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## Reclaiming the “Little Bees” and the “Little Bells”: Colombia’s Failure to Adhere to and Enforce International and Domestic Laws in Preventing Recruitment of Child Soldiers

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# Reclaiming the “Little Bees” and the “Little Bells”: Colombia’s Failure to Adhere to and Enforce International and Domestic Laws in Preventing Recruitment of Child Soldiers

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## **Abstract**

This Comment addresses the recruitment of Colombian children into the insurgent armed groups and the Colombian government’s attempts to respond to the issue. Part I provides an overview of the worldwide child soldier epidemic, specifically of the Colombian child soldier. Part I also addresses the general history of the civil strife in Colombia and the impact on the lives of the country’s children. Part II describes the existing international laws that protect civilians and children during internal armed conflicts, as well as those laws that address child combatants specifically. Part II also analyzes the Colombian government’s response to the child soldier situation within the country’s borders and the legislative provisions and protections afforded Colombian children. In addition, Part II addresses the Colombian government’s attempts to address the child soldier issue in the country’s national legislation. Part III argues that the Colombian legislation falls short in attacking the root causes of the problem. Part III proposes that in order to eradicate this abuse, Colombia needs to actively implement international standards, strictly enforce existing national laws, and aggressively pursue and punish the guilty parties in order to begin the eradication of the Colombian child soldier problem.

## COMMENT

### RECLAIMING THE “LITTLE BEES” AND THE “LITTLE BELLS”: COLOMBIA’S FAILURE TO ADHERE TO AND ENFORCE INTERNATIONAL AND DOMESTIC LAWS IN PREVENTING RECRUITMENT OF CHILD SOLDIERS

*Veronica Escobar\**

#### INTRODUCTION

A teenage boy from a rural town in Colombia was approached by a man who offered him work as a field hand for four thousand Colombian pesos a month. In need of money to help support his family, the boy agreed to go with the man. Once he arrived in the mountains, he realized that there was neither a field hand nor was there any money. The boy had unwillingly been recruited into an armed insurgent group. When he asked to go home, the guerrillas told him that the only way he would leave the mountains was dead.<sup>1</sup>

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1. See Angela Maria Pardo, *Crece el Reclutamiento de Niños*, EL TIEMPO CITY NOTICIAS, Oct. 9, 2001, available at <http://www.mindefensa.gov.co/prensa/temas/ninos/non-notnal091001reclutamientobogota.html> (relating story of “Jesus,” seventeen-year old former child soldier who took part in three armed combats). Statistical information provided by a national social welfare agency that assists former child soldiers found that the number of children it has helped has increased by 100%, as the children’s ages have decreased. *Id.* In 1999, the agency helped 100 young people; in 2000 it helped approximately 246; and up until October 2001, it helped 165 young people. *Id.* The national social welfare agency also reported helping children around the ages of eleven and twelve, when it had been used to only seeing children between the ages of fourteen and seventeen. *Id.*

Commentators discuss that there are approximately 300,000 children involved in armed conflict around the world — in State armed forces, as well as illegal armed groups.<sup>2</sup> The majority of these children are younger than eighteen, but some are ten years old and younger.<sup>3</sup> Experts note that the increased employment of children in armed conflict marks a qualitative shift in the nature and conduct of warfare — from international to national in scope.<sup>4</sup>

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2. See Steven Hick, *The Political Economy of War-Affected Children*, 575 *ANNALS* 106, 114 (2001) (stating that wars, armies, rebel, paramilitary, and military groups have abducted or recruited approximately 300,000 children). See also Graca Machel, *The Impact of Armed Conflict of Children*, INTERNATIONAL CONFERENCE ON WAR AFFECTED CHILDREN 9 (Sept. 2000), available at <http://www.globalmarch.org/virtuallibrary> (stating that estimated figure of 300,000 child soldiers reflects number of children being used in combat at any one time). As conflicts flare up and children are killed, wounded, grow older, and are replaced by other children, the cumulative total is much higher and the destruction carries over from one generation to the next. *Id.* See also *Protection of Children Affected by Armed Conflict: United Nations ("U.N.") General Assembly Note by the Secretary General*, 54th Sess., Agenda Item 112, at 6, U.N. Doc. A/54/430 (1999) [hereinafter *Protection of Children*] (stating that in addition to 300,000 children recruited for armed conflict, two million children have been killed in conflict situations). Over one million have become orphans, over six million have been seriously injured or permanently disabled, and over ten million have suffered grave psychological trauma over the last decade. *Id.*

3. See also Machel *supra* n.2, at 9 (defining child soldier as any child, boy or girl under age of eighteen who is compulsorily, forcibly, voluntarily recruited or otherwise used in hostilities by armed forces, paramilitaries, civil defense units, or other armed groups). See also *Protection of Children*, *supra* n.2, at 7 (stating that children are perpetrators in addition to victims of violence). Children are either systematically recruited or kidnapped to become child soldiers. *Id.* They are voiced to become the instruments that express the hatred of adults towards each other. *Id.* See also Hick, *supra* n.2, at 114 (defining child soldiers as children under age of eighteen who are forcibly or voluntarily recruited or used in armed conflicts by State military or insurgent armed groups).

4. See *Protection of Children*, *supra* n.2, at 6 (pointing out that several developments mark this transformation in the nature of warfare). Almost all major armed conflicts in the world today are civil wars and can last many years. *Id.* These armed conflicts are characterized by widespread social breakdown and lawlessness, small arms and light weapons proliferation, indiscriminate use of anti-personnel landmines and involvement of multiple and often semi-autonomous armed groups. *Id.* at 13. See also Machel, *supra* n.2, at 5 (identifying several causes of modern day wars). The fight over natural resources, like diamonds in South Africa or narcotics trade in Colombia, are some examples. *Id.* Global businesses, legal and illegal, have made war possible and profitable. *Id.* International weapons sales, especially of small arms, perpetuate these wars. The poorest communities are now gaining ready access to small arms. *Id.* Serious financial problems and debt have forced developing countries to restructure their economies, thereby cutting basic services to the community and reducing the size of the public sector. *Id.* As a result, they have weakened their own economies and have allowed for the emergence of other actors who seek power and monetary gain. *Id.* See also Hick, *supra* n.2, at 108 (calling this new type of warfare "intranational wars" — wars within

Colombia has experienced internal armed conflict for over forty years.<sup>5</sup> The two primary insurgent groups responsible for the fighting in Colombia are the left-wing guerilla forces and the right-wing paramilitary groups.<sup>6</sup> The biggest casualties have been civilian lives, including children who have been victims and witnesses to atrocities, and perpetrators of violence against others.<sup>7</sup> Commentators agree that the problem of using children as combatants is an alarming one in Colombia, where it is reported that there are at least 6,000 children within the ranks of the illegal armed forces.<sup>8</sup>

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Nations). These new wars should be examined concurrently with changes occurring in the world's political and economic order. *Id.* The political and economic environments in war-torn countries have three common characteristics — free trade and foreign investment, forced structural adjustment, and diverging per capita incomes between countries. *Id.* The end of the Cold War has also helped to increase the sale of weapons worldwide. *Id.*

5. See U.N. Economic and Social Council Official Resolution (ESCOR), *Mission Report on the Visit to Colombia from 30 May to 6 June 1999*, 56th Sess., Agenda Item 13, Annex II at 34, U.N. Doc. E/CN.4/2000/71 (2000) [hereinafter *Colombia Mission*] (reporting visit of U.N. Special Representative to Colombia from May 30 to June 6, 1999). The report categorized the internal conflict as being of "low intensity," disproportionately affecting outlying areas and peasant populations while having less impact upon the lives of residents in major urban centers. *Id.* at 35. See also RUSSELL CRANDALL, *DRIVEN BY DRUGS: U.S. POLICY TOWARD COLOMBIA* 54 (2002) (stating that most of Colombia's political analysts or violentologists who study the country's history trace current internal conflict to violence that erupted in 1930s and 1940s). See also FRANK SAFFORD & MARCO PALACIOS, *COLOMBIA: FRAGMENTED LAND, DIVIDED SOCIETY* 345 (2002) (commenting that Colombia's history of violence can be traced to La Violencia or "The Violence" which began in 1940s). See also Karl Penhaul, *A Spiraling Devastation*, *CRIMES OF WAR MAGAZINE: COLOMBIA: TRAFFIC OF TERROR* (Aug. 2001), available at <http://www.crimesofwar.org/colombia-mag/mag-index.htm>. (commenting on origins of Colombia's modern day conflict). It is traced back to the 1940s during La Violencia — a civil war between the members of the liberal and conservative political parties. *Id.* The fighting was triggered by the assassination of presidential candidate and political leader Jorge Gaitán in 1948. *Id.* Although the riots began in the Colombian capitol of Bogotá, it spread to the countryside. *Id.*

6. See Alexandra De La Asunción, Comment: *Colombia: The Ignored Humanitarian Crisis*, 31 U. MIAMI INTER-AM. L.REV. 439, 447-48 (2001) (detailing players in Colombia's internal conflict, which include not only guerrillas and paramilitaries, but Colombian military). The Colombian armed forces consists of 146,300 soldiers — 121,000 belonging to the army, 27,000 the Navy, and 7,300 the Air Force. *Id.* at 449.

7. See *Colombia Mission*, *supra* n.5, at 36 (reporting on Special Representative's first hand account of disproportionate effect conflict had on Colombian children in past forty years).

8. See Pardo, *supra* n.1 (explaining that this figure includes guerrilla groups and illegal auto-defense groups). See also Unidad de Paz, *Segun ONG, el conflicto armado afecta a seis millones de niños colombianos*, EL ESPECTADOR, Apr. 24, 2002, available at <http://www.mindefensa.gov.co/prensa/temas/ninos/ninnotnal240402ninosconflictosavechildrens.html> (stating that armed conflict affects, directly or indirectly, one-third, or six million,

Commentators observe that increasing numbers of children have been drawn into combat as participants in the various armed groups.<sup>9</sup> Either due to a lack of alternatives or as a result of forced recruitment, these children's childhoods are severely compromised.<sup>10</sup> The children risk reprisals and threats in the event they separate from an armed group.<sup>11</sup>

This Comment addresses the recruitment of Colombian children into the insurgent armed groups and the Colombian government's attempts to respond to the issue. Part I provides an overview of the worldwide child soldier epidemic, specifically of the Colombian child soldier. Part I also addresses the general history of the civil strife in Colombia and the impact on the lives of the country's children. Part II describes the existing international laws that protect civilians and children during internal armed conflicts, as well as those laws that address child combatants specifically. Part II also analyzes the Colombian government's response to the child soldier situation within the country's borders and the legislative provisions and protections afforded Colombian children. In addition, Part II addresses the Colombian government's attempts to address the child soldier issue in the country's national legislation. Part III argues that the Colombian legislation falls short in attacking the root causes of the problem. Part III proposes that in order to eradicate this abuse, Colombia needs to actively implement international standards, strictly enforce existing national laws, and aggressively

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of seventeen million Colombian children). The children are affected either because they are combatants, demobilized child soldiers, part of the displaced population, or because they live in areas of high conflict. *Id.* The 6,000 child soldier figure is conservative, and an actual accurate figure is "impossible" to calculate. *Id.* See also Coalition to Stop the Use of Child Soldiers, *Child Soldier Global Report 2001*, available at <http://www.child-soldiers.org> [hereinafter *Child Soldiers*] (reporting that total of 14,000 Colombian children are in armed insurgent groups, both guerrillas and paramilitaries).

9. See *Colombia Mission*, *supra* n.5, at 36 (discussing disproportionate effect armed conflict had on Colombian children and how past forty years of violence have seriously affected Colombian children's lives).

10. See Pardo, *supra* n.5, at 36 (expressing observations made by Special Representative upon visiting with children during his visit to Colombia). See also Lisa Alfredson, *Child Soldiers, Displacement and Human Security*, 3 *DISPLACEMENT FORUM: CHILDREN AND SECURITY* 17-18 (2000), available at <http://www.unidir.ch>. (commenting that children may be subjected to political and economic pressures, that provide little alternative than to "voluntarily" join an armed group).

11. See *Colombia Mission*, *supra* n.5, at 36 (expressing observations made by Special Representative during his eight-day visit to Colombia in summer of 1999).

pursue and punish the guilty parties in order to begin the eradication of Colombian child soldier problem.

### I. "WAR AFFECTED CHILDREN": THE CHILD SOLDIER EPIDEMIC IN COLOMBIA AND BEYOND

Commentators note that although military groups have used children as soldiers throughout history, recruitment of children as soldiers has increased in recent years throughout the world.<sup>12</sup> Experts note that complicating the situation is the fact that the longer the conflicts persist, the greater the probability that the guerilla forces will recruit children.<sup>13</sup>

#### A. World-Wide Use of Children As Soldiers

Today, in approximately fifty countries, children are suffering as a result of armed conflict and its consequences.<sup>14</sup> Children constitute a disproportionately large percentage of the world's displaced population—approximately fifty percent of the populations uprooted within their own countries as a result of internal armed conflicts.<sup>15</sup> Commentators agree that protecting

12. See Amy Beth Abbott, Note, *Child Soldiers—The Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L.REV. 499, 508-09 (2000) (discussing that increase in number of recruits is mainly due to internal and local nature of today's conflicts, as well as fact that conflicts occur in populated areas where there is greater and easier access to children). See also Machel, *supra* n.2, at 6 (commenting that modern warfare is extremely violent, employing any means from rape, to ethnic cleansing, to genocide). The armed actors perpetrate assaults on children and their communities. *Id.* In turn, the children can eventually become soldiers and perpetrate violence themselves. *Id.*

13. See Abbott, *supra* n.12, at 511 (contending that as time passes, and number of casualties and conflicts increases, there is desperate search for new soldiers). This makes volunteers difficult to find especially after witnessing the effects of war on their predecessors. *Id.* Rebel leaders then turn their attention to younger people to fill the ranks. *Id.*

14. See *Protection of Children*, *supra* n.2, at 5-6 (reporting that children are being killed, orphaned, maimed, displaced, raped and sexually abused, as well as deprived of schooling and adequate medical attention). See also Machel, *supra* n.2, at 19 (stating that typical perpetrators of sexual violence in armed conflict are either government forces or insurgent armed groups). These sexual attacks are used as a humiliation and terror tool during armed conflict. *Id.* It is also detrimental to the physical and emotional development of children. *Id.* Sexually transmitted diseases ("STDs") and HIV/AIDS are immediate dangers. *Id.*

Although children are also killed during direct combat (as child soldiers), more die from malnutrition and disease. *Id.* at 21. Armed conflicts cut off food supplies, destroy crops and agricultural systems. *Id.*

15. See *Protection of Children*, *supra* n.2, at 6 (reporting that twenty million of world's displaced population consists of children). See also Machel, *supra* n.2, at 12 (placing

these children has become more difficult in recent years because of the internalization and localization of global conflicts, often grounded in nationalist, ethnic, and/or religious dissension.<sup>16</sup> Guerilla groups have targeted and exploited children, thereby failing to respect international human rights law that provides protection for children in times of armed conflict.<sup>17</sup>

Conscription, abduction, or coercion are among the various methods used to recruit child soldiers.<sup>18</sup> Scholars explain that

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number of total displaced children at twenty million). This constant movement is disruptive and dangerous because these children are deprived of security and exposed to danger. *Id.* See also Alfredson, *supra* n.10, at 17 (discussing that children who are displaced from their families or communities are at greatest risk of being recruited by armed forces and groups). At the same time, child soldiers are also at a great risk of becoming internally displaced persons ("IDPs"). *Id.* These children are displaced an average of six to seven years, during which time they lack (adequate) access to education, health care, and a balanced diet. *Id.* at 18. At the same time, former child soldiers are vulnerable to displacement. *Id.* at 19. Those who escape, are captured or demobilized and sometimes cannot return to their families or communities. *Id.* Because many of these children's families are also displaced and/or killed, attempts at reunification are complicated. *Id.* at 20.

16. See Abbott, *supra* n.12, at 508 (commenting on changing face of warfare in recent decades). See also *Protection of Children*, *supra* n.2, at 6 (pointing out that several developments mark this transformation in nature of warfare). Almost all major armed conflicts today are fought internally. *Id.* They are long lasting, and are fought between inhabitants of the same Nation. *Id.* These wars are identified by lawlessness, the increase in use and accessibility of weapons, use of landmines, and fighting between several armed and/or insurgent groups. *Id.* See also Machel, *supra* n.2, at 5 (identifying factors leading to present day civil wars). Natural resources like diamonds and narcotics trade are causes of modern day conflicts. *Id.* Legal and illegal businesses have also increased the profitability and possibility of war. *Id.* International arms sales have also helped to stimulate war to such an extent that even the poor have access to small arms. *Id.* Because so many of these countries have faced serious financial difficulties that necessitated their economic restructuring, there was a negative impact on basic community services and the size of the public sector. *Id.* As a result, these countries now have weak economies that spurred the rise of insurgent groups looking for power. *Id.* See also Hick, *supra* n.2, at 108 (naming this new type of war "intranational war"). Politics and economics have also influenced these wars, and can be identified by three common characteristics—heavy foreign investment, forced economic restructuring, and marked differences in per capita incomes between countries. *Id.*

17. See Abbott, *supra* n.12, at 508-09 (relating that insurgent groups consider children to be expendable, less demanding and easier to manipulate than adult soldiers).

