



Center for International Human Rights

Northwestern

PRITZKER SCHOOL OF LAW

Bluhm Legal Clinic

## **Violations by Colombia of**

- 1. The right to safe working conditions and the highest attainable standard of health**
- 2. The right to reparations and social security for victims and surviving family members**

Submitted for consideration at the  
60<sup>th</sup> Pre-Sessional Working Group of the  
Committee on Economic, Social and Cultural Rights  
February 2017, Geneva

Submitted by:

Compañía Colombiana Contra Minas (Colombian Campaign Against Mines)

Center for International Human Rights of Northwestern Pritzker School of Law

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Compañía Colombiana Contra Minas (Colombian Campaign Against Mines)<sup>1</sup> and

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### I. Executive Summary and Introduction

#### *Worker deaths and injuries as a result of State policy*

For the past eleven 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.<sup>3</sup>

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<sup>1</sup> 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/>.

<sup>2</sup> The Center for International Human Rights of Northwestern Pritzker School of Law (“CIHR”) is a non-governmental, 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 Pritzker School of Law, <http://www.law.northwestern.edu/legalclinic/humanrights/>.

<sup>3</sup> 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, Sections 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 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, during 2014 and 2016. The victims’ declarations are in the possession of CCCM and CIHR. For the protection of their identities, only their initials (real or fictitious) are used in this report instead of their full names.

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.<sup>4</sup> In addition to the dead, 356 civilian eradicators have been injured in landmine explosions, and 65 more have been injured in armed attacks.<sup>5</sup> These injuries include loss of limbs, severe shrapnel wounds, and debilitating psychological damage.<sup>6</sup> More will be killed or injured unless this policy is ended.

These workers' 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 7(b), 12, 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 Economic, Social and Cultural Rights ("Covenant"). Article 7 recognizes "the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions."<sup>7</sup> As this Committee has recognized, this right "is a prerequisite for" the enjoyment of the Article 12 right to the highest attainable standard of health.<sup>8</sup> Similarly, the right to health is recognized as "an inclusive right extending . . . to the underlying determinants of health, such as . . . healthy occupational . . . conditions."<sup>9</sup> A State party violates its obligation to *respect* the right to health when it implements actions or policies that "are likely to result in bodily harm . . . and preventable mortality."<sup>10</sup> It violates its obligation to *protect* this right when it fails "to take all necessary measures to safeguard persons . . . from infringements of the right to health by third parties."<sup>11</sup>

A State party violates its obligations with respect to the rights to health and safe working conditions when it "adopt[s] legislation or policies which are manifestly incompatible with [relevant] pre-existing . . . international legal obligations."<sup>12</sup> Colombia's policy of sending civilian workers to

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<sup>4</sup> 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) (on file with author) (hereinafter May 2015 Letter from the Director of the Program against Illicit Crops).

<sup>5</sup> *Id.*

<sup>6</sup> See Section III, *infra*.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, General Comment 18, The Right to Work, ¶ 2, U.N. Doc. E/C.12/GC/18 (2005) (hereinafter General Comment 18).

<sup>8</sup> Committee on Economic, Social and Cultural Rights, General Comment 23, The Right to Just and Favorable Conditions of Work, ¶¶ 1, 25, U.N. Doc. E/C.12/GC/23 (2016) (hereinafter General Comment 23); *see also* Committee on Economic, Social and Cultural Rights, General Comment 14, The Right to the Highest Attainable Standard of Health, ¶ 4, U.N. Doc. E/C.12/2000/4 (2000) (hereinafter General Comment 14).

<sup>9</sup> General Comment 14, *supra* note 8, ¶ 11.

<sup>10</sup> *Id.*, ¶ 50.

<sup>11</sup> *Id.*, ¶ 51.

