

# COMMENTS ON THE REVISED DRAFT POLITICAL DECLARATION ON THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM  
FEBRUARY 2021

WILPF welcomes the revised draft political declaration on the use of explosive weapons in populated areas (EWIPA), circulated by the government of Ireland in January 2021.

This draft declaration has been improved in some ways from the March 2020 draft, including by removing some of the language from the first draft that suggested the use of EWIPA will continue regardless of the declaration. This is important, as it is imperative that the political declaration promote a presumption *against* the use of explosive weapons in populated areas.

Unfortunately, as currently written, the declaration is still insufficient in several critical ways, including:

- The core commitment, which should be for all parties to conflict to stop or end the use of explosive weapons with wide area effects in populated areas, still only urges armed forces to restrict such use. It gives the impression that some use of EWIPA may be legitimate, except in narrow circumstances where wide area effects causing harm is anticipated.
- Further, the draft declaration suggests that bombing in towns and cities “can” cause some harm to civilians, indicating uncertainty on this point, when in reality the patterns of violence are well documented by civil society and humanitarian agencies. The data we have demonstrate that the use of explosive weapons leads to devastating and long-lasting physical, social, psychological, environmental, and economic harm.
- The increased references only to explosive weapons with wide area effects also unnecessarily diminishes the scope of the declaration. Some elements of the declaration require actions broader than a narrow focus on wide area effects, such as data collection and assistance to affected communities, including victims. Limiting the scope of the text in this way lacks a moral justification for doing so, as it suggests that civilian harm does not arise from explosive weapons that do not have wide area effects.
- The text should also provide more detail in describing wide area effects, including factors resulting from blast and fragmentation, as well as inaccuracy of delivery, and/or the projection of multiple firings or multiple warheads across an area. Further, it should include an explanation that these factors result in the significant likelihood that the effects extend beyond, or occur outside the specific military objective, presenting a significant risk of harm to civilians when used in populated areas.
- By focusing on actions related to international humanitarian law (IHL), which are already separate legal obligations, the draft misses opportunities to drive actions that have central significance to this issue. This declaration should promote understandings and assessments of the area effects of explosive weapons, the specific contexts of use, and measures to protect civilians, civilian infrastructure, and the environment, including by ending the use of EWIPA.



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The following provides some commentary and recommendations from WILPF on the revised draft declaration that we hope can be taken into consideration during the next round of consultations in this process.

## TITLE

The revised title now refers to “consequences that can arise” from the use of EWIPA, specially from the use of explosive weapons with wide area effects. This diminishes the very real consequences from the use of all EWIPA, suggesting that only certain types of weapons may result in certain harms. Given the unconscionable levels of death and destruction currently caused by bombing of towns, cities, and villages, it is imperative that the declaration becomes a meaningful tool for strengthening civilian protection and preventing human suffering and environmental degradation. This must begin with its title, which should reflect the severity of the lived reality of those who have experienced bombing and bombardment.

## SECTION 1

**1.1** suggests that conflict will become “more protracted, complex and urbanised” and that the number of civilian casualties will continue to increase. Instead of accepting this as inevitable, the declaration should emphasise that states must take action now to prevent and end the practices that lead to armed conflict and that result in human suffering and environmental degradation. This section should refer broadly to EWIPA, and not just those with “wide area effects”.

**1.2** should reference and describe direct, indirect, and reverberating effects (or do so separately). The description here of reverberating effects is improved from the first draft, though expanded explanations could be helpful to explain the difference between direct, indirect, and reverberating effects. This paragraph could also more extensively describe the various types of harms caused by the use of EWIPA, including civilian death and injury, psychological and psychosocial harm, and gendered impacts.

The suggestion in this paragraph that the use of EWIPA “can” have the impacts described is insufficient; it *will* have these effects and that should be stated clearly.

**1.3** states that the “the destruction of housing, schools and cultural heritage sites further aggravates civilian suffering,” but as these are some of the core damages that cause suffering and death, this phrasing risks creating a hierarchy between suffering caused by the destruction of hospitals, energy networks, and water and sanitation systems and that caused by the destruction of homes and schools, etc. The destruction of hospitals, markets, and communications and transport infrastructure should also be included in this section. Impacts on other services such as education and food security should be included, as well as longer-term impacts on livelihoods and social and economic justice.

