



Graduate School of Development Studies

**PROTECTING CHILDREN IN RURAL COLOMBIA AGAINST
ANTI-PERSONNEL LANDMINES:
The role of the State**

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List of Acronyms and glossary

Acronyms

ACHR	American Convention on Human Rights
CINAMAP	National Authority of Anti-personnel mines
CRBA	Child's Rights-Based Approach
CRC	United Nations Convention on the Rights of the Child
CRSA	Child Rights Situation Analysis
ERW	Explosives remnants of war
FARC-EP	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia Ejército del Pueblo)
FOSYGA	National Fund of Action
ICRC	International Committee Red Cross
I/A Court HR	Inter American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
OAS	Organization of American States
PAICMA	National Program of Integral Action against Landmines
RBA	Rights Based Approach
UN	United Nations
UDHR	Universal Declaration on Human Rights
UC-ELN	National Liberation Army (Unión Camilista - Ejército de Liberación Nacional)
UNICEF	United Nations Children's Emergency Fund

Glossary

Public Policy	Any public action called strategy, programme or project created to solve a problematic situation
Ottawa Treaty	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti- personnel Landmines and their Destruction
Rome Statute	Statute of the International Criminal Court
Victim	Person attacked by a landmine and that as a consequence he/she has suffered a physical damage. Damages can go from slight wounds up to mutilation and permanent disability or death
Weapons Contamination	Land affected by landmines, explosive remnants of war (ERW) and cluster munitions

Abstract

Anti-personnel landmines are indiscriminate weapons that affect the civil population including children. This situation represents a violation of human and children's rights and the International Humanitarian Law (IHL). Through the years landmines have generated a chronic emergency situation in rural Colombia.

In the last three decades several international instruments such as the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR) and the Convention on the Rights of the Child (CRC) have been ratified by Colombia. As a consequence the State has acquired international responsibilities for the human rights fulfillment and it is commanded to play a definitive role in the situation. It is compelled to respect and to ensure the human rights of its people by no using landmines, taking the necessary measures to ensure the people's rights and providing special protection to its children.

This research work analyzes the children's situation as well as the current and the expected role played by the State. Its main purpose is to determine whether the protection offered to children is sufficient according to the standards of a child rights-based approach (CRBA) and the international responsibilities of the State for children's rights.

The CRBA was chosen as the base approach to the analysis since it sets the children protection international standards based on the CRC. A causal analysis of the situation has shown the multiple aspects that are contained in the problem and the many consequences that the problem has for children, directly or indirectly. It has shown that even those who have not been attacked directly by a landmine are victims as well. A capacity analysis on the side has identified the strengths and weaknesses that the State as main duty bearer has in the fulfillment of its obligations.

In the policy analysis the current role of the State has been identified and assessed through its public policy against landmines. Positive features have been recognized which the most important is the comprehensiveness of the policy to face the causes of the problem and the search for real solutions to the situation. Some contradictions between the expected and the actual role of the State for the children, such as the multiple legal obstacles to claim their rights, the lack of participation and empowerment and the existence of discriminatory practices, were found. Those failures have demonstrated that the protection of children is not sufficient according to the general international responsibilities of the State for children's rights.

Finally and in order to close the found gaps and to offer a better protection to children, a reformulation of the policy is proposed through the inclusion of a CRBA perspective into the program. The inclusion ensures the

implementation of the principles of the CRC and the three pillars of a child rights-based policy. As a complement the step up of the scope of the international commitment of the State for human rights is proposed.

Relevance to Development Studies

This research paper analyzes the Colombian public policy created to solve the chronic emergency generated by the use of landmines. From a human development perspective, this paper links the violations of individual and collective rights with the development of the Nation. It proposes a reconsideration and a reformulation of the policy based on a better realisation of the rights of the victims especially of the children as the most vulnerable human beings. The outcome is aimed to be the promotion of their social reintegration and a post-conflict life reconstruction. This paper develops aspects of a new paradigm of development that conceives the general welfare as the full realisation of human rights.

Keywords

Colombia, anti-personnel landmines, international responsibility of the State for human rights, Child Rights-Based Approach, policy analysis

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This work is dedicated to God and to my angels. To those beloved ones I have in Heaven and to those God has layed and kept next to me in Earth. All of them helped me to achieve this goal. They know who they are. How much I love them and how thankful I am.

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Introduction

" ... I do not dream about anything, what for? Now I can not study because my eyes are in pain... neither I can eat because the bomb destroyed my guts and my stomach hurts... before I liked to play football but now I can not, how? Through this eye I do not see anything and through the other one every day less and less, I believe that soon I am going to become completely blind"¹.

Painful testimonies like this are common in rural areas of Colombia, a country that despite worldwide efforts to eliminate landmines continues to witness the damage that these weapons cause to people. This problem is a consequence of the long-standing civil conflict among Government troops, guerrillas, and paramilitary forces and where the civil population (including children) is often a victim.

Nowadays, Colombia is considered as the first country in the world in landmine attacks². Although the landmine problem has been always serious, it has worsened in the last years. The number of reported attacks increased from one to three per day since the year 2005³. Furthermore, these attacks are aggravated by the lack of capacity of the State to provide solutions and to protect its people. In order to receive aid and to claim their rights, victims have to overcome by their own means obstacles such as the armed conflict, the isolation of the rural areas, the bureaucratic processes, the weak health system and the failures in the communications and road infrastructure.

The landmines problem in Colombia has brought social and economic costs at individual, family, collective, national and even international levels. The resulting humanitarian crisis has affected the development of the whole nation. The victims are often among the most poor and vulnerable Colombian citizens. Especially, because of their physical and psychological condition, children are clearly the most vulnerable victims, to the extent that even in normal circumstances they would need guidance and special support from others. They are the individuals of highest concern as they represent the future, the continuity of our dreams, jobs and generations.

Hundreds of laws and campaigns have been issued to reaffirm that children, without any exception, should not participate in armed conflicts, and to recognize the special care they need. However, in Colombia children are victims of the armed conflict. Hundreds of them have been killed or mutilated by landmines, and surely hundreds more will suffer in the near future because thousands of those lethal weapons are still buried in the ground, waiting for explosion.

This paper invites the reader to reflect on the particular situation of children as special victims of landmine attacks in Colombia, to analyze from a human rights perspective the measures taken by the State and to propose

modifications that will improve the protection of children against this chronic emergency situation.

Chapter I Introduction

1.1 Background

Colombia is a developing country located in South America, 'ravaged by a decades-long violent conflict among the government, non state armed groups (both right and left extreme sides) and drug cartels⁴'. This conflict is a bloody struggle with gross violations of human rights⁵.

Around the year 1960, Colombia's highly stratified society and low social mobility were the reasons behind the beginning of a guerrillas' war⁶. They started to fight the socio-political established democratic system from a point of view of a socialist ideology. However, in the course of the 20th century, the guerrillas acquired more economical than social interests given their monopoly over the drug business. New fund sources such as illegal drug trade, kidnapping and extortion of civilians⁷ were introduced.

The lack of capacity of the State to protect the people and the rising power of the guerrillas were especially perceived during the government of Andrés Pastrana⁸. This generated strong protest reactions within the civilians. On one hand, right-wing paramilitary groups⁹ were created and became new actors in the struggle. On the other hand, the democratic election of current president Alvaro Uribe occurred. President Uribe has been described as a 'hard-line and right-leaning leader'¹⁰. He took a tough 'stance against left-sided guerrillas by military pressure especially in rural and vulnerable areas'¹¹.

During the current government of Uribe the power of the guerrillas has clearly descended. Many security indicators have improved and actions that affected the civil population such as massacres, kidnappings, destruction of towns and attacks on infrastructure of public services have decreased¹². However, other means of warfare that affect the civil population including the use of landmines are not yet under control¹³. On the contrary, the use of landmines has become a relatively easy way to fight enemies and control civilians. Even though three armed groups fight in the rural areas of the country (State forces, guerrillas and paramilitary groups) 'there is only evidence that nowadays landmines are used by the guerrillas groups specially the Revolutionary Armed Forces of Colombia (FARC-EP) and the National Liberation Army (UC-ELN)¹⁴.

Colombia rural areas are weapons contaminated. Although 'the exact area is unknown, it has been calculated that today 31 out of the 32 departments of the total national territory are contaminated'¹⁵. This means that 669 out of the 1.098 of the Colombian municipalities¹⁶ represent a risk for the civilians as landmines can be found around territories of non- state armed groups and also around schools, houses, national parks, and lands belonging to indigenous communities¹⁷. According to the Landmine Monitor Report of 2007

‘Colombia is considered the most affected country in the world by landmines and explosives remnants of war (ERW)’¹⁸.

Between January 1990 and February 2008 the number of victims was calculated in 6.724¹⁹. Nevertheless, the problem has not been continuously at the same level of intensity. In 2005 around 2.300 victims joined the statistics²⁰ which meant an increase from one to three reported attacks per day²¹. This situation was probably due to a variety of factors such as the increased military operations to fight guerrillas, the national anti-drugs policy of manual eradication of drug crops and the territorial disputes among different guerrilla groups²².

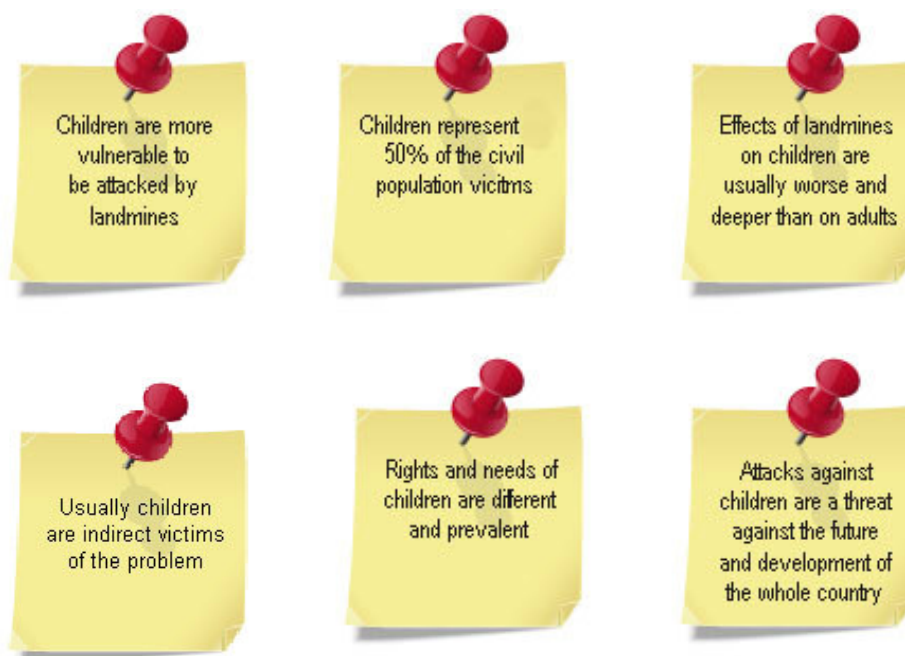
1.2 Problem statement

Anti-personnel landmines are an attractive mean of warfare for armed groups. They are simple to manufacture from cheap and easily available materials and their use does not represent any physical contact with the enemy. They are indiscriminate weapons that work with an automatic-activation/time-delay system²³. They often remain through the years waiting to explode when somebody steps on them, or just in reaction to the proximity of a person. Landmines do not distinguish civilians, soldiers, adults or children.

Most of the civilian victims belong to the rural areas where 97% of the attacks take place²⁴. They are at ‘any age and belong to Colombia’s poorest and most vulnerable citizens, peasants who live in impoverished rural regions and who often have been caught in the middle of the conflict or have been victims of other abuses such as forced displacement’²⁵. Usually, victims have suffered the accident while they were ‘engaging in ordinary activities like playing, doing housework, tending to cattle, fishing or walking’²⁶. Hundreds of children have been killed or maimed in the last years by landmines as a consequence of an armed conflict from which they should have been left out.

The principal concern regarding children can be resumed in the statements of Figure 1.

Figure 1
Landmine problem and children

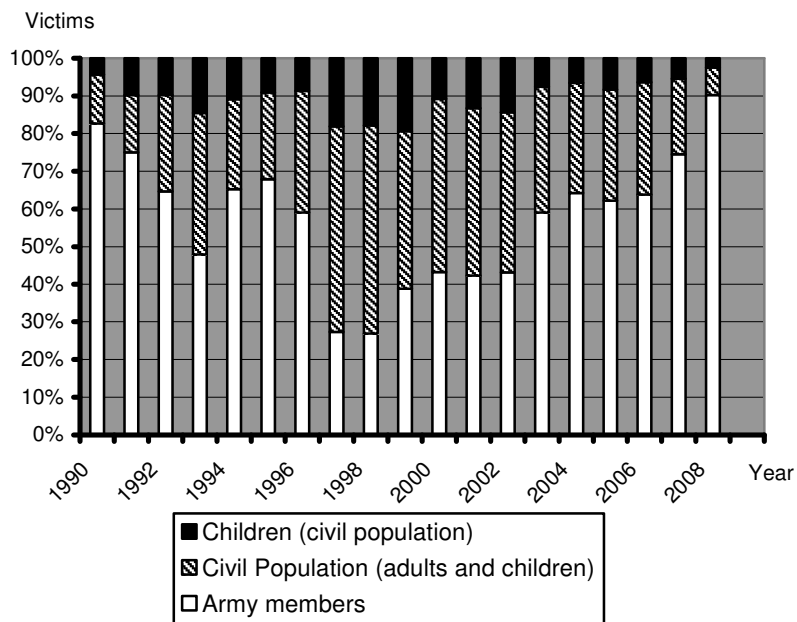


Source: Own construction

Children are particularly vulnerable to accidents because they are more likely to play around and pick up unfamiliar objects²⁷. Nowadays they represent according to UNICEF ‘one third of the victims’²⁸ and according to the Colombian government ‘the 50% of the civilian casualties’²⁹. ‘Between 1990 and February 2008, 656 children have been victims of landmines, of whom 154 died. In 2007, 51 children joined the statistics where one accident was reported every week’³⁰.

