



**CAMPAÑA COLOMBIANA
CONTRA MINAS**
Miembros de la Campaña Internacional
para la prohibición de las Minas - ICBL

 **Northwestern Law**
Bluhm Legal Clinic Center for International Human Rights

Violations by Colombia of:

- 1. The obligation to respect and ensure the rights to life and security of person, and**
- 2. The obligation to provide adequate remedies to victims and surviving family members**

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Human Rights Committee
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Submitted by:

Compañía Colombiana Contra Minas (Colombian Campaign Against Mines)

Center for International Human Rights of Northwestern University, Pritzker School of Law

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I. Introduction and Summary

Deaths and injuries as a result of State policy

For the past ten years, Colombia has pursued a policy of sending poor campesinos to conduct forced manual eradication of coca crops in remote areas of the country – areas where landmines are commonplace and where illegal armed groups often have more presence than the Government. “Mobile eradication groups” of about 28 workers are recruited in towns and transported to camps in remote areas where they spend roughly two months uprooting and destroying coca plants. As the Colombian Government is well aware, illegal armed groups operating in these remote areas plant landmines in and around coca plants to protect their illicit crops. Eradicators are also vulnerable to armed attacks by groups opposed to the forced eradication of the coca crops.³

¹ Campaña Colombiana Contra Minas (Colombian Campaign Against Mines) (“CCCM”) is a non-governmental organization whose aim is to prevent and redress the human suffering caused by landmines. CCCM works to prevent landmine deaths and injuries through mine risk education workshops and advocacy of appropriate governmental policies. It provides support and advice to landmine victims, their families, and their communities to protect their rights and assist them in their physical, psychological and social rehabilitation. CCCM is a member of the International Campaign to Ban Landmines, the 1997 Nobel Peace Prize Laureate. *See* Campaña Colombiana Contra Minas, <http://www.colombiasinminas.org/>.

² The Center for International Human Rights of Northwestern University School of Law (“CIHR”) is a nongovernmental, non-profit organization dedicated to human rights education and to legal and policy-focused human rights advocacy within the United States and worldwide. CIHR, which is in consultative status with the UN Economic and Social Council (ECOSOC), conducts legal research, compiles reports, and represents individual and NGO clients in cases and projects addressing violations of human rights. *See* Center for International Human Rights of Northwestern University School of Law, <http://www.law.northwestern.edu/legalclinic/humanrights/>.

³ *See* Section II, *infra*, for additional facts about Colombia’s forced manual eradication program and the reasons why this work is so unduly dangerous. Thereafter, Section III provides facts regarding deaths and injuries and the suffering they have caused. Section IV recounts the victims’ inability to obtain adequate health care and compensation. In addition to other sources as cited, this report relies on the personal experiences of a group of

Many civilian eradicators have been killed and many more have been injured as a result of the State's use of civilians to conduct forced manual eradication. At least 58 civilian eradicators have been killed by landmines and nine more have been killed in armed attacks against the eradication missions.⁴ In addition to the dead, 356 civilian eradicators have been injured in landmine explosions, and 65 more have been injured in armed attacks.⁵ These injuries include loss of limbs, severe shrapnel wounds, and debilitating psychological damage.⁶ More will be killed or injured unless this policy is ended.

These deaths and injuries have caused tremendous suffering. This suffering has been exacerbated by Colombia's failure to provide adequate medical care and compensation to those who have been injured, and by its failure to provide adequate compensation to the widows and children of those who have been killed.

Violations of articles 2(1), 2(3), 6 and 9 of the Covenant

The State's use of civilians rather than military personnel to conduct forced manual eradication in areas riddled with landmines and vulnerable to attack by illegal armed groups violates its obligations under the International Covenant on Civil and Political Rights ("Covenant"). Under articles 2(1), 6 and 9 of the Covenant, Colombia has an obligation to protect and ensure the rights to life and security of person. This includes the obligation to protect individuals "against acts committed by private persons or entities that would impair the enjoyment of Covenant rights."⁷ States parties are obliged "to protect individuals from foreseeable threats to life or bodily integrity" at the hands of non-State, as well as State, actors.⁸ As a State party to the Mine Ban Treaty,⁹ Colombia has a specific obligation "to ensure the effective exclusion of civilians" from all areas where the presence of landmines is known or suspected.¹⁰ Although it is not this Committee's function to assess a State's compliance with other treaties, the Mine Ban Treaty provides useful guidance in assessing whether the rights to life and security of person are

victims of Colombia's forced manual eradication program. These victims were interviewed by, and their written declarations detailing their experiences were obtained by, Compañía Colombiana Contra Minas and the Center for International Human Rights of Northwestern, during spring and summer 2014. The victim's declarations are in the possession of CCCM and CIHR. For the protection of their identities, only their initials are used in this report instead of their full names.

