



## INEW Input to the EWIPA Talks Workshops

16 October 2018

This submission comprises key messages INEW and its member organisations have included in presentations and interventions at the EWIPA Talks workshops in Geneva in 2018. This summary is for ease of reference and consideration as input ahead of the development of the working paper for the CCW meeting of High Contracting Parties.

### **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 an **urgent humanitarian priority** as the growing tendency for conflicts to be fought in urban settings results in high levels of civilian casualties and destruction of civilian objects. Data shows that when explosive weapons are used in populated areas, approximately 91% of those reported killed and injured are civilians.

Beyond those killed and injured, an even greater number of civilians are affected as a result of **damage and destruction to essential infrastructure and services**. The bombing and bombardment of towns and cities destroys homes leaving people without shelter, is a driver and cause of forced displacement, and in some instances prevents the civilian population from fleeing the area. 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 treatment. Damage to sanitation systems creates further problems in maintaining basic levels of hygiene, which can cause result in the onset of illness and diseases. The destruction of commercial buildings and transport infrastructure impedes access to, and availability of, vital provisions including food. Humanitarian access can be hampered, or stopped entirely, as humanitarian and relief organisations struggle to access particularly violent areas. Damage to electricity or other forms of power further compound such problems.

Studies are increasingly being conducted into the differentiated impact of explosive force on **children** compared to adults, as well as on mental injury caused by exposure to explosive force.

The use of explosive weapons also has a **gendered impact**. Research has shown that female survivors of landmine explosions tend to suffer greater stigma than men as a result of injury, disfigurement or disability. For pregnant women, exposure to blast effects can cause miscarriage, and lack of access to medical care exacerbates threats to women's health in pregnancy and childbirth. Societal effects include increased domestic violence where men are unable to provide for their family. Women find access to work much harder in many societies than men do, and their role as single provider for a household is much harder than for a man.

Women displaced by EWIPA use have a higher risk of Gender Based Violence including harassment, domestic violence, rape, trafficking, forced prostitution, and other crimes that are disproportionately targeted towards women. Further, the destruction of infrastructure also makes it even more difficult for humanitarian organisations or UN relief to reach marginalised women.

The **long-term reverberating effects** are extensive and varied, ranging from death, injury, disease, mental trauma, damage to civilian objects, displacement, lack of access to education, health care or agricultural land, loss of livelihoods, and unemployment and a negative impact on development. The effects of an attack using explosive weapons can have severe cumulative effects, due in particular to essential services in urban areas being interconnected and interdependent. The reverberating effects of attacks using explosive weapons are multiplied in urban areas because the dependency of civilians on such services is greater.

### **The legal framework**

Explosive weapons are not defined or regulated as a category under international law, but their use must comply with international legal rules. Notable in this regard is the prohibition on indiscriminate attacks, the prohibition on disproportionate attacks, and the obligation to take precaution in attack. These rules are universally agreed, but **states have differing interpretations of what these legal rules require in the context of the use of EWIPA**, and commanders have differing interpretations of how those legal requirements apply to particular situations.

Despite assertions that international humanitarian law is sufficient, we continue to see a **high degree of civilian harm from the use of explosive weapons in populated areas** – including harm caused by actions which do not deliberately target civilians, and by actors who claim to be in full compliance with the law. The law, on its own, does not make it clear that commanders should understand the area effects that different explosive weapons may produce, in different contexts and in different configurations of use. And the law does not explain how to incorporate such an understanding into the application of specific legal rules.

For these reasons, **simply asserting a need for compliance with the law does not effective action to address the humanitarian harms** caused by the use of explosive weapons in populated areas. Rather an effective response must entail the elaboration of a common understanding of these norms so that this harm is effectively and sustainably reduced.

