

# Alternative report to the report of the government of Colombia on the situation of the rights of the child in Colombia



Colombia, 2005



**ALTERNATIVE REPORT  
TO THE REPORT OF THE GOVERNMENT OF COLOMBIA  
ON THE SITUATION OF THE RIGHTS OF THE CHILD IN COLOMBIA**

**COORDINATING COMMITTEE**

**Coalition against the involvement of boys, girls and youths into the armed conflict in Colombia**

Colectivo por la Objeción de Conciencia  
Comité Andino de Servicios – American Friends Comité  
Defensa de los Niños Internacional – Colombia  
Fundación Creciendo Unidos  
Fundación Dos Mundos  
Fundación para la Educación y el Desarrollo – FEDES  
JUSTAPAZ  
Taller de Vida  
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**Colectivo de Abogados “José Alvear Restrepo”**

**Comisión Colombiana de Juristas**

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**This report is available, in English and Spanish, in [www.coalico.org](http://www.coalico.org)**

**Alternative report to the report of the  
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The Committee on the Rights of the Child (CRC) is the body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties.

According to the CRC, all States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of “concluding observations”. The Committee reviews additional reports which must be submitted by States who have acceded to the two Optional Protocols to the Convention.

In the Colombian case, the Committee reviewed the State reports and addressed recommendations in 1995 (CRC/C/15/Add. 30) and in 2000 (CRC/C/15/Add.137).

In the occasion of the third Colombian State Report presentation on June of 2004, the Colombian Coalition, the Corporación Colectivo de Abogados “José Alvear Restrepo”, the Colombian Commission of Jurists and Humanidad Vigente – Juridical Corporation began a participative process to write an Alternative Report, in which the voices of boys and girls were considered as priority. The process included the following activities:

### Boys and Girls National Meeting

In October of 2004, a national meeting with 45 boys and girls from **Santander, Bolívar, Chocó, Cauca, Putumayo, Arauca, Norte de Santander, Antioquia, Cundinamarca and Bogotá** was carried out for analyzing the recommendations

of the Committee for the Colombian government and the 3<sup>rd</sup> State Report for the Committee. The participants exchanged their concerns on their situation; they defined the main issues for the Alternative Report and the investigation process they will carry out inside their regions for contributing with information to.

### **Presentation and consult with organizations**

Since November of 2004 to February of 2005, presentation meetings of the initiative were carried out with social organizations from **Bogotá, Putumayo, Santander, Arauca, Antioquia, Valle** and **Cauca**. The organizations received the third State Report, the Convention on the Rights of the Child, the Optional Protocol on the Sale of Children, the Optional Protocol on Children in Armed Conflict, the Recommendations of the Committee to the Colombian State and a synthesis of the third Colombian State Report.

The organizations were invited to participate in the process in different ways:

- Giving relevant information on the implementation of the recommendations by the Colombian State.
- Participating in the Coordinating Committee.
- Making feedback to the draft.
- Adding and disseminating the final report.

### **Gathering the information**

The Coordinating Committee gathered to analyzed information from different sources:

- a. **Official Sources:** as the Colombian Institute for Family Welfare (ICBF), Ombudsman's Office, Foreign Affairs Minister, Education Minister, National Defense Minister, Justice and Interior Minister and the General Attorney's Office, etc.
- b. **Social Organizations:** the report looks for compile the thematic expertise of the Colombian NGO and social organizations. That

is the reason why the report and studies of the national and regional networks and organizations have had great significance.

- c. **Juvenile Groups:** several boys and girls carried out thematic investigations. The participants of the National Meeting joined with other youths carried out thematic researches on children situation in Antioquia, Arauca, Santander, Cauca and Putumayo.
- d. **Boys and girls:** as part of the process, three interviews were applied: 1) on the implementation of the Convention on the Rights of the Child, with boys and girls in Norte de Santander, Arauca, Chocó, Putumayo, Cauca, Cundinamarca, Santander, Antioquia y Bogotá; 2) with students and graduated youths from military schools in Bogotá on the military education; and 3) boys and girls from Bolívar, Bogotá, Cundinamarca y Santander on the impact of the displacement.

The intention of this document is to analyze the situation of the rights of the child and provide information to the Committee on the implementation of the observations and recommendations made in 1995 and 2000.

The main issues on the situation of children were stated in eight chapters. The introduction describes the general situation of the country and the armed conflict that is going through, keeping in mind, the discussion about the figures on the social situation, the denying of the internal armed conflict and the negotiation with the paramilitary groups.

The first chapter is dedicated to the general application of the CRC. It analyzes the dissemination by the State through such as Infancy Observatories, the level of knowledge that boys and girls have on their rights, the participation of the civil society and the Non-governmental Organizations in the definition of the public policies for children and the professional training on the rights of the child, specially, to members of the armed forces and teachers.

The second chapter, on the general principles, tackles the right to life, starting from the situation of the street children and their quality of life, the homicides of children living in conditions of social marginalization, "social cleansing campaigns", the violations to the right to life by the combatants, the breach of

hostilities proposed by the paramilitary groups and its repercussion on boys and girls, and the level of impunity of these crimes.

In this chapter, the principal issues regarding the right to equality are also pointed out, highlighting the discriminative situation suffered by boys and girls in conflict zones. The gender discrimination in the family roles, the right to freedom of expression and information, remarking the persecution of youth organizations, or friend groups, and the irregular armed groups codes of conduct that have been implemented in several zones of the country are discussed.

The third chapter is referred to the situation of the civil rights and freedoms, it evaluates the situation of the children, in such aspects as the right to the identity of the indigenous and afro-descendents boys and girls, the suicides of boys and girls from the Emberá Katío ethnic group; the right to freedom of thought, consciousness and religion, especially, the accusations against indigenous neutrality; the right to the protection of their private lives, jut out the massive and arbitrary detentions; children as victims of kidnappings and the right to not being subject of torture or other cruel, inhuman or degrading treatments or punishments.

The fourth chapter is dedicated to the family environment and other types of protection and analyzes the implementation of the right to have a family and to not being separate from their parents, especially, on the domestic violence, the institutionalization of boys and girls who were separated from their family environment and adoptions.

The fifth chapter analyzes the right to basic health and welfare. The impact of the social security system on the right to health is included, standing out issues like lack of improvement on the achieved effects on the reduction of mortality and reemerging of transmissible and preventable ills. Equally, the situation of the right to special assistance for disable boys and girls, and the right to live in a healthy environment, analyzing the impact of the fumigation of the illicit crops on boys and girls.

The sixth chapter deals with the implementation of the right to education by the State and recreation and cultural activities. Issues such as governmental policy on education (“educational revolution”) and its impact on the guarantee of the right to education, scholar desertion, and the failure in ethnic-education, the situation of teachers, the training on human right for children, schools as

battlefield, the violence in schools and the impact of military education in the fundamental rights of the child are analyzed.

The last chapter is dedicated to the special protective measures; several sections are included. The first one, related to the right to an integral protection of refugee and displaced children, according with the constitutional mandates pointed out in the SU-1150 sentence of 2001 and T-025 of 2004 by the Constitutional Court; the second one, about the government policy to tackle the economic exploitation and any kind of hazardous work; the third one, analyzes the right to full protection against the production, use and exploitation of illegal drugs, highlighting, the increase tendency to criminalize and repress instead of prevent and protect these boys and girls that are victims according to the ILO Convention No. 182.

A fourth issue related to the special protective measures evaluates the right to an integral protection from sale and trade against boys, girls and adolescents, concluding that the figures have increased during the last years, mostly due to the Colombian economic crisis. Referring to the sexual abuse and exploitation, it is stated that the public policy about this matter is not working on the causes, but on concrete cases.

The fifth section tackles on the right to the protection of children in the internal armed conflict. On this matter, the direct involvement with guerrilla and paramilitary groups, the indirect involvement with State Armed Forces, the lack of public policies regarding prevention, the lack of a legal framework for demobilized children, the omission of this issue in the negotiation process with the paramilitary groups and the impunity on this kind of crimes, including the existence of a governmental safeguard before the CPI to know about these facts, is exposed. Equally, an analysis of the affectation of land mines to boys and girls, the gender grounded violence, and other infractions to the International Humanitarian Law are made.

Finally, we exposed the main concerns on the guaranty of fundamental rights of Children that are depraving of liberty, as well as, their affectation if the "Infancy and adolescence Law" is approved by the congress. Since, it states up penalties for 5 years of deprivation of liberty.

Besides, supporting the important work of the Committee in establishing the responsibility of the Colombian State in the implementation of the

recommendations, we hope this diagnostic on the situation of the rights of the child could be useful for the promotion of public policies in favor of Colombian boys and girls.

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Presented by the following organizations:

Taller de Vida, Fundación Creciendo Unidos, Comité Andino de Servicios (American Friends Service Committee), terre des hommes-Germany, Colectivo por la Objeción de Conciencia, JUSTAPAZ, Fundación Dos Mundos, Fundación para la Educación y Desarrollo, FEDES, members of the Coalition against the involvement of boys, girls and youths into the Armed Conflict in Colombia, along with:

Comisión Colombiana de Juristas, Humanidad Vigente - Corporación Jurídica and Corporación Colectivo de Abogados "José Alvear Restrepo".

To: the Experts of the UN Committee on the Rights of the Child.

Pre-session Committee on the Rights of the Child, Palais Wilson, Geneva

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January, 2006

## **1. General situation of the country, with emphasis on the situation of the child**

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There are 16'800.000 girls and boys in Colombia that represent 41.5% of the total population of the country<sup>1</sup>. However a vast portion of the children are poor. According to the Economic Commission for Latin America and the Caribbean (ECLAC), for the year 2002 Colombia was to present a coefficient for income concentration (GINI Coefficient) of 0,575, ranking it as one of the countries with the highest unbalances; the General Accounting Office of Colombia states that 20% of the wealthiest households of Colombia concentrate 52 per cent of the income.<sup>2</sup>

The realization of the social, economic and cultural rights of the Colombian population has been more difficult during the recent past, due to the fact that the governmental agenda has been busy with the "war on terror" and has oriented to promote a "a strong debate on the figures and methodologies employed for measuring poverty and internal displacement, creating an environment that is refractory to dissident opinions around an outrageous growing of the levels of poverty and social inequity existing in the country<sup>3</sup>.

Although statistics are fundamental for the analysis, it is necessary to go beyond them in order to think of real people to whom the State must assist.<sup>4</sup> Even under a positive reading, the situation is very serious: in 2003, the figures of population living under the poverty line was 64.2 per cent, according to the General Accounting Office (Contraloría General de la República); and 64.2 per cent as per a study of the National University or even 66.1 per cent according to the National Department of Statistics, DANE<sup>5</sup>.

The overall population under the misery line went from 23 per cent in 2000 to 31 per cent in 2003. The General Accounting Office has warned that "the exclusion of Colombian children is profoundly notorious: 24 per cent of the population living under the poverty line is aged in less than 10 years old. 13.5 per cent of the children below five years old suffer from chronic malnutrition, and other factors and 18.3 per cent do not have access to the educational system (...)"<sup>6</sup>

It is noted with concern that the programs under the responsibility of the Colombian

Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar), ICBF (for its Spanish acronym), has gone through a progressive decline, coming from the cut in the public resources required for its operation and from the shift in the conception on public policies regarding infancy; this ends up with giving priorities to economic criteria rather than to the real needs of the population.<sup>7</sup> Additionally the present government insists on the draft proposal to amend the Constitution. This would make it that legal remedy like the *tutela* ((legal action to seek immediate relief for the violation of a constitutional right)) enshrined to protect the economic, social and cultural rights of the population, including the rights of the child become useless.<sup>8</sup>

### The armed conflict

There has been an armed conflict in Colombia since more than 50 years ago, when the peasant self defence groups from the Liberal party got organized. They fought for an agrarian reform along with socialist guerrillas, created by political sectors that had been excluded due to the traditional bipartisanism that dominated the country.<sup>9</sup>

With the excuse of fighting against these leftist groups, social and grassroots sectors have been repressed and attacked. The Colombian state deployed and still deploys several strategies to confront them, including the support for the creation and consolidation of civilian armed groups that act as paramilitaries, under Decree 3398 of 1966 and Law 48 of 1968. This legislation

allowed the formation of armed groups made up of peasants, trained militarily by the State. These paramilitaries received orders from big landowners, cattle raisers, industrials and military.<sup>10</sup> Despite the approval of legislation that persecuted and prohibited paramilitary groups, at the end of the 80s they continued to operate, deepening their scope in the subsequent decades, thanks to the upsurge of drug trafficking as a mechanism to finance the counterinsurgent war.

In this context, the inauguration of President Alvaro Uribe in 2002 meant that repeatedly, the Colombian state denied the existence of an armed conflict in the country<sup>11</sup> to put in doubt the application of international humanitarian law in Colombia and the possible achievement of a humanitarian exchange in which the rights of the civilian population be respected without abusing the principle of distinction between civilians and combatants.

Although in practice the Colombian government refuses to accept the existence of an armed conflict, in which the State holds the responsibility of respect and protection of human rights and international humanitarian law; in particular the Colombian Ministry of Foreign Relations, the ICBF and the pertinent governmental institutions that participated in the drafting of the Third Report to the Committee on the Rights of the Child could not hide the existence of a war: "*The most critical aspect of the Colombian reality today is the internal armed conflict. To characterize the armed conflict implies thus a*

*multidimensional vision and the recognition of the varied causes and factors that make it complex.”<sup>12</sup>*

The governmental strategy with regard to the armed conflict, established in the so-called “Democratic Security Policy” engages civilians in the warfare and poses on the citizenship the obligation to guarantee the nation’s security. The government states that *“the citizenship will be a fundamental part of the topic of information gathering”* and proposes to incorporate in the military program of “peasant soldiers” approximately 100,000 youth. After a short period of three months of training these peasant soldiers go to straight to perform combat tasks. Under the current militarization policy of civilian life, there is an idea that is getting generalized that states that if any one is not with the Public Force he or she is against it<sup>13</sup>; this idea is used to attack forms of non violent resistance of communities, such as the so-called “Peace Communities”.

### **Impunity and negotiation with paramilitary groups<sup>14</sup>**

On the 29<sup>th</sup> of November 2002, the paramilitary groups gathered around the United Self Defences of Colombia (*Autodefensas Unidas de Colombia*) that comprise the Self Defences of Cordoba and Urabá, those of the Middle Magdalena Valley, of Puerto Boyaca, Cundinamarca and south of Cesar, delivered a document of 12 points to the High Commissioner for Peace of the Colombian government, that included a commitment to refrain to attack the civilian population. The

document was ratified on the 15<sup>th</sup> of July 2003<sup>15</sup>. The negotiations process between the government and these groups began on the 1<sup>st</sup> of December 2002. In May 2004 the “Tierra Alta Accord” was signed. In it, the High Commissioner for Peace, the commanders of these paramilitary groups, representatives of the Catholic Church and the Mission to Support the Peace Process in Colombia of the Organization of the American States, MAPP/OEA (for its Spanish acronym)<sup>16</sup> created a “Zone of location” (Zona de Ubicación) for these groups to initiate their complete demobilization process, something that in theory should be finished by December, 2005.

The international community and the Colombian civil society have expressed from the beginning of this process, their serious concerns and criticism with regard to it. Amongst the main concerns, they have said that the negotiations have denied the root causes and serious human rights abuses committed by paramilitaries; that the negotiations have been carried out in spite of these groups continue to commit crimes; that there have not been taken the necessary measures to dismantle and disarticulate their ties with members of the official armed forces or to guarantee the rights of the victims and the society to truth, justice and compensation. In sum, that the *“process is being carried out in a superficial manner and without the appropriate safeguards to guarantee that the structure of these complex organizations be effectively disarticulated and that those guilty of crimes be trialled.”<sup>17</sup>*

The demobilization of paramilitary groups has been carried out under Decree 128 of 2003 that develops Law 782 of 2002, according to which all of the combatants that at the moment of demobilizing do not have legal processes nor condemnation against them, will not have any criminal record, according to the certificate issued by the Operational Committee for the giving up of weapons, *Comité Operativo para la Dejación de Armas, CODA*, of the Ministry of Interior.

At the end of 2005, the President of the Republic passed Law 975 of 2005, promoted by his administration, which goal is to regulate the legal benefits for the demobilized combatants that are being processed or condemned for serious human rights and international humanitarian law abuses. From the beginning of the negotiations approximately 11,400 paramilitaries have demobilized individually and collectively; it is expected that in total, around 18,000 people will demobilize<sup>18</sup> Only 300 to 400 out of those that would demobilize will be processed according to law 975 of 2005; that is to say, only 2,2 per cent of the total paramilitaries demobilized.<sup>19</sup> This means that only this 2,2 per cent are demobilized paramilitaries that have penal cases against them including legal condemnation because of serious crimes. But this percentage will not be processed for all of the crimes they have committed, but only for those particular crimes for which they were sentenced before.

This law has been strongly criticized because it abuses the rights of the victims.

For instance, with regard to the **right to truth**, a great deal of the provisions impedes the victim's access to the legal process carried against the perpetrators of war crimes and crimes against humanity. Although in its introduction, the law presents a definition of victim close to the provisions of international bodies for the protection and overseeing of human rights, in several subsequent articles it limits the access to truth for the relatives of the victims on the real facts that happened, in first place, because it obviates that the quality of victim is acquired precisely for the circumstances of having suffered a human rights violation, beyond the need to prove that the person had or not familial ties or relation by marriage; and in second place, because it leaves to the decision of the authorities to determine the circumstances that they would consider pertinent as evidences.

Also since the total confession of the crimes committed is not considered as a requisite to have access to the benefits for the demobilized people, the right to truth becomes reduced to what the victimizer would like to inform, or to what the investigations that in a reduced time frame, of no more than 60 days, the Attorney General's office could complete. Besides this, the Attorney's General office will not be able to really investigate, for it has only a precarious term of 60 days to verify the testimony of the demobilized person.

In the best scenario only the judicial truth of what happened will be known, not

mentioning that political negotiating processes should be mainstreamed by the historical truth. This would lead to negative consequences for the victims will not be able to know about the structural reasons, intellectual authors, financial sponsors and direct or indirect beneficiaries of the crimes committed.

With respect to the **right to justice**, the law enacted contains provisions that seriously impede its implementation. When it stipulates that the beneficiaries of this law will receive punishment of five to eight years for the commission of horrendous crimes; and that they would be discounted one year and a half for having stayed in the “location zone”, one of the pillars of the right to justice is openly abused: proportionality between the seriousness of the facts and the imposed punishment.

A second negative aspect for the protection of the right to justice has to do with the paragraph under Article 10<sup>th</sup> and Article 22<sup>nd</sup> whereas the prosecuted and the condemned will receive respectively the totality of the benefited provided by Law 975 of 2005, even if they are imprisoned or if they were given a definite sentence.

Another article provides that, although within the legal process the person that benefits from this law does not plead guilty for the totality of the crimes committed, in case that the pertinent authorities show that the crimes were committed *a posteriori*, this person can receive the benefits for the new evidences, unless it is proven

that the omission was not intentional, something that is almost impossible to prove in criminal process Law.

When the crime committed is grave it can receive an additional 20 per cent of the total punishment. A consequence of this might be to reward lies, since the author of atrocious crimes can keep silent for crimes committed and if in any moment the administration of justice demonstrates that he or she is guilty for them, the person must accept these charges to be subject to the legal and material benefits.

When the author of the crimes is a demobilized person that is part of the 97.8 per cent of the demobilized forces that did not have legal processes or condemnations for serious crimes at the moment of their demobilization, this person can not lose the benefits because he does not have the obligation to provide a free version of the facts, according to the Decree 128 of 2003.

Besides despite Article 37<sup>th</sup> of this law is extremely generous in terms of provisions for the victims, the legal procedure does not involve them so that it does not become an effective remedy for the victims, because their participation is not considered but when it comes to the incident of compensation, at the end of this procedure. It does not permit access to the proceedings by the victims and provides exaggerated reduced time frames.

With regard to the **right to compensation**, one of the more harmful precepts for the

victims has to do with the procedure to access a comprehensive compensation, something called in this law as “incident of comprehensive compensation”. This procedure transfers the totality of the burden of the proof to the victims, who should ask for a reparation concerning facts and responsibilities in which they had had not participation during the process. Without truth and without justice there can not be a true compensation, for the compensation provided by this law becomes an illusion.

On the other hand, the totality of the law evades the State’s responsibility on the activities of paramilitary groups, something that has been broadly pointed out by United Nations human rights bodies, and recently has been extensively described by the Inter American Court on Human Rights, in its sentence on the “Case of 19 merchants vs. Colombia.”

On the political crime, Article 71<sup>st</sup> of the above mentioned Law broadens the

definition of the penal crime known as “sedition” to include paramilitary groups, thus allowing forgiveness for a variety of crimes on which it can be argued its connection with sedition, and opens the space for the participation in the political arena and in electoral processes for these victimizers.

Although **recruitment** of boys and girls into the armed groups is considered a crime by the Colombian penal law, and a war crime for the Rome Statute, as well as a human rights violation by the “Optional Protocol on the Convention of the Rights of the Child on children in the armed conflict”, and the 182 ILO Convention, and although Law 975 of 2005 establishes that a condition to demobilize is to give back the girls and boys who were combatants, Article 64<sup>th</sup> of this law includes a provision that states that releasing girls and boys that were part of their ranks does not generate a loss of the benefits for the adult demobilized.

## GENERAL MEASURES OF APPLICATION

### 1. State of the application of the CRC in general terms

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The Committee on the Rights of the Child has recommended the Colombian State to improve the coordination and cooperation between institutions that look for the application of the Convention at the national, regional and local levels<sup>20</sup>. However, the situation of the child in Colombia has not improved.

