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boletín 11



Coalition against the involvement of boys, girls and youth to the armed conflict in Colombia

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The implementation of the Convention on the Rights of the Child



While being a candidate, president Alvaro Uribe proposed "*more severity on the minor delinquent of high dangerousness*"¹ and to "*evaluate if 18 years old must continue being the minimum age of penal responsibility or the convenience of reducing it*"². According to these proposals, on the beginning of 2004 the congress representative, Gina Parody, from the government's party, presented the law project 225 of 2004, "*by which system of juvenile law responsibility in Colombia is adopted*", that was afterwards retired in order to present the statutory law project No.032 of 2004, "*by which an Infancy and Youth Law that derogates Decree 2737 of 1989 -Code of the Minor is issued*".

Unlike the previous law proposals related to childhood, this project of statutory law express an intention of integrality and besides establishing a system of juvenile criminal responsibility, measures that tend to guarantee the rights of boys and girls with the aim responding to international demands about childhood and youth hood rights.

... CONTINÚA EN LA PÁGINA 10

1 Point 34 of the "Democratic Manifesto of 100 points". Alvaro Uribe Vélez.

2 Government Program, Alvaro Uribe Vélez, President 2002-2006. May the 6th, 2002.



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COLECTIVO POR LA OBJECIÓN
DE CONCIENCIA



tercero de hombres - Alianza



Fundación Creciendo Unidos



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The Colombia Coalition finished 2004 with a positive balance of the tasks developed in order to include in the public agenda the topic of childhood and youth affected by the direct and indirect involvement in the armed conflict in different spaces of decision-making, with an important effort on the Congress and with relations with control organizations concerned by the topic. In the same way it continued with its sustained work of raising awareness and training teenagers and children that are in the most hardly punished zones by stigmatisation, pursuit and disrespect of children and youth rights, supporting ourselves on organizations with which members of the coalition work, in places such as Santander, Putumayo, Bolivar, Sucre and the south of Bogotá.

In permanent dialogue with institutions devoted to the protection of the rights of the childhood and youth, the Colombia Coalition assumed the roll as a substitute member of the entities that represent the topic inside the National Peace Council, an organization created by Law 434 of 1998 and that hadn't been called by president Alvaro Uribe. Thanks to a series of legal actions, the government was obliged to call to such a space and in it the COALICO hopes to contribute to its reflections, in particular in moments where the reported demobilization of paramilitary combatants occupy the mass media highlighting the argument that it is better to have at least one faction of the conflict out of the scenery in order to concentrate in defeating the guerrilla by the military via.

Nevertheless, the issue is not that simple. Besides the polemic caused by the project of law that looks towards to punish paramilitaries for serious felonies against human rights committed during more than 20 years in the country, with sentences that don't rise above 10 years of prison, and with weak approaches about truth, justice and reparation, the government and paramilitary leaders themselves insist they won't be extradited because of drug dealing, and that they need economical resources to invest in resocialization plans for excombatants, appealing to their condition of persons who are tired of the war and look forwards to reintegrate into the society.

Among these discussions, it is not at all mentioned that the whole society is tired of war, that the dialogue and negotiation via with the guerrilla groups is the most convenient for the country and that the issue of child and young paramilitaries and the way they would be treated is not explicitly included on the Santa Fe de Ralito negotiations.

At the same time, the congress discusses about a project of law to reshape the 1998 Minor's Code, that introduces some guarantees for the human rights of children and teenagers, but in which they incorporate much more serious punishment that those that could be applied for adult paramilitaries. The central article of this bulletin recovers the most important concerns and analysis of the COALICO in order to generate reactions from those who are interested in the topic of the protection of children and youth direct or indirectly involved in the armed conflict.

While on the legal level these are the discussions, on the level of the development of the armed conflict, actions like indiscriminate fumigations in several rural regions of the country, combats and attacks against civilian population, pursuit and stigmatisation to young men and women in poor areas of Colombian cities and death, torture, disappearance, "retentions" and harassment against children and youth in conflict zones, keep on raising the urgency of society to mobilize in order to demand integral and coherent public policies according to the international standards that guard for the well-being of these part of the population.



**"PLEASE HELP US.
YOU CAN DO
SOMETHING"**



With this sentence, it finishes one of more than 35 letters that young men and women wrote to members of the Congress of the Republic responsible for the discussion of the law project that will modify the Childhood Code (Called Code of the Minor) in Colombia.

In the context of a national training workshop with both sexes teenagers coming from at least 8 regions of the country where the organizations members of the Coalico work at, the participants analyzed the problematic aspects of the proposal discussed until October 2004 in the Congress of the Republic. Many of the aspects were object of discussions and modifications on December the same year, date in which representatives of the Coaliton participated on debates organized together with organizations of the civilian society harmonizing the Childhood Code (see in this Bulletin the central article about the Code of the Minor).

