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RIGHTS OF THE CHILD

Written statement\* submitted by the Colombian Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2003]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

### Human rights of boys and girls who are no longer combatants in the conflict

Many girls and boys in Colombia are in a critical human rights<sup>1</sup> situation. 60% of the child population lives under the poverty line<sup>2</sup>. Of this population, 9% lives in conditions of misery<sup>3</sup>. The situation is so serious that the UNICEF representative for Colombia indicated that the past decade was a lost decade for children's rights in this country<sup>4</sup>. As we illustrate below, paramilitary groups and guerrilla groups recruit girls and boys for the war, within a context of grave violations to Colombian children's human rights.

In spite of the insufficient recording of statistics regarding this issue, the existing data makes the State's lack of capacity to prevent and eradicate domestic violence and sexual exploitation against girls and boys obvious. During the year 2001, the Institute of Legal Medicine pronounced judgment on 10,981 cases of domestic violence and 11,324 cases of sexual violence against girls and boys<sup>5</sup>. In 1999 more than 25,000 girls and boys were submitted to prostitution<sup>6</sup>. For that same year, the Administrative Security Department reported that 54 networks that traffic girls and boys had been identified within Colombia<sup>7</sup>.

As indicated in the obligations contracted by the Colombian State and in international human rights guidelines regarding this issue, the first measure that the State should take to stop girls and boys from breaking the law or from being recruited by armed actors should be to ensure them the full scope of their rights, and among them, the right to an education in accordance with their human dignity. Nonetheless, in Colombia, near 3,000,000 school-age girls and boys do not go to school; that represents 21.5% of the total child population. Approximately 1,600,000 of them are girls. In addition, 20,000 to 30,000 girls and boys are homeless<sup>8</sup> and approximately 2,500,000 are underage workers, of which 800,000 are six to eleven years old.

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1 In Colombia there are 6,814,217 girls and 7,079,504 boys. Socio-demographic Indicators System for Colombia, National Planning Department), *Children*, Bogota, SISD & DNP, Bulletin No. 12, Chart No. 1, 1996, page 7.

2 National Statistics Administration Department quoted in Ombudsman's Office, *Report on Children's Human Rights in Colombia during the Year 2001*, Bogota, mimeo, pg.2.

3 National Statistics Administration Department quoted in Ombudsman's Office, *Report on Children's Human Rights in Colombia during the Year 2001*, Bogota, mimeo, pg.2.

4 This opinion was stated in the District Inspector's Office on May 28, 2002. The opinion is based on the analysis of the report presented by the Colombian State at the World Summit for Children.

5 Information furnished by telephone to the Colombian Attorneys Commission by the National Institute of Legal Medicine and Forensic Sciences in the month of August 2002.

6 Calculations show that that three-fourths of them are girls. National General Prosecutor's Office, quoted in Ombudsman's Office, *Report on Children's Human Rights of in Colombia during the Year 2001*, Bogota, mimeo, pg. 20.

7 Administration Security Department, quoted in Ombudsman's Office, *Report on Children's Human Rights of in Colombia during the Year 2001*, Bogota, mimeo, pg. 10.

8 Presidency of the Republic, National Planning Department, *National Development Plan, Change to Build Peace 1998-2002*, Bogota, DNP, Volume 2, 1999, pg. 263.

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The human rights situation of girls and boys in this country has been aggravated by the socio-political violence. From October 2000 to March 2001, one girl or boy died every three days, due to socio-political violence. During the month of July 2001, 74% of the total displaced population consisted of women, girls and boys <sup>9</sup>.

Around 3,000 girls and boys are in the paramilitary groups and approximately 2,000 are in the guerrilla groups<sup>10</sup>. During her visit to Colombia<sup>11</sup>, United Nations Special Rapporteur on Violence against Women Radhika Coomaraswamy received testimonies from youths recruited by the actors in the armed conflict. In her report she stated the following,

“When armed groups try to increase their numbers, the children in the rural zones<sup>12</sup> and those from economically limited urban groups become an easy prey for recruiting. Armed groups promise the children an education and possibilities of a better future. It is not easy to establish the difference between voluntary recruiting and forced recruiting. In general, children are obliged to enlist because of poverty and violence” <sup>13</sup>.

To a great extent, recruiting girls and boys is a consequence of the lack of State protection. It also constitutes an abuse of the power that weapons yield, perpetrated by the actors in the armed conflict. According to Colombian criminal law, this type of abuse is a crime<sup>14</sup>. However, this crime is committed and goes completely unpunished.

Armed actors' violations of the human rights of girls and boys in the lines also go unpunished. The testimonies of some youths no longer involved in the armed conflict prove that girls who formed part of an armed group were submitted to various types of sex-based violence, such as slavery and sexual violence, sexual harassment by their superiors, and forced birth control<sup>15</sup>. Nonetheless, no investigations are being forwarded aimed at determining those responsible for the crimes, sanctioning them and reestablishing the victims' rights.

True stories of girls and boys no longer involved<sup>16</sup> in armed groups give an account of how

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<sup>9</sup> Social Solidarity Network "Attention to Populations Displaced by Violence in Colombia", Management Report, Bogota, January 2000 to June 2001.

