



COLOMBIA

# Maiming the People

Guerrilla Use of Antipersonnel Landmines  
and other Indiscriminate Weapons in Colombia

HUMAN  
RIGHTS  
WATCH



## **Maiming the People**

### **Guerrilla Use of Antipersonnel Landmines and other Indiscriminate Weapons in Colombia**

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## Summary and Recommendations

New casualties from antipersonnel landmines in Colombia have skyrocketed in recent years, to such a degree that Colombia now has some of the highest annual reported casualty rates in the world.

The biggest users of antipersonnel landmines in Colombia, as well as other indiscriminate weapons such as gas cylinder bombs, are Colombia's two largest guerrilla groups: the Revolutionary Armed Forces of Colombia (FARC-EP) and the smaller National Liberation Army (ELN).

Guerrillas' frequent use of antipersonnel landmines, improvised out of cheap, readily available materials, leaves hundreds of civilians maimed, blind, deaf, or dead every year.

Many of the survivors are among Colombia's poorest and most vulnerable citizens: peasants or others who live in impoverished rural regions, far from state authorities and hospitals, and who are often caught in the middle of the conflict involving guerrillas, Colombian security forces, and paramilitary groups. Often, landmine survivors are victims of other abuses too, such as forced displacement. When they suffer a landmine injury, survivors' whole lives are seriously affected, not only because of the injury's physical effects, but also because of the incident's impact on their mental health, their ability to support themselves and their families, and their ability to remain in their homes.

Over the past two decades, Human Rights Watch has repeatedly documented widespread abuses of human rights and international humanitarian law in Colombia committed by irregular armed groups in the internal armed conflict, including guerrillas and paramilitaries, as well as by the Colombian security forces.<sup>1</sup> This report

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<sup>1</sup> See, e.g., Human Rights Watch, *You'll Learn Not to Cry: Child Combatants in Colombia* (New York: Human Rights Watch, 2003); *The "Sixth Division": Military-Paramilitary Ties and U.S. Policy in Colombia*, (New York: Human Rights Watch, 2001); *Beyond Negotiation: International Humanitarian Law and its Application to the Conduct of the FARC-EP*, (New York: Human Rights Watch, 2001); Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (New York: Human Rights Watch, 1998).

documents the impact on civilian victims of the use of antipersonnel landmines in Colombia, as well as the assistance the government provides to such survivors.<sup>2</sup> It is based on dozens of interviews Human Rights Watch conducted in September and October 2006 in the cities of Bucaramanga, Popayán, Medellín, and Bogotá, Colombia, with civilian survivors, health workers, landmine and victim assistance experts from nongovernmental organizations (NGOs), national and state government officials, military officers, and a representative of the ELN guerrillas.

While it is often difficult to determine with certainty who laid any given antipersonnel landmine, most of the civilian survivors who spoke to Human Rights Watch for this report placed the blame for their injuries squarely on the guerrilla groups, which in many cases had been in the area right before the landmine incident. This information is consistent with reports we received from landmine experts in Colombia. In fact, while the Colombian government has banned the use of landmines, the guerrilla groups have made statements attempting to justify their use of antipersonnel landmines. For example, the FARC has asserted that landmines are the “weapon of the poor.” An ELN spokesman who spoke to Human Rights Watch said that his group does not believe international humanitarian law applies in Colombia at all.

At the same time, many civilian survivors feel they have been ignored by the Colombian government in its policies and funding. The Colombian government’s initiatives on landmines have drawn much-needed funding for work on this issue, including on victim assistance. However, it is a fact that civilian survivors often do not receive adequate support. In many cases this is simply a result of lack of awareness: many of these survivors, and even local officials and healthcare providers, are not well informed about the benefits available to landmine survivors. Yet even those survivors who are lucky enough to receive advice about these

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<sup>2</sup> In addition to obligations relating to victim assistance, the government has various other international obligations related to promotion of mine risk education, destruction of stockpiled antipersonnel mines, and destruction of mines in mined areas. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction, articles 4, 5, 6, adopted 18 September 1997, entered into force March 1, 1999 (1997 Mine Ban Treaty). Colombia signed the Convention on December 3, 1997, ratified it on September 6, 2000, and it entered into force on March 1, 2001. Because this report is focused primarily on the plight of civilian survivors of antipersonnel landmines, it highlights the government’s victim assistance programs, but does not provide a comprehensive analysis of the government’s compliance with other international obligations relating to landmines.

benefits sometimes find that the benefits can be difficult to access and inadequate to cover some of their basic needs.

The laws of war forbid the use of indiscriminate weapons such as antipersonnel landmines, and the parties to the Colombian conflict who use such weapons bear the primary responsibility for their impact on the civilian population. In addition, individuals and commanders of armed groups who intentionally direct attacks against civilians could become subject to prosecution for war crimes, or—if the attacks are part of a broader systematic attack against a civilian population—even crimes against humanity, under the Rome Statute of the International Criminal Court.

At the same time, the Colombian government has legal responsibilities to assist the civilians who have suffered landmine-related injuries. International actors also have responsibilities to assist landmine survivors and promote an end to the use of indiscriminate weapons.

## Recommendations

*To the FARC-EP, ELN, and other irregular armed groups in Colombia*

- **Cessation of Use and Production of Indiscriminate Weapons:** Unconditionally and immediately cease all use and production of antipersonnel landmines and other indiscriminate weapons such as gas cylinder bombs.
- **Stockpile Destruction:** Destroy any existing stockpiles of antipersonnel landmines in the group's possession.
- **Marking and Fencing:** Mark and fence as soon as possible all areas where each group has laid antipersonnel landmines, to ensure the effective exclusion of civilians, and inform local communities and authorities of any initiatives or steps taken to mark and fence such areas.
- **Disclosure of Information for Landmine Clearance:** Disclose information on where landmines are laid and cooperate in the development and implementation of a plan for clearance and destruction of landmines.

## *To the Colombian Government*

- **Advice to survivors:** Establish a nationwide system to ensure that survivors receive prompt advice and guidance concerning their full array of rights and benefits as soon as state authorities or medical care providers are first made aware of the person's status as a landmine survivor. Each survivor should receive not only written materials, but also personalized advice on how to request available benefits.
- **Survivors' benefits:** Review the legal framework governing survivors' rights and reform the law to better address survivors' needs for (a) transportation and lodging during rehabilitation; (b) prompt and regular replacements of prosthetic limbs; and (c) regular (rather than one-time) financial assistance for disabled survivors.
- **Streamlined procedures:** Review the legal framework and procedures governing victim assistance with the goal of removing unnecessary bureaucratic delays or procedures that prevent survivors from accessing assistance with ease.
- **No deadlines for claiming assistance:** Eliminate deadlines for survivors to request humanitarian assistance and disability payments.
- **Healthcare providers:** Establish comprehensive training programs for healthcare providers in all hospitals that deal with landmine survivors, to create awareness of survivors' rights and to ensure that hospitals establish protocols for landmine survivors to receive psychological, hearing, and vision tests and care.
- **Accountability for users of landmines:** Investigate and hold accountable individuals who have manufactured and laid antipersonnel landmines in Colombia.
- **UN Convention on the Rights of People with Disabilities:** Having signed the treaty, Colombia's government should promptly ratify the Convention and take the necessary measures to bring its laws and policies towards people with disabilities, including survivors of landmines, into line with the obligations set out in the Convention.
- **Other obligations:** in addition to complying with requirements regarding victim assistance, the Colombian government should fully comply with all requirements of the 1997 Mine Ban Treaty, including those relating to mine

risk education, and the marking and destruction of antipersonnel mines. In particular, carry out specific mine risk education activities in the areas of the country where there is the greatest risk that antipersonnel landmines may be present.

*To International Donors, Institutions, and Parties to the 1997 Mine Ban Treaty*

- Make assistance to civilian survivors of landmines a priority, including by supporting civil society groups that now provide advice and assistance to landmine survivors.
- Urge Colombia's government to implement the recommendations made above, with international assistance and advice.
- Incorporate the recommendations listed above into funding for victim assistance programs in Colombia.