The Ombudsman's office (*Defensoria del Pueblo*) has mentioned when referring to the ICBF that *"its task as a coordinating body of the [child assistance] system is in the majority of the cases none, if it is taken into account that such a system of inter institutional relationships demands necessarily the concurrence of and support by several sectors, such as health, education, judiciary and labour, integrated at the national, regional and municipal levels"*<sup>21</sup>

The Ombudsman's office has stated that although the ICBF has coverage for the program on prevention and protection in more than 1000 municipalities of the country, it only has prevention programs in agreement with people that lack the legal competences to intervene in serious cases. And that with respect to the protection issues, its pro-

grams cover less than 200 municipalities out of the 1069 existing in Colombia. Also that the same time this office says that the statistics system of ICBF *"does not correspond to the reality of the services provided for the institution"*, because many of them operate under subcontracting forms with individuals and lack the appropriate verification and monitoring mechanisms.

During 2004, the Procurator-General of the Nation (Procurador General de la Nación) undertook a study to determine the inclusion levels of the rights of the child (boys and girls) in 32 development plans of Colombian departments (provinces) as well as in 964 municipalities<sup>22</sup>.

Based on this study, the Procurator's office states that the inclusion of the themes related to children and adolescents in the development plans at the municipal and departmental levels vary significantly, while it is noted under consideration of the problems of infancy and the lack of collaboration, concurrence and subsidiary services of the departmental and national levels. For instance, less than 30 per cent of the municipalities included issues of maternal mortality and

mother's breastfeeding in their plans; concerning the issue of especial protection, except for the issues of family violence, of children with special disabilities and of their abuse of drugs, the level of inclusion is

reduced to a minimum. The Procurator concludes that infancy, adolescence and healthy environment should be thought as priority issues and not marginal, as it has been so far<sup>23</sup>.

## 2. Dissemination of the Convention

### Governmental policy: Infancy Observatories<sup>24</sup>

According to the Third Report of the Colombian State to the Committee on the Rights of the Child, one of the principal activities undertaken in the context of the public policy towards infancy is the creation of 175 Infancy Observatories throughout the national territory. However, these Observatories are limited to be reflection and academic debate spaces on issues related to the situation of the child. Their goals are quite diffuse especially when the reality of this population is impacted by the serious violation of their rights, particularly in zones of intense armed conflict.

For ICBF, one of the results of this activity is that the Observatories have helped "...increasing the children's life standards, based on their involvement [in them]", something that contrasts with the real living standards for the Colombian population as a whole, and of children in particular; their standard has worsened in the past years,

without being clear that the participation in the Observatories might have incidence in improving it, since these bodies consist of "*public servants from the Colombian Institute for Family Welfare and the other public institutions at the municipal and departmental levels, such as Mayors, Governors, and Secretariats (of Education, Social Development and others, depending on the regional local dynamics); NGOs, universities, researchers; beneficiaries of the programs, projects and sub-projects and other modalities to assist provided by the ICBF; leaders of community organizations; girls and boys, youth, elders, community mothers; parents' associations, Community associations and, in general, people and institutions that work for the rights of the child and the family.*"

Even considering that all the above mentioned people were effectively involved in these Observatories, -something that is not the common practice-, it is not clear what functions they have and the form they coordinate initiatives coming from the private and public sectors; or from the civil

society organizations, bearing in mind that there are different profiles, levels of experience and interests, among other

aspects. Besides, it is not clear to which extent the right to participation is granted for children when defining public policies in a country where infancy and youth are stigmatized and marginalized.

### **Dissemination of the CRC to girls and boys**

For the realization of this report, a **Survey on the implementation of the Convention of the Rights of the Child** was designed. (We will further refer to it as the SCRC). It was applied to 228 boys and girls with ages from 6 to 18 years old, in different zones of the country: Cúcuta (Norte de Santander), Saravena (Arauca), Quibdó (Chocó), Puerto Asís (Putumayo), Pueblo Nuevo (Cauca), Soacha (Cundinamarca), Barrancabermeja (Santander), Medellín (Antioquia) and the districts of San Cristóbal and Ciudad Bolívar in Bogotá<sup>25</sup>.

According to the SCRC, 84.9% of the boys and girls know what a right is or know about the existence of the Convention of the Rights of the Child. But the governmental role in the process of dissemination of the Convention is quite reduced: only 14% out of the 228 interviewed children learned about their rights through civil society organizations, 13.3% through their families and only 31.5% thanks to their school teachers generally from public schools.

### **Participation of Civil Society Organizations in the definition of public policies for children**

In 2000, the Committee on the Rights of the Child recommended the Colombian government to *“review its existing legislation and harmonize it with all of the provisions of the Convention. It also recommends that the State Party reactivates the process initiated to review the Code of the Minor (1989). In this process all the sectors involved in the promotion and protection of the rights of the child should be involved (...)”* (underlined out of the text)

The Third Report of the Colombian State to the Committee – when referring to the developments of the Law on Infancy and Adolescence- highlights that it has been involvement of *“a variety of social organizations, fulfilling thus the Constitutional principles that enshrine participatory democracy”*.

Although the draft bill of 2004 was done by a group of state institutions, foundations and international cooperation institutions<sup>26</sup>, with the support of experts in penal and family law<sup>27</sup> their participation does not mean that the recommendation by the Committee has been fulfilled, in terms of allowing the involvement of all of the sectors that intervene in the promotion and protection of the rights of the child, because the discussion was not made through an open call for nominations and it did not count on other actors, particularly children.

In November 2004, a group of civil society organizations<sup>28</sup> asked the First Commission of the Colombian Senate to call for a wide national debate that could permit those that had not been invited to participate in the process of agreement around this legislative initiative, to express their position with regard to this project. These organizations highlighted that in the discussion process about the legislative themes, and of public policy on children in Colombia an even more important actor has been absent: children. To this moment the voices of children have not been heard or consulted and paradoxically, children have been considered capable to plead guilty for offences they may commit, but incapable for expressing their own opinions when acting as someone entitled with all rights.

Although the draft bill was withdrawn by the proposing members of Congress in order to introduce some amendments, the reform of the Code of Minors has been presented, even without having been approved, as one of the main goals of the current government from its inauguration. It was demonstrated in such a way in the "Third Report of Colombia to the Committee on the Rights of the Child, 1998-2003", where the Colombian government assured that it had worked on a draft proposal on children that *"was aimed at all children, boys and girls, as persons fully entitled of rights until the age of 18 years, and at those that in spite of having reached that age, might be under special measures of protection by the State, including newborns, children in their first infancy, adolescents and youth."* (p. 31) and

stated that the draft law under review was one of the main advances with regard to the inclusion of the Convention on the Rights of the Child into the domestic law.

Based on that, the national government, represented by the Director of the Colombian Institute for Family Welfare, ICBF, and counting on the support of the "Alliance for infancy", presented during the second week of September 2005 a new draft proposal for the Code of Minors for the consideration of the First Commission of the House of Representatives; the civil society organizations that submit the present report were invited to this session. In the public hearing held by the members of Congress above mentioned, the civil society organizations different from those invited directly by the Colombian government had the opportunity to submit their concerns, although this happened only at the end of the session, when the majority of the participants had already gone off the sessions' room. It is expected, however, that the issues presented by these NGOs would be appropriately addressed by the drafters of this law so that it can, finally harmonize with the obligations acquired by the Colombian State with UN bodies.

### **Professional training**

The Committee on the Rights of the Child has recommended that professionals, male and female, that work with children receive a systematic training on the rights of the child. These activities have been developed, for instance, by the Ombudsman's Office

(Defensoría del Pueblo) and for the National Attorney's General Office with judges for Minors, family attorneys, ICBF staff and members of the municipal and departmental governments.

Nevertheless, it is necessary to ask questions on the efficacy of the training programs undertaken, because many non denounced or unregistered cases of abuses of the rights of the child persist due to the lack of accountability of public servants; and there is a continuation of complaints for the lack of understanding, sensitivity and value of the primary interest of the child in legal proceedings, the use of information by the mass media and the drafting and implementation of norms related to themes such as forced internal displacement.

The increase in cases of violations of the rights of the child happens in the framework of the lack of appreciation by public servants and the administration towards human rights in general, and towards the members of the national and international organizations that defend human rights, in episodes such as the ones we list here:

In September 2003, the President of the Republic accused national human rights organizations of "political jobbery to the service of terrorism"; despite several individuals and organizations asked him to rectify, amongst them the Commissioner and Rapporteur on Colombia of the Inter American Commission on Human Rights, of the OAS, the Director for America of Human Rights Watch, the British Vice Chancellor and the

Inter American Commission on Human Rights<sup>29</sup>, this rectification did not happen.

Later and alluding the violent death of 34 peasants in the town of La Gabarra, municipality of Tibú (Norte de Santander), the President expressed that *"for maintaining hypocritical courtesy norms and not having the courage to denounce Amnesty International, we have permitted that [they] legitimate international terrorism."*<sup>30</sup>

This attitude has negative consequences: it stimulates the idea that those that dissent from the government are in favour of terrorism and that human rights are not a solution to the crisis, but an obstacle for the development of the war and the state's military victory and an impediment for the modality of peace process that the Colombian government seeks to impose in the country.

The presumption according to which any activity on human rights is a façade of the guerrillas has led to persecutions: the number of human rights defenders that have been victims of abuses to the right to life since the inauguration of the current government is the highest for the past eight years, reaching the 33 cases, nine of them women, between the 7<sup>th</sup> of August 2002 and the 7<sup>th</sup> of August 2004.<sup>31</sup>

In the end, this is affecting the possibility for the civil society organizations to have a human rights reference as an ideal towards which the governmental and social activities should be guided.

## **Members of the official Armed Forces**

Official sources have informed on the creation of 13 regional offices for human rights that involve plans for human rights and international humanitarian law training. Despite the fact that members of the Armed Forces receive human rights education courses, there is not any specific mention to some sort of education on the rights of the child and there is not allocated budgets for this activity.<sup>32</sup>

The failure to allocate specific budgets for the inclusion of human rights issues on children can be seen as a trivial form in which the human rights problems are treated and not necessarily for the lack of budget because there are more funds allocated to the purchase of weapons and to pay pensions, salaries and other special benefits for certain privileged groups of governmental staff, such as the members of the Public Force, amongst others.

## **Teaching**

Although according to Law 115 of 1994, or General Education Law, the teaching of fundamental rights in public and private schools is compulsory, there is not information available and up to date referring the implementation of this norm in the training of professionals in the educational field, as well as students. This includes the absence of norms that comply with the UNESCO international conventions signed and ratified by Colombia in the areas of peace education, human rights and the struggle against all forms of discrimination in the sphere of education and teaching.

Besides, the changes in educational policies have led teachers, women and men, who used to have labour stability as public servants be replaced by occasional professionals, not necessarily trained in educational sciences; this causes the ignorance and inability to apply lasting and permanent programs on human rights training, especially on the rights of the child and on the instruments related to the Convention on the Rights of the Child.

### 1. **Right to life**<sup>33</sup>

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#### **Street children**

ICBF estimates that in Colombian cities and urban centres there are approximately 30,000 boys and girls living in the streets; only 6,200 out of these are annually assisted by State institutions or state controlled institutions.<sup>34</sup>

The Ombudsman's office (Defensoría del Pueblo)<sup>35</sup> has expressed its concern with regard to the lack of quantification and response to this problem; to the fact that children living in the streets are mistreated by the Police, receive deficient assistance by the corresponding State authorities and that practices of the so called "social cleansing campaigns" continue against these children. This state body concludes that *"with respect to the children, the activities deployed by the State have not reached the expected outcomes."*

The Ombudsman's office warned on the lack of attention and coordination between and amongst the institutions at the local or departmental level (territorial entities) with the national ones in order to tackle this problem that is linked to the issue of internal

displacement and impoverishment of Colombian households, too.

The Procurator-General's Office has confirmed that the territorial entities are not taking into account this serious problem, for with the exception of the department of Vichada (border with Brazil), in the rest of the Colombian provinces or departments, less than 30 per cent of the municipalities included into their plans any sort of intervention aimed at children and adolescents living in the streets.<sup>36</sup>

As a response to this serious problem, the government is implementing the "Program to support street youth and children in Colombia"<sup>37</sup>, with a total budget of • 7,710,000 out of which • 6,420,000 are provided by the European Community and only • 1,290,000 by the Colombian government.

Activities in this program include research, assistance and prevention, as well as institutional building, mobilization of and raising awareness for civil society organizations. Bearing in mind the huge sums of money at stake, principally coming from the

international cooperation that have invested in this program, it is worrisome that the number of beneficiaries is quite reduced (5,200 children and youth and 1,700 families living in the streets), and the fact that 30% of the funds have been allocated to *“undertake statistic studies that permit to determine the characteristics of this population”*, when in practice the problem is not of a diagnosis but of prevention, assistance and protection.

### **Homicides of children living in conditions of social marginalization<sup>38</sup>**

In the year 2000, the Committee expressed its concern about situations related to the so called “social cleansing campaigns” against children living in the streets. Unfortunately, in the past four years there has been an increase in the tendency of cases of executions of people socially marginalized, principally against adolescents. Between July 2000 and June 2004, at least 87 girls and boys lost their lives due to violence against people socially marginalized.<sup>39</sup> 85 cases out of the total (97.70%) were supposedly perpetrated by paramilitary groups.<sup>40</sup>

For example, in Magangué (Bolívar), the local office of the Ombudsman (Personería Municipal) informed that 34 adolescents were murdered in violent events against socially marginalized children in 2004, presumably by paramilitary forces, without any kind of penal investigation for this.<sup>41</sup> In another instance, in the south of the depart-

ment of Caquetá, paramilitary groups are killing young people that live in the streets or that are considered as “unwanted”<sup>42</sup>

In the area of Ciudad Bolívar, one of the most populous and vulnerable of the capital, Bogotá, in October 2004 two adolescents were slaughtered<sup>43</sup>, and during the celebration of the “Week for Peace” [annual event organized by Colombian Peace NGOs and the Catholic Church, note of the translator], in September 2005 local leaders denounced that at least 150 young people had been assassinated in this sector of the capital.<sup>44</sup>

Additional violent events against socially marginalized girls, boys and adolescents have been denounced in other places of the country, such as Piedecuesta, Santander.<sup>45</sup>

The attacks are selective against adolescent boys and girls, who combine characteristics of being vulnerable due to conditions such as age, poverty and stigmatization by the armed parties, in particular by paramilitaries, for in many regions of Colombia they consider young people as a “military target”.

### **The situation in “Altos de Cazucá”<sup>46</sup>**

In the border between the township of Ciudad Bolívar in Bogotá, and the municipality of Soacha (Cundinamarca), there is “Altos de Cazucá”, a network of poor slums inhabited by people who are mostly immigrant from several regions of the country, forcibly displaced by violence,

and in a lesser extent, by displaced from other sectors of Bogotá, pushed there for poverty reasons.

At the beginning of the 90s and coinciding with an outstanding increase of population, the first cases of violence against socially marginalized children and adolescent started to appear. These attacks increased upon the arrival of paramilitary forces especially targeting adolescent people.

Persecution against adolescents was characterized by the control of aspects of their daily lives and open signs of harassment, such as "pintas" or graffiti that stated things like: *"Good boys and girls sleep at 7 p.m.; we send to sleep the bad ones at 8. AUC"* or *"Kill marihuana consumers"*, or *"Kill drug addicts or vicious persons"*. The terms "marihuana consumer" or "vicious person" were resumed by paramilitaries as names to call young people who did not attend schools or were jobless.

A mother living as internally displaced said: *"War is against young people. It is said that paramilitaries use any pretext to kill them, because the youth have a moment to spare or dance, and the paramilitaries accuse them of being "sapos" (informants), of being in one or the other side, that they consume marihuana, they rape, or any other crime they invent to target them."*

According to information gathered by several NGOs, between 2001 and 2004, there have been more than 250 killings of young people in Altos de Cazucá; 59

were committed between January 2000 and February 2001.<sup>47</sup>

The wave of violence against boys, girls and adolescents who are socially marginalized has worsened since the beginning of 2003. Among the most relevant cases in the past years, we have: the murder in August 2003 of three adolescents between 13 and 16 years old; the killing of four young people, in August 2004, among them two adolescents of 15 and 16 years old; the assassination of three adolescents in October 2004, by four people wearing uniforms of the National Police and that covered with hoods.<sup>48</sup> And the execution of a young man of 17, son of a woman leader from the Red de Mujeres de Altos de Cazucá (Women's Network of Altos de Cazucá), whose body was found on the 9<sup>th</sup> of December 2004, gagged, with hands and feet tied and with clear signs of torture.

Frequently mass media register adolescent victims from this part of the Colombian capital as being responsible of urban insecurity, dangerous persons, with criminal records, such as drugs abuse. According to a research coordinated by staff of the Institute of Forensic Medicine and the University "Externado de Colombia", some state agents, even stigmatize the victimized children, referring to them indiscriminately as *"sicarios"* (gunmen) or *"pandilleros"* (members of gangs)<sup>49</sup> Nevertheless, the researchers could confirm that the common characteristics of these adolescents were to be documented with ID for under 18 years old (different from the "cédula de ciudada-

nía”, a person receives after that age); be jobless or students or had been victims of assassination in or near their place of residence.

The investigation points out that in the majority of the cases, the toxicological proofs practiced (for alcohol, marihuana, hashish and coca related substances), showed no evidence and that the authorities do not have information about the possible motive or the responsible for them.

The emotional impact of this situation on the adolescent population is overwhelming. A boy mentioned: *“I never feel quiet, because I am always expecting something to happen, asking if they will or will not kill me. I think of my mummy and my family if they happen to kill me.”* And another adolescent says, *“At this moment we do not have the right even to breath.”*

### **Suicides of boys and girls from the Embera Katío ethnic group**

Since 2003 the indigenous ethnic group Embera Katío that inhabits the Lower Atrato area in northern Chocó province or department is being affected by the continued suicide of their girls and boys.<sup>50</sup>

The *“Jaibanás”* or spiritual leaders of these communities blame “a bad spirit” for the suicides of at least 14 children between 2003 and July 2004. This “spirit” would had revived because of the dynamics of conflict had led this people to disobey the sacred rites, necessary for the protection

of the members of this indigenous community.

In 1997 the Colombian army, in the context of the “Genesis Operation” bombarded the sacred territories of this ethnic group, forcing them to displace. By the same time, paramilitary groups made an incursion into their lands, breaking the peaceful relationship they used to have with their territory and nature.

The internal armed conflict has affected in other ways the lives of indigenous boys and girls, too. In the last three years it is estimated that 120 of them have died due to preventive illnesses, most of the times because there are blockades by the official armed forces and the paramilitaries that impede the entrance of medicines and vaccinations. These armed parties allegedly say that the indigenous peoples do not need medicines, but they use to transport them to give to the insurgent groups, who at the same time also press indigenous to join their ranks.

### **Abuse of the right to life by the official Armed Forces and the Police<sup>51</sup>**

Many of the victims of socio-political violence in Colombia are boys and girls. Between July 2000 and June 2004, at least 837 children lost their lives for this reason. The big majority of these deaths (767 cases) happened outside of combat.

From the total of cases affecting children that happened outside of combat during this

period, in which the supposed responsible is generically known, 68.83% of the killings were attributed to State agents, and 18.09% (97 victims) directly to members of state agencies; for omission, tolerance, acquiescence or support to abuses committed by paramilitary groups, 50.74% /272 victims). 31.15% of the total cases were attributed to the guerrilla insurgence, presumably responsible for the killing and forced disappearance of 167 victims.<sup>52</sup>

With regard to the crimes committed directly by state agents, in many of the reported cases, the Public Force [National Police, Army, Navy and Air Force, note of the translator] has tried to cover the crimes, reporting them as “combatants killed in combat” when it is really girls or boys who have been assassinated:

In January 2003, a patrol of the “Manosalva Flórez” Battalion of the Colombian Army obliged an indigenous student of 15 years old to descend from a bus in the community of Palmira-Bagadó (Chocó). Few days later his body was presented by the authorities in the town of Tadó with signs of torture and dressed up in camouflage [as if he were a guerrilla].

In April of the same year, in the road that from Mindó goes to Mumbú, another indigenous adolescent, of 14 years old, was assassinated by troops of the same battalion and his body taken by the Army to the capital of Chocó, Quibdó, reporting him as “killed in combat”.<sup>53</sup>

The Public Force has tried to cover extrajudicial executions of children, presenting them as deaths occurred in the crossfire while combating guerrillas:

In February 2003, an 8 years old girl perished when she was shot down by joint troops of the Air Force and the Rapid Deployment Force (Fuerza de Despliegue Rápido, FUDRA), in the hamlet “Culebritas”, town of El Carmen, Norte de Santander. The military said that they were attacking a camp belonging to the ELN (National Liberation Army); however, the Association of Community Boards (Asociación de Juntas Comunes) of the township of Alto Bobalí, denounced that the attack was made directly against the home of the President of this civilian association, whose daughter was the person slaughtered.<sup>54</sup>

In the second semester of 2003, troops of the Army anti-aerial battalion “Nueva Granada” entered forcibly a house in the hamlet “Brisas de Yanacué”, in Cantagallo (Bolívar) and killed an adult man and a 9 year old boy, while wounded two more people. Military authorities presented these people as “people dead in combat” with guerrillas from the 24 Front of FARC-EP (Revolutionary Armed Forces of Colombia - People’s Army). But eyewitnesses affirmed that there was not any combat in this hamlet and that the troop had entered at dawn and massacred the family while they were sleeping.<sup>55</sup>

In other cases, the army has justified the killings presenting them as “military mistakes”:

On April 10<sup>th</sup> 2004, a 17 year old couple and their 6 months baby, with a 14 year old boy and an adult man, all belonging to the same family, were executed during a military operation undertaken by the national army in the hamlet of Potosi municipality of Cajamarca (Tolima)<sup>56</sup> According to the official version, there were visibility problems in this place due to weather conditions and distances; for this reason, soldiers confused these adolescent, their baby and the man accompanying them with guerrillas.

