



Colombian Child Soldiers: Victims not Criminals

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Submission of Vides International Colombian Child Soldiers: Victims not Criminals

1. Vides International is a non-governmental organization that works worldwide for the promotion of Human Rights particularly of children, women, and youth. Our activities intend to encourage social inclusion and participation to democratic life of marginalized youth and children.

2. After an in-depth analysis of Colombian legal framework concerning child soldiers, we focused on the lack of legislation to promote child demobilization and problems related to their criminal liability. Furthermore, we verified that children are forced to join armed groups because the State is incapable of providing a concrete alternative to enlistment despite Its International obligations to protect the Rights of the Child.

Legal Framework

3. Colombia has continuously improved Its legislation to alleviate the issue of child soldiers; however, there is still a series of changes that must be made in order to uphold the Human Rights of children. The country ratified the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the involvement of children in armed conflict.

4. National legislation includes a wide range of norms with the purpose of protecting children's rights. Articles 44 and 45 of the Colombian National Constitution adhere to internationally recognized standards of the protection of child and adolescent rights. The Infancy and Adolescence Code, established by law 1098 (2006) was shaped following the example of International Conventions and represents the outcome of a long process that eventually replaced the old Code of Minors of 1989.

5. Law 418 (1997), established eighteen as the age limit for military recruitment, and Law 548 (1999) extended its effectiveness. Though surprisingly, the Colombian Declaration on adherence to the Optional Protocol on the involvement of children in armed conflict states that under aged persons can be recruited with the "consent of the parents"¹.

6. Article 19 of Law 782 (2002) prorogued the legislations that came before it, and regulated in particular the issue of individual as well as collective demobilization for armed groups. Furthermore, it modified article 50 of Law 418 (1997), eliminating the legal requirement that peace negotiations could only be carried out with armed groups that had been granted political status. Article 19.2 admitted pardon for minors stating that they can reap the benefit of indults like adults and thus they are held responsible for their crimes; however, this raises the question of constitutionality in holding conscripted children liable for their criminal offences. They must be considered victims of forced and illicit recruitment according to article 162 of the Colombian criminal code (Law 599, 2000), therefore they could not be considered liable for the crimes they were obliged to commit.

¹ "The military forces of Colombia, in application of the norms of international humanitarian law for the protection of the best interests of the child and in application of domestic legislation, do not recruit minors in age into their ranks unless they have the consent of their parents". http://www2.ohchr.org/english/bodies/ratification/11_b.htm



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7. In Decision C-203 (2005)², the Colombian Constitutional Court confirmed the ruling was in accordance with the national constitutional framework and International Law. The Court sustained that minors who are no longer in armed groups must be subject to a judicial process in front of the juvenile court (“Juez de Menores” or “Promiscuo de Familia”) for the violation of criminal laws committed during the internal conflict. Minors may receive pardon for violations specifically dismissed by the law.

8. The above mentioned legislation is completed by Decree 128 (2003) which develops Law 782. Law 975 (2005) called Law “Justice and Peace”, adds new elements to this ruling.

Child Soldiers, Rights Violations, Disarmament Demobilization and Reintegration process (DDR)

9. Law 782, developed by Decree 128, established the conditions for demobilization of different armed groups. Combatants that turn themselves in for minor crimes³ can benefit of amnesties as provided by Law. The rule sets a standard for granting amnesties and pardons to members of warring factions that have committed “politically related crimes”. Crimes against humanity, as also stated by the Colombian Constitutional Court, could never be considered political. Nevertheless, Colombian Government, ignoring Its international obligations, passed Law Justicia y Paz stating that those who commit Gross Violations of Human Rights during the conflict will receive a maximum sentence of eight years in prison.

10. It is clear that these laws do not give enough support to children and, as a result, many have demobilized informally without taking advantage of the mechanisms provided by the Disarmament Demobilization and Reintegration process. As a consequence they do not get counted in official reports, denying them certain benefits of the DDR program.

11. The Colombian Ministry of Defence estimates that between 2002 and 2008 16,074 ex members of armed groups have demobilized individually, 2,412 of which (15 percent of the total) were child soldiers. From January 1 to June 22, 2008, 1,618 people demobilized; 131 of them were child soldiers. In 2004, 17.3 percent of people demobilized were child soldiers. Since then the numbers have continued to fall almost exponentially, with only 8.1 percent being demobilized in the first six months of 2008⁴. These numbers suggest that there is a flaw in legislation that has rendered government efforts to discontinue the recruitment and to demobilize child soldiers counterproductive.