*To States, Institutions, and Individuals Involved in Brokering Peace Negotiations between the Colombian Government and Armed Groups*

- Urge the armed groups to unconditionally and immediately cease manufacturing and using antipersonnel landmines and other indiscriminate weapons as required under the laws of war, and destroy their existing stockpiles.

## Landmines' Impact on Civilians in Colombia

The most comprehensive source of data about landmine casualties in Colombia is the Colombian Vice-Presidency's Antipersonnel Landmine Observatory, which reports official statistics of antipersonnel landmine casualties. These statistics provide only a partial picture, in the sense that they do not distinguish between antipersonnel landmine incidents and incidents involving unexploded ordnance (due to the difficulty in distinguishing between the two types of incidents). Also, it is likely that there is a great deal of underreporting, especially of civilian casualties.<sup>3</sup> Underreporting may be due to the lack of state presence in parts of the country, survivors' fear that they will be subject to further abuse if they report the landmine, or lack of knowledge by survivors, local governments, and medical institutions about the benefits available to landmine survivors, among other factors.

Nonetheless, the data of the Antipersonnel Landmine Observatory shows a dramatic increase in casualties that is consistent with the observations of local NGOs: between 1990 and 2000, reported casualties fluctuated, but did not exceed 148 per year. In 2001, reported casualties started going up: to 287 in 2001, 627 in 2002, 732 in 2003, 877 in 2004, 1,112 in 2005, and 1,107 in 2006.<sup>4</sup>

The bulk of these casualties are military. However, the number of reported civilian casualties is very high, and has also increased alarmingly in recent years, from 66 in 2000 to 314 in 2006.<sup>5</sup>

Many encountered the landmines while they were engaging in ordinary activities. For example, according to government records, 151 were hurt while they were "passing

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<sup>3</sup> Various sources consider that there is significant underreporting. See International Campaign to Ban Landmines, *Landmine Monitor Report 2006*, Colombia chapter, <http://www.icbl.org/lm/2006/colombia.html#fnB174> (accessed June 20, 2007). According to the Colombian Vice-Presidency's Antipersonnel Landmine Observatory, however, registration of landmine incidents is improving. Human Rights Watch interview with Luz Piedad Herrera, director of the Colombian Vice-Presidency's Antipersonnel Landmine Observatory, September 27, 2006.

<sup>4</sup> Colombian Vice-Presidency's Antipersonnel Landmine Observatory, Chart on Frequency of Victims of Mines/UXO by Condition 1990-June 1, 2007, <http://www.derechoshumanos.gov.co/minas/descargas/victimascondicion.pdf> (accessed June 19, 2007).

<sup>5</sup> *Ibid.*

through the area,” and many others were hurt while engaging in farming, playing, doing housework, tending to cattle, hunting, or fishing.<sup>6</sup> Of the 314 civilian casualties recorded by the Landmine Observatory in 2006, 66 were children.<sup>7</sup>



Nine-year-old “Pablo” told us he felt “incomplete” when playing with other children because “I had one hand and the other boys had two.” © 2006 MMSM/Human Rights Watch.

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<sup>6</sup> Colombian Vice-Presidency’s Antipersonnel Landmine Observatory, Chart on Victims by Activity at the Time of the Accident, 1990-June 1 2007, <http://www.derechoshumanos.gov.co/minas/descargas/victimasactividad.pdf> (accessed June 19, 2007).

<sup>7</sup> Colombian Vice-Presidency’s Antipersonnel Landmine Observatory, Chart on Victims of Mines/UXO by Gender and Age, 1990-June 1, 2007, <http://www.derechoshumanos.gov.co/minas/descargas/edadsexozona.pdf> (accessed June 19, 2007).

## The Smallest Survivors

The children who are injured by landmines are often forced to leave their families and cope with their injuries alone, in new and difficult environments. “Lucía,” a 10-year-old we met in Bucaramanga, lost her eyesight, a hand, and several fingers on her remaining hand in her incident. Because of the lack of specialized teachers for the blind in her town, she was living in a shelter full of other children and displaced people in the city. She didn’t want to talk about her landmine incident, and she missed her family: “Sometimes on Christmas I stay with my mommy, but at other times I’m not with her ... I like to study, but only next to my mommy.”<sup>8</sup> “Pablo,” a nine-year-old living at the same shelter, told us about how he felt when playing with other children after the incident: “I felt incomplete because I had one hand and the other boys had two.”<sup>9</sup>

At the same time, however, children who are injured are sometimes better able than adults to adjust to the resulting changes in their lives.<sup>10</sup> In some cases, children who move away from rural areas as a result of incidents are able to find better educational opportunities. “What has hurt me the most is that I can’t continue playing soccer,” Onofre Zafra Sánchez, who stepped on a landmine at the age of 16, told us. “I would have given my life to play soccer. But being in the city I have more of a chance of doing something in my life.”<sup>11</sup>

## More Than Physical Injuries

If not fatal, the physical injuries caused by landmines are often very serious. Most of the survivors we interviewed had suffered typical injuries from landmine incidents: loss of limbs—legs, feet, and sometimes hands—and damage to their eyesight and hearing. But the impact that landmine incidents have on the survivors often extends far beyond the physical injuries, affecting their mental wellbeing, their ability to support themselves and their families, and their ability to remain in their homes.

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<sup>8</sup> Human Rights Watch interview with Lucía (pseudonym), September 28, 2006.

<sup>9</sup> Human Rights Watch interview with Pablo (pseudonym), September 28, 2006.

<sup>10</sup> Human Rights Watch interview with Rodrigo Chaparra, psychologist at CIREC rehabilitation center, September 27, 2006.

<sup>11</sup> Human Rights Watch interview with Onofre Zafra Sánchez, September 28, 2006.



Edilberto lost his vision in one eye and his hands to a landmine. His injuries forced him to abandon the countryside and he now lives off charity in the city. © 2006 MMSM/Human Rights Watch.

The majority of civilian survivors are adult men, many of whom do manual labor in farming, cattle-ranching, or mining in rural areas.<sup>12</sup> Landmine injuries limit or

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<sup>12</sup> In 2006, only 20 of the casualties recorded by the Landmine Observatory were women. Colombian Vice-Presidency's Antipersonnel Landmine Observatory, Chart on Frequency of Victims of Mines/UXO by Condition, <http://www.derechoshumanos.gov.co/minas/descargas/victimascondicion.pdf> (accessed March 20, 2007).

sometimes completely impede their ability to work, forcing them to migrate to cities in search of new opportunities for gainful employment. “I was a farmer, I raised yucca, corn, bananas, cacao. I was born and raised in the countryside. I expected to continue in the countryside,” said Edilberto Prada Ardila, a 46-year-old man who lost an eye and his hands to a landmine, and now lives off charity in the city of Bucaramanga.<sup>13</sup>

Sometimes, active adults become dependent on their children, developing depression and feelings of uselessness. “I live dying,” said one farmer in his fifties who lost a leg and most of his eyesight when he stepped on a landmine four years ago. “I was coming from working, I had been digging out a little yucca plant [when the incident happened] ... Now I live from handouts and from the food my children give me. I live with the three youngest ones .... I’ve been sick for three years and still, I don’t die.”<sup>14</sup>

Another survivor in her fifties, Ofelia, attempted suicide after her incident. Widowed after guerrilla groups killed her husband in 1991, Ofelia lost her leg when she stepped on a landmine, and then lost her farm as a result:

I had a very pretty farm when I fell on the mine but I had to sell it to pay all the expenses and to eat, since the children were small .... there was not a single person to help us, to give us some advice, to do something. And so you’re left like that .... I cried and cried. It’s very difficult. Once I tried to throw myself in the river because I was sick of my situation, with nothing to feed the children. They were 16, 12, 10, and the small one, and we had to suffer a lot of hunger. I dragged myself to the field by the river but then my little one appeared before me, and I said, “Lord forgive me,” and I returned, to cry. A man came by and carried me back home, but I lived very sick, with a lot of pain.<sup>15</sup>

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<sup>13</sup> Human Rights Watch interview with Edilberto Prada Ardila, September 28, 2006.