In June 2004, the Procurator's Office opened a disciplinary investigation about these events, based on proofs that it collected. It later declared that: *"the official military version is not in accord to what really happened, since a shot at short distance (at point-blank range) as evidenced, implies necessarily that those who shot were near their target and there was not impediment of visibility that could led the troop to commit a mistake."*<sup>57</sup>

It is a matter of preoccupation that despite of the evidences, the Executive has reiterated in several occasions his unrestricted support to members of the Public Force that have incurred in grave violations of rights. For instance, in relation to the events in Cajamarca, President Uribe stated: *"I have reasons for a deep pain, but I lack the administrative arguments to sanction the soldiers and commanders. I am convinced of the good faith of the army in this mistake."*<sup>58</sup>

Numerous cases in which children have resulted dead in events caused by members of the official Armed Forces and de Police continue to go unpunished. One of the most illustrative cases has to do with the massacre carried out in the township of Pueblo Rico, in Antioquia:

In the morning of the 15<sup>th</sup> of August 2000, 47 children from the rural school of the hamlet La Pica, in the above mentioned municipality of Pueblo Rico, went out for an excursion; some minutes later they were attacked during 40 minutes approximately, by troops belonging to the Army Infantry Battalion No. 32. Despite the repeated calls by the adult accompanying the children to ask the military to stop shooting, explaining that the group was made of school girls and boys, the consequences were that six children died and other four were wounded; the youngest of the victims was 6 years old and the eldest, 15.

The implementation of a military plan, presented as a second phase of "Plan Colombia" to defeat FARC guerrillas in the south eastern part of the country by the national government, called "Patriot Plan", has come about serious violations to the right to life for children that live in this region.

A mother who lives in the department of Caquetá denounced in a public event held in Bogotá the negative impacts of this plan, because members of the army had shot indiscriminately against her house, accusing her family of hiding rebels. During this action, her 8 years old daughter was killed.<sup>59</sup>

At the beginning of February 2003, the Military Penal Law Attorney 11 ordered for the suspension of any proceedings in favour of 30 members of the army involved in this crime. The martial court considered that the military did not have the intention to kill the children, because they could not distinguish these children from the guerrillas. Later, the Procurator-General's Office suspended without payment for ninety days three out of the 30 military involved,<sup>60</sup> but there was not any subsequent penal punishment, contradicting enforced domestic legislation since 1997, when the Constitutional Court<sup>61</sup> ruled that the ordinary legal system has the exclusive competence on serious human rights abuses perpetrated by members of the Public Force, because these abuses can not ever be considered as part of their duties. The Court stated that in case of doubts on the existence of a link between the events and the military's duties, the case should be transferred to the ordinary justice.

Nevertheless, these cases continue to be transferred to the penal military law system. In March 2003, in Apartadó (Antioquia), a 3 years old girl was executed by members of the army. According to the press release by the XVII Brigade, the death of this girl occurred for the crossfire, during clashes with guerrillas. But according to the victim's relatives, the army maintained her grandmother arrested, insisting her to declare that the death had happened due to the clashes with the rebels. The case is in its initial stages of inquiry under Tribunal 31 of the Penal Military Jurisdiction of the XVII

Brigade in Carepa, in the same province of Antioquia.

The Cajamarca case is also being investigated by the Penal Military Jurisdiction, as per decision of the Superior Council of the Judiciary, due to June 2004.<sup>62</sup>

It is unacceptable that the Colombian State's explanation that the deaths of these children will not go unpunished because they are under the study of tribunals, according to the existing norms on human rights; but these cases are just in the inquiry stage by ordinary or military judicial bodies, without a conclusion. Alleging the "independence" of the judiciary, when the evidences are discarded and the charge of the proof is misinterpreted, is not bringing about true justice to the victims.

### **Cease of hostilities by paramilitaries and homicides occurrence**

In December 2002, paramilitary groups proposed to cease any action against civilian population and ratified their commitment on July 15<sup>th</sup>, 2003<sup>63</sup>. A year later they started formal negotiations with the Uribe administration.

However, the Ombudsman's Office stated that the cease of hostilities, a necessary prerequisite for the initial stages for and normal continuation of the negotiations had been constantly broken.<sup>64</sup>

From the 1<sup>st</sup> of December 2002 to the 31<sup>st</sup> of December 2004, paramilitary groups had assassinated or forcibly “disappeared” at least 2,241 people outside of combat,<sup>65</sup> 92 out of them corresponding to children<sup>66</sup>. Among the most representative cases, we list the following:

On the 11<sup>th</sup> of January 2004, a 17 year old adolescent was assassinated in El Castillo, Meta<sup>67</sup>. On the 16<sup>th</sup> of February 2004, the human rights defender, Maria Lucero HENAO, was killed together with her son by paramilitaries that arrived in their home in the town of El Castillo, Meta, and took them out by force. One day later the dead bodies of the mother and the boy were found.<sup>68</sup>

On the 10<sup>th</sup> of February, 2004 a 17 year old young boy was assassinated in the city of Barrancabermeja, Santander, by three men that obliged him to get into a car; later his body was found with 22 wounds made with a knife. This adolescent had returned on January that year after having had to flee from his city in August 2003 due to death threats made by paramilitaries.<sup>69</sup>

On the 18<sup>th</sup> of April, 2004, a group of paramilitaries made an incursion into the indigenous territories of the Wayúu people, in La Guajira province, causing the death of more than 38 indigenous and “disappearing” 10 more, among them two girls aged 13 and 16.<sup>70</sup>

On October 3<sup>rd</sup>, 2004, a group of paramilitaries entered a farm in the town of Candelaria (Valle), killing several families that

were in this state, among them some boys and one girl.<sup>71</sup>

The situation in the municipality of Buenaventura, main port on the Colombian Pacific, is serious too: Only in 2005 the population has been victim of 8 massacres in the urban zone of the city, 5 terrorist events in the marginal urban zone, 252 homicides (also in the urban perimeter); three incursions by the Public Force in rural zones that has promoted clashes with other armed parties, with bombardments to communities and, in general, human and material casualties, especially in the rural area; 7 situations of massive and arbitrary arrests resulting in 43 people with warrant for arrest and others targeted and threatened, in the urban area and the rural zone in the Calima River basin. Among those victimized there are Afro descendant boys and girls, who are the prevailing population there.

On April 16<sup>th</sup>, 2005, a group of 12 youth under 18 years old were murdered allegedly by paramilitaries. An eyewitness said that: *“these young people were invited to play a soccer game and were slain in Comuna 12, El Triunfo neighbourhood, in the hamlet of Las Vegas. This sector is permanently surveilled by the Navy Infantry, because this place is close to the road to the city airport. The neighbourhood is controlled by paramilitaries who check every person that comes in or goes out of the area. Although the police officers practice their normal rounds, they find nobody [armed]... This keeps the communities in constant fear and the local organizations have decided to*

*provide social and humanitarian accompaniment to the inhabitants.*"<sup>72</sup>

Concerned for the uncountable abuses to the right to life perpetrated by paramilitary groups, the Office in Colombia of the UN High Commissioner for Human Rights stated that: *"The negotiations with the AUC tended to demobilization of paramilitary groups; notwithstanding the constant violations of the cease of hostilities, which was publicly reclaimed by the Government. It was possible to observe that this absolute prerequisite demanded by President Uribe was not fulfilled as expected. There are not any concrete consequences known so far on the AUC for their lack of fulfilment to the cease of hostilities; according to the Ombudsman's office and other observers, these events were widespread and serious."*<sup>73</sup>

The Colombian Commission of Jurists, a NGO, has systematized information about 31 out of the 80 cases of violations to the right to life committed by paramilitary groups against children. All of these cases remain unpunished. In 17 of them there is not any sort of investigation undertaken, and in the cases under investigation, there are not any positive results. Seven cases are under inquiry by Attorneys on common crime and only seven are under specialized Attorney's offices<sup>74</sup>.

## Guerrilla groups

Between July 2000 and June 2004, rebels have executed, assassinated or "disappeared" 167 children<sup>75</sup>, many of them under situations of military operations, like those that happened in the town of Toribío, Cauca. There, on the 14<sup>th</sup> of April, 2005, FARC rebels attacked the counter guerrilla post of the National Police located adjacent to the civilian houses, throwing explosive artefacts contained in gas cylinders, causing thus the death of at least three children under 15 years old.<sup>76</sup>

Abuses of International Humanitarian Law by left guerrilla groups are also characterized by being systematic and generalized, and in occasions they are barbaric actions: On June 15<sup>th</sup> 2004, FARC guerrillas killed 46 coca harvesters or "*raspachines*" in the department (province) of Norte de Santander, in the border with Venezuela. The rebels entered during the night and woke up the peasants, split them into four groups, tied them and shot them dead, after demanding them to kneel. Amongst those killed there were two boys.<sup>77</sup>

In the section devoted to the analysis of the International Humanitarian Law, there is a detailed comment on the way FARC and ELN rebels abuse seriously the rights of children.

## 2. Right to Equality

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### Discrimination against children in conflictive zones

In the context of the degradation of the internal armed conflict, the civilian population is perceived by the warring parties as “friends” or “enemies”. This perception prompts serious abuses, affecting particularly children, who are discriminated against for living in zones that are considered as “supporters” of subversives, or on the contrary, urban zones in some departments where they are said to be “friends” of the right wing paramilitaries. The protection of the basic rights of children, like the right to life, to education or to health, is negatively affected for these children inhabit stigmatized zones.

On the 11<sup>th</sup> of August, 2002, the Colombian government declared a state of emergency (estado de conmoción interior), and on the 9<sup>th</sup> of September of the same year, issued Decree 2002 that established the “Rehabilitation and Consolidation Zones”, against the insurgence, with the argument that *“Amongst the main supporters of the delinquency action of such organizations there is on one hand the mimicry of their members inside the civilian population and the hiding of their equipment (...) in towns; and on the other hand, the constant provision [of goods] that operates in places where the rebels stay”*<sup>78</sup>

The Presidential resolution 129 of September 2002 defined two of such zones: Arauca and the region known as “Montes de María” that comprises areas of two departments: Sucre and Bolívar. In these two zones the civilian population has been in constant risk due to the abuses committed by the official armed forces and the police that operate under the presumption that the population living there collaborates with the rebels.<sup>79</sup>

Since 2002 there has been an increase in the number of communities affected by blockades to the provision of basic goods for the civilian population, such as food supplies, medicines and gasoline; in the majority of the cases these blockades are made by the Public Force and paramilitary groups, with the argument that these communities provide them to guerrilla groups; nevertheless there are similar cases committed by the rebels.

At least 70 towns, principally located in the departments of Putumayo, Antioquia, Sucre, Magdalena, Casanare, La Guajira, Caquetá, Chocó and Meta have been negatively impacted for this situation.<sup>80</sup>

Blockades prompt increased malnutrition and illnesses, affecting especially children. Despite an official version stating the opposite, based even on a recent OAS report, indiscriminate aerial spraying on illicit

crops (coca and poppy), affected seriously food crops and increased therefore the levels of infant malnutrition in regions such as the department of Putumayo, and forcing at the same time, internal displacement of the affected population.

The perception of certain zones as “enemies” has equally posed the civilian population that inhabit there under risk of being caught in the crossfire due to military operations that are carried out without considering the fact that they happen in densely populated areas. In some operations launched in stigmatized zones, there had not been any measures taken according to the provisions of the International Humanitarian Law for the protection of civilians; and in other places, the military operations seem to be designed to attack these populations.<sup>81</sup>

Such is the case of “Júbilo Operation” carried out in the town of Cantagallo, Bolívar, in September 2002, when army troops entered shooting at a house, causing the death of a 9 year old boy<sup>82</sup>. Or when during the “Orion Operation” held in Medellín [the second city of the country] in October 2002, the Public Force used helicopters to shoot from the air with machine-guns that impacted civilian houses and had combats with guerrillas in the midst of the civilian residential neighbourhoods of the city, leaving at least six children dead.<sup>83</sup>

The relationship between social investments, threats by the guerrillas and counter-insurgent policies in the department of

Arauca are of particular concern for the realization of human rights of children.<sup>84</sup>

Firstly, the State justifies the lack of investments for the lack of security conditions in the zone and the possibilities of attacks by the rebels. Secondly, it justifies its lack of social investments with the argument that these would end up benefiting the insurgents. And thirdly, the ability to handle public or private funds for programs aimed at children is diminished because the local leaders can not go to the urban centres at the municipal or departmental levels, due to security reasons.

In the same manner, the perception that Cazucá (south of Bogotá) as a “red zone” [a conflictive area] has made that the State presence be limited primarily to military or police operations. On this respect, the Ombudsman’s Office has expressed that, *“the inhabitants of Altos de Cazucá and Ciudadela Sucre do not enjoy their human rights in equal conditions; on the contrary, they have been rejected by the municipal governments and the society as a whole.”*<sup>85</sup>

### **Family roles and gender equality**

According to the Survey on the implementation of the Convention of the Rights of the Child, SCRC, 25 per cent of the children interviewed have pointed out that they *“help their families,”* with varied chores like caring after siblings, washing dishes, cooking, sweeping, cleaning floors, or organizing the house.

Only four per cent of the total number of children interviewed that carry out domestic chores are boys, while 60 per cent are girls. These data reveal that there persists a strong gender unbalance regarding house tasks; this makes the exercise of rights to education and recreation of children unequal for girls and boys.

Very often children in situation of forced displacement, refuge or confinement [communities closed to the outside world for the armed parties], have to assume the responsibility of being heads of household, because of orphanage or for the separation

of their parents. In these cases, it is girls who principally have to assume this responsibility, in a 64.22% of the cases, versus 35.78% of boys.<sup>86</sup>

On the issue of girls forcibly displaced, it is important to consider that the changes of roles suppose for them to assume responsibilities as economic providers for the family group, something that facilitates deepening traditional negative stereotypes that reduce the role of girls to form and care after a family and limits thus their possibilities to develop autonomously their personality.

### **3. Right to participation, freedom of expression and information**

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#### **Persecution of youth organizations**

Participating in youth organizations entails risks of being targeted as subversives or delinquents for many young women and men. For staying at the street, they are seen as a threat for security, without the consideration of the reasons why they meet at the corners, because generally these young people do not have any other place to socialize or because there is not adequate social infrastructure for recreation.

Besides stigmatization for being young, they have to suffer for being poor and meeting with other people of the same age. The

creation of collective instances is one of the great offences for those that possess the political and social control, because this implies the structuring of a potentially “dangerous enemy” that might defy the establishment, altering thus the norms and values system that is being imposed.

In Arauca, in 2003, after an attack by the FARC guerrillas, the Police and the Army deployed an operation in which more than 100 young people, amongst them some children that had shortly ended the Third Congress of the Students and Youth Association (ASOJER). These young leaders claimed that they were hit and mistreated

during the time they were held arrested.<sup>87</sup> As a consequence of the persecution environment generated against them, the members of ASOJER say that they live in constant fear, feel that they are seen as “enemies” in the middle of the conflict, “*carrying all the weight of the war*”.

Besides the risks for their lives, these adolescents see their leaders, teachers – men and women- constantly threatened: “*They accuse me for rebellion and indoctrination and recruitment of youth and children to the service of the guerrillas. They say so because I had a group that performed theatre for children and a program in a community radio, aimed at young people and at the rescue of the cultural identity and I participated in the youth and students association.*”<sup>88</sup>

In January 2004, a young women (22) member of the Female Popular Organization (Organización Femenina Popular, OFP) was seriously subject to torture by a paramilitary group in Barrancabermeja (Santander). Their torturers demanded her to resign from her activities as presenter of a youth program in the regional television channel and as a promoter of the Youth Network on Human Rights sponsored by the Regional (local) Ombudsman’s Office.<sup>89</sup>

In places like Altos de Cazucá, south of Bogotá, due to the marginalization conditions and poverty in which they live, adolescents of both sexes see unity and collaboration as fundamental.<sup>90</sup> When they create groups or collectives, it is because they see peer’s

groups or “*parches*” as a way to respond to the challenging conditions that their environment imposes on them, in order to achieve a force they would not have individually and that in a hostile environment are basic to survival.

In Putumayo (border with Ecuador and Peru), in December 2004 a group of young persons that participated in a training course on non-violence and peaceful conflict transformation was subject to arbitrary search and interrogation by units of the Administrative Department of Security [a corps for internal State security] jointly with the Police, who considered it suspicious that young people coming from different towns of the department could meet to participate in a course sponsored by UNHCR.

### **Irregular armed groups’ codes of conduct**

Guerrillas, but mostly paramilitaries exercise abhorrent mechanisms of social control over the civilian population in their areas of influence, affecting principally adolescents, girls and boys. These regulations imposed by force, restrict their freedom, autonomy, intimacy and identity. If the young people break these rules, they are posed at a great risk to suffer from tortures and cruel, inhuman and degrading treatments, and even from extrajudicial executions.

On January 22<sup>nd</sup>, 2002 FARC rebels released 16 adolescents that had been kept in captivity in the town of Tablón de Gómez,

Nariño, because of their *“bad behaviour during their vacation”*. The youth group was withheld during 14 days and was subject to forced labour.<sup>91</sup>

In several towns of north eastern Colombia, like Barrancabermeja, Puerto Wilches, Cantagallo, and Bucaramanga (Santander); and Cúcuta (Norte de Santander), as well as in other towns on the Caribbean coast, like in Sucre and Bolivar departments, paramilitaries have issued *“daily life rules”* (normas de convivencia) that establish severe control over the population. These include the prohibition for girls to wear low neckline or short blouses or for adolescent men to have long hair or wear earrings; and for anybody, to respect curfew or defined time frames out of which young adolescents can not be in the streets; warnings for bad records regarding academic performance, or on familial issues such as quarrels with siblings or disobeying parents' orders.

Paramilitaries establish varied punishments if these norms are broken, like detentions, expulsion of a zone, marks on the person's body, forced hair cuts with machete or shaving the head and eyebrows totally, lashes, forced labour and executions.<sup>92</sup>

Very often, fathers or mothers of the affected children intervene to defend them, putting additional risk to their lives: *“...paracos [nick name for paramilitaries] have taken us to clean football fields; last year, they took me. If you do not obey, they lash you with their belts, they ask you to do*

*physical exercise, or they tie you to a stick or a tree. They left a boy tied and vomiting until his dad arrived.”*<sup>93</sup>

In other occasions, adult people welcome this type of violent measures, favouring this behaviour that is openly authoritarian. In some sectors of Barrancabermeja (Santander), parents have authorized paramilitaries to attend the school meetings for them to observe the academic results and to determine and inflict punishments, in case the academic performance of their children is deficient.

In *Altos de Cazucá* (south of Bogotá), paramilitaries have established curfews and norms for clothing, too. Its breakage is punished with forced seclusion or executions<sup>94</sup>: *“The situation is like ugly; it is dangerous because of the ‘paracos’. If kids go too often to the street or if too many people visit their place, they call their attention and threat them. Also for the use of earrings, having long hair or stay in gamble places, or for the soccer games.”*<sup>95</sup>

This practice has reached other zones, like Usme (town in south eastern Bogotá), or in the department (province) of Tolima. In Arauca, *“...To girls that like wearing those t-shirts [short ones], they mark their abdomen. Men are forbidden to wear earrings, for they say they will cut part of their ears”*.<sup>96</sup>

Psychosocial impact of these daily life norms is extremely preoccupant. The population sees how the limits between the public and

the private spheres are broken, and that in the first place, the action by the armed party mediates the simplest manners of relationship in fields like the family and the personal realms. The way people should settle their conjugal disputes, or how to dress or to behave properly.

Children are faced with a confusing panorama that recreates and reinforces the notion of authority not based on human rights values and family principles, but from the promotion of a warlike rationale: domination, patriarchal rule, authoritarian

and violent control, exclusion, imposition by force and alienation.

These negative values are translated into the children's limitations of their criticism and reflective abilities, and their impossibility to decide on their own lives. Besides, these situations reinforce ideas that privilege the use of force on words and set aside the possibilities to settle down differences through peaceful negotiations<sup>97</sup>, something that is negatively underlined by the mass media, even the national television programs supported by the State.

### 1. Right to identity

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#### Indigenous and Afro descendant children

Indigenous Peoples represent less than 1 per cent of the total Colombian population, while the population of African descent consider themselves that they are at least one quarter of the Colombians. This makes them ethnic minorities, together with the Roma peoples, that are not more than 10,000 people.<sup>98</sup>

Indigenous and afro Colombian children have been affected in their right to identity for the violation of norms that protect them, because of events like the construction of economic mega schemes and the invasion of their territories by the combating forces; these situations have direct repercussions on their particular world vision (cosmovision), the development of cultural activities and the enjoyment of their territories and consequently, their existence as peoples.

According to the Working Table on Women and Conflict, indigenous peoples suffer more negatively the impacts of war.

Among the most affected peoples there are the Wayúu, in La Guajira department; the Kankuamo, Arhuaco, Kogui and Wiwa, in the Sierra Nevada de Santa Marta (departments of Magdalena and Cesar); the Embera, in the north Pacific region; the U'wa and Guahibo, in Arauca; the Cofan, in Putumayo; the Nasa or Paez in the indigenous reserves of northern Cauca, and the Embera-Katío, in Antioquia. According to the National Indigenous Organization of Colombia, ONIC, approximately 35 per cent of the indigenous population has been blockade or confined inside their territories, under the armed control of the warring parties.