<sup>12</sup> *Id.*, ¶ 48; *see also* General Comment 18, *supra* note 7, ¶ 34.

eradicate coca in areas where they risk injury or death from landmines and armed attacks is “manifestly incompatible” with its obligations under the Mine Ban Treaty<sup>13</sup> and the International Covenant on Civil and Political Rights.<sup>14</sup> As a State party to the Mine Ban Treaty, Colombia has a specific obligation “to ensure the effective exclusion of civilians” from all areas where the presence of landmines is known or suspected.<sup>15</sup> Additionally, as a State party to the International Covenant on Civil and Political Rights, Colombia is obligated to respect and ensure the rights to life and security of person.<sup>16</sup> Following its October 2017 State review of Colombia’s compliance with that treaty, the Human Rights Committee expressed its concern and called upon Colombia to halt its use of civilian coca eradicators until it is verified, under the rigorous international standards for mine clearance, that their work areas are effectively free of landmines and the dangers of armed attacks:

The Committee notes with concern the reports relating to the activities for the manual eradication of coca carried out by poor campesinos who lack other work opportunities in zones where they are exposed to the risks generated by the existence of landmines and the presence of illegal armed groups. While we take note of the information provided by the State party about the methods adopted to diminish the risks, we are concerned by the information that many of these people have lost their lives or been injured as a consequence of landmine explosions or attacks by illegal armed groups (arts. 6 to 9).

The State party should halt its use of civilians in activities for the manual eradication of coca until it is verified, in conformity with international standards for such verification (such as the International Mine Action Standards), that the areas in which such activities must be performed are effectively free of landmines, and until it is also verified that these areas are effectively free of other dangers that can put at risk their life or integrity. [The State party] should also guarantee that the people who have been injured, or their families in case of death, receive integral reparations.<sup>17</sup>

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<sup>13</sup> 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&mtdsq\\_no=XXVI-5&chapter=26&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XXVI-5&chapter=26&lang=en) (hereinafter Mine Ban Treaty).

<sup>14</sup> International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter ICCPR).

<sup>15</sup> Mine Ban Treaty, *supra* note 13, Art. 5.

<sup>16</sup> ICCPR, *supra* note 14, Arts. 2(1), 6 and 9.

<sup>17</sup> Human Rights Committee, Concluding Observations of the 7<sup>th</sup> Periodic Report of Colombia, U.N. Doc. CCPR/C/COL/CO/7, November 17 2016, ¶ 23 (translation from Spanish by author). Original in Spanish:

#### Erradicación manual de cultivos de coca por campesinos

22. El Comité nota con preocupación los informes relativos a actividades de erradicación manual de cultivos de coca realizadas por campesinos pobres que no tienen otras oportunidades laborales en zonas donde están expuestos a los riesgos generados por la existencia de minas terrestres y la presencia de grupos armados ilegales. Si bien toma nota de la información proporcionada por el Estado parte sobre las medidas adoptadas para disminuir los riesgos, le preocupan las informaciones de que muchas de estas personas habrían perdido la vida o resultado heridas como consecuencia de la explosión de minas terrestres o de ataques de grupos armados ilegales (arts. 6 a 9).

Unfortunately, Colombia has not yet acted on these recommendations. Indeed, although CCCM has requested a meeting with relevant Government officials to discuss the State's plans for compliance, a meeting has not been granted.

The State's obligations under articles 7(b) and 12 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.<sup>18</sup> 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."<sup>19</sup> 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 obligations with respect to the rights to safe working conditions and the highest attainable standards of health.

Under articles 7(b), 12, and 9, Colombia has an obligation to make reparations to individuals whose rights to safe working conditions and the highest attainable standard of health have been violated and to provide them or (in the case of the deceased) their survivors with social security. Under Article 7(2), States parties are required to "ensure that workers suffering from an accident . . . and, where relevant, the dependents of those workers, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services."<sup>20</sup> Similarly, individuals whose right to health has been violated are "entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition."<sup>21</sup> Additionally, Article 9 of the Covenant recognizes the right of individuals to social security that guarantees the human dignity of *all* persons.<sup>22</sup> States parties have an obligation to:

ensure the protection of workers who are injured in the course of employment or other productive work. The social security system should cover the costs and loss of earnings from the injury . . . and the loss of support for spouses or dependents suffered as the result of the death of a breadwinner. Adequate benefits should be