Figure 2 and Table 1 present the problem in numbers. In the figure can be seen that although the majority of the victims are the members of the military forces, the attacks on civilians and especially on children are not sporadic:

Figure 2
Victims of landmines in Colombia



Source: Vice-presidency, 2008a /own construction

Table 1
Victims of landmines in Colombia

Year	Army members	Civilians	Total attacks	Adults	Children
1990	19	3	22	2	1
1991	54	11	65	4	7
1992	106	42	148	26	16
1993	46	36	82	22	14
1994	60	22	82	12	10
1995	97	33	130	20	13
1996	75	41	116	30	11
1997	30	60	90	40	20
1998	18	37	55	25	12
1999	26	28	54	15	13
2000	64	68	132	52	16
2001	140	147	287	103	44
2002	318	312	630	206	106
2003	469	265	734	205	60
2004	606	276	882	214	62
2005	762	362	1124	260	102
2006	795	372	1167	293	79
2007	696	188	884	137	51
2008	37	3	40	2	1

Source: Vice-presidency, 2008a/own construction

Comparing the number of children victims of landmines given in Table 2 with the total number of civilians victims, it is possible to conclude that the number is very high. This conclusion is reaffirmed taking into account that the attacks in an armed conflict should be exclusively addressed against those who participate in it and not against civilians and especially not against children.

Despite the worrying official data, it is worth clarifying that they do not reflect the entire problem. To begin with, there is 'a great deal of underreporting, especially of civilian casualties'³¹. The underreporting (calculated around 20%)³² is caused by the lack of presence of the State in rural areas, fear among survivors of being subjected to further abuse³³, their lack of knowledge about their rights and available benefits and the lack of updated census information³⁴.

Secondly, statistics are limited to the physical injuries but do not reflect the complexity of the wounds caused by the attack. The limitation of the attacks to only physical injuries suggests the ignorance of the human rights violations caused by the lack of protection of the State to direct and indirect victims.

Regarding the damages of a landmine attack it is possible to affirm that wounds caused by landmines are considered as 'the most complex and dramatic of all the injuries of war'³⁵. Often they are 'dirty and contaminated and affect several organs simultaneously'³⁶. 'Earth, pieces of clothes and footwear, osseous fragments, human excrement, old tacks, metal pieces and plastic tailing penetrate in the body destroying and infecting. The final outcome is almost invariably the amputation'³⁷.

Given the short height and lower center of gravity of children, the impact of the mines on their bodies is thus stronger and deeper³⁸. In most of the cases even if the child survives, the explosion will reach their genital and internal organs, bottom, arms, trunk, eyes and head. 'The number of resulting amputations is higher, often doubled and worse, e.g. both legs, or one leg and one arm.'³⁹ Afterwards they require 'frequent medical attention, surgeries, adjustments and re-fitting with new prostheses throughout their growing up period'⁴⁰. According to UNICEF 'in case of children, the splinters caused by mines of fragmentation⁴¹ generally reach the thorax and head and cause deep and painful wounds against which doctors find themselves impotent. The pains and sufferings can last for days and often the death is almost inevitable'⁴².

In addition, the emergency care at the scene of a mine incident is deficient. Medical treatment and surgeries in regional hospitals are scarce and transportation to medical facilities inadequate⁴³. Surgeries are costly and often realized by not qualified medical personnel⁴⁴. Devices to facilitate the mobilization (prostheses, crutches and wheelchairs) are not available and the rehabilitation processes are offered in centers far from their homes, what makes more difficult their situation⁴⁵.

Covering the whole extent of the problem, indirect victims should be included as well. They have not suffered a landmine attack on their own bodies but they are affected by the problem. In the case of children the consequences of being indirect victims of a landmine attack are:

- Feelings of pain because of the attack against their loved ones.
- Premature responsibilities. Some adults become dependent on their children and develop depression and feelings of uselessness. Children are forced to change their lives in order to take care of them.
- Economic burden. Attacks against members of the household carry economical breaks that change abruptly the life conditions of the children forcing them to work and thus stop their education process.
- Mobility break. Fear of landmines may result in school leaving, confinement and limited mobility to urban areas.

Based on the facts mentioned above, it must be recognized that the current situation of the rural children of Colombia represents a humanitarian crisis that should be treated as an emergency. The Emergency status implies more dramatic causes and deeper consequences than common problems. They are 'natural disasters or man-made situations where lives, physical and mental wellbeing or development opportunities for people are threatened and where local capacity is inadequate'⁴⁶.

This long-running problematic situation can be categorized specifically as a chronic man-made emergency situation. It means that the humanitarian crisis is aggravated by the weak capacity of the State to solve the problem⁴⁷ but having at the same time other positive factors that allow it to lead and run the emergency⁴⁸.

To recognize the problem as an emergency, it is crucial to be aware of the obstacles that diminish the capacity of the State, to point out the high risk under which the children are, and to look for the special care required⁴⁹.

1.3 Justification

The significance of this research work is based on two main reasons: The existence of an emergency situation that is affecting children's welfare and as a consequence the development of the whole Nation and the existence of an international responsibility of the State to ensure its children's rights.

The emergency situation is precise; the existence of landmines and ERW in the national territory which are clearly a threat for children of rural Colombia. Despite the dispositions of the United Nations Convention on the Rights of the Child (CRC) and the International Humanitarian Law (IHL) to keep children out of the armed conflict, they are being involved in it. Some are neither informed nor aware of the high risk that landmines and ERW represent to their lives. Many have already been attacked, various remain confined to their homes because of the risk that landmines represent, and others must simply face daily the danger and continue walking on contaminated fields.

The use of landmines is a consequence that the Colombian armed conflict has generated and is a specific chronic emergency situation for the Colombian rural children. The humanitarian crisis is deep and it has not been reflected in the limited and under reported official data.

Weapons contaminated land and its damage on children brings collective negative consequences that affect the development of the whole country such as high economical costs, school abandonment and forced displacements to urban towns that bring new cycles of violence, poverty, and unemployment.

The particular international responsibility of the State for children's rights is specially acquired in 1991 when Colombia ratified the CRC. Since then the Colombian State is compelled to offer its children a special care given their natural vulnerability. This special care has to be increased especially in risk situations such as the existence of an armed conflict or a condition of disability. It also implies the acknowledgment of the children's special needs and rights that have been recognized by the CRC as indispensable ones for their development.

1.4 Objectives and purposes of the research

The objective of this research is to examine from the child rights-based approach (CRBA) and from the international responsibilities of the State in children's rights, the position of the Colombian government regarding the chronic emergency situation of children caused by the use of landmines.

This examination is made through an analysis of the current Colombian public policy against landmines. The purpose of this research is to verify whether Colombia meets its international children's right obligations and to provide resource material that could be used by the government for reconsidering the current policy and improving the realisation of children's rights according to the principles of the CRBA.

1.5 Research questions

Main questions: The research aims to address two main questions:

- To what extent does Colombian public policy sufficiently protect children against landmines, in accordance with the main principles of a CRBA and its international child's rights responsibilities?
- How could this policy be improved?

Secondary questions: In order to answer the main questions, secondary questions are formulated:

- What is the significance of the context of the armed conflict and the landmine problem in Colombia?
- How deep is the landmine problem in Colombia?
- What are the effects, magnitude and features of the problem on Colombian children?
- Which children's rights are affected?
- How can be perceived the capacity of the State to solve the problem?
- What other duty bearers can be identified?

- What roles do they play?
- What kind of obstacles do duty bearers find?
- What kind of obstacles do children find in the practice to claim their rights?
- What is the current Colombian policy against landmines?
- Does the current Colombian public policy of children's protection incorporate a CRBA perspective?
- Does the Colombian public policy reflect a real interest of the State for protecting the life the victims?
- Do discriminatory practices exist?
- Who are the most vulnerable children victims of landmines?
- To what extent is the State fulfilling its international responsibilities as per international human rights law, IHL and the CRC?
- Does the policy include the three pillars of a child rights-based policy?
- What kind of changes could be implemented in the current policy to introduce a CRBA perspective, to improve the protection to the children's rights and to fulfill the international obligations of the State?

1.6 Methodology

This research work is focused on the Colombian rural children as direct and indirect victims of landmines. Given the features of the situation, an analysis of the statistical data would not reveal its complexity. Because of this, a qualitative research approach is adopted. It is made through a policy analysis based on three main issues: The child rights situation, the identification of the expected role of the State in the children's protection and the description of the Colombian public policy against landmines.

The child rights situation analysis (CRSA) is the start point of the policy analysis. It outlines the children's situation from a child rights perspective and through a causal analysis identifies the main causes and consequences of the problem and the violated rights. Through a capacity analysis it identifies the involved duty bearers with their respective roles.

Then, the expected role of the State is recognized in the international legal framework in where the country is compelled to the protection of children. The CRC, the American Convention on Human Rights (ACHR) and the International Covenant on Civil and Political Rights (ICCPR) are the bounding international instruments.

The description of the Colombian public policy against landmines and the identification of its most important aspects is done. A consequent analysis is then performed based on them.

The approach used to make the policy analysis is the CRBA. Although there is no evidence that the CRBA is the unique way to achieve the realisation of the

children's rights, it has enough legitimacy to be chosen in this case. The influence of the CRBA comes from the fact that is based on the CRC which is the suitable instrument that sets the international standards for protection of the children's rights. The application of the CRBA represents the willingness of the State to accomplish its international obligation on children's rights.

An approach based on the children's rights does not mean that adults are left out. The principles of the CRC also fit in the situation of adults. The CRBA goal is to create an awareness of the prevalent care to children, their special rights and a concept of active childhood.

In order to direct the analysis; main and secondary questions are formulated based on the features and elements of the CRBA. These questions are answered through an individual desk research based on the personal interaction of the author with the problem and on literature review.

Reports, data and documents from the Colombian Government as well as from other reliable sources such as the most important media of the country, non governmental organizations (NGOs) and international organizations such as UNICEF, Human Rights Watch, International Campaign to Ban Landmines and International Red Cross are used.

The directing questions as well as the features and elements of the CRBA are taken into account throughout the research.

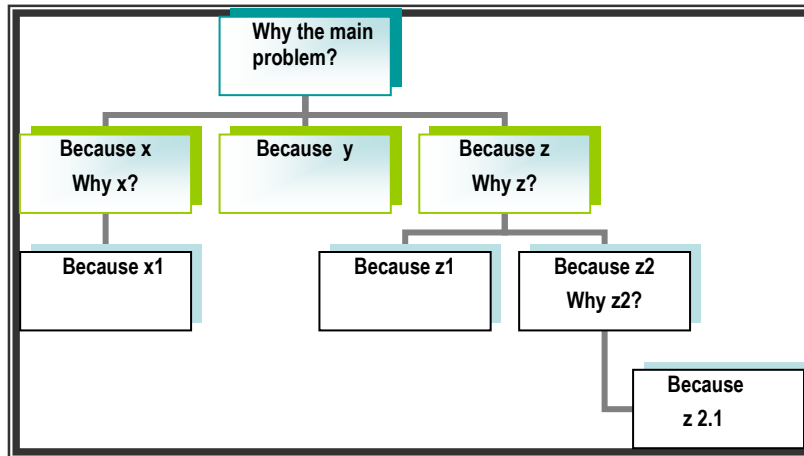
The policy analysis continues examining the outcomes of the CRSA and the policy against landmines from three key perspectives. In this sense three different analyses are developed: one made from the principles of the CRC, another made from the called three pillars of a child rights-based policy and the last one made from other relevant international instruments on human rights. Based on the findings of these analyses and using the same three perspectives the recommendations are proposed and the policy analysis finished.

In this research work, a problem tree and a capacity analysis matrix are the tools used to frame the whole investigation. A Problem Tree is a causal analysis tool developed within the Logical Framework Approach (a systematic top/down method of policy analysis with a managerial perspective)⁵⁰. The tool is useful for achieving a first draw of the situation and an 'initial screening of proposals'⁵¹.

The problem tree makes a causal analysis of the problem⁵² and generates based on its outcomes, a Violated Rights Tree and a Solution Tree.

The Problem Tree starts at the top level with the main problem. One level down asks for its most direct causes that by themselves constitute other problems of the situation. The lower levels ask for the causes of other identified problems. As Figure 3 shows, the lower levels are used for going step by step to the roots of the problem:

Figure 3
Problem Tree



Source: Own construction

Hence, the construction of the trees is given ‘to see immediately the roots and causes of the violations of children’s rights and the key problems that the children face’⁵³ (problem tree/ appendix II), to identify the rights that are affected by the problem (violated rights tree/ appendix III) and to find possible solutions to the causes of the problem (solution tree/ appendix V).

On the other hand the capacity analysis matrix⁵⁴ is a map of the situation from the point of view of the duty bearers and their ‘ability to meet their obligations and influence processes of change’⁵⁵. This analysis makes emphasis on the State as the main duty bearer (appendix IV).