The Embera-Katío people have suffered from massacres, "disappearances", and the destruction of their goods due to their peaceful resistance towards the building of a hydroelectric in their territories.<sup>99</sup> Other peoples, like the Kankuamo have suffered from killings perpetrated by insurgent groups, paramilitaries and the official military forces. More than 300 Kankuamo indigenous have been assassinated, due to the fact that the south-

eastern part of the Sierra Nevada de Santa Marta is one of the richest territories in copper and gold of the Colombian Atlantic coast, and this generates greed by the combatants. Internal forced displacement and dispersion of these indigenous have led more than 300 families of the Kankuamo group to lose their ethnic and cultural identity.<sup>100</sup>

This situation has been a matter for the Inter American Court on Human Rights to order precautionary measures to protect these people, for the irreversible consequences for the existence of all of the indigenous inhabiting this Sierra Nevada de Santa Marta. According to the cosmovision of the four indigenous groups living there (Kogui, Arhuaco, Wiwa and Kankuamo), their territory has four pillars, one grounded in each people, and if any of them is attacked, the impact goes to the whole four peoples.<sup>101</sup>

As the Special Rapporteur on Indigenous People's human rights and fundamental freedoms has stated, the principal affected people for this sort of attacks against indigenous communities are children, because, on one hand the traumas they bear produce important psychological and social impact in the long term, and on the other, if they are forced to displace from their territories or to join any armed party they consider opposite to those that

perpetrated killings of their relatives, in order to revenge them, have as a consequence the rupture of the ethnic ties that keep them united.

Besides, since 2001 the company "Urapalma S.A." has promoted intense cultivation of oil palm in approximately 1,500 hectares of the zone of the collective territory of the afro Colombian communities living in Chocó, one of the zones with highest biological diversity of the planet.

The Inter American Commission on Human Rights has stated that this agroindustrial project implies an important loss of natural diversity and that the extensive plantation of oil palm as a mono-cultivation impedes food autonomy as well as the respect for the culture of the afro Colombian population living in this rain forest.<sup>102</sup>

A great majority of the indigenous and afro Colombian peoples have seen the reduction of their cultural development, because of the conditions of the armed conflict or for the deployment of economic mega schemes. Practices like the mourning of the dead relatives or "pagamentos" have not been able to continue, and in other zones, like the Sierra Nevada de Santa Marta, there has been profanation of sacred lands devoted to the dead or to worship.<sup>103</sup>

## 2. **Right to freedom of thought, consciousness, religion and to use the own language and culture**

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### **State accusations against indigenous neutrality**

During the last years, several indigenous communities have decided to remain neutral with regard to the internal armed conflict, based on their right to freedom of thought, consciousness and religion, and on their world visions in order to seek for the protection of their culture and territories.

They have done so by taking a strong stand against the use of violence and rejecting the presence in their territories of combatants from the guerrillas, the paramilitary groups or the branches of the official armed forces and the police.

Reacting to this decision, the Colombian government has stated in several occasions that any Colombian citizen can remain neutral, for this position implies to put in equal terms the official armed forces with the rest of illegal combatants.<sup>104</sup>

To reject the neutrality position of the indigenous peoples poses a serious risk to the life and integrity of their members and ignores ancestral rights they have acquired to define their own governing rules and systems to behave in their social environment.<sup>105</sup>

Indigenous peoples have stated that the sort of security they need is not understood as individual security, but that this concept is totally linked to the respect for their culture, traditions, territories and their community members, and, especially, for the exercise of autonomous decisions facing the armed conflict.<sup>106</sup> Consequently, indigenous children have been unable to adopt the decisions that their culture and tradition ask them, generating thus serious risks and prejudices.

Additionally, the official position of the Colombian government of denying the existence of an armed conflict in the country, with the argument that there are only terrorist threats that should be attacked by military means have been translated into pressures over the indigenous and afro Colombian communities.

In particular, the involvement of indigenous peoples in the governmental armed forces and the police is opposed to their legal right as peoples to not to serve compulsory military service. But the government sees that the indigenous can serve as interpreters of the local native languages, serve in intelligence work and question the declared neutrality made by the indigenous authorities. The use of indigenous youth as members of the official armed forces and

the police poses an additional risk to their families and establishes authoritarian models on children that see their identity,

religious principles and beliefs questioned and confused when following the patterns of the western culture.

### **3. Right of children to the protection of their private life**

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#### **Detentions**

Between June 1996 and June 2002, approximately 2,869 people were arrested arbitrarily in Colombia.<sup>107</sup> The current administration analyses the advance of its security strategy, among other things, for the number of captured people and not for the quality of the investigations or the due process in its implementation.

This situation is expressed in the increase of detentions in the past two years: from July 1<sup>st</sup>, 2002 to June 30<sup>th</sup> 2003, 4,362 people were subject to arbitrary detentions, done with violations of the due process with an average of almost 12 people daily.

As a result of this policy, many children have been victimized too, as it can be seen with the following examples:<sup>108</sup>

In the framework of the "Orion Operation", deployed in "Comuna 13" area of Medellín, in October 2002, 240 people were arrested. 23 out of them were children, and only 32 of the arrested had a warrant for arrest.<sup>109</sup>

In August 2003, in the towns of Chalán, Colosó and Ovejas, department of Sucre, an operation carried out by the Attorney General's Office, the Police and the Navy Infantry, led to the detention of 156 people, amongst them several boys and girls. These children were released some hours later, because there was not any evidence against them.<sup>110</sup>

In similar cases, in September 2003 in Quinchia, Risaralda and in March 2003, in Dolores, Tolima, two children were arrested in a joint operation between the Attorney's General Office and the Army, accusing them of the same crimes as their parents.<sup>111</sup>

In March 2002, in the hamlet "Los AngELITOS", in the town of Arauquita (Arauca), a 17 year old adolescent was murdered allegedly by members of the Army "Heroes of Saraguro" Battalion that attacked with grenades and shot with machine guns at a group of children that were hunting wild animals (chigüiros). The rest of the children in the group with ages between 9 and 13 were arrested, mistreated, insulted and accused of being rebels. Shortly after this

event, they were released but received death threats if they denounced the episode.<sup>112</sup>

In some cases, it seems like if the children were arrested without any consideration regarding their age. In other situations, it is obvious that they are children and in spite of this, the authorities continue the military operations affecting them: *"The Army was with some people with hoods that said: 'You come here'. I was taken with one of my sons, a minor, and they detained him during two days, and finally they released him"*.<sup>113</sup> *"We were playing marbles in front of my home when the army came and surrounded us. They took our pants down and took us to the car. It was a good job that my mum arrived."*<sup>114</sup>

In Buenaventura there continue to be cases of afro Colombian children arrested, like the case of the boy Patricio Ballesteros, captured by DAS and supposedly delivered to the Salesian community in Cali [the capital of the Valle department]. His whereabouts are unknown and there is not information on him according to DAS or the religious community where apparently he was transferred by these public servants.

Unexplained detentions have happened, like the case of two young boys that left the city of Buenaventura to purchase clothes

to attend a party and were detained without any warrant for arrest by the Public Force. After completing 36 hours of detention, they were released, but 500 meters far from their detention place they were recaptured this time following a warrant for arrest issued by the Attorney's General Office. Currently they are held in the Buenaventura prison.

Ms. Maria Fidelia GARCIA MURILLO suffered the detention of two of her sons on the 22<sup>nd</sup> of April, 2005, accused of being guerrilla collaborators. Three months after her husband, Luis Eduardo MURILLO was arrested, accused of being the "oldest guerrilla in the zone". The same day there was a massive arrest of people and mothers were asking for the reasons for them, or the evidences the authorities had to do so. The officers replied that *"When the others will come [paramilitaries] they will finish out with you all"*.<sup>115</sup>

On the 15<sup>th</sup> of May 2005, two boys -10 and 9 years old- and a 12 year old girl were going to school in the town of Calamar, department of Guaviare when they were stopped by members of the Mobil Brigade 7 of the National Army. The military impeded them to go to their destination, accusing them of being rebels and ordering them to provide information about the activities of their relatives, that, according to the Public Force members, were part of insurgent groups.

#### **4. Right of children and adolescents to the protection against torture and other cruel, inhuman or degrading treatment or punishment**

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The UN Committee against Torture, CAT, when examining in November 2003 the third periodic report of the Colombian state mentioned its concern because in this country *"the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations."*<sup>116</sup>

From July 2002 to June 2003, at least 340 people were reportedly victims of torture, the highest average registered during the past seven years. Torture is practiced to obtain information, as a means of political pressure, or to terrorize the civilian population. People that are victims of kidnappings are generally subject to cruel, inhuman and degrading treatment during captivity.<sup>117</sup>

But the value of integrity and human dignity is reduced to its lowest limits when the law enforcement authorities use torture as a form to punish a child living socially marginalized:

In October 2003, in Bogotá, members of the Metropolitan Police detained four street children, accusing them of having committed the offence of theft in a public bus. Police officers obliged the children to lay down on the floor and started inflicting physical and psychological tortures on them. For instance, they charged the drum of a revolver with a bullet and shot in the head of one of the kids, practicing what is popularly called the "Russian roulette". Shortly after this, another police officer arrived in the scene and shot to the head of one of the children. The officer offered \$20,000 Colombian Pesos (approximately US \$8 dollars) to a street adult for him to get rid of the body. The other children were set free with clear signs of torture. For such situation, the National Procurator-General's Office punished the officer that perpetrated the crime with 90 days suspension without payment and the others were fired for having allowed him to commit the homicide.<sup>118</sup>

## FAMILY ENVIRONMENT AND OTHER TYPES OF PROTECTION

### 1. Right to a family

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#### Protection to the family<sup>119</sup>

The high levels of domestic violence that affect particularly women and girls are a manifestation of the abuse of the right to have a family, enshrined as a social fundamental right<sup>120</sup>. But also it is a failure by the State to comply with the international obligations resulting from the implementation of the Convention of the Rights of the Child that provides that the family should be protected by the governmental authorities in order to avoid social consequences that come from ignorance, stereotypes, poverty and marginalization.

According to the Health Ministry, 361 out of 1,000 children in Colombia suffer from any sort of mistreatment in the household, and as stated by the Institute of Forensic Medicine, 11,981 boys and girls were abused by their father, mother, step father or any other relative in 2001.<sup>121</sup> Although the data concerning violence against children presents problems of not all of the information being registered because not all of the victims can or want to submit a claim, the reported figures are highly preoccupant.

At the national level, a plan for the prevention, detection, monitoring and assistance in cases of domestic violence has been designed and implemented, under the name "Haz Paz" (Make Peace), launched in the previous administration of President Andres Pastrana and that continues to be in practice for the current presidential period of Alvaro Uribe.<sup>122</sup>

This program however is insufficient because it is focused only in the preventive side. With regard to it, the Ombudsman's Office has expressed concern because domestic violence "*has not diminished in the expected proportions*".

In Colombia there are not programs coordinated by State institutions to assist women, girls and children who are abused in their households, because the mechanism of "Substitute homes" has serious deficiencies in terms of design, follow-up and evaluation of its impact.

Additional to this Colombia has had a history as a nation that has a conservative and patriarchal conception of family that makes that domestic abuse be seen as a normal

and necessary situation for raising children. It is so evident that the Code of Penal Proceedings consider that the offence of domestic violence is a crime susceptible of being conciliated (Article 35 of Law 600 of 2000) and the Constitutional Court stated in a resolution that did not admit a complaint

for such a situation, that international treaties like the Belen do Para Convention or Inter American Convention to Prevent and Penalize violence against women are not integral part of the Constitution, as it happens with other international treaties on human rights.<sup>123</sup>

## **2. Right to the full protection of boys, girls and adolescents in case of separation from their parents<sup>124</sup>**

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The Committee on the Rights of the Child had recommended the Colombian State to facilitate other types of protection and the establishment of independent mechanisms for complaints and supervision of children's protection institutions.

During 2001, the ICBF assisted 99,683 children that had been abandoned by their parents or were in a dangerous situation inside their household, due to domestic violence or sexual abuse, neglect or other forms of maltreatment. Only 4,562 out of the total were declared legally in abandonment, and 2,706 were given in adoption, in a situation in which the circumstances and mechanisms established to resolve their condition in the great majority of the cases are not clearly known.

It is only noted by the ICBF that there is a big number of these children that had been separated from their families; but since there is not a true National Family Welfare

System, beyond the responsibilities attributed to the ICBF, a more integrated and coordinated assistance, in the framework of the Convention has not become a reality.

### **Situation of institutionalized children**

Children who are placed in institutions, as a protective mechanism continue to have exceptionally difficult conditions. The Ombudsman's Office in reports written before 2005, has found cases of girls and boys that are transferred to institutions in regions quite apart from their departments of origin; for instance, in the Amazonas department, a measure that makes them even more separated from their nuclear and extended families, in particular when it has to do with indigenous children or those belonging to other ethnic groups.

In those reports it was also found that in the Magdalena Medio region, which princi-

pal urban centre is the petroleum port of Barrancabermeja, there is only one institution for these children, used as a centre to observe young offenders of the penal law, and at the same time, it is used as a protection institution for abandoned or endangered children, for children workers and for those with problems related to abuse of drugs. But in the majority of cities and towns of the country there is not even a governmental service of this nature.

### **Adoptions**

The Ombudsman's Office has identified some of the obstacles for the realization of the right of children to have a family through adoption. The first of them has to do with

the extreme slow process to declare a child in abandonment that makes that eventual adoptions become less feasible as the girl or boy is growing. It also refers to the need of having a legislation that establishes better controls to prevent irregular adoptions to happen and to really guarantee that the decisions made on adoptions give the necessary priority to the primary interests of the child and full protection to his or her human rights.

If Colombian children are not protected by a clear and efficient legislation, the illegal trade of children used in illicit activities will continue to happen, such as in pornography and children's prostitution, mendicity or trade of organs.

### 1. Right to health

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The social security system implemented since the approval of Law 100 of 1993 reduced the State action from being a universal, free and obligatory service to a series of actions in the fields of promotion, prevention, vigilance and control of public health, implemented increasingly by private institutions in a situation in which there has been a dismantling of the public health system.

Some of the consequences of the new system that have weakened the already reduced state operation, have to do with the deterioration of the achievements in reducing morbidity<sup>125</sup> and the reduction in the number of people that became ill and were assisted. The percentage decreased from 77.2% in 1997 to 67.9 in 2003.<sup>126</sup>

Also, the numbers of children born alive has diminished between 1999 and 2003: while the number of adolescent mothers increased in 2003 to 154,000, including 5,821 girls below 14 years of age, at the moment of giving birth.<sup>127</sup>

Equally, transmitted and preventive illnesses have resurged. Chief Directors of the

National Academy of Medicine have said that the existence of a central system that set the alarms rapidly could have helped preventing the epidemics of yellow fever at the beginning of 2004.<sup>128</sup>

During that epidemic there was a lack of sufficient vaccinations and timely information, and the numbers of people who got sick from yellow fever in January 2004 was the same of the entire year 2003; that in turn had registered as many cases as in the past 10 years, due to the serious problems faced to stop the epidemic, researchers considered that *"The country has gone backwards 60 years in the control of the yellow fever"*.<sup>129</sup>

The General Accounting Office (Contraloría General de la República) has expressed concern for the insufficient coverage of vaccination campaigns<sup>130</sup>. At the beginning of the 90s, the percentage of this coverage in Colombia was of 99, 9%, but this figure descended for the year 2002 to 70.2%<sup>131</sup>. The present Health Secretary of Bogotá had noted that only 46% of the peasant children have the corresponding vaccinations (B.C.G., D.P.T, poliomyelitis and measles)

and that at the urban level, the coverage of children with the complete set of vaccinations is also low, with 54.8 per cent. This also explains the resurgence of sicknesses such as diphtheria and sprouts of whooping cough and measles.<sup>132</sup>

The Decennial Plan for Basic Health Assistance, PAB (for its Spanish acronym) contains general activities, although not specific ones, on prevention, especial protection and early detection benefiting children, such as prenatal controls, monitoring of the development of children below five years of age and vaccinations.<sup>133</sup>

This is so because although some of these measures respond to the Millennium Development Goals, MGDs, with respect to immunizations coverage and the reduction of infant mortality, more consistent governmental plans are being carried out by some local or district administrations, with the support of the multilateral financial institutions, in areas such as the struggle against infant malnutrition. But there is not a consideration of issues such as a more decisive work to prevent grave illnesses such as malaria and sexually transmitted infections, the latter generally related to high presence of armed parties.

## 2.

### **Right of disabled children to receive special assistance**

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Five million Colombians have some sort of disability or especial limitation. Out of them, 50 per cent are children.<sup>134</sup>

In the context of the reorganization processes of education and teaching, there is a worrying situation for the transfer of teachers that had been assisting centres for especial education to educational institutions that do not have specialized services. This means that there is a loss in human resources with professional skills to assist disabled people.<sup>135</sup>

In Medellín, for example, professionals in the fields of psychology, that were previous-

ly devoted exclusively to provide psychosocial support to children have to share now their time and functions to give classes, sometimes in areas that do not have to do with their professional training.

Additionally, the internal armed conflict is causing devastation amongst the civilian population, leaving great numbers of people, particularly children, with severe disabilities. They are victims of explosions of artefacts such as landmines, grenades or for the effects of aerial bombardments, aerial spraying of chemicals over food and illicit crops with poisonous chemicals.

### **3. Right of children and adolescents to live in a healthy environment**

The right of children to a healthy environment has been affected principally due to the restriction to clean water and basic sanitation services, and for the aerial and indiscriminate fumigation of crops of illicit use.

With regard to the first problem, according to the Procurator's-General Office, approximately 5.4 million inhabitants of rural areas do not count on a system that provides them with clean water; 8.2 million lack sanitation and sewers to dispose dirty waters and only 1.5 million people have access to drinkable water.<sup>136</sup>

On the fumigations issue, at the beginning of the decade of 2000, the efforts by the Colombian government to eradicate illicit crops focused in the aerial spraying program with a herbicide called "glyphosate", to which two other chemical components were added (POEA and Cosmoflux). The outcomes of this mixture prompt the effects of this herbicide, causing the destruction not only of coca or poppy crops, but of food crops.

This program, financially supported by the United States government, has created since its inception enormous preoccupation for the effects of the chemicals used on health and the environment, to the point

that the Superior Court of Cundinamarca ordered the suspension of such fumigations, for considering potentially dangerous for human health.

The decision of this Court, however was revoked by the State Council [one of the Supreme Courts existing in Colombia] and now the Colombian government, supported by the Inter American Drug Abuse Control Commission of the Organization of American States, CICAD-OAS, undertook a study which dubious conclusions serve today as a pretext for the authorities to continue a fumigations program that has expanded to natural reserves, parks and indigenous reserves.

Based on informed studies about the serious effects of the mixture used in the fumigations program, the neighbouring government of Ecuador has presented a formal complaint before the Inter American Commission on Human Rights and has submitted the case before international bodies, because since 2001 the wind or drift of the sprayed chemical has affected indigenous and peasant farmers that live in the border with Colombia, with similar effects –although in smaller scale- than those that affect the Colombian population in that region, including chromosomes or genetic damage in women in reproductive age.

The Ombudsman's Office, in a report that it annexed to the judicial process before Colombian courts had denounced that *"indiscriminate fumigations over small plantations neglect positive differentiation measures that the government has established in favour of these small cultivators, and what is more serious, had affected the rights to health and a healthy environment of the population, as well as the rights of the children that inhabit regions where the Eradication Program is being implemented"*.<sup>137</sup>

In the same report, this state body notes that shortly after the fumigations were carried out, there were cases of children intoxicated as well as others that died for causes that according to evidences came out of their exposure to the chemicals used.

Several rural schools of the towns of Orito, San Miguel, Valle del Guamuéz, Puerto Guzman, Villa Garzón and Puerto Leguízamo (Putumayo) had planed their gardens to offer food provisions to the students; something that becomes an incentive for

children who in many cases find themselves in conditions of malnutrition and have to walk for hours before getting to school.

Aerial fumigations undertaken in the context of the program for the forced eradication of illicit crops had affected seriously these school gardens, something that has intensified hunger among the infant population and school desertion.<sup>138</sup>

During 2004, communities from different departments, such as Nariño, Boyaca, Caldas, Chocó, Norte de Santander, Santander and Putumayo<sup>139</sup> denounced that the fumigation with glyphosate had affected the health of their population and destroyed their traditional food crops.

In March 2004, in the hamlet La Templada, municipality of San Jose de Fragua, Caquetá, a 14 year old boy was working in a farm when the air plane spraying chemicals passed over him. When he glanced over the poison fell on his eyes. The boy lost one eye and is progressively losing the vision of the other.<sup>140</sup>

### 1. Right to Education

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According to UNESCO, the quality of education have to be assessed through three dimensions: (1) Conditions in which learning takes place (infrastructure, availability of materials, presence of teachers); (2) Satisfaction of basic learning needs in the context of the country, and (3) The extent to which these results are socially distributed, that is to say, if children, regardless of their social or cultural origin reach the goals of education.<sup>141</sup>

Accessibility has three dimensions that partially correspond one to each other:<sup>142</sup>

- (i) Non discrimination. Education has to be available to all, especially to those groups in conditions of vulnerability.
- (ii) Material availability. Education has to be accessible materially; for example, for its geographic location to have reasonable access to all.
- (iii) Economic availability. Education has to be accessible for all. This dimension of availability is conditioned: while primary education has to be free for all, State Parties are asked

to gradually implement secondary education and free university studies.

These and other conditions were broadly analyzed by the United Nations' Special Rapporteur on the Right to Education who visited the country in October 2003. This section is based to some degree to the concerns and recommendations given by the Rapporteur in her 2004 Report.<sup>143</sup>

#### **The governmental policy on education: "Educational Revolution" and free service in the right to Education**

35 years after the ratification of the International Covenant on Economic, Social and Cultural Rights, Colombia has not reached the goal of universal and free education.