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23. El Estado parte debe interrumpir el uso de civiles en actividades de erradicación manual de cultivos de coca hasta que se verifique, de conformidad con los estándares internacionales para dicha verificación (tales como las Normas Internacionales para la Acción Contra Minas), que las áreas en las que se deban realizar tales actividades estén efectivamente libres de minas terrestres; y se verifique también que esas áreas estén efectivamente libres de otros peligros que puedan poner en riesgo su vida o integridad. Debe también garantizar que las personas que hayan resultado heridas, o sus familiares en caso de fallecimiento, reciban reparación integral.

<sup>18</sup> See, e.g., Declaration of LCA, ¶ 3; Declaration of ESO, ¶ 3.

<sup>19</sup> 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 29 Jan. 2017).

<sup>20</sup> General Comment 23, *supra* note 8, ¶ 29.

<sup>21</sup> General Comment 14, *supra* note 8, ¶ 59.

<sup>22</sup> Committee on Economic, Social and Cultural Rights, General Comment 19, The Right to Social Security, ¶ 1, U.N. Doc. E/C.12/GC/19 (2007) (hereinafter General Comment 19).

provided in the form of access to health care and cash benefits to ensure income security.<sup>23</sup>

Moreover, persons with disabilities have a right to “adequate income support” when they are unable to find employment due to their disabilities.<sup>24</sup> It is critical that social security benefits “be provided in a timely manner.”<sup>25</sup>

These obligations to make reparations and provide social security require Colombia to provide adequate physical health, mental health, and rehabilitative care to those who have been injured in its forced manual eradication program, and to provide appropriate compensation (including appropriate disability or survivor pensions) 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 has now reached an historic peace agreement with the largest of the illegal armed groups, FARC. This agreement, passed by the Colombian Congress on 30 November 2016<sup>26</sup> in a special procedure approved by the Constitutional Court on 13 December 2016,<sup>27</sup> put a formal end to the more than fifty year conflict with the FARC. Colombia is to be applauded for this achievement and for its efforts in the peace process.

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

First, given the highly lucrative nature of the coca trade, there is reason to fear that new armed actors will emerge to try to take over FARC’s role in the coca trade.<sup>28</sup>

Second, 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.<sup>29</sup>

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<sup>23</sup> *Id.*, ¶ 17 (footnote omitted).

<sup>24</sup> Committee on Economic, Social and Cultural Rights, General Comment 5, Persons with disabilities, ¶ 28, U.N. Doc. E/1995/22 (1995).

<sup>25</sup> General Comment 19, *supra* note 22, ¶ 27.

<sup>26</sup> Reuters, *Colombian peace deal passed by Congress, ending 52-year war* (30 Nov. 2016), available at <http://www.reuters.com/article/us-colombia-peace-idUSKBN13P1D2> (last visited 21 January 2017).

<sup>27</sup> El Tiempo, *Corte aprueba el ‘fast track’ para implementar el acuerdo de paz [Court approves fast-track procedure to implement peace agreement]* (13 Dec. 2016), available at <http://www.eltiempo.com/politica/justicia/corte-constitucional-aprueba-el-fast-track-para-nuevo-acuerdo-de-paz/16772050> (last visited 28 January 2017).

<sup>28</sup> The Atlantic, *Who Will Control Colombia’s Cocaine Without FARC* (1 July 2016), available at <http://www.theatlantic.com/news/archive/2016/07/farc-cocaine-colombia/489551/> (last visited 16 Sept. 2016).

<sup>29</sup> See 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>.

Third, the rights to safe working conditions, the highest attainable standard of health and social security include 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.

