid non-compliance of IHL. The area effects of certain explosive weapons are already recognised in some military policy and practice as having a direct link to the risk presented to civilians.¹¹ However, this recognition is often dispersed across various policy and operational frameworks and differs amongst states. Such a recognition could be consolidated and addressed through the development of an international political declaration containing clear commitments to reduce harm from the use of explosive weapons in populated areas. This would include enacting a commitment against the use in populated areas of explosive weapons with wide area effects through national level operational policy, including military procedures and rules of engagement. There are already good examples of policy and practice that have been effectively developed and implemented to curtail the use of explosive weapons in populated areas in order to provide greater protection to civilians.¹²

¹⁰ Maya Brehm, UNIDIR, "Protecting Civilians from the Effects of Explosive Weapons: An Analysis of International Legal and Policy Standards" (2012)

¹¹ Article 36 and PAX, 'Areas of harm: Understanding explosive weapons with wide area effects', October 2016, <http://bit.ly/2dGaVLx>

¹² OCHA, 'Compilation of Military Policy and Practice: Reducing the humanitarian impact of the use of explosive weapons in populated areas, October 2017, <http://bit.ly/2ANCyhf>

Developing clear standards: an international political declaration on explosive weapons

The UN Secretary-General has called on states to engage constructively in efforts to develop a political declaration to address the harm caused by EWIPA.¹³ Discussions towards developing an international political instrument to address this humanitarian problem are ongoing, and already 70 states have spoken out on the issue of EWIPA.¹⁴ A political declaration would build on the basis provided by existing international law, including human rights and international humanitarian law, and provide practical commitments to reduce the impact of explosive weapons on civilians.

An international political declaration must promote actions that will reduce humanitarian harm from the use of explosive weapons in populated areas, and increase the protection of civilians living through conflict. A commitment to stop the use of explosive weapons with wide area effects in populated areas should be central to a declaration and would provide the best practical mechanism for reducing civilian harm. Whilst not a legally-binding commitment, a political declaration should seek to influence the behaviour of states by promoting a clear international standard of practice. A political declaration signed by a group of states would provide a tool that promotes operational policy and practice to better protect civilians, and a framework for states to work together to achieve that purpose.

A clear collective commitment on this vital humanitarian question is urgently needed.

The following 78 states and territories and 4 state groupings have publicly acknowledged the harm caused by explosive weapons in populated areas in statements¹⁵:

Afghanistan	Holy See	Panama
Angola	Hungary	Paraguay
Argentina	Iceland	Poland
Australia	Indonesia	Portugal
Austria	Ireland	Qatar
Azerbaijan	Italy	Romania
Bangladesh	Japan	Republic of Korea
Belgium	Jordan	Republic of Moldova
Benin	Kazakhstan	San Marino
Botswana	Latvia	Slovakia
Brazil	Liechtenstein	Slovenia
Bulgaria	Lithuania	Somalia
Canada	Luxembourg	South Africa
Chile	Madagascar	Spain
Costa Rica	Malaysia	Sri Lanka
Croatia	Mali	Sweden
Cyprus	Malta	Switzerland
Czech Republic	Mexico	Thailand
Denmark	Monaco	Togo
Estonia	Montenegro	Tunisia
Finland	Mozambique	Turkey
France	Netherlands	Ukraine
Gabon	New Zealand	United Kingdom
Germany	Nigeria	United States
Greece	Norway	Uruguay
Guatemala	State of Palestine	Zambia

¹³ Report of the Secretary-General on the protection of civilians in armed conflict' (S/2017/414).

¹⁴ See: <http://www.inew.org/acknowledgements>

¹⁵ See: <http://www.inew.org/acknowledgements>