<sup>14</sup> Human Rights Watch interview with a landmine survivor who requested anonymity, September 28, 2006.

<sup>15</sup> Human Rights Watch interview with Ofelia Pinto, September 28, 2006.

For indigenous survivors, adjusting to a life outside of their traditional communities can be particularly painful. Adelmo, a member of the Yanacona tribe, left his community because the incident made it difficult for him to do the walking and hard labor that life there entails. “Even if it hurts me in my soul to leave the region, I can’t work like in the past,” he said. The move was traumatic. “I’m restless. My place is my own community. I miss the food, the customs of the community. Here you feel bad; you wonder what the community is planning. You become very disconnected from what is happening there.”<sup>16</sup>

## **Mines and Other Abuses**

Many of the survivors we interviewed described how their injuries had compounded other problems that the survivors or their families were already suffering due to abuses such as displacement, forced taking of land, or the killing of family members.

One man told us that he encountered the landmine that injured him on a farm he moved to near the town of Tibú, in the state of Norte de Santander, after he had been displaced from his farm in the nearby town of La Gabarra. “The FARC, ELN, paramilitaries, and the army were all there. They would all enter my farm.... The paramilitaries entered La Gabarra in ’99 and killed 67 people, and they took away all the animals and ate all the cattle.... So we moved to Tibú.”<sup>17</sup>

One young man, Jimmy, and his family had to leave their home after the FARC killed his father: “They accused us of helping the paramilitaries. They took him away and three days later we found him dead ... on the side of the road. He was tied up and they had cut his throat.”<sup>18</sup> They were displaced again after paramilitaries arrived in the next town. To make money, Jimmy left his family and took a job working on a cattle ranch in the state of Meta: “That way I would have money left over to study at the University. But I only lasted nine months” before being injured by an antipersonnel landmine.<sup>19</sup>

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<sup>16</sup> Human Rights Watch interview with Adelmo Uni Jiménez, October 2, 2006.

<sup>17</sup> Human Rights Watch interview with landmine survivor who requested anonymity, September 28, 2006.

<sup>18</sup> Human Rights Watch interview with Jimmy Alejandro Peña, October 1, 2006.

<sup>19</sup> Ibid.

People who are living in areas under the control of armed groups can face even greater difficulty than most in obtaining assistance and recovering from the incident.

One 19-year-old landmine survivor who is still living in a rural area under FARC control told us that after his incident he had to travel into the city for treatment.<sup>20</sup> But the guerrillas started to accuse him of collaborating with the army. As a result, while the guerrillas control the movements of all the people in the region, he said in his case they set even stricter rules: “I live humiliated ... I have to ask for permission to make phone calls ... I can only leave the area once a month and then I have to show them results from my trip,” he said.<sup>21</sup> This man filed papers with the government to receive compensation for his injury, but when he went home, he said, “The guerrillas burned my papers ... The guerrillas don’t like us to receive help from the state. But they don’t offer us help either... If the government offers me some help, I will leave the area.”<sup>22</sup>

Mauro Antonio Joaquí, a survivor from southern Cauca, had to leave his town after losing part of a leg to a landmine. He told us that even though he had encountered the landmine while fishing, the guerrillas in the area accused him of serving as a guide for the military, so he had to flee.<sup>23</sup>

### **Other Indiscriminate Weapons: Gas Cylinder Bombs**

In addition to using antipersonnel landmines, the FARC are notorious for their use of gas cylinder bombs. Gas cylinder bombs are made out of empty tanks of gas, which are easy to obtain because Colombians all over the country use them to fuel their stoves. After loading the tank with explosives and shrapnel, a FARC member launches it from a tube packed with dynamite. The tubes are impossible to aim with accuracy, and as a result they regularly strike civilian objects and cause avoidable civilian casualties. International humanitarian law requires that combatants be distinguished from noncombatants and that military objectives be distinguished

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<sup>20</sup> Human Rights Watch interview with landmine survivor who requested anonymity, October 2, 2006.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Human Rights Watch interview with Mauro Antonio Joaquí, October 2-3, 2006.

from protected property or places. The FARC's use of gas cylinder bombs in civilian areas is thus a clear violation of international humanitarian law.

Perhaps the most horrific case of gas cylinder bomb use by the FARC occurred on May 2, 2002, when during combat with paramilitary groups the FARC launched gas cylinder bombs in the town of Bellavista, in the Bojayá region of Chocó state.<sup>24</sup> One of the bombs, apparently directed at paramilitaries, instead hit the local church, where many of the town's residents had sought refuge.<sup>25</sup> Approximately 120 people were killed, and another 98 were wounded, according to the United Nations (UN) mission that reconstructed the events shortly thereafter.<sup>26</sup> For two days after the event, "almost the totality of the approximately 1,000 inhabitants" of the community were forced to stay in a neighboring town while the fighting continued.<sup>27</sup>

The FARC later issued a public statement expressing their regret for the damage caused to the community, and accusing the government, military, and paramilitaries of being ultimately responsible.<sup>28</sup> But while the UN report concluded that paramilitaries had also violated the laws of war during the confrontations, and that the military should be investigated for failing to stop paramilitaries from entering the area, none of this excuses the FARC's use of these weapons in a civilian area that, in this case, led to devastating loss of civilian life.

The horrific events in Bojayá have not stopped the FARC from using gas cylinder bombs. One example is the case of Teresa Arcila, a 49-year-old woman who cooks the typical Colombian "arepas" and washes other people's clothes to support her nine-member family. Teresa bought her house near the police station in the town of Toribío, in the state of Cauca, 35 years ago. In 2005 her house was destroyed when the FARC launched simultaneous attacks using gas cylinders into the neighboring towns of Toribío and Jambaló. "The cylinders started at 8:30, they were coming from

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<sup>24</sup> Office of the UN High Commissioner for Human Rights in Colombia, "Report on Observation Mission in the Middle Atrato," May 20, 2002.

<sup>25</sup> *Ibid.*, pp. 9-10.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Communiqué by the José María Córdoba Block of the FARC-EP, May 8, 2002, available as Annex VI to Office of the UN High Commissioner for Human Rights in Colombia, "Report on Observation Mission in the Middle Atrato."

the hills and landing on the neighboring houses. They [the FARC] wanted the cylinders to land on the police station, but none of them fell there. Ten houses were destroyed. They landed on the church too.”<sup>29</sup>

In August 2006, as Teresa was trying to rebuild her house, the FARC launched another attack on Toribío using gas cylinder bombs. “We were asleep and it landed in the patio of the house. They threw only one cylinder and it hit us again.”<sup>30</sup>

A member of the indigenous association of northern Cauca, who lives in the same area as Teresa Arcila, told Human Rights Watch that his group had asked the FARC to cease these types of attacks, which affect civilians. However, he said that the FARC had always refused, replying that in war, everything is fair.<sup>31</sup>

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<sup>29</sup> Human Rights Watch interview with Teresa Arcila, October 2, 2006.

<sup>30</sup> Ibid.

<sup>31</sup> Human Rights Watch interview with member of the Association of Indigenous Towns of Northern Cauca who requested that his name be withheld, May 25, 2007.

## Causes of Increased Landmine Use

The increase in recorded landmine casualties in Colombia is probably due to a variety of factors. In part, it may be explained by the fact that the government has improved its capacity to record the casualties. However, most landmine experts we interviewed in Colombia agreed that the FARC's use of antipersonnel landmines has in fact increased substantially since 2000.