Fourth, Colombia's efforts to end its protracted internal armed conflict do not affect its international human rights obligations. As stated by one of the members of the Human Rights Committee during Colombia's last periodic review, international human rights standards should not be affected by "the fact that the political agreement on the negotiation of the armed conflict has been approved."<sup>30</sup> In its decision approving Colombia's Legislative Act passing the peace agreement, Colombia's Constitutional Court recalled that the State's human rights obligations could not be neglected.<sup>31</sup>

## 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")<sup>32</sup> 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.<sup>33</sup> Their eradication work is called "forced" manual eradication because the people and communities that grow the coca oppose the eradication of their crops.<sup>34</sup>

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.<sup>35</sup> These are the areas into which the GMEs are sent to manually eradicate coca crops.<sup>36</sup> The illegal armed groups that operate in these areas depend heavily on the

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<sup>30</sup> Victor Manuel Rodríguez Rescia, Human Rights Committee Member, *Consideration of Colombia - 3313th meeting 118th Session of Human Rights Committee*, Statement at the Human Rights Committee (October 19 2016), 22:43-24.01, available at <http://webtv.un.org/search/consideration-of-colombia-3313th-meeting-118th-session-of-human-rights-committee/5184203459001?term=colombia&languages=&sort=date#full-text>.

<sup>31</sup> Judgment C-699/16 (Constitutional Court, *en banc* Chamber, Dec. 13 2016) ¶ 35.5, citing Judgment C-579/13 (Constitutional Court, *en banc* Chamber, Aug. 28 2013) ¶ 8.2.1, available at <http://www.corteconstitucional.gov.co/relatoria/2016/c-699-16.htm>.

<sup>32</sup> The acronym is based on the Spanish; it stands for *Grupos Móviles de Erradicación* (GMEs).

<sup>33</sup> See Special Administrative Agency for Territorial Consolidation (Republic of Colombia), Resolution 00021 of 2015 (23 Jan. 2015) (hereinafter 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); Declarations of the victims.

<sup>34</sup> 2015 GME Operations Manual, *supra* note 33, at 4-5.

<sup>35</sup> CONPES 3669, *supra* note 33, at 57.

<sup>36</sup> *Id.*

drug trade to finance their operations.<sup>37</sup> Attempts to destroy the coca crops that they own or protect are met with violent resistance.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> But International Mine Action Standards caution that mine detection dogs “cannot be used successfully under all circumstances.”<sup>42</sup> Dense vegetation and rain, both characteristic of the eradication zones, significantly impede the dogs’ effectiveness.<sup>43</sup> 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

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<sup>37</sup> 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/Cartera\\_New/doctrina/manuales/34.pdf](http://www.policia.gov.co/portal/page/portal/INSTITUCION/Cartera_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);

<sup>38</sup> 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](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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOL%2f6&Lang=en) (hereinafter Colombia State Report); 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](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).

<sup>39</sup> Landmine and Cluster Munition Monitor, *supra* note 38; see also Human Rights Watch, *supra* note 38, at 15–16 and n. 35.

<sup>40</sup> 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).

<sup>41</sup> Police Manual, *supra* note 37, p. 41 ¶ b.

<sup>42</sup> 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>.

<sup>43</sup> *Id.*; Procuraduría General Report, *supra* note 33, at 30.



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.”<sup>44</sup>

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.<sup>45</sup> Moreover, in practice, security personnel have performed their inspections late, or haphazardly, or not at all.<sup>46</sup> 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.<sup>47</sup> JAAJ, another injured eradicator, reported that the security forces for his GME had inspected only parts of the eradication area. As he explained, 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.<sup>48</sup> AAA, who was injured while walking along the path between their encampment and the coca field, reported that although the soldiers attempted to check for mines in the coca crops, they made no effort to check for mines along the path that the eradicators had to use to get to the coca fields.<sup>49</sup> BBB reported that the mine-detecting dogs were ineffective because they got tired after a while and therefore there was no assurance that the field was clear of mines.<sup>50</sup> 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.<sup>51</sup> When LCA entered the area, a co-worker walking in front of him stepped on and detonated a landmine.<sup>52</sup> In a report critical of the GME program, Colombia’s own Procuraduría General<sup>53</sup> noted instances in which the mine detection process did not start until after the civilian eradicators had already begun working.<sup>54</sup> 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.<sup>55</sup>

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<sup>44</sup> See Colombia State Report, *supra* note 38, at ¶ 244.