Anyway the Coalition started an analysis mechanism about the previous project, counting on the opinion and voice of these young people, among which persons affected by forced displacement, persecution and continuous uncertainty in zones of armed conflict, unemployment, lack of access to education, poverty and recently having demobilized from the conflict can be found. We transcribe some paragraphs of these letters:

The voice of young men and women

"We manifest that now a days our region (Cūcuta, Norte de Santander) has been struck and invaded by the violence that presents everyday in our country, that absurd violence that converts us in victims and limits us and denies our rights. Therefore, we want by this means, to show our round inconformity by the way social justice is distributed, and besides, without giving the minimum importance to our position and thoughts. We want to remind you that us, children and youth came to the world to live, not to suffer, we are part of the solution of many problems".

"The present is to inform you that by means of this letter you hear the voices of a group of young persons, concerned about education in our locality, South San Cristobal (Bogotá)".

"Colombian boys and girls want you to have in mind that we have all the right of being listened and especially, of giving our opinions about what we want and feel".

"Unite our voices so that they are heard in each corner of the map."

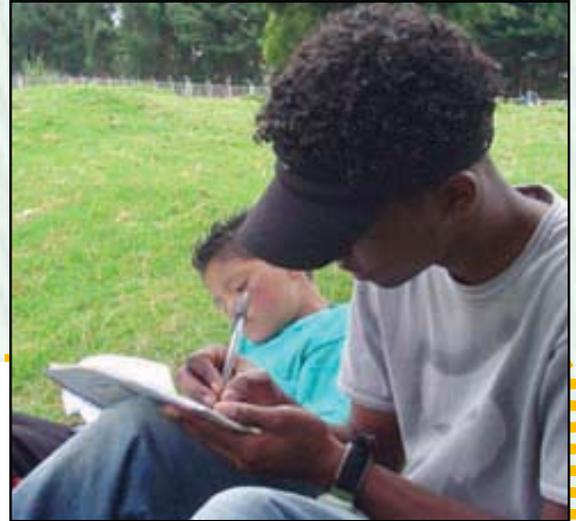
"We, the children, young men and women of the Coalition request to have in mind that we all are Colombia, not only some people"

"We are demobilized from the armed conflict young men and women and we don't have the benefits that they have promised us. Understand that you told us so in all mass media, TV, radio etc. We are waiting for your answer".



Causes of the infractions to the penal rules and protection of the rights as a mechanism of preventing the infraction to the penal law.

"We consider that some articles of the current Code of the Minor don't adjust or don't approach to a joust justice (sic) with us; many times they penalize us like adults. We suggest that the age of 12 years is too early to subject us to trials; we want you to study alternatives to adjust these laws to our physical and mental integrity. We must be judged in a more adequate way; we must be more oriented".



A 14 years old participant coming from Arauca pointed clearly the causes of the situation of childhood and youth that pushes hundreds of children and young men and women to involve in armed groups:

"It seems to me that a country with so many wealths, with so many economical income, can not give the **educational** service as it should. For me, in a country with so many expectative, education should be free. I would propose the previous thing to the government, instead of thinking in privatising it.

Poverty: I think it is terrible that in a country like this one, there is such a high level of poverty. I think this is due to the corruption that exist in our country.

Abuse of Authority: I as a young man have seen cases of abuse of authority and violations, by means of the public and judicial authorities. I feel bad when I hear that democratic security is to protect the civilian population, and instead of this, what they do is to abuse of their authority.

Health: I think that the government makes few things in order to satisfy the needs of Colombians regarding medical assistance. There have been many cases of people dying due to the non-attendance of medical attention, most of the cases this happens because people doesn't have economical resources and hospitable centres don't give the health service.

Food Non-attendance: I feel sorry that in a country like this there are so many cases of death because of this reason, that is food-non-attendance, meaning hunger".

"The problematic that we are living in our region (La Hormiga, Putumayo) is very difficult, because fumigation has affected a lot...both health and work. Some children have had to abandon school. I think that is why some boys and girls involve with armed groups or they things that they shouldn't do. That is why a child should not be punished. The different entities in the Congress must help in to the benefit of the different families. And they must never punish a child, because he or she feels very bad, by not being able of helping his family during the crisis. And they must not involve in armed groups by mercy. "In your hands is changing the world. Help overcoming the crisis and don't forget La Hormiga, Putumayo."



"We think that deep inside we are in a war, that as boys and girls we don't have to see or being mistreated, or taken our live away only because we don't have knowledge since we were small. How is it that we have to pay for felonies, or sentences knowing that who should pay for all this are those who destroy our family, in spite of the fact that we are going thru poverty, misery and other dangers? Why do they have to come here and invade what is ours and even worst to threaten us, because here we, all of us who live in it are innocent people. Later we have to pay the penalty, knowing that we were innocent and now we are "worst" people? Guilty is who makes it!".