In many cases it is difficult to pinpoint with certainty which armed party laid any given landmine. However, all the nongovernmental organizations we interviewed that were working on landmine issues in Colombia stated that based on their experience the FARC guerrillas were the biggest users of landmines in the country and were responsible for the recorded increase in landmine casualties, while the ELN guerrillas also use landmines regularly. These statements were consistent with assertions we heard from numerous civilian survivors, who said that the appearance of the landmines on their land coincided with the guerrillas' arrival or passage through the area. Nonetheless, paramilitary groups have also been known to stockpile large numbers of landmines.<sup>32</sup>

The Colombian government has banned the use of antipersonnel landmines and is a party to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction (more commonly known as the "Mine Ban Treaty").<sup>33</sup> There have been no confirmed reports of government use of landmines in recent years, although occasional allegations of such use have been made.<sup>34</sup>

The Colombian government claims that the guerrillas use the landmines as a way to deter the military from entering territory under guerrilla control, as well as to protect

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<sup>32</sup> International Campaign to Ban Landmines, *Landmine Monitor Report 2006*, Colombia chapter.

<sup>33</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction, adopted 18 September 1997, entered into force March 1, 1999. Colombia signed the Convention on December 3, 1997, ratified it on September 6, 2000, and it entered into force on March 1, 2001.

<sup>34</sup> International Campaign to Ban Landmines, *Landmine Monitor Report 2006*, Colombia chapter.

drug crops.<sup>35</sup> Colombian military officers told us that fear of the landmines demoralizes the troops.<sup>36</sup> Also, landmine explosions usually put not only the injured soldier out of circulation, but also others who have to care for or transport the casualty.<sup>37</sup> In response to the military's increasing use of mine detectors, they claimed, the FARC is increasingly hanging landmines on trees to make them more difficult to detect.<sup>38</sup>

The landmines are a cheap weapon to use, as they are mostly manufactured by the FARC and ELN themselves out of inexpensive materials. In the past, the FARC has stated that “the FARC-EP do not set antipersonnel landmines that affect the civilian population, and do not have minefields.”<sup>39</sup> However, it has invoked the low cost of manufacturing landmines as a justification for their use, stating that “antipersonnel mines are also known as ‘the weapon of the poor.’”<sup>40</sup>

Human Rights Watch interviewed Francisco Galán, a spokesperson for the ELN in that group's preliminary peace negotiations with the Colombian government, at the “Casa de Paz,”<sup>41</sup> and asked him about his group's landmine use. However, Galán refused to answer our questions about landmines, asserting that the reports by international human rights groups “do not contribute to the transformation of reality.”<sup>42</sup>

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<sup>35</sup> Human Rights Watch interview with Luz Piedad Herrera, September 27, 2006. The Colombian government also claims to have found a correlation between landmine incidents and the location of drug crops. *Ibid.* The military describes having found landmines in the roots of coca plants, apparently designed to deter manual eradication of the crops. Human Rights Watch interview with Col. Jaime Esguerra and Col. Guillermo Ramírez, September 26, 2006.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Communiqué by the FARC-EP, July 7, 2001, describing a meeting between Queen Noor of Jordan and FARC Commander-in-Chief Manuel Marulanda during failed peace negotiations between the FARC and the Colombian government.

<sup>40</sup> “The FARC assess the outcome of the Patriot Plan fourteen months into its execution,” FARC-EP press release, January 26, 2005, <http://www.rebellion.org/noticia.php?id=10707> (accessed June 20, 2007).

<sup>41</sup> The Casa de Paz is the house in Medellín where the Colombian government was allowing Galán—who at the time of the interview was serving a criminal sentence—to remain and meet with members of civil society during peace negotiations. See <http://www.casadepaz.org/doc/QUIENES%2oSOMOS01.htm> (accessed June 20, 2007).

<sup>42</sup> Human Rights Watch interview with Francisco Galán, spokesperson for the ELN, October 6, 2006.

More broadly, Galán claimed that the ELN did not believe that international humanitarian law applied to them, and that instead, they thought a “creole” version of international humanitarian law should apply in Colombia.<sup>43</sup> Therefore, he claimed, the ELN was willing to “reach agreements with communities on demining processes.”<sup>44</sup>



ELN guerrilla spokesman Francisco Galán, whose group uses antipersonnel landmines, says that the ELN does not believe that international humanitarian law applies to them, and that instead a “creole” version of international humanitarian law should apply in Colombia. © 2006 Pauline Bartolone/Human Rights Watch.

In fact, the ELN recently accepted a proposal by the community of Samaniego, state of Nariño, to do “humanitarian demining” in that community “so that the community

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<sup>43</sup> Ibid. Previously, the ELN Central Command made a slightly different statement, claiming that while it was not a party to the Mine Ban Treaty, “the ELN applies the norms established by IHL for its status, and in that sense it does not use mines in an indiscriminate manner, it limits them to specific defense areas, and in critical situations it marks the mined area.” Statement by the ELN Central Command, International Forum: Antipersonnel Landmines and Humanitarian Accords (June 4, 2004), <http://www.genevacall.org/SPAGNOLO/resources/testi-reference-materials/testi-nsa-states/eln-04juno4.pdf> (accessed March 22, 2007). In April 2006 ELN representative Antonio García reportedly said that the ELN “complies with international norms against ... indiscriminate use” of landmines, and noted that “when we mine, we do not do it on roads, nor on populated areas. This is a topic we have been discussing with [the Swiss-based NGO] Geneva Call and we are reflecting on how ELN uses mines. We are not avoiding the topic; we are exploring it with specialists.” International Campaign to Ban Landmines, *Landmine Monitor Report 2006*, Colombia chapter, quoting “The Orient wants to be an example for the ELN,” *El Colombiano* (Medellín), April 19, 2006.

<sup>44</sup> Human Rights Watch interview with Francisco Galán, spokesperson for the ELN, October 6, 2006.

affected by the conflict can have some of its critical situation alleviated.”<sup>45</sup> Nonetheless, the ELN has so far failed to commit itself to ceasing antipersonnel landmine use. On the contrary, it has reportedly re-mined areas that it had previously claimed to have cleared.<sup>46</sup>

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<sup>45</sup> Letter from Antonio García, Juan Carlos Cuéllar, Francisco Galán, the ELN delegation in the Peace Process, to the Comisión Urging Humanitarian Demining of Samaniego and facilitators, October 29, 2006. On an earlier occasion, the ELN also agreed to demine part of a road in the community of Micoahumado, in the state of Bolívar. See letter from Francisco Galán, representative from the ELN Central Command, to Elizabeth Reusse Decrey and Mehmet Balci of Geneva Call, and Álvaro Jiménez Millán of the Colombian Campaign to Ban Landmines, January 4, 2005. However, that demining operation was never verifiably completed. The Colombian government refused to support the demining operation because, according to the Colombian Vice-Presidency’s Antipersonnel Landmine Observatory, “the ELN was at the same time planting landmines elsewhere.” Human Rights Watch interview with Luz Piedad Herrera, September 27, 2006. As a result, no international groups with expertise in demining were able to assist or verify it. Human Rights Watch telephone interview with Álvaro Jiménez Millán, director of Colombian Campaign to Ban Landmines, April 9, 2007.

<sup>46</sup> In May 2007 we received reports that the ELN had re-mined the road in Micoahumado. Communiqué by the Popular Constituent Assembly, La Plaza, Micoahumado, May 31, 2007. Human Rights Watch email exchange with Álvaro Jiménez Millán, June 4-5, 2007. The ELN later reportedly told villagers that it had cleared the mines again. “ICBL condemns recent mine use by the National Liberation Army (ELN) in Colombia,” International Campaign to Ban Landmines press release, June 15, 2007, [http://www.icbl.org/news/micoahumado\\_remined](http://www.icbl.org/news/micoahumado_remined) (accessed June 29, 2007).

## Victim Assistance: Theory and Practice

Colombian legislation provides for a variety of benefits for survivors of landmine incidents. However, these laws contain some serious gaps, which are compounded by various difficulties in accessing the benefits that are provided. Survivors are often unaware of their own rights, and face bureaucratic bottlenecks and resistance in institutions that are supposed to provide or administer the benefits.