18. See Machel, *supra* n.2, at 9 (explaining that "voluntary" is misleading term). While these young people may appear to choose military service, the choice is not exercised freely. *Id.* They may be driven by any of several forces, including cultural, social, economic, or political pressures. *Id.* See also Abbott, *supra* n.12, at 516 (explaining that term "voluntary enlistment" is used loosely). Often extrinsic factors are the real motivating force for many children. *Id.* Living in a culture of violence, desperation for food, and the need for either security or desire to avenge the deaths of family members may prompt "voluntary" recruitment. *Id.* Because of these factors one needs to deter-



once in the ranks, children make obedient and cheap soldiers who instill terror in civilians and opposing forces.<sup>19</sup> The proliferation of automatic weapons and lightweight arms has only increased the desirability and utility of these children in live combat.<sup>20</sup> In addition to their use as soldiers, children provide sexual services, and are employed as spies, messengers, porters, and cooks.<sup>21</sup> In recent years, insurgent groups have increasingly

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mine whether this enlistment is really voluntary. *Id.* Children lack the capacity to determine their best interests, to independently form opinions, or to analyze competing beliefs. *Id.* at 517. In some countries, the armies seize and force all children to fight. *Id.* They remove children at gunpoint from poor and marginalized backgrounds from buses, cars, marketplaces, churches. *Id.* They deliberately subject them to brutality, sexual abuse, and psychological manipulation and sever all ties to the children's communities to prevent resistance to forcible recruitment. *Id.* at 514. *See also* Alfredson, *supra* n.10, at 17 (stating that while some children volunteer, others are drafted or forcibly recruited). *Id.* The lines between compulsory, voluntary, or forced recruitment are blurry. *Id.* Lack of food, high levels of insecurity, and even a sense of family or national/ethnic loyalty may "compel" children to join. *Id.* at 21. For children without families or separated from them due to the conflict itself, the assurances of food, shelter and protection offered by the armed forces is a lure. *Id.* Others join after witnessing violence perpetrated against their own families, and in hopes of seeking revenge or out of a sense of entitlement. *Id.*

19. *See* U.N. General Assembly Security Council (GAOR) Report of the Secretary-General, *Children and Armed Conflict*, 55th Sess., Agenda Item 112, at 15 U.N. Doc. A/55/163-S/2000/712 (July 19, 2000) [hereinafter *Children and Armed Conflict*] (attributing this to adolescents, who are in middle of identity formation and are vulnerable to involvement in armed conflict).

20. *See* Machel, *supra* n.2, at 32 (reporting that there are one half billion small arms and light weapons that fuel conflicts around world — one for every twelve people). There are many different kinds of weapons: revolvers, self-loading pistols, assault rifles, submachine guns, anti-personnel landmines and light machine guns. *Id.* The weapons are light and simple to use. *Id.* *See also* Abbott, *supra* n.12, at 510-11 (stating that as result of international arms trade, children can use assault weapons as effectively and easily as adults because weapons are inexpensive, light and simple enough for children to use). This, coupled with drug and alcohol abuse, can turn these children into combatants. *Id.* Leaders promote drug use as a way to recruit children to fight and to desensitize them to the atrocities of war. *Id.* As a result, these children prove more useful in battle. *Id.* *See also* *Protection of Children*, *supra* n.2, at 10 (stating that there is correlation between availability of arms and increased violence against children). It has made children into vehicles of violence. *Id.* *See also* Sibylla Brodzinsky, *Colombia's child soldiers swap guns for home*, *TIMES* (U.K.), available at <http://www.timesonline.co.uk> (relating story of fifteen-year old former child soldier who stated that although he liked being guerrilla, being in combat and using weapons, he disagreed with killing of innocent civilians). When this demobilized child soldier received orders to blow up an army truck carrying civilians, he stopped a car on the road and asked to be taken to the nearest army base. *Id.*

21. *See* Alfredson, *supra* n.10, at 17 (discussing that child need not be soldier in order to be considered part of armed group). Children perform military and non military tasks, like scouting, spying, sabotage, training, drill, acting as decoys, couriers, guards, porters, sexual slaves, and carrying out forced domestic tasks and forced labor.

employed children, because of their small size and agility, in the task of planting and searching for landmines.<sup>22</sup>

Commentators agree that even if these children do manage to escape their situations, reintegration into society is a difficult process.<sup>23</sup> Those who survive are often physically injured and psychologically scarred, having lost years of schooling and socialization.<sup>24</sup> Some are shunned, while others face the difficult task

*Id.* See also Hick, *supra* n.2, at 114 (reporting that number of children used in “supportive services” is unknown). See also *Protection of Children*, *supra* n.2, at 7. See also Lisa Alfredson, *Sexual Exploitation of Child Soldiers: An Exploration and Analysis of Global Dimensions and Trends*, available at <http://www.child-soldiers.org> [hereinafter *Sexual Exploitation*] (discussing prevalence of sexual exploitation of children in armed forces and groups). Between 1998 and 2001, child soldiers were being utilized in at least eighty-seven countries. *Id.* at 2. Female child soldiers were used in forty-nine of these eighty-seven countries. *Id.* For girls, the incidence of sexual exploitation is very high; it occurs in approximately seventeen of those forty-nine countries, while taking into account that there might be some under-reporting of cases. *Id.* Even though more countries use male child soldiers, the reported cases of male sexual exploitation are more rare and difficult to verify. *Id.* The regions of the world where sexual abuse of child soldiers is highest are those of high or long-standing conflict. *Id.* at 3. This is supposedly related to three factors: a) armed conflict increases the likelihood of recruiting girls; b) conflicts increase the likelihood of economic and social structure breakdowns, and increase the likelihood of voluntary recruitment by youths; and c) sexual violence under the latter conditions instills fear in the children and may ensure their obedience. *Id.* at 3-4.

22. See Abbott, *supra* n.12, at 507 (stating that military groups often use child soldiers to clear unexplored areas). Children’s size and inexperience make them especially vulnerable to becoming victims of landmines. *Id.* See also *Protection of Children*, *supra* n.2, at 7 (stating that approximately 800 children are killed or maimed by landmines every month). See also Machel, *supra* n.2, at 28 (reporting that while most mines are hidden killers and are impossible to see, “butterfly mines” and brightly colored bombs hold attraction for children). Anti-personnel landmines are designed to attack adults, but primarily to maim and not to kill. *Id.* For the smaller anatomies of children, the explosion of even the smallest mine can be lethal. *Id.*

23. See Abbott, *supra* n.12, at 515-16 (stating that once child escapes, guerrilla groups will brand child as deserter, and can subject him or her to immediate execution). Even if the child were to receive adequate therapy and to be reunified with his or her family, complete reintegration depends upon education, vocational opportunity, and economic security. *Id.* See also Machel, *supra* n.2, at 23 (pointing out that children witness and experience terrible atrocities during combat). The physical, sexual, and emotional violence to which they are exposed has a negative impact. *Id.* It can destroy their homes, communities and break their trust in adults. *Id.* See also Alfredson, *supra* n.10, at 20 (commenting that former child soldiers are at risk for re-recruitment and reprisals by very group they formed part of as well as opposition groups).

24. See *Children and Armed Conflict*, *supra* n.19, at 15 (commenting on after effects of child involvement in armed conflict). See also Alfredson, *supra* n.10, at 18 (commenting that child’s association with armed group can put him or her in serious danger — risk of attack by enemy groups, physical or psychological harm, disability, drug addiction, pregnancy, sexually transmitted diseases, homelessness, and death is high when children are involved with armed groups).

of resuming their roles in the community as students, workers, and family members.<sup>25</sup>

B. *Guerillas and Paramilitaries: The Colombian Government's Formidable Foes*

Commentators agree that Colombia is the only country in the Americas in which guerilla war remains a significant problem.<sup>26</sup> Colombia has been beset by intense internal conflict for over fifty years.<sup>27</sup> National security units, guerrilla forces, and paramilitary groups are the main parties involved.<sup>28</sup>

25. See *id.* at 15 (stating difficulties faced by child soldiers after demobilization including physical injury and psychological trauma). See also Alfredson, *supra* n.10, at 18 (stating that demobilized child soldiers may suffer from psychological trauma, social alienation, and an inability to reintegrate into society).

26. See FRANK SAFFORD & MARCO PALACIOS, *COLOMBIA: FRAGMENTED LAND, DIVIDED SOCIETY* 362 (2002) (providing statistical information on cost in human lives in Colombia's internal conflict). In 1997 alone, approximately 200,000 people were forcibly displaced from their homes as a result of armed warfare between the guerrillas and paramilitaries. *Id.* Between 1975 and 1995, the internal conflict caused 11,000 deaths and 23,000 murders and executions. *Id.* Those 33,000 deaths are only 10% of the total number of killings during those twenty years. *Id.* See generally Gonzalo Sanchez G. *Problems of Violence, Prospects for Peace, in VIOLENCE IN COLOMBIA 1990-2000: WAGING WAR AND NEGOTIATING PEACE* (Bergquist, et al., ed. 2000) (discussing multiplicity of Colombia's violence in origins, objectives, geographic locations, methods of operation, and strategies, as well as overall effect it has had on Colombian society).

27. See SAFFORD & PALACIOS, *supra* n.26, at 345 (commenting on era known as "La Violencia" or "The Violence" which began in the 1940s and marked the beginning of internal conflict and violence in Colombia). See also THE COUNCIL ON FOREIGN RELATIONS AND THE INTER-AMERICAN DIALOGUE, *Toward Greater Peace and Security in Colombia: Forging a Constructive U.S. Policy* 6 (2000) [hereinafter INDEPENDENT TASK FORCE REPORT] (reporting that Colombia, country characterized by rampant violence and insecurity, has one of highest homicide rates in world). An average of 25,000 Colombians die each year from acts of violence and half of the world's kidnappings take place in Colombia. *Id.*

28. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 6 (commenting that Fuerzas Armadas Revolucionarias de Colombia ("FARC") or the "Revolutionary Armed Forces of Colombia" and Ejercito de Liberacion Nacional ("ELN") or the "National Liberation Army" have deep political roots, dating back to 1960s). The rural-based FARC, the larger of the two groups with approximately 15,000 combatants, is strong militarily and financially. *Id.* The ELN's roughly 3,000-5,000 fighters are concentrated in the Northeast; the ELN derives much of its income through kidnapping and extortion. *Id.* Both groups have combined revenues of at least several hundred million dollars a year. *Id.* There are paramilitary groups which emerged in response to these insurgent groups and the government's inability to deal with the conflict. *Id.* The paramilitaries are also strong militarily and financially with between 5,000 and 7,000 members. *Id.* The most powerful of these groups is the Autodefensas Unidas de Colombia ("AUC") or the "United Self-Defenses of Colombia." *Id.* There is debate as to the extent that these insurgent and paramilitary groups continue to be political actors

## 1. The Left Wing Insurgency: The Revolutionary Armed Forces of Colombia and the National Liberation Army

The largest guerilla groups in Colombia are the Fuerzas Armadas Revolucionarias de Colombia ("FARC") or the Revolutionary Armed Forces of Colombia, followed by the Ejército de Liberación Nacional ("ELN") or the National Liberation Army.<sup>29</sup> The FARC is an outgrowth of the Colombian Communist Party.<sup>30</sup> Commentators note that the Cuban Revolution strongly

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or whether their behavior could classify them as criminal groups. *Id.* There is a measure of truth to both characterizations. *Id.* They are large and fractured forces; the motivations and objectives of their many smaller units, spread throughout the large country, vary widely. *Id.* The evidence suggests that they use criminal activities as means of furthering their economic and political interests. *Id.* at 7.

29. See VIOLENCE IN COLOMBIA 1990-2000: WAGING WAR AND NEGOTIATING PEACE, *supra* n.26, at 282-83 (noting that FARC evolved in response to government offensives in 1950s against Communist-led rural enclaves in Colombia). The ELN was founded in the early 1960s and was inspired by the Cuban Revolution. *Id.* See also Arturo Carrillo-Suarez, *Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict*, 15 AM. U. INT'L L.REV. 1, 13 (1999) (stating that FARC is estimated to have between 10,000 and 15,000 troops organized into sixty-two rural fronts, three urban fronts, and nine "elite" units). The FARC possesses a unified central command structure called the "General Secretariat," headed by Manuel "Tirofijo" Marulanda Velez, one of the founding members of the FARC in 1964. *Id.* He and six other members divide responsibilities according to subject and region, and are supported by a general staff. *Id.*

The ELN contains at least 5,000 armed forces, and is divided into approximately thirty-five rural fronts, five urban fronts, and several urban militias. *Id.* at 15. The top leadership is organized in the National Directorate, which is headed by two veteran guerrillas. *Id.* Below them is the Central Command, which is comprised of the leaders of the ELN's military fronts who enjoy more autonomy than their FARC counterparts. *Id.*

30. See Ricardo Vargas Meza, *The Revolutionary Armed Forces of Colombia (FARC) and the Illicit Drug Trade*, TRANSNATIONAL INSTITUTE ("TNI") (1999), available at <http://www.uni.org/drugs/pubs/farc.htm> (discussing history of FARC). The history of the regional guerilla movements in Colombia began with the peasant struggles of the 1920s and 1930s. *Id.* The peasants were reacting to the harsh working conditions imposed on them by coffee plantation owners. *Id.* The authorities used force against the peasants, which set the stage for the peasant resistance that evolved into the armed self-defense groups of the 1940s. *Id.* The politics and strategies of many peasant groups had their origins in socialism and communism. *Id.* The period known as "La Violencia" began fifty years ago with the murder of political leader Jorge E. Gaitán and it led to rural violence. *Id.* The peasant self-defense groups and guerilla groups became the Communist Party's predominant mode of action during the Violence. *Id.* The peasant resistance combined the self-defense model with guerilla warfare. *Id.* The two groups used these two approaches until 1964, when the FARC declared that it would use the armed struggle as part of a political strategy to seize power. *Id.* Armed opposition in Colombia was bolstered by the exclusionary stance of the Colombian political system. *Id.* Grass-roots groups, popular movements, and demonstrations of opposition were criminalized. *Id.* Social and political support for the guerrillas peaked during the 1980s, nour-

influenced the ELNs formation.<sup>31</sup>

Guerillas mainly target rural towns and villages.<sup>32</sup> Experts

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ished by a lack of opportunity for political participation and legal opposition. *Id.* The traditional conflict based on land conflicts and violence was recast as a component of a process that views as its objective the struggle for power. *Id.* See also CRANDALL, *supra* n.5, at 59 (discussing that early guerrilla groups were linked to Communist Party and evolved into modern groups in existence today). See also Jorge Esquirol, *Can International Law Help? An Analysis of the Colombian Peace Process*, 16 CONN. J. INT'L L. 23, 28 (2000) (relating origins of FARC, which are traced to Communist Revolution). The origins of guerrilla groups in general in Colombia, however, can be traced to the "National Front." *Id.* at 28. The five-year war between both parties known as "La Violencia" began on April 9, 1948. *Id.* Peace came when the electorate system was revised, and the two political parties in Colombia, the Conservatives and Liberals, who seemed unable to share power, agreed to run the country in alternating administrations — the National Front. *Id.* The sitting administration would agree to appoint equal numbers from each party to government posts. *Id.* During this time guerrilla groups emerged in reaction to the political exclusion engendered by the National Front. *Id.* It secured the place of the two main parties, but left out other politics. *Id.* Guerrillas claim they are a reaction to this "restricted system"— although there is debate as to how closed the system is or was. *Id.*

31. See CRANDALL, *supra* n.5, at 62 (commenting that ELN resembled more traditional Latin American revolutionary group, along lines of Fidel Castro's movement in Cuba in 1960s). The ELN wanted to emulate the "foco" strategy — in which a group of educated leaders wins the trust of the local community and turns them into revolutionaries, like Fidel Castro did in Cuba. *Id.* During the early part of the 1960s, ELN members traveled to Cuba to learn how to incite revolution. *Id.* at 62-63. The ELN was formally founded in 1964, and gained fame when in 1966 a priest named Camilo Torres joined the ELN. *Id.* at 63. Beginning in the 1980s, the ELN changed strategies and started focusing on economic nationalism, by targeting foreign oil executives, bombing oil pipelines and accusing state-owned oil companies of selling Colombia's patrimony. *Id.* See also Esquirol, *supra* n.30, at 30 (pointing out that some ELN's most revered leaders were ex-Catholic priests). The group's theological leaders are responsible for the ELN's repeated appeals to international humanitarian law and pronouncements against the drug trade. *Id.* A more radical faction with fewer ethical qualms counterbalances them. *Id.* at 31 See also VIOLENCE IN COLOMBIA, *supra* n.26, at 283 (reporting that beginning in 1980s ELN specialized in sabotage of oil pipelines and kidnapping of oil executives).