<sup>10</sup> Family Welfare Institute, "This Is Not Even Our War ... and We Are Losing It", *CODHES (Information Bureau for Human Rights and Displacement)*, Bogota, Bulletin No. 27, January 26, 2000, pg. 6.

<sup>11</sup> From November 1 to 7, 2001.

<sup>12</sup> According to the Colombian Family Welfare Institute, 95% of ex-combatants are peasants.

<sup>13</sup> Human Rights Commission, E/CN.4/2002/83/A.

<sup>14</sup> The International Criminal Court Statute sets forth that recruiting minors under 15 years of age is a war crime (Article 8, Number xxvi).

<sup>15</sup> UN, E/CN.4/2002/83/Add.3, paragraph 55.

<sup>16</sup> Boys and girls no longer involved are those who have left the guerrilla groups or the paramilitary groups in one of the following circumstances: a) they have voluntarily abandoned the armed group, b) the armed group

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they suffered many violations of their human rights before they were recruited and during the time they remained in the armed groups. Due to the lack of a legislation that agrees with international human rights instruments, many girls and boys no longer involved in the armed conflict are presently deprived of their liberty. Many judges treat girls and boys no longer involved in the armed conflict as criminals who have broken the law; they deny them the possibility of rebuilding their lives in conditions of dignity.

Approximately two years ago, the Colombian Family Welfare Institute, with the support of the Ombudsman's Office and some non-governmental organizations, undertook a pilot project for girls and boys no longer involved in the armed conflict. In the framework of said project, an interpretation was given to internal norms, which tends to protect the fundamental rights of girls and boys who no longer participate in the conflict, offering them personal, psycho-social assistance. However, not all of the girls and boys no longer involved are benefiting from said program. In practice, the lack of an adequate legislation propitiates various interpretations of existing norms and, therefore, discriminatory and arbitrary treatment.

Girls and boys no longer involved in the armed conflict are also victims of the armed conflict. Consequently, in no case whatsoever should they be treated as criminals. It is very important to issue a law that seeks to prevent recruiting girls and boys and to protect and give integral attention to girls and boys no longer involved in the armed conflict.

Unfortunately, the bill of law regarding this issue presently in process in the Congress of the Republic does not meet this objective. To the contrary, its approval would contribute to further impairing the rights of boys and girls no longer involved in the armed conflict<sup>17</sup>. Although the bill of law acknowledges that girls and boys no longer involved in the armed conflict are victims of it<sup>18</sup>, it sets forth distinctions in the legal treatment to be given to these girls and boys, based on the gravity of the crimes they have committed. Acts in which the boys and girls are forced to participate in the context of war are, by definition, abuses against them themselves and are part of the brutal, humiliating treatment to which they are submitted. Therefore, it is contradictory to treat persons in the condition of victims as criminals.

It is urgent that the Human Rights Commission urge the Colombian State to meet its obligations regarding children under the terms indicated by the Inter-American Human Rights Court in a recent advisory opinion; that is to say, taking into account that

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to which they belonged turned them over to State authorities, c) they were apprehended by one of the State security bodies.

<sup>17</sup> Attached is a document containing the main concerns regarding the mentioned bill of law.

<sup>18</sup> Article 3.

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“the true, full protection of children means that they may broadly enjoy all of their rights, among them the economic, social and cultural rights granted them in various international instruments. Member States to international human rights treaties are under the obligation of adopting positive measures to ensure the protection of all of the rights to which children are entitled”<sup>19</sup>.

As to girls and boys no longer involved in the armed conflict, the positive actions that the State should undertake would consist of preventing recruiting and using girls and boys in the armed confrontation, of taking actions aimed at getting the girls and boys out of the armed groups, and of ensuring a treatment for the girls and boys no longer involved, which will enable them to integrally recover and enjoy all of their rights. As a maximum priority, the Colombian State should assume the investigation and sanctioning of those responsible for using girls and boys in the war.

It is also urgent that the paramilitary groups and the guerrilla groups be called upon to comply with the norms of humanitarian law. Along these lines, it should be taken into account that in Colombia humanitarian law norms<sup>20</sup> offer more protection to minors under 18 years of age, because the Colombian State has acknowledged that the minimum age to participate in armed conflicts is 18 years old<sup>21</sup>.

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<sup>19</sup> International Human Rights Court, Advisory Opinion OC- 17/2002, dated August 28, 2002.

<sup>20</sup> The Additional Protocol to the Geneva Convention dated August 12, 1949 regarding the Protection of Victims of Armed Conflicts without an International Nature (Protocol II), to which Colombia is a party, stipulates in Article 4 Number 3, Letter c that "*children under fifteen years of age will not be recruited in the armed forces or armed groups and will not be allowed to participate in the hostilities*".

<sup>21</sup> Colombia's reservation to Article 38 in the Convention on Children's Rights. Article 38 in the Convention states that Member States will adopt all possible measures to ensure that persons who are under 15 years old not participate directly in the hostilities, and that Member States will abstain from recruiting in their armed forces persons under 15 years old.

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