A young man of a popular sector in Bogotá pointed : "Principally I want to tell you that children when committing mistakes must respond for their acts, but in a fair way, where they have the rights of defending themselves and not of being mistreated, by accusing them in an unfair way, as hitting them. When some mates try to sale on the streets products and objects for the sustenance of themselves and of their families, the police is very aggressive. When it comes to pick this children (from the streets) they treat them in a very cruel way, in many cases they violate their human rights. I am 17 years old and I also live in a neighbourhood in the south west of the capital (...)We wave gang problems, illegal groups, well in the sector I have seen many Police stations, but they do nothing to counter and worthily judge the offenders and in many cases it would seem like the law would take the same gang groups (...)Children and teenagers who traffic narcotics, some times they do it because somehow they don't have a way of helping their families. So when they create juvenile delinquency groups and some times the State is guilty itself, because it doesn't give these guys any resources, or training where they have to employ their time on incorrect things like drug dealing. (...)The best answer towards different youth problems are not forced punishments, but guiding them on a good life way for them and their descendents.



"We think that instead of a punishment (to a child who commits "felonies"), they should give him or her psychological support, because most of the children do it, not by their own willingness, but principally because of economical problems. We would also like that the age (in which children are punished) (...)would be modified from 12 to 18 years old, to an age between 15 and 18 years old, because they have maturity enough to face the consequences of their acts. We respectfully request you to modify the process that is currently given to a child for his penalization."



Obligatory Military Service and direct and indirect involvement with armed groups



JT a 17 years old girl wrote: "The aim of this letter is to ask you in a very kind way for the respect of the Convention on the Rights of the Child an also ask you for things such as: Not obliging children to give the Obligatory Military Service, because the only fact of obliging us to wear a military uniform and to take a gun, is a very big indication to participate in armed groups, even if you want to or not, because they say you "you already know how to use a weapon, you have to come to my armed group".

"**D**isplaced children should not give the obligatory military service, and I think that instead, they should be given programs on how to work so that they can help themselves and their families".

Another young woman from Arauca said: "I don't think it is fair that demobilized boys and girls have to give the obligatory military service or being incorporated in a forced way to any other illegal or legal armed group, since this will only keep on supporting war, and on the contrary, they deserve education and a deign home".

"**I** am a person like any other; I have lived war myself and I don't want our children that are the present and the future, have to live this absurd war that doesn't benefit anyone, I think that the better way of stopping this war is to give it up, because there are no winners or losers here".

"**I**t is important to see the high number of children that have been recruited by guerrilla. It is a shame that boys and girls after having being demobilized have to give the military service at the age of 18, even more, that of the military "Service" carries on with disadvantages such us: psychological traumas, loving more the weapons than the Mother land..."

"**R**egarding the military service, I think it shouldn't be obligatory: that if a young man or woman turns 18 he chooses if he wants to give the service or not. I graduate this year from school and I went to the District and I became a "remiss" and when I turn 18, I have to present myself and I don't want to".



The State and the adult society's tasks



"The Convention on the Rights of the Child has been the most important act of humanity in relation to childhood and youth hood, in the sense of recognizing their citizenship as a social subject. This Convention urges to be feed and enriched with the new categories of rights that keeping the generality child-subject, but recognizing their cultural and ethnical specificity. Reflecting myself on the Code of the Childhood, regarding boys and girls in the armed conflict, it may be seen from the point of view that boys and girls need to be protected both before and after they are borned. Then, while they are growing up, they need school opportunities in order to keep an integral formation as it should be.



"The State must protect us and our families. We want and we believe it's fair, it is time for our lives to start changing and happiness, that we once had, comes again to our faces. We hope that these simple words achieve to have the expected transcendency".

"Many entities in charged of guarding by the accomplishment of the rights of boys and girls (in quotation marks) don't make the effort of making a tour or visiting the department (Chocó); they only guide themselves by what mayors and governors tell them. It is said that the government is in charged of making pressure so that they (the rights) are accomplished, but it is seen that all this is not how it seems to be: Chocó is very, very abandoned by the president. We believe that in one of their tight work agendas, they should take time to listen the opinions and complaints that us, children have".

"One of the principal problems in Altos de Cazucá, in the south of Bogotá, is the high index of juvenile mortality caused by armed groups, also called "social cleaning". This problem is caused by the lack of authorities; due to that, there are many young men and women afraid of being murdered and they think that the most viable solution for this situation is to involve in those groups, and that is way, as time goes by the murders of young people, most of them innocent, will increase. We ask for help. Please, competent authorities, be present. Thanks for your attention."

"If the State has the obligation of protecting us against the conflict or trying to lower the indexes of possible involvements, the narcotics traffic, when they catch a child involved in this activities, the "guarantees "that the State presents on the sessions of the United Nations do not accomplish. The State must guarantee the exercise of the right to a free and non clasist education (article 63 of the Convention on the Rights of the Child).