Instead of saying “urban warfare can also result in psychological and psychosocial harm to civilians,” the declaration should specifically reference the use of EWIPA, or living with bombing and bombardment, and it should acknowledge that such practices lead to traumatic experiences. The declaration should also mention the effects on people with physical and mental disabilities, as the psychological and physiological harms can disproportionately affect such people and exacerbate existing conditions.

The added references to the environmental harm caused by EWIPA are welcome—though the word “natural” should be removed and again, this provision is diminished by the suggestion that such effects are merely possible rather than inevitable or at least likely, and by limiting it to explosive weapons with wide area effects.

**1.4** should separate out displacement and Sustainable Development Goals, as the challenges to the SDGs do not just arise from displacement but from all of the effects described in the preamble.

The reference to explosive remnants of war (ERW) has been replaced with unexploded ordnance. This

should change back, as ERW is an established term with specific frameworks of responsibilities and actions. It would also make it consistent with 3.5, which does reference ERW. Further, 1.4 should specify that ERW *does* impede the return of displaced persons and cause further casualties, rather than only saying it *can* do so.

**1.5** is vastly improved in removing the references to the “inherent difficulties” of using EWIPA.

**1.6** could be moved to the end of section 2.

**1.7** includes too many caveats on data collection and sharing. Data collection should be mandatory, and the widest possible sharing of data should be encouraged.

It should call for collection of data on the types, locations, and effects of weapon(s) used, in order to better track which weapon systems are causing harm. This will be relevant for understanding the impacts of particular weapons as well as for making arms transfer assessments as mandated by the Arms Trade Treaty and other relevant instruments.

Data collection should also include disability along with sex and age. Furthermore, the declaration should note that sex must not be used as a presupposition of civilian status, as it has been in certain drone strike targeting practices.<sup>1</sup>

The declaration should note that investigations should be conducted into all credible allegations of civilian harm. It should also note the importance of sharing of data and transparency in reporting, which can inform understandings of the impacts and responses.

**1.8** has too many elements and should be divided up. The first and third sentences could be brought together regarding raising awareness and addressing the impacts and consequences of the use of EWIPA. This should not just be limited to explosive weapons with wide area effects.

The call for “further research into potential gendered impacts” should delete the word potential, as it is already known that there are gendered impacts of all armed conflict. The call for research could perhaps also be moved to section 3 or 4 as an operative commitment, while 1.8 should acknowledge that there are gendered impacts of the use of EWIPA.<sup>2</sup> Again, this paragraph should include all EWIPA, not just those with wide area effects.

## SECTION 2

**2.1** does well to reference the accountability for IHL and human rights violations and for ending impunity, and is well strengthened in reference to obligations not just commitments. Emphasising that the law needs to be implemented “in particular within populated areas” is unnecessary.

**2.2** should remove the reference to “with wide area effects,” as IHL deals with all use of EWIPA.

**2.4** still gives the UN Security Council too much credit for strengthening the protection of civilians and compliance with IHL. Among other problems, the permanent members of the Security Council profit from transferring weapons that are used in populated areas and most use their veto to prevent action to protect civilians if that will interfere with those profits. It’s not clear what this paragraph adds to the political declaration.

## SECTION 3

The key policy commitments, in 3.3 and 3.4, should come first in this section and the other commitments should flow from those.

**3.1** should remove “where necessary,” as it is necessary to continuously improve national policy in response to growing understandings of harm and ways to prevent it. This point should drive specific actions for protecting civilians from the use of EWIPA by adding that states should develop policy and practice with regard to the protection of

civilians during armed conflict in populated areas, in particular from the use of EWIPA.

**3.2's** commitments on training should focus on actions that are of central significance to this declaration, such as assessing and understanding the area effects of weapons, the specific contexts of use and specificities of the urban environment, and measures to protect civilians and avoid civilian harm, rather than IHL, which is already a legal requirement.

**3.3** has improved slightly by no longer referencing “the immediate area” of a military objective. However, the qualifier of “when the effects may be expected to extend beyond a military objective” is still far too weak. It gives the impression that some use of EWIPA may be legitimate, except in narrow circumstances where wide area effects causing harm is anticipated in advance.

This paragraph, which contains the core commitment of the declaration, must be made much stronger in order to truly prevent human suffering from the use of EWIPA. The commitment should be to **stop** or **end** the use of explosive weapons with wide area effects in populated areas rather than to restrict such use. As Human Rights Watch and the International Human Rights Clinic of the Human Rights Program at Harvard Law School point out, such a commitment would have the greatest impact on preventing civilian harm.<sup>3</sup> Furthermore, IHL already restricts the use of EWIPA. It is imperative that this declaration promote the presumption of non-use of EWIPA rather than normalise it or suggest that certain use is acceptable, which will only undermine existing IHL and lead to civilian harm.