32. See Esquirol, *supra* n.30, at 31 (stating that guerrillas are typically more guarded around large urban centers and seats of elite power). See also Carrillo-Suarez, *supra* n.29, at 13 (evidenced by fact that sixty-two of guerrillas fronts are located in rural areas). See also CRANDALL, *supra* n.5, at 62 (commenting that FARC knew it was not powerful enough to overthrow Colombian government so they dispersed throughout country). The FARC believed that extra attacks in more areas would be the best strategy to compensate for their lack of troops. *Id.* But see Vice Presidencia de la República, Programa Presidencial de Derechos Humanos y DIH, *Breve Apreciación de la Comuna 13 Medellín (Antioquia)*, Oct. 12, 2002, available at <http://www.derechoshumanos.gov.co> [hereinafter *Comuna 13*] (discussing urban violence perpetrated by Colombian insurgent groups in city of Medellín in Department of Antioquia). According to the National Police, the FARC urban militias have 150 militants, while ELN fronts have approximately 300 members. *Id.* Paramilitary groups are also a presence in other communities within what is known as "Comuna 13." *Id.* Comuna 13 reported 373

note that their war effort is aimed at local police and municipal officials more so than the military directly.<sup>33</sup> The illegal drug trade, in which guerrillas are actively involved, has also helped to strengthen the guerilla forces militarily and financially.<sup>34</sup>

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homicides from January 1 to August 31, 2002, and it was estimated that by the end of 2002, there would be 559 homicides reported. *Id.* Comuna 13 has approximately 128,620 inhabitants, so it would translate into 434 homicides for every 100,000 people — which is twice the numbers projected for Medellín (184 for every 100,000 inhabitants) and six times the figures projected for Colombia (sixty-eight for every 100,000 inhabitants). *Id.* See also Juan Forero, *Colombia Takes Aim at Rebels in its Cities*, N.Y. TIMES, Nov. 4, 2002, at 6 (commenting that Comuna 13 and its 130,000 inhabitants have homicide rate fifty-five times that of New York City). For some, Comuna 13 signifies an urban war. *Id.*

33. See Esquirol, *supra* n.30, at 31 (stating guerrillas targeting of towns and villages is part of overall FARC military strategy). By controlling local authorities, guerrillas attempt to ensure their effective control over political offices and area finances. *Id.* See also CRANDALL, *supra* n.5, at 90 (commenting that FARC has normally avoided direct Colombian military confrontation but that FARC acquisition of more soldiers and high tech weaponry has allowed FARC to directly confront Colombian military). There is also evidence that FARC is contemplating increased acts of urban terrorism, like car bombings. *Id.* See also Carrillo-Suarez, *supra* n.29, at 13 (stating that although FARC operates throughout different regions of country, they predominate in Southern territories of Colombia where their military presence is strongest, and they are *de facto* authority in many areas. *Id.* at 14.

34. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 7 (alleging that drug trade fuels and benefits FARC in complex, but important ways). The data points to rising production, high levels of trafficking, and increasing signs of consumption. *Id.* See also SAFFORD & PALACIOS, *supra* n.26, at 362-63 (contending that illegal drugs and oil have contributed to increased income of insurgent groups). This is one key to their power and the spread of their forces. *Id.* The cultivation of poppies and coca is in the hands of settlers over whom the FARC has strong control. *Id.* The movement of cultivators may not have been able to obtain the size, intensity, and influence that it had without FARC support. *Id.* See also Gonzalo Sanchez G., *Introduction: Problems of Violence, Prospects for Peace*, in VIOLENCE IN COLOMBIA: 1990-2000, *supra* n.26, at 24 (reporting that drug trade, or extractions imposed on it, represent primary source, roughly 50%, of FARC income (second most important source is kidnapping)). It represents 20%, the third most important source of income for the ELN (the first being extortion from oil companies, the second, kidnapping). *Id.* See also CRANDALL, *supra* n.5, at 90 (stating that guerrilla involvement in drug trade is limited to taxing drug shipments or charging cultivators tax). This provides hundreds of millions of dollars to the FARC annually in addition to revenue collected from kidnapping and other illegal activities. *Id.* The FARC has an annual income of approximately US\$500 million a year. *Id.* See also Vargas Meza, *supra* n.30 (discussing that since 1990s, Colombian coca plantations have comprised area estimated to be as large as 150,000 hectares). An estimated 300,000 people are directly dependent on the coca economy. *Id.* At the same time, these same zones are controlled by guerrillas who earn a significant amount of their income by levying taxes on medium, large scale farmers, intermediate coca products, merchants, and the processing labs and secret air strips used to ship cocaine. *Id.* The guerrillas use these funds to strengthen their logistical and communications capacity. *Id.* See also John Otis, *Special Report: Rebel Held: The Rebel Sanctuary*, Hous. CHRON., Aug. 3, 2000, available at <http://www.chron.com/content/chronicle/special/01/farc/index.html>

## 2. The Right Wing Counter Insurgency: The United Auto-Defenses of Colombia

The largest umbrella paramilitary group is the Autodefensas Unidas de Colombia ("AUC") or the United Self-Defenses of Colombia.<sup>35</sup> Commentators note that certain paramilitary groups

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[hereinafter *Rebel Sanctuary*] (stating that CIA satellite photographs show that coca plantations in the region grew from 14,900 acres in 2000 to 19,600 acres in 2001). The FARC earns millions of dollars by taxing and providing protection to drug farmers and traffickers). *Id.* See also Jeremy McDermott, *Colombia's most powerful rebels*, BBC NEWS, available at <http://new.bbc.co.uk/1/hi/world/americas> (commenting that FARC taxes every stage of narcotics business, from chemicals used in processing to charging fee to transport drugs from airstrips under their control. *Id.* FARC makes approximately \$300 million dollars a year from these operations, adding the income they obtain from kidnapping and extortion. *Id.* It makes them the richest insurgent group in the world. *Id.* See generally John Otis, *Special Report: Rebel Held: Is the FARC a Drug Cartel?*, Hous. CHRON., Aug. 3, 2001, available at <http://www.chron.com/content/chronicle/special/01/farc/index.html> (commenting over debate on whether FARC is drug cartel and how acknowledging such fact would pose danger to United States-backed economic aid plan).

35. See Documents, in *VIOLENCE IN COLOMBIA 1990-2000*, *supra* n.26, at 246 [hereinafter *Documents*] (stating that self-defense groups or paramilitary groups developed into powerful fighting forces during 1990s): The AUC, in one of their founding documents, circulated on June 26, 1997, states that they are a "civil defense organization in arms" that has evolved due to the socio-economic, political and cultural contradictions found in Colombian society, which they claim worsened due to the State's inability to guarantee Colombian people their Constitutional rights and liberties. *Id.* The AUC claimed that the State was solely responsible for the rise of the guerrilla groups that terrorized innocent Colombian people. *Id.* at 246-47. They called on the State to take initiative and implement social reforms so that Colombia and her people can regain peace, security, and enjoyment of life. *Id.* See also Jeremy McDermott, *Colombia's Growing Paramilitary Force*, BBC NEWS, Jan. 7, 2002, available at <http://news.bbc.co.uk/1/hi/world/americas/1746943.stm> (discussing formation of AUC). Formed in 1997, the AUC likes to trace its origins to the self-defense groups formed under national legislation in 1968, which allowed the government to use citizens to return order. *Id.* It may be more accurate to trace their beginnings to the paramilitary armies built up by drug lords, like Fidel Castaño. *Id.* As drug lords became land owners buying up land, they took over and set up their own self-defense groups to protect their own interests. *Id.* They faced kidnapping and extortion threats from the guerrillas. *Id.* When the FARC killed Castaño's father, the family swore revenge. *Id.* Carlos Castaño, Fidel's brother, is the present head of the AUC, which he inherited from his brother, killed in a guerrilla ambush in 1994. *Id.* Carlos Castaño has built up the paramilitary forces from 300 in 1994 to approximately 9000 today. *Id.* In 1997 he formed the AUC as an umbrella group that welcomed anyone willing to kill guerrillas—local warlords, drug traffickers, and disaffected members of security forces. *Id.* See also Martha Elvira Soto & Orlando Restrepo, *An Interview with Colombian Paramilitary Leader Carlos Castaño*, EL TIEMPO, (June 30, 2002), reprinted in *WORLDPRESS*, July 15, 2002, available at [http://www.worldpress.org/article\\_model.cfm?article\\_id=756&dont=yes](http://www.worldpress.org/article_model.cfm?article_id=756&dont=yes) (stating that when asked how many men were part of AUC, Castaño replied by saying "fifteen thousand, and you can count them whenever you want"). *Id.* See generally Ana Carigan, *Into the Abyss: The Paramilitary Political Objective*, *CRIMES OF WAR MAGAZINE: COLOMBIA: THE TRAFFIC OF TER-*

were begun as self-help groups to protect landowners from guerrilla groups.<sup>36</sup> Others began as private armies or security to the drug traffickers.<sup>37</sup> Currently, all of these groups are virtually indistinguishable, and have become full-fledged fighting forces.<sup>38</sup>

By some estimates, paramilitaries are deemed responsible for the majority of human rights abuses in Colombia.<sup>39</sup> Their

ROR (2001), available at <http://www.crimesofwar.org/colombia-mag/index-mag.html> (discussing Colombian paramilitary movement).

36. See Ministerio de Defensa Nacional, *Los Grupos Ilegales de Autodefensa en Colombia*, REPÚBLICA DE COLOMBIA 8 (Dec. 2000), available at <http://www.mindefensa.gov.co> [hereinafter *Illegal Auto Defense Groups*] (stating that some auto defense groups were actually formed legally under norms that existed at time that allowed for formation of vigilante and security groups in communities). Subsequently, many of these groups changed course and were declared outside the margins of the law. *Id.* Although many of these groups were founded as a response to civilian discontent with guerrilla abuses, because of their direct and continuous participation in the hostilities these groups are considered part of the internal armed conflict. *Id.* at 11. See also CRANDALL, *supra* n.5, at 84 (commenting that during 1960s and 1970s as guerrillas gained power they began demanding taxes from landowners in guerrilla inhabited areas to continue funding their operations). This levying of taxes continued until the 1980s, but landowners created self-defense groups to counter the guerrillas. *Id.* at 84-85. This type of paramilitary group was institutionalized by the government in the 1960s, and received State military assistance. *Id.* See also Esquirol, *supra* n.30, at 34 (discussing emergence of paramilitarism). See also McDermott, *supra* n.35 (stating that although paramilitary groups claim different origins, they have their roots in being armies built up by drug lords who later needed them to protect their land).

37. See *Illegal Auto Defense Groups*, *supra* n.36, at 8 (stating that initial purpose of auto-defense groups was to guard rural properties of heads of drug cartels, who bought land to launder drug money). See also McDermott, *supra* n.35 (claiming origins of paramilitaries to be rooted in drug trade). See also CRANDALL, *supra* n.5, at 85 (stating that during last decade another more powerful and influential paramilitary group rose to power). These groups evolved from drug traffickers' attempts to fight guerrilla harassment. *Id.* Today, although these paramilitary groups supposedly no longer have drug cartel ties, they are supported by drug money and continue their fight to rid rural Colombia of the guerrillas. *Id.* See also Esquirol, *supra* n.30, at 34 (reporting that yet other groups were formed as vigilantes engaged in "social cleansing" of street children and other undesirables).

38. See *Illegal Auto Defense Groups*, *supra* n.36, at 10 (providing that paramilitary groups grew steadily in 1990s). They had approximately 850 members in 1992, which jumped to 6000 members in 1999, and to more than 8000 in 2000. *Id.* See also CRANDALL, *supra* n.5, at 88 (reporting number of AUC members to be 8000 in 2000 and increasing to 14,000 in 2001). See also Carrillo-Suarez, *supra* n.29, at 17 (stating that AUC is spread out over twenty-nine fronts). Although they are regionally organized, the groups coordinate strategy through a general staff or "war council." *Id.* The fighting force is made up of three types of units: stationary groups (local self-defense associations), and support groups, and mobile units with the capability to travel throughout the country. *Id.*

39. See Esquirol, *supra* n.30, at 34 (reporting that paramilitaries are responsible for number of paramilitaries are responsible for approximately 70% of human rights abuse cases). See also Carigan, *supra* n.35 (reporting figure to be around 80%). Castaño is the



preferred method of warfare is the massacre of townspeople suspected of sympathizing with the guerillas.<sup>40</sup> Paramilitary groups are responsible for the majority of politically related killings.<sup>41</sup>

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subject of twenty-two arrest warrants for massacres, kidnapping, assassinations and drug trafficking. *Id.* See also McDermott, *supra* n.35 (stating that AUC has grown in strength and influence due to links with army and financing by business interests and landowners who have tired of guerrilla extortion). With this rise in strength and influence has come an increase in massacres, the murders of left-wing intellectuals, union workers, human rights workers, and journalists. *Id.* The paramilitaries have provoked massive displacements through their policy of massacres and terror. *Id.* They arrive in towns where a guerrilla influence is present with a list of suspected guerrilla sympathizers. *Id.* Those people are killed, in front of their families and in an explicit manner. *Id.* The message is clear, support the guerrillas and your life is in danger. *Id.*

40. See *Illegal Auto Defense Groups*, *supra* n.36, at 15 (reporting that principal form of action is use of terror against civilian population paramilitaries accuse of being guerrilla sympathizers). The ultimate motive of these groups is to force a massive displacement of the population, to "clean" the area. *Id.* Once these groups are established, they begin to extort money from the population in the form of monthly payments on property or a tax on businessmen in the occupied area. *Id.* See also Carigan, *supra* n.35 (providing description of so-called "death squads" visit). Heavily-armed men arrive by trucks day or night and block all entries and exits to the town or village. *Id.* They proceed to assemble the people in a public place, like a town square. *Id.* The hooded figure, the informant, with a list of names selects people from the crowd, and identifies them as "guerrilla auxiliaries." *Id.* To be called an auxiliary, it is enough to have sold something to a guerrilla, to have been a guerrilla's schoolteacher, or to be wearing the wrong clothing. *Id.* These individuals are taken to the place of torture and execution. *Id.* Before the paramilitaries leave, they may demand meals, loot and set fire to homes, and threaten others with their return. *Id.* See also Carrillo-Suarez, *supra* n.29, at 17 (stating that paramilitaries attack guerrillas by targeting civilians, whom they view as guerrilla sympathizers). The paramilitaries "systematically" engage in death threats, executions, massacres, torture, and forced disappearances as a way to spread terror. *Id.* at 18. See also *Documents*, *supra* n.26, at 251 (espousing views of AUC on civilian populations role in the armed conflict). The AUC claims that civilians played a pivotal role in the present conflict. *Id.* They are either active sympathizers who take on responsibilities for the guerrillas or passive sympathizers who pretend to not hear, see or know anything. *Id.* at 252. The AUC claims that people are motivated to act in this way because of fear, blackmail, pressure from the guerrillas, convenience or unspoken sympathy for guerrillas. *Id.* Both types of sympathizers are as important as active combatants. *Id.* Distinguishing combatants from sympathizers and other non-combatant participants in the conflict is complicated. *Id.* at 253. Therefore the AUC calls for all actors in war to respect the rights of non-combatant civilians. *Id.* See also Human Rights Watch, *Colombia: Terror from All Sides*, from Testimony of Jose Miguel Vivanco, Executive Director Americas Division, Human Rights Watch, Apr. 24, 2002, available at <http://www.hrw.org/background/america> [hereinafter *Terror from All Sides*] (stating that AUC had committed more than one hundred massacres in 2001).

41. See Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Country Reports on Human Rights Report 2001, Colombia Section*, Washington D.C. 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm> [hereinafter *U.S. Dep't of State Rep. 2001*] (reporting that NGOs attributed majority of political and social cleansing killings, and forced disappearances in 2001 to paramilitary groups). See also *Terror from All Sides*, *supra* n.40 (stating that AUC committed at least 1,015 killings in

There is also evidence that shows the cooperation and support of the State armed forces in paramilitary activities.<sup>42</sup>

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2001 — at least 50% of all political killings). *See also* Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law*, in HUMAN RIGHTS WATCH REPORT: 1998, available at <http://www.hrw.org/reports98/Colombia> [hereinafter *War Without Quarter*] (reporting Carlos Castaño admitted targeting leftist politicians solely on their views). The AUC claims that as long as guerrillas kill security force members or relatives of paramilitaries, they will consider politicians and trade union leaders prime targets. *Id.* In 1997, Castaño reaffirmed this stance by stating his troops would kill perceived guerrilla supporting political candidates. *Id.* *See also* Esquirol, *supra* n.30, at 34 (discussing that insurgent groups have also targeted human rights workers, pro-peace activists, and political centrists in Colombia's major cities).