### Colombian Legislation

Colombian legislation provides for several basic benefits for which civilian survivors of landmine incidents might be eligible:

#### *Lump-sum payments*

“Humanitarian assistance” is available to civilians “who suffer damages to their lives [or] serious damage to their personal integrity and/or assets, as a result of acts that take place in the context of the internal armed conflict, such as terrorist attacks, combats, attacks, and massacres, among others.”<sup>47</sup> Currently, humanitarian assistance consists of a one-time payment equivalent to approximately US\$8,680.<sup>48</sup> The request for assistance must be made within one year of the injury, and there are a series of requirements that must be satisfied.<sup>49</sup>

There is also a one-time payment available to survivors of “terrorist events caused by bombs or explosive artifacts,”<sup>50</sup> including landmines, who suffer a “permanent disability.” A permanent disability is a “loss that is not recoverable through

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<sup>47</sup> Colombian Law 418 of 1997, arts. 15 and 16.

<sup>48</sup> The law provides that assistance is calculated as 40 monthly minimum wages. Law 418 of 1997, art. 49 (providing that the amount of humanitarian assistance available is to be set in the annual budget); Presidential Agency for Social Action and International Cooperation (Acción Social), Current Chart of Percentages of Humanitarian Assistance Available According to Disability, <http://www.accionsocial.gov.co/documentos/Montos.pdf> (accessed June 2, 2007) (listing maximum amount as 40 monthly minimum wages). Currently the monthly minimum wage set by law is 433,700 colombian pesos. Decree No. 4580, December 27, 2006. At the current exchange rate of approximately 2,000 pesos to the US dollar, the monthly minimum wage is approximately US\$217, so the total assistance would be US\$8,680.

<sup>49</sup> Colombian Law 418 of 1997, art. 16 (providing that the assistance shall be provided “as long as the request is made within the year after the event has occurred”).

<sup>50</sup> Colombian Decree 1283 of July 23, 1996, art. 30(b).

rehabilitation of the function of a body part, such that the individual's ability to perform in the workforce is reduced.”<sup>51</sup> Persons who are certified by relevant authorities as having such disability are eligible for a one-time payment of at most the equivalent of US\$1,301 (the amount varies depending on the extent of the injury),<sup>52</sup> which must be claimed within six months. If, within a year after the event, the injured person has died as a result of the “terrorist event,” the surviving family can claim the equivalent of \$4,337.<sup>53</sup>

### *Medical care*

Survivors of landmine incidents are entitled to have their emergency medical costs, as well as costs of surgery, medication, and rehabilitation covered. Prosthetic limbs are also included, though the law does not specify how frequently prosthetic limbs may be changed.<sup>54</sup>

### *Transportation to a medical facility*

According to the law, the government is supposed to cover the costs of transporting survivors from the place of the incident to the first place where they receive emergency medical care and, in some cases, to the second medical center to which the survivor is referred.<sup>55</sup>

### *Housing*

Colombian law provides that government subsidies for housing are available to people whose homes have been damaged as a result of the armed conflict.<sup>56</sup>

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<sup>51</sup> Ibid, art. 32(2).

<sup>52</sup> Ibid. The decree provides for a payment of up to 180 daily minimum wages. The daily minimum wage is approximately 14,456.6 colombian pesos, so the maximum payment is 2,602,188 colombian pesos, or approximately US\$1,301.

<sup>53</sup> Ibid, art. 32(3). The decree provides for a payment of 600 daily minimum wages, so the payment in the event of death would be 8,674,000 colombian pesos, or approximately US\$4,337.

<sup>54</sup> Ibid, art. 32(1).

<sup>55</sup> Ibid, art. 32(5).

<sup>56</sup> Colombian Law 418 of 1997, art. 26.

## *Education*

Victims of the armed conflict are also eligible for certain educational benefits and job training from state institutions.<sup>57</sup>

## **Poor Enforcement**

While on paper Colombia's victim assistance programs seem relatively good, in practice they present various problems. There are gaps in the law; many survivors, healthcare workers, and local officials are unaware of the available benefits; and even when they do find out about the available benefits, survivors can face serious difficulties in accessing them. As a result, several of the survivors who spoke to us expressed a great deal of frustration with the government's victim assistance programs.



Despite having lost both hands and part of his eyesight to a landmine, Javier is a painter. However, he cannot afford his own housing and has been living in a shelter for over eight years. © 2006 MMSM/Human Rights Watch.

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<sup>57</sup> Ibid, art. 42.

For example, Javier Pallares de la Rosa, a 31-year-old who works as an artist despite having lost both hands and part of his eyesight, told us that he lives in a shelter run by a private foundation because he has been unable to receive government assistance for housing. “I have been in this shelter for over eight-and-a-half years ... I need to get out of here.”<sup>58</sup>

The following are a few of the most common concerns we heard from survivors and organizations that work with them:

### *Insufficient assistance*

One gap in the law is that the Colombian government does not cover the costs of transportation and lodging for survivors who need to travel for rehabilitation. Mariela Trujillo, who runs a victim assistance project in Medellín for the Colombian Campaign to Ban Landmines, told us that the majority of victims who need rehabilitation have to go to “level 3” hospitals, which are hospitals that offer a wide range of specialties of medical care and are primarily located in major cities.<sup>59</sup> As a result, landmine survivors who need rehabilitation or specialized care either have to relocate near the hospital or they travel regularly, often long distances, to the nearest one.

Trujillo works primarily with survivors in the state of Antioquia, where 97 out of 125 municipalities are reportedly affected by landmines or unexploded ordnance.<sup>60</sup> The only level 3 hospital in the area is the San Vicente de Paul University Hospital in Medellín, but “many times the victims have no way of getting to the hospital, and it’s not just one time—they have to come many times.”<sup>61</sup>

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<sup>58</sup> Human Rights Watch interview with Javier Pallares de la Rosa, September 28, 2006.

<sup>59</sup> Human Rights Watch interview with Mariela Trujillo, victim assistance expert at the Medellín office of the Colombian Campaign to Ban Landmines, October 4, 2006.

<sup>60</sup> Colombian Vice-Presidency’s Antipersonnel Landmine Observatory, Chart on Frequency of events from Antipersonnel Landmines and Explosive Ordinances, 1990 to May 1, 2007, <http://www.derechoshumanos.gov.co/minas/descargas/frecuenciamunicipalo8.pdf> (accessed May 18, 2007).

<sup>61</sup> Ibid.

As a result, Trujillo's group, like various other nongovernmental organizations working with landmine survivors in Colombia, tries to help survivors by covering transportation and lodging costs for survivors who have to travel for rehabilitation.<sup>62</sup>

Financial assistance—which adds up to a total of at most US\$9,908—can also end up being far too little for many survivors.<sup>63</sup> Because the assistance is provided in a lump sum, after the survivors spend the money, they are left with no financial support.