"I also want to kindly ask you not to buy weapons; please do not contribute to war; invest in school, in markets for the people for example (...)When negotiations occur, please let displaced children and youngsters, the civilian population, the government and the armed groups be in the table. So that they get to a common agreement between all of them, let the young people say what they think and feel about war, and let all the present members express what they live".

Alternatives

"Regarding education, I would like them not to deny children the opportunity, either for being poor, black or from a different nationality, because the only thing they want is their well-being as persons in order to achieve their ideals. And at last, try that schools do not work as trenches or refugees for different armed groups, because they jeopardize many innocent lives".

"We, boys and girls have a lot of expectations about helping our people and guarding for the accomplishment of our rights; nevertheless, we have many obstacles, such as war, displacement, discrimination because of being displaced or black"

"We only ask you to listen to us. We are not a problem. We only want a better live quality, where they don't violate our fundamental rights, that are legally constituted in the Code of the Childhood".

"We are aware of the great importance that the penalization topic has regarding people under the age of 18 and that is why we keep the position of the non total privation of freedom. Meaning, we propose a system where the principal objective is to awake the conscience in the children of having an adequate vindication with the society, based on the coexistence rules where inclusion, social, political, religious, economical ethnical, philosophical diversities are included, and overall the desires and feelings of boys and girls are also include".





"We fight for the recognizing of children as subjects of law and not as objects of law. And this implies a group of (variant) responsibility but that must be accompanied in case of being violated (the law), in order to create a conscience according to the époque (age) that is going thru. We don't want a punishment create in us rancor feelings".

Another 14 years old young man from Medellín affirmed: "We know the problems that affect our sector such as: drug dealing, and the participation in the armed conflict where children are used as objects of a war that doesn't belong to us. That is why we can not be punished (we are not adults, and therefore we have a different condition than yours), because we have more a victim that an executioner condition".

That they have a clear vision of the way in which resources that are going to be yearly distributed in different departments are going to be invested, so that they reach small towns, called municipalities".



A young man from Barrancabemeja proposes: "I want them to put away the government's program "Soldiers for a day", because when we grow up it leads us to want to use a gun or ride a tank".

"My ideal is to see a Colombia without war and that we all have the opportunity of expressing and make visible our points of view about the Colombian problematic, referred to armed conflicts".

"I am going to be sincere with you and I don't want you to get offended: I know that very few of you will give this letter any importance, but even with one of you thinking about what I wrote, I would feel fine. What I want you to change is the idea of punishing children for committed felonies. They must respond, but with your help, some helps that we need such us psychological help. What I want is their rights to accomplish".

"I want you to debate the possibility of not combating in schools, that hospitals and churches have nothing to do with the conflict, because it is in the rights and is not getting accomplished, and you are doing nothing for them to be respected. Well, I want you to make accomplish the rights of the children, as human beings".



Nevertheless it is concerning that while protecting measures would have a progressive execution, criminalization of childhood would have an immediate execution...The proposal of the system of juvenile criminal responsibility included in the present project, has been justified according to a strange interpretation of the concept of holder of rights, according to which since boys and girls are holders of rights, they must be criminally responsible. In contrast, the Coalition has pointed that considering childhood as holder of right, derives on the State obligation to give them social, political and civilian guarantees so that such population develops in an integrally way their projects of life.

Additionally, on December 2004, senators Andrés González, Claudia Blum and Germán Vargas Lleras, the last 2 of them also related to the politics of the government, presented, as referees, a sheet of modifications to the law project, in which they make even harder the initial provisions with regard to juvenile responsibility.

Though the Convention on the Rights of the Child allows the existence of a system of juvenile responsibility, international rules establish specific limits:



a. The Specificity of the Juvenile system

The Juvenile Criminal system is not a criminal system adapted to people under the age of 18 and its specificity is not exclusively given by formalities or procedure issues (as the simple existence of a reclusion place different from that of the adults, or the participation of the parents or tutors of the child in the process), but by the aim that the measures pursuit.

While the occidental Criminal system applicable to adults looks forwards to "neutralize the offender"³, meaning, to protect society by using privation of freedom to those who commit an offence as a method, in a juvenile penal, the measures must look forward the integration of the child into society and to return the child his or her rights back. In the matter, the Constitutional Court has pointed that the judicial authority "*may impose to the minor offender protective or pedagogic-like measures, but it may never impose condemnatory nature measures*"⁴

b. Prevention of the juvenile delinquency : priority

The priority of a juvenile criminal system is to establish adequate strategies in order to prevent that children and teenagers commit infractions

3 Ferrajoli, Luigi. "The sentence on the democratic society". In Martínez, Mauricio "The sentence: guarantism and democracy". Gustavo Ibáñez Editions, Bogotá 1999.