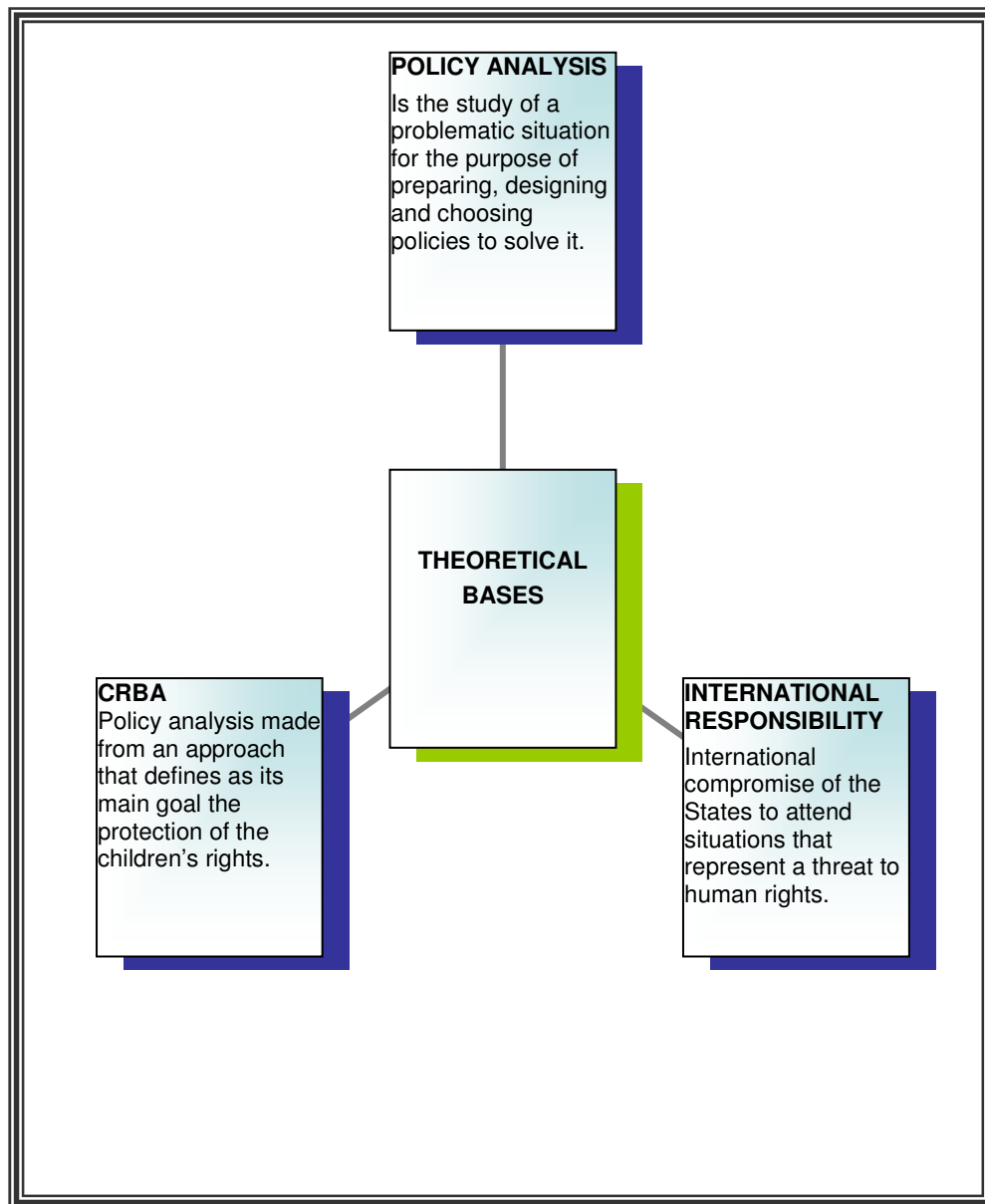
Through the application of the mentioned tools, the formulation of the research questions and having the CRBA as the driving policy analysis guideline, the whole scope of the investigation is covered in the most suitable and direct way.

Chapter II Theoretical basis

2.1 Theoretical framework

In figure 4, the theoretical foundation of this research work is presented.

Figure 4
Theoretical framework



Source: Own construction

The International Responsibility of the State for Children's Rights and the CRBA provide the most relevant concepts used in this investigation. These concepts are used to explain the obligations of the State with its children and

to clarify the role of the international community in the field. In the same way the CRBA is used with the theory of the Policy Analysis to set the basis of the methodology used through this study.

2.1.1 The international responsibility of the states for human rights

It is a juridical relationship originated from international agreements where each state promises to attend in the required form, situations that represent threats against the human rights of its population. This commitment is made in front of an international system in which every State voluntarily decides to be a part of it. The system exercises an eventual supranational jurisdiction to judge the States' performance in the field.

The system is composed by the international community but is directed by the United Nations (UN) and its specialized agencies. Within the system, different agreements and organizations coexist. For this reason, the subject, the field, the ratifications and the reservations of the States are taken into account in order to identify for each case the jurisdiction and the corresponding duties.

The international responsibility can be declared 'after the State has had the opportunity to repair the situation by its own means'⁵⁶. The cause of an eventual declaration of international responsibility is the State's failure in respecting and ensuring the rights of the individuals that are submitted to its jurisdiction⁵⁷. Obligation to respect brings a 'negative connotation for the State of non-intervention or interference when the freedom of people should be guaranteed'⁵⁸. This implies that the failure in this obligation is limited to the actions committed by the State⁵⁹. On the contrary, obligation to ensure⁶⁰ brings a positive connotation for the State 'to take actions and measures to meet the people's rights'⁶¹. Thus, the failure in this obligation can be extended to the violations committed by others⁶².

Some specific duties are included within the obligation to ensure the people's rights. Here, a reference is made to the duties of prevention, investigation, punishment and reparation.

Prevent, to avoid human rights violations. ***Investigate***,⁶³ as the right to the truth, in order to know the causes and the facts related to the occurrence of the crimes. ***Punish***, as the right to the justice, achieved through the imposition of condemnatory sentences against the author of the crimes adjusted to the principles of necessity, proportionality and reasonability. ***Repair***, through individual actions of reparation such as ***restitution*** of the violated rights, ***indemnification*** of the moral and material damages and the physical and psychological ***rehabilitation***⁶⁴ of the victims, as well as 'collective measures of satisfaction of a general scope and guarantees of no repetition'⁶⁵.

The Colombian government is submitted to the mentioned international obligations and to the international system of protection of human rights since it is a member of the UN and of the Organization of American States (OAS) and it has ratified the ICCPR, the ACHR, and the CRC including these agreements in the national legal system.

The inclusion of these agreements in the Colombian legal system is given by the existence of the article 93 of the Constitutional Law that commands that all the ratified international agreements that recognize human rights have a prevalent connotation over the internal system. For this matter, a jurisprudential concept called ‘Constitutional Block’⁶⁶ was created by the Constitutional Court. The concept declares that there are norms and principles that make part of the Constitutional Law and are criteria of interpretation of all its rights and duties even if they are not written in. Consequently, the Colombian government must fulfill its international obligations for human and children’s rights or could face an eventual legal claim in front of the system and be declared internationally responsible for the violations of human rights.

2.1.2 Policy analysis

The Policy analysis is the start point of the policy-making process composed of three activities: analysis, implementation and evaluation⁶⁷. The target of the process is a public policy. It can be defined as ‘any strategy, programme, project or action of public nature created to solve a social problematic situation’⁶⁸.

Although policy analysis is considered as a single activity, it involves the ‘process of preparing, designing and choosing policies’⁶⁹. Its importance is based on the fact that it guides the agents in the ‘unending task of making and arguing decisions through the use of analytical and procedural approaches, methods and skills’⁷⁰. In this sense, policy analysis is more than a formal stage of the policy-making process. It is a useful activity throughout all its stages to make new decisions, to reconsider former ones or to propose new arguments⁷¹.

References to social constructions and mental processes draw the complexity of the matter and allow concluding that each policy is the result of a single process adapted to the circumstances of the situation⁷². There is an impossibility to find a unique policy-making formula that fits in all the situations and satisfies all the policy makers. For this reason and despite the theories, the personal experiences and points of view of those who interact directly with the problem are the most important criteria to outline the process.

In the policy analysis field, several theories refer to different aspects considered important in the study of the problem and in the design of the solution. Some authors have developed theories about the conditions and skills that the policy makers should have; others have presented methods and tools to organize ideas and to make the process easier; and many have focused their theories in the choosing of the approach through which the problem is analyzed⁷³.

The selection of the approach is the key issue in the analysis process. It constitutes the technique of the policy from where the situation is analyzed, the goals defined, the beneficiaries determined, the strategy developed and the indicators to measure the effectiveness of the policy specified.

Managerial, market-based and inspired approaches, participatory and ethic driven approaches are examples of some of the approaches that we can find nowadays⁷⁴.

Policy approaches bring assumptions and judgments and they set up the position of the policy maker⁷⁵ in front of the problem and the policy. The chosen approach reflects the interests, priorities and ranking of values of the policy maker⁷⁶ and even, his/her ideas about development and the way to achieve it⁷⁷. As a consequence, institutions and policy makers usually look for the approach that fits best their interests and values.

Given the fact that the protection of the children's rights is the focus of this investigation; the approach through which the public policy is analyzed is the one that sets the protection of the rights of the children as its principal criterion of effectiveness⁷⁸.

2.1.3 Child rights-based approach (CRBA)

Among the policy- analysis approaches, it is the family of Right Based Approaches (RBAs)⁷⁹, the one that analyzes poverty not only through the economical aspect but through human rights as the main indicator of people's welfare⁸⁰. According to RBAs, realising human rights is the way to solve social problems and to move toward a general development.

CRBA is a specific RBA focused on children as a group of human beings that given their vulnerability need special care. Its main objective is to achieve the realisation of their rights.

As any policy approach it bears some conceptual assumptions that constitute the main features of the policies based on it. These assumptions are the outstanding importance of human rights, the concept of active childhood⁸¹ (where children are not considered only as victims but as actors of their own development⁸²), the shift from the idea of social-charity programs to the idea of social-rights programs⁸³, the establishing of a new relationship between children and government ('not based on good will but on obligations')⁸⁴ and the recognition of the exclusion, the deprivation and the vulnerability as the 'three domains of children's poverty experience'⁸⁵.

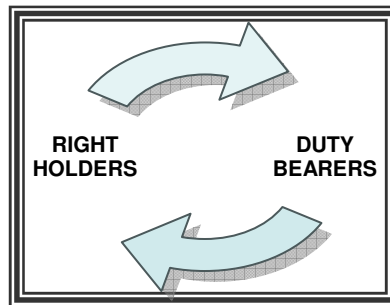
From the mentioned features the two main elements of the CRBA are originated. Reference here is made to the right holders/duty bearers' relationship and to the guide of the CRC.

The right holders/duty bearers' relationship: This relationship relies on the assumption that the realisation of the children's rights implies the accomplishment of defined duties and that specific actors are in charge of them. These actors as duty bearers need the children's participation and accountability to better perform their roles.

According to this, and as Figure 5 shows, a child rights-based policy looks for a better realisation of the children's rights through the construction of a mutual

relationship that ‘helps duty bearers to meet their obligations and support children as right holders to claim their rights’⁸⁶.

Figure 5
Right holders/duty bearers’ relationship



Source: Own construction

However, this relationship should be constructed while the urgent needs are addressed. This double strategy is proposed in order to achieve a balance between the real solution of the problem and the attention to the rights violations. In this matter, the CRBA suggests child rights-based policies composed by three essential pillars⁸⁷ that cover immediate and long term solutions to the problem.

The first pillar refers to the ‘immediate perspective of the policy. The design of actions over the human’s rights violations in order to respond to the emergency of the situation’. The second and third pillars give the ‘long term perspective of the policy and the construction of the right holders/duty bearers’ relationship’⁸⁸.

Specifically, the second pillar refers to ‘the actions over the capacity of the duty bearers and in particular over the State that is recognized as the main one’⁸⁹. The purpose of the second pillar is ‘to help the State to meet its obligations of respecting the enjoyment of the rights, protect them through the adoption of measures that prevent violations from third parties and promote them through the adoption of measures to facilitate their realisation’⁹⁰.

The third pillar makes reference to the design of actions over the empowerment of right holders⁹¹ helping them to claim their rights’⁹². In order to achieve this, children have to be trained to participate in the policy-making process’⁹³.

Guide of the CRC: Children’s rights are ‘universal entitlements’⁹⁴ that children should enjoy. They are recognized worldwide through the CRC, an international instrument that has been written in general terms giving a ‘common understanding of the rights’⁹⁵ but respecting ethnic diversity.

The CRC has been ‘built on varied legal systems and cultural traditions. It is a universally agreed set of non-negotiable standards and obligations. These basic standards also called human rights set minimum entitlements and freedoms.

They are founded on respect for the dignity and worth of each individual. These standards are both interdependent and indivisible; we cannot ensure some rights without or at the expense of other rights⁹⁶.

The CRC spells out the basic human rights that children everywhere have and the principles that ‘shape the way in which children are viewed’⁹⁷. These principles create an adequate ‘rights climate’⁹⁸ where the children’s rights can be realised. It entails the involvement of children and especially of the most vulnerable ones in the policy-making process⁹⁹.

The importance given to the principles makes of the CRBA not an objective-oriented approach but a process-oriented one guided by the following principles that must be guaranteed during the whole process¹⁰⁰:

Survival and development: The article 6 of the CRC alludes to two different concepts: ‘survival that refers to the simple fact of remaining alive; and development which encompasses the physical, psychological, emotional, social and spiritual development of the child as required aspects to enjoy a high quality of life’¹⁰¹.

Non discrimination: The article 2 of the CRC points out that ‘all the rights should be applied to children without exception and that is the State’s obligation to protect children from any form of discrimination and to take action to promote their rights’¹⁰². Discrimination can be caused by different conditions such as poverty, disability, illiteracy, gender, among others. It can exist ‘against a group of children, against a particular child or against children as a whole group’¹⁰³.

Child participation: The article 12 of the CRC refers to the right of the children to express their opinions freely in any procedure that affects them. Nevertheless, ‘participation is not only allowing the children to speak; it involves the right of the children to be heard and also implies the will of the duty bearers of letting them an active role and to influence decisions that affect their lives’¹⁰⁴.

Best interest of the child: The article 3 of the CRC commands that ‘all actions concerning to children shall be taken on their best interests. This gets special importance when their caregivers fail to do so and the State has to protect them’¹⁰⁵.

To conclude, it is possible to say that the CRBA is a solid approach used by the highest authority in the matter as it is UNICEF and useful in this case.

However, it is important to be aware of its critics in order to proactively anticipate possible failures. They argue its ‘stronger interest in the long term solutions than in meeting urgent needs, its lack of prevision in the case of abusive duty bearers, the absence of universal definitions of concepts and the

utopia that constitute the principles of indivisibility and universality of the rights¹⁰⁶.

Its followers on the other hand look after its advantages such as the increase in accountability, better protection of the poor, trade off removal, attention to discrimination and planning in terms of rights¹⁰⁷. They assume that an incorporation of a CRBA perspective will bring a better realisation of the children's rights through concrete objectives such as the 'remotion of practices and policies affecting children's rights, the ensuring of equity and non discrimination, the increase of the children's participation and the empowerment of the community capable to support the policy'¹⁰⁸

2.2 Legal framework

The legal framework defines the expected role of Colombia in this case. It bears the reasons for the creation of a public policy against landmines and constitutes the basis for the special protection to children, specially the disabled ones and the ones victims of the armed conflict.

2.2.1 The general obligations of the State for human rights

The following are the international instruments that set the general obligations of the State for human rights:

The ICCPR issued in 1966, ratified by Colombia on October 29, 1969 with no reservations and entered into force in 1976. The ICCPR reaffirms the recognition of the human rights included in the Universal Declaration on Human Rights (UDHR), imposing concrete obligations to the states parties that the UDHR does not impose because its lack of binding character.

The ACHR issued in 1969, ratified by Colombia on May 28, 1973 and entered into force in 1978. The ACHR was issued to create a regional human rights protection system composed by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (I/A Court HR). Colombia recognized the competence of the system on June 21, 2005 reserving itself the right 'to withdraw the recognition of its competence'¹⁰⁹.