⁴ Letter from Jairo Cabrera Pantoja, Director of the Program against Illicit Crops [*Director del Programa contra Cultivos Ilícitos*], Special Administrative Agency for Territorial Consolidation [*Unidad Administrativa Especial para la Consolidación Territorial*], to Diego Cebas Lapeña, Ref. No. 20154000022891, at 4 (Mayo 12, 2015) (in file with the author) ["May 2015 Letter from the Director of the Program against Illicit Crops"].

⁵ *Id.*

⁶ See Section III, *infra*.

⁷ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) ["General Comment 31"].

⁸ Human Rights Committee, General Comment 35, Liberty and security of person, ¶ 9, U.N. Doc. CCPR/C/GC/35 (2014).

⁹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Oslo, Norway (18 Sept. 2007), *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-5&chapter=26&lang=en ["Mine Ban Treaty"].

¹⁰ *Id.*, Art. 5.

violated when a State knowingly deploys civilians to areas where the presence of landmines is known or suspected.¹¹

The State's obligations under articles 2(1), 6 and 9 are not diminished by the fact that no one is forced to join a mobile eradication group. While it is true that no one is *directly* forced to work as an eradicator, those who agree to undertake such dangerous work are *indirectly* forced to do so by their poverty and lack of alternative opportunities.¹² As has been recognized by the U.N. Special Rapporteur on Extreme Poverty and Human Rights, "[e]xtreme poverty can be a *cause* of specific human rights violations, for instance because the poor are forced to work in environments that are unsafe and unhealthy."¹³ Colombia's use of campesinos to conduct forced manual eradication in such dangerous areas exploits the extreme poverty of the eradicators, in violation of the State's obligation to protect and ensure the rights to life and security of person.

Under articles 2(3), 6 and 9, Colombia has an obligation to make reparations to individuals whose rights to life and security of person have been violated,¹⁴ and to take measures to prevent a recurrence of the violation.¹⁵ The obligation to make reparations requires Colombia to provide adequate physical, mental health, and rehabilitative care to those who have been injured in its forced manual eradication program, and to provide appropriate compensation to the injured and to the widows and children of the dead. Colombia's failure to do so, as detailed below, violates this obligation. Additionally, the obligation to prevent a recurrence is violated so long as Colombia continues to deploy civilians to conduct this dangerous work.

Impact of the current Colombian peace process

Colombia is now engaged in peace talks with the largest of the illegal armed groups, the FARC, and the parties hope that an agreement formally ending the armed conflict between Colombia and the FARC will be reached by the target date of March 2016.¹⁶ This is an extremely encouraging development, and Colombia is to be applauded for its efforts in the peace process.

But notwithstanding this positive development, it is still important for the Human Rights Committee to address the violations of Covenant rights and obligations discussed in this report.

¹¹ Cf. Human Rights Committee, General Comment 29, States of Emergency (article 4), ¶ 10 U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) ("Although it is not the function of the Human Rights Committee to review the conduct of a State party under other treaties, in exercising its functions under the Covenant the Committee has the competence to take a State party's other international obligations into account when it considers whether the Covenant allows the State party to derogate from specific provisions of the Covenant."). See also, e.g., Human Rights Committee, General Comment 35, Article 9 (Liberty and Security of Person), ¶ 62, U.N. Doc. CCPR/C/GC/35 (2014) (citing standards under another treaty, the Convention on the Rights of the Child, in interpreting Covenant obligations).

¹² See, e.g., Declaration of LCA, ¶ 3; Declaration of ESO, ¶ 3.

¹³ United Nations Office of the High Commissioner on Human Rights, Special Rapporteur on extreme poverty and human rights, *available at* <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx> (last visited: Dec. 16, 2015).

¹⁴ General Comment 31, *supra* note 7, ¶ 16.

¹⁵ *Id.*, ¶ 17.