The UN Special Rapporteur showed her concern for the high costs of public and compulsory education that can reach the three minimum monthly legal wages per year, something that the lowest layers of the Colombian society can not afford. Also, due to the fact that the governmental policy of "Educational Revolution" does not involve

increases in resources, nor strategies to expand free education or to reduce educational costs, it uses the principle of co-financing of education by the student's families, transferring the responsibility of the State to the hands of the population.

The reorganization process of educational institutions has affected access in rural zones, for the available positions are geographically far away for children to get there. There have been cases of integration of schools that were separated by rivers or great distances, impeding thus the access of students to the educational facilities.<sup>144</sup>

This process has equally led to the situation in which instead of looking for a more personalized education, there are more students per teacher: in 1992 the figure was 28 students per teacher; but Decree 3020 issued by the Ministry of Education established that the relationship between students and teachers should be a minimum of 32 for the urban schools and 22 for rural schools.<sup>145</sup>

According to the National Federation of Teachers, FECODE, the situation is even worse: in Bogotá there are courses in which there are more than 45 students per teacher, and a great number of children continue to be outside of the educational system.

### **School desertion**

A high level of desertion of school children is one of the more serious problems with

regard to the right to education. The report by the Colombian state cites, among other causes for school non attendance, the precarious economic situation: "*factors associated with the internal armed conflict and internal forced displacement*"; that the children do not like going to school (21%) and that 11 per cent of the girls deserted because of pregnancies or marriage.

For consider the assertion contained in the state report as unusual, we found out for the reasons why children said that they "*did not like*" school. According to the SCRC, 38 per cent of the children asked better facilities; 41 per cent better pedagogies; 59% more adequate materials according to their realities and needs, and 49% asked for a better treatment by teachers.

On this last issue it was concerning to verify that there are still physical punishments and degrading treatments in the schools, despite it being prohibited by law. Some children mentioned that, in order for teachers to discipline them, they are "*hit with a ruler*" (they are hit with wooden or metal rulers), they are asked to carry bricks during a period of time, they are hit on their hands or obliged to wash the school toilets.

With respect to adolescent pregnancies, Colombia is the only country in the region that has a growing rate of adolescent pregnancies that passed from 13 per cent in the 90s to 19 per cent in the next decade.<sup>146</sup>

Adolescents have asked to actively participate in the design and implemen-

tation of educational policies on sexual and reproductive health in order to prevent early pregnancies. However, the Colombian State has failed in adopting such policies.<sup>147</sup>

In a considerable number of departments (provinces), less than 30 per cent of their municipalities included in their development plans actions aimed at preventing adolescent pregnancies or to provide services to the pregnant adolescents.<sup>148</sup>

Many educational institutions consider that premarital pregnancies are attacks against moral or religious principles or impose sanctions on the students, like expulsion, marginalization or the rejection to admit them in the following school class.<sup>149</sup>

The lack of control by the Ministry of Education and the local education Secretariats impede that the abuses committed by schools be corrected. For this reason, students have had to repeatedly demand legal action, like *tutela* to protect their rights.

The Constitutional Court has established that the State has the obligation to guarantee the right of women pregnant to be free from discrimination, and enjoy the right to education. To achieve this, the State has to monitor that schools do not frustrate, alter or interrupt the normal course of the academic cycle of a girl as a punishment for her maternity.<sup>150</sup>

However, the Special UN Rapporteur had access to school norms (*manuals de convivencia*) that maintain many repressive

measures with regard to pregnancy.

## **Ethnic education**

In Colombia there are 84 indigenous peoples with a population estimated in 784,000 people, 45 per cent of which are between 0 and 14 years of age and 21 per cent between 15 and 24 years of age.<sup>151</sup>

Under the Constitution, the General Education Act (Law 115 of 1994) and the Law on afro descendants and "raizales" [English speaking afro Colombian from the Caribbean islands of San Andres and Providence] (Law 70 of 1993), indigenous peoples and afro descendants have the right to receive education from an ethnic perspective.

Ethnic education is defined as "*the one offered to groups or communities that are part of the nation and possess a culture, language, traditions and own and autochthon jurisdiction*". Its end is to consolidate processes of identity, knowledge, socialization, protection and adequate use of nature, organizing systems and community practices, use of vernacular languages, teacher's training and research about all fields of culture.<sup>152</sup>

This right to ethnic education is not respected, though, because public policies about ethnic education have only been aimed at increasing coverage, maintaining (not expanding) infrastructure and training professionals from these ethnic groups in general themes, without differentiating between indigenous peoples, afro

descendants, raizales or Roma people letting alone the ethnic specificities of each one of these communities.<sup>153</sup>

Both at the national and the local levels, institutions responsible for the design of educational policies do not count on sections that take care of including the educational needs of ethnic minorities, nor the established norms derived from the implementation of the ILO Convention 169, that provides the establishment of proceedings of prior, free and informed consent for the indigenous peoples and other ethnic minorities on administrative or legal matters that affect their rights. School calendar, labour days, schedules, disciplinary control and curricula are not established according to the necessities of each people and within the framework of their respective culture and autonomy.<sup>154</sup>

The provinces or departments with the lowest net coverage for primary education are: Huila, La Guajira, and Valle del Cauca, where more than 70 per cent of their inhabitants belong to ethnic minorities.<sup>155</sup>

Bilingual education is applied partially and for some groups only, because the Colombian State has not allocated sufficient resources for teacher's training and the elaboration of appropriate educational materials in the languages of all of the ethnic groups of the country.<sup>156</sup> Also this right is denied for indigenous and afro descendants who have been forcibly displaced,<sup>157</sup> because in the reception places in the best of the situations, they are registered in

institutions that give western education courses.<sup>158</sup>

According to the National Indigenous Organization, ONIC, more than 150 indigenous communities do not have access to ethnic education<sup>159</sup> and several indigenous groups do not have instruction in their own language.<sup>160</sup>

With regard to the ethnic and cultural education for afro Colombians, the class on afro Colombian studies which is compulsory in every public and private educational institution, has not been fulfilled.<sup>161</sup>

Besides, in the Pacific region, that gathers 70 per cent of the afro descendant population in Colombia, 95 % of the families can not send their children to the university because they lack the economic resources to do so, something that builds on the lack of preparation of teachers to cover ethnic education.<sup>162</sup>

Despite that almost all of the 70 African languages that at the beginning of the XVII century were spoken by afro Colombian communities have been lost, there are still settlements of people of African descent who speak dialects derived from the Bantu language, called "*Palenquero*", in reference to the population of the town of San Basilio de Palenque, ancestral place inhabited by former "cimarrones" [or enslaved Africans that escaped slavery and created their safe heavens]. However education in these ancestral lands is carried out exclusively in Spanish and there are not mentions to the

African history or culture in the school texts.<sup>163</sup>

Roma peoples, on the other hand, have not been given visibility, for they have been discriminated against and stigmatized by the majority of the population. For this reason Roma people educate their children at home. The fact that education does not adapt to these people's cultural codes makes several of these communities to feel afraid of sending their children to schools. Women rarely go beyond the fourth grade of elementary school and children attend some times schools to learn how to read and write and count numbers.

Generally, after having being at school a couple of years, they lose their affection for their own traditions, some quit speaking Roma language or understanding their own language and for this reason, their parents decide to take them away from schools. The Colombian State has not initiated a process to agree with the Roma people on an educational model that responds to their culture.<sup>164</sup>

### Threats against teachers

The Special Rapporteur on the Right to Education expressed during her visit to Colombia her concern for the killing of 691 teachers, men and women, during the past ten years and the death threats against teachers because of the exercise of their profession.

According to the Colombian Federation of Teachers, FECODE, from 2000 to 2003 191 teachers were assassinated and hundreds were forcibly displaced.<sup>165</sup> Many teachers have been killed inside the schools in front of their students.

Persecution against teachers happens even against those that voluntarily want to support the children's education in conditions in which these children would go uneducated: *"In a little house a man gave us classes and snacks. This man was forced to leave... the rebels came and threatened this teacher, asking why we had built that school, because they had not ordered it"*.<sup>166</sup> The UN Special Rapporteur recommended that *"the Colombian Government take immediate steps to clarify the circumstances surrounding murders of teaching staff."*

Human Rights abuses of teachers and teaching staff are indeed serious but besides they have a very negative impact on children, because they share most of their time with their teachers. For this reason homicides and "disappearances" of these relevant people for the children's lives causes suffering and affects seriously their mental health.<sup>167</sup>

### Human Rights training for children

The National Constitution provides that education should guide citizens to the respect of human rights, peace and democracy. However, while the State through its armed forces educates children

for war, it stigmatizes peace education and human rights training.

In the “Star Six” military operation carried out in Comuna 3 of Medellín (Antioquia), community and social leaders were arrested as well as leaders of the internally displaced peoples. The Second Commander of the IV Brigade stated that they found “*documents and photographs that show that these people were developing an ideological work with the community, especially with children*”.<sup>168</sup>

The UN Special Rapporteur showed her concern for prejudices against activities on human rights teaching and learning that have been stigmatized as “*germs of subversion*”.

### **Schools as a battlefield**

The Special Rapporteur, citing the Colombian Coalition noted that “*Colombia’s schools are the target of attacks by armed groups, but they also play a role in “training for war”: “The army and the police have intervened in a number of schools in impoverished areas to conduct exercises in military strategy and ‘psychological operations’ among the civilian population; in these schools they organize training and military instruction and establish bases for security operations.*” On this regard, she recommended the separation of schools from conflict and its delimitation and protection as places for peace.

From July 1996 to June 2003 at least 71 school facilities were affected by the armed

conflict. Guerrillas were responsible for 56.34 % of these events.<sup>169</sup> Also, there are police stations and other military targets located near or inside rural or urban schools in different zones of the country.

Schools are one of the spaces that have been more affected by the armed conflict, and simultaneously, the right to education of children has been seriously abused because of conflict. Schools, students and teachers are constantly the target of attacks, something that has led to interrupt in many cases the educational cycles, due to the conditions of violence in several zones.<sup>170</sup>

In Medellín, in 2002 five schools of the “Barrio Popular No 1” were closed, leaving more than 1,900 students without classes. Four out of these schools opened again in 2003, with a strong restructuring process that entailed the reduction of teachers and places for students.<sup>171</sup>

The increase of school desertion related to the armed conflict is alarming. In the department (province) of Cesar, in the north eastern part of the country, after the killing of two Kankuamo indigenous students by the rebels of the National Liberation Army, ELN, the school San Isidro Labrador had a 40 per cent desertion between 2002 and 2003.<sup>172</sup>

In 2002 in the Paulo VI school of Medellín, there was a school desertion of 1,000 students due to the situation of violence that the poor slums of “comunas” experienced

in this part of Medellín. The answer of the Education Secretariat of the city was to say that *"Medellín has such a good schools coverage that there are places available in schools, and the school Paulo VI is one example of this"*.

All of the combatants use schools as battlefields, posing a serious risk on the lives of the students. In the context of the "Mariscal" military operation, jointly realized by the Police, the Attorney's General Office, the Administrative Security Department, DAS, the Fourth Brigade of the Army and the Air Force in the city of Medellín (Antioquia) in May 2002, units of the official armed forces used the facilities of "Liceo Barrio La Independencia" as a shield during combats that for eight hours they had with rebels.<sup>173</sup>

In May 2004, school buses of a rural school in Usme, south of Bogotá, were used as shields during a military operation, in which armoured cars and military trucks were hiding behind these buses.<sup>174</sup>

In the department of Cundinamarca, rebels of the Revolutionary Armed Forces of Colombia, FARC, planted mines around a rural school attended by children from the hamlets Los Medios, San Antonio, Pascote and Brazil, in the town of Gutierrez on the east of this province.

The risks to which students are exposed were accepted by an officer of the Army's Counter guerrillas Battalion #67: *"In the school there is a store where we buy*

*groceries and personal care elements. This might be the motive for the guerrillas to attack us"*.<sup>175</sup>

In Cazucá, urban marginal zone belonging to the municipality of Soacha, south of Bogotá, the army is responsible for giving the classes on physical education and sports in the schools of the neighbourhoods (barrios) Juan José Rondón, Caracolí, San Francisco and Sierra Morena; they take advantage of this possibility to interrogate students about their parents or neighbours and offer rewards to those of these children who provide information on the guerrillas.<sup>176</sup>

In the department of Magdalena, the police sent officers to give education in schools attended by children whose families had been forcibly displaced for violence.<sup>177</sup> This is a highly dangerous practice for children, in the context of the degradation of the armed conflict that affects the whole country by all of the armed parties.

In this way, paramilitary presence has been denounced in schools of the city of Sogamoso (Boyaca); or of guerrillas, in Concepción (Antioquia): *"Rebels used to go [to school] to purchase stuff or to play with us"*; or of the official armed forces and the police: In the town of San Vicente de Chucurí (Santander), *"armed people used to go to the school and I used to be friendly with them; they were from the Army, and they gave us food..."*.<sup>178</sup>

In Arauca, during a mission held by mid 2004<sup>179</sup>, nine schools were found occupied

by the National Army in the towns of Arauquita and Saravena; in the urban centres of Betoyes, Flor Amarillo, Puerto Nidia, Pueblo Nuevo, Panama, Brisas del Caranal and Filipinas. Despite of this, the Army says that, *"it is forbidden to sleep overnight or occupy school facilities or educational institutions in the development of military operations and these can only be used in specific situations of necessity, when support to the civilian population is required, previously coordinating with the local authorities."*<sup>180</sup>

Military staff installs camps, trenches or operational locations in schools. Authorities underestimate the fears of attacks by the subversives for this behaviour, claiming that their presence has the intention of impeding that to happen. Nevertheless a teacher told that the rebels *"had sent [rockets] with ramps and shot grenades"* over the school where he was working.

Many teachers had reacted to the hazards to which their students are exposed, informing their concerns to the military or civilian authorities. For instance, when a teacher demanded that measures should be taken to impede the army continue using schools for military purposes, the Governor of Arauca said: *"You will not take the army out of here! Watch out! Remember that they are little soldiers, sons of peasants like you. How dare you take one of this soldiers out [of the school] when it is raining? You are also State staff, you are also institution; you will not take them out for me!"*

In the rural zone of the city of Florencia, capital of the department of Caquetá, where members of the National Army who were persecuting a group of subversives shot indiscriminately against a school where classes were being given. When she saw the shooting, one of the teachers protected with her body some children, receiving some shots that caused her to lose her arm.<sup>181</sup>

According to the Army, the protection of the schools corresponds to the National Police<sup>182</sup>; and according to the Ministry of Education, *"There are cases in which protection of school facilities requires public order measures, where competence corresponds to the Ministry of Interior and Justice... in coordination with the Ministry of National Defence as appropriate."*<sup>183</sup>

### **Violence in schools, beyond the armed conflict**

Children of both sexes need a safe and calmed environment to learn. However, even without having into account the existence of conflict schools are influenced by different actions and forms of violence.

According to the SCRC 38 per cent of the girls and boys stated that armed people enter their schools. 40 per cent are members of the Police and the National Army, principally to practice searches; 38 per cent are school students, and 22 per cent are other actors, amongst which they included guerrillas, paramilitaries, common crime delinquents, bodyguards, etc.

*“Once [they] found a pistol in the volley ball field; teachers found it and nobody knew why. Police officers sometimes come to give workshops at the beginning of the year. I do not like going to that”.*

Schools have become the opposite of what they should be: a protection, education and tranquillity place. Girls of the north western part of Medellín, for instance, identify schools as the first place they call as *“dangerous or fearful places”*.<sup>184</sup>

In February 2005, a social problem was publicly denounced, exerting doubts on assertions according to which the problems of juvenile gangs is due, necessary to poverty or lack of schooling of adolescents that take part of these gangs, for it questions ideas that consider schools as such spaces for tranquillity and peace education:

Police discovered that students of private schools coming from wealthy families were creating juvenile gangs to confront each others from schools of wealthy people, too.<sup>185</sup> The motives behind this confrontation went from emotional problems to feeling hatred against somebody for the fact of living in a given sector of the city, being a sympathizer of determined football soccer team or belonging to schools that are not of the affection of the gang members.

### **Military Schools**

In Colombia there are 41 military schools that count on 21,451 students<sup>186</sup>, amongst

them 748 children and girl children of 3 to 5 years of age at the preschool level, 4,462 children of 6 to 10 years old in basic primary education, 10,264 students of ages between 10 and 13 in secondary school and 5,137 of 14 to 18 years old in high school.

Military schools are ruled under Law 48 of 1993,<sup>187</sup> and the internal norms of operation 3-20 of the Ministry of Defence, that authorizes them to impart 1,300 hours of military instruction.

Students receive military instruction since the last year of secondary school (9<sup>th</sup> grade), that is to say until the age of 14 to 17 years. Approximately 7,990 children receive currently this military instruction. It involves handling weapons, shooting, survival activities, assaults carrying armament and without armament, training to repel riots and three campaigns or missions to the field, one each year.

These campaigns are realized in a state belonging to the Navy near the military base of “Tolemaida”, located in the town of Melgar (Tolima)<sup>188</sup>, where children stay more than nine days, bearing long periods of time alone, practicing survival techniques in the mountains.<sup>189</sup>

These activities have a high risk: in occasions, students can not use their school buses and uniforms to get to the ranch and in one case the campaign had to be suspended due to death threats against students of a military school.

Students are submitted to punishments that constitute humiliating and degrading treatment: the most common of them is to “voltear” or realize physical exercise continuously, for periods of 30 minutes to three hours. Besides the exercise, they are abused through physical aggressions, deprivation of food or the constant use of disparaging language or dirty words that mean offences. However the affected children rarely denounce this situation because they consider that this has to be normal for these institutions.

In the context of the degradation of the internal armed conflict in Colombia, the fact that the students receive military instruction, that their schools are located near military facilities, among other problems, add hazards to become military targets of the combating forces.

### **Equality and discrimination in the educational system**

Discrimination in Colombian education is outstanding in several ways. In first instance, the immense differences between quality, infrastructure and teaching materials between public and private institutions make that the better the social and economic conditions of the families, the better education quality for their children.

Indeed the gap between public and private education has been growing: from 1986 to 1999, the proportion of public schools considered of low performance doubled during that period.<sup>190</sup>

Also, there are great unbalances in terms of quality of education that school students from the big cities receive, compared to those in small towns or in the poorest provinces or departments; and between the urban centres and the rural areas. In 2001, all of the schools in the departments of Amazonas and Vaupés [Amazon basin] were classified as “low” level. In the Chocó department this situation happens in nine out of ten institutions, while in Bogotá, one third of schools register a “high” level of academic performance.<sup>191</sup>

Unbalance is manifested in the differentiated access that girl children have, in comparison with boys. Not for all of the departments there is updated information that disaggregates gender opportunities<sup>192</sup>, but in those departments that do have this information, there are significant differences that show discrimination against girls and women: In Boyaca, the illiteracy rate for women overpasses the male’s rate in 5.4 per cent. In Chocó this rate is higher for a 4.6 per cent, and in Nariño, it is 3.3%<sup>193</sup>

Colombian Civil Code provides that girls and boys can get married with the consent of their parents since 12 years old for the girls and 14 for the boys. This provision additionally to violating the Convention on the Elimination of All Forms of Discrimination against Women, affects negatively the right to Education of the marrying children that at those ages have not completed their 10 year obligatory education cycle.<sup>194</sup>

## 2. Right to play and recreate

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### Right to recreation and physical exercise

The right to recreation is vital for the development of children and it is fully protected by the Convention. Nevertheless this right is poorly met in Colombia and its guarantee is aggravated because the principal celebrations for children, such as the Children's Day, are generally undertaken by military and police authorities and not for the civilian ones.

It is discouraging to corroborate that a series of military activities deployed in the context of psychological military strategies by the Public Force is in many regions the strongest effort made by the Colombian State to realize the right to recreation of children.

In Arauca, soldiers go to schools or simply gather children in the streets: *"They have their circus, with hoops and some five clowns, plus the acrobats and tightrope exhibitions; occasionally they bring some plastic things full of sugar and milk and they give this to the children, they play clowns in the streets and gather groups of children"*.

In May 2003 military units from the air force of "Catam" (military airport in Bogotá) took the students of the departmental rural

school "El Cerrito" to have lunch and recreational activities in which they were teaching the functions of the Military Forces, their structure and the role they play in the context of the Colombian war.<sup>195</sup>

In Cali (Valle), the "Marco Fidel Suarez" military Air Force School celebrated Children's Day with more than 900 children of both sexes coming from deprived areas of the city. Activities included a musical show and a visit that the students from the "Carlos Holguin Sardi" school paid to the military facilities, where the program "Soldiers for one day" was performed.<sup>196</sup>

In private primary and secondary schools of Bogotá, the campaign implemented by the Army continues to developing the program "Soldiers for one day", that entails periodic visits by military high ranked officials that address the prospect recruits, and invitations to children above 12 years of age to visit the aforementioned state in the town of Tolemaida, Melgar (Tolima), distant approximately three hours by bus from Bogotá.

A testimony of a girl from a private institution of wealthy students informed that the military included children below 12 years of age, following a written consent by their parents and that the kids were taken up to military tanks, they were given rifles and

pistols and they were allowed to see military training.