42. *See* INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 8 (reporting that there are major questions about links between military/State security forces and paramilitaries). U.N. reports, the U.S. State Department, and non-governmental organizations ("NGOs") have suggested that direct connections between both State security forces and paramilitaries have been established in some instances. *Id.* At the very least, the military looked the other way when the paramilitaries committed atrocities. *Id.* *See also* HUMAN RIGHTS WATCH WORLD REPORT 2002 133, available at <http://www.hrw.org> [hereinafter HRW 2002] (recounting several incidents during 2001, where massacres occurred and residents reported that Colombian armed forces and police looked other way as paramilitaries entered their villages). Certain military units and police detachments continued to promote, work with, support, profit from, and tolerate paramilitary groups, treating them as allies. *Id.* At their most brazen, these relationships involved active coordination between government and paramilitary units; communication via radios, cellular phones, and beepers; intelligence sharing, including names of suspected guerilla collaborators; sharing of fighters, including State soldiers serving in the paramilitary and paramilitary commanders staying on military bases; sharing of vehicles, transporting fighters; coordinating army roadblocks, which allowed paramilitary fighters to pass; and money payments made from paramilitaries to military officers for their support. *Id.* *See also* Asunción, *supra* n.6, at 450 (stating that paramilitaries are often illegally armed and trained by high ranking Colombian armed forces members.) *See also* McDermott, *supra* n.35 (stating that paramilitaries owe their increase in growth and influence, partly due to their links to army, and that substantial evidence exists to show cooperation between army and paramilitaries). This is in spite of the fact that the Colombian government has tried hard to sever the links between the two. *Id.* *See also* *The Curse of the Vigilantes*, ECONOMIST, Apr. 19, 2001, available at <http://www.economist.com> (stating that paramilitaries operate without interference close to bases of armed forces). The Colombian government states that it is taking action against the paramilitaries and their military co-conspirators. *Id.* From December 1999 to October 2000, they claimed to have killed seventy-six paramilitaries, and captured 248. *Id.* Yet, out of one group of security officers that were fired in 2000, twenty-three joined the paramilitaries. *Id.* In February 2001, a retired army general was sentenced by court martial to forty months in jail for failing to prevent a paramilitary massacre in 1997. *Id.* Yet the colonel who "blew the whistle" was also given the same sentence. *Id.* *See also* Carigan, *supra* n. 35 (describing events of "Naya Massacre" that took place in 2001). Human rights advocates denounced the government's failure to protect a massacre they had been warned about. *Id.* The residents of the town had been asking for protection for months, and the Organization of American States ("OAS") Human Rights Commission had instructed the Colombian government to extend special protection the Naya residents. *Id.* The U.N. Human rights office had alerted the authorities two

In addition, the flourishing drug trade has aided the growing strength of paramilitaries.<sup>43</sup> Their rapid growth runs parallel to the increase in narcotics trafficking.<sup>44</sup> This is evidenced by the close geographic proximity of illegal cultivation areas and paramilitary groups.<sup>45</sup>

### 3. The Colombian Government: A War on All Fronts

Commentators agree that during his presidency, Andrés Pastrana Arango made the peace process his top priority.<sup>46</sup> In

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days before the massacre that a "300 strong" paramilitary force was advancing into the region. *Id.* The army did nothing to protect the people of Naya. *Id.* See also CRANDALL, *supra* n.5, at 88 (arguing that paramilitaries are becoming more independent of State armed forces and are more self-interested). Paramilitaries use the military when it is convenient and fight alone when it is not. *Id.*

43. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 7 (stating that industry fuels and benefits paramilitary forces, like guerillas, in important ways). The data points to rising production, high levels of trafficking, and increasing signs of consumption. *Id.* See also SAFFORD & PALACIOS, *supra* n.26, at 362-63 (stating that illegal drugs and oil contributed to increased income of insurgent groups). See also Illegal Auto Defense Groups, *supra* n.36, at 12-13 (stating that paramilitaries have copied guerillas in many ways, particularly in how they finance their operations — through drug trade). This has led to fierce and violent territorial disputes between both groups for the control of land. *Id.*

44. See *Illegal Auto Defense Groups*, *supra* n.36, at 12 (stating that although paramilitaries have found other methods for financial support, they have not broken their ties with drug traffickers). It is also claimed that paramilitary groups have also established an extortion system in cocaine cultivation zones under their control, allowing them to partly derive income from narco-trafficking. *Id.* at 14. AUC leader Carlos Castaño admitted that directly or indirectly, 70% of AUC income is derived from trafficking. *Id.* Paramilitary groups also provide security for traffickers and their properties. *Id.* See also Karl Penhaul, *A Spiraling Devastation*, CRIMES OF WAR MAGAZINE: COLOMBIA: TRAFFIC OF TERROR (Aug. 2001), available at <http://www.crimesofwar.org/colombia-mag/index-mag.html> (stating that paramilitary forces admit receiving taxes from coca trade, but claim it is only used to finance their campaign against FARC).

45. See *Illegal Auto Defense Groups*, *supra* n.36, at 12 (stating that where there is abundance of "illegal resources", there are more armed paramilitaries). See also Carrillo-Suarez, *supra* n.29, at 17 (stating that there is significant evidence demonstrating that paramilitary groups participate in, and derive income from, drug trafficking activities, although paramilitary leaders deny allegations). See also U.S. Dep't of State Rep. 2001, *supra* n.41 (reporting that massacres of townspeople and their forced displacement is part of campaign to allow paramilitaries to challenge guerrilla groups over control of drug cultivation and other strategically important territories). See also SAFFORD & PALACIOS, *supra* n.5, at 367 (stating that decline of Colombian drug mafias lead to decreased resources for paramilitaries). The current locations of paramilitary camps is an indicator suggesting a continuing connection to drug trafficking. *Id.* Drug traffickers, guerillas, and paramilitaries operate in areas with similar socio-economic profiles. *Id.* The violence is at its most intense in these areas when at least two of the three actors are present. *Id.*

46. See Esquirol, *supra* n.30, at 32 (stating that although Andrés Pastrana Arango

an effort to promote peace negotiations, the Pastrana administration ceded a “demilitarized zone,” the size of Switzerland, in Southern Colombia to the FARC.<sup>47</sup> Unfortunately, the peace ne-

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did make peace process his top priority, he was criticized for possibly doing so at expense of other questions of domestic policy). *See also* INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 12 (stating that Pastrana identified peace process as his highest priority). Even before his inauguration in August 1998, he set out to attempt a negotiated settlement with the FARC. *Id.* In addition to economic aid plans, Pastrana pursued the backing of key sectors of the Colombian society. *Id.* at 13. There were meetings of influential business leaders with FARC representatives, more active involvement of the Catholic Church, and the emergence of nation-wide movements that have brought millions of Colombian citizens together to protest against the violence. *Id.* Yet the peace process struggled and yielded few, if any, results. *Id.* at 13-14. *See also* CRANDALL, *supra* n.5, at 72 (noting that when then President-elect Andrés Pastrana Arango met with FARC commanders it was received with much enthusiasm by Colombians). It was believed that Pastrana could be the person to bring peace between Colombia and the FARC. *Id.* *See also* Memorandum from Adam Isaacson, Senior Associate, Center for International Policy, to Foreign Policy Aides 1 (Nov. 18, 2002), at <http://www.ciponline.org/colombia> (discussing election of Alvaro Uribe Velez to Colombian Presidency in May 2002). Uribe was inaugurated into office on August 7. *Id.* He and his cabinet have traveled throughout Colombia holding town meetings to discuss security, and is considered to be intolerant of corruption. *Id.* He is also controversial due to his past opposition to the peace talks during the 1990s and his summoning of legal mechanisms to rule by decree. *Id.* This latter act has alarmed human rights defenders. *Id.*

47. *See* RES. 85 (1998) (Col.) (enacted), available at <http://bib.minjusticia.gov.co/biblioteca/consulta.htm> [hereinafter Resolution 85] (declaring beginning of peace process and political character of armed group is recognized and demilitarized zone is declared). Resolution 85 reads:

Considering:

1. That the Revolutionary Armed Forces of Colombia — FARC — has expressed its aim and a willingness for peace.
2. That the National Government, paying attention to the wishes expressed by Colombians at the voting booths on the 26th of October 1997 in the Mandate for Peace, Life and Liberty, has initiated talks with the aforementioned insurgent Organization, with the objective of peacefully resolving the armed conflict.
3. That the Government and representative members of the FARC have agreed to initiate the peace process within the first three months of the [Pastrana] government, and that will take place in the demilitarized zone comprised of the municipalities of Mesetas, La Uribe, La Macarena, and San Vicente del Caguan.

Resolves:

Article 1. Declare the initiation of conversations with the Revolutionary Armed Forces of Colombia –FARC,

Article 2. Recognize the political character of the aforementioned Organization.

Article 3. With the goal of bringing about peace talks with representative of the Government and spokespersons and representatives of the FARC, as of November 7, 1998 until February 7, 1999 a demilitarized zone will be set up in the municipalities of Mesetas, La Uribe, La Macarena, Vista Hermosa, in the department of Meta and San Vicente del Caguan in Caquetá department . . .

gotiations with the FARC ended on February 20, 2002, amidst alleged continuing human rights violations perpetrated by the FARC.<sup>48</sup> In conjunction with Plan Colombia, an economic aid plan, Pastrana strengthened his relationship with the United States.<sup>49</sup> The Colombian Government maintained the support

Article 4. The present resolution is effective as of the date enacted.

*Id.* (author's trans.). See also CRANDALL, *supra* n.5, at 73 (discussing that in Pastrana's peace efforts, he conceded a temporary *zona de despeje* or "demilitarized zone" the size of Switzerland to FARC in Southern Colombia). The agreement removed all Colombian military personnel from the area, effectively handing control of the area over to the FARC. *Id.* The FARC set up its own local government, judiciary and police. *Id.* Earnest peace negotiations in the region began in January 1999. *Id.* See also Sanchez, *supra* n.29, at 24 (describing the demilitarized zone area as comprising five municipalities in the Southern departments of Caquetá and Macarena). The area is 41,000 square kilometers and approximately 100,000 inhabitants. *Id.* See also U.S. Dep't of State Rep. 2001, *supra* n.41 (describing what is known as the "demilitarized zone"); Coalition to Stop the Use of Child Soldiers, *Child Soldiers: 1379 Report* 23 (Nov. 2002) available at <http://www.child-soldiers.org> [hereinafter *Colombia 1379 Report*] (stating that this was zone that FARC occupied until February 21, 2002). On February 19, 2002, then President Pastrana announced that peace talks had been suspended on account of FARC's continued violations of humanitarian and human rights law. *Id.*

48. See RES. 31 (COL.), DIARIO OFICIAL NO. 44716 (2002), available at <http://www.imprenta.gov.co> (ending FARC peace process). Resolution 31 states:

The National Government of the Republic of Colombia

In exercise of its constitutional and legal faculties, especially those conferred by Law 418 of 1997 and continued by Law 548 of 1999

Resolves:

Article 1. Bring an end to the talks and negotiations and signing of agreements that began with the Revolutionary Armed Forces of Colombia FARC by way of Resolution 85 of 14 of October 1998.

Paragraph. Notify the corresponding judicial authorities regarding the content of this resolution in accordance with Article 8 of Law 418 of 1997, continued by Law 548 of 1999.

Article 2. Leave without effect the recognition of the Revolutionary Armed Forces of Colombia's FARC political character which was authorized by Resolution No. 85 of 1998.

Article 3. This resolution is effective as of this date and annuls all other resolutions that are to the contrary, in particular number 85 of the 14 of October 1998.

Communicate and Execute.

*Id.* (author's trans.). See also *Colombia 1379 Report*, *supra* n.47, at 23 (stating that this was zone that FARC occupied until February 21, 2002). *Id.* On February 19, 2002, then President Pastrana announced that peace talks had been suspended on account of the FARC's continued violations of humanitarian and human rights law. *Id.*

49. See Esquirol, *supra* n.30, at 32 (reporting that Plan Colombia was developed with assistance of White House advisers). See also Bureau of Western Hemisphere Affairs, U.S. Department of State, *Fact Sheet: Plan Colombia*, Washington D.C., Mar. 14, 2001, available at <http://www.state.gov/p/wha/rls/fs/2001/index.cfm?docid=1042> [hereinafter *Plan Colombia*] (providing overview of Plan Colombia). The plan was developed by the Colombian government to meet the most pressing challenges confronting the country

of the Colombian military, although the relationship was tense due, in part, to continuing allegations of human rights abuse towards civilians by the military.<sup>50</sup>

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— promoting the peace process, combating the narcotics industry, reviving the Colombian economy, and strengthening the Democratic pillars of Colombian society. *Id.* The Plan is worth US\$7.5 billion. *Id.* US\$4 billion of Colombian resources has been pledged and Pastrana called on the international community to provide the remaining US\$3.5 billion. *Id.* The United States is providing US\$1.3 billion in aid, which is in addition a previously approved US\$330 million package. *Id.* A considerable amount of the US aid, US\$390.5 million will go towards the expansion of counter-narcotics operations into Southern Colombia. *Id.* In the area of Human Rights and Judicial Reform, the total U.S. interagency package provides US\$122 million for a broad range of human rights, judicial reform, and other programs designed to support the peace process. *Id.* Specific initiatives include NGOs concerned with human rights (US\$4 million); strengthening human rights institutions (US\$7 million); establishing human rights units within the Colombian National Police (“CNP”) and the Colombian Attorney’s General’s office (US\$25 million); training judges and prosecutors (US\$7.5 million); and providing funding to train and support Colombian law enforcement personnel in anti-corruption, anti-money laundering, and anti-kidnapping measures. *Id.* See also U.S. Dep’t of State, International Information Programs, Washington File: *Fact Sheet: USAID Programs for Economic and Social Development in Colombia*, Mar. 13, 2001, available at <http://usinfo.state.gov/regional/ar/colombia/usaid13.htm> [hereinafter *USAID Colombia*] (reporting that U.S. Agency for International Development (USAID) earmarked US\$30 million for IDPs, and US\$2.5 million towards rehabilitation of child soldiers). See generally U.S. AID Fact Sheet, *USAID Assistance to Colombia*, May 24, 2002, available at [http://www.usaid.gov/press/releases/2002/02fs\\_colombia.html](http://www.usaid.gov/press/releases/2002/02fs_colombia.html) [hereinafter *USAID Fact Sheet*].

50. See Esquirol, *supra* n.30, at 32 (commenting that military disagreed with Pastrana on de-militarized zone, and also acknowledged that they did not have enough training and intelligence capabilities (militarily) to combat insurgent groups — therefore their operations have been mostly reactive). See also U.S. Dept of State 2001, *supra* n.41 (reporting that although small percentage of total human rights abuses reported are attributable to State security forces, government security forces continue to commit serious abuses, including extrajudicial killings). See also *U.S. Antidrug Funds Missing*, ASSOC. PRESS, May 10, 2002, available at [http://www.americas.org/news/nir/20020512\\_u\\_s\\_antidrug\\_funds\\_missing.asp](http://www.americas.org/news/nir/20020512_u_s_antidrug_funds_missing.asp) (reporting that this past May, following disappearance of U.S. funds earmarked to combat drugs, Colombian antinarcotics police Chief Gen. Gustavo Socha was re-assigned to police unit providing security to dignitaries). Two million U.S. dollars disappeared. *Id.* Part of the stolen money came from the money designated by Plan Colombia. *Id.* The disappearance was discovered in March, and it was confirmed that up to twenty police officers might have been taking the money for themselves. *Id.* See also Frances Robles, *Colombian admiral resigns amid allegations of drug trafficking*, MIAMI HERALD, Nov. 27, 2002, available at <http://www.miami.com> (reporting that controversial Colombian admiral who had had his American visa rescinded previous week resigned amid accusations). He was audiotaped discussing shipments of “coffee” and having to be “very careful, because if you come to fall into this mess, it’s screwed.” *Id.* The Colombian government accepted his resignation. *Id.* The Colombian Inspector General’s office also stated the admiral was guilty of “deliberate inertia,” looking the other way, in a January 2001 massacre attributed to paramilitaries. *Id.* He was also linked to fifty-seven murders of trade unionists, human rights workers and community leaders in 1991 and 1992, when he was head of Navy Intelligence. *Id.* A

Yet, scholars also point to the presence of impunity in Colombia as a debilitating factor in the country's journey to peace and security.<sup>51</sup> This is partly due to the unresponsive and corrupt justice system, which has not only caused Colombia's multiple crises, but is also a product of them.<sup>52</sup> Human rights abuses continue to be a problem for the country, their main perpetrators being the illegal armed groups as well as the military, police,

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military tribunal found there was not enough evidence against him. *Id.* Despite all of this, he was promoted to military attaché in Israel in 2002. *Id.*

51. See U.S. *Dep't of State Rep. 2001*, *supra* n.41 (reporting that in 2001, Colombian government continued facing serious challenges to its control over national territory, as internal conflict increased, and political and criminal violence continued). See also Sanchez, *supra* n.26, at 12 (discussing the simultaneous growth of criminality and impunity in Colombia). Violence seems to be the greatest problem affecting modern Colombia. *Id.* It comprises 26% of the health care costs in the country, compared to 3.3% for the rest of Latin America, and 1.5% for the rest of the world. *Id.* See also Alan Seagrave, Note: *Conflict in Colombia: How Can Rebel Forces, Paramilitary Groups, Drug Traffickers, and Government Forces Be Held Liable for Human Rights Violations Where Impunity Reigns Supreme?*, 25 NOVA L. REV. 525, 528 (2001) (commenting on Colombia's tumultuous history). *Id.* at 528. Due to the violence of the last fifty years, Colombia has been involved in a protracted state of political violence that caused a steady decline in national security. *Id.* This, in turn, is what provided the fertile ground for the rise of drug cartels, which capitalized on the government's weakness and complicity, and the use of violence to attain their ends. *Id.* at 528-29. This heritage is the basis for the armed conflict. *Id.* The use of violence by all involved parties, including the government, has accelerated "the downward spiral in human rights violations." *Id.*

52. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 10 (identifying corrupt and inefficient judicial system as part of Colombia's multi-layered problem). See also U.S. *Dep't of State Rep. 2001*, *supra* n.41 (commenting that although judiciary is independent of government influence, subordination or intimidation of judges, witnesses, and prosecutors remains common). See also Sanchez, *supra* n.29, at 12 (discussing the Colombian judiciary's increasing inefficiency). Not only are there more cases to be decided, but the Colombian judiciary has been unable to give investigative priority to its most serious crimes, the ones against life. *Id.* Since 1990, approximately 50% of all judicial processes have ended in impunity. *Id.* Simultaneously, there has been an increase in homicides and organized crime. *Id.* It is noted that only 6% of homicides are brought to trial, and penalties are imposed in a mere 4% of those cases. *Id.* See also Seagrave, *supra* n.51, at 527 (reporting that judiciary is virtually powerless as result of decades of death threats and payoffs from drug traffickers, and today less than 3% of crimes are successfully prosecuted). This impunity further weakens an already weakened executive branch. *Id.* See also Luz Estella Nagle, *LATIN AMERICA IN THE TWENTY-FIRST CENTURY: The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT'L L.J. 345, 363 (2000) (recounting incident of one Colombian judge, who after bringing charges against two soldiers for their involvement in civilian massacre and issuing their arrest warrants, was forced to leave country after receiving death threats, and her father was murdered in retaliation). But at the same time, there is also incompetence within the system, as when court procedure is not followed, evidence is contaminated or damaged, a lack of training for personnel, or more often than not bribery. *Id.* at 364. Three examples are not turning over evidence; or turning it over but it subsequently disappearing, or tipping off suspects before they are arrested. *Id.* at 364-65.