¹⁶ Aljazeera English, *Is a peace deal possible in Colombia?* (16 Dec. 16), *available at* <http://www.aljazeera.com/programmes/insidestory/2015/12/peace-deal-colombia-151216183359108.html>

First, assuming a peace agreement is reached with the FARC, it will remain to be seen how fully the agreement will be honored. For example, there remains a danger that mid or low-level FARC commanders may splinter from the FARC and continue to engage in hostilities.¹⁷ Second, the current negotiations are only with the FARC, which is not the only illegal armed group operating in Colombia. Both the ELN and groups formed from the former paramilitary organization AUC also engage in armed violence in Colombia, and they are not parties to the peace talks.¹⁸ Third, even if all ongoing hostilities were to cease, civilians still should not be sent to conduct forced manual eradication operations until the coca fields where they will work are pronounced clear of landmines, in accordance with the rigorous international standards for mine clearance.¹⁹ Fourth, the obligation to protect and ensure the rights to life and security of person includes the obligation to provide adequate reparations to victims, to enable them so far as possible to enjoy a life with dignity. Up to now, Colombia has not fulfilled this obligation.

Proposed questions for List of Issues

Accordingly, we respectfully urge this Committee to include the following questions in its List of Issues for Colombia:

1. Will Colombia agree to use military personnel rather than civilians if it chooses to continue conducting forced manual coca eradication operations?
2. What measures will the State take to ensure that each person injured while working in Colombia's forced manual eradication program receives comprehensive health care to enable the fullest possible recovery from his injuries, including physical health care, mental health care, and rehabilitative care?
3. What measures will the State take to ensure that each person injured while working in Colombia's forced manual eradication program, and the widows and children of those who were killed, receives adequate compensation? What measures will the State take to ensure that the widows and children of those who were killed, as well as eradicators whose physical and/or mental health injuries make it impossible for them to support themselves and their families adequately, receive pensions in an amount that will allow them to enjoy a life with dignity?

¹⁷ See, e.g., Colombia Reports, *As FARC prepares to demobilize, neo-paramilitaries settle in rebel territory*, at 4 (14 Dec. 2015), available at <http://colombiareports.com/colombias-largest-neo-paramilitary-group-expands-into-farc-territory/> (following the commencement of peace talks, some "mid and low-level FARC commanders" assisted the Urabeños, a paramilitary group, in taking or strengthening their control over certain territory),

¹⁸ Al Jazeera English, *Colombian refugees seek justice in peace deal*, (6 Dec. 2015), available at <http://www.aljazeera.com/indepth/features/2015/12/151215085220857.html> ("FARC is only one of the many armed groups participating in this long-running conflict and many wonder what peace it will be if the other participants continue with their violence"); Colombia Reports, *supra* note 17, at 5, 1-5 (the Urabeños, a paramilitary offshoot of the formally demobilized AUC, "have expanded their territory from 160 to 304 municipalities, and are now active in almost one third of Colombia's national territory").

¹⁹ United Nations Mine Action Service, IMAS [International Mine Action Standards] 09.10: Clearance Requirements, Second Edition, Amendment 3, at 4, ¶ 8 (June 2013), available at <http://www.mineactionstandards.org/fileadmin/MAS/documents/imas-international-standards/english/series-09/IMAS-09-10-Ed2-Am5.pdf>.

II. The Forced Manual Eradication Program and the Dangers Faced by Eradicators

Since 2005 Colombia has recruited poor campesinos to conduct forced manual eradication of coca crops in areas contaminated by landmines and largely controlled by illegal armed groups that profit from the drug trade. Under this policy, “mobile eradication groups” (“GMEs”)²⁰ of about 28 campesinos are hired in towns and transported to camps in remote areas of the country. They remain there for periods of about two months, living in tents and marching out each day to manually uproot and destroy coca plants in the surrounding area.²¹ Their eradication work is called “forced” manual eradication because the people and communities that grow the coca oppose the eradication of their crops.²²

This work is extremely dangerous. As a consequence of the internal armed conflict that has plagued Colombia for decades, large sections of the national territory remain beyond the effective control of the Government.²³ These are the areas into which the GMEs are sent to manually eradicate coca crops.²⁴ The illegal armed groups that operate in these areas depend heavily on the drug trade to finance their operations.²⁵ Attempts to destroy the coca crops that they own or protect are met with violent resistance.²⁶

²⁰ The acronym is based on the Spanish and it stands for *Grupos Móviles de Erradicación* (GMEs).

²¹ See Special Administrative Agency for Territorial Consolidation (Republic of Colombia), Resolution 00021 of 2015, (23 Jan. 2015) [“2015 GME Operations Manual”]; Procuraduría General de la Nación (Republic of Colombia), *La Situación de los Erradicadores Manuales de Cultivos Ilícitos en Colombia*, 10 (Sept. 2012), at 10, 12, 15, 23, 26, and 27, available at <http://www.procuraduria.gov.co/relatoria/media/file/dependencia/InformesPreventivas/2013/erradicadores.pdf> [hereinafter Procuraduría General Report]; Departamento Nacional de Planeación, CONPES 3669: Política Nacional de Erradicación Manual de Cultivos Ilícitos y Desarrollo Alternativo Para la Consolidación Territorial, at 13 and illustration 2, (28 June 2010), available at <http://www.dnp.gov.co/portalDNP/grupo-de-gobierno/CONPES3669.pdf> [hereinafter CONPES 3669]; and the Declarations of the victims, filed with this Request as Supporting Documentation.