These initiatives are really concerning if we take into account that the state control

bodies have expressed that in the current context of armed conflict in Colombia, this type of programs are clear strategies to involve children into the warfare, posing high risks to their lives.<sup>197</sup>

## SPECIAL PROTECTIVE MEASURES

### 1. **Right to an integrated protection of refugee and displaced children and adolescents**

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Internal displacement which coincides with actions to control territories that are military or economically strategic, continue to be one of the more dramatic human rights violations and abuses to international humanitarian law.<sup>198</sup>

According to the NGO CODHES<sup>199</sup>, 2,420,041 people were forcibly displaced since 1997. 287,581 out of this total were displaced in 2004. It is estimated that between 48 to 55 per cent of the displaced persons are children.<sup>200</sup>

Threats of forced recruitment or the fears that their children get involved into the armed groups are another causes for displacement, something that is gaining greater incidence.<sup>201</sup>

Public policies have not been translated into effective actions to prevent or protect the population that had been once displaced or that are in risk of being uprooted. The response by the authorities does not transcend the emergency phase and it does not prompt measures aimed at the social, cultural and economic reestablishment of the victims.

According to the Procurator's General and the Ombudsman's Offices, only 30, 4 per cent of the individual displaced households between 1997 and 2004, and 8 per cent of the displaced families that displaced massively have received humanitarian emergency assistance.<sup>202</sup>

#### **Forced displacement, unconstitutional state of things**

In February 2004, in the T-025 Sentence by the Constitutional Court, internal displacement was named as "unconstitutional state of things"<sup>203</sup>, warning that the Colombian State has not assumed its obligation to protect thousands of people that for this reason suffer multiple and continuous abuses of their human rights.

Despite the obligations demanded by this Court to the government, there have not been adopted effective measures to prevent forced displacement, compensate and protect integrally those victimizes and guarantee their economic, social and cultural rights.

Assistance continues to focus on superficial approaches that do not cover the whole affected population, as well on return, that has been developed without the necessary security, voluntary basis and dignity conditions for these people.<sup>204</sup> According to a UNHCR assessment, in 28 return processes the members of the communities had to displace one more time or are in risk of doing so in a high proportion.<sup>205</sup>

### **Schools for displaced children**

According to UNICEF, 7 out of each 10 children who have been forcibly displaced do not go back to school<sup>206</sup> for economic reasons, despite the legal obligation to offer free education to this population<sup>207</sup>; but also for discrimination or maltreatment or for the conditions of malnutrition and the need to work to help their families economically.

During 2004, 77 displaced children of 11 to 17 years old were interviewed in Altos de Cazucá, Soacha (Cundinamarca), in Cartagena (Bolívar), Usme and Ciudad Bolívar (Bogotá, capital district) and Barrancabermeja (Santander)<sup>208</sup>. 58 per cent of these interviewed children said that they have to partially pay for enrolment fees and buy books and school uniforms. Additionally, 53 per cent of them said that if they do not pay for these items they are not allowed to enter the schools. For these reasons it can be deduced that at least 23 per cent of the interviewed children do not attend school for economic reasons.

Public policy regarding this situation has focused in the creation of more places in schools something that is not sufficient to cover the deficit, though<sup>209</sup>. Very often teachers only teach children how to write and read and they are not provided with the required advise and training to cope with problems and trauma resulting from displacement or to help recreating new life conditions.<sup>210</sup>

Displaced children are the victims of prejudices by community members and educational staff, that most of the times discriminate them against. This results in changes in the form they perceive themselves, the meanings with respect to their identity and the responses they receive when asking who they are.<sup>211</sup>

### **Health of the displaced population**

The Colombian government has not provided the minimum standards for guaranteeing the right to health for displaced peoples, both in terms of coverage and quality, such as the provision of medicines.

National authorities, State control bodies, local authorities and organizations working with this population have pointed out their concern for the dismantling of the health assistance model for the displaced population<sup>212</sup>. This includes limitations to the coverage of health services to only emergencies resulting from forced displacement and the lack of psychosocial assistance.<sup>213</sup>

The food component of the assistance the government must offer this population<sup>214</sup> does not guarantee their right to adequate nutrition. According to the World Food Program, *“23 per cent of the displaced children face malnutrition risks, being those between one and two years old the most affected ones”*.<sup>215</sup>

Additionally, while the rate of adolescent pregnancies at the national level is 19 per cent, this figure is higher for displaced adolescents, with 33 per cent.<sup>216</sup>

The situation of Altos de Cazucá is illustrative of the seriousness of this health condition for displaced children: Only 23 per

cent of these children are included in the subsidized health regime and none of them in the contributions system. Thus, the resulting 77 per cent have coverage problems, and besides having the letter that entitles them to obtain health services but not an official card impedes them to access medicines.<sup>217</sup>

According to Doctors without Borders, 29 per cent of the children forcibly displaced shows malnutrition and 3 per cent severe malnutrition. This organization reported 900 children between 6 and 59 months of age living in chronic malnutrition, and pointed out that the most frequent illness is respiratory, infections and parasitic diseases.<sup>218</sup>

## 2. **Right to protection against economic exploitation and any kind of hazardous work**

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### **Current situation of children's economic exploitation**

In Colombia approximately 1,425,440 children between 12 and 17 years old work, corresponding to 27.7 per cent of the infant population. 16 per cent out of them are between 7 and 11 years old.<sup>219</sup>

More than 1.5 million children aged 5 to 17 years are exploited because they do not receive any sort of income and those that

receive a payment do not earn even one fourth of the legal minimum salary.<sup>220</sup> According to the Ombudsman's office<sup>221</sup>, three out of 10 working children attend school, that is to say, only 427,620.

Child labour is directly related to the socioeconomic conditions they live in and is associated with the high unemployment rates and the increase of underemployment. The majority of children report that they work to help their households.<sup>222</sup>

### **Governmental policy on child labour**

Traditional policies regarding child labour seek to eradicate it.<sup>223</sup> Consequently, the government has established programs and policies to discourage it but without real budgets, and ignoring the root causes that lead children to work to earn a living.

The National Plan for the Eradication of Child Labour and the Protection of Young Workers 2003-2006 define as child labour *"any physical or mental activity that is or is not paid, aimed at the production, trade, trans-formation, sale or distribution of goods or services, that is developed independently or to the service of individual or juridical persons and that is carried out by people under 18 years old."*<sup>224</sup> This definition is in agreement with the international definitions on this matter.

The above mention Plan was developed based on a reduced number of workshops: 15 workshops held in 13 departments (provinces). It contains serious weaknesses, for it does not establish clear actions to combat the problem and does not consider factors that are relevant to achieve solutions, such as racial and gender discrimination grounds.

Although the UN Rapporteur on the right to education stated that, *"programmes are inflexible and not targeted at populations with specific characteristics such as child workers,"* this Plan does not respond to their needs.

Neglect by public servants regarding this situation is also a matter of concern. ILO revealed that *"functionaries of the Ministry of Education who were interviewed knew superficially the activities that the educational sector develops regarding child labour"*.<sup>225</sup>

### **Abuses against children workers**

Social bias and prejudices against children workers are translated in abuses and aggressions by passers-by, employers and police officers:

A group of four children was attacked in May 2005 in the market of the 20 de Julio neighborhoods in Bogotá, while they were accompanying their parents to collect food supplies: *"They hit me, crashed me against the wall and broke my glasses,"* one of the children who were shortly detained in a police station told. *"They took me to the Bello Horizonte police station and later they released me."*<sup>226</sup>

### 3. **Right to full protection against the use and exploitation related to drugs**

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According to the National Plan for the Eradication of Child Labour and the Protection of Young Workers 2003-2006, there are more than 200,000 children that work as coca leaves harvesters or "*raspachines*", and because irregular armed groups provide security to those crops considered as illicit, these children are involved into the armed conflict.<sup>227</sup>

Although the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) recently ratified by Colombia determines as one of the worst forms of child labour, "*the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.*" However, the current antinarcotics policies implemented by Colombia do not comply with this provision, because it is based on criminalization and repression rather on prevention and protection approaches.

This may be concluded because such a policy does not understand the "*raspachin*"

children as victims of the phenomenon of illegal drugs trade, but as an offender of the penal law. In the same way, the national government has increased the use of eradication in the guise of fumigations, even in natural reserves and national parks, despite the fact that the Ombudsman's office has warned that indiscriminate aerial spraying cause physical illnesses and forced displacement of the harvesting population and that that lives in zones surrounding the plantations.<sup>228</sup>

This type of measures entails a neglect of the Concluding Observations of the Committee on the Rights of the Child, according to which "*In the light of article 33 of the Convention, the Committee recommends that the State party continue taking effective measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances. It encourages the State party to support rehabilitation programmes for child victims of drug and substance abuse.*"

## **4. Right to protection against the sale and trade of children and adolescents**

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In 2001, the Ombudsman's Office pointed out its preoccupation for the increase in children's trafficking due to the serious economic situation of the country, that led to the creation of criminal organizations which objective is to send these children to other countries with adoption purposes for economic reasons or to exploit them in the labour market or sexually.<sup>229</sup>

According to the United States' Department of State, the Colombian government although is doing actions to confront this violation, realises inconsistent efforts that in turn are also negatively funded.

While there is an adequate control in the airports, this is insufficient in the terrestrial

borders and maritime ports<sup>230</sup>, adds the US State Department. During 2004 there was the liberation of 14 victims and the capture of 8 traffickers only; but the International Migrations Office, IMO and the Colombian Ministry of Foreign Affairs noted the increase of 34 per cent of this crime<sup>231</sup> and the Attorney's General Office affirms that the majority of the victims are children.<sup>232</sup>

Title VI of the Penal Code punishes the crimes of children trafficking and irregular adoption; however, the sanctions for those that incur on these crimes are so low that the guilty people can enjoy the benefit of being released from prison.<sup>233</sup>

## **5. Right to protection against sexual abuse and commercial exploitation**

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In Colombia, 89 per cent of the victims of sexual violence are children, and the most affected population is that between 10 and 14 years old, followed by children between 5 and 9 years old.

According to the National Institute of Forensic Sciences, in 2003 there were

14,239 sexologist opinions produced, 84 per cent of which was practised to girl children with an average age of 13 years, and 16 per cent of boys between 9 and 12 years old.<sup>234</sup> An increase of these crimes and complaints is noted, because in 2001 only 11,258 cases of sexual abuse against children were denounced.

Approximately 35,000 children are sexually exploited in Colombia<sup>235</sup>, and only 14,400 out of this figure have been assisted by the ICBF.<sup>236</sup>

The most frequent age in which girls and boys are initiated into sexual exploitation activities is 13.5 years, although authorities from the city of Cartagena have reported 10 year old girls practising prostitution. Barranquilla and Bogotá are other cities where this problem is registered.

The most generalized reasons to get involved in sexual exploitation and prostitution are domestic violence, forced displacement and the need of money.<sup>237</sup>

With regard to the public policy, the National Plan for the Eradication of Child Labour and Protection of Young Workers 2003-2006 only tackles the issue of sexual exploitation when it mentions the worst forms of child labour. But it does not present clear strategies to combat it.

Nor there is not a programme that addresses the lack of hospital assistance to this population, in spite of the fact that in many cases they suffer from sexually transmitted infections.<sup>238</sup>

On the issue of prevention of sexual abuse and exploitation [this happens] *"in the majority of the cases in the educational sector. Because of operational or overburden problem, teaching staff are not able to detect and treat with particular attention, cases that require a great deal of time devotion and*

*preparation. Nor there are considerable particular supports by other sectors (health, for instance), to promote the integration of children with major problems like violence and sexual exploitation."*<sup>239</sup>

DAS (Administrative Department of Security) affirms that despite Colombian penal law is clear to sanction those guilty for sexual exploitation, the levels of impunity for this crime are quite outstanding<sup>240</sup>. The Ombudsman's Office has said that while *"there is a lack of more efficient work by the State security authorities ... in the monitoring of child prostitution networks and in capturing and sanctioning the perpetrators of this exploitation"*, there are children victims of sexual exploitation that are sent to re-education centres for children in conflict with the penal law, in cities like Pereira and Barrancabermeja.<sup>241</sup>

On the 3<sup>rd</sup> of January 2005, the television program "First Impact" presented a report entitled *"Porno Mariners"*, in which it is told that in October 2004, members of the Navy and contractors of the United States that provide military advisory services in the military base of "Tolemaida" (Melgar, Tolima) submitted three school girls to a session of sexual abuse, that were recorded in a domestic video and traded in the town of Melgar.

It is preoccupying that the authorities deny knowing the episode<sup>242</sup>, despite the video having been divulged in the mass media, and therefore, are of public knowledge.

Besides, these foreign military staff can not be sent to justice in Colombia, due to an agreement that is being implemented since 1962 with the government of the United States, which bans that their personnel be sent to trial for crimes committed in the

national territory of Colombia<sup>243</sup>. This agreement was strengthened by another one (2002), signed in relation to the non application of the Criminal International Court whenever similar cases may occur in this country involving US troops or personnel.

## 6.

### **Right to protection of children in the internal armed conflict**

#### **Involvement**

Thousands of Colombian children are involved with guerrillas or paramilitaries, placing Colombia fourth in the rank of countries where children are linked to these practices.

Children are executed when trying to escape or disobeying orders, and are exposed to other violations of their rights, such as torture, sexual abuse, prolonged detention, the separation from their families, etc.

In June 1998, the ELN signed in Mainz, Germany, the "Puerta del Cielo agreements" under which it committed to not to recruit children below 16, in June 1999 FARC guerrillas offered the Special Representative of the UN Secretary- General for children and the armed conflict not to recruit children under 15 years,<sup>244</sup> and that in the "*Declaration for Peace in Colombia*", of November 2002, the AUC or paramilitary groups offered also to give back to UNICEF those girls and boys "*combatants who are*

*minors that having been released of their belonging to the guerrilla forces by the Self Defence Groups, are still in our ranks*".<sup>245</sup>

In spite of these declarations, the involvement of children in the armed conflict has grown during 2004<sup>246</sup>. The High Commissioner of the UN for Human Rights in Colombia estimates that 14,000 children are part of the armed groups and their militias<sup>247</sup>, and Human Rights Watch estimates that they are approximately 11,000.<sup>248</sup>

The Chief Commander of FARC, Manuel Marulanda Vélez has pointed out that the children "*would continue in the ranks*"<sup>249</sup> of this group while it is enlarging the recruitment of girls and boys, even enrolling indigenous children or children as young as 7 years old<sup>250</sup>, in rural zones like that of the Montes de Maria<sup>251</sup>, and slums like Ciudad Bolivar in Bogotá.<sup>252</sup>

One of the most serious cases happened in 2002 in Puerto Alvira, Meta province. In May

that year, a mission of FARC visited several hamlets and doing a census of people apt to enrol. At the end of July they called all of the inhabitants of that town to inform them that they "*should join or they were going to be executed*". As a consequence approximately 2,000 people left the town.

Before people started the exodus, the rebels separated an important number of adolescents and ordered them to stay because since that moment on they had become FARC guerrillas; according to reports by the local population these young people could total 100.<sup>253</sup>

ELN rebels have also unfulfilled their commitments and continue to recruit children under 15 years old into their ranks. At the beginning of 2003, Kankuamo indigenous peoples from the department of Cesar claimed that this guerrilla group had killed two students, of 13 and 20 years, because they refused to join their ranks.<sup>254</sup>

Paramilitary groups in turn, have different modalities of involving and paying children in vast areas of the country. In Cordoba, for instance, they recruit children for a salary of Colombian pesos \$300,000 (approximately US \$100)<sup>255</sup>; in Barrancabermeja (Santander) besides recruiting children for a salaries that go from Col. Pesos \$270,000 to \$500,000 (or US 80 to 170, approximately), the paramilitaries use children to investigate or follow suspects, and for this they can pay between Col pesos \$1,000 to 10,000 or a gift represented in costly clothes,

depending on the value of the provided information.<sup>256</sup>

In Altos de Cazucá, Soacha (Cundinamarca), besides the fixed payment the children receive (between US \$100 to 250), the paramilitaries promise these kids security and a percentage of the blackmailing they practise.<sup>257</sup>

In San Jose del Guaviare (Guaviare), paramilitaries use children as informants.<sup>258</sup> In many occasions, when these children are not useful anymore, they are killed in a practice known as "*erasing the information*".<sup>259</sup>

Trends of this problem and the profiles and stories of children enrolled call for the need to question the "voluntary" basis of their involvement<sup>260</sup>. To be able to speak of voluntary joining there should be the possibility of choosing between different options and of desisting from this decision when the child considers it necessary.

Nevertheless due to the governmental absence and that the prevalent rights of the children are not addressed, many of these children do not have other alternative than joining the armed groups; besides they can not leave these groups once incorporated as easily as they are invited to join.<sup>261</sup>

Guerrillas, paramilitary groups and the official armed forces and the police are responsible for the use of indigenous children in regions such as High Naya basin (department of Cauca), Sierra Nevada de Santa Marta (Magdalena and Cesar

departments), the Tierradentro region that shares a territory in Huila and Cauca, and various zones of Antioquia department.<sup>262</sup>

Combating forces are currently undertaking strategies to involve these indigenous populations that used to maintain separated from the armed conflict because of their ancestral ties with their territories.<sup>263</sup>

In Northern Cauca, at the beginning of August 2002, FARC rebels have offered a modality of recruitment that can be more attractive for the indigenous population: they have to leave their territory only for a three months to one year training, and afterwards they can return to their reserve (resguardo), as active guerrilla members with the task of exerting blackmailing and recruiting each one of them other children.<sup>264</sup>

In the Amazon region, the armed parties seek to recruit indigenous children because of their deep knowledge of the jungle and because they are culturally and physically adapted to the environmental conditions of the zone.<sup>265</sup>

In Vaupés, for instance, they have developed integration events for indigenous children<sup>266</sup>, and according to information gathered by the Regional Indigenous Council of Vaupés, by mid 2002 there should be between 500 to 800 indigenous adolescents enrolled with the FARC.

Inside the armed groups, girl children are frequently victims of sexual abuse<sup>267</sup>, or forced to abortions of family planning

methods against their will, including injections with hormones or contraceptive devices of a permanent nature, imposed on them without the required care to avoid complications.<sup>268</sup>

### **Indirect involvement in the internal armed conflict**

The Colombian state does not recruit formally people below 18 years into their armed forces or the police. However, it uses children as informants and in counterinsurgent propaganda activities.

In the context of the degradation of the armed conflict such activities pose a serious risk on the children's lives and their families' and communities<sup>269</sup>. Also, for being used for tasks that are appropriate for wartime, there is an abuse of the Optional Protocol of the Convention on the Rights of the Child on children in the armed conflict, and Protocol II additional to the Geneva Conventions referred to the protection of victims of non international conflicts.

Such a practice was unveiled for the first time in the third report of the Inter American Commission on Human Rights on the Human Rights situation in Colombia during 1998, and has been reiteratively mentioned by the UN Office of the High Commissioner on Human Rights, about the situation of human rights in Colombia for the years 2002, 2003 and 2004.

Between 2002 and 2004 there have been cases throughout the country, in places like

the departments of Meta, Putumayo, Boyaca, Norte de Santander, Cauca, Chocó, Valle and Arauca<sup>270</sup>, and the city of Medellín (Antioquia)<sup>271</sup>, stating that children have been used by the Colombian army for intelligence work, paying some times in cash or goods, or in other occasions simply by threatening them.

The army develops integration activities like the campaign *"Soldiers for one day"*, that seeks for *"the integration of children with the army, through recreational activities and their visit to military facilities in the country"*. During this campaign children got on armoured cars or tanks, learn about military helicopters or try to make up their faces with camouflage.

These expeditions have included the visit of 2,000 children to three army battalions in Bucaramanga (Santander); the visit of students of the *"Bohios de Maria"* school in Medellín (Antioquia) to the Fourth Artillery Battalion; of students of preschool children to the Infantry Battalion *"Boyaca"* in Pasto (Nariño), and activities in Cúcuta (Norte de Santander) together with a delegation of children from Tachira (Venezuela) that were visiting the city of Cúcuta.<sup>272</sup>

In the *"Rehabilitation and Consolidation"* zones, declared later by the Constitutional Court as contrary to the Constitution, there was the implementation of activities of this sort, as the *"Soldiers for one day"* campaign, in the town of Saravena and Arauca (Arauca), and *"Marines for one day"*, in San Jacinto (Bolívar) and Los Palmitos

(Sucre)<sup>273</sup>, as part of the integrated plan of the Army for this zone<sup>274</sup>.

In Arauca, every Thursday a group of 20 children went to the Reveis Pizarro Battalion to play with the soldiers: *"They swam in the pool, had raffles, spoke with the Colonels and had a trip riding on a tank"*. According to its Commander, one of the objectives of this strategy was to *"make the guerrilla son or daughter question their fathers"*. During these Days, the group on psychological operations of the army distributed the children fancy bills with legends inviting the rebels to desert, with the idea that *"children take them home and in this way we reach their fathers and elder brothers."*<sup>275</sup>

In Sucre and Bolívar teachers were object of pressures by the army to send their children to this program, notwithstanding that the participant families were targeted by FARC.<sup>276</sup>

The National Procurator-General's Office asked the suspension of this programme in Arauca, arguing that: (i) the intention of making children question about social and political situations is contrary to the development level and vulnerability of children; (ii) the risk that these children are taking for being in places that are clearly determined by the illegal armed groups as military targets, is notorious, and, (iii) the principal mission of the army is not to educate children. This does not mean that the presence of other specialized state institutions is not indispensable for the construction of values since childhood.<sup>277</sup>

Despite the demand by the Procurator-General, the Colombian Army continues to develop this programme, that seeks to “teach patriot symbols, identity of soldiers and plant a patriot feeling” in several zones of the country<sup>278</sup>, with slight formal modifications in the department of Arauca.<sup>279</sup>

Those that defend such practices point out that they can be understood as part of what is meant by citizen’s competences, according to which, children must know what role the public authorities play.