The ACHR recognizes human rights, establishes the protection system and sets obligations to the states parties. 'The obligations contained in the articles 1.1 and 2 of the ACHR constitute the base for the determination of the international responsibility of a State. These articles put at the expense of the States two fundamental duties of respect and guarantee in such a way that any damage to the human rights recognized in the ACHR that could be attributed, according to the rules of the International Law, to the action or omission of any public authority, constitutes a fact attributable to the State that compromises its responsibility in the terms foreseen by the same ACHR'¹¹⁰.

2.2.2 The special protection to children

The following are the international instruments applicable to the special protection of children:

The CRC issued in 1989, ratified by Colombia on January 28, 1991¹¹¹. It sets out the children's rights and the process guide principles. It obliges states to push caregivers to exercise their responsibilities and to ensure the children's special needs and rights.

The CRC recognizes the vulnerability of children and sets for them a general special protection. However, the CRC also identifies some particular high risk situations where the vulnerability of children is increased and where the State is demanded to give an exceptional special protection to its children.

Some of these high risk situations are generated because of the use of landmines. For that matter, special protection to children victims of the armed conflict must be provided in order to achieve their physical and psychological recovery and social reintegration (art. 39).

In the matter of special protection to disabled children (art. 23), the CRC recognizes their special needs with the purpose of achieving the greatest degree of self-reliance and social integration. In that sense it obliges the states to ensure the children's rights such as access to health care and rehabilitation services, education and training, preparation for employment and recreation opportunities.

Special protection guidelines to children temporarily or permanently deprived of his/her familiar environment are contained in the article 20 of the CRC.

The Optional Protocol of the CRC regarding the Involvement of Children in armed conflicts issued in 2000 and ratified by Colombia on May 25, 2005¹¹². It seeks to keep children out of armed conflicts and to protect them in a prevalent way if they result involved.

2.2.3 International commitment to ban and to eliminate landmines

The following are the international conventions in where the boundary conditions for the proscription and elimination of landmines are contained:

The Convention on Certain Conventional Weapons issued in 1980 and ratified by Colombia on June 3, 2000. The Convention restricts the use of certain conventional weapons which are considered excessively injurious or whose effects are indiscriminate.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Landmines and their Destruction. Commonly 'The Ottawa Treaty' ratified by Colombia on September 6, 2000. The treaty does not open space to reservations.

The Ottawa Treaty is the 'most comprehensive international instrument for ridding the world out of the scourge of antipersonnel mines. It deals with everything from mine use, production and trade, to victim assistance, mine clearance and stockpile destruction'¹¹³.

2.2.4 Other relevant international instruments

Other relevant instruments, applicable in the scope of this investigation are mentioned below:

The American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities issued in 1998 and ratified by Colombia on April 12, 2003. The convention aims to achieve equity and eliminate discrimination.

The Fourth Geneva Convention issued in 1949 and ratified by Colombia on November 8, 1961 and the Protocol II Additional to the Geneva Conventions issued in 1977 and ratified by Colombia on August 14, 1995. These instruments were issued with the objective of recognizing civilians as protected persons and provide them with a special treatment during war and non international armed conflicts.

2.2.5 National law

The national Colombian laws relevant to the problem are considered as well, being those:

The Colombian Constitutional Law issued in 1991 recognizes Colombia as a social State. The adoption of this concept refers to two basic issues: First, the recognition in its legislation of the rights of the Colombian people; and second, the adoption of policies of social protection specially addressed towards the most vulnerable citizens. In addition, its article 44 recognizes the rights of the children and declares their prevalence over any other rights.

The Law 1098 of 2006 by which the regime to protect the youth and the childhood is issued. This law recognizes children as active right holders. It is based on the CRC and developed under the article 44 of the Constitutional Law.

The proper interpretation and application of the above mentioned instruments is the key to the successful creation of the basis of a public policy against landmines where children are its centre and focus of main concern.

Chapter III Child rights situation analysis (CRSA)

The CRSA continues the analysis of the problem in order to determine to what extent the children's rights have been realised and to identify the obstacles that children face to enjoy them.

The CRSA is composed by a causal and a capacity analysis and it is based on the Problem Tree, the Violated Rights Tree and the Capacity Analysis Matrix (appendices II, III and IV).

3.1 Causal analysis

The causal analysis of the situation is based on the following statement: '*Colombian rural children's rights are being affected because of the use of anti-personnel landmines by non state armed groups*'.

Children are identified as direct and indirect victims of the problem. The main cause is the weapons contaminated land which is a consequence of an armed conflict that seeks for the control of civilians. The impairment of the children's rights is generated not only by the landmine attacks but also by the fact that they remain unprotected after it. This failure in the protection is a consequence of several factors summed up. The **delay** in the rescue of the victims, the lack of an immediate and qualified attention, the **poverty** and the social and political oblivion of the rural areas, the existence of **discriminatory practices**, the **lack of knowledge** about rights claiming, and the existence of **formal requirements** to claim the victims' rights.

The delay in the rescue and immediate attention to the victims is generated by the risk that the weapons-contaminated land represent for those who provide help and by the conditions of the rural areas of Colombia which are characterized by the lack of State presence and high difficulties in transportation and communication.

Poverty is identified as a cause of the problem because many accidents occur in high risk zones where people live without other alternative. Furthermore, poverty is also identified as a consequence of the problem because weapons-contaminated land and attacks over family members bring negative economical consequences to the households. These economical changes generate other problems such as forced displacements, school abandonment, child-labor and the involvement of children in harmful activities.

Discrimination of disabled children is other factor added to the problem. Its causes are the lack of social commitment with the reintegration process, the absence of job opportunities and the lack of an education system accessible to disabled children in general.

The *lack of knowledge* has been identified as a double cause of the problem. On one hand people do not know the risk that landmines represent to them or how to prevent accidents. On the other hand, people do not know their rights or how to claim them. Other reasons that hold victims from claiming their rights include the threats from non state armed groups in the case of reporting the accident and the high costs of medical treatment usually offered in urban areas. This situation is worse in the case of children because the claim of their rights depends on a decision made by their caregivers without any control from the State.

Many other people are left unprotected because despite their desire to claim their rights they have to face complex *formal requirements* that they can not fulfill.

3.2 Violated rights

Based on the causal analysis the rights of the CRC that are being affected by the problem are identified. The violation of these rights represents the failure in the State's obligation of ensuring the children's rights.

The landmines attacks on children represent the State's failure in ensuring the rules of the IHL and to provide special protection to its children during armed conflicts (article 38). Consequently, the *right to the life* is threatened being the death a common consequence of the attack (art. 6). Even if the child survives his/her normal standard of life is diminished because of the physical and psychological consequences of the attack (art. 27).

The fact that children remain unprotected after the attack also constitutes a violation of their right to the life and of the articles 26, 24 and 39 of the CRC that command that in the cases of illnesses, disabilities or abuses inflicted on children as a result of an armed conflict, they must receive the benefits of the social security as well as an adequate care and treatment. The ultimate goal is to achieve their rehabilitation, their physical and psychological *recovery* and their *social reintegration*.

The physical recovery of the children victims of landmines implies in most of the cases, the transfer to urban areas in order to receive an adequate treatment. This situation generates a dilemma for their caregivers who should decide between the benefits of the treatment and the burden of its high costs. These costs involve not only the economic aspect but also the emotional one of separating the children from their parents and from their familiar environment. This special situation charges the State with the duty of ensuring that this decision is taken on the *child's best interest* (art.3).

Discriminatory practices against disabled children imply violations of their special rights recognized in the CRC. These rights are the recognition of the *disabled children's special needs*, their right to education, training, health care and rehabilitation services, preparation for employment and recreation

opportunities (art. 23). All these rights have as a purpose to promote their self-reliance, to promote their integral individual development, to facilitate their active participation in the community, to achieve their major possible level of social integration and to allow them to enjoy a full and decent life.

School abandonment is a consequence of the problem for both direct and indirect victims. To the direct ones because of the physical impediments caused by the attack and because of the lack of an education system accessible to disabled children. To the indirect ones because of the confinement and the economical changes that brings the problem. This situation causes not only the violation of the **right to education** (art. 28) but also affect the **right to leisure** that children have (art. 31).

Poverty forces children as indirect victims, to assume extra economical responsibilities in the search of new income options. This situation put them frequently in other risk situations such as economic exploitation, inclusion in hazardous or harmful works (art. 32, 33) and the immersion in illegal activities such as the production of illegal drugs (art. 36) or combating for non state armed groups(art. 38).

Finally, forced displacements to urban areas are commonly seen by rural inhabitants as an escape from the problem. However, this option does not represent an enhancement in the children's situation. The new urban environment is usually in marginalized areas and does not represent a **good standard of life quality**. The lack of an **adequate alimentation and clean drinking-water** (art 24) are usually unsatisfactory in these areas and thus inappropriate for the children's general development (art. 27).

3.3 Most vulnerable groups

Landmine attacks over Colombian rural children place them immediately in a triple risk situation: disability, poverty and armed conflict. It is possible however, to find children that are victims as well of previous risk situations. This fact makes them, the most vulnerable ones, being¹¹⁴ :

- Disabled children victims of the armed conflict without caregivers.
- Disabled children victims of the armed conflict with abusive caregivers.
- Disabled children victims of the armed conflict with illiterate caregivers.
- Children victims of the armed conflict with former illnesses, mental or physical disabilities.
- Disabled children victims of the armed conflict from indigenous communities.
- Disabled children victims of multiple abuses because of the armed conflict.
- Disabled children that have been forced-displaced from their lands.
- Disabled children victims of the armed conflict without any education.

From the mentioned group it can be conclude that the support of the caregivers plays a definitive role in the children recovery and can make a difference in their situation. Abusive caregivers on the contrary, deteriorate the condition of the children.

The weak education system is also a key issue in the children's situation that makes them vulnerable.

The identification of the members of the indigenous communities as one of the most vulnerable victims implies the existence of other discriminatory practices within the general context that require special attention of the State.

Finally, it is not possible to make distinctions grounded on the cause of the disability or on the abuse inflicted by the armed conflict. All children in high risk situations deserve a prevalent treatment.

3.4 Capacity analysis

3.4.1. Duty bearers, roles and obstacles

In the scope of the problem, different duty bearers interact at different levels with each other. Figure 6 identifies them and illustrates the dynamics of their relationship.

Figure 6
Duty bearers' interaction



Source: Own construction/Idea from Save the Children, 2005: 16

In Roman numeral seven duty bearers that play a decisive role in the situation are identified. Those are the State central government (I), the children's caregivers (II), the community (III), the State service providers (IV), the civil society (V), the non state armed groups (VI) and the international community (VII).

The black arrows indicate the duty bearers expected to support directly the State in its task of solving the problem. The white arrows specify the duty bearers that are supported by the State and that are direct responsible of providing the children's rights.

The Arabic numeral that starts clockwise from the caregivers (1) represents the different levels in which children could claim their rights. It represents as well the level of proximity of the children with the duty bearers, being their parents (caregivers) the nearest, and the international community (6) the farthest away

positioned. There is no numeration for the non state armed groups because is not expected that civilians ask them for the respect of their rights.

The Figure also points out the main role of the State placed in the centre of the graph and the active position of children in the claiming of their rights indicated by the running child symbol.

Accordinging with the capacity analysis matrix (appendix IV), the following are the expected roles and principal obstacles of the duty bearers in the situation (they are enumerated with respect to the level of proximity to children indicated in the duty bearer's interaction diagram):

The immediate children's caregivers (1). Caregivers are in charge of providing children with their basic needs. They must protect them from risk situations, and to represent them in the claiming of their rights. Poverty, fear and ignorance are significant obstacles in the accomplishment of their roles.

The community (2). The expected role of the community is the direct support to the caregivers and the aid in the social reintegration of the victims. The main obstacle is that the communities have not recognized themselves as duty bearers and have not received any training to play their role.

The State service providers (3). The service providers are the representatives of the State in contact with the children. Their role can be compared with the caregivers', but in addition they are in charge of the direct attention to the victims. Their main obstacles are the armed conflict, the lack of training and the scarce resources that make difficult the implementation of the program in a street- level¹¹⁵.

The State central government (4). It is in charge of adopting the budgetary, legislative, administrative, and promotional measures to ensure the children's rights¹¹⁶. It is in charge of creating the national program that service providers must implement. Giving the importance of the State central government, its roles and obstacles are more precisely analyzed in section 3.4.2.

The civil society (NGOs) (5). The civil society is expected to support the State in its duties. Its role can be performed by giving direct attention to the children or by supporting other duty bearers such as the community, the caregivers or the State. The main obstacle that the civil society faces is the armed conflict.

The civil society (private sector) (5). Its expected role is to support the State in its duties, specially the social reintegration of disabled children.

The private sector is in charge of removing obstacles to disabled people particularly to those who search for job opportunities. Its main obstacle is the excess of supply in the labour market that put disabled people at a disadvantage with respect to the non disabled persons who also look for a job.

The actors of the armed conflict (n.a.). All the parts of the armed conflict are expected to respect the IHL. The guerrilla groups specifically are expected to stop the use of landmines and to help in the demining process through the identification of contaminated zones. They are expected to stop the threats against the victims that try to claim their rights. The lack of good will is identified as the reason of failure in their role.

The International Community (6). International cooperation commitment imposes to the international community the duties of funding, training and supporting the State in its role. The role of the international community is to watch the performance of the State and to condemn the actors that use such weapons. The obstacles are sudden macro economic problems or other complex emergency situations.

3.4.2 The State

Given the importance of the functions of the State, they are treated separately in this section.

The State's expected role. The general role of the State is to fulfill its international obligations of respecting and ensuring the children's rights. More specifically it is required to eliminate the threat that landmines represent to children and to provide them with the required prevalent aid in order to achieve their recovery and social reintegration.

In order to accomplish this, the State must enforce the respect of the rules of the IHL and achieve the weapons decontamination of the rural areas. It must adopt the necessary measures to remove obstacles to fulfill the children's rights and to provide them with a better attention.

From a CRBA perspective, it is expected that the State empowers children to participate through the creation of spaces that promote this final goal.

The State's obstacles. The main obstacle of the State is the existence of a chronic emergency situation in the country generated by the armed conflict as well as many other particular chronic emergency situations that have also been derived from it. All of them require resources and great efforts in order to be solved.