²² 2015 GME Operations Manual, *supra* note 21, at 4-5.

²³ CONPES 3669, *supra* note 21, at 57.

²⁴ *Id.*, at 57.

²⁵ Policía Nacional de Colombia, Dirección General, *Manual de Antinarcóticos Para la Erradicación Manual de Cultivos Ilícitos*, 9 (15 October 2010), available at http://www.policia.gov.co/portal/page/portal/INSTITUCION/Cartelera_New/doctrina/manuales/34.pdf [hereinafter Police Manual]; Departamento Nacional de Planeación, República de Colombia, Documento CONPES 3218: Programa de Desarrollo Alternativo 2003-2006, 2, 4 (3 Mar. 2003), available at <http://www.dnp.gov.co/portalDNP/politica-de-desarrollo/3218.pdf> [hereinafter CONPES 3218];

²⁶ General Secretariat, Organization of American States, *The Drug Problem in the Americas*, OEA/Ser.D/XXV.4, at 30 (2013), available at http://www.oas.org/documents/eng/press/Introduction_and_Analytical_Report.pdf; see also U.N. Human Rights Comm. (ICCPR), Sixth Periodic Report: Colombia, CCPR/C/COL/6, ¶ 242, 10 Dec. 2008, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOL%2f6&Lang=en [hereinafter Colombia State Report] (“Despite the efforts of the national Government, Colombia is currently the country with the highest number of victims of [landmines], all because of organized illegal armed groups which continue to plague the country.”); Landmine and Cluster Munition Monitor, *Colombia: Mine Ban Policy* (28 November 2013), http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3350 [hereinafter Landmine and Cluster Munition Monitor]; Human Rights Watch, *Maiming the People*, 15-16 (2007), available at <http://www.hrw.org/reports/2007/07/24/maiming-people-0> [hereinafter Human Rights Watch].

The civilian eradicators face a particularly grave risk of death or injury from landmines, which illegal armed groups plant near and among the coca plants to prevent eradication efforts.²⁷ This fact is well known to the Colombian Government. Colombia itself has reported that illegal armed groups operating within Colombia use landmines “systematically and indiscriminately” as part of their strategy of irregular warfare, both to stop the advance of Colombian security forces and to protect their illicit crops.²⁸ These landmines kill or maim when stepped on by an eradicator.

The Colombian Government takes the position that before eradicators are sent into a field, the military or police who accompany the GMEs check to be sure that the field is clear of landmines. However, the detection techniques that the Colombian security forces have used have been woefully inadequate. The security forces are supposed to check for the presence of landmines using trained mine-detecting dogs and metal detectors.²⁹ But International Mine Action Standards caution that mine detection dogs “cannot be used successfully under all circumstances.”³⁰ Dense vegetation and rain, both characteristic of the eradication zones, significantly impede the dogs’ effectiveness.³¹ Metal detectors are only effective if the entire area is meticulously checked; given the size of the fields and the density of the vegetation, this cannot be done in the short morning time before the eradicators begin work. Moreover, metal detectors can only detect metal, but – as the Colombian Government has noted – the mines used by the illegal armed groups in Colombia often “are made of plastic and are difficult to detect.”³²

The mine detection techniques that are supposed to be used before the day’s eradication work begins fall far short of the rigorous international requirements for declaring an area clear of landmines, as set out in the International Mine Action Standards of the United Nations Mine Action Service.³³ Moreover, in practice, security personnel have performed their inspections late, or haphazardly, or not at all.³⁴ JELM, an eradicator who was injured in a landmine explosion, reported that the security forces assigned to his GME had searched only the sides of the eradication zone, not the whole zone.³⁵ JAAJ, another injured eradicator, reported that the security forces for his GME had inspected only parts of the eradication area. As he explained,

²⁷ Landmine and Cluster Munition Monitor, *supra* note 26; *see also* Human Rights Watch, *supra* note 26, at 15–16 & n. 35.