Some survivors are able to invest the sum in ways that allow them to have an income over time. For example, Mauro Antonio Joaquí bought a small house with a storefront in a poor neighborhood on the outskirts of Popayán, and he is able to support himself and his family on the proceeds of the store.<sup>64</sup> However, other landmine survivors are not in a position to invest the payments in a profitable manner, either because their needs are so pressing that they must spend the money, or because they lack the skills and knowledge to invest the money. In the case of Jhon Ferney Giraldo, a teenage landmine survivor whose whole family of 14 people was displaced from its farm, the financial assistance that the government provided to him went on the family's rent and food in Medellín, and the money ran out in just a matter of months.<sup>65</sup>

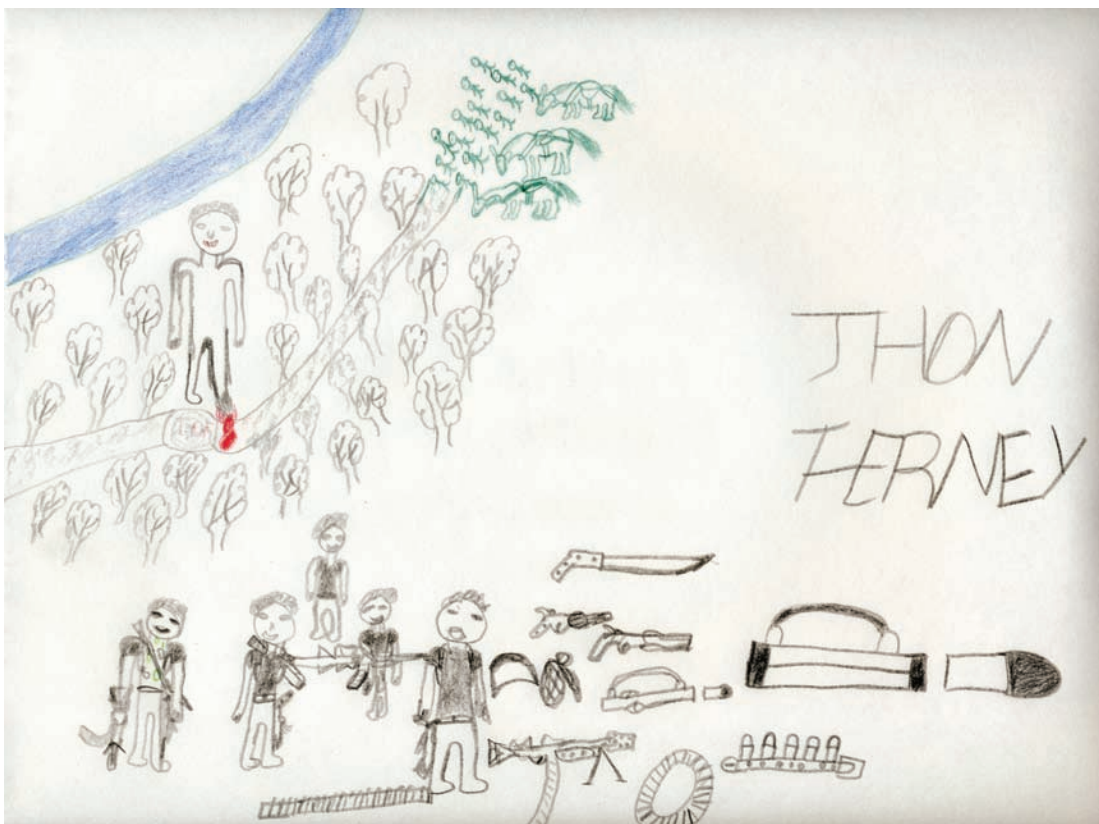
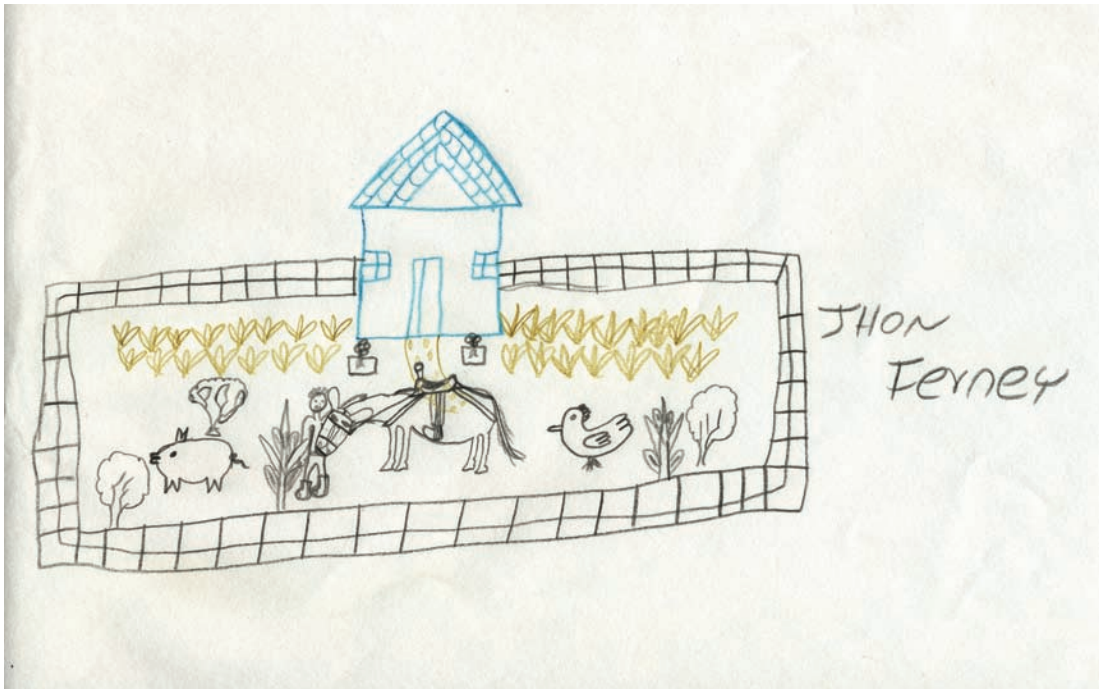
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<sup>62</sup> Ibid.

<sup>63</sup> Landmine survivors can receive a maximum of US\$8,680 in humanitarian assistance plus a US\$1,301 disability payment.

<sup>64</sup> Human Rights Watch interviews with Mauro Antonio Joaquí, October 2-3, 2006.

<sup>65</sup> Human Rights Watch interviews with Jhon Ferney Giraldo and his mother, Consuelo Giraldo, October 4 and 6, 2006.



Jhon Ferney drew the family home that guerrillas forced his family to leave, as well as his encounter, at the age of 12, with a landmine while they were fleeing. © 2006 Private.

### *Short deadlines and insufficient awareness of landmine survivors' rights*

One serious obstacle, which Colombian government officials themselves acknowledge, is that the law establishes relatively short deadlines for applying for the benefits.<sup>66</sup> As noted above, to claim the “humanitarian assistance” the deadline is one year after the events, and to claim the disability payment, the deadline is six months after the incident.<sup>67</sup> Meeting these deadlines can be difficult for survivors who are busy dealing with the consequences of their injuries, especially those who do not receive information about the programs in the immediate aftermath of their injuries. As a result, many end up applying for benefits when it is already too late to claim them.<sup>68</sup>

Survivors are often unaware of the benefits available to them. Moreover, to get the benefits, survivors must fill out complex forms and turn in certifications from local government officials and hospitals that are sometimes difficult to obtain due to local officials' and hospitals' lack of knowledge of the law.<sup>69</sup> As a result, survivors of landmine incidents often “lose their rights because they don't assert them,” according to Luz Dary Mesa, a social worker at the CIREC rehabilitation center (Centro Integral de Rehabilitacion de Colombia).<sup>70</sup>

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<sup>66</sup> Human Rights Watch interview with Luz Piedad Herrera, September 27, 2006.

<sup>67</sup> See Law 418 of 1997, art. 16. See also Colombian Vice-Presidency's Antipersonnel Landmine Observatory, Assistance to Victims of Antipersonnel Mines and Unexploded Ordnances, p. 6 (Chart on Attention Route for Victims of Antipersonnel Mines and Unexploded Ordnances), <http://www.derechoshumanos.gov.co/descargas/guiaatencionvictimas.PDF> (accessed June 2, 2007) (listing six-month deadline for claiming disability benefits).

<sup>68</sup> For example, of 139 cases of landmine survivors that the Colombian Campaign to Ban Landmines reviewed in 2005 and 2006, only 17 survivors had received humanitarian assistance. Seventy-nine had lost their rights to payments because the deadline to claim the benefits had expired. The victims who lost their rights to financial assistance reported that they had not claimed the benefits in time because they did not know about the deadlines. E-mail communication from Camilo Serna, Colombian Campaign to Ban Landmines, to Human Rights Watch, June 13, 2007. While this is only a partial sample, which does not include all civilian landmine survivors in Colombia, it suggests that the deadlines are a significant obstacle to survivors' ability to access benefits.