The second significant obstacle is the lack of resources of the State. Colombia is a country with a weak economic situation aggravated by its corruption and its lack of expertise in funds management. Its external debts grow every year, and the majority of the international funding is destined to fight the non state armed groups.

The third major obstacle is the big gap between the level where the decisions are made and the level where they are implemented. The policy can be presented as an easy issue by those who made it but it is implemented at a

street-bureaucratic level where services providers face multiple obstacles including their own lack of training.

At last, the general perception of children as victims and not as active actors is considered an obstacle. This perception does not allow the State to empower children or to open spaces for their participation. Their recovery process is then directly affected by this misinterpretation of the children role.

The State's capacity. The existence of a chronic emergency situation denotes a State that is unable to provide a real solution.

The analysis of the State's capacity involves the examination of its '*willingness*, its *authority* and its *resources* to address the problematic situation'¹¹⁷:

The *willingness* of the State to solve the landmine problem is found in the ratification of the Ottawa Treaty, in the creation of a program against landmines and in the destruction of its stockpiled antipersonnel mines. Nevertheless, its real interest in the recovery and reintegration of the victims is clouded with the existence of complex formal requirements such as the limit terms in where humanitarian help can be asked, the certificates required to receive medical attention and the condition of previous seven years of formal education to have access to the education benefits¹¹⁸.

The *Authority* is the main strength of the State to carry out its roles. The current elected government is in the power since the year 2002 and it has the support of the majority of the country despite its critics and its accusations of human rights violations. The government has the legitimacy required and has the support of the international community. Its hard authority has been felt especially by the non state armed groups in the last years.

A difficult situation for the State is the lack of enough *resources* to protect and ensure the children's rights. Although the funding of the protection program is high, it is not only allocated for the attention of the victims but also for long term solutions to the problem such as the demining process and the prevention programs. The lack of resources brings negative consequences for the victims such as a privileged treatment to patients with private health insurance, scarcity of medical supplies and lack of emergency transport and first aids in rural areas¹¹⁹.

The scarcity of human resources is present as well. Not only as a consequence of the lack of resources but as a direct consequence of the armed conflict. According to Landmine Monitor Report 2007 'health professionals and centres in conflict areas are at risk of kidnapping or raids'¹²⁰.

The State also faces the lack of organization and skills to handle the problem¹²¹. This situation generates some of the failures of the State's role represented in the underreporting (aggravated by the lack of capacity of the State to proactively identify casualties¹²²) and the weakness of the health system

(aggravated by the ‘lack of inter-sectoral coordination and institutional leadership’¹²³).

Although the capacity of the State is limited, it has increased in the last years. This increase is due to the general interest of the world in the landmines problem and the solidarity that has brought to Colombia the fact of being considered the first country in landmine casualties.

The commitment of the international community and the civil society has strengthened the capacity of the State through the allocation of new human and material resources and the provision of a technical assistance. The role played by the civil society in the support of the State in its duties and especially in victims’ attention has improved its capacity. Finally, the academia has also been incorporated in the situation. Nowadays, Colombian students and institutes are trying new technological solutions to fight the problem and help the victims.

Chapter IV Policy analysis

4.1 Colombian public policy against landmines

The Colombian Public Policy against landmines is contained in the laws 759 of 2002 and 418 of 1997 and in the decree 2150 of 2007. They hold the National Program of Integral Action against Landmines (PAICMA) through which the Ottawa Treaty is applied and through which the protection of the victims is offered.

For the purposes of this research work, the description of the policy against landmines is limited to the PAICMA. However, other programs such as the ones designed to solve the armed conflict, to improve the health system, to fight poverty and displacements and to protect disabled persons, can be considered as a part of the whole strategy because they address some other causes and consequences of the problem.

4.1.1 Overview of the program

According to the PAICMA the Colombian policy against landmines is constituted by six components that are presented in the following general terms¹²⁴:

- Territorial management. It includes the identification of actors and their commitments, the training programs, the coordination of the different institutions, the allocation of resources, the technical assistance, the monitoring and evaluation of the impact of the program and the promotion of participative processes.
- Information management. It aims for the geographical identification of weapons contaminated areas, the evaluation of risk to anticipate accidents and the preparation for the demining process.
- Education for risk avoidance. It seeks to gather the voices of the children, the indigenous, the black communities and the forced-displaced population. Its purpose is to build a strategy for the prevention of the accidents based on their own experiences, values, knowledge, codes of conduct and languages.
- Victims' attention. It looks for the diffusion of the people's rights and the facilitation of the victim's access to the humanitarian helps, goods and services.
- Humanitarian demining. It develops Humanitarian National Missions that promote actions to protect life, integrity, goods and safety of the inhabitants. The Humanitarian Missions are a response against situations

of humanitarian emergency originated by the presence of landmines and ERW.

- Communications. It involves the support of the media to the campaigns, manuals of prevention and the activities related with the education for risk avoidance component.

4.1.2 Law 759 of 2002

This law represents the whole strategy to face the landmine problem and to apply the Ottawa Treaty. Specifically it creates:

- A national structure of integral action against anti-personnel landmines: 'The PAICMA is a public entity of national order. It is responsible for the coordination and regulation of the integral actions against anti-personnel mines in Colombia and of serving as Technical Secretary of the National Authority of Anti-personnel mines (CINAMAP)'¹²⁵.

The CINAMAP is composed by different sectors of the government and two representatives of the NGOs. Its purpose is to orientate, to coordinate and to ensure an active participation of them in the program.

- A criminal regime: The law includes the addition of the article 367A in the Colombian Criminal Law. The article defines a crime for the use, production, trade and store of anti-personnel landmines. It contemplates prison punishments from 10 to 20 years, fines and interdiction for public functions. The punishments are addressed to those who are active actors of the crime as well as to those who promote, help, facilitate, stimulate or induce the execution of them.
- A regime of destruction of anti-personnel mines: encloses the demining plan led by the Ministry of Defense and the armed forces.
- A regime of financial sustainability: The budget allocation is administrated by the National Fund of Action (FOSYGA) and includes national and international resources.
- Humanitarian missions: Are the entities in charge of the verification of the destruction of stored mines and the completion of the demining process.

4.1.3 Law 418 of 1997

The Law 418 of 1997 creates the victim's attention program summarized in 'the Route of attention to the victims' (appendix I), composed by five stages¹²⁶:

- Rescue, first aid, evacuation and immediate attention

- Emergency rehabilitation
- Medical, physical and psychological attention
- Medical, physical and psychological continued attention
- Social, educational and employment reintegration

According to this route the following are the available benefits to the victims of the landmines:

- Transport to medical establishments: The government covers the costs of transport of the survivors from the place of the accident to the nearest place where they can receive emergency medical care. In some cases, it also covers the cost of transport to a second medical establishment if the treatment of the patient requires it. If the patient pays for its own transport, the reimbursement period will have a term of six months in which a formal claim should be presented.
- Medical attention: The survivors of landmine attacks have the right to the coverage of their medical expenses during emergency attention, surgeries, medicines, and rehabilitation. The law recognizes the right to the prostheses but it does not specify with what frequency they can be replaced.
- Educational assistance and training for working: The victims of the armed conflict are also eligible for certain educational benefits and labour training from government institutions. It has a term of one year to present a formal claim. It has additional requirements.
- Subsidy for housing: Subsidies from the government for housing are available for those persons whose houses have been damaged as a result of the armed conflict. Special requirements must be fulfilled.
- Financial humanitarian help: Victims of landmines or their families are entitled to receive a financial humanitarian help from the Government according to the injuries caused by the attack. In this sense, the victim can claim (according to his/her case), a humanitarian assistance for slight wounds or a humanitarian assistance and an indemnification for a permanent disability. If the victim dies, his/her family is allowed to claim an aid for funeral expenses and an indemnification for death. The law has set a limited term of six months to claim funeral expenses and indemnifications and one year to claim the humanitarian help.

4.2 Policy analysis

The following four analyses constitute the core of the policy examination. They are aimed to identify the contradictions between the current role of the State and its international commitments for protecting the children's rights:

- Analysis from the causal analysis
- Analysis from the principles of the CRC
- Analysis from the three pillars of a child-rights based policy
- Analysis from other international human rights obligations of the states

Their findings constitute the argument of the following statement: *‘The current Colombian policy offers a general protection to children victims of landmines but according to the CRBA and the international responsibilities of the State on child’s rights, it is not sufficient’*. This declaration is the answer to the first main question of this research work.

4.2.1 Analysis from the causal analysis

Based on the findings of the causal analysis (3.1), plausible solutions to the causes and consequences of the problem are identified (appendix V). A comparison between these possible solutions and the contents of the policy is then made and the incorporation of them into the policy is reviewed.

From this comparison it is possible to affirm that the current policy is an integral program of action against landmines that covers all the direct consequences of the problem and includes in a direct way many of the identified solutions. In addition, the policy is complemented with other national projects that address other aspects of the problem such as the armed conflict, the weak health and education system and the poverty. Hence, it can be affirmed that integrality is the main strength of the policy.

Even so, the comparison also shows some gaps between the identified solutions and the contents of the policy. They are the lack of involvement of the community as key duty bearer in the process and the lack of integration of the education system with the problem. This brings consequences such as weak prevention programs, lack of empowerment and lack of access to disabled children. Finally, the lack of association between the interest of the State to protect children and the existence of practical obstacles is a factor that is still affecting them.

All the mentioned breaks reflect the absence of a CRBA perspective in the policy and imply a lower realisation of the children’s rights.

4.2.2 Analysis from the principles of the CRC

This analysis makes a comparison between the actual and the expected rights climate of the policy through the examination of the fulfillment of the CRC principles.

Survival and development: This principle represents the interest of the State to protect the right to the life of its children in such a way that allow the enjoyment of all their other rights. However, this interest is unclear given the existence of formal requirements in the rights claim processes that given the

vulnerable condition of the victims represent a failure in the State's obligation of ensuring the children's rights.

The first formal requirement is the establishment of an expiration term in which humanitarian help can be asked. It implies that all the benefits and rights that the policy has created for the protection of the life and development of the victims, their rehabilitation and their social reintegration are only available for a limited period of time.

In legal terms, this disposition implies the caducity of all the CRC rights that should not expire. As a consequence, it is a violation of the right to the life conceived from its wider sense: 'The right to the life does not correspond simply to the biological aspect, which would suppose scarcely the conservation of the vital signs. The right to the life implies a necessary qualification because nothing is useful if it is not supported by the minimum conditions that form a human being as such'¹²⁷.

This situation constitutes an infringement of the Pacta Sunt Servanda¹²⁸ interpretation principle. The good faith that with human rights agreements should be interpreted is blurred by the creation of formal requirements that try to legitimize the breach in the obligation of the State in ensuring the people's rights.

The second formal requirements are the certifications and identification documents asked to the victims before receiving medical attention. The difficult access to the health system is a general problem of the people affected by poverty and especially of the rural population victim of the multiple abuses of the armed conflict.

The difficult access to the health system is caused by the lack of resources and the dangers of the armed conflict. This is aggravated even more by the formal requirement of documents that in the most of the cases do not exist.

The State's capacity of register its people in isolated rural areas is none. Hence, to provide them with formal health assistance and legal certifications is a tougher task. The failure of the State in this matter can not be translated in rejections of urgent medical attention to the victims.

The entire situation is further aggravated by the lack of judicial processes adapted to the reality of the victims. If the people's rights are violated, victims must make use of the available judicial processes to protect themselves. Despite that the Constitutional Law created a simpler judicial process to respond to urgent human rights violations¹²⁹ it also has some requirements that make difficult its application. It must be presented at places with legal jurisdiction and sometimes the collection of proofs by the victim or his/her legal representative is required.

These conditions are obstacles that contradict the reality and vulnerability of the victims of the armed conflict and thus represent a direct infringement of their rights.

Non Discrimination: Lack of a prevalent treatment for children, discriminatory environment for other children and lack of involvement of the

community are the main findings of the analysis from the non discrimination perspective.

The State provides an equal treatment for children and adults. This situation implies a violation of the CRC that places children in the centre of interests of the states. It is also a discriminatory practice because an equal treatment is based on the assumption of equal conditions. Nevertheless, when conditions are not the same (as is the children case who are actually more vulnerable than adults), the provision of a special treatment and the recognition of the differences is required. The public policy makes no distinction between children and adults and does not recognize their special needs originated by their growing up process and their dependency on their caregivers.

On the other hand, a discriminatory environment can be perceived against other children who are not direct or indirect landmines victims, but are affected by other high risk situations. In general, children of rural areas of Colombia do not realise their rights. They do not live in good environments; they are confined because the multiple abuses of the armed conflict; some are in extremely poor conditions and have no access to medical services and education. Other children are labor-exploited, recruited in non state armed groups or are victimized by many other situations that increase their vulnerability. Many other children have become disabled not because of landmines attacks but because of other causes and as the landmine victims they can not enjoy a normal life.

However, victims of landmines seem to be in a better position than the other children in front of the duty bearers. An integral protection program with high allocation of resources and multiple benefits has been created for victims of landmines leaving out the other vulnerable and disabled children victims of other tragedies.

Finally, it is worth mentioning the lack of social commitment as the main cause of discrimination of disabled people and of the failure in their social reintegration. The policy does not take into account the key role of the community in the social reintegration of the victim and does not involved it in the process.

Participation: Participation of children is contemplated in the policy but it is reduced to the creation of more effective prevention manuals. Nonetheless, there are multiple aspects where children and victims in general can participate and help in the solution of the problem. Participation of children at other levels of the program is not taken into account by the policy. The reason is that there is not an awareness of the concept of active childhood and on the contrary, children are considered just victims of the situation.

The lack of participation is also perceived in the CINAMAP where the representation of the victims and the service providers is null and the

representation of the duty bearers insufficient. The committee is mostly limited to the high levels of the government.

Best interest: Best interest of the child is analyzed in relation with the decision of separating them from their parents in order to receive a treatment available in urban areas far away from their homes.

However, the lack of control of the reported attacks makes of this principle a criterion that can be taken into account or not by the children's caregivers at the moment of making their decision without any influence from the State.

Thus, the poor data collection constitutes a failure of the policy that represents the State's abandonment of its duties over children.

4.2.3 Analysis from the three pillars of a child rights-based policy

This analysis examines the main strategies contained in the policy in order to check if they cover or not the three pillars suggested for an integral child right-based policy.