<sup>45</sup> 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>.

<sup>46</sup> See Declarations of JELM, at ¶ 6; JAAJ, at ¶ 7; and LCA at ¶¶ 7, 8.

<sup>47</sup> Declaration of JELM, at ¶ 6.

<sup>48</sup> Declaration of JAAJ, at ¶ 7.

<sup>49</sup> Interview of AAA.

<sup>50</sup> Interview of BBB.

<sup>51</sup> Declaration of LCA, at ¶¶ 7, 8.

<sup>52</sup> *Id.*, ¶ 8.

<sup>53</sup> 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](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](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.”).

<sup>54</sup> Procuraduría General Report, *supra* note 33, at 29.

<sup>55</sup> *Id.*, at 29-30 n. 58.

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.<sup>56</sup> Indeed, because the security forces are seen as legitimate military targets, eradicators have become “collateral damage” in attacks on the security forces.<sup>57</sup> 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.<sup>58</sup> Eradicators are told to march to and from the day’s worksite in single file lines,<sup>59</sup> 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,<sup>60</sup> since Colombian police sometimes wear dark blue uniforms.<sup>61</sup> Moreover, illegal armed groups have declared the eradicators themselves to be a “military target.”<sup>62</sup> Eradicators have been ambushed, targeted by snipers, and attacked with improvised explosive devices (“IEDs”).<sup>63</sup> CCC and AAA both reported that the eradicators were singled out for attack; when both soldiers and eradicators were walking along a path, the attackers waited until the soldiers had passed and then detonated their explosives when the civilian eradicators reached the spot where the explosive device had been planted.<sup>64</sup>

### 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 2015 Colombian Government figures, 58 civilian eradicators have been killed by landmines and nine more have been killed by gunfire or IEDs during armed attacks.<sup>65</sup> Landmine explosions have injured 356 civilian eradicators, and 65 additional civilian eradicators have been injured by gunfire or IEDs during armed attacks.<sup>66</sup> Many of these injuries have been horrific, including loss of limbs, severe shrapnel wounds, and debilitating psychological damage.<sup>67</sup>

These deaths and injuries have caused tremendous suffering. Some eradicators have lost limbs from mine explosions.<sup>68</sup> The always-devastating impact of losing a limb is amplified for these

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<sup>56</sup> *Id.*, at 29.

<sup>57</sup> *Id.*

<sup>58</sup> 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>.

<sup>59</sup> Police Manual, *supra* note 37, at 40 (Figura 3) and 41.

<sup>60</sup> 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>.

<sup>61</sup> 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](http://www.policia.gov.co/portal/page/portal/INSTITUCION/normatividad/resoluciones/ReglamentoPolicia_Nov.24.09.pdf).

<sup>62</sup> Procuraduría General Report, *supra* note 33, at 29.

<sup>63</sup> *Id.*

<sup>64</sup> Interviews of CCC and AAA.

<sup>65</sup> May 2015 Letter from the Director of the Program against Illicit Crops, *supra* note 4 at 4.

<sup>66</sup> *Id.*

<sup>67</sup> Declarations of victims.

<sup>68</sup> *See, e.g.*, Declaration of JELM, at ¶ 10 (reporting that his cousin lost his leg in a mine explosion).

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.<sup>69</sup> JAAJ lost hearing in one ear.<sup>70</sup> LEFG suffers from constant back pain, leg pain and headaches.<sup>71</sup> DACG's husband lost two fingers of his right hand.<sup>72</sup> DDD lost 75% of his hearing in his left ear because his eardrum was perforated by the explosion.<sup>73</sup> EEE still feels pain on one side of his body and close to his spine, requiring him to stay on medication.<sup>74</sup> CCC suffered wounds to his leg and torso.<sup>75</sup> FFF lost hearing in his left ear, and his face and legs were wounded and burned.<sup>76</sup> JELM suffered shrapnel wounds all over his face and body.<sup>77</sup> 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.<sup>78</sup> JAOQ has constant headaches and can no longer work in agriculture because his hand was injured and he cannot use it properly.<sup>79</sup> 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 diminished.<sup>80</sup> GGG lost her brother, and her nephew had his face burned and lost hearing in one ear.<sup>81</sup> AAA lost his vision and hearing capacity.<sup>82</sup>