4 Constitutional Court, sentence C-817 of 1999 MP. Carlos Gaviria Díaz.



c. The criminal process is the last resource

to the penal law, which is not solved with the implementation of penal systems that only offer sanctions towards actions considered as criminal, but that obviate a glance at the causes of the infraction, due to the fact that the causes respond to structural exclusion and discrimination phenomena inside the society.

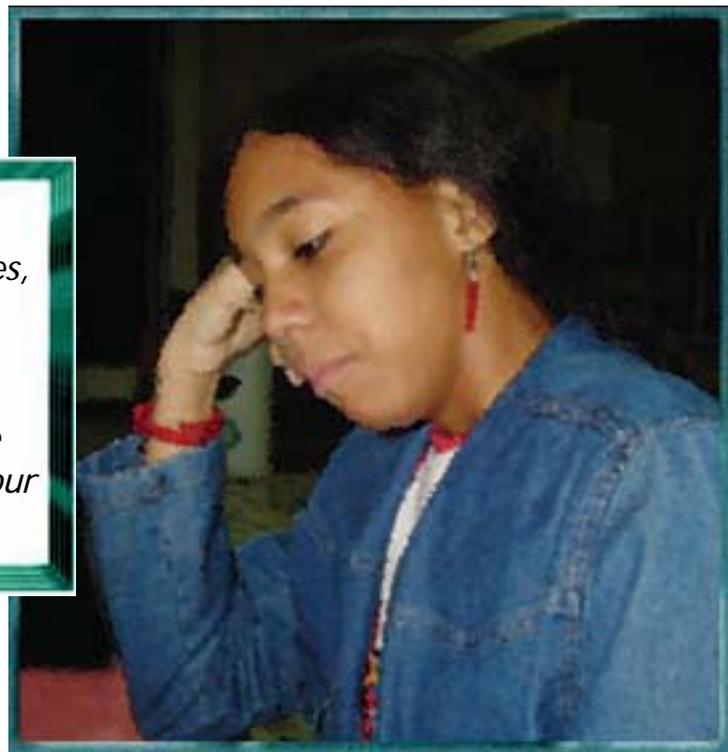
The first strategy towards juvenile delinquency must consist, then, in fully guaranteeing the rights of boys and girls as the more suitable mechanism of prevention. To this respect, the preamble of the Convention on the Rights of the Child points that children must receive the necessary assistance and protection in order to be able to fully assume their responsibilities inside the community.

Coinciding with this raising, the United Nations Guidelines for the prevention of juvenile delinquency (Riad Guidelines) point that a public policy must have in mind the need of achieving a harmonious development of boys and girls, of protecting their well-being, rights and interests, offering them educative and other kinds of opportunities and any other measure that allow to

" reduce the motives, needs and opportunities of committing infractions or the conditions that favour them" .

Having in mind that criminal judgement and freedom privation generate stigmatisation, and that the child is in an important stage of development of his or her personality, international rules establish the obligation of using criminal process as a last resource and they establish some clues in order to understand in what sense the penal process must be the last resource:

- The minimum rules of the United Nations for the administration of minor's justice ("Beijing Rules) invite to reduce to the maximum the number of cases in which a minor's system of justice must intervene.
- In what it concerns to the age, children's criminalization in the most critic ages of entrance to the adolescence⁵, may harm them for a life time. In this aspect the minimum Rules of the United Nations for the administration of justice to minors (Beijing Rules) establish that: *" In juridical systems that recognize the concept of criminal age majority with respect to their minors, its beginning should not be established on a too early age having in mind the circumstances that accompany intellectual and emotional maturity" .*



5 The project contemplates that children from 12 years old would be criminally responsible.



d. The privation of freedom is the last resource

The Beijing Rules stipulate that if children are confined in penitentiary establishments, it must last the minimum possible time; nevertheless, the law project establishes sentences that last until 15 years⁶, which can not be considered as short periods for a child in fully physical and emotional development.

The Committee on the Rights of the Child has pointed to the Colombian State (CRC/C/15/Add.137) that long term reclusion for offender children stops being a socioeducative measure and converts into a privation of freedom similar to that applied on adult persons. According to the Committee, instead of making longer sentences, states must create alternative measures that allow a real education process.



e. Special Situations require special protection

Children's rights treaties (among them the Convention on the Rights of the Child, Agreement 182 of the ILO or the Optional Protocol of the Convention on the Rights of the Child relative to the participation of children in armed conflicts) explicitly point some facts that constitute a harm to the children's rights; towards these facts, they establish that the State has the obligation of preventing their occurrence and protecting children who are victims of them:

- Behaviours related to the production, traffic and/or commercialisation of stupeficients,
- Participation of children in the armed conflict.

Opposite to international rules and recommendations, the project that penalizes children who participate on the production and traffic of stupeficient substances and those who have been involved in the armed conflict.