Within the general contents of the policy, the component of victims' attention is identified as the strategy aimed to offer an immediate solution to the human rights violations caused by the use of landmines. The others five components (4.1.1) are long term strategies as the demining process and the prevention programs. This is a positive finding which implicates that the policy includes the proposed first pillar and looks for providing both immediate response to the human rights violations and definitive solutions to the emergency situation.

Related with the second pillar, it is possible to say that it is also included in the policy and that the State is building capacity to face the problem.

According to the Landmine Monitor Report of 2007, the capacity of the State is inadequate but it is improving¹³⁰. This capacity building is perceived in issues such as the creation of the PAICMA¹³¹, the creation of the Department of Humanitarian Demining of the Armed Forces¹³² and the planned workshops aimed to improve data collection.

Furthermore, new objectives are incorporated in the Colombia's National Development Plan 2006-2010 such as to 'improve the State's capacity to adequately address rural urgencies, provide referral and access to departmental and national hospitals, use efficient communication systems, guarantee the security of medical staff and provide information about services to survivors, family members and government prioritizing the survivor assistance¹³³'.

Finally, the analysis of the policy from the perspective of the third pillar shows that the empowerment of right holders is weak. The education strategy is limited to the prevention of the attacks and it is not oriented to the training of victims to claim their rights. There are not specific objectives that can be fit

in the third pillar of the CRBA, what means an imbalance in the strategy and particularly, in the construction of the right holders/duty bearer's relationship.

4.2.4 Analysis from other international human rights obligations of the states

This analysis is based on the international dispositions of the international criminal law and the IHL.

The current policy does not recognize the crimes committed by the use of landmines as crimes of deep concern for human rights or as crimes against humanity. This 'hard core' classification of the human rights violations is only conceived in the Colombian Criminal Law for 'genocide, forced disappearance, forced displacement and torture'¹³⁴.

Although a special crime to punish the use landmines was created (4.1.2), the Criminal Law does not include crimes to prosecute and punish the violations of the children and civilians' rights committed with the use of these weapons. The prosecution of these crimes is made through other crimes of individual nature such as *homicide* or *personal injuries* with a simple increase in the punishment because they are committed against 'a person protected by international instruments'¹³⁵.

This situation implies that the State is ignoring the deep concern about these inhumane acts and is closing its eyes to the systematic aggression and to the general damage that the use of landmines causes to the society.

Crimes against humanity are defined as those 'serious crimes against the human condition; and consequently against the international law (...). The crimes against humanity are characterized by their intrinsic atrocity. Can be perpetrated by the State or by irregular forces by some degree of territorial control, and must be prosecuted for all the States by means of their national jurisdiction or across universal jurisdiction'¹³⁶.

The Rome Statute lists the crimes against humanity and among them includes the 'inhumane acts of a similar character intentionally causing great suffering, or serious injury to body, to mental or to physical health if they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'¹³⁷.

Hence, it can be said, that crimes committed with landmines fit in the general definition of crimes against humanity and in the particular definition of inhumane acts. As a consequence, they should not be subjected to any statute of limitations as the article 29 of the Rome Statute commands.

In the actual case, this situation represents a break in the State's obligation to ensure the children's rights. The State's failure is originated from the lack of punishment of these crimes that are allowed to expire as any other crime. Their mediocre dimensioning only takes into account the physical injuries disregarding the collective ones thus falling in contradiction to the principle of proportionality that guides any punishment creation.

In summary, the advances of the State such as the creation of an integral program that includes immediate and long strategies to solve the problem are recognized. However, the situation of children is still risky and is worse for those who also suffer disability conditions or other high risk situation and are left out of the program. An inclusive policy that involves all the duty bearers and that incorporates a CRBA perspective is needed to fully realise the children's rights.

Chapter V Recommendations to improve the policy

This chapter constitutes the answer to the second main question of this research work. It presents some recommendations for the improvement of the current Colombian policy against landmines from a CRBA perspective and from the international responsibilities of the State for children's rights. The recommendations are based on the policy analysis and represent three challenges to the policy:

- Develop the principles of the CRC
- Include the three pillars of a child rights-based policy
- Amplify the scope of the Colombia's international commitment for human rights

5.1 Development of the principles of the CRC

This challenge is aimed to create an adequate rights climate where the children's rights can be realised.

Survival and development. The development of this principle implies the removal of the formal requirements that do not allow children to enjoy their rights.

First, the existence of terms that bind the victims to claim their rights in a limited period of time must be terminated. If by any legal reason (e.g. juridical security) a term must be imposed, this should be at least of 5 years for adults and in the case of children it must cover them at least until they are 25 years old.

Secondly, the State should ensure the access to the health system. Identification and certification of victims is important for collecting data but it can not be an obstacle to receive a medical attention. Service providers should be controlled and prosecuted if they refuse to offer a medical attention.

Finally, access to the justice should be facilitated. Poverty, isolation, confinement and lack of mobility are situations that should be taken into account in the judicial processes established by the victims of the armed conflict. Jurisprudential concepts of the Colombian high courts should be issued in order to establish the way that other judges must act. Ombudsmen should control the legal actions used in behalf of children and take their advocacy in the required cases.

No discrimination. This principle implies the recognition of children as the priority of the policy, the extension of the rights and benefits available for the victims of landmines to all disabled children and the integration of the education system in the reintegration process.

The explicit recognition of children in the program and the prevalent care for them as well as for their special needs is required to ensure equality.

The benefits created for children victims of landmines must be extended to any disabled children. Landmine survivors must be considered a part of the disabled community and not as a separate group. The cause of the disability can not be the criterion for receiving assistance; it must be the type of disability e.g. amputation, blindness, deafness, etc.

The important role of the education system in the reintegration of disabled children should be recognized. Objectives of schooling should be paired with the objectives of the programs aimed to the reintegration of disabled children.

Schools should be accessible for disabled children and should have mobility aids such as wheelchairs, crutches, etc. The infrastructure of the schools should be properly adapted as well.

New methods to attend classes, new practical courses, and different assistance options have to be combined with the basic formal curriculum in order to fulfill the needs of the victimized children.

Participation. The increase of the children's participation can be achieved through the creation of a network of landmine victims. The identification of the most vulnerable groups (among them, the children) and their necessities, must be used to open spaces of participation.

A significant number of representatives of the network should be part of the CINAMAP in order to raise the voices of the victims.

Best interest of the child. Within the component of victims' attention, the control of the reported attacks should be included. In this way, the no claiming of the children's rights is identified thus the authorities can take action and advocate their rights.

5.2 Include the three pillars of a child-rights based policy.

According to the policy analysis, the imbalance of the policy lays in the third pillar related to the empowerment of the right holders. Still, the other two pillars need to be addressed as well.

On the *first pillar*, the previous recommendation of formal requirements removal implies a better response to the urgency of the situation and to the human rights violations.

On the *second pillar*, actions to promote the capacity of the State should be taken. The recommendations for this pillar are to improve the relations with other duty bearers, to increase accountability and to be aware of possible lessons from other countries.

The relationship with other duty bearers should be based on the concept that the State is the link in which everyone must work and appeal to. The State should ensure an environment of peace, transparency, democracy and justice guided by the law. The coordination on the State level is decisive and should be made with an exceptional leadership. Furthermore the State should increase the representation of the other duty bearers in the CINAMAP and include the representation of some key service providers.

In order to increase accountability, the augmentation of the victim's participation in the evaluation of the program is proposed. The proposed victim's network is a good space to involve people in this role.

The State should be aware of other countries' processes in order to develop links and use them to gain knowledge of the techniques that could be applied to its precise need e.g. Nowadays the demining process is led by countries such as Afghanistan, Azerbaijan, Mozambique, Cambodia, Bosnia, Croatia and Albania¹³⁸.

In addition, the awareness of other processes is important to recognize its own advances or deficiencies in this matter e.g. Although Colombia is not offering a good victim's attention, it is also true that nowadays most of the worldwide programs are inadequate¹³⁹.

On the *third pillar*, actions regarding the empowerment of the right holders should be taken in order to balance the right holders/duty bearers' relationship. The recommendations are an enhancement of the objectives of the education program against landmines and the development of a community work.

The objectives of the education for the risk avoidance program should be extended not only to the prevention of accidents but also to the education for people regarding their rights and the claiming of them.

The role of the school should not be limited to their alumni but extended to their caregivers and other members of the community. Education of caregivers is fundamental. Parents must know the problem and also be aware of successful stories and role models in order to improve their children's protection.

Community work is identified as a strategy against almost all the causes of the problem (appendix V). However, given the fact that the communities have not been identified themselves as duty bearers, the support of the State to start the process is needed.

Community work increases participation, is useful to prevent accidents, to provide care, to find solutions, to eliminate discrimination and to allow social reintegration. Community work could be developed through a reformulation of the education for risk avoidance program or as a single component of the program.

Community groups, members, leaders and organizations should be identified and trained as an agency to protect its people, support the caregivers and State's roles.

An empowered community can be extremely useful in zones where there is an unclear presence of the authorities. It represents a permanent task that goes beyond the capacity and the programs of the State.

5.3 Magnify the scope of the Colombia's international commitments for human rights

Colombia needs to demonstrate to the international community its interest in the human rights situation and its efforts in the accomplishment of its international obligations for human rights.

The State should commit itself with all the human rights processes that are carried out in the world. In order to do this, the State should modify its Criminal Law according to the concepts and purposes of the international criminal law (Rome Statute) that was ratified on August 5, 2002¹⁴⁰

This modification requires the explicit recognition of the crimes against humanity and then it must define a punishment proportional to the relevance of the damage that they cause.

Furthermore, Colombia should ratify other relevant international instruments such as the Convention on the Rights of Persons with Disabilities signed on March 30, 2007 and its Optional Protocol that has not been signed yet.

Finally, an amplification of the commitment of the State with the IHL would be advantageous. The commitment of Colombia with the IHL has been reduced to the Conventions of Geneva for the protection of victims and has left out the Law of The Hague that guides the hostilities¹⁴¹.

Although the Law of The Hague does not bring direct consequences over children victims of landmines it does over the non state armed groups. It shows the good will of the State with the IHL and represents a positive response of the non state armed groups over the civilian victims.

The recommendations presented throughout this chapter, constitute the reactions to the findings of the policy analysis. They conceive an incorporation of the CRBA as a way to ensure the accomplishment of the international responsibilities of the State for children's rights.

VI Conclusions

This research work has established that the use of anti-personnel landmines as a strategy of war goes beyond the statistics and the wounds. These indiscriminate weapons affect civilians including children and represent a violation of the human and children's rights and the IHL.

It has been demonstrated the chronic emergency situation in which Colombian rural children are because of this practice and it has been pointed out the reasons of the vulnerability of children and their need of a special care. This need is based on the natural physical and psychological weak condition of children but also on the existence of international responsibilities of the State for protecting them especially if they are in high risk situations such as a disability conditions or an armed conflict.

The argumentation of the international responsibility of the State is based on the ratification and adoption of defined international instruments such as the ICCPR and the ACHR. The special international responsibility for children's rights is acquired by the ratification of the CRC.

Based on those instruments, the expected role of the State is identified. It is expected that Colombia respect the human rights of its people by avoiding the use of such weapons, by taking the necessary measures to ensure the people's rights and by providing special protection to children who are in risk situations.

The causal analysis of the situation showed that multiple aspects such as the armed conflict, the weak health system, poverty, the lack of education and discrimination practices are contained in the problem. In the same way, several consequences such as school abandonment, forced displacement and poverty are imposed upon children and even upon those who have not been attacked directly by landmines but that can be considered as indirect victims of them.

The capacity analysis identified the weaknesses of the State as the main duty bearer being the most important the armed conflict and the lack of resources. It also identified in its strengths, its authority and the important support of the civil society and the international community.

The policy analysis found some positive features of the policy being the most relevant its integrality to confront the main causes of the problem and to provide real solutions to the situation. However, some contradictions were found between the actual and the expected role of the State regarding children's protection.

The policy does not reflect any prevalent care to children. Its interest for achieving their recovery and reintegration is clouded by State-made obstacles and difficult formal requirements to claim victims' rights. In addition, the policy does not open proper spaces to children's participation and its implementation is being carried out in an environment of poverty, corruption, bureaucracy and lack of training and resources.

In summary, the State provides a general protection to children victims of landmines that may be in accordance with its weak capacity but that is not sufficient according to the perspective of the CRBA and its international responsibilities on child's rights.

On the other hand and despite the failures of the policy, it can be perceived that the international worry about landmines has centered the efforts of the State in protecting victims of landmines. Nevertheless it has allowed a discriminatory environment against other children in high risk situations, specially other disabled children. This situation is also against the CRBA and the universality principle of the CRC.

In order to offer a better protection to children a reformulation of the current Colombian public policy was proposed. This reformulation implies a change in the conceptual basis of the policy in such a way that all children are considered active actors with universal entitlements. In a more specific way the reformulation involves three basic challenges: the development of the principles of the CRC, the incorporation of the three pillars of the CRBA and the amplification of the scope of the international commitments of the State for human rights.

The development of the principles of the CRC aims for an adequate climate where the rights can be realised. The recommendations for the achievement of the program are the removal of complex formal requirements for rights claiming, the recognition of children as the centre of the policy, the extension of the benefits to other disabled children and the encouragement of their participation.

The incorporation of the three pillars defines activities to follow for each one of them. To the first pillar, the removal of the formal requirements for rights claiming is required. To the second pillar, the further building of the capacity of the State must be achieved. This is done through the promotion of better relationships with other duty bearers, the increase in accountability and the acknowledgement of other countries experiences in the matter. At last, in the third pillar (the weakest one) actions over the empowerment of the right holders are presented through the reformulation of the objectives of the education for risk avoidance and the training of the community in order to empower them both as a right holder and duty bearer.

Finally, the amplification of the scope of the international commitment of the State for human rights implies to respond to other international requirements that increase the willingness of the State and guarantee a general respect of the human rights and the international law. Some specific recommendations are proposed such as the application of the Rome Statute, the recognition of the crimes committed with landmines as crimes against humanity and the ratification of relevant international agreements such as the legislation against discrimination and the Law of The Hague.

These recommendations mean the incorporation of the CRBA in the policy and the fulfillment of the international responsibilities of the State for children's rights. These proposed changes are aimed to bring positive

consequences such as a better realisation of children and victims' rights, a social reintegration and a post-conflict reconstruction in pro of the development of the Nation in general.