**IHL compliance will not sufficiently address the cumulative, complex and long-term pattern of harm that results from the use of EWIPA.** Compliance with the law is determined with reference to the impact of individual attacks at the time those attacks took place. It is not determined on the basis of the cumulative impact on civilians of multiple attacks (which may have been lawful in isolation) over a period of time. This is a problem because the humanitarian harm resulting from the use of EWIPA stems precisely from the cumulative, complex and long-term impact of multiple attacks over a period of time. Thus, even full compliance with the law (to the extent to which this can be judged.) will not address the long-term harm resulting from the use of EWIPA that we see today.

It is vital to promote respect for IHL by **establishing a normative boundary against practices that bear a significant likelihood of indiscriminate effects** – and to further develop operational policies and procedures that can work systematically to avoid harm to civilians. Such policies and procedures should ensure that commanders **understand the area effects of the explosive weapons under their control, and have systems in place to avoid their use** where these effects can be expected to extend beyond the intended target.

**The development of international standards on the use of explosive weapons in populated areas would ultimately contribute to strengthening the framework of international law** to protect civilians from harm during armed conflict. The development of such standards could not only set an important political and operational direction for parties to armed conflict to avoid using explosive

weapons with wide area effects in populated areas, but also provide a framework for states to develop national measures and guidance, and contribute to assisting survivors and their communities and addressing civilian harm from the effects of explosive weapons.

### **Military and operational policies and practice**

Following the rise in urban warfare and increase in use of explosive weapons in populated areas, and consequent high levels of civilian harm, it is clear that **there is an urgent need to revise and adapt military policies and practice** to provide better protection to civilians in conflict. Too often heavy explosive weapons, designed for use in open battlefields, are being used against military objectives in populated areas with severe consequences for civilians.

**Of particular concern are explosive weapons with wide area effects.** Wide area effects can result from three factors: explosive weapon systems that have a large blast and fragmentation radius (large aircraft bombs), are inaccurate (indirect fire weapon systems), or that fire multiple munitions over a wide area (multiple launch rocket systems), all of which present a high likelihood of the weapon's effects going significantly beyond the intended target.

Understanding the area effect of a weapon system is of central importance. Within certain military policies and procedures there is already **recognition that the scale of the area effect of a weapon is a central and direct technical factor that influences the likely level of civilian harm.** For example:

- **Collateral Damage Estimation Methodologies** factor in target size, area effects of the weapons and population density and seek to restrict these area effects in an effort to prevent harm, but there are limitations. They are used predominantly for planned attacks, rather than in dynamic targeting; they produce a working estimate, not a specific prediction; as a matter of process, the outcome of specific attacks is not consistently compared to the estimate to check for efficacy; and they may not effectively factor in long-term harm and reverberating effects.
- **Effective targeting procedures, including weapon target matching or weaponeering**, also requires understanding the area effect of a weapon in assessing its suitability for application of force on a target, and can be a process that identifies whether a weapon's effects will extend beyond the target. Such approaches however, **emphasise achieving the desired effect on the target itself**, rather than considerations over the likely humanitarian impact, especially in the long term.
- There are also numerous **technical factors** that can influence the area effects in a particular configuration of use: fusing, angle of attack, the delivery system being used, the distance from which a weapon is launched, amongst other things. Some of these factors can be adjusted to reduce area effects, but there are limits to how far such adjustments can mitigate the scale of area effects presented by certain types of weapons. This means that **when used in populated areas, against most specific targets, it can be assumed that explosive weapons with wide area effects will extend too far.**

Drawing on recommendations from the UN Secretary General and the ICRC, the most effective way to prevent humanitarian harm is to establish a **presumption against the use of explosive weapons with wide area effects in populated areas**, also referred to as the avoidance principle. Without a clear recommendation to armed forces to avoid use of explosive weapons with wide area effects in populated areas, other measures are proving insufficient in and of themselves to provide adequate protection to civilians.

A clear **normative international standard specifically developed against the use of explosive weapons with wide area effects would provide the most effective response to the humanitarian harm we are concerned about.** A new international standard could promote these central concerns

over the area effects of heavy explosive weapon systems, and build stronger assumptions or presumptions about where they should not be used.