12. In order to maximize the demobilization of recruited children, Colombia should render the liberation from armed groups universal rather than selective. This can be done through the establishment of legislation for the demobilization of children that would keep into consideration the fact that child soldiers are captives of the armed groups and they cannot abandon the faction voluntarily. The Colombian Government should also implement special programs to reinforce children’s rights for no longer conscripted children that tend to each individual’s specific need. Colombian Government has certainly not taken “all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities [...] are demobilized or otherwise released from

² <http://190.24.134.68/relatoria/2005/C-203-05.rtf>

³ Illegal possession of arms, participation in illegal groups and other small crimes

⁴ Ministerio de Defensa Nacional Programa de Atencion Humanitaria Desmovilizado. August 7, 2008 to June 20, 2008
2005: 2,574 total demobilized of which 365 children (14.2%)
2006: 2,460 total demobilized of which 384 children (15.6%)
2007: 3,192 total demobilized of which 353 children (11.1%)



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service” as required from article 6.3 of the Optional Protocol to the CRC on the involvement of children in armed conflicts.

13. Another significant problem with former child soldier regards their criminal liability for crimes committed during their status as conscripted soldiers. We must remember that they are “primarily” victims of the crime of forced recruitment (article 162 of the Colombian criminal code Law 599, 2000).

14. In 2006 Colombia approved Law 1098 (2006) also known as Infancy and Adolescence Code. The new legislation, inspired from the Convention on the Rights of the Child, introduces the complete protection system. The former legal framework was falsely protective and the Children did not benefit the same substantial and trial guarantees. The new Code has a paragraph “Sistema de Responsabilidad penal para Adoloscetes” that establishes criminal liability of under age focusing on the concept that minors are subject of law with rights and duties⁵. The criminal liability of minors “*de facto*” existed also before and it is internationally recognized as a necessary rule in a Constitutional State. The Constitutional Court admits criminal liability for child soldiers (see Decision C-203, 2005), Article 175 of the new Code establishes the rules for child soldiers in conflict with law stating when “La Fiscalía General de la Nación” could renounce to their criminal prosecution. Gross Violations of International Humanitarian Law and Genocide should always be prosecuted.

15. Colombia failed to implement an appropriate legislation: as a matter of fact the situation of demobilized child soldiers is different from the condition of a child in conflict with law. The only two articles of the Code related to the child soldiers are not adequate to guarantee “the best interests of the child” and their “recovery and reintegration [...] in an environment which fosters the health, self-respect and dignity of the child” as stated by article 3 and 39 of the CRC.

16. Vides believes that child soldiers always endure the conditions listed by article 175 of the Code (socio-economic conditions that make adhesion to armed groups inevitable, socio-economic exclusion, lack of capacity to alternative participation forms, duress and threat); the problem is not really “when” but “how” the Fiscalía “could” decide whether prosecuting or not. Furthermore, the Code does not clearly state when children are chargeable leaving a big gap in the regulation of child soldiers’ liability.

“Voluntary” Enlistment

17. It is estimated that there are between 11,000 and 14,000 child soldiers in Colombia today⁶. Recruitment into armed groups is categorized as being “voluntary” or forced. The Colombian Family Welfare Institute, a governmental organization, states that 83.7 percent of child combatants are labelled as “voluntary” recruits. The voluntary recruitment of child soldiers is in fact difficult to consider. It does not depend on a conscious choice made by the child; rather, it is the socio-economic condition of rural Colombians, which renders the decision inevitable. Internal displacement, malnutrition, lack of education, lack of government control, and abuse within families have created problematic environments, forcing the decision to enlist into armed groups.

18. “Erika, an 18 year old girl joined the FARC at 16. The socio-economic conditions she lived in left her with two choices, become an internally displaced person, or join an armed guerrilla

⁵ Artículo 139. *Sistema de responsabilidad penal para adolescentes*. [...] de delitos cometidos por personas que tengan entre catorce (14) y dieciocho (18) años al momento de cometer el hecho punible.

⁶ Overcoming Lost Childhoods Colombia Y Care International 2008



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group. At first her father was hesitant, however he eventually accepted as it would provide her with a higher quality of life.”⁷

19. In a table by Colombian Family Welfare Institute analyzing reasons for “voluntary” enlistment according to sex, 19.4 percent of females and 36 percent of males said they enlisted because they “liked weapons and uniforms”; 25.2 percent of females, and 24.3 percent of males liked the idea of the paramilitary or guerrilla way of life⁸. These popular ways of reasoning amongst children indicate that it is unlikely for a child to make a consciously responsible voluntary decision to enlist. According to Garry Leech⁹, victims of child soldiery are in fact forced by their poor socio economic conditions to join these groups, and for this reason Colombia should “extend the definition of forced recruitment”. He went on to cite an interview with Manuel Marulanda Vélez (former commander in chief of the FARC) saying that it does not make sense for the FARC to force recruitment as many people willingly join in order to escape the mass poverty in rural Colombia.