<sup>69</sup> Human Rights Watch interview with Luz Dary Mesa, victim assistance expert at CIREC rehabilitation center, October 1, 2006. Human Rights Watch interview with Mariela Trujillo, October 4, 2006. Decree 1283 requires that victims fill out claim forms, obtain a certification from local authorities stating that they are victims, and file original receipts for each of the medical and transportation expenses they want covered. Decree 1283, art. 36. See also Colombian Vice-Presidency's Antipersonnel Landmine Observatory, Assistance to Victims of Antipersonnel Mines and Unexploded Ordnances, <http://www.derechoshumanos.gov.co/descargas/guiaatencionvictimas.PDF> (accessed June 2, 2007), pp. 8-10 (listing an assortment of documents that survivors must provide to claim each government benefit).

<sup>70</sup> Human Rights Watch interview with Luz Dary Mesa, October 1, 2006.

By law, hospitals are required to provide care to landmine survivors free of charge and to cover the costs of emergency transportation, and then get reimbursed by the government. However, the system does not always work in practice. This is partly due to the fact that local hospitals are not always aware of the law's requirements, but also because the reimbursement process can be very slow,<sup>71</sup> and as a result some hospitals—especially hospitals that are facing financial difficulties—sometimes end up being unable or unwilling to cover patients' costs.<sup>72</sup> Several survivors told us that they had covered their own transportation costs, and Mesa said she had known of cases where the hospital did not treat the patients as landmine victims, or where victims were asked for payments so that the hospital could later reimburse them. To mitigate this situation, Mesa explained, there has to be an effort not only to inform survivors but to create awareness in hospitals.<sup>73</sup> Dr. Diana Molina, head of the rehabilitation program at the San Vicente de Paul Hospital also recommended that hospital workers be better trained on landmine survivors' legal rights and on how to properly bill the state for services provided to survivors, so they can secure reimbursement more easily.<sup>74</sup>

Hospitals' lack of expertise in working with landmine survivors can lead to other problems. For example, when they are first admitted, landmine survivors are sometimes referred to experts only for amputations and prosthetic limbs, but not for other less obvious injuries. "There is no protocol in place for psychological checkups, or referrals to ear doctors and ophthalmologists," Trujillo said.<sup>75</sup>

Survivors sometimes face new problems when they attempt to get replacements for prosthetic limbs that are worn out. Such replacements are in theory part of the medical care to which survivors are entitled by law. However, in practice survivors must get authorization for the replacements from the companies (known as

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<sup>71</sup> Human Rights Watch interview with Dr. Diana Molina, head of the Physical Rehabilitation Department, San Vicente de Paul Hospital, Medellín, October 5, 2006.

<sup>72</sup> Human Rights Watch interview with Mariela Trujillo, October 4, 2006.

<sup>73</sup> Human Rights Watch interview with Luz Dary Mesa, October 1, 2006.

<sup>74</sup> Human Rights Watch interview with Dr. Diana Molina, October 5, 2006.

<sup>75</sup> Ibid.

Administradoras de Regimen Subsidiado, ARSs) charged with administering the government's healthcare programs, or from state health authorities.

Guillermo Gil, who works with landmine survivors in the state of Santander, told us that in his experience “the ARS’s always deny requests for replacements, and so we always have to file legal complaints before the courts to get the replacements.”<sup>76</sup> Guillermo estimated that in the last year he had probably had to work with six or seven different survivors to file legal complaints against healthcare administrators in the region, to get medication or replacements to which the survivors were legally entitled. They won every case, but Guillermo pointed out that the initial denial of the replacement “discourages the victim in the rehabilitation process.”<sup>77</sup> Unless the survivors have someone to advise them on how to file the legal complaint, they might be unable to claim the benefit.

## Reform proposals

Luz Piedad Herrera, who runs the Colombian Vice-Presidency's Antipersonnel Landmine Observatory, says that with international assistance, the government is strengthening victim assistance programs. In particular, she highlighted the strengthening of the University Hospital of Valle del Cauca and the University Hospital of Santander, which would provide level 3 care to landmine survivors.<sup>78</sup>

Some of the gaps in victim assistance are being partially addressed in the National Development Plan for 2006-2010, recently approved by the Colombian Congress.<sup>79</sup> In the plan, the Colombian government states that during this period it will carry out actions to ensure “integral and retroactive attention” to landmine survivors.<sup>80</sup> According to Herrera, this means that government authorities will implement policies

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<sup>76</sup> Human Rights Watch telephone interview with Guillermo Gil, Santander province coordinator of the Colombian Campaign to Ban Landmines, April 9, 2007.

<sup>77</sup> Ibid.

<sup>78</sup> Human Rights Watch interview with Luz Piedad Herrera, September 27, 2006.

<sup>79</sup> Colombian National Development Plan 2006-2010, Chapter 2.2, Section on Antipersonnel Landmines and Unexploded Ordnances, [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=906](http://www.dnp.gov.co/paginas_detalle.aspx?idp=906) (accessed June 8, 2007).

<sup>80</sup> Ibid., p. 88.

to ensure that the deadlines for claiming assistance are no longer applied to landmine victims.<sup>81</sup>

For about a year, the Colombian Ministry of Social Protection has been working on a draft decree to address victim assistance. Herrera asserted that she expects the government to have a final draft of the decree, or possibly of a law, by March 2008.<sup>82</sup>

In its latest statement on victim assistance at the April 2007 meeting of states parties to the Mine Ban Treaty, the Colombian government stated that it is developing an integral rehabilitation law to cover all disabled persons, including victims of violence, equally. It also stated that it had developed an Integral Rehabilitation Plan that the government plans to start implementing on a trial basis with the goal of eventually implementing it nationwide.<sup>83</sup>

## **International Assistance**

Various international entities and foreign governments provide assistance to Colombia in connection with landmine issues. On victim assistance, the International Committee of the Red Cross and Colombian Red Cross, as well as various other organizations such as the Colombian Campaign to Ban Landmines (which is part of the International Campaign to Ban Landmines), Handicap International, and the Landmine Survivor Network are active in Colombia and regularly step in to fill gaps in the assistance provided by the government, though most of them are unable to cover the entire country. The United Nations Children's Fund (UNICEF), International Organization for Migration (IOM), and the United Nations Development Programme (UNDP) are also active on landmine issues in Colombia.

The European Union recently committed itself to providing €2.5 million to Colombian initiatives related to the implementation of the Mine Ban Treaty.<sup>84</sup> In particular, the

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<sup>81</sup> Human Rights Watch telephone interview with Luz Piedad Herrera, June 8, 2007.

<sup>82</sup> Ibid.

<sup>83</sup> Statement of the Government of Colombia on Victim Assistance and Economic Reintegration, Intersessional Meeting of States Parties to the Mine Ban Treaty, April 24, 2007.

<sup>84</sup> Human Rights Watch telephone interview with Luz Piedad Herrera, June 8, 2007.

funding will be focused on landmine risk education and victim assistance programs to be carried out by 2009. Japan has provided assistance in the establishment of medical facilities with the capacity to treat landmine survivors. Other states that have provided assistance to Colombia and to Colombian-based NGOs on landmine-related issues, though not necessarily for civilian victim assistance, include Canada, The Netherlands, Germany, Norway, Spain, Switzerland, and the United States.<sup>85</sup>

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<sup>85</sup> Ibid. See also International Campaign to Ban Landmines, *Landmine Monitor Report 2006*, Colombia chapter, <http://www.icbl.org/lm/2006/colombia.html#fnB174> (accessed June 20, 2007).