and State security forces.<sup>53</sup> The list of targets include politicians, prosecutors, investigators, judges, human rights workers, journalists, and civilians.<sup>54</sup> Experts point to the weak State as the source of Colombia's multiple problems.<sup>55</sup> Scholars also opine

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53. See *U.S. Dep't of State Rep. 2001*, *supra* n.41 (reporting that political and extrajudicial killings continued to be problem during 2001). An estimated 3,700 civilians died in such acts, committed principally by non-state agents. *Id.* But state agents reportedly committed 100 killings, including deaths that resulted from abuse of police authority. *Id.* It was also reported that from January to September 2001, State security forces committed ninety-two "intentional homicides of protected persons," and caused death to twenty-five citizens during armed combat. *Id.* And during the same time period in 2000, the security forces were responsible for 119 deaths. *Id.* As of December 2001, the Prosecutor General's Office reported that it had approximately 788 open investigations of human rights violations by 1342 individuals, including 234 members of the military and police, 770 presumed paramilitaries, 240 alleged guerrillas, and ninety eight other civilians. *Id.*

54. See HRW 2002, *supra* n.42, at 137 (reporting that during 2001, seven government investigators were murdered by illegal paramilitary gunmen). Several key witnesses to important cases were also killed while in government custody or while in the process of supplying information to prosecutors. *Id.* In the first ten months of 2001, eleven defenders were killed. *Id.* Some government offices attempted to protect defenders, supplying bodyguards, bulletproof reinforcements for offices, and an emergency response network operated by handheld radios. *Id.* The Interior Ministry provided protection or relocation assistance to 747 people between May and Mid September of 2001. *Id.* See generally *U.S. Dep't of State Rep. 2001*, *supra* n.41 (providing detailed report of human rights abuses in Colombia during 2001). See also Human Rights Watch, *A Wrong Turn: The Record of the Colombian Attorney General's Office* 10 (Nov. 2002) [hereinafter *A Wrong Turn*] (stating that investigating and prosecuting human rights violations in Colombia is very dangerous work, and large number of prosecutors and investigator have been killed). The report offers a few examples. *Id.* In 1998, after an investigation into the paramilitaries' financing networks, twelve investigators were killed and two were forced to flee the country. *Id.* In 2001, during the investigation of a massacre, a prosecutor and three judicial investigators were murdered. *Id.* Between January 2000 and November 2001, investigators received 196 death threats. *Id.* See also *Ministerio De Defensa Nacional, República de Colombia, Informe Anual Derechos Humanos y DIH 2001*, 23 (Feb. 2002), available at <http://www.midefensa.gov.co> [hereinafter *Colombian Defense Ministry Rep. 2001*] (reporting results of government's Witness and Threatened Persons Protection Program, purpose of which is to protect thousands of Colombians who find themselves in either category, witness or threatened person). According to the report, approximately 2,344 persons benefited from the protection the program offers. *Id.*

55. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 10 (stating that attempts to correct high levels of impunity met with little success). See also Sanchez, *supra* n.29, at 25 (commenting that both guerrillas and paramilitaries base their origins in the State's inability to meet the needs of the country). Guerrillas claim that the State's incapacity to meet its economic, cultural and social obligations brought about the guerrilla movement. *Id.* Paramilitaries, on the other hand, attribute their rise to the State's inability to guarantee public security for people's lives, property and freedom for Colombian citizens. *Id.* The State is considered the absent enemy in the war against its two main rivals, for it is neither a social regulator nor a guardian of order. *Id.* The war has delegitimized the State and its public institutions. *Id.* See also William D. Shingleton,



that the violence, criminal activities and the human rights abuses are, to a great extent, the product of a State that has not been capable of protecting its citizens and upholding the rule of law.<sup>56</sup>

Colombia's internal conflict has had serious repercussions, having more than 35,000 Colombian lives in the past decade.<sup>57</sup> In 2001, between 3,000 and 5,000 civilians were killed as a result of the armed conflict.<sup>58</sup> The U.N. states that Colombia's IDP of

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*Understanding Colombia*, 25 FLETCHER F. WORLD AFF. 255, 258 (2001) (stating that Colombian people view their political leaders as impotent and corrupt). This view worsened after it came to light that the former President Ernesto Samper's 1994 election campaign had been partly financed by drug money. *Id.* In a study, an international corruption watchdog group named Colombia one of the thirty most corrupt Nations in the world. *Id.* The Colombian Parliament's failure to impeach Samper has been noted as a visible example of Colombia's two-party system's unwillingness to attack its opponents' corruption for fear of revealing their own. *Id.*

56. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 10 (stating that a weak State with little physical presence in much of the country is to blame for Colombia's problems). See also Rodrigo Uprimny Yepes, *Violence, Power, and Collective Action: A Comparison between Bolivia and Colombia*, in *VIOLENCE IN COLOMBIA 1990-2000: WAGING WAR AND NEGOTIATING PEACE*, *supra* n.26, at 47-49 (drawing comparisons between Bolivian and Colombian governments' reactions to mass violence and collective action). The problem of violence in Colombia is a complex one, with many factors. *Id.* at 48. Violence does not depend exclusively on economic, social, or political factors. *Id.* The weakness of the Colombian State draws the most consensus as the cause of Colombia's problems, but it is not unequivocal, since there are different interpretations as to what a weak State is. *Id.* Either it means improving the military in order to control mass violence, or it refers to a lack of democracy and state of law. *Id.* A distinction between power and violence is proposed. *Id.* Power is the ability to act collectively, while violence is an individual's use of violent instruments against other people. *Id.* An individual or group can use violence, while the group always shares power. *Id.* The violence in Colombia is derived partly from Colombians' inability to act collectively. *Id.* at 48-49. Increasing violence tends to increase fragmentation in Colombian society, so that a decrease in the citizenry's power leads to increased violence. *Id.* The State should promote civil society before implementing political solutions that foster State participation. *Id.* See also Shingleton, *supra* n.55, at 258 (reporting recent survey results claiming that Colombian people's support for democracy had fallen from 60% in 1996 to 50% in 2000).

57. See INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 7 (noting that although people may disagree as to characteristics of Colombia's violent groups, resulting 35,000 deaths have been significant). See also Seagrave, *supra* n.51, at 529 (stating that huge loss of life in Colombia as well as large number of displaced individuals, led to Colombia's poor human rights record). See also Carrillo-Suarez, *supra* n.29, at 20 (citing number of civilians killed between 1988 and 1997 at 35,000). During this time period, the average of politically motivated killings or those presumed to be was 3,428 a year, including combat casualties. *Id.* That is approximately six to seven persons a day. *Id.*

58. See U.S. Dep't of State Rep. 2001, *supra* n.41 (clarifying that figure includes combat casualties, political murders, and forced disappearances). See also Colombian Defense Ministry Rep. 2001, *supra* n.54, at 64 (reporting that during 2001, guerrillas and paramilitaries were responsible for almost equal amounts of killing). The guerrillas and paramilitaries assassinated 1,060, and 1,028 persons, respectively. *Id.* In relation to

1.5 million is the third largest in the world.<sup>59</sup> In 2001, 347,000 civilians were displaced from their homes.<sup>60</sup> It is reported that State agents are responsible for less than one percent of the displacements, while the paramilitaries are responsible for forty-six to sixty-three percent, and guerilla groups are responsible for twelve to thirteen percent.<sup>61</sup> According to the United Nations

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1995, when the guerrillas and paramilitaries assassinated 467 persons, there has been a 126% increase).

59. See Defensoria Del Pueblo, *Informe Defensorial Sobre el Desplazamiento Forzado por la Violencia en Colombia 2* (2001), available at [http://www.mindefensa.gov.co/der-echos\\_humanos/desplazados](http://www.mindefensa.gov.co/der-echos_humanos/desplazados) [hereinafter *Forced Displacement in Colombia Report*] (reporting number of displaced persons within Colombia between 1996 and 2001, was approximately 720,000 persons). In 2000, 128,843 persons were displaced, while in 2001 that figure increased to 190,454. *Id.* The number of displaced increased by 52% in those two years. *Id.* See also *U.S. Dep't of State Rep. 2001*, *supra* n.41 (stating that vast majority of displaced are peasants, who have settled in outskirts of major cities, like Bogotá, Medellín, Cartagena). Between 1985 and the first quarter of 2001, 26% of displaced persons were from rural areas, 22% were female heads of household, and 57% were female. *Id.* See also INDEPENDENT TASK FORCE REPORT, *supra* n.27, at 7 (noting that Colombia is preceded only by Sudan and Angola in total numbers of displaced). See also Machel, *supra* n.2, at 12 (reporting that about one in every 150 people on earth — for a total of forty million — are displaced by conflict or human rights violations). Approximately half of these displaced people are children. *Id.* Those displaced individuals who stay within their own national borders are considered “internally displaced persons” (“IDPs”), while those forced to flee to other countries are called “refugees.” *Id.* See generally Seagrave, *supra* n.51, at 528 (citing similar statistical information on number of displaced Colombians).

60. See *U.S. Dep't of State Rep. 2001*, *supra* n.41 (reporting figure of 347,000 civilians, which was provided by Consultorio para los Derechos Humanos y el Desplazamiento (“CODHES”) or Observatory for Human Rights and Displaced Persons, Colombian NGO that works directly with displaced persons). Government figures differ slightly and place the number of displaced at 275,000. *Id.* Calculating the number of displaced is difficult because some persons are displaced more than once, and many of these IDPs do not register with the government. *Id.* See also Jimmie Briggs, et al., *Case Study on the Impact of Small Arms on War-Affected Children: Colombia: No Safe Haven from War 5* (2001), available at <http://www.yapi.org/publications/resourcepapers.htm> (reporting that approximately two million Colombians have been displaced from their homes and communities since 1985). Most of the displaced have been from rural areas where the guerilla and paramilitary factions fight over control for drug crops and land. *Id.*

61. See *U.S. Dep't of State 2001*, *supra* n.41 (citing statistics provided by U.N., Colombian government agencies, and NGOs). See generally *Forced Displacement in Colombia Report* *supra* n.59, at 2 (providing detailed report of activity of displaced persons through different departments in country, as well as description of how violent activity of guerrillas and paramilitaries caused this massive displacement). Close to 10% of the registered displacements in the last ten years took place in departments and regions involved in the peace process with the FARC and ELN. *Id.* at 3. The pressure faced by the families and communities in the then demilitarized zone, the fears of forced recruitment of children and military actions by the guerrillas and paramilitaries and the state security forces in the surrounding areas could be considered the principal causes of displacement. *Id.* at 3-4. In addition, the increased growth of the insurgent groups is

Children's Fund ("UNICEF"), over one million Colombian children have been displaced from their homes in the past decade as a result of the armed conflict.<sup>62</sup> Experts opine that children have suffered disproportionately.<sup>63</sup>

### C. Colombian Child Soldiers: The Weapons of Choice

#### 1. The Guerillas "Little Bees"

Commentators report that up to thirty percent of some guerrilla units are made up of children.<sup>64</sup> There are an estimated

considered a determining factor in the increased number of displaced persons. *Id.* at 4. An increase in armed men allows for an increase or extension in the number of fronts, and an increase in the number of territorial disputes. *Id.* at 5. Between 1996 and 2000, the number of armed actors increased from 13,400 to more than 29,000. *Id.*

62. See U.S. Dep't of State Rep. 2001, *supra* n.41 (reporting that 70% of IDPs in Colombia are under age of nineteen). See also Defensoria del Pueblo, *Informe Sobre Los Derechos Humanos de la Niñez en Colombia Durante el Año 2001* 25, Mar. 19 2002, available at <http://www.defensoria.org>. [hereinafter *Children's Rights in Colombia 2001*] (reporting that in last fifteen years, close to 1,100,000 children have been displaced by internal armed conflict). In 2001, 93,210 minors were displaced, which is approximately 48.84% of the displaced population. *Id.* See also Briggs, et al., *supra* n.60, at 4 (contending that United Nation Children's Fund ("UNICEF") approximates that more than 75% of displaced youths who previously attended school do not return after leaving their original homes). An estimated 66% of Colombian children who live in the conflict zones do not have access to secondary education. *Id.* The fact that teachers in these regions have received death threats from guerillas and paramilitaries further reduces children's access to education. *Id.*

63. See *Children's Rights in Colombia 2001*, *supra* n.62, at 25 (stating that forced displacement is one of worst consequences of armed conflict). Forced displacement has forced women, children and adolescents to seek refuge in large urban areas where they lack basic necessities and have limited access to health care, education and housing. *Id.* at 25-26. Children are the most affected by this because they are least able to protect themselves in these situations. *Id.* See also U.S. Dep't of State Rep. 2001, *supra* n.41 (reporting that only 15% of internally displaced children attend school). Ministry of Defense figures calculate that approximately 200 children were killed in the internal armed conflict during 2000, and that 460 had been killed in the previous four years and another 789 had been kidnapped. *Id.*

64. See *War Without Quarter*, *supra* n. 41 (reporting that number of children in militias, considered training ground for future fighters, can be as high as 85%). See also Briggs, et al., *supra* n.60, at 5 (reporting that there are as many as 16,000 FARC combatants throughout Colombia, approximately 20% of which thought to be under age of eighteen). See also Defensoria del Pueblo, República de Colombia, *Boletín Niñez No. 8: La Niñez en el Conflicto Armado Colombiano* 7 (2002), available at <http://www.defensoria.org> [hereinafter *Children in Colombian Armed Conflict*] (reporting results of study conducted with eighty-six former child soldiers, where 81% belonged to FARC, 16% to ELN, and remaining belonged to other, small guerrilla groups). The ages of the study participants when they entered the guerrillas was between seven and seventeen. *Id.* Sixty-one percent were between the ages of seven and fourteen when they joined, and 20% of those children joined before they reached the age of twelve. *Id.*

4,000 to 6,000 children in the Colombian ranks.<sup>65</sup> Two thirds are boys.<sup>66</sup> Guerrillas refer to child soldiers as “abejitas,” or “little bees,” for the children’s ability to sting before their targets realize they are being attacked.<sup>67</sup> Recent research suggests that the FARC, the oldest and the largest insurgent group, continues to

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65. See *Child Soldiers*, *supra* n.8 (providing statistical information on number of children reportedly involved as combatants in internal armed conflict). See also Jan McGirk, *Growing Up as Guerrillas*, 48 WORLD PRESS REVIEW, July 2001, available at [http://www.worldpress.org/article\\_model.cfm?article\\_id=197&don't=yes](http://www.worldpress.org/article_model.cfm?article_id=197&don't=yes) (stating that at least 6,000 children are thought to be fighting in insurgency, and that one-third of fighting force is female). An amateur guerrilla training video shows guerrillas, some as young as eleven, in camouflage playing with submachine guns. *Id.* See also Juan Forero, *A Child's Vision of War: Boy Guerrillas in Colombia*, N.Y. TIMES, Dec. 20, 2000, at A22 (reporting that in month-long series of skirmishes between Colombian Army and rebel column in mountains above Bucaramanga, thirty-two of seventy-seven rebel fighters captured were under age of eighteen, and nineteen of those were fifteen and younger). Of the forty-six killed, twenty were children. *Id.* Colombian military officials believe that as many as half of the FARC fighters who comprised the original 360-member column were under eighteen. *Id.* If this is so, then the figures would be much higher than 6,000. *Id.* See also Frances Robles, *The New Face of Colombian Leftist Guerrillas: Children*, MIAMI HERALD, Jul. 14, 2002, available at <http://www.rose-hulman.edu/~delacova/colombia> (stating that after battle between military forces and guerrillas, at least thirty guerrillas had been killed, and sixteen detained. *Id.* Three of the survivors were girl guerrillas, ages thirteen, fifteen, and sixteen. *Id.* Half of the dead were boys and girls not yet sixteen years old. *Id.* Figures place 80% of the total number of child soldiers as FARC members. *Id.* See also Ángela Lucía Pinzón, *La Guerra, Golosa Sin Cielo*, UNIMEDIOS, Jan. 20, 2000 (reporting that approximately 6,000 children are part of guerrilla ranks). Approximately 20% of total FARC ranks are children under the age of eighteen. *Id.* Of those children, close to 86% claimed to have joined voluntarily. *Id.* Thirty-three percent were attracted to the weaponry and uniforms that seemingly conferred social recognition on them. *Id.* Another 33% were looking for social and economic security that the State could not provide them. *Id.* Close to 17% were attracted to the guerrillas because of pre-existing positive relations they had with them. *Id.* The remaining 8% joined out of a sense of vengeance. *Id.*

66. See Nelly Mendivelso, *Niñas Entre Armas*, UNIMEDIOS, Jan. 20 2000 (according to Colombian NGO which assists approximately 214 female ex-child soldiers, 5,000 girls remain in insurgent armed groups). Although there are no precise statistics available, some estimates state that girls make up 20% of the guerrillas and 15% of the paramilitaries. *Id.* In addition, 95% of former child combatants come from rural areas in conflict, with inadequate services and no education. *Id.* Of this group, 80% present high levels of illiteracy and 90% are undocumented. *Id.* See also Briggs, et al., *supra* n.60, at 5 (reporting that one third of children fighting for Colombia’s irregular armed groups are female). Up to 40% of the FARC soldiers are women and girls. *Id.* Experts believe that the majority of girls, up to 80%, join voluntarily. *Id.*

67. See *War Without Quarter*, *supra* n.41 (defining and describing name given to child soldiers by adult guerrillas). See also *Child Soldiers*, *supra* n.8 (defining child guerrilla). See also Sandra Jordan, *Girls go to war: Colombia's frontline killers*, OBSERVER, Jul. 14, 2002 available at <http://www.observer.co.uk> (stating that FARC is training girls as young as thirteen to kill and have used women to hijack airliners).

recruit children, including minors under fifteen.<sup>68</sup> Most of the children come from impoverished backgrounds, with few possibilities for advancement of any kind.<sup>69</sup> Although the FARC and

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68. See Human Rights Watch, *Colombia: Beyond Negotiation: International Humanitarian Law and its Application to the Conduct of the FARC-EP* 16 (Aug. 2001), available at <http://www.hrw.org/reports/2001/farc> [hereinafter *Beyond Negotiation*] (reporting that children living in "zona de despeje" — demilitarized zone occupied by FARC in department of Caquetá are particularly vulnerable). One advocate for child soldiers said she knew the names of over one hundred minors from the region who belong to the FARC. *Id.* Many were under fifteen years old. *Id.* Yet, the families of children recruited by the FARC in the demilitarized zone told Human Rights Watch that their children had not been forced to join the FARC. *Id.* The parents said that promises of a better life enticed the children. *Id.* The FARC continues to recruit children under fifteen, even after repeatedly stating they would not do so. *Id.* at 18. In 1999, Olara Ottunu, U.N. Secretary-General's special representative for children and armed conflict, met with FARC Commander Raul Reyes, where Reyes reportedly promised that the FARC would no longer recruit minors under fifteen. *Id.* See also, John Otis, *Special Report: Rebel Held: Child Warriors*, Hous. CHRONICLE, Aug. 3, 2001, available at <http://www.chron.com/content/chronicle/special/01/farc/index.html> (stating that 30% of the FARC fighters today are under fifteen, compared with 15% a decade ago). See generally Special Representative Visit to Colombia, E/CN.4/2000/71.