²⁸ República de Colombia, Convención Sobre la Prohibición del Empleo, Almacenamiento, Producción, y Transferencia de Minas AntiPersonal y Sobre su Destrucción: Informe en Virtud del Artículo 7 de la Convención, 6 (Apr. 2014), *available at* [http://www.unog.ch/80256EE600585943/\(httpPages\)/A5378B203CBE9B8CC12573E7006380FA?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/A5378B203CBE9B8CC12573E7006380FA?OpenDocument). [hereinafter Mine Ban Treaty Art. 7 Report].

²⁹ Police Manual, *supra* note 25, p. 41 ¶ b.

³⁰ United Nations Mine Action Service, IMAS [International Mine Action Standards] 09.40: Guide for the Use of Mine Detection Dogs, Second Edition, Amendment 3, at 4, ¶ 8 (June 2013), *available at* <http://www.mineactionstandards.org/fileadmin/MAS/documents/imas-international-standards/english/series-09/IMAS-09-40-Ed2-Am3.pdf>.

³¹ *Id.*; Procuraduría General Report, *supra* note 21, at 30.

³² *See* Colombia State Report, *supra* note 26, at ¶ 244.

³³ *See, e.g.*, United Nations Mine Action Service, IMAS [International Mine Action Standards] 09.10: Clearance Requirements, Second Edition (Amendment 5, June 2013), *available at* <http://www.mineactionstandards.org/fileadmin/MAS/documents/imas-international-standards/english/series-09/IMAS-09-10-Ed2-Am5.pdf>.

³⁴ *See* Declarations of JELM, at ¶ 6; JAAJ, at ¶ 7; and LCA at ¶¶ 7, 8.

³⁵ Declaration of JELM, at ¶ 6.

the eradicators could see which areas had not been checked because, in the checked areas, the tall grass was bent down, but in the unchecked area the tall grass was undisturbed.³⁶ LCA reported that on the day he was injured by a landmine explosion, the person in charge of the camp had told the workers to work harder, and had told the security personnel not to carry out the checking procedure. The eradicators were told that, because there were only a few hectares left to eradicate, they should work the area even though it had not been checked.³⁷ When LCA entered the area, a co-worker walking in front of him stepped on and detonated a landmine.³⁸ In a report critical of the GME program, Colombia's own Procuraduría General³⁹ noted instances in which the mine detection process did not start until after the civilian eradicators had already begun working.⁴⁰ In one case highlighted by the Procuraduría General, the detectors and dogs did not arrive at the eradication site until after several landmine accidents had already occurred.⁴¹

The civilian eradicators also face the risk of sudden armed attacks by the illegal armed groups that operate in the areas where the eradicators work. Although military or police personnel accompany the GMEs, this has not eliminated the risk of attacks.⁴² Indeed, because the security forces are seen as legitimate military targets, eradicators have become "collateral damage" in attacks on the security forces.⁴³ Certain practices heighten this danger. On occasion, eradicators have been housed in military camouflage tents, making the civilian eradicators appear to be legitimate military targets.⁴⁴ Eradicators are told to march to and from the day's worksite in single file lines,⁴⁵ making them appear (especially from a distance) to be security forces, and hence a legitimate military target. This is especially so when the eradicators are told to wear dark blue uniforms,⁴⁶ since Colombian police sometimes wear dark blue uniforms.⁴⁷ Moreover, illegal armed groups have declared the eradicators themselves to be a "military target."⁴⁸

³⁶ Declaration of JAAJ, at ¶ 7.

³⁷ Declaration of LCA, at ¶¶ 7, 8.

³⁸ *Id.* at ¶ 8.

³⁹ The Procuraduría General de la Nación is vested by the Colombian Constitution with the functions of the Colombian Public Ministry. See National Constitution, July 4, 1991, Art. 275 (Colom.), available at http://www.senado.gov.co/images/stories/Informacion_General/constitucion_politica.pdf. See also, Human Rights Watch, *Paramilitaries' Heirs: The New Face of Violence in Colombia*, 1 (2010) available at http://www.hrw.org/sites/default/files/reports/colombia0210webwcover_1.pdf ("Procuraduría General de la Nación: a Colombian state entity charged with representing the interests of citizens before the rest of the state. The office conducts most disciplinary investigations of public officials and monitors criminal investigations and prosecutions, as well as other state agencies' actions.").

⁴⁰ Procuraduría General Report, *supra* note 21, at 29.

⁴¹ *Id.* at 29-30 n. 58.

⁴² *Id.*, at 29.

⁴³ *Id.*

⁴⁴ *Erradicadores de cultivos de coca en Colombia partes 1 + 2*, YouTube (Nov. 10, 2011, 0:55-1:15), <https://www.youtube.com/watch?v=XOPDj8noonQ&list=PLE637FAF411BCF3E5>.