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.<sup>83</sup> 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.<sup>84</sup> JASM reports suffering from nightmares, depression, fear of loud noises, aggressive behavior, and suicidal thoughts.<sup>85</sup> Other eradicators reported suffering from nightmares,<sup>86</sup> difficulties sleeping,<sup>87</sup> and memory loss.<sup>88</sup>

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."<sup>89</sup>

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<sup>69</sup> Declaration of LBA, at ¶¶ 8–9.

<sup>70</sup> Declaration of JAAJ, at ¶ 9.

<sup>71</sup> Declaration of LEFG, at ¶ 10.

<sup>72</sup> Declaration of DACG, at ¶ 7.

<sup>73</sup> Interview of DDD.

<sup>74</sup> Interview of EEE.

<sup>75</sup> Interview of CCC.

<sup>76</sup> Interview of FFF.

<sup>77</sup> Declaration of JELM, at ¶ 10.

<sup>78</sup> Declaration of LJB, at 1.

<sup>79</sup> Declaration of JAOQ, at ¶ 14.

<sup>80</sup> Declaration of JASM, at ¶¶ 5–6.

<sup>81</sup> Interview of GGG.

<sup>82</sup> Interview of AAA.

<sup>83</sup> Declaration of LBA, at ¶¶ 9–10.

<sup>84</sup> Declaration of DACG, at ¶ 8.

<sup>85</sup> Declaration of JASM, at ¶ 7.

<sup>86</sup> Declaration of LJB, at 2; Declaration of JAOQ, at ¶ 14.

<sup>87</sup> Declaration of LJB, at 2.

<sup>88</sup> Declaration of DOC, at ¶ 9.

<sup>89</sup> Declaration of ESO, at ¶ 7.

#### 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.<sup>90</sup>

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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup> 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.<sup>95</sup> For example, AAA reported that he was not allowed to read the contract he was signing, nor was he able to obtain a copy of the contract.<sup>96</sup>

Many eradicators cannot obtain medical care or rehabilitative services because they cannot afford to pay for transportation.<sup>97</sup> 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

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<sup>90</sup> Procuraduría General Report, *supra* note 33 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.

<sup>91</sup> *Id.*, at 15 fn. 25, 34-35.

<sup>92</sup> Declaration of JAOQ, at ¶¶ 2, 10.

<sup>93</sup> *Id.*, ¶¶ 1-2, 10-14, 18.

<sup>94</sup> Procuraduría General Report, *supra* note 33, at 57.

<sup>95</sup> *Id.*

<sup>96</sup> Interview with AAA.

<sup>97</sup> Procuraduría General Report, *supra* note 33, at 38.

because he could not pay the travel costs.<sup>98</sup> Similarly, CCC could not obtain needed medical care because he did not have the money to pay for transportation to attend therapy sessions.<sup>99</sup>

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.<sup>100</sup> Likewise, HHH reported that he did not receive psychological attention after the accident.<sup>101</sup>

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.<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> DDD reported that he used to work in construction, but after the accident he cannot work because companies order medical exams and when they realize he has health problems they refuse to hire him.<sup>105</sup> EEE's life was changed by the injuries he suffered. He cannot work anymore because the explosion affected his right leg and back. His wife now has to work to support their children. He has tried to get work in farming or construction, but because of the physical effort such work involves, he is not able to do the work. He had expected to receive benefits, but no benefits have been made available to him.<sup>106</sup> III reported that he has been unable to find a job due to his injuries, because once employers become aware of his disability, they are unwilling to hire him, viewing him as a potential liability if he were injured on the job.<sup>107</sup>

Many eradicators have not received any compensation at all for their injuries.<sup>108</sup> 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.<sup>109</sup> 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

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<sup>98</sup> Declaration of DOC, at ¶¶ 8, 11–12; *see also* Declaration of DACG, at ¶ 10; Declaration of LJB, at 1.