69. See Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia, *Las Niñas en Los Grupos Armados Colombianos*, 3 BOLETIN PÜTCH-IPU: EL HACEDOR DE PAZ 6 (Dec. 2001) available at <http://www.coalico.org> [hereinafter *Girls in Colombian Armed Groups*] (stating that majority of former child soldiers originally lived in rural areas, those areas most affected by armed conflict). The characteristics of the rural areas were lack of infrastructure and basic services, lack of schools, and paying employment for young people, single parent homes — mostly mothers as heads of household or children in the care of grandparents or relatives — exploitation, sexual abuse, and family violence. *Id.* A strong State presence is lacking in these areas; yet, there is a large number of guerillas and other insurgent groups. *Id.* See also Tim Johnson, *Colombia's Child Soldiers*, MIAMI HERALD, Jan. 23, 2000, available at <http://www.miami.com/herald/special/news/specialreport/docs/058718.htm> (reporting that while military officers accuse FARC and ELN, of forcibly recruiting children, experts say most youngsters join voluntarily, frustrated by lack of educational opportunity and other factors). Some 600,000 children under the age of twelve do not have access to schooling in Colombia. *Id.* For every one hundred children that begin elementary school, only forty finish. *Id.* See also *Children's Rights in Colombia 2001*, *supra* n.62 (reporting that 42% of Colombian population, 16,800,000, is under the age of eighteen). Close to 60% of the population lives below the poverty line, while 9% of those live in conditions of utter misery. *Id.* More than 2,800,000 school-aged children do not attend school, approximately 20% of the child population. *Id.* 1,000 children were assassinated in 2000. *Id.* It is also reported that an alarming 200,000 are involved in the cultivation of illegal narcotics in the areas of internal conflict. *Id.* See also Otis, *supra* n.68 (stating that some of these children are orphans who have nowhere to go). Others have family in the FARC and see joining as kind of a legacy. *Id.* Others enlist to escape poverty or domestic violence and sexual abuse. *Id.* Some children may see the FARC as a "surrogate family" where they are provided for. *Id.* Experts state that many of these children do not realize the dangers, because rebel-controlled areas seem so peaceful. *Id.* They do not imagine being sent into battle. *Id.* Many end up deserting. *Id.* Between 1996 and 1999, a total of one hundred minors deserted or were captured by the

other groups maintain that they do not recruit children under the age of fifteen as soldiers, these groups have stated that they make “exceptions” in certain cases.<sup>70</sup> Certain groups have admitted to taking in younger children, only because they are the children of current militants.<sup>71</sup> They insist that these children are not placed in active combat.<sup>72</sup> Despite these denials and qualifications, commentators state that abundant information exists to

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army. *Id.* The number jumped to 244 in 2000. *Id.* See also Pinzón, *supra* n.65 (commenting that in Colombia voluntary recruitment does not exist). If there are no educational opportunities and a lack of employment, then many of these young people feel forced to enlist in one of the insurgent groups. *Id.*

70. See *Child Soldiers*, *supra* n.8 (detailing areas where children “beg insistently” to join guerillas, but noting that there are situations where their very own mothers, who are desperate, take their children to guerillas because their families live in misery). According to the FARC, it is “very difficult” for them to say no to these families. *Id.* See also “Comandante Mariana,” Comisión Temática de las FARC, *Los Niños y Niñas Participes de la Guerra*, in NIÑEZ Y CONFLICTO ARMADO EN COLOMBIA: MEMORIAS DE LOS FOROS: LOS NIÑOS Y LAS NIÑAS DE LA GUERRA 40 (Aug. 24, 2000), available at [http://www.funrestrepobarco.org.co/english/publications/publicaciones\\_in.htm](http://www.funrestrepobarco.org.co/english/publications/publicaciones_in.htm) [hereinafter FARC Commander Mariana] (stating that within FARC ranks there are great number of youths over the age of fifteen). These children reportedly join because they seek a better future for Colombia. *Id.* The FARC also claim that in many instances they accept children because neither their families nor the State can provide for their basic needs. *Id.* The FARC is not ashamed of this practice, for they merely state that society should examine what exactly Colombia has offered them—mainly poverty, membership in urban gangs, associations with narco-trafficking groups, employment as Government military informants, prostitutes, street vendors, drug addicts, and coca farmers. *Id.* Children should not form a part of war, but the political and economic powers that be have not given children options. *Id.*

71. See *Child Soldiers*, *supra* n.8 (stating one reason given by guerrillas for having children in their ranks). See also McGirk, *supra* n.65 (reporting statistics compiled by Colombia’s Department of Statistics stating that 17% of guerrillas under age of eighteen were born into ranks). See also Pinzón, *supra* n.65 (stating the three main ways children become part of insurgent groups). It is either voluntary, by force, or because they are the children of current guerrillas.

72. See *Child Soldiers*, *supra* n.8 (noting that non-combat activities may be just as dangerous as actual combat). In April 1996, police captured a fifteen-year old girl who was apparently used to collect money extorted by the group from merchants in the department of Caldas. *Id.* See also *Beyond Negotiation*, *supra* n.68, at 18 (commenting that in late 2000, after combat between FARC and Colombian army, in operation baptized “Operation Berlin,” it was reported that dozens of child soldiers were among those registered as killed or captured). The army announced that thirty-two of those captured were under seventeen, including a few under fifteen, and a third were females. *Id.* According to the army, twenty of the casualties were children. *Id.* See also *Children in Colombian Armed Conflict*, *supra* n.64, at 18 (reporting that as far as eighty-six former child soldiers that participated in study, their main duties fell in four categories: 1) military training, 2) maintaining campgrounds, 3) combat, and 4) special missions). Thirty-five percent of the eighty-six children interviewed felt at times obligated to carry out unwanted activities, such as military training (96%), combat/killing (81%).

indicate that the various insurgent groups continue to recruit children as combatants.<sup>73</sup>

Experts note that guerillas have carried out recruitment campaigns targeting children in elementary schools and children's homes, promising to send the families a regular salary in return for their children's services.<sup>74</sup> Often, these families do not report the forced recruitment of their children for fear of reprisals.<sup>75</sup> Commentators opine that guerillas recruit children

73. See *Child Soldiers*, *supra* n.8 (reporting that between January 1 and April 27, 2001, Colombian army reported fifty-three cases of child soldiers, twenty-four were captured during military operations, while twenty-nine were deserters; of those nineteen were girls and thirty-four were boys). See also *Beyond Negotiation*, *supra* n.68, at 18 (reporting speech supposedly given by FARC Commander Jorge Briceño in demilitarized zone, where he acknowledged that FARC had committed "errors," including the recruitment of child soldiers). According to witnesses, the Commander stated children would be returned to their families. *Id.* After this speech, it was reported that some children were returned to their families, including a twelve-year old girl. *Id.* In February 2001, the FARC handed over supposed child soldiers to the U.N. Children's Fund. *Id.* They also pledged to demobilize another 500 children. *Id.* However, estimates state that 60% of FARC forces are children under fifteen. *Id.* See also *Colombian Defense Ministry 2001 Report*, *supra* n.54, at 33 (describing various methods used by insurgent groups to recruit children). These methods include:

- a) Taking children against their will, without explaining to them that they will participate in dangerous and violent activities.
- b) Creating false economic expectations, taking advantage of their lack of education and their poverty.
- c) By threat, which at times includes death threats against their parents so that they will be relinquished to these insurgent groups.

*Id.* (author's trans.) According to the Interior Ministry's Reinsertion Program, during 2000 the recruitment of children grew by 30% for boys and 35% for girls. *Id.*

74. See *Child Soldiers*, *supra* n.8 (according to Public Advocate in Cali, in Department of Valle del Cauca, guerillas have gone to schools and homes of children offering to take them to war, enticing them with stories about fighting and offering to sign them up as a type of adventure). Guerillas have offered the families money and guarantees of security in exchange for allowing their children to join the guerillas. *Id.* See also Johnson, *supra* n.69 (reporting that although both sides to conflict, guerillas and paramilitaries, deny paying combatants regular wages, they do admit to irregular stipends that lure impoverished rural youth). See also Otis, *supra* n.68 (recounting story of high school who had guerillas enter his classroom to recruit his students). A consequence of this was that families living within demilitarized zone decided to send their children away. *Id.* See also *Girls in Colombian Armed Groups*, *supra* n. 69, at 6 (stating that "voluntariness" of the children's enlistment/recruitment considering their life option is not as easy topic, when war is almost only option in middle of conflict, and an aggravated economic crisis, particularly in the areas of intense armed conflict). Armed groups do not discriminate by gender when recruiting children. *Id.* Their only concern is to increase the size of their forces. *Id.* For girls in particular, their main motivating factors for joining the guerillas, is the desire to escape maltreatment, sexual abuse, the excessive amount of domestic chores, and intra-family violence. *Id.*

75. See *War Without Quarter*, *supra* n.41 (reporting that in guerilla dominated re-

because they are considered valuable assets.<sup>76</sup> Some experts also believe that the guerillas' increased recruitment of children stems from the growth of the rival paramilitary groups.<sup>77</sup> In June 1998, the ELN agreed to halt child recruitment under the terms of "Acuerdo de Puerto Del Cielo" (Mainz "Heaven's Gate" Agreement), a civilian agreement; yet as of today they continue to recruit children.<sup>78</sup> Commentators opine that the ELN has

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gions families fear reporting taking of their children). *See also Colombian Defense Ministry Report 2001, supra* n.54, at 33 (stating methods used by subversive groups to recruit children). Included among these methods, was the use of intimidation tactics on parents, from taking their land, their money and even threatening to assassinate them if they do not relinquish their children. *Id.*

76. *See War Without Quarter, supra* n.41 (reporting that a guerilla commander told investigator's from Public Advocate's Office that children were more intrepid and had more bravery for war). They carried out their duties much better than an adult would. *Id.* *See also Colombian Defense Ministry Report 2001, supra* n.54, at 35 (stating that guerilla groups recruit children because they are much easier to intimidate than adults, do what they are told, do not demand economic compensation, and are considered the most expendable fighting force).

77. *See Otis, supra* n.68 (stating that right-wing paramilitary groups have expanded faster than FARC, with their ranks doubling in size since 1997 to 8,100). During this same time period, the FARC grew from 15,000 to 17,000 troops. A recent military operative illustrates the magnitude of the problem. *Id.* In the fall of 2000, the military carried out an operative entitled "Operation Berlin" where the military routed a guerilla unit of 240 fighters near Bucaramanga. *Id.* According to Commander of the army brigade that carried out the operative, half of the FARC unit's members were minors. Of the seventy-three guerillas killed, twenty-seven were minors. *Id.* Another sixty children, ranging in age from eleven to seventeen, either deserted or were captured by the army. *Id.*

78. *See* Mainz 'Heaven's Gate' Agreement, signed in Mainz Germany, July 15 1998, available at <http://www.ciponline.org/colombia/cielo.htm> [hereinafter "Heaven's Gate Agreement"] (noting that agreement was signed in Mainz, Germany). The Agreement states, in part:

The Civilian society here represented, the ELN and the National Committee for Peace, with the facilitation of the German and Colombian Episcopal Conferences,

Agree to:

1. Begin the peace process with the ELN.  
With respect to the participation of civilian society:
2. Recognize and support the permanent action of civil society to attain Peace.
3. To favor the execution of investigations and propositions concerning peace ideas that look for structural changes in the life of the Nation.
4. To arrange meetings with different sectors to consolidate what has been attained in the Peace Process.
5. To promote the spirit of this document before the Government and continue this work in favor of peace, with the collaboration of the international community.
6. Facilitate meetings between the Government and the ELN and EPL At the same time, promote the meeting of the signatories of this document with



the FARC and the CGSB and other actors of war. In this sense: greet as valuable for future peace, the meeting between the President-elect Andrés Pastrana Arango, and the Commanders of the FARC.

7. To be of service to the great national movement inspired by the Mandate for Peace and promote its amplification and consolidation in events like the Permanent Assembly of Civil Society for Peace.
8. To procure that civil society facilitate and look for opportunities in the Government to demand compliance with the political guarantees and liberties guaranteed by the Constitution in any part of the country.
9. Condone hostile actions and massacres of civilians financed from different sectors and that increase by omission of action by any State agents.
10. The ELN commits to suspending the retention or depriving of liberty of persons for financial purposes, and the ELN attempts to find other means by which to finance their operations, as long as it culminates in attaining peace with this organization and not its strategic weakening. Also, as of today they will cease to kidnap minors, adults over the age of sixty-five, and under no circumstances will pregnant women be deprived of liberty.
11. To demand an end to impunity for crimes against humanity, like forced disappearances, massacres, genocide, and torture, and to respond completely in the spirit of international law with regard to the subject matter.
12. Based on concepts of the United Nations, to be attentive that regional justice not overreach its legal boundaries. In the same, to insist with urgency that Justice recuperate its efficaciousness, promptness, impartiality and procedural guarantees.
13. With respect to the grave problem of the displaced population, we will promote and support the defense of their legitimate interests and necessities, especially their safe return home, title to their property(ies), if applicable, and the development of their respective regions.
14. In an attempt to separate from the attacks of the armed groups, we will proceed with the leadership of civil society and the coordinating efforts of the Attorney General and People's Ombudsman to identify and mark all the resources protected by international humanitarian law: Aqueducts, Schools, health care centers, hospitals and veterinary clinics, social service centers.  
Ambulances, fire engines, and emergency vehicles.  
Vehicles, ships, or airplanes used by civilians and not in military operations; Campaigns for human and animals social rights; Educations, sports, cultural or recreational centers and places of religious worship, and electrical power plants; Installations which contain dangerous materials, like repressed water or nuclear material.
15. The ELN reaffirms its unilateral acceptance of the recommendations made by Amnesty International for the insurgent movements made in their 1994 Colombia report. Those recommendations are:
  - a. To treat prisoners, the injured and those who attempt to surrender, with humanity, be they civilians or members of the armed forces, and that they not be killed.
  - b. Deliberate and arbitrary homicides of non-combatants is prohibited under any and all circumstances.
  - c. Prisoners will not be used as a way to collect a ransom or achieve some other objective. Detained persons will be identified and their safe return guaranteed.
  - d. Landmines will not be used to deliberately kill or mutilate civilians.