20. In Colombia, 2,224,931 people were internally displaced as a result of violent conflict between rightist paramilitaries and leftist guerrillas from 1999 to October 30, 2007, and 133,664 in the first six months of 2008 alone¹⁰. This mass displacement has been a catalyst for rapid growth of poverty and malnutrition. The majority of Internally Displaced People are situated in rural regions. Sucre, a region located in northwest Colombia, is a typical example of the social and living conditions of children who live in a rural region. This instability has rendered the enlistment of child soldiers always forced, making the two categories of recruitment indistinguishable. 50.4 percent of Colombians and 69.5 percent of people in the region of Sucre live below the poverty line. 7 percent of Colombians are malnourished. 2.37 percent of Colombians are illiterate, while in Sucre it is a staggering 6.66 percent. The average education in Colombia is 8.7 years¹¹. In 38 percent of Colombian families there is a high presence of child abuse especially in rural areas¹². In fact, 25.2 percent of females, and 15 percent of males claim to have joined an armed group to escape intra familial violence¹³.

21. These numbers indicate that the socio-economic conditions in Colombia and particularly in certain rural regions do not leave an alternative to child soldiers. The circumstances surrounding them force these victims to seek out a better life. Thus they cannot be held responsible for their decision, especially when considering lack of education and familial instability. This perpetuates a culture of violence within the country that troubles many of these regions.

22. The Colombian Government has taken steps towards establishing an international collaboration to combat armed groups. In 2007, they renewed the agreement with the office of the United Nations High Commissioner for Human Rights (OHCHR) to maintain an office in Colombia

⁷ Interview by Vides International with Garry Leech, Editor of The Colombia Journal, professor of Political Science at the Cape Breton University (July 4, 2008)

⁸ See footnote n. 6

⁹ See footnote n. 7

¹⁰ Boletín informativo de la Consultoría para los Derechos Humanos y el Desplazamiento. Número 72, Bogotá, Colombia, 30 de noviembre de 2007

¹¹ Objetivos de Desarrollo del Milenio en Colombia (UNDP) Erradicar la Pobreza y el Hambre and Lograr la Educación Básica Universal

¹² XIX Congreso Colombiano Panamericano del Niño. La Violencia Intrafamiliar y su Incidencia en el Desarrollo del Niño, La Niña y el Adolescente. La Violencia Intrafamiliar... Una Ruta Para su transformación. Autores : Patricia Escobar A. Aoba Lucia Martín R. (IIN)

¹³ Caracterización de las Niñas, Niños y Adolescentes Desvinculados de los Grupos Armados Ilegales: Inserción Social y Productiva desde un Enfoque de Derechos Humanos (Noviembre 2006) Convenio Defensoría del Pueblo-UNICEF



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until 2010¹⁴. However, there are some legislations and programs that have contradicted the agreement and added to the culture of violence in Colombia. Law 975 (2005) states that members of armed groups who demobilize voluntarily will receive a minimal sentence for the crimes they committed. Decree 128 states that ex child soldiers must stay with the government for up to 36 hours before being taken to the Colombian Family Welfare Institute for treatment. During this interim period children are often used by Government armed forces for intelligence purposes, as also stated by Secretary General in his December 2007 report on Children and Armed Conflict, although the above mentioned decree disallows any use of minors in intelligence activity.

23. Through this policy the Colombian government is violating Its own laws and Its international obligations. In turn it is endangering its children who are at risk of retribution from militant factions.

Recommendations:

24. We recognize the efforts made by the Colombian Government to respect and uphold Human Rights, as clearly evidenced by their agreement to maintain the Office of the High Commissioner of Human Rights till 2010. We strongly recommend that Colombia respect all the international treaties that it has agreed to adopt.

25. We believe that the Colombian government has not created sufficient programs for release and rehabilitation as seen in the statistics on the total individual demobilization of children in the particularly in the past four years. The nearly exponentially decreasing number demonstrates that there is a problem on two levels: rehabilitation programs and legislation.

26. Colombia must create legislation that pertains specifically to child soldiers. The Infancy and Adolescence Code introduces clear rules on children penal liability but it is not enough focused on child soldiers. We recommend that the Colombian Government improve Its legislation as soon as possible because the legal status of conscripted children demands immediate change.

27. After close analysis of the conflict, we of Vides International believe that children living in rural areas are option-less and the decision to join the armed group is often the only choice they have. They are victims and the State, in contrast with Its International obligations (ex art. 4.2 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict), is not capable of protecting them and to provide appropriate legislation to help them in abandoning the armed groups.

28. In order to avoid the recruitment of children into armed groups, it is the Government's responsibility to create alternative educational and cultural programs. These programs should promote social change and offer an alternative to child soldiery. New programs should also be created for reintegration into society in order to avoid reenlistment.

¹⁴ Supplementary Agreement Regarding the Extension of the Term of the Agreement for the Establishment of the Office in Colombia of the United Nations High Commissioner for Human Rights, the Number of Experts and the Establishment of Auxiliary Offices. September 9 2007