⁴⁵ Police Manual, *supra* note 25, at 40 (Figura 3) and 41.

⁴⁶ Vanguardia, 'Los pitufos' de la erradicación manual de coca (1 Sept. 20013) available at <http://www.vanguardia.com/actualidad/colombia/223190-los-pitufos-de-la-erradicacion-manual-de-coca>.

⁴⁷ Policía Nacional de Colombia, Dirección General, Reglamento de uniformes, insignias, condecoraciones y distintivos para el personal de la Policía Nacional, Arts. 12, 20, 58, 96 (5 November 2009), available at http://www.policia.gov.co/portal/page/portal/INSTITUCION/normatividad/resoluciones/ReglamentoPolicia_Nov.24.09.pdf.

⁴⁸ Procuraduría General Report, *supra* note 21, at 29.

Eradicators have been ambushed, targeted by snipers, and attacked with improvised explosive devices (“IEDs”).⁴⁹

III. Deaths and Injuries Resulting from the Forced Manual Eradication Program

At least 67 civilian eradicators have been killed and 421 have been injured while working in the GMEs. According to Colombian Government figures, 58 civilian eradicators have been killed by landmines and nine more have been killed by gunfire or IEDs during armed attacks.⁵⁰ Landmine explosions have injured 356 civilian eradicators, and 65 additional civilian eradicators have been injured by gunfire or IEDs during armed attacks.⁵¹ Many of these injuries have been horrific, including loss of limbs, severe shrapnel wounds, and debilitating psychological damage.⁵²

These deaths and injuries have caused tremendous suffering. Some eradicators have lost limbs from mine explosions.⁵³ The always-devastating impact of losing a limb is amplified for these victims because the eradicators are men who have made their living and supported their families by manual labor. Other injuries have also been life-changing. LBA lost an eye.⁵⁴ JAAJ lost hearing in one ear.⁵⁵ LEFG suffers from constant back pain, leg pain and headaches.⁵⁶ DACG’s husband lost two fingers of his right hand.⁵⁷ JELM suffered shrapnel wounds all over his face and body.⁵⁸ LJB continues to experience pain from the shrapnel that remains in his body; as a consequence, he is only able to do light work and can no longer play sports as he used to.⁵⁹ JAOQ has constant headaches and can no longer work in agriculture because his hand was injured and he cannot use it properly.⁶⁰ JASM was knocked completely unconscious when a mine exploded between his legs and threw him two meters into the air; to this day he still experiences pain. His injured leg became seriously infected, and his vision and hearing have diminished⁶¹

The psychological injuries suffered by the eradicators are equally devastating. LBA reports that he lives in constant fear, experiences nightmares and hallucinations, cannot sleep well, is so distrustful and fearful that he cannot travel alone, and needs medication to calm his nerves.⁶² DACG reports that the accident changed her husband; before, he was “much more caring,” but now, he is nervous, fearful and aggressive, and he often gets mad at their children.⁶³ JASM

⁴⁹ *Id.*

⁵⁰ May 2015 Letter from the Director of the Program against Illicit Crops, *supra* note 4 at 4.

⁵¹ *Id.*

⁵² Declarations of victims.

⁵³ *See, e.g.*, Declaration of JELM, at ¶ 10 (reporting that his cousin lost his leg in a mine explosion).

⁵⁴ Declaration of LBA, at ¶¶ 8–9.

⁵⁵ Declaration of JAAJ, at ¶ 9.

⁵⁶ Declaration of LEFG, at ¶ 10.

⁵⁷ Declaration of DACG, at ¶ 7.

⁵⁸ Declaration of JELM, at ¶ 10.

⁵⁹ Declaration of LJB, at 1.

⁶⁰ Declaration of JAOQ, at ¶ 14.

⁶¹ Declaration of JASM, at ¶¶ 5–6.

⁶² Declaration of LBA, at ¶¶ 9–10.

⁶³ Declaration of DACG, at ¶ 8.

reports suffering from nightmares, depression, fear of loud noises, aggressive behavior, and suicidal thoughts.⁶⁴ Other eradicators reported suffering from nightmares,⁶⁵ difficulties sleeping,⁶⁶ and memory loss.⁶⁷

The survivors of those killed also continue to suffer. ESO reports, “I always think about my husband; it is impossible for me to forget him. I constantly cry over his death. I can’t stop thinking about everything that happened.”⁶⁸

IV. The Absence of Adequate Health Care and Compensation for the Victims

Eradicators injured by landmine explosions and armed attacks have not been able to obtain adequate physical and mental health services. Indeed, Colombia’s own Procuraduría General has concluded in 2013 that Colombia had failed to provide adequate medical care and assistance to injured eradicators.⁶⁹