## Legal Standards

### Standards Applicable to Colombia's Guerrillas

Colombia's guerrilla groups are bound by both customary international humanitarian law and the Geneva Conventions, insofar as they are relevant to internal armed conflict. International humanitarian law requires that combatants be distinguished from non-combatants.<sup>86</sup> Accordingly, parties to an internal armed conflict are barred not only from directly targeting non-combatants, but also from engaging in indiscriminate attacks. Indiscriminate attacks include: "(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by [Protocol 1 to the Geneva Conventions]; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction."<sup>87</sup>

In addition, if guerrilla members intentionally direct attacks against civilians using antipersonnel landmines, then they could be subject to prosecution for war crimes under the Rome Statute of the International Criminal Court.<sup>88</sup> Should such attacks be

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<sup>86</sup> Geneva Conventions of 12 August 1949, entered into force October 21, 1950. Common Article 3 of the Geneva Conventions, which is binding on non-state actors, states the following:

In the case of armed conflict *not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(a) Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely....

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ...

(c) outrages upon personal dignity, in particular humiliating and degrading treatment....

In addition, Protocol II, which applies to internal armed conflicts, provides that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations..." Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, art. 13.

<sup>87</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978, art. 51(4). Although this protocol applies only to situations of international armed conflict, the provisions prohibiting indiscriminate warfare are part of customary international law and are binding on all parties to both internal and international conflicts.

<sup>88</sup> Rome Statute of the International Criminal Court (Rome Statute), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art 8(2)(e)(i). Colombia ratified the Rome Statute on August 5, 2002, with a declaration providing that, pursuant to Article 124 of the Rome Statute, for a period of seven years (i.e., until 2009), Colombia does not accept the jurisdiction of

shown to be part of a broader, systematic attack directed against a civilian population, they could rise to the level of crimes against humanity under the Rome Statute.<sup>89</sup> Under such circumstances, guerrilla commanders such as “Manuel Marulanda,” the leader of the FARC, could become subject to prosecution by the Court under general principles of command responsibility.

## Colombia’s Obligations to Survivors

As already noted, Colombia is a party to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction (the “Mine Ban Treaty”). The Mine Ban Treaty requires state parties in a position to do so to provide assistance for the care and rehabilitation, including the social and economic reintegration, of landmine victims.<sup>90</sup>

The Convention does not specify in detail how states parties are to implement this obligation. However, at the First Five-Year Review Conference of the Mine Ban Treaty (the “Nairobi Summit on a Mine Free World” ), states parties to the Mine Ban Treaty committed themselves to implementing the Nairobi Action Plan 2005-2009. That plan sets out a number of specific actions that states parties—particularly those that, like Colombia, are among the 24 countries identified as having significant populations of landmine survivors—commit themselves to take on victim assistance.<sup>91</sup>

Colombia has thus committed itself to: establish and enhance healthcare services needed to respond to the immediate and ongoing medical needs of landmine victims; increase national physical rehabilitation capacities; develop capacities to meet the psychological and social support needs of landmine victims; actively support the

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the Court for war crimes committed on Colombian territory or by Colombian nationals. Starting in 2009, war crimes committed on Colombian territory or by Colombian nationals will be subject to the Court’s jurisdiction.

<sup>89</sup> Ibid, art. 7. The Rome Statute’s provisions on crimes against humanity are already applicable in Colombia.

<sup>90</sup> The Convention states, “Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine survivors and for mine risk education programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.” Mine Ban Treaty, art. 6.

<sup>91</sup> Ending the Suffering Caused by Antipersonnel Mines: the Nairobi Action Plan 2005-2009, [http://www.icrc.org/Web/eng/siteengo.nsf/htmlall/68LGY8/\\$File/Action%20Plan%20.pdf](http://www.icrc.org/Web/eng/siteengo.nsf/htmlall/68LGY8/$File/Action%20Plan%20.pdf) (accessed June 20, 2007).

socio-economic reintegration of victims; ensure that national legal and policy frameworks effectively address the needs and fundamental human rights of landmine victims; develop or enhance national landmine victim data collection capacities; and ensure that in all victim assistance, emphasis is given to age and gender considerations.<sup>92</sup> According to the Action Plan, states parties agree to undertake these actions by 2009.<sup>93</sup>

While the Nairobi Action Plan is not itself legally binding, it does reflect actions that the Colombian government should take in fulfillment of its obligations under Article 6 of the Mine Ban Treaty.

In addition, Colombia has signed, but has yet to ratify, the recently adopted UN Convention on the Rights of Persons with Disabilities.<sup>94</sup> The Convention was adopted “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”<sup>95</sup>

States parties to the Convention undertake a number of obligations towards those with disabilities, including those who have sustained disability as a result of a landmine. Countries must identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies.<sup>96</sup> Persons with disabilities must be able to live independently, and have a right to an adequate standard of living and social protection; this includes public housing, services and assistance for disability-related needs, as well as assistance with disability-related expenses in case of poverty.<sup>97</sup> The Convention also re-iterates that persons with disabilities have the right to the highest attainable standard of health without

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<sup>92</sup> *Ibid.*, actions 29-35.

<sup>93</sup> *Ibid.*, para. 5.

<sup>94</sup> UN Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly on December, 13, 2006, A/RES/61/106, and opened for signature on March 30, 2007.

<sup>95</sup> *Ibid.*, art. 1.

<sup>96</sup> Convention on the Rights of Persons with Disabilities, art. 9(1).

<sup>97</sup> *Ibid.*, arts. 19 and 28.

discrimination on the basis of disability.<sup>98</sup> To enable persons with disabilities to attain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, countries are to provide comprehensive habilitation and rehabilitation services in the areas of health, employment, education, and social services.<sup>99</sup> Although the Convention is awaiting enough ratifications to enter into force, and is therefore not technically binding, Colombia has signed the Convention and should be putting in place the measures necessary to meet the requirements of the Convention and to proceed to ratification.

### **International Actors' Obligations to Mine Survivors**

The Mine Ban Treaty requires that all states parties in a position to do so provide victim assistance.<sup>100</sup> In fulfillment of this obligation, through the Nairobi Action Plan, all states parties committed themselves to assisting others with a demonstrated need for support on victim assistance.<sup>101</sup>

The UN Convention on the Rights of Persons with Disabilities specifically recognizes the role of international co-operation in the realization of the purpose and objectives of the Convention.<sup>102</sup> The Convention has 95 signatories to date, and all parties undertake to engage in co-operation as necessary.

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<sup>98</sup> *Ibid.*, art. 25.

<sup>99</sup> *Ibid.*, art. 26.

<sup>100</sup> Mine Ban Treaty, art. 6.

<sup>101</sup> Nairobi Action Plan 2005-2009, action 36.

<sup>102</sup> Convention on the Rights of Persons with Disabilities, art. 32.

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# Maiming the People

## Guerrilla Use of Antipersonnel Landmines and other Indiscriminate Weapons in Colombia

Colombia has one of the highest rates of reported antipersonnel landmine casualties in the world. While a majority of the casualties are military, every year hundreds of civilians who have no part in Colombia's internal armed conflict are injured as well. Often, they encounter the landmines in the course of ordinary activities, while at work or play.

The main users of antipersonnel landmines in Colombia are the country's largest guerrilla group, the FARC. The smaller ELN guerrillas also use these weapons. In using antipersonnel landmines, these groups fail to distinguish between civilian and military targets, and do not recognize the international ban on use of these indiscriminate weapons. Right-wing paramilitaries have also been known to stockpile landmines. These armed groups claim to be fighting for the Colombian people. But by using antipersonnel landmines, they are leaving many Colombian civilians maimed, blind, deaf, or dead.

Colombia's landmine survivors tend to be among its most vulnerable citizens: peasants or others who live in rural regions, far from state authorities and hospitals. Often they are also victims of forced displacement and other abuses. Landmine injuries can have a devastating impact on many aspects of their lives, including their mental health, their ability to support themselves and their families, and their ability to remain in their homes. Colombian law provides for various benefits for landmine survivors, but many find that government assistance is difficult to access or inadequate to address their needs.

This report documents the impact of guerrilla use of antipersonnel landmines on civilians, as well as the obstacles survivors face in obtaining needed assistance.

*Jhon Ferney Giraldo, who lost his left leg to an antipersonnel landmine at the age of 12, sits next to his older sister in the small apartment their 14-person family shares in a poor Medellín neighborhood.*

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