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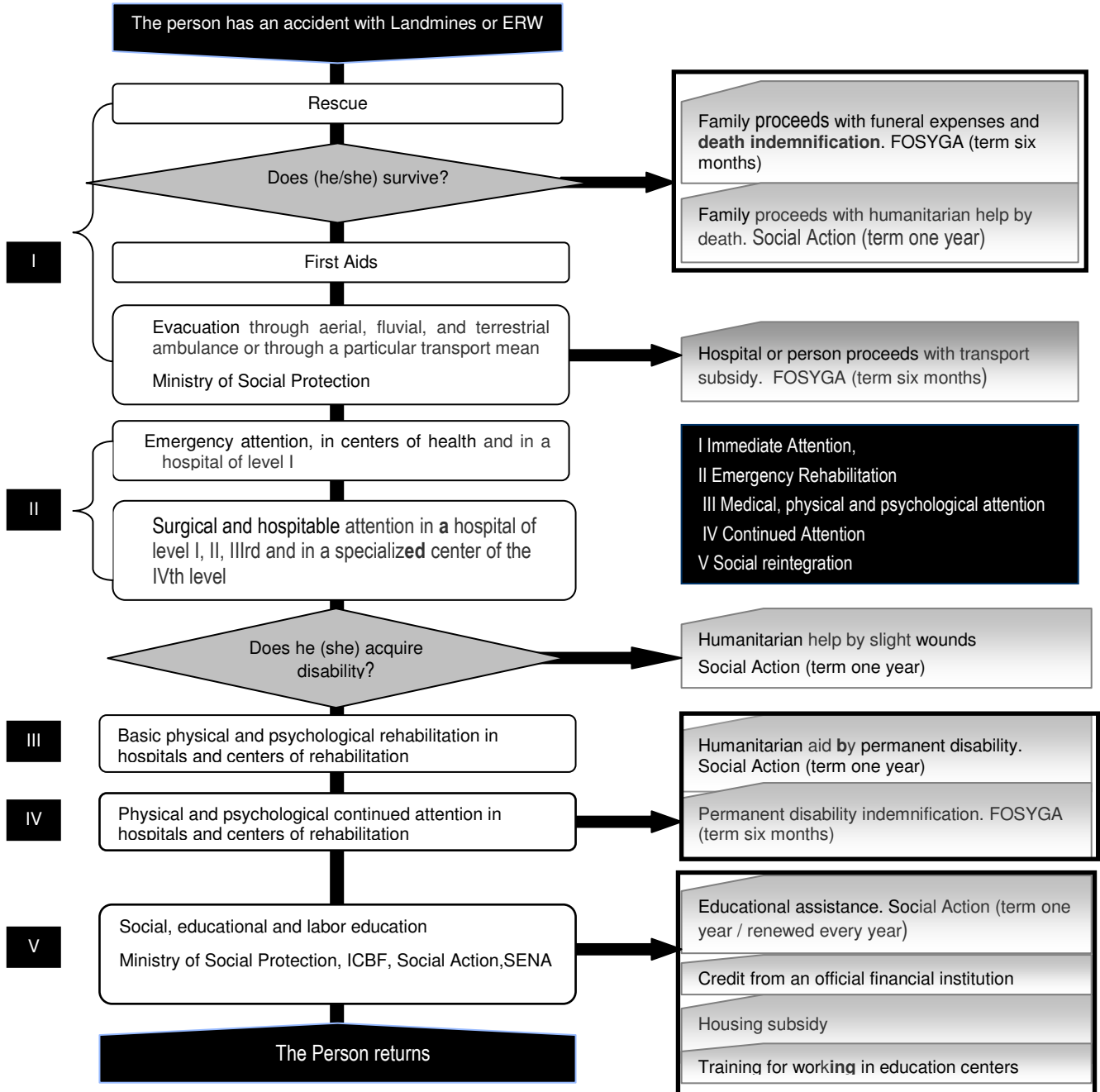
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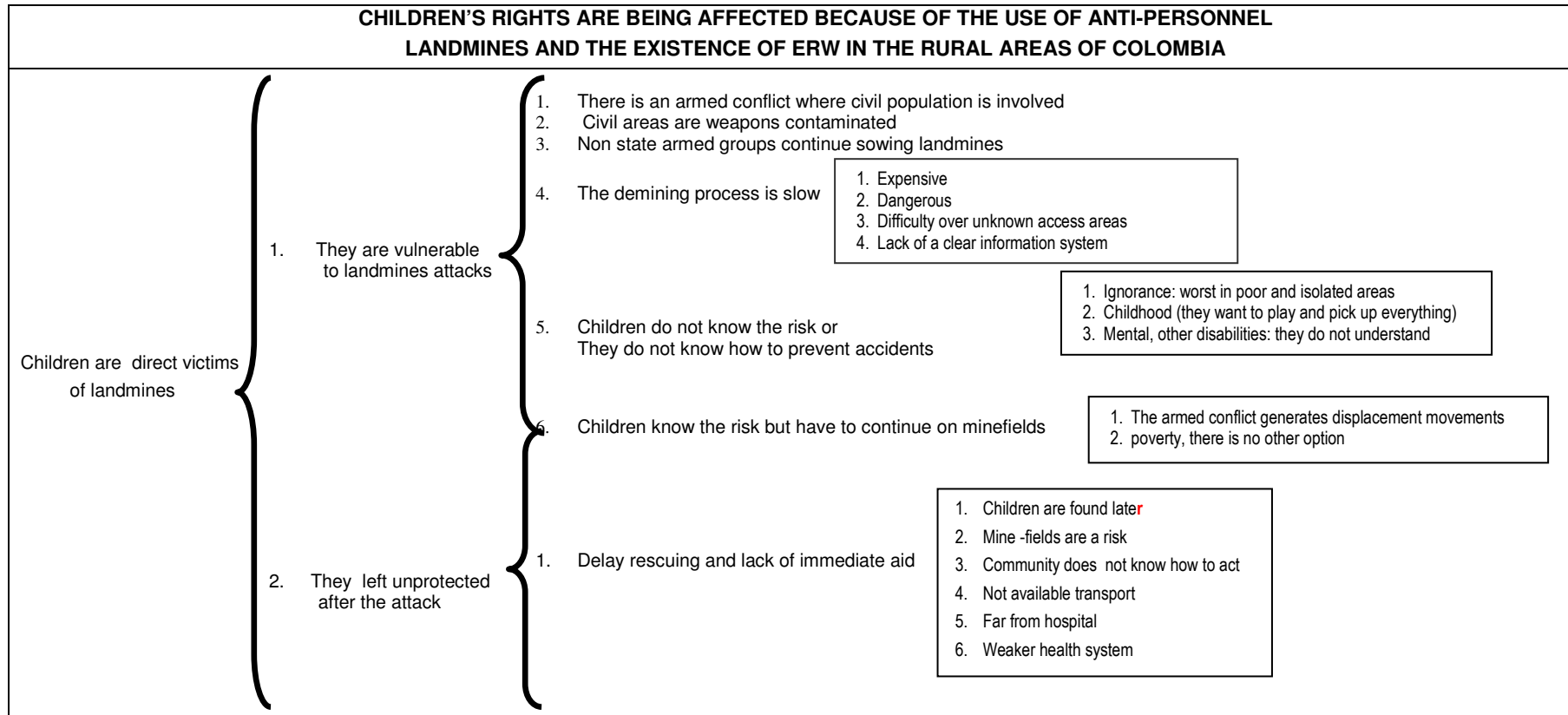
Appendices

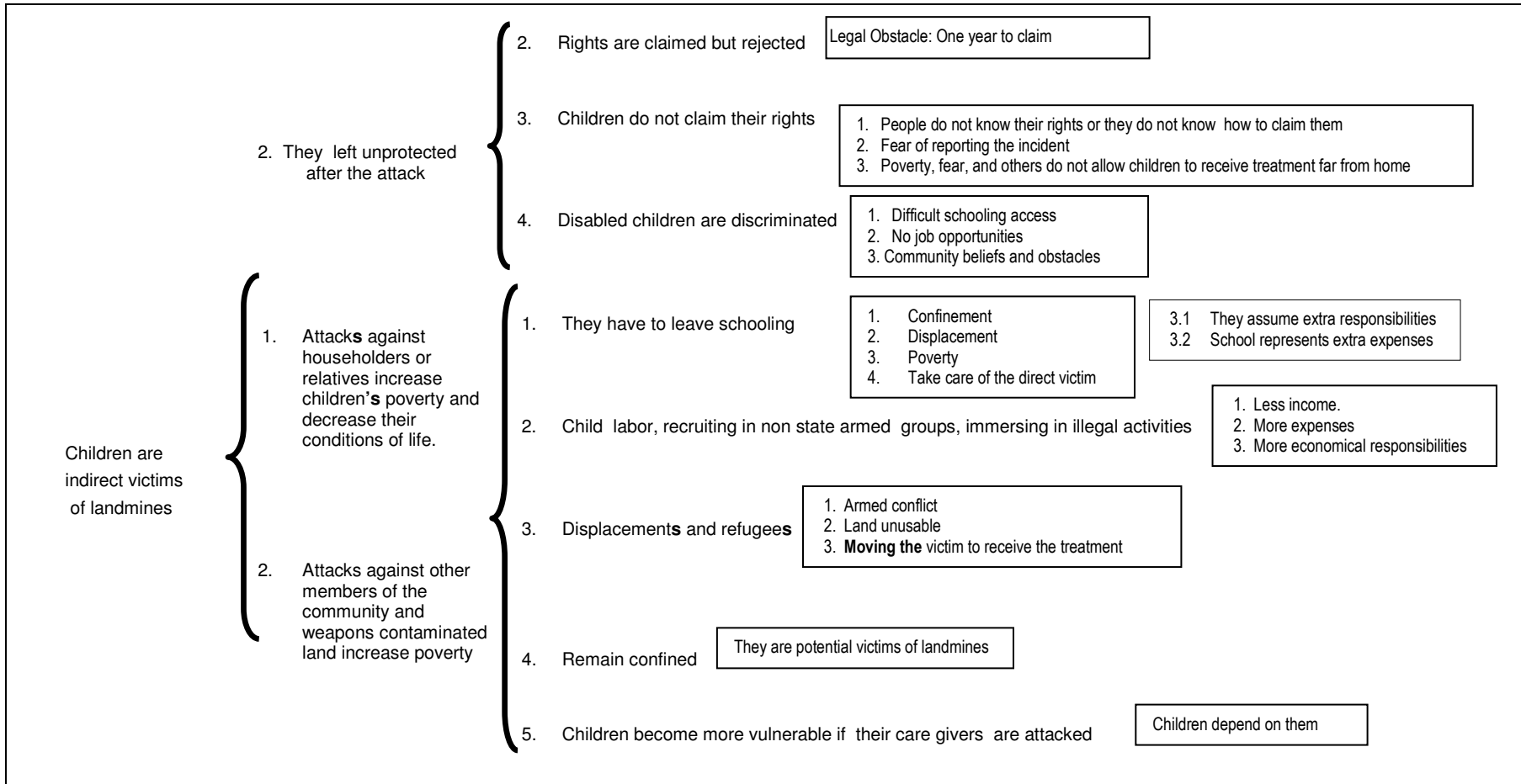
Appendix I Route for the attention of victims of landmines



Source: Handbook of Benefits to the victims of Anti personnel Landmines and ERW. Colombian observatory of Anti-personnel mines

Appendix II Problem tree





Source: Own construction

Appendix III Violated rights tree

Condition	Causes of the violation	Violated rights
Direct Victim	<p>Children are attacked by landmines</p> <p>The armed conflict is involving civil population including children</p> <p>Civil areas are weapons contaminated</p> <p>Children do not know the risk that landmines represent or they do not know how to prevent it</p> <p>Children know the risk but the situation push them to continue on mine-fields</p>	<p>Article 6:</p> <ol style="list-style-type: none"> 1. Right to life 2. Survival and development of the child <p>Article 38:</p> <ol style="list-style-type: none"> 1. Respect for rules of international humanitarian law applicable in armed conflicts and relevant to the child 4. Protect the civilian population in armed conflicts, protection and care of children who are affected by an armed conflict <p>Article 27:</p> <ol style="list-style-type: none"> 1. Right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development
	<p>Children left unprotected and lost their rights</p> <p>Children are not receiving the needed aid on time</p> <p>Children are not claiming their rights</p> <p>Rights are rejected</p>	<p>Article 6.</p> <p>Article 26:</p> <ol style="list-style-type: none"> 1. Right to benefits from social security, including social insurance <p>Article 39:</p> <p>Physical and psychological recovery and social reintegration of a child victim of (...) armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child</p> <p>Article 24:</p> <ol style="list-style-type: none"> 1. Right to the enjoyment of the highest attainable standard of health and to facilities for the illness treatment and rehabilitation

	Children are treated as adults	<p>Article 23:</p> <ol style="list-style-type: none"> 2. Right of the disabled child to special care 3. Recognizing the special needs of a disabled child <p>Article 20:</p> <ol style="list-style-type: none"> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests can not be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State
	Disabled children are discriminated	<p>Article 23:</p> <ol style="list-style-type: none"> 1. Mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community <p>Article 2:</p> <p>The rights of the convention are for each child without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status</p> <p>Article 31:</p> <ol style="list-style-type: none"> 2. Right of the child to participate fully in a cultural and an artistic life. <p>Article 3:</p> <ol style="list-style-type: none"> 3. (...) Education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the disabled child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
	Children are being separated for their parents	<p>Article 3:</p> <ol style="list-style-type: none"> 1. Best interests of the child shall be a primary consideration in all decisions related with them 2. Ensure the child protection taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her (...)