One problem noted by the Procuraduría General is that during the first two years of the forced manual eradication program, nearly 1000 peasants were hired for the GMEs without any labor contracts and hence without any labor benefits.⁷⁰ As a result, these workers were not affiliated with any health care company. They continue to have difficulty obtaining necessary medical care. For example, JAOQ reports that after he was injured by a landmine in 2006, all they did was stitch him up.⁷¹ He was told that he needed surgery on his injured hand, but that nothing could be done because of a problem with his medical insurance. To this day, he has not had the surgery. He cannot use his injured hand properly, and therefore he cannot do the agricultural work that has always been his livelihood and his means of supporting his wife and two daughters. He is currently not receiving any medical attention because he cannot pay for it.⁷²

Although since 2007 eradicators have been hired under labor contracts, many still have not been able to obtain health insurance coverage for medical expenses because they do not know with which health insurance company their employer affiliated them.⁷³ As noted by the Procuraduría General, this problem results from the employer’s failure to give eradicators a copy of their labor contract and an ID card from the health insurance company with which they were affiliated.⁷⁴

⁶⁴ Declaration of JASM, at ¶ 7.

⁶⁵ Declaration of LJB, at 2; Declaration of JAOQ, at ¶ 14.

⁶⁶ Declaration of LJB, at 2.

⁶⁷ Declaration of DOC, at ¶ 9.

⁶⁸ Declaration of ESO, at ¶ 7.

⁶⁹ Procuraduría General Report, *supra* note 21 at 57. The Procuraduría General noted that victims who had lost limbs or had serious injuries generally received adequate emergency care immediately following the injury, *id.* at 36, but concluded that, thereafter, care was inadequate. *Id.* at 57.

⁷⁰ *Id.* at 15 fn. 25, 34-35.

⁷¹ Declaration of JAOQ, at ¶¶ 2, 10.

⁷² *Id.*, at ¶¶ 1-2, 10-14, 18.

⁷³ Procuraduría General Report, *supra* note 21, at 57.

⁷⁴ *Id.*

Many eradicators cannot obtain medical care or rehabilitative services because they cannot afford to pay for transportation.⁷⁵ DOC is one example. His leg was pierced by shrapnel. Twice he had surgery to remove metal shards buried deep in his leg. To this day, he suffers pain and a burning sensation in his leg. Although his surgeries were paid for, the Government will not pay his travel expenses to get from his home in Manzanares to his appointments in Manizales for follow-up care. On some occasions, he has been able to get to his appointments only because the Red Cross paid his travel expenses and loaned him crutches. On other occasions, he has missed his appointments because he could not pay the travel costs.⁷⁶

Many eradicators report that they have not been able to receive much-needed psychiatric care. For example, JASM reports that despite suffering from nightmares, depression, fear of loud noises, aggressive behavior and suicidal thoughts, he has never received any psychiatric care.⁷⁷

Injured eradicators and the widows of those who were killed have not received adequate compensation and pensions to enable them to support themselves and their families.⁷⁸ These families were struggling to support themselves even before the men agreed to work as eradicators. But for their poverty, they would not have risked their lives working in the eradication program.⁷⁹ Now, the debilitating effects of their injuries prevent them from earning even the meager amounts they previously were able to earn, leaving them unable to support themselves, their wives, and their children.⁸⁰

Many eradicators have not received any compensation at all for their injuries.⁸¹ For example, DACG reports that she went to a lawyer to try to get compensation for her husband's injuries, but nothing happened. She heard they were going to get assistance from a Colombian government agency, but again they received nothing. Her husband still has not received any kind of economic compensation for the landmine injuries he suffered in 2010.⁸² JAOQ, who was injured by a landmine in 2006, reports that he too has not received any compensation of any kind. He filed an *Acción de Tutela* (constitutional injunction) and was told he would hear back in three days, but he never heard back. He tried going to a lawyer to file a suit for compensation, but the lawyer asked him for money, and he could not afford to pay. He reports that because of his lack of money and lack of knowledge of the law, he cannot file a suit against the State for compensation.⁸³

Injured eradicators have been denied disability pensions on the grounds that their injuries are not severe enough, even though those injuries continue to prevent them from earning a living. For example, although LEFG lost the normal use of his hand and continues to suffer from back and leg pain, blurry vision, headaches, and psychological trauma, he was assigned a disability rating

⁷⁵ *Id.* at 38.

⁷⁶ Declaration of DOC, at ¶¶ 8, 11–12; *see also* Declaration of DACG, at ¶ 10; Declaration of LJB, at 1.