DEMobilized BOYS AND GIRLS

Towards this serious situation of the rights of the children, the State must adopt all possible measures to impede recruitment and use, and give them all the needed assistance for their physical and psychological recuperation and their rehabilitation and social reintegration (Agreement 182 of the ILO, Convention on the Rights of the Child and Optional Protocol of the Convention on the Rights of the Child relative to the participation of children in armed conflicts).

In the same way, given that the involvement of children constitutes a felony, according to the national classification (article 162 Criminal Code) and international (article 8, war crimes, Statute of the International Criminal Court) the State has the obligation of sanctioning those adult persons responsible of this felonies.

The statutory law project contemplates the exoneration for political felonies, but excepting those "*felonies of special seriousness*". At the same time it contemplates in its list of felonies of special seriousness a series of behaviours, that in many occasions, involved children are forced to commit⁷. That way demobilized boys and girls will traverse the serious risk of being judged for felonies they were obliged to commit while being victims of the felony of illegal recruitment.

6 The sheet of modifications establishes freedom privation measures from one to 5 years for serious felonies (sty.398) and from 7 to 15 years for specially serious felonies (article 399).

7 About how children are obliged, see Human Rights Watch (You will learn not to cry); ICBF and the Nation's General Attorney's office (Warriors without a shadow) and la Defensoría del Pueblo (Bulletin Childhood and its rights No.8, Childhood in the Colombian armed conflict).



WHO PARTICIPATES?

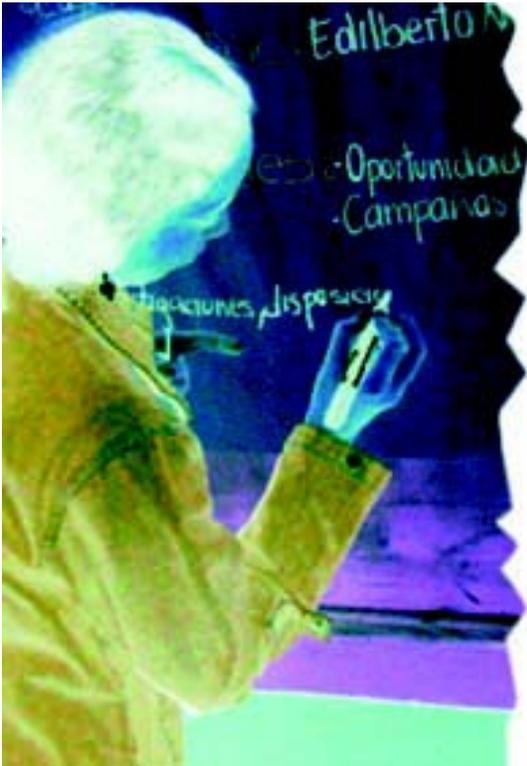
On 2000 the Committee on Rights of the Child recommended to the Colombian State "...to check its existent legislation and harmonize it with all the disposition of the Convention. It also recommends to the Part State to reactivate the initiated process to check the Code of the Minor (1989). In this process all the sectors that intervene the promotion and the protection of the rights of the child must participate and the activity must conclude as soon as possible" (CRC/15/Add.137). (Underlined out of the text).

Referring to the law project, the Third Report of the Colombian Government to the Committee on the Rights of the Child commented that it was elaborated "...supported on the contributions of experts specialized on the subject" and that in the process "diverse social organization participated, accomplishing this way the Constitutional principles that dedicate on participative democracy".

In fact, the law project was elaborated by a group of state institutions, foundations and international cooperation organizations⁸ and for its elaboration they counted on the support of criminal and family law professors. Nevertheless, with this tripartite participation, the recommendation of the Committee can not be given for fulfilled, in the sense of allowing the participation of all the sectors that intervene in the prevention and promotion of the rights of the child, starting by listening the voice of those implied.

Because of this, in November 2004, various organizations, among them, the organizations member of the Coalition Against the Involvement of Boys Girls and Youth to the Armed Conflict in Colombia (Justapaz, Taller de Vida, Colectivo de Objetores de Conciencia, Creciendo Unidos, terre des hommes Germany, Fundación Dos Mundos and FEDES), the Comisión Colombiana de Juristas, Humanidad Vigente, Beposta and the Colectivo de Abogados José Alvear Restrepo, sent a communication to the first Commission of the Senate, looking forwards to call for a wide national debate, that allow those who have been absent during the conciliation of this legislative initiative, to manifest their position towards the project.