However, although the importance of the above is taken for granted, it is clear that teaching should be led by institutions such as the Ministry or Secretariats of Education. The fact that this responsibility be given to the National Army not only evidences the militaristic tendencies of current policies, but that the principle of distinction is neglected when involving children with one of the parties in the armed conflict.<sup>280</sup>

### **Prevention in a war context**

Fully securing the rights of the child is the best prevention strategy and it has to correspond with the presence of civilian authorities in the regions, social investment and the existence and pertinence of public policies or programmes, together with the eradication of abusive facts of their rights, such as extrajudicial executions, the imposition of codes of conduct and the use of schools by the warring parties.<sup>281</sup>

Nevertheless, some activities which indirectly involve children into the armed conflict are presented by the Colombian government as prevention actions: The “Campaign against the recruitment of minors” started by the Ministry of Defence as part of their programme “Colombia: Act against terrorism”, that consists of the donation by the army of school kits in poor schools and that serves the affected population by violence.

In La Palma (Cundinamarca), Medellín’s comunas, some towns in Caquetá, Putumayo, Meta and Vichada, and in the zone of Ciudad Bolivar, in Bogotá, the intention of the government is to persuade children for not to join the guerrillas but promote that they “continue to support the Public Force.”<sup>282</sup> Equally as with the campaign “Soldiers for one day”, this involvement only reproduces the war logics and abuses the principle of distinction enshrined by International Humanitarian Law.

In January 2004 the launching of an initiative to prevent the involvement of children into the armed conflict was held with the participation of ICBF, the Ombudsman’s Office, UNICEF, IMO and ILO<sup>283</sup> representatives.

According to ICBF during 2004 the campaign focused in the regional (local) launching activities in Huila, Santander, Antioquia, Cesar, Valle del Cauca and Tolima, along with the song “A chant to our things” (Un canto a lo nuestro).<sup>284</sup>

This initiative shows that at the end, prevention of involvement is an issue of public agenda, a matter of advance. However, within the current context of abuses of the children's rights, the Colombian State can not consider as fulfilled its obligation of preventing the involvement of children in the armed conflict with occasional programs on recreation or mass media campaigns. For this reason, there persist doubts on the sufficiency of such an initiative and on its pertinence and efficacy.

### **Legal framework for demobilised children**

Both non governmental organisations and state institutions (the Coalition and the Ombudsman's Office, amongst others), have pointed out repeatedly the necessity of issuing in Colombia a specialized legislation to reconstitute the rights for demobilised children.

Nevertheless, the Colombian State has not defined a clear and coherent public policy to assist the demobilised children, not for their protection facing the internal armed conflict. The only important measure has been the recent ratification of the Optional Protocol to the Convention on the Rights of the Child related to the participation of children in armed conflicts.<sup>285</sup>

The legal framework applicable for demobilised children is dispersed in several public order norms, such as Law 782 of 2002 and Decree 128 of 2003, all of them under a war rationale.

This legislation lacks several normative gaps that leave children population in an indefinite situation. However, it contains several positive articles<sup>286</sup>:

- (i) Demobilised children are considered as victims of conflict, and for this reason they can not be submitted to penal processes but to programmes aiming at the restitution of their rights.
- (ii) It is forbidden to use children in intelligence activities, and
- (iii) There is a minimum time frame of 36 hours since the children demobilise to present them before ICBF staff.

It is our concern that these fragile normative advances might become blurred with the adoption of the draft law on Infancy and Adolescence, No. 85 in the House of Representatives, that stipulates sanctions of imprisonment for crimes that due to the degradation of the armed conflict, demobilised children are obliged to commit, among them abuses to international humanitarian law and those against individual freedoms.<sup>287</sup>

### **Governmental policies**

Demobilisation is framed within the counterinsurgent struggle, because it has been defined by the Defence vice minister as a non bloody weapon of war<sup>288</sup>; that is to say, demobilization is considered as a strategy to weaken the enemy.<sup>289</sup> In this context, children demobilisation is addressed not from the children's protection view point.

In a recent evaluation of the program to assist demobilised children by ICBF, the National Procurator-General's Office highlighted as a positive issue the strengthening of the pedagogical model and information system, management and international cooperation and contracting basis for the program.

However, it pointed out preoccupations regarding information offered to the young demobilised about the program, the lack of clarity that the young ex soldiers have about their immediate future and their situation, evasion from the programme that reaches 25 per cent of the participants, and the existence of more than 382 penal processes against children before Juvenile Courts, Family Courts or District Courts. The Procurator-General's Office concluded that until June 2004 a real social reintegration had not been guaranteed.<sup>290</sup>

The process to assist demobilised children creates serious doubts with regard to the lack of control to the process in Colombian regions, the convenience or not of the assistance in re-education centres and the follow up to those who have been assisted, once they finish their term with the program.<sup>291</sup>

Added to this is the lack of clarity on the figures regarding assistance by the State, because the Ministry of Defence presents statistics that differ from those of the ICBF<sup>292</sup>. According to 2005 information, the programme is being carried out in nine regions of the country and until the 30<sup>th</sup> of

December 2004, 2,210 children had been assisted<sup>293</sup>.

It is important to consider the role of the international cooperation on this program. USAID funds in "*activities to assist the reincorporation to society of demobilised children from the armed conflict*" amounted US \$2.5 million from November 2002 to October 2003<sup>294</sup>; and during 2003 and 2004 countries members of the European Union provided important financial resources: Italy financed the Programme for the rehabilitation of former combatant children and adolescents, implemented by the IMO with • 1,048,000, and the Swedish government has supported the work done by UNICEF to "*demobilise, reintegrate and rehabilitate ex combatant children*" with \$ 3,000,000 Swedish Crowns.<sup>295</sup>

The concrete results benefiting demobilised children do not correspond to the enormous sums provided by the international cooperation, because, in the best of the cases, the Programme for Assisting Children Victims of Violence of ICBF, has supported between 1999 and February 2004, a little bit more than 10 per cent of the total children in the armed groups.

### **Negotiations with paramilitary groups**

"*The Declaration for the Peace of Colombia*" with which negotiations with the AUC or paramilitary groups offered to give back to UNICEF, "*combatants who are minors that*

*having been released of their belonging to the guerrilla forces by the Self Defence Groups, are still in our ranks.*<sup>296</sup>

The Central Bolivar Bloc of the AUC gave back 13 children in Santander in December 2003 and 40 in June 2003<sup>297</sup>. This bloc announced that a group of children that were to be released in June was captured by the army and sent to the El Bagre prison, in Antioquia. That the group stayed there for five days and that for this reason the bloc decided to *“to arrange the devolution to the war fronts of 74 combatant minors.”*<sup>298</sup> Later, 48 children were given back within the demobilisation of the Cacique Nutibara Bloc, in Antioquia.<sup>299</sup>

Civil society organisations share general concerns on this process that seeks to legalise the paramilitary structure and does not protect the human rights to truth, justice and compensation. To these concerns, the lack of clarity on the protection of children's rights is added.

In spite that two years ago, paramilitaries promised to release children from their ranks, approximately they have given back only 180 children. These demobilisations have been more functional to impact the public opinion than to bring the reestablishment of the rights of children, for thousands continue enrolled<sup>300</sup>, and others have been demobilised informally, impeding their access to state-led assistance processes; or they have been recruited simply to show them as demobilised children under a false disarmament process.

This latter occurred in Medellín (Antioquia). Some days previous to the demobilisation of members of the Cacique Nutibara Bloc, BCN, these paramilitary asked some youth from deprived sectors of the city to pretend being members of this bloc and offering them in return the benefits provided by the government.<sup>301</sup>

This situation has been recognised even by the Presidential High Commissioner for Peace, Luis Carlos Restrepo, who addressed the paramilitary chiefs, saying: *“Despite the atypical process of Medellín, in which [they] mixed street delinquents 48 hours before and introduced them into the package for demobilisation; despite these irregularities that happened, we validate this process.”*<sup>302</sup>

On the other hand, demobilisations have not necessarily had incidence on the improvement of the situation of security for the population. According to inhabitants of the poor slums and barrios of Medellín, those youth that in theory demobilised from the BCN *“have not separated totally from delinquent activities”*.

Indeed, although the number of assassinations in Medellín has decreased, cases of women victimised has increased in opposition to male victims<sup>303</sup>, and other types of crimes have increased, such as sexual abuse and “disappearances”. For instance, during the first semester of 2003 there were 25 cases of “disappeared” girls, and this increased to 34 cases for the first semester of 2004.<sup>304</sup>

It is clear that the paramilitary continue recruiting children, as it was shown by the capture in Venezuela of 88 paramilitary units, among whom there were 8 children and a pregnant girl<sup>305</sup>. Later, news by mid 2004 that reported the recruitment of at least 16 children that work in the market place of the municipality of Girardot (Cundinamarca), to be sent to the paramilitary bloc led by "Martin Llanos".<sup>306</sup>

To end with this preoccupying situation, the High Commissioner for Peace has pointed out that demobilisation of child paramilitaries is not a matter of his competence, and that his office –legally entitled to carry out negotiations with the paramilitary- has not undertaken any actions on this regard.<sup>307</sup>

### **The 36 hours time-frame**

The legal time frame to give back demobilised children to ICBF is 36 hours. However, in the context of the governmental security strategy, the army considers that the State can not lose the information that these children have. For this reason, they are subject to military interrogations, in many occasions using the demobilised people militarily to denounce or to collaborate in operations in the field<sup>308</sup>.

There are cases in which, arguing problems of lack of infrastructure or security reasons, these children are held in military battalions or police stations, together with adults<sup>309</sup>.

The National Procurator-General's Office received complaints by Family Attorneys

and Juvenile Judges about the permanence of children inside military barracks. Only based on this information this Office could start 12 disciplinary investigations against members of the armed forces<sup>310</sup>.

In its turn, the Unit for the Rights of the Child of Ombudsman's Office, "*has been carrying out a follow-up process both with the members of the official armed forces and the beneficiaries of the assistance program of the ICBF, and has established that there are strictly operational circumstances that make that the 36 hours time frame can not be met. They mention conditions related to combats, the proceedings related to the location of places in the Institute's [ICBF] programs, etc. The Ombudsman's Office is writing a situational report that will be published when convenient.*"<sup>311</sup>

The Procurator-General's Office issued Directive No. 13 in which it reiterates the members of the Public Force to meet the maximum time frame of 36 hours to deliver children to the ICBF and that they "*can not subject them to any sort of interrogation, being it called interview, approach or intelligence activity.*"<sup>312</sup>

However, the UN Office of the High Commissioner for Human Rights in Colombia stated recently that "*the use of children as informants or in intelligence operations, including demobilised children, continue contradicting Directive No. 13 issued by the Procurator-General's Office.*"<sup>313</sup>

## **Impunity in the crime of forced recruitment**

As a form to protect children, several international instruments and human rights bodies recommended that the crime of recruitment was included into the penal legislation.<sup>314</sup>

In 1997 the crime of recruitment of minors was created (Article 162 of the Penal Code). It punishes members of insurgent groups and paramilitaries with a sanction of 3 to 5 years of imprisonment.

However, this provision does not consider the members of the official armed forces as authors of this crime, and its incidence has been quite weak.<sup>315</sup>

Among the members of the combating forces against which proceedings have been instituted for this crime, there is a former member of the military forces that recruited children in Ciudad Bolívar, south of Bogotá, to be sent to the Centauros Bloc of the paramilitaries of Meta<sup>316</sup>, and Ricardo Palmera, finances chief of FARC<sup>317</sup>.

## **Reservation regarding the crime of forced recruitment under the ICC**

On the 5<sup>th</sup> of August, 2002, the then retiring government of Andres Pastrana, with the approval of the elected government of Uribe, ratified the Rome Statute but reserving for seven years the imple-

mentation of the International Criminal Court, ICC on war crimes<sup>318</sup>.

The most serious effects of this reservation is that the ICC will not be able to try during this period of time [until 2009] people for the crime of forced recruitment of children under 15 years old, something that Colombia has had a continued increase.

The decision has, therefore, curtailed one of the most important mechanisms for the protection of children in the armed conflict.

## **Relapse of recruitment of demobilised children**

Testimonies of children indicate that among the alternatives offered to them after leaving the ICBF assistance programme there is still the consideration of joining the armed groups, based principally on the lack of clear proposals on how he or she will survive.

A demobilised child told how the army has offered him to work with them: *"I was promised a job and that they were going to pay me one million [Colombian] pesos for each guerrilla leader that I killed. I am expert in explosives and then I can work planting mines and other explosives."*<sup>319</sup>

## **Family reunification**

The Procurator-General's Office pointed out the urgency of promoting a follow-up strategy of young people that passed out of the programme. Its main failure in the

establishment of follow-up mechanisms and control are seen, among others, in the lack of neat information on family reunification.

In 2003, IMO reported that only 35 per cent of the children assisted by the ICBF programme returned to their homes<sup>320</sup>. During 2004 this figure could have increased to 50 per cent, still an insufficient data, because 1,138 cases of which ICBF has information, only 498 children have familial contact (43 %) and there has been only 12 family reunifications (1,05 %)<sup>321</sup>.

The governmental discourse has justified the low rates of family reunification based on the public order conditions in the regions of origin or residence of the children. However, it is contradictory that, on one hand, the governmental authorities affirm that there are appropriate security conditions for the return of displaced families, and on the other, they say that demobilised children can not return to their families due to security reasons.<sup>322</sup>

### **Children affected by land mines<sup>323</sup>**

Colombia ratified, in September 2001, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction [Ottawa Convention 18 September 1997]<sup>324</sup>.

According to UNICEF by October 2004, there was landmine fields in 542 municipalities located in 30 out of the 32 departments (provinces) of Colombia<sup>325</sup>.

The National Planning Department (DNP<sup>326</sup>) estimated in 2002 that there were at least 100,000 landmines<sup>327</sup> planted in Colombian territories.

The Observatory on Landmines run by the Vice Presidency of the Republic registers that from January 1999 to April 2005 there were 3,539 victims of landmines and at least 400 out of these were children<sup>328</sup>, that is to say, 11.30 per cent of the total reported.

Anti-personnel landmines in Colombia are used by all the warring parties: the Public Force, paramilitary groups and guerrilla groups. The Ministry of Defence has acknowledged that "*Military Forces count on 23 landmine fields with about 3,000 mines,*" planted throughout the country; these "*are used to defend the permanent bases and communications infrastructure.*"<sup>329</sup>

Guerrilla rebels have increased the use of anti-personnel landmines in the past years as combat weapons. This implies a larger number of non exploded landmines in rural zones that generate a major hazard for children and their families to become victims in those areas.

Children that live in the countryside are, at a great extent, potential victims of anti-personnel landmines that are planted by the combating forces near plantations, rural roads and in the surroundings of schools<sup>330</sup>:

*"On the 21<sup>st</sup> of February 2003, in the town of San Pablo (Bolívar), an 8 year old girl lost*

*one of her legs and one hand when stepped on an anti-personnel mine when she was heading to her school. The mine was planted allegedly by guerrillas from the 24 Front of FARC, in the hamlet of Tanacué”.*<sup>331</sup>

*“On the 2<sup>nd</sup> of July, 2003 in the municipality of Paz de Ariporo (Casanare), two brothers died as a consequence of the explosion of an anti-personnel mine, installed presumably by rebels of Front 28 of FARC. The mine exploded at the moment when the children were walking in a rural zone of the town.”*<sup>332</sup>

In application of the Ottawa Convention, the Colombian State has destroyed 19,002 anti-personnel mines that were stored in military deposits, and 2,279 landmine fields planted by guerrilla and paramilitary groups. Nevertheless, the government has not started tasks for the destruction of landmine fields that the military forces still have, despite they say they have them “mapped and marked”.<sup>333</sup>

The use of anti-personnel mines has serious consequences on children. Those that survive are victims of major injuries such as the loss of inferior and superior extremities that make these people to undertake surgical interventions, amputations, or the use of prosthesis which size should be adapted as the children grow<sup>334</sup>.

However, despite of the obligation by the State to provide free and immediate assistance to these victims (as per the provisions of the Ottawa Convention, Decree 1283 of 1996 and Law 418 of 1997), it is not com-

plying with these provisions adequately, as the Integrated Centre for Rehabilitation of Colombia (CIREC), that also denounced the practice of surgeries by non specialized personnel.<sup>335</sup>

Finally, children who are mired by anti-personnel mines generally can not enrol in schools because they become physically disabled and have to walk long distances in rural zones to get to educational facilities. In cases in which they can not continue attending school there are not specialized teaching staff to assist them, nor pedagogical materials appropriate for reverting the psychological harms that miring produces<sup>336</sup>.

### **Gender grounded violence<sup>337</sup>**

During an armed conflict, definitions of masculinity associated to violence and femininity with submission are validated and widely accepted. These stereotypes maintain and legitimate discriminatory relationships between men and women, and this makes girl children and adolescent women to suffer particularly their impacts because of their gender identity.

Girls and young women are seen as a target for military actors and their bodies are used as war trophies or as symbolic spaces for aggressions against communities. Besides, women are exposed to be used as traps for intelligence activities that neglect the principle of distinction and their human dignity.

Conflict has deepened the risks for girls and adolescent women to be victimized with different forms of sexual violence that can go from pressures and harassment to rape and sexual mutilation. Despite not having relevant official data available to determine the true magnitude of this problem it can be said that there is a significant increase in the rates of sexual crimes against women and girls in conflictive zones<sup>338</sup>.

Adolescent women that engage emotionally with any member of the armed parties are targeted and threatened by the opposing groups: *“One can see 12 year old girls and so forth that are pregnant. Armed actors, any of them, take advantage of this to invite girls and abduct them. Sadly, after they got pregnant if the girls are with the national army or the police, they are killed by guerrillas, and if they are with the opponent, they are also killed.”*

Adolescent women are constant victims of harassment and threats to establish sexual or emotional relations with the armed parties. The Special Rapporteur on Violence against Women pointed out that the guerrilla groups have kidnapped young women to make them serve as partners of their chiefs and that paramilitary groups have abducted young girls to use them as sexual slaves.<sup>339</sup>

The *Organizacion Femenina Popular*, OFP [a grassroots women’s organization], reported that in Barrancabermeja the paramilitary units abuse adolescent girls if they do not accept to be their girl friends or lovers. At

the end of 2002, 15 adolescent girls had to leave the city to escape from these groups that obliged them to prostitute for them<sup>340</sup>.

In Corinto (Cauca), FARC rebels use girls to court police officers and in this form obtain information. At least three girls were assassinated for refusing to do so<sup>341</sup>.

Paramilitaries impose girls and adolescent women territorial limits to their freedom of movement and curfews, as well as rigorous codes of social behaviour and restrictions on what they can or cannot wear, for example they are not allowed to wear miniskirts, jeans showing their hips or t-shirts that leave their belly exposed. If these girls break these rules they can be raped or killed.

Violence and discrimination against girls and adolescent women has a dramatic impact on their emotional, individual, relational and social world. Therefore, it is necessary to make a decisive effort to understand the specificities that within the internal armed conflict increase their vulnerability in order to avoid a worsening of the historical conditions of relative disadvantages related to gender, to advance in the exercise of realizing the rights of girls and young women and to prevent psychosocial damage that their abuse entails<sup>342</sup>.

## Kidnapping<sup>343</sup>

Between January and December 2004, 1,402 people were victims of kidnappings in Colombia<sup>344</sup>, with a daily average of 4 persons.

Guerrilla groups were the supposed authors of the kidnapping of 441 people (31.46%); paramilitary groups of 128 (9.13%); common crime delinquents of 397 (28.32%), relatives of the victims of 59 (4.21%)<sup>345</sup> and unidentified authors, of 377 (26.89%).

265 children were kidnapped during the year 2000; 205 in 2001; 215 in 2002; 45 in the first three months of 2003<sup>346</sup>; and 103 children in 2004 that represent 12.62% of the total kidnappings reported in the country.

ON the 20<sup>th</sup> of September 2001, in Cali (Valle), FARC guerrillas kidnapped a 12 year old girl. A group of armed men intercepted the school bus that transported her back home. On April 4<sup>th</sup>, 2002, after almost seven months of captivity, she was released. This was her second kidnapping, because she had been victim of a first one on the 30<sup>th</sup> of May, 1999 when a group of ELN guerrillas kidnapped 162 people in the Church La Maria, near Cali<sup>347</sup>.

In October 1<sup>st</sup>, 2001 in Medellín (Antioquia), ELN guerrillas of the Carlos Alirio Buitrago Front kidnapped a 22 month old baby girl. For her release they asked the family Colombian pesos \$2,000 million. On the 22<sup>nd</sup> of December 2002 after 14 months and the family paid a sum of Col. Pesos \$18 million and having publicized their complaint for the kidnapping before the mass media, the girl was released to a humanitarian commission headed by the IRC representatives in the town of San Luis, Antioquia<sup>348</sup>.

On the 6<sup>th</sup> of January 2002, in the municipality of Santander de Quilichao (Cauca), a group of paramilitaries kidnapped four girls, one of whom was sexually abused as a method to obtain information. In the same event a group of paramilitaries threatened to death the inhabitants of the hamlets Páez, Aguila, Vilachi and El Condor<sup>349</sup>.

Kidnapping causes particularly severe physical and emotional impacts on children. Due to the stage of development in which they find themselves, they require special assistance and care, and the emotional support by their parents and relatives.

The State has to take special measures to prevent kidnapping of children and to guarantee their enjoyment of the right to freedom, besides investigating and assisting the particular consequences that on them this practice may have.

### **Children affected by other abuses of International Humanitarian Law, IHL**

Combatants commit constant and numerous abuses of the principles related to IHL. These attacks are committed against civilian populations or their goods, against combatants who are put out of combat or through the use of means and methods prohibited or with indiscriminate effects, contradicting Article 3 common of the Geneva Conventions, Protocol II and consuetudinary law.

