



Mine Action Review statement on Afghanistan's Article 5 Deadline Extension Request

Agenda Item 9: Presentation of requests submitted under Article 5 and of the analysis of these requests

APMBC Twentieth Meeting of States Parties, 21–25 November 2022

Thank you, Mr. President and to the representative from the Permanent Mission of Afghanistan in Geneva.

I am delivering this statement on behalf of Mine Action Review.

Afghanistan is a key State Party to the Convention, and one in which anti-personnel mine contamination has a huge impact and poses a significant humanitarian risk to the lives, limbs, and livelihoods of civilians.

Mine Action Review understands the complexity of the situation following the takeover by the Taliban in August 2021. We want to see Afghanistan remain in compliance with all provisions of the Treaty and for Afghanistan's extension request to be granted by States Parties at 20MSP this week.

At the same time, it is important to address the issue of which entity is bound directly by the provisions of the Mine Ban Convention, including the prohibitions on production, stockpiling, transfer, or use under Article 1 of the Convention as well as by the duty to destroy or ensure the destruction of anti-personnel mines in Afghanistan under Article 5 and the duty to report on progress under Article 7.

Under international law, it is the entity that is in effective control of sovereign territory and the armed forces that represents any State in question for the purpose of the Anti-Personnel Mine Ban Convention (and other disarmament treaties to which Afghanistan is a party, such as the 1992 Chemical Weapons Convention or the 2008 Convention on Cluster Munitions). That is so, notwithstanding whether that governmental authority is recognised as such by other States or the United Nations. The comprehensive change in governing regime means that Afghanistan as a State Party to the Mine Ban Convention is now represented by the Taliban authorities. Since the change of regime, the Islamic Emirate of Afghanistan (IEA) has affirmed its commitment to fulfilling its obligations in relation to the Anti-Personnel Mine Ban Convention.

While it is Afghanistan's Permanent Mission in Geneva that submitted the extension request being considered this week, the Directorate of Mine Action (DMAC)'s Director in Kabul informed Mine Action Review in August 2022 that it had not prepared the extension request but accepted it as "the best possible solution for continuing mine clearance operations in Afghanistan in the current circumstances." The Permanent Mission in Geneva no longer represents the State of Afghanistan and therefore, a priori, the extension request it submitted was not valid under the Mine Ban Convention or general international law. That said, under international law, conduct that is not ordinarily attributable to a State may be considered an act of that State "if and to the extent that the State acknowledges and adopts the conduct in question as its own". As such, we believe the Article 5 deadline extension request being considered this week is valid.

We regret, however, that it has not been possible to consider a substantive extension request containing information on the remaining challenge and a detailed work plan for addressing it. This



also highlights the important issue of how the change of government is posing problems for treaty implementation.

The issue of recognition/non-recognition of the Taliban government by States Parties and the UN, should not prevent the application of international law and ability of the Islamic Emirate of Afghanistan to fulfil its legal obligations under the Mine Ban Convention, including through Article 7 transparency reporting and through updates during treaty meetings. Afghanistan has consistently submitted annual Article 7 reports, but as yet it has not submitted an Article 7 report this year. Engagement with DMAC will also be crucial in preparation of Afghanistan's follow-on Article 5 deadline extension request, which will be due to be submitted by the end of March 2024.

If treaty implementation and mine clearance are to proceed efficiently, the Mine Action Programme of Afghanistan must have effective coordination. We call on donors to ensure funding for an effective coordination mechanism, to enable Afghanistan to comply with its obligations to destroy emplaced mines as soon as possible.

Thank you.