**3.3** and **3.4** frame the commitments in terms of armed forces, whereas other commitments in this section do not specify which entities are responsible for implementation. It would be better to remove the specification of armed forces here.

**3.5** could reference risk education and reduction in the context of explosive remnants of war.

**3.6** should focus on dissemination and understandings of the operative commitments in this political declaration to the parties to armed conflict, rather than disseminating IHL, which is already a legal obligation.

## SECTION 4

**4.1** should remove the reference to “good practice” in reference to armed forces as the only good practice is to abolish militaries, which are inherently violent, undermine peace and security, and waste financial and human resources necessary for achieving social, economic, and environmental justice and equality. Instead, 4.1 should urge international cooperation and assistance among all relevant stakeholders to exchange information and experiences in enhancing the protection of civilians, ending the use of EWIPA, and preventing armed conflict.

**4.2** includes too many caveats on data collection and sharing. Data collection should be mandatory, and the widest possible sharing of data should be encouraged. The reference to “where appropriate” in terms of data sharing is problematic; data should always be shared in order to help prevent civilian harm.

As noted earlier, commitments on data collection in the declaration should call for collection of data on the types, locations, and effects of weapon(s) used, in order to better track which weapon systems are causing harm, as well as an explicit commitment to casualty recording and recording of destruction and damage to infrastructure. Data collection should also include disability along with sex and age.

The declaration should note that investigations should be conducted into all credible allegations of civilian harm. It should also note the importance of sharing of data and transparency in reporting, which can inform understandings of the impacts and responses.

Indirect and reverberating effects are conflated again here (as in the preamble); both should be included here. Data collection and sharing should be on all use of EWIPA, not just that with wide area effects. The reference to “our military operations” should be removed.

**4.3** should refer to all use of EWIPA, not just that with wide area effects. The word “relevant” in qualifying civil society should be removed. The removal of the language about complementing and supporting states is very welcome.

**4.4**’s commitment to “make every effort” in relation to victim assistance is not strong enough; a state’s human rights obligations are in force even during or after armed conflict. It should instead say: “Provide, facilitate, and support assistance to victims”. This commitment also needs to acknowledge that families and communities are included as victims.

The “post-stabilisation” reference should be deleted. This para, or a separate one, could refer to “supporting humanitarian responses” or other language that reflects a commitment to humanitarian programming. The provision on supporting humanitarian relief efforts (previously 4.5) should be reinserted and strengthened to urge all parties to armed conflict to provide and facilitate rapid and unimpeded access for principled humanitarian relief in line with international norms and standards for providing principled and inclusive humanitarian assistance.

**4.5** has added unnecessary qualifications around the provision of support, which should be deleted—such as “as appropriate”. The phrase “that can arise from” should also be deleted, as this undermines the reality that the use of EWIPA does result in harm.

**4.6** should reference all use of explosive weapons, not just those with wide area effects.

It should be made clear that meetings under the declaration are aimed at reviewing humanitarian consequences arising from the use of EWIPA and implementation of the political declaration and universalisation, not compliance with IHL. Meetings of the declaration should provide the agenda for work and broader framework of activities to be carried out under this declaration rather than a suggestion types of activities which could be undertaken by some actors. The declaration should be careful to avoid inadvertently suggesting implementation is undertaken exclusively or primarily by military actors and risking excluding humanitarian and civil actors in this function concerned with humanitarian protection.

## NOTES

1. See *Sex and drone strikes: gender and identity in targeting and causality analysis*, Reaching Critical Will and Article 36, October 2014.
2. The declaration could recognise differential experiences of men, women, boys, girls, and non-binary people (without lumping together “women and girls”). It is more straightforward and there is less risk of exclusion or reinforcing binaries to use language recognising gendered impacts and experiences.
3. *A Commitment to Civilians: Precedent for a Political Declaration on Explosive Weapons in Populated Areas*, Human Rights Watch and International Human Rights Clinic, Human Rights Program at Harvard Law School, November 2019.

**This submission was prepared by Ray Acheson, Director of Reaching Critical Will.** For more resources on EWIPA and the political declaration process, see [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org) and [www.inew.org](http://www.inew.org).