<sup>99</sup> Interview of CCC.

<sup>100</sup> Declaration of JASM, at ¶ 7; *see also* Declaration of DOC, at ¶ 9–10; Declaration of DACG, at ¶¶ 8, 10; Declaration of LGB, at 2.

<sup>101</sup> Interview of HHH.

<sup>102</sup> Procuraduría General Report, *supra* note 33, at 55 (reparations to victims have been “insufficient”).

<sup>103</sup> *See, e.g.*, Declaration of LCA, at ¶ 3; Declaration of ESO, at ¶ 3.

<sup>104</sup> *See, e.g.*, Declaration of LFFG, at ¶ 13.

<sup>105</sup> Interview of DDD.

<sup>106</sup> Interview of EEE.

<sup>107</sup> Interview of III.

<sup>108</sup> *See, e.g.*, Declaration of LCA, at ¶ 11; Declaration of DACG, at ¶¶ 4, 12; Declaration of JAOQ, at ¶ 17; Interview of EEE.

<sup>109</sup> Declaration of DACG, at ¶¶ 1, 12.

lack of knowledge of the law, he cannot file a suit against the State for compensation.<sup>110</sup> AAA, another injured eradicator, reported that his sister was subjected to threats when she persisted in seeking compensation from the labour contracting company that had hired him for the eradication work.<sup>111</sup>

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 of only 39%, which is too low to qualify for a disability pension.<sup>112</sup> Although he tries to work in construction, often he cannot work because of his injuries and hence cannot provide the support his family needs.<sup>113</sup> 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.”<sup>114</sup>

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.<sup>115</sup>

## V. Conclusion

Colombia’s use of civilians for its forced manual eradication policy violates the victims’ rights to safe working conditions and the highest attainable standard of health. The State’s failure to provide the victims with adequate physical and mental health care and adequate compensation, disability pensions, and survivors’ pensions further violates these rights and the right to social security. 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,<sup>116</sup> and the more general humanitarian law obligation to spare civilians from the effects of hostilities,<sup>117</sup> the State has sent these campesinos to face a very foreseeable danger

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<sup>110</sup> Declaration of JAOQ, at ¶¶ 2, 17.

<sup>111</sup> Interview of AAA.

<sup>112</sup> Declaration of LEFG, at ¶¶ 10-12.

<sup>113</sup> *Id.*, ¶ 13.

<sup>114</sup> Procuraduría General Report, *supra* note 33, at 39.

<sup>115</sup> *Id.*

<sup>116</sup> See discussion in text, *supra* at p. 3 and note 15.

<sup>117</sup> 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/](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.”).

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. Remedies must be "effective" ones,<sup>118</sup> and "even in times of severe resources constraints, vulnerable members of society can and indeed must be protected."<sup>119</sup> The eradicators, as a group, have limited formal education. Many 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. Their daily lives are consumed with trying to survive and, if possible, 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. Finally, it takes many years for a case to produce a judgment; the eradicators lack the means to support themselves and their families in dignity during these many years.

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 7(b), 12, 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.

We therefore ask this Committee to include the issue of the coca eradicators in its List of Issues for Colombia. We ask the Committee to join the Human Rights Committee in urging Colombia (1) to halt the use of civilians in eradication work until it is verified, under the rigorous international standards for mine clearance, that their work areas are effectively free of landmines and the dangers of armed attacks, and (2) to ensure that the victims and the survivors of those who lost their lives receive comprehensive reparations.

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<sup>118</sup> General Comment 14, *supra* note 8, ¶ 59; General Comment 23, *supra* note 8, ¶ 57.

<sup>119</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States Parties' Obligations, ¶ 12, U.N. Doc. E/1991/23 (1990).