⁷⁷ Declaration of JASM, at ¶ 7; *see also* Declaration of DOC, at ¶ 9–10;

Declaration of DACG, at ¶¶ 8, 10; Declaration of LGB, at 2.

⁷⁸ Procuraduría General Report, *supra* note 21, at 55 (reparations to victims have been “insufficient”).

⁷⁹ *See, e.g.*, Declaration of LCA, at ¶ 3; Declaration of ESO, at ¶ 3.

⁸⁰ *See, e.g.*, Declaration of LFFG, at ¶ 13.

⁸¹ *See, e.g.*, Declaration of LCA, at ¶ 11; Declaration of DACG, at ¶¶ 4, 12; Declaration of JAOQ, at ¶ 17.

⁸² Declaration of DACG, at ¶¶ 1, 12.

⁸³ Declaration of JAOQ, at ¶¶ 2, 17.

of only 39%, which is too low to qualify for a disability pension.⁸⁴ Although he tries to work in construction, often he cannot work because of his injuries and hence cannot provide the support his family needs.⁸⁵ His problem is a common one. According to the Procuraduría General, there are many cases in which an injured eradicator cannot find work because of his disability, but was given a disability rating too low to qualify for ongoing payment of a disability pension. As a result, they “do not have the resources to support themselves and their families.”⁸⁶

The Procuraduría General found that eradicators normally are not told of the humanitarian assistance to which they are entitled and, as a result, they do not know how to make a claim. His interviews with eradicators corroborated that they were never informed of their rights or how to exercise them.⁸⁷

V. Conclusion

Colombia’s use of civilians for its forced manual eradication policy violates its Covenant obligations to respect and ensure the rights to life and security of person. While this is not a case where State actors directly kill or injure the victims, the State does bear a particular responsibility for the deaths and injuries suffered by the eradicators. It is the State that has exploited the eradicators’ poverty to enlist them in this dangerous work. Notwithstanding its obligation to ensure the effective exclusion of civilians from areas where the presence of landmines is known or suspected,⁸⁸ and the more general humanitarian law obligation to spare civilians from the effects of hostilities,⁸⁹ the State has sent these campesinos to face a very foreseeable danger of landmine explosions and armed attacks. The deaths of 67 eradicators and the injury of 421 more are the direct result of the State’s policy choice.

Colombia therefore owes to each of these victims reparations that will allow them, to the extent possible, to live a life with dignity. Each injured eradicator is entitled to comprehensive physical health care, mental health care, and rehabilitative care. Those who have been injured, and the widows and children of those who have been killed, are entitled to compensation. Victims whose physical or mental health injuries make it impossible for them to work to support themselves and their families, and the widows and minor children of those who have been killed, are entitled to pensions in an amount that will allow them to enjoy a life with dignity.

It is not enough for the State to say that its legal system does provide remedies. Article (3) of the Covenant requires that there be not only remedies, but “effective” ones.⁹⁰ Moreover, such

⁸⁴ Declaration of LEFG, at ¶¶ 10-12.

⁸⁵ *Id.* at ¶ 13.

⁸⁶ Procuraduría General Report, *supra* note 21, at 39.

⁸⁷ *Id.*

⁸⁸ *See supra* at 2 and note 10.

⁸⁹ *See* Ban Ki-Moon, Report of the Secretary-General on the protection of civilians in armed conflict, S/2012/376, p. 9 ¶ 32 (22 May 2012), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/376&referer=/english/ (“As I have stressed repeatedly, international humanitarian law requires parties to conflict to spare the civilian population from the effects of hostilities.”).

⁹⁰ General Comment 31, *supra* note 7, ¶ 15.

remedies “should be appropriately adapted so as to take account of the special vulnerability” of certain categories of victims.⁹¹ The eradicators, as a group, have limited formal education. They live in poverty in smaller towns and rural areas, away from the resources of large urban areas. They cannot be expected to have an understanding of rights, legal remedies and court procedures, and they do not have the financial resources to hire attorneys. Their daily lives are consumed with trying to make a living to support themselves and their families. Moreover, at the very time they would need to pursue legal remedies, they must cope with the injuries – psychological as well as physical – that they have just experienced.

Under these circumstances, the theoretical availability of legal mechanisms to compel the State to provide health care, compensation, and pensions is not enough. To comply with its obligations under Covenant articles 2(1), 2(3), 6 and 9, Colombia should reach out to the victims of its forced manual eradication policy and provide them with comprehensive health care, compensation, and, in appropriate cases, pensions.

⁹¹ *Id.*