

**Establishing, Implementing and Enforcing the Necessary Legal and Policy
Frameworks to Meet the Rights of Landmine Survivors**
Taller para avanzar en la asistencia a las víctimas de minas terrestres en las Américas
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Summary of LSN draft study
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Introduction

This presentation will be a summary of a draft study on disability legislation to be released by the Landmine Survivors Network at the June 2005 intersessional meetings. The final editor of this study, Kirsten Young, welcomes any comments you may have. Her e-mail address is included in the document distributed to you today.

The document includes examples of existing legislation in each of your countries, which I will not take time to cite, but please refer to the document for details.

The “victim assistance” provision in the Convention requires that “each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs.” The ICBL believes >all< States Parties, including those mine-affected, are “in a position to do so”, in one way or the other, with national and local resources.

While the obligation acknowledges the relative capacities among States Parties to achieve immediate full implementation, it does not absolve any State Party of their obligation to ensure the widest possible implementation of the survivor assistance provision. They must demonstrate that every effort has been made to prioritize and utilize resources at their disposition in an effort to satisfy article 6.3. The harnessing of resources in this regard extends well beyond financial resources and includes legal, human and institutional measures. This presentation will focus on the legal measures a State Party should undertake.

Legislative provisions are widely recognized as one of the most important means for achievement of rights of landmine survivors. Since landmine survivors are part of the general group of persons with disabilities, the logical starting point for analysis is an understanding of legislative provisions relating to persons with disabilities, including:

- *Constitutional Provisions*
- *Incorporation by Reference to International Human Rights Law*
- *Protection and Assistance Models*

Details about each of the above examples can be found in the draft study.

National Legislation

Constitutional guarantees of equality and non-discrimination for people with disabilities may be reinforced by explicit legislative enactments. Anti-discrimination legislation typically sets forth

bases for prohibited discrimination (e.g. disability, race, gender, and so forth), it identifies specific areas of protection in relation to discriminatory practices (e.g., employment, housing, education, and transportation), it establishes complaints and/or adjudication procedures, and it provides some form of enforcement mechanism.

The draft document focuses on three legal sectors:

- Health and Rehabilitation
- Employment
- Accessibility

Please refer to the document for details in each of these areas. All four of your countries have legislation addressing health and rehabilitation needs of persons with disabilities.

Comprehensive Legislation

Colombia and Peru provide good examples of comprehensive legislation on disability,¹ which covers a range of aspects, including education, rehabilitation, labour integration, social welfare and accessibility. The central thrust of the law is to ensure that people with disabilities achieve personal fulfillment and accomplish full social integration.²

Conclusion

While each of the constitutional law frameworks examined are relevant to advancing the human rights of landmine survivors, they vary widely in approach and level of specificity. In no case does the constitutional law framework take measures to ensure the broad participation of disabled people in decision-making in a manner that would proactively facilitate the goals of Article 6.3. As legislation is often driven by constitutional goals, it is critical to arrive at a common understanding of a rights-based approach to disability. While improvements have been made, the prevailing framework is one in which people with disabilities are most often seen to be in need of charity rather than rights holders. Legislators need to take into consideration regarding who the primary stakeholders are when developing legislation. For example, financial incentives to an employer are not a sustainable measure unless the broader goals of non-discrimination, equality of opportunity and a barrier-free society are also included.

Implementation remains highly problematic, with lack of resources, lack of prioritization, and lack of inter-sectoral coordination being cited as the main challenges. In terms of accessing these legal protections, the main mechanisms for legal recourse include the court system and mediation, although many of the laws do not provide for penalties in the event of violation. In addition, the use of these avenues of recourse is limited either by the lack of financial resources, slowness of the judicial process, and lack of awareness of the legal frameworks protecting and promoting the rights of persons with disabilities.

In conclusion, while establishing national legal and policy frameworks to meet the rights of landmine survivors is crucial, we must remember that it comes down to improving the life of the

¹ Law 361/97.

² Both Nicaragua and El Salvador also have reasonably comprehensive laws. See e.g. Nicaraguan Prevention, Rehabilitation, and Equal Opportunities for Persons with Disabilities Act, Law 202 enacted on 23 August 1995. The regulations of the law were elaborated and published in Decree 50-90 of 25 August 1997. El Salvador's Legislative Decree 888 (2000): Law on Equal Treatment and Opportunities for People with Disabilities.



individual person and communities whose lives and livelihoods have been shattered by anti-personnel mines. When the Convention was adopted in Oslo in 1997, landmine survivors and mine-affected communities worldwide felt that the “voice of the victims had finally been heard”. It is our collective responsibility to ensure that their hopes will be realized so that men, women and children in mine-affected communities worldwide can resume productive lives with dignity and “walk without fear” that their next step may be their last.

Muchas gracias.