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- e. To investigate the alleged abuses committed by the guerrillas in order to determine responsibility.
  - f. Guerrillas suspected of committing or ordering abuses, shall be separated from any charge of authority and any service that will place them in the position of committing such alleged abuses.
  16. To promote with all the armed actors and their respective parts the respect, autonomy, culture and right of neutrality of the indigenous, and other ethnic groups and their territories.
  17. Reaffirm the agreement between civil society and the ELN to respect and have respected the rights of the children and the ELN will not incorporate minors under the age of sixteen into their ranks. In the future the age will be raised to eighteen.
  18. To promote the ratification by Congress of the Ottawa Convention over the prohibition of the use of anti personnel mines. Equally, it was established that mines would not be planted in areas of risk for civilians, especially children. We demand compliance with the bombing property and areas used by the civilian population.
  19. Prisoners and detainees should be treated with dignity, and as if they were political prisoners. We will support the non-penalization of social protest
  20. [omitted]
  21. [omitted]

*Id.* (author's trans). See also *U.S. Dep't of State Rep. 2001*, *supra* n.41 (highlighting that although ELN signed agreement to refrain from, among other things, recruiting children into their ranks, they continue to recruit). See also Jorge L. Esquirol, *supra* n.30, at 61 (stating that under auspices of Catholic Church, ELN met in Mainz, Germany with prominent members of Colombia's political class in their capacity as private citizens. *Id.* The government was not officially represented. *Id.* After three days, two accomplishments were reached: an international humanitarian agreement and a commitment and a schedule for peace negotiations. *Id.* See also Carrillo-Suarez, *supra* n.29, at 62 (stating that Mainz Agreement was more of written "understanding" between group of civilians and ELN than formal peace accord). The ELN accepted that it would unilaterally respect important norms of international humanitarian law. *Id.* at 63. Besides their promise to stop kidnappings for ransom, the ELN also promised to stop using anti-personnel mines in civilian areas and the recruiting of children into their ranks. *Id.* The Heaven's Gate agreement was celebrated as the first humanitarian agreement signed by a guerilla group in Colombia, and the beginning of the peace process with the ELN. *Id.* Yet it was also criticized by members of Pastrana's government, for its selective use of humanitarian norms that failed to take into account the legal character of the obligations involved. *Id.* See also Tim Johnson, *Colombian Leaders, Rebels sign peace pact*, *MIAMI HERALD*, Jul. 16, 1998 [hereinafter *Rebel Pact*] (stating that under agreement ELN condemned "hostile actions and massacres of civilians," and pledged to respect international humanitarian law). The agreement also pledged to halt violence against schools, health clinics, reservoirs, fire stations and power lines, and more importantly to stop kidnapping for profit. *Id.* Authorities stated that the FARC and ELN earn as much as \$300 million a year from kidnappings of businessmen, ranchers, and others. *Id.* See also *Colombia Signs Pact with Rebel Group*, *CATHOLIC WORLD NEWS — NEWS BRIEF*, July 16, 1998, available at <http://www.cwnews.com/Browse/1998/07/8109.htm> (reporting that representatives of Colombian government signed 12-point agreement with leaders of ELN). The Agreement called for the convocation of a national convention at the end of the year, at which concrete steps toward a final peace agreement were to be discussed. *Id.* Many felt that the most important feature was the ELN promise to stop the kidnappings it had been using to finance their operations. *Id.* They would only agree to do so

the most number of children in its ranks in relation to its total strength.<sup>79</sup>

Children guerillas have the task of collecting intelligence, serving as an advance shock force that is sent first into combat to ambush the paramilitaries, soldiers, or police officers, serving during patrols; kidnapping and guarding hostages; and making and deploying mines.<sup>80</sup> Mines are a favored weapon of the FARC and the ELN, and in 2000 alone, these groups had indiscriminately laid 50,000 mines in rural areas.<sup>81</sup> Additionally, ap-

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when they found other means to secure funds. *Id.* However, they agreed to an immediate halt in kidnappings of women, children and the elderly. *Id.*

79. See *War without Quarter*, *supra* n.41 (reporting that Human Rights Watch received numerous testimonies from people familiar with ELN regarding child combatants). One source told Human Rights Watch that it was common to see a unit of fifteen adult commanders leading up to sixty-five child soldiers. *Id.* See also Briggs, *et al*, *supra* n.60, at 5 (reporting that proportion of children in ELN could be higher than 20%).

80. See Pinzón, *supra* n.65 (reporting results of 1998 People's Defender Office study of 180 child soldiers). Eighteen percent had killed at least once. *Id.* Sixty percent had witnessed killings. *Id.* Eighty percent had seen bodies be mutilated. Seventy-eight percent had witnessed kidnappings. *Id.* Twelve percent had kidnapped people. *Id.* Eighteen percent had witnessed tortures. Forty percent had shot at people at least once. *Id.* Eighty-three percent had been at the brink of death at one time or another. *Id.* See also *War Without Quarter*, *supra* n.41 (asserting that one child, interviewed by the Public Advocate's Office told them that to calm their fears, he and other children drank milk mixed with gunpowder, stating that gunpowder gave them more energy, "like with the desire to kill the troops passing in front of you."). A former hostage also reported that during her captivity a fifteen-year old girl guarded her. *Id.* She stated that many of the guerillas she saw in that three-month period were children. *Id.* See also Forero, *supra* n.65 (stating that Colombian military has long contended that FARC uses children on front lines). Soldiers have reported fighting against children. *Id.* According to reports, the first wave of fighters were children between the ages of twelve and fifteen. *Id.* The children are also used for intelligence gathering and to see if paths are clear. *Id.* See also *Colombian Defense Ministry Report 2001*, *supra* n.54, at 33 (stating that these children are employed in violent activities or in intelligence work). See also *Children's Rights in Colombia 2001*, *supra* n.62 (reporting that 40% of victims of anti-personnel mines are civilians and that in last eight years 5,250 children died because of their use). See also *Presidential Program for Human Rights and IHL- Observatories on Human Rights and IHL and on Anti-Personnel Mines*, *Anti-Personnel Mines in Colombia 8* (Dec. 2001), available at <http://www.derechoshumanos.gov.co> [hereinafter *Anti-Personnel Mines*] (stating that human cost of mines in Colombia is high, although an exact figure has been difficult to calculate). Colombia's information collecting methods fail to record the actual number of victims. *Id.* Yet provisional data does provide approximations. *Id.* During the first ten months of 2001, the amount of landmine accidents was 162, meaning one person had an accident almost every two days. *Id.* Thirty-one victims died, while another 131 were injured or disabled for life. *Id.* Twenty-seven percent were civilians, and the largest numbers in this group were children under eighteen. *Id.* Five children died and twenty-seven were injured. *Id.*

81. See *U.S. Dep't of State Rep. 2001*, *supra* n.41 (reporting that guerillas used landmines to defend both static positions, such as base camps, cocaine laboratories, and

proximately 100,000 anti-personnel mines are scattered around the Colombian countryside.<sup>82</sup> The children are fully armed for most of these tasks.<sup>83</sup> Commentators further note that girl-child soldiers are often employed as sexual servants or “forced wives.”<sup>84</sup>

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sites at which kidnap victims were being held and as indiscriminate weapons of terror). *Id.* Landmines planted by guerrillas or disguised as everyday items such as soccer balls or paint cans often resulted in the killing or maiming of civilian noncombatants. *Id.* According to press reports, landmines surrounded guerrilla bases in the demilitarized zone. *Id.* The FARC used sulfuric acid in gas canisters that it employed as artillery and continued its practice of using these canisters to attack small towns. *Id.* Scores of soldiers, police, and civilians were burned indiscriminately as a result. *Id.* See also *Colombian Defense Ministry Report 2001*, *supra* n.54, at 39 (providing that more than 140 municipalities in twenty four departments in Colombia have been affected by presence or suspicion of anti-personnel mines — this is approximately 13% of the national territory). The subversive and auto-defense groups have not manifested any attempt nor acted in any way to eliminate the threat of the mines. *Id.* See also *Anti-Personnel Mines*, *supra* n.80, at 6 (stating that according to Observatory, which monitors international human rights law (“IHRL” and international humanitarian law (“IHL”) in Colombia, during first ten months of 2001 there were 243 accidents or incidents with mines in the country). Eighty-seven percent or 211, involved anti-personnel mines. *Id.* Sixty-two of these accidents left victims. *Id.* Responsibility for 42% (102) of these accidents or incidents has not been determined. *Id.* Fifty seven percent (73) of the cases are attributed to the FARC and close to twenty six percent (63) to the ELN. *Id.* At least three accidents or incidents were associated with joint FARC/ELN operations. *Id.* Therefore, the report concludes that the anti-personnel mine problem in Colombia is directly linked to the current armed conflict. *Id.*

82. See *Colombian Defense Ministry Report 2001*, *supra* n.54, at 39 (reporting that approximately 100,000 anti-personnel mines are buried in the Colombian countryside, which have been nicknamed “quebra-patas,” or leg breakers). See also *Anti-Personnel Mines*, *supra* n.80, at 5 (stating that a preliminary estimate places number of mines in Colombia at 70,000, of which 20,000 were laid by Colombian military forces and remaining by illegal armed groups, the ELN and FARC. *Id.* The report also stated that considering mines had been used since “La Violencia” (the time of civil unrest in the 1940s) and that illegal groups continue to use them as weapons, the 70,000 figure, with an annual rate of increase of 20%, is “at best hypothetical.” *Id.*

83. See *War Without Quarter*, *supra* n.41 (reporting that former-female-child guerilla told Public Advocate investigators that she used pistols, AK-47s, Galils, M-16s, R-15s, Uzi submachine guns, Ingams, and 357 Magnum). She stated that in her organization, your weapon was your life and your mother, guarding you day and night. *Id.* See also Briggs et al., *supra* n.60, at 2 (stating that majority of violence in Colombia is conducted with small arms, and Galil, AK-47 and M-16 serve as weapons of choice for warring parties in Colombia). The most common weapon in use by Colombian guerillas is the AKM — which is almost identical to the AK-47, Kalashnikov automatic rifles, and Galils. *Id.*

84. See *Beyond Negotiation*, *supra* n.68, at 16 (reporting that many girls who are recruited into these groups are pressured to have sexual relations with male members of group). Some are given injections as a form of birth control, and have contracted venereal diseases. *Id.* at 16-17. A Colombian mother recounted the story of her daughter who was returned by the FARC, but arrived not only with an eye infection, anemia, and

While the FARC claims that children are not forcibly recruited, once integrated into the ranks, these children are often unable to leave.<sup>85</sup> If they do escape, they are considered deserters and could be subject to on-the-spot execution.<sup>86</sup> Schol-

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blister on her feet, but had allegedly told her mother that she was forced into sexual relations with a FARC member and contracted a venereal disease. *Id.* at 17. *See also*, Tim Johnson, *supra* n.69 (asserting that adolescent girls are sometimes recruited for "special missions" — implying their use in a sexual capacity). They are told to sleep with military soldiers and extract information from them. *Id.* *See also Colombian Defense Ministry Report 2001, supra* n.54, at 33 (reporting that with respect to female child soldiers, the insurgent groups induce them to sexual activity with older male soldiers). If pregnancy results, female child soldiers are forced to abort without adequate medical assistance, thereby putting their lives at risk. *Id.* *See also* Briggs et al, *supra* n.60, at 5 (discussing some accounts indicating that female child soldiers are deliberately sexually abused, but experts have not found any indication of widespread sexual abuse of girls). Rather, a "clear abuse of power" exists between the commanders and girl soldiers. *Id.* Both main guerilla groups actively encourage girls to use birth control. *Id.* They are also encouraged to couple with male combatants, who in many cases are much older than the girls. *Id.* *See also Sexual Exploitation, supra* n.21, at 4 (stating that approximately 40% of the girls who volunteered for the FARC were escaping abuse in the home). Upon integrating into the FARC found that they were expected to provide sexual services, were treated badly because they were female, and were punished through sexual means. *Id.* *See also Girls in Colombian Armed Groups, supra* n.69, at 6 (stating that besides other reasons that may exist for children wanting to join guerrilla groups, girls imagine that within ranks they will be treated as equals to men). They may fall in love with the uniform or with the warrior. *Id.* at 6-7. Girls look to overcome the exclusion felt within their own families, where they played domestic roles. *Id.* They may also want to associate their identities with those who represent power. *Id.*

85. *See Beyond Negotiation, supra* n.68, at 17 (stating that relatives of child recruits have reported that these children must get "permission" from their commanders to leave, and that is often difficult to obtain). *See also Colombian Defense Ministry Report 2001, supra* n.54, at 33-34 (reporting that once these children are in ranks, their freedom of thought, conscience, ethics and religion are curtailed. They are submitted to a forced indoctrination in a subject area where there is no room for contradiction or comparison. *Id.* Physically, they are made to perform tasks that they would normally be unable to do due to their ages. *Id.* These include marching with heavy loads on long trajectories, usually through rough terrain. *Id.* They are forced to commit acts of brutality against the civilian population and police, and in the majority of the cases the conscience of these children has been deformed, maybe forever. *Id.* at 34. *See also Children in Colombian Armed Conflict, supra* n.64, at 11 (commenting that 55% of children in study deserted guerrillas). The principal reasons given were: disagreeing with the tasks they were ordered to do (fourteen), inability to see their families (seven) and infraction of a rule (five). *Id.* The guerrillas had surrendered only 1% of the children to the authorities, and this was due to health reasons. *Id.*

86. *See Beyond Negotiation, supra* n.68, at 17 (asserting that FARC applies same punishment to child deserters as adult soldiers). Their punishment is the "firing squad." *Id.* *See also War Without Quarter, supra* n.41 (noting that if guerillas believe that children have provided information to Colombian security forces, their punishment is death). One mother even went as far to attempt to have her daughter's former commanders sign a "certificate of liberty" that would be distributed to other area units, ensuring that her daughter would not be killed. *Id.* *See also Colombian Defense Ministry Report 2001,*

ars discuss that many children soldiers are left traumatized.<sup>87</sup>

## 2. The Paramilitaries “Little Bells”

Like guerrillas, paramilitaries also rely on children to sustain and expand their operations, and according to available statistics, up to fifty percent of some paramilitary units are made up of children called “campanitas,” or little bells.<sup>88</sup> Children, as

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*supra* n.54, at 34 (reporting that many of these children desert to escape their inadmissible obligations and all kinds of abuse, but often they will be killed when found by their ex-compatriots). This serves as a warning to others who remain in the subversive organization. *Id.* See generally Otis, *supra* n.68 (stating that those who have been captured or escaped often avoid going home immediately for fear that local guerillas will recognize them). See also Brodzinsky, *supra* n.20 (relating story of seventeen year old Claudia who voluntarily joined ELN at twelve, but was allowed to return home to help work on her family’s farm. *Id.* She was later forcibly recruited by the FARC. *Id.* The police captured her in 2000. *Id.* She cannot return to her family, because she says “everyone is looking for me:(sic) the guerrillas because they’re afraid I’ll give information to the army and the paramilitaries because they want the information I have.” *Id.* See also *Children in Colombian Armed Conflict*, *supra* n.64, at 20 (stating that 55% of children interviewed who deserted guerrillas claimed that it was due to violation of their rights and that they risked fleeing even if it meant they would be executed). Some of the reasons given: they had been ordered to kill someone and could not do it, they were deprived medical treatment, they disagreed with having to kill another guerrilla for an infraction of the rules, or because they themselves were to be executed. *Id.* at 20-21. See also Pinzón, *supra* n.65 (reporting that if child soldiers decide to escape they face serious consequences). If the child is recaptured they face a guerrilla war tribunal and could face the death penalty for treason. *Id.*

87. See Pinzón, *supra* n.65 (commenting that in addition to physical scars, demobilized child soldiers also have emotional and spiritual scars). These scars are the ones that are most quickly forgotten by society. *Id.* Children will internalize violence until they begin to use it against themselves and people around them. *Id.* In addition, they can also suffer from identity problems and sleep dysfunction. *Id.* See also *Colombian Defense Ministry Report 2001*, *supra* n.73, at 34 (discussing how desertion of children from both the guerrillas and paramilitary groups is an expression of abuses and intense “putrefaction” within these organizations). This is evidence by the fact that every year the number of child deserters steadily increases. *Id.* In 1998 there were 28 minors, in 2000 there were 82, and in 2001, 93. *Id.* A total of 203 minors have been reunited with their families and reinserted into the community. *Id.*

88. See *War Without Quarter*, *supra* n.41 (providing that one former child paramilitary interviewed by Office of Public Advocate said that he had been forcibly recruited at nine years of age). During the time he served, he had no communication with his parents. *Id.* Some of the children in his group were around his age, while another five were between ten and fifteen years old. *Id.* All were serving two years. *Id.* See also *Child Soldiers*, *supra* n.8 (reporting that some estimates place total number of children in paramilitary groups at 3000). It is reported that paramilitaries rely on forced recruitment, including the use of leaflets calling for “compulsory military service.” *Id.* See also Johnson, *supra* n.69 (indicating that paramilitary groups rely just as heavily on minors as FARC does). As many as 50% of the paramilitaries in the Middle Magdalena river valley, an anti-guerrilla stronghold, were children. *Id.* See also Briggs, et al, *supra* n.60, at 5

young as eight years old, patrol with paramilitary units.<sup>89</sup> Other children are used as back-up troops, spies and patrolmen in their home regions.<sup>90</sup>

### 3. The National Institute on Family Welfare ("ICBF"): Part of Colombian Government's Initiative to Reclaim Its Children

The Colombian government implemented various programs meant to assist demobilized children in making their transition back into society, and educational and vocational programs in particular.<sup>91</sup> The Instituto de Bienestar Familiar ("ICBF") or National Institute of Family Welfare oversees all government child protection and welfare programs and funds non-governmental and church programs for these children.<sup>92</sup> In the

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(calculating number of paramilitaries in AUC, largest umbrella paramilitary group, to be as many as 8000 combatants). *Id.* Among them, the AUC had at least 180 children deployed with arms as of April 2000. *Id.* In 1998, organizations within Colombia estimated that 15% of the AUC members were children. *Id.* See also Pinzón, *supra* n.69, (reporting that children comprise between fifteen and 50% of troops in paramilitary groups).

89. See *War Without Quarter*, *supra* n.41 (reporting that residents told Public Advocate that paramilitaries consider service obligatory and service can last as long as two years). Families who refuse to allow their children to provide service risk being considered sympathetic to guerillas and attacked. *Id.* See also Inter-Amer. C.H.R., *The Rights of the Child: Third Report on the Human Rights Situation in Colombia*, OEA Ser.L/V/II.102, Doc. 9, Rev. 1 (1999), available at <http://www.cidh.oas.org/countryrep/Colom99en/chapter-13.htm> [hereinafter *OAS Colombia Report 1999*] (reporting that approximately 15% of paramilitary ranks are minors). In some areas these numbers rise up to 50%. *Id.* Part of the paramilitary strategy is to go to low-income areas or displaced persons camps, offering money to entice children into joining them. *Id.*

90. See *War Without Quarter*, *supra* n.41 (describing tasks relegated to child soldiers within paramilitary groups). See also *OAS Colombia Report 1999*, *supra* n.89 (reporting that in single day in 1997, members of paramilitary group recruited fifty minors). In other instances they are carried off by force. *Id.* See also *Child Soldiers*, *supra* n.8 (reporting later incident in March 1998, where journalists allegedly saw group of over fifty students, including ten girls, leave their town to join the paramilitaries).