		<p>Article 9: 1. Not be separated from his or her parents against their will</p>
Indirect Victim	Children have to be confined and they have to abandon school and other rights	<p>Article 28: 1. Right to education</p>
	Increase of poverty and decrease of life conditions.	<p>Article 24. 1. Right to the enjoyment of the highest attainable standard of health (...) (c) To combat disease and malnutrition, (...) provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution(..)</p>
	Displacement to insane environments and new circles of violence	<p>Article 32. 1. To be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development</p>
	Children assume economical responsibilities so: school abandonment , child labor, recruitment in non state armed groups and immersion in illegal activities	<p>Article 38. 2. Persons who have not reached the age of fifteen years do not take a direct part in hostilities</p>

Source: Own construction

Appendix IV Capacity analysis matrix

Actors /duty bearers	Responsibilities and roles	Gaps/obstacles
Children	Good use of the spaces and opportunities given by the other actors to participate	<ol style="list-style-type: none"> 1. Children are perceived as victims and incapable human beings, not as active actors 2. Children do not have real spaces to participate and to express themselves
Immediate caregiver e.g. parents	<ol style="list-style-type: none"> 1. To prevent children of landmines risk 2. To provide children with their needs 3. To represent children in claiming their rights 4. To protect children directly in case of an accident 	<ol style="list-style-type: none"> 1. Ignorance 2. Poverty 3. Armed conflict
Non state armed groups	To leave children and civil society out of the armed conflict and stop using anti- personnel landmines especially in areas with civil population's presence.	Lack of will
Community	<ol style="list-style-type: none"> 1. To prevent children of landmines risk 2. To protect children of landmines attacks 3. To assist care givers in their responsibilities; To create opportunities to children for developing their capacities 4. To listen to children 5. To eliminate any kind of discrimination against children 6. To create spaces to children's leisure and recreation 7. To allow disabled children fully reintegration in the community 	<ol style="list-style-type: none"> 1. Ignorance 2. Lack of community work 3. Discriminatory practices 4. Poverty 5. Perception of a child as a victim 6. Division because of the armed conflict
Private Sector	To allow disabled children and armed conflict victims find employment opportunities	Discriminatory practices because the only interest is the profit and the production
Civil Society	<ol style="list-style-type: none"> 1. To support children and their care givers to claim rights 2. To support the state 3. To promote accountability to the State's duties 	<ol style="list-style-type: none"> 1. Lack of a real partnership environment 2. Armed conflict
Local Government e.g. teachers, health workers	<ol style="list-style-type: none"> 1. To prevent children of landmines attacks 2. To teach children and their care givers what to do in case of an accident 3. To protect children that have suffered a landmine attack 4. To teach children and their care givers how to claim their rights 5. To provide the immediate required attention 6. To represent children in claiming their rights if necessary 	<ol style="list-style-type: none"> 1. Lack of capacity, skills, resources 2. Discriminatory practices 3. Legal obstacles 4. Armed conflict 5. Corruption 6. Bureaucracy
National Government	<ol style="list-style-type: none"> 1. To protect all children directly from landmines 2. To protect disabled children and victims of the armed conflict 3. To remove all the obstacles that avoid children to fulfill their rights 4. To provide the necessary attention and services to achieve the highest standard of physical and psychological health and social reintegration 	<ol style="list-style-type: none"> 1. Armed conflict 2. Other priorities 3. General address of the problem 4. Lack of capacity 5. Children perceive as victims

	<ul style="list-style-type: none"> 5. To ensure children's rights and basic needs 6. To keep children out of the armed conflict 7. To eliminate any kind of discrimination against children 8. To empower children and care givers to claim their rights 	<ul style="list-style-type: none"> 6. Street level, implementation of the program 7. Lack of consensus
International Community	<ul style="list-style-type: none"> 1. To assist the State in its responsibilities to the children. 2. To promote accountability to the State 	<ul style="list-style-type: none"> 1. Lack of real partnership environment 2. Armed conflict

Source: Own construction

Source: Own construction

Appendix V Solution tree

Problems	Solution	Strategy	Does the policy cover it?
Land is weapons contaminated	Solution of the armed conflict		Security national project
	Stop controlling civil population		
	Stop sowing mines		
	Demining process	Funding, International Cooperation Training and new technologies Geographical identification of minefields	The component of humanitarian demining The component of information
Children do not know the risk or they do not know how to prevent accidents	Education and Schooling: Prevention Campaigns	Risk of landmines How to prevent accidents Signalization of field mines	The component of education for the risk
	Community Work	Create safe spaces to leisure Identify safe roads or paths Auto-vigilance	Lack of involvement of the community as duty bearers and key actors in the process
Children do not receive immediate attention	Education and schooling	First aid and response	The component of education for the risk
	Community work	Auto.-vigilance Communal communication system Support in taking care of the victims First aid and immediate response Communal transport emergencies	Lack of involvement of the community as duty bearers and key actors in the process
		Building capacity Funding	National projects of the social protection ministry
		Removing legal obstacles to health system	Lack of correspondence between the interest of the state

	Improving health system	access Improving data collection Following reported attacks	in protecting children and the existence of legal obstacles to claim their rights
Children do not claim their rights	Education and schooling	Rights of the victims	The component of victim's attention
		How to claim rights	Lack of integration between the education system and the problem
	Community work	Auto-vigilance Help community members to claim their rights	Lack of involvement of the community as duty bearers and key actors in the process
	Removing legal obstacles	No terms Easy access to the justice Near authorities to attorney victim's rights	Lack of correspondence between the interest of the state in protecting children and the existence of legal obstacles to claim their rights
Children treated as adults	Explicit acknowledgment of the most vulnerable groups and their prevalent attention Recognizing and providing special needs	Going with other person to receive a treatment Required prostheses for one year	Lack of correspondence between the prevalent interest of the state on children and the normal treatment given that does not ensure their rights
Disabled children are discriminated	Education and schooling	Alternative schooling ways Teachers able to handle disabled students Common spaces for disabled and non disabled children Practical training that represents other income options Removing discrimination practices	Lack of integration between the education system and the problem
		Community work	Support for taking care of the victims Available materials for prostheses and moving devices Help in the reintegration of victims Communal income options
		Agreements for schooling and job opportunities for disabled people	It exists an agreement with the national learning institute and private sector to provide opportunities

	Legal initiatives	No disabilities discrimination Adequate training and spaces for attending disabled people in all the school centers of the country and public spaces	General disabilities law Lack of correspondence between the interest of the state in protecting children and the existence of legal obstacles to claim their rights
Conditions of Children' s lives have decreased	Education and schooling	Free schooling Another ways of schooling Cash program for schooling	Lack of integration between the education system and the problem
	Community watch work	Communal income options	Lack of involvement of the community as duty bearers and key actors in the process
	Indemnifying victims and their relatives		The component of victims' attention
	Housing help for displaced		
	Demining process		The component of humanitarian demining

Source: Own construction

Notes

1 UNICEF Colombia, 2000: 12

2 International Campaign to Ban Landmines, 2007: Colombia/Landmine, IED, ERW casualties: par. 1

3 Semana, 2008a: par 2

4 BBC News, 2008a: par 1

5 Ibid.

6 Ibid.: Overview, par 2

7 Ibid.: par 3

8 BBC News, 2002a: Doomed Dreams, par 3

9 BBC News, 2002b: par 1

10 BBC News, 2008b: par 3, 2008a: Leaders, par 2

11 Ibid.

12 'In 2001, the guerrilla warfare took 39 villages, and in 2007 they did not take any. Of 483 blowing-ups of towers of energy in 2002, it passed to 122 in 2007 and of 86 blowing-ups to the pipelines one lowered 57'. (...) 'In 2002 the payments for kidnapping were representing a good proportion of its finance, since they committed in whole 973 kidnappings. But in 2007, only they kidnapped 120 persons'. Semana, 2008b: The present 2008, BBC News, 2008a: Leaders, par 3

13 BBC News, 2008a: Leaders, par 3

14 International Campaign to Ban Landmines, 2007: Colombia/Stockpiling and destruction: par 1. 'Colombia reported completion of the destruction of its stockpiled antipersonnel mines on October 24, 2004', Ibid./Non State-Armed Groups: par 4.

15 International Campaign to Ban Landmines, 2007: Colombia/Landmine and ERW Problem: par 2

16 Ibid, El Tiempo, 2008a: par 3

17 Ibid, Semana, 2008a: par 2

18 Ibid.: par 1

19 El Tiempo, 2008a: par 6, Vicepresidency, 2008a

20 El Tiempo, 2008a: par 2

21 Semana, 2008a: par 2

22 UNDSS Bucaramanga, 2008: 2, International Campaign to ban Landmines, 2007: Colombia/Landmine, IED,ERW Casualties: par 2

23 'Not designed for immediate effect, landmines lie dormant until triggered by a victim'. Jody Williams as in Sanajaoba, 2004: 601

24 Vicepresidency of Colombia, 2008b: 1

25 Human Rights Watch, 2007 b: 1, El Tiempo, 2008 b: par. 7-9

26 Human Rights Watch, 2007 b: 6

27 UNICEF, 2007: par 5

28 UNICEF, 2008: par 2

29 Colombian Observatory Anti-personnel Landmines, 2003: 2

30 El Tiempo, 2008 b: par 3

31 Human Rights Watch, 2007a : 6

32 International Campaign to Ban Landmines, 2007: Colombia/ Data collection: par 6

33 Ibid.: par 3

34 UNICEF Colombia, 2000: 15

35 Unicef Colombia, 2000: 10

36 Ibid.

37 Ibid.

38 Ibid.:11

39 Watchlist on Children on Armed Conflict, 2004: 27

40 Ibid.

41 ‘The mines can qualify as mines of shock wave and as mines of fragmentation. The mines of shock are designed to explode against who step on them. The latters are not buried; they are located in such form that not only reach the low members, but they can spread its splinters at higher levels, so they kill or mutilate not only whom it activates, but to all those who are to its scope’. UNICEF Colombia, 2000: 10, 36

42 UNICEF Colombia, 2000: 10

43 Watchlist on Children on Armed Conflict, 2004: 27

44 UNICEF Colombia, 2000: 9

45 El tiempo, 2008 b: par 7

46 Save the Children, 2007:5

47 Man-made emergencies can be denominated as chronic and complex emergencies. In the latter, the humanitarian crisis has breakdown the authority, so the States is not able to continue leading the situation as a single agency and requires an international response that extends beyond its mandate. Ibid.

48 Ibid.

49 Save the Children, 2005: 106

50 Gasper, 2006: 5

51 Ibid. 6

52 Jonsson, 2005: 53, Schuftan, 2000: 1

53 Save the Children, 2005: 27

54 Jonsson, 2005: 53-56, Schuftan, 2000: 2

55 Save the Children, 2005: 29

56 I/A Court HR., 2005: par 111

57 ICCPR: art 2, ACHR: art 1.1 , 2

58 Skogly, S. 2006: 58

59 I/A Court HR, 2004 a: par. 71

60 I/A Court HR, 2004 b par. 219

61 Skogly S., 2006: 58

62 I/A Court HR,2005: par. 111

63 ‘The investigation of the facts must be realized for all the legal available means and be orientated to the determination of the truth and the pursuit, apprehension, prosecution and sentence of all the persons in charge’. I/A Court HR, 2007: par. 147-148

64 I/A Court HR, 2007: par 242

65 Ibid.: par 221

66 Colombian Constitutional Court, 1995

67 Gasper, 2008: par 1

68 Ibid.: par 2

69 Ibid.: par 1

70 Ibid.

71 Ibid.: par 2

72 Ibid.: par 1,5

73 Ibid.: par 2

74 Ibid.: par 3

75 Shue, 2006: 710, Gasper, 2002: 1

76 Etzioni, 1991: 379

77 Gasper, 2002: 21-24

78 Ibid: 1

79 Wessels, :10

80 Gasper, 2007: 18, Ul Haq Mahbub, 1998: 14, Wessels, : 10

81 Save the Childre, 2005: 6

82 Ibid., Wessels, 2005: 18

83 Wessels, 2005 : 10

84 Ibid.

85 Jonsson, 2005: 47

86 Save the Children, 2005: 9

87 Ibid.:18

88 Ibid.: 10

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 Gasper, 2007: 6, Wessels, 2005: 10

95 Jonsson, 2005: 51, Save the Children, 2005: preface

96 UNICEF, n.d.(a): par 2

97 UNICEF, n.d.(b): par 1

98 Save the Children, 2005: 10

99 Ibid.: 8

100 Jonsson, 2005: 49-52, Wessels, 2005 : 11, Save the Children, 2005: 4, UNICEF, n.d. (b) par. 1

101 Save the Children, 2005: 10

102 Unofficial Summary CRC, (n.d.): par 3

103 Save the Children, 2005: 12

104 Ibid.: 13

105 Ibid.: 14

106 Gasper, 2007 11,18, Jonsson: 59-60, Wessels, 2005: 12-15

107 Gasper, 2007: 10, 25

108 Save the Children: 16

109 OAS, (n.d.)

110 I/A Court HR, 2005: par. 107-108

111 'Reservation: The Government of Colombia declares that for the purposes of article 38 of the Convention, the age referred to in said paragraphs shall be understood to be 18 years(..)'. Office of the United Nation High Commissioner for Human Rights, 2004: 3

112 'Declaration: The military forces of Colombia, in application of the norms of IHL for the protection of the best interests of the child and in application of domestic legislation, do not recruit minors in age into their ranks unless they have the consent of their parents'. Ibid.

113 International Campaigns to Ban Landmines, 2008: par 2

114 Save the Children Alliance, 2002: 11

115 Street-level bureaucracy argues that policies are in charge of the people who actually implement it. Lipsky, 1997: 389

116 Save the Children, 2005: 10

117 Ibid.: 30

118 International Campaigns to Ban Landmines, 2007: Colombia/ Survivor assistance: par 1-6

119 Ibid.

120 Ibid.: par 2

121 Ibid.

122 Ibid: Colombia/ Data collection: par 2

123 Ibid.: Colombia/ Survivor assistance: par 7

124 PAICMA, 2008 b: Componentes de Acción/Componentes de apoyo

125 PAICMA, 2008 b: El Programa

126 PAICMA, 2008 a

127 Colombian Constitutional Court, 2000

128 Pacta sunt servanda Principle: According to the Vienna Convention on the Law of Treaties every treaty in force is binding upon the parties to it and must be performed by them in good faith

129 Colombian Constitutional Law: art 86

130 International Campaigning to ban Landmines, 2007: Summary table, par 1

131 Ibid.

132 Ibid.

133 Ibid.: Colombia/Survivor assistance strategic framework: par 2

134 Kai A and E. Malarino, 2003: 211

135 Referring to civil population that should be out of armed conflict hostilities

136 Velencia H., 2.002: 98

137 Rome Statute: art 7

138 International Campaign to ban Landmines, 2007: Executive Summary

139 Ibid.

140 The Colombian Government presented reservation according to which the Court will not have competition to know about war crimes for a space of seven years. Statute of the International Criminal Court Reservation text

141 ‘The humanitarian contemporary international law has its origins in two principal sources: the Law of Geneva, a regulation destined to protect the victims of the war, and the Law of The Hague, a set of dispositions that regulate the conduction of the hostilities’. Bugnion, F., 2001: Abstract