Actions by rebel groups have been characterized in the past years for the use of non conventional weapons and attacks against the official armed forces and the police that end up in involving the integrity of the civilian population, caught in the crossfire.

Children have been assassinated, be it for guerrilla incursions that pretend to attack the Public Force within strictly civilian zones, or for clashes between the warring factions.

In Pensilvania (Caldas), Puerto Libertador (Córdoba), San Jose de Apartadó (Antioquia), amongst other municipalities, several children have died due to attacks against the civilian population in the majority of the cases by the FARC guerrillas<sup>350</sup>.

In November 24<sup>th</sup> to 27<sup>th</sup> 2003, two bombs exploded in Tame (Arauca) leaving a girl wounded and a boy dead<sup>351</sup>. In May 2004 in an attack with a bomb in a car placed by FARC, in the same town, an 8 year old boy died<sup>352</sup>.

It is highly preoccupant that like in other occasions, children die because of attacks by guerrilla groups that seem precisely directed at the civilian population. These are some of the most illustrative cases:

- In February 2003, FARC exploded a bomb in a car in the El Nopal Club in the north of Bogotá, causing the deaths of at least 7 children and wounding some 15 more.

- In April 2003, FARC attacked a religious pilgrimage in Dolores (Tolima) leaving a girl wounded and killing a 14 year old boy<sup>353</sup>.
- In February 2004, FARC threw an explosive artefact in the municipality of Sácama (Casanare), during a popular festival, resulting 15 children wounded<sup>354</sup>.

Combatant groups often target Catholic or Evangelical Churches that are protected civilian facilities by IHL. In May 2003, FARC threw a cylinder with explosives against the church in the town of Bellavista, Bojayá (Chocó) after paramilitaries used this church as a shield during clashes with FARC. The community sought refuge in the church and resulting from the rebel's attack, 119 people died, and 45 out of them children.

Between the second semester of 2002 and 2003 there were 48 killings of Pastors and leaders of evangelical Christian churches. In 2004 at least two temples were invaded by armed actors that massacred those who were in worship, including two children<sup>355</sup>.

On the 31<sup>st</sup> of December 2004, in the village of San Salvador, in Tame (Arauca), an armed group entered an evangelical church and killed 17 people, among them some children. On this regard, state institutions blamed FARC. However, the zone where these events happened is fully controlled by paramilitary, and –according to peasants that inhabit the place- the responsible for this massacre were paramilitaries<sup>356</sup>.

FARC guerrillas are using children as warfare weapons to commit attacks against the army. On the 20<sup>th</sup> of April 2002, a group of guerrillas forced two children, aged 14 and 15 years, to take two horses, one of which was carrying explosives to a military unit in the town of Acevedo (Huila). The horse exploded 20 meters before getting the military target, killing the 14 year old boy and wounding the other one.

At the beginning of May 2002, FARC rebels killed a 14 year-old boy, filled his body with explosives and sent him to the Mobile Brigade No. 4, in Vista Hermosa (Meta)<sup>357</sup>. In Fortul, Arauca, in April 2003 an 11 year-old boy died when a bomb made of 5 kilos of explosives installed on a bicycle he was riding exploded. Guerrillas had allegedly paid him Col. Pesos \$1,000 (US \$0.45 cents) to take the bomb near the Police station<sup>358</sup>.

## **7. Right to protection in situations of deprivation of liberty**

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In Colombia, since 1997 until 2003 there had been 24,734 children in conflict with the penal law captured. By 2003 approximately ten per cent of this population had been sent to re-education centres<sup>359</sup>. Such locations have been considered by the Constitutional Court as a measure of deprivation of liberty<sup>360</sup>.

The numbers of children kept in these institutionalized centres is so high that in a study carried out by the Ombudsman's Office by mid 2000<sup>361</sup>, this state body pointed out that these centres are so crowded that their levels of over occupancy represented 33 % so that part of this population had to be sent to police stations, to jails they shared with adults.

Both in the institutional re-education centres as in police stations, it is largely proven

that children receive cruel and degrading treatment. There are cases where the National Police has permitted that passers-by to give a hiding on children that have been caught for theft; also, in some specialized centres for the re-education children are obliged to stay for several days in confinement cells that lack sanitary services, without ventilation and sunlight for having committed faults to the internal discipline rules or for having been in disagreement with the centre's staff<sup>362</sup>.

For this reason, several international and national institutions have demanded repeatedly that the Code of Minors be derogated, through a law that implements the Convention on the Rights of the Child and establishes real mechanisms to safeguard the rights of children who are in conflict with the penal law.

In spite of this, the draft law for Infancy and Adolescence that is being discussed in Congress is far from reaching the desired goals. While guarantee measures should have a progressive implementation, punishment of children would have an immediate effect.

The proposal for a penal juvenile responsibility system that this draft bill contains has been justified under an odd interpretation of the concept of children as “entitled with rights”, according to which since children are entitled to rights, they

shall be fully accountable under penal law<sup>363</sup>.

The initial project does not include some of the minimum provisions established by international norms with regard to the rights of children; for example, the prioritisation of prevention of juvenile delinquency, the goal and pedagogical end protecting measures applicable to children in conflict with the penal law, the application of deprivation of liberty only as an ultimate resource and the prohibition of criminal record for children<sup>364</sup>.

## RECOMMENDATIONS

### **With regard to the compliance by the Colombian State with the provisions of the Convention on the Rights of the Child**

- ■ ■ Maintain the recommendations made to the Colombian State by the Committee on the Rights of the Child in 2000 (CRC/C/15/Add.137)

### **On the general situation of the country**

- ■ ■ Urge the Colombian State to accept the existence of an internal armed conflict that enables the demand to comply with the International Humanitarian Law and the subscription of humanitarian agreements, in which the parties in conflict commit themselves to cease kidnappings or direct and indirect involvement of children into their ranks.
- ■ ■ Urge the Colombian state to demand the paramilitary groups the compliance with the cease of hostilities and demobilisation of every children in their ranks, as they committed at the beginning of the negotiations process with the government; that the Colombian government guarantees the total dismantling of these groups,

revokes the current legal framework and sets another one that truly guarantees the rights to truth, justice and comprehensive reparation to the victims.

### **On the general measures of application**

- ■ ■ Demand the State to implement, in a coherent and coordinated manner, a policy for infancy into the national, departmental and municipal development plans that lead to a real safeguard of the rights of the children provided in the Convention on the Rights of the Child, its Optional Protocols and other relevant norms.
- ■ ■ Demand the State to guarantee the real participation of civil society organizations, non governmental organizations, children and adolescents in the implementation of public policies on children and adolescents.
- ■ ■ Demand the Colombian State to recognise publicly the importance of human rights and that the public servants refrain from questioning the work undertaken by the organizations that defend them.

- Demand the Colombian State, from a human rights framework, the inclusion of protection measures that children must have into the human rights plans and programmes that the Public Force develops and that the training plans include adequate budgets.
- Demand the Colombian State to offer on a free and continued basis, different programs and studies for teaching staff on human rights in general, and on children's rights in particular.

### **On the general principles**

- Demand the Colombian State the adoption of preventive and punitive measures against the members of the Public Force that are involved in abuses of human rights affecting street children and that it guarantees a decent living for street children, especially bearing in mind that the State counts on strong financial sources coming from the international community.
  - Urge the Colombian State to investigate, in a rapid and timely way, assassinations of children committed in actions considered by their perpetrators as "social cleansing campaigns", and in those cases, in which members of the paramilitary groups are involved, punish proportionately these abuses.
- Demand the Colombian State to include in its development plans at the national, departmental and municipal levels, clear policies that tackle the problem of street children, addressing the root social, familial and political causes that have made this phenomenon to increase in recent years.
  - Demand the Colombian State and irregular armed groups to refrain from exerting military actions in the indigenous people's territories, in particular of the Embera-Katio people and in this form, to contribute to the reestablishment of the social balance that has been broken due to the armed conflict.
  - Demand the Colombian State to design ethnical education and health plans for the indigenous peoples in the country, that permit to assist the basic needs of these populations in an efficient and opportune manner, without abusing of their world visions.
  - Urge the Colombian state to investigate from the ordinary jurisdiction, and to sanction in correspondence with the national law and the international protection instruments, those members of the Public Force that have incurred in homicides against children, very often attributed to "military mistakes" and others because they

consider these children as subversives.

- Urge the opposition armed groups to refrain from committing homicides against children, and ceasing indiscriminate attacks against the civilian population and the use of conventional weapons.
- Urge the Colombian State to sanction public servants, including members of the official armed forces and the police that target, without mediating a legal process, children and their communities of being part of insurgent armed groups, discriminating against their access to education, health, and in general, social well-being.
- Demand the Colombian State to develop continued programmes in the educational institutions that include students, parents or guardians, where issues such as gender equity, domestic violence, and the rights of women and children be addressed, procuring to stop any kind of discrimination in the familial, labour or social spheres.
- Urge the Colombian State to punish, according to the penal law and the international treaties it has subscribed and ratified those members of the Public Force and judicial functionaries that are involved in individual or massive

arbitrary detention against members of youth social organisations.

- Urge the irregular armed groups to proscribe from their military activities the imposition of codes of conduct for children and youth, in particular in those regions where they have control.

### **With regard to civil rights and freedoms**

- Demand the Colombian State to impede the realisation of mega-schemes that affect the identity and normal development of indigenous peoples and to sanction those public servants that act against such interests.
- Demand the Colombian State to comply with the obligations incurred in view of the several precautionary measures that the Inter American Human Rights System has ordered for the protection of indigenous and afro descendant peoples.
- Demand the Colombian State that any of the public servants produces negative statements with regard to the neutrality position facing the internal armed conflict that several indigenous and peasant communities have declared, and on the contrary, respect them because they are rooted in many cases, in

norms of International Humanitarian Law that are binding, and in others, grounded on the constitutional principle of self determination of indigenous peoples.

- Urge the Colombian State to investigate and punish, according to the penal and disciplinary law in practice, and international treaties on human rights, those members of the public force and judicial functionaries that have illegally searched or that under the figure of voluntary house searches, the residences of people living in zones of intense armed conflict, affecting psychologically and socially children, for they are abused their right to privacy.
- Urge the Colombian State to investigate and sanction, according to the penal and disciplinary law in practice, and international treaties on human rights, as applicable, those members of the public force and judicial functionaries that have tortured children while carrying out military operations of outside of them.

### **On family environment and other types of protection**

- Demand the Colombian government to implement programmes that prevent domestic violence efficiently starting from the school and the family.

- Demand the Colombian state to implement programmes for the institutional assistance of children temporarily separated from their parents or guardians, respecting principles such as family unity, through the prohibition of transfers of children out of the region, city or town where their relatives live.
- Demand the Colombian state to significantly reduce the time for the adoption processes of children, because with the time, it is more difficult to find a new family for these children.
- Demand the Colombian state to sanction, according to the penal and disciplinary law in practice, those public servants that are involved in processes of illegal adoptions.

### **On health rights**

- Demand the Colombian state to reform Law 100 of 1993, because it has made health something purely commercial, posing a serious risk on children facing illnesses.
- Demand the Colombian state to implement programmes for massive vaccinations that do not depend on international donations or mere emergency plans.
- Demand the Colombian state to stop aerial indiscriminate fumiga-

tions on crops considered as illicit, taking into account that the Ombudsman's Office, the Governor of Putumayo and the Administrative Court of Cundinamarca have pointed out the serious harms for health and the enjoyment of a healthy environment that aerial spraying has on children and their families.

### **On the right to education, recreation and cultural activities**

- Demand the Colombian State to adopt, within its educational policy, the recommendations made by the UN Special Rapporteur on the Right to Education, resulting from her visit to Colombia in 2003.
- Demand the Colombian state to develop programmes on ethnic education in correspondence to each one of the indigenous and afro descendant peoples that live in Colombia, bearing in mind that each one of them has its peculiarities, different from the others.
- Demand the Colombian state to offer efficient security programmes that impede that new homicides and death threats against teaching staff take place.
- Urge the Colombian state to stop the practices by the Armed Forces of invading schools and use them

as warfare trenches or places for housing military troops, and to sanction, according to the penal and administrative law in practice, those members of the official armed forces and the police that for this reason are abusing international humanitarian law.

- Demand the Colombian State to stop the military education that is given in primary and secondary schools and has that characteristic, because the parameters of discipline, symbols and future perspectives imposed in these institutions has as a goal the involvement of children from early childhood in the official armies.

### **On the special measures for protection**

- Demand the Colombian state to comply with the obligations derived from the ruling of the Constitutional Court that asks the government to guarantee the human rights of the displaced population, in general, and of children, women and, indigenous and afro descendant peoples, in particular, in aspects such as free education and health, the provision of profitable productive projects for the internally displaced peoples and the reform of its administrative machinery so that all of the proceedings referred to this population be realised in a rapid and opportune manner.

- ■ ■ Demand the Colombian state to present an efficient action plan that involves short and middle term measures to implement ILO Convention 182, after its ratification by the national government during the first semester of 2005.
- ■ ■ Demand the Colombian state the development of programmes to assist children working in the harvest of coca leaves, known as "*raspachines*" because this work is considered as one of the worst forms of child labour and to stop any legislative initiative that states that children who participate in a given moment of the productive process of psychoactive drugs have to be punished.
- ■ ■ Demand the Colombian State the implementation of programmes to prevent and combat structural causes of child prostitution, underlying domestic violence and economic crisis that Colombians are passing through. Also that the government adopts appropriate measures for health assistance to address problems of physical or mental health affecting children that participate in coca related work.
- ■ ■ Demand the Colombian State to sanction those public servants, Colombian nationals or expatriates that have been involved in sexual tourism networks and child pornography.
- ■ ■ Urge the FARC guerrillas to stop any involvement of children into their ranks and to comply with the offer made to the UN Special Representative of the Secretary-General on children in the armed conflict of not recruiting children under 15 years old. Also that they seek a humanitarian agreement to release all of the children that are part of their organization.
- ■ ■ Demand the ELN rebels to stop any involvement of children into their ranks and to comply with the "Mainz Agreements" in which it committed to not to recruit children under 16 years old, and that they seek a humanitarian agreement to release all of the children that are part of their organization.
- ■ ■ Demand the paramilitary groups to stop any kind of involvement of children into their ranks and that they fulfil their promise to release all of the children that belong to their blocs in the framework of the current negotiation process with the Colombian government.
- ■ ■ Demand the Colombian State to stop any kind of indirect use of children in the armed conflict, through the realisation of civic and military campaigns, particularly to

- cease the programme “Soldiers for one day”, or “Clown soldiers”, among others, as well as through the payment or illegal constraint to force children to serve as informants of the official armed forces and the police. This latter taking into account that state control bodies such as the National Procurator-General’s Office reported this type of programmes as abusive of the fundamental rights of children.
- Demand the Colombian State to take into consideration the Observations made by the National Procurator-General’s office, as well as several non governmental organisations, about the failure that presents the demobilisation programme for children offered by ICBF.
  - Demand the Colombian State that without dismissing the possibility of starting a reform to enable demobilised children to be fully restituted in their rights, it complies with the mandate established in the current legislation, in particular regarding the order given to all members of the armed forces and the police to give ICBF, in a maximum time frame of 36 hours, those children that have demobilised from the armed conflict, because they were captured or they gave up voluntarily.
  - Demand the Colombian State to take administrative and political measures that permit those institutions such as the National Attorney’s General office (Fiscalía General de la Nación) assumes seriously the sanction of the crime of forced recruitment that is enshrined in the penal law, taking into account that there is total impunity around it.
  - Demand the Colombian State to release the reservation made to the Rome Statute that states that war crimes provided by this Statute, including recruitment of children can not be considered by the ICC for a period of 7 years after the ratification of this treaty by Colombia.
  - Demand all parties in conflict, including the Colombian State, to undertake programmes to dismantle anti-personnel mines with the purpose of avoiding that children continue to be victims of this type of weapons.
  - Demand the Colombian State to comply with the obligations regarding treatment and physical, mental and social rehabilitation of children victims of anti-personnel mines.
  - Urge all armed parties, including the Colombian State to stop practices

of gender related violence in the armed conflict.

- Demand the Colombian State to investigate and sanction according to the penal law in practice, those members of the irregular armed groups and of the official armed forces and the police that have been involved in cases of violence against women and girl children.
- Urge the irregular armed groups to stop kidnappings against children and the Colombian State to impartially investigate these crimes, as well as to impede that legal framework measures planned for the demobilisation of armed groups pretend to forbid this sort of crimes.

#### **On the right to protection in situations of deprivation of liberty**

- Demand the Colombian State to take urgent measures to overcome

in a real and lasting manner, the problems of children deprived of their liberty that live in crowded re-education institutions.

- Demand the Colombian State to sanction, according to the penal law in practice, those members of the public force and staff of centres of re-education that have been involved in torture or cruel and degrading treatment against children that are in conflict with the penal law.
- Demand the Colombian State to refrain from promoting legal reforms that punish children in a similar form than adult people, and that state that detention punishment is the primary resource within the juvenile penal accountability system and that they ignore the pedagogical and educational purpose of this system.

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- 2 Economic Commission for Latin America and the Caribbean, ECLAC, "Social Panorama for Latin America and the Caribbean", 2000-2001. And General Accounting Office of the Republic of Colombia (Contraloría General de la República): "Evaluación de la Política Social 2003" (Assessment of the Social Policies, 2003). Bogotá 2004
- 3 Mieles, Ernesto and Prada, Gladys. "Necesidades o Derechos: ¿Cómo medir la pobreza?" In UN Periódico. Universidad Nacional de Colombia. 20 de marzo de 2005
- 4 UNDP Colombia Office "The polemics on the figures." In: Hechos Del Callejón No.1, March 2005, citing the National Social Ministries of the Catholic Church.
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- 6 Contraloría General de la República, "Colombia entre la exclusión y el desarrollo", Bogotá, 2002.
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- 8 Comisión Colombiana de Juristas. "Colombia: en contravía de las Recomendaciones internacionales sobre Derechos Humanos". Octubre de 2004
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- 10 In order to have a broader knowledge on these paramilitary groups, see the Sentence by the Inter American Court on Human Rights: "Case of 19 merchants". San Jose, Costa Rica, November 2004.
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- 22 Procuraduría General de la Nación y UNICEF. "La infancia, la adolescencia y el ambiente sano en los Planes de desarrollo departamentales y municipales", marzo de 2005.
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- 39 Socially marginalized people are those who are destitute, street boys and girls, burglars, sexual workers, homosexuals who are prostitutes, drug addicts, people with penal records or supposed delinquents and petty criminals.
- 40 Source: Database of the Colombian Commission of Jurists.
- 41 Corporación "Colectivo de Abogados 'José Alvear Restrepo'": 34 homicidios de jóvenes cometidos en 2004 en Magangue, Bolívar. 15 de febrero de 2004, Bogotá-Colombia, en www.actualidadcolombiana.org.co y Colectivo de Abogados José Alvear Restrepo, 10 de febrero de 2005.
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- 45 Escuela Juvenil de Derechos Humanos "Mario González", Corporación PROMOPAZ. Informe sobre la situación de la educación pública en el municipio de Piedecuesta, Santander. Marzo 11 de 2005.
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## FOLLOWING ORGANIZATIONS SUSCRIBE THE ALTERNATIVE REPORT

- Coalition against the involvement of boys, girls and youths into the armed conflict in Colombia:
    - Fundación Dos Mundos
    - Fundación Creciendo Unidos
    - American Friends Committee, Comité Andino de Servicios
    - Colectivo por la Objeción de Conciencia
    - Justapaz
    - terre des hommes – Alemania
    - Fundación para la Educación y el Desarrollo – FEDES
    - Taller de Vida
    - Defensa de los Niños Internacional – DNI, Colombia
  
  - Colectivo de Abogados “Jose Alvear Restrepo”
  - Comisión Colombiana de Juristas
  - Corporación Yira Castro
  - Fundación Manuel Cepeda Vargas
  - Humanidad Vigente Corporación Jurídica
  - Instituto Latinoamericano de Servicios Legales Alternativos, ILSA
  - Asociación Casa del Niño
  - Escuela Popular de Derechos Humanos “Mario Andrés González”. (Piedecuesta Santander)
  - Corporación Acción Humanitaria por la Convivencia y la paz del nordeste antioqueño “CAHUCOPANA” (Nordeste Antioqueño, Remedios - Segovia)
  - Red Juvenil de Medellín.
  - Asociación Regional Juvenil “ASOJER” (Arauca)
- Instituto Cerros del Sur “ICES”. Potosí Ciudad Bolívar
  - Corporación Sembrar
  - Proyecto «Colombia Nunca Más»
  - Campaña «Colombia, Nunca Más Impunidad: Verdad, Justicia y Reparación”
  - Misión Médica
  - Asociación MINGA
  - Misioneros Claretianos
  - Fundación Comité de Solidaridad con Presos Políticos
  - CREDHOS
  - CUT Valle
  - Comité Permanente de Derechos Humanos seccional Pereira
  - Corporación AVRE
  - ECATE
  - ANUC-UR
  - SINTRAMINERCOL
  - ADE
  - FECODE
  - ASONALJUDICIAL “Asociación Nacional de Funcionarios y Empleados de la Rama Judicial”
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  - Secretaría Técnica Marcha Mundial de Mujeres
  - BENPOSTA
  - Fundación Tierra y Patria
  - Fundación MENCOLDES



## Coalition against the involvement of boys, girls and youths into the armed conflict in Colombia



Defensa de los niños  
Internacional - Colombia



FUNDACIÓN DOS MUNDOS



COMITE ANDINO DE SERVICIOS



Comisión  
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Colectivo de Abogados  
"José Alvear Restrepo"



Humanidad  
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