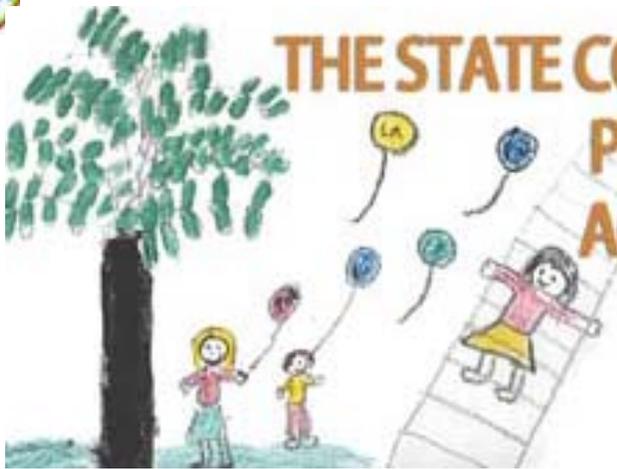
The participation of the social organizations is important; nevertheless there is an absence even more important. We as organizations defender of the rights of the children point that in this conciliation process it is essential to listen to boys and girls. In fact, if they are considered capable of responding in a penal way for their acts, they must be considered capable of, acting as holders of rights, they may express their opinions, so that they are considered in the context of this debate.



It is necessary to insist on the approach of the situation of the people under the age of 18 in the armed conflict, as "victims" not to underestimate them or to disqualify them but from the perspective of pointing the responsibility of the State and of the non-state and para-state armed groups, in the negative impact that the armed conflict has generated on boys, girls and youth in their condition of civilian population or involved in one of the parts.

Consequently, in relation to these children, passive subjects of the felony of illegal recruitment, the state answer must be to pursuit, investigate and sanction the adults authors of this felony, and not to judge children for facts they were forced to commit as victims of this felony.

⁸ The "Alliance for the Childhood", created on February 2004 and conformed by NGO's (Fundación Restrepo Barco, Visión Mundial, Save the Children UK, CINDE, Tear Found), Intergovernmental Organizations (ILO, FNUAP, UNICEF, World Health Organization WHO, the Organisation of American States OAS, World Food Program WFP), State Organizations (National Welfare Institute ICBF, DABS, Consejo Nacional de Planeación) and the entrepreneur sector (Refinería de Sal-REFISAL, Federación Nacional de Molineros de Trigo-FEDEMOL). (Information given by the ICBF, letter 14000-067845 of December the 9th of 2004).



THE STATE CONTROL ORGANIZATIONS PRONOUNCE THEMSELVES AGAINST THE AMBIGUITIES OF THE COLOMBIAN LEGISLATION

In spite of the multiple attacks that the Constitutional Court has suffered during the present government, there are still debate spaces raised from the State control organizations, that question the politics of the current administration, in response to the protection of the juridical goods that nationally and internationally the country commit itself to defend. It is essential that -in order to maintain what is consecrated in the 1991 Constitution-, the organizations of the civilian society could maintain a constant dialogue with this State institution, in order to support the reflections directed to improve the life of our childhood and youth affected by the armed conflict in the country.

The role of the Ombudsman's Office and the National General Attorney's Office, thru their delegates for childhood and family and the Defence of the Minor and the family, respectively, is crucial in the current time.

In fact, the government has approved laws that favour the negotiation processes with paramilitary groups (even though it manifests that they are negotiations with "any armed illegal

group"), such as Law 782 of 2002 that omitted the character of "armed groups of political opposition" to those who actively participated in the armed conflict, in order to start the negotiations with the Auto Defensas Unidas de Colombia, AUC in June 2003, that are currently in demobilization and reinsertion process.

With regard to that rule, the General Attorney's Office sent a concept to the Constitutional Court, relative to the necessity of reconsidering if children and teenagers who directly or indirectly involved in armed groups (of opposition, or para-state) must be penalized.

Given the importance of such concept, we transcribe extracts of the concept of the National General Attorney's Office :

CONCEPT OF THE NATIONAL GENERAL ATTORNEY'S OFFICE JUDICALIZATION OF DEMOBILIZED CHILDREN (EXTRACTS)

The Attorney presented the concept towards the Constitutional Court about the demand against paragraph 2 of the article 19 of Law 782, 2002:

" When it comes to people under the age of 18 involved with illegal armed groups, the judicial authorities, will send the documentation to the Operative Committee for Weapon Leaving, which will decide on the expedition of the certification that makes reference to the Decree 1385 of 1994, on the terms that the law consecrates."



" ... the public ministry asks itself if children and young people that have demobilized and that get to demobilize from illegal armed groups may be subjected to a processes of juvenile responsibility on the part of the State because of their belonging to these organizations, because of felonies such as rebellion, mob, illegal weapon freightage or even for those felonies in which they are obliged to participate such as kidnapping, tortures, massacres, etc.



And as such, receiving benefits from the State for example the indult referred in the accused paragraph.

The response in our criteria must not be different than this one : NO”.

2

“...the first thing to have in mind is, as it has already been affirmed by this Corporation (Constitutional Court) in the sentence C-1064 of 2000 “The infantile population is vulnerable and the lack of social, economical and familiar structures adequate for their growth aggravate their vulnerability” and that in the State and in the society relapses and the obligation of avoiding that minors are involved in the armed conflict. Nevertheless, though it is true that in the intern order there have been done enormous efforts to impede that the minors make part of the conflict and that in fact the prohibition of entering into the Colombian Armed Forces to people under the age of 18 has been fulfilled it is also true that the State institutions have failed in their effort of impeding that armed groups incur in the felony of illicit recruitment of minors.”

3

“And it is precisely the phenomenon of illicit recruitment that typifies the article 162 of the Penal Code, what led to the Colombian legislator to consider that the minors who participate in the armed conflict are victims of the political violence, article 6 of the Law 782, 2002. From where the General Attorney deduces that in harmony with the public instruments outlined in the clause 3 of this concept, that the response

of the State towards the discussion about minors recruited by the illegal armed groups involves the horrifying particularities of the dehumanisation of the war and the evidence of the lack of social, economical and familiar structures that have impeded the development of these children in an adequate environment converting themselves in victims of a scourge of unsuspected dimensions.

In fact , the insertion of boys and girls in the rows of the armed organizations in one of the most perverse modalities of recruitment, that turn minors into victims of the conflict, the discussion of if it was “voluntarily” or in a “forced way” must be relieved towards the magnitude of this practice, that has found on the familiar, economical and social context an excuse with regards to the absence of any expectation of a better life.

In that order, it is unquestionable that minors involved in belligerent activities in the intern armed conflict, the concept of willingness is really not present, even more if we have in mind that because of the impact of the conflict they must not be considered as responsible of the subversive activities that they commit.

On the other hand, it may be induced that the involvement of minors into the conflict, in all the cases is forced and therefore, the performances of the State respect to those who have demobilized from the conflict must be directed to give them integral attention and protection in a way they can find options that allow them to overcome the enslavement that originates their insertion in the illegal armed groups.”

4

“In that sense, the judicial procedure does not harmonize with the national and international postulates that plead for a recovery of the rights of minors excombatants that were arbitrarily cleared from their childhood and taken into an agitator and violent scenery from which they have been direct victims. As a consequence such children may not be submitted to the jurisdiction of a tribunal or of a judge so that their responsibility is solved as a consequence of the realization of a conduct reproachable in a penal way, since because of the particularities proper of the illegal recruitment, the guilty capacity of these minors is inexistent”

5

“For all the previous, for the Public Ministry it is clear that excombatant boys and girls are neither called to benefit with indults such as the one established in the article 19 of Law 782 of 2002, because, it is necessary to remember that the indult is the total or partial forgiveness, of a penalty imposed to the condemned for political felonies, felonies that in the viewed context it may not be an object of responsibility on the part of people under the age of 18 that because of the degradation and dehumanisation in which the armed conflict is, they result being their victims and not their generators.”

6

“In merit of the exposed, the General Attorney requests to this corporation to declare paragraph 2 of the article 19 of Law 782, 2002 **INEQUIBLE**”.





COLOMBIAN COALITION ACTIVITIES

The Coalition was delegated by the organizations of defence on children's rights as a substitute delegate of the Children Chapter to the National Council of Peace, which was created by law in the country as an State-civil society compound space to discuss about the politics to overcome the armed conflict.

During the last bimester of 2004, the Coalition started a training process directed specially to children and youth, but also to teachers, workers and NGO's thru the implementation of the Formation School "Childhood and Armed Conflict" in Putumayo, Santander and Cauca.

INTERNATIONAL COALITION ACTIVITIES

On the 17th November simultaneous launchings of the "Child soldiers Global Report 2004" in Colombia, United Kingdom, Spain, Brazil, Kenya, Thailand, Philippines, Germany and United States took place. The Report examines the evolution of the use of children as soldiers in 169 countries between 2001 and 2004. The Coalition made a call to the governments to forbid all recruitment of people under the age of 18 by any armed force and to ratify and apply the totality of UN treaties on children and armed conflict, and by that way, contributing to the reduction of the number of children used in the conflicts.

In June 2004 the Coalition and the "Mesa de Trabajo por Arauca" carried out a verification commission on the situation of boys and girls in Arauca. The launching of the Report of the Commission was led to end on the context of the National Day of Human Rights, in Bogotá and Saravena, Tame and Arauquita (Arauca). As a part of the commitments arose on such Commission, the Coalition started a process of psycho-social support with children on the department.

In order to commemorate the 15 years of the Convention on the Rights of the Child, the Coalition opened the children's drawing exposition "Boys and girls express their wishes of peace" in Barrancabermeja (Santander). In this petroleum port, one of most affected by human rights violations on the last 20 years, hundreds of visitors to the exposition knew what boys and girls think about war.



The Coalition has started a campaign for the appointment of a Special Rapporteur of the European Union on childhood and armed conflict, that is able to affect on the fast and effective implementation of the EU Guidelines on children and armed conflict.