91. See *Colombian Defense Ministry Report 2001*, *supra* n.54, at 35-36 (stating that Colombian government wants to create incentives to favor children's decision to desert these subversive groups by guaranteeing them emergency humanitarian aid and offering them the possibility of employment and reinsertion into society, and legal assistance, whenever necessary). See also *Child Soldiers*, *supra* n.8 (reporting that in addition to government run programs, several other independent re-integration programs operate throughout country). See also *Colombian Children in Armed Conflict*, *supra* n.64, at 13 (reporting results of poll taken of eighty-six participants, 77% expressing positive feelings for Instituto de Bienestar Familiar ("ICBF") or National Institute of Family Welfare. *Id.* The nineteen who felt unhappy missed their families. *Id.*

92. See U.N. Committee on the Rights of the Child, *Consideration of Reports Submitted*

past four years, the ICBF has assisted approximately 752 former child soldiers in the guerrillas and paramilitary groups.<sup>93</sup>

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by *States Parties under Article 44 of the Convention: Colombia*, CRC/C/70/Add.5 89 (Jan. 2000) [hereinafter *U.N. Colombia Report*] (stating that ICBF played active role in inter-agency process to ensure implementation of international humanitarian law, particularly role of children in armed conflict). The bodies working on the issue of children in armed conflict include not only the ICBF, who takes in these children, protects, and rehabilitates them, but also the Red de Solidaridad, or the Social Solidarity Network, which cares for victims of violence and through its rehabilitation program, enables these children and young adults to obtain access to educational programs through the Ministry of Education. *Id.* See also *Child Soldiers*, *supra* n.8 (reporting that in 1999, the ICBF established special program to deal with re-integration of former child combatants who have escaped or been captured). In addition, several other independent re-integration programs operate throughout the country. *Id.* See also *Colombian Defense Ministry Report 2001*, *supra* n.54, at 36 (reporting that ICBF trained 300 ex-child combatants through Specialized Centers of the ICBF in diverse professions in service and technical industries). To bring the re-integration about there is coordination between the ICBF and the National Military and Police, who are the first to receive these children after their escape; the Judiciary in the legal proceedings; the Interior Ministry in agreement with the ICBF in relation to the mechanisms to bring these individuals back into society, and other government institutions. *Id.* at 36. The ICBF has guidelines as to who qualifies for the program, and they are divided in the following categories:

- 1) A child or adolescent captured by the State security forces due to membership in a subversive group and who appears in front of a judge. They are classified as forcibly demobilized (captured).
- 2) The child or adolescent that has deserted an armed group and presents him/herself to a State Institution, like the Public Defender's Office, the ICBF, the military, asking for protection. They are classified as voluntarily demobilized. For these children, their participation in these armed groups must be swiftly clarified so that a Judge may be made aware and they may be granted benefits under the program.
- 3) Children recruited by these armed groups who turn themselves in to the State or a domestic or international human rights group, as part of a mass demobilization. These children should be protected and urgent attention is needed to address their dangerous situation. (author's trans.).

*Id.* See also *Colombia 1379 Report*, *supra* n.47, at 25 (stating that before ICBF began its first program, former child soldiers were at risk of being placed in closed institutions alongside juvenile delinquents, where according to People's Ombudsmen's Office, 13% of children were killed by other inmates between 1994 and 1996). By 2001 there were seven programs for boys and girls. *Id.* In the past three years, the ICBF has received approximately 600 former child soldiers and has developed community based programs. *Id.* Because of the security risks involved, many of the integration programs locations are confidential and many of these former soldiers change their names. *Id.*

93. See Unidad de Paz, *Ejercito revela cifras sobre niños en conflicto*, EL ESPECTADOR, Apr. 29, 2002, available at <http://www.mindefensa.gov.co/prensa/temas/ninos/ninnotnal> [hereinafter *Military figures regarding child soldiers*] (breaking down 752 former child soldiers, into ninety-two that deserted and 660 that were captured). Of this group, 512 were boys, while 240 were women, all between the ages of thirteen and seventeen. *Id.* The number of children being attended to has increased 100% at the same time their ages decreased. *Id.* According to ICBF figures, they serviced 100 minors in 1999, 246 in 2000, 260 in 2001, and up until April 2002, 145 children. *Id.* They



II. INTERNATIONAL TREATY LAW AND NATIONAL  
LEGISLATION GOVERNING INTERNAL ARMED  
CONFLICT AND THE CHILD SOLDIER IN COLOMBIA

Colombia ratified the four Geneva Conventions of 1949 on August 11, 1961.<sup>94</sup> It acceded to both Protocol Additional I ("AP I") and II ("AP II") to the Geneva Conventions.<sup>95</sup> Protocol II, which governs intense internal armed conflict, is particularly relevant to the Colombian war.<sup>96</sup>

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used to get children between the ages of fourteen and seventeen, but now they are getting those between the ages of eleven and twelve. *Id.* Twelve percent of these children suffer from physical and mental ailments. *Id.* They are attended to in "reception centers" of the ICBF by specialists, who begin a medical and psychological process to reintegrate the children into society. *Id.* They reside there four to six months and are then sent to juvenile homes where their treatment is completed). *Id.* See also Brodzinsky, *supra* n.20 (stating that ICBF has seven safe houses where former child soldiers reside, but that due to threats of execution, their locations are kept secret). The safe houses offer the children vocational training, psychological help and a chance to return to their formal studies. *Id.* Once their residency at the house ends, those who can and want to, return to their families, while others are sent to foster homes. *Id.* Others are given the opportunity to learn a vocation. *Id.* See also *Colombian Children in Armed Conflict*, *supra* n.64, at 21 (commenting that once children were in ICBF programs they expressed desires to learn, work, and re-join their families). The highest priority is to strengthen and prepare these children for autonomy, independence, citizenship and reintegration into their families and law-abiding society. *Id.*

94. See Geneva Conventions of 1949 [hereinafter Geneva Conventions]. There are four Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field. Geneva, 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, 75 U.N.T.S. 31. See also *Geneva Conventions of 12 August 1949 and Additional Protocols of 8 June 1977: Ratifications*, available at <http://www.icrc.org>.

95. See Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, reprinted in 16 I.L.M. 1391 [hereinafter AP I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, reprinted in 16 I.L.M. 1442 [hereinafter AP II]. See also Arturo Carrillo, *Crimes of War Magazine: Colombia: The Traffic of Terror: International Law and the War in Colombia*, available at <http://www.crimesofwar.org/colombia-mag/index-mag.html> (commenting on international humanitarian law treaties ("IHL") signed by Colombia). See also Geneva Conventions of 12 August 1949 and Additional Protocols of 8 June 1977: Ratifications, available at <http://www.icrc.org> (stating that Colombia acceded to API and APII on January 9, 1993 and August 14, 1995, respectively). See also HILAIRE MCCOUBREY, INTERNATIONAL HUMANITARIAN LAW: THE REGULATION OF ARMED CONFLICTS I (1990) (commenting that international humanitarian law ("IHL") or "Geneva Law," as it is also termed, is found in four 1949 Geneva Conventions and two 1977 Additional Protocols).

96. See Carrillo-Suarez, *supra* n.29, at 90 (commenting that most observers having

In terms of children's rights, Colombia ratified the Convention on the Rights of the Child ("CRC") on January 28, 1991, and adopted the CRC as national legislation in national Ley 12 de 1991 ("Law 12").<sup>97</sup> Colombia signed the Optional Protocols to the Convention on the Rights of the Child ("OP-CRC") on September 6, 2000, but has yet to ratify it.<sup>98</sup> Colombia ratified the International Labour Organization ("ILO") Convention (No. 182) on the Worst Forms of Child Labour of 1999, in its national Ley 704 de 2001 ("Law 704").<sup>99</sup>

By subscribing to the principal human rights and International Humanitarian Law ("IHL") treaties, Colombia must respect the decisions of international legal organizations that seek to ensure the respect of the human rights and humanitarian law

direct contact with Colombia's internal conflict assume APII applies). *See also* RENE PROVOST, *INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW* 94 (2002) (stating that international norms and recent practice concur that during internal conflicts, obligations are imposed on all parties involved, state and non-state parties). This is reflected in the language of Common Article 3 and AP II. *Id.* *See also* HILAIRE McCoubrey, *INTERNATIONAL HUMANITARIAN LAW: MODERN DEVELOPMENTS IN THE LIMITATION OF WARFARE* 253-54 (2nd ed. 1998) (commenting that AP II, Article 1 helped to further define criteria necessary for internal armed conflict).

97. *See* Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/25/49 (1989), *revised in* U.N. Doc. A/RES/44/25/Corr.1 (1990), *reprinted in* 28 I.L.M. 1457(1989) [hereinafter CRC]. *See* Ley 12 de 1991 y Convención Sobre Los Derechos de los Niños, Jan. 21 1991 (Col.), DIARIO OFICIAL No. 39640, Jan. 22, 1991, *available at* <http://www.bib.minjusticia.gov.co/biblioteca/consulta.htm> (stating that Law 12 approved CRC, which was adopted by U.N. in 1989). The CRC obligated Colombia's respect and effective compliance. *Id.* *See also* U.N. *Colombia Report*, *supra* n.92, at 87 (stating that Colombia, upon signing CRC made declaration where it held that preferable age for involvement in armed conflict was eighteen rather than fifteen). Colombia would construe Article 38 to require the age of eighteen. *Id.*

98. *See* Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, 54th Sess., Annex I & II, U.N. Doc. A/54/49 (2000), *entered into force* Feb. 12, 2002. *See also* Press Release, Optional Protocol Banning Use of Child Soldiers Comes Into Force, Special Representative of the Secretary-General for Children and Armed Conflict, Feb. 12, 2002 [hereinafter Special Representative U.N. Press Release] (stating that Colombia signed Optional Protocol on September 6 2000).

99. *See* International Labour Organization ("ILO") Convention (No. 182) on the Worst Forms of Child Labour, 1999, *available at* <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm> [hereinafter Child Labour Convention]. *See also* Ley 704 de 2001, Nov. 21, 2001, DIARIO OFICIAL No. 44628, Nov. 27, 2001, *available at* <http://bib.minjusticia.gov.co/biblioteca/consulta.htm> [hereinafter Law 704] (commenting that through this law Colombia was ratifying ILO Convention on Worst Forms of Child Labor).

norms they have adopted. These organizations include the United Nations Commission on Human Rights ("UNCHR") and its High Commissioner for Human Rights.<sup>100</sup>

#### A. *Treaty Law and Non-International Armed Conflict*

Under the traditional principles of international law, violations of human rights are attributable only to States and their officials — even if a particular State did not commit the violations.<sup>101</sup> Private actors, such as the Colombian guerilla and

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100. See Carrillo, *supra* n.95 (commenting that Commission on Human Rights and Human Rights Commissioner are main political organs of U.N. that promote compliance with human rights and IHL norms). The High-Commissioner for Human Rights maintains an office in Bogotá. *Id.* Both are very active in monitoring the Colombian war. *Id.* See also *War Without Quarter*, *supra* n.41 (discussing laws of war applicable to Colombian armed conflict). The obligations of Common Article 3 are for all the parties to the conflict and independent of the other parties. *Id.* The Colombian government cannot excuse itself from complying on the grounds that other parties to the conflict are in violation of Common Article 3 and vice versa. *Id.* In addition, application of Common Article 3 by the government cannot be legally construed as recognizing an insurgent party's belligerence. *Id.* Nor does the government need to recognize the insurgent's belligerent's status in order for article Three to apply. *Id.* See also Esquirol, *supra* n.30, at 42 (discussing difference between terms "insurgency" and "belligerency"). *Id.* Local rebellions are within a state's jurisdiction. *Id.* at 45. More general revolts amount to an insurgency when recognized as one by the government or a third-party state. *Id.* An insurgency is subject to the full force of the State law. *Id.* Belligerency standing means that the internal conflict has escalated to the level of a full-scale international war. *Id.* Governments have wide discretion to decide whether or not to recognize belligerency. *Id.*

101. See Carrillo, *supra* n.95 (pointing out that international law of human rights derives principally from contemporary international agreements in which States undertake to recognize, respect, and ensure specific rights for inhabitants of their own countries). See also LINDSAY MOIR, *THE LAW OF INTERNAL ARMED CONFLICT* 44 (2002) (commenting that human rights obligations are imposed on States and their governments). See also PROVOST, *supra* n.96, at 58-59 (stating that human rights law imposes an obligation on states, rather than individuals). In human rights law, there is a State obligation corresponding to every individual right. *Id.* at 59. The State is obligated to protect people's enjoyment of individual rights. *Id.* at 60. The State must also respect and ensure respect for people's rights. *Id.* In a recent Inter-American Court of Human Rights Case ("IACHR"), the Court noted that the duty to ensure enjoyment of rights also meant a duty to, with due diligence, prevent, investigate and punish any violation of such rights, through the enactment of appropriate legislation and reorganizing the state apparatus. *Id.* Failing to do this, a State may be in breach of its international obligation, even though the State did not commit the actual violation. *Id.* See also International Committee of the Red Cross ("ICRC"), *National implementation of international humanitarian law: International humanitarian law and international human rights law — Similarities and Differences*, available at <http://www.icrc.org> (commenting that human rights law applies at all times — in peace and times of armed conflict. *Id.* Some human rights law treaties allow governments to curtail certain rights during public emergencies that threaten the nation, but the curtailment must be in proportion to the crisis, cannot

paramilitary groups, cannot violate human rights norms under International law because they are not subject to the obligations laid out in human rights treaties for governments and their agents.<sup>102</sup> IHL, on the other hand, clearly contemplates responsibility for individuals, non-State actors, and government officials, who act in breach of IHL provisions during armed conflict.<sup>103</sup>

### 1. Geneva Conventions of 1949 and common Article Three

The four Geneva Conventions were passed on August 12, 1949.<sup>104</sup> Geneva Conventions anticipated two types of conflict: the first includes all cases of war or armed conflict arising between two or more parties or States, in which one of the four Geneva Conventions applies in its entirety — international

be discriminatory, and must not contravene other rules of international law, including international humanitarian law. *Id.*

102. See Carrillo, *supra* n.95 (discussing obligations of guerrillas under IHL). See also LINDSAY MOIR, *supra* n.101, at 45 (commenting that human rights obligations are not binding on insurgents). The law has not reached that stage where insurgents are bound to observe the human rights of government forces, much less those of opposing insurgents. *Id.* at 194. See also PROVOST, *supra* n.96, at 59 (stating that if under human rights law individual obligation existed, activities of non-state armed group could be covered by human rights law). See also ICRC, *supra* n.101 (stating that while there is growing body of opinion according to which non-state actors must also be expected to respect human rights norms, issue is unsettled).

103. See Carrillo, *supra* n.95 (explaining differences between HR law and IHL as pertains to responsibility of non-state actors). See also PROVOST, *supra* n.96, at 78 (stating that imposition of humanitarian law obligations directly on individual appear in two instances). First, when a non-combatant carries out the act during an international conflict. *Id.* Second, when behavior is caused by insurgents not connected to the State, fighting in an internal conflict. *Id.* In past cases in the International Criminal Tribunal for Rwanda (“ICTR”) and International Criminal Tribunal for Yugoslavia (“ICTY”) it has been held that acts of individuals can and do fall within class of relationships governed by humanitarian law. *Id.* at 89. Since neither Tribunal offers a reason to restrict humanitarian law to the State, then there seems to be no public policy reason not to. *Id.* In its 1999 Report on Human Rights in Colombia, The Inter-American Commission on Human Rights, found that paramilitaries were bound by humanitarian law through their participation in the conflict, which is separate from the issue as to whether these groups acted as State agents. *Id.* at 94.

104. See Geneva Conventions, *supra* n.94 See also ILENE COHN & GUS GOODWIN-GILL, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICT 56-57 (1994) (describing scope of Geneva Conventions). See also Colleen C. Maher, Note, *The Protection of Children in Armed Conflict: A Human Rights Analysis of the Protection Afforded to Children in Warfare*, 9 B.C. THIRD WORLD L.J. 297, 301 (1989) (describing historical background to Geneva Conventions of 1949). The Conventions came about after the outrage expressed at the Third Reich’s treatment of Civilians during the Second World War. *Id.*

armed conflict.<sup>105</sup> The second category includes armed conflict of an internal (non-international) character occurring in the territory of one of the parties, in which the minimum standards of common Article 3 to all four Geneva Conventions, apply.<sup>106</sup> Arti-

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105. See generally Geneva Conventions, *supra* n.94, arts. 1 & 2. Articles 1 and 2 read, in part:

Chapter I. General Provisions:

Art. 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict that may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 56-57 (stating and describing two types of conflict anticipated at time of Geneva Convention drafting).

106. See Common Article 3 of the Geneva Conventions, *supra* n.94. Article 3 reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the Conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 58-59 (stating that some internal conflicts do not meet requirements of Protocol II and are governed instead by Article Three). See also Charles Lysaght, *The Scope of Protocol II and Its Relation to Common Article 3 of the Geneva Conventions and Other Human Rights Instruments*, 33 AM. U. L. REV. 9, 11 (1983) (stating that Common Article 3 was compromise reached at 1949 Diplomatic Conference between those who believed that Geneva Conventions should apply to all wars of sufficient scale and those that felt it should have no application except in armed

cle 3 generally calls for the humane treatment of individuals not taking active part in the hostilities — mainly prohibiting the use of all types of violence, degrading and humiliation, extra-judicial executions, and allowing for the care of the sick and injured.<sup>107</sup>

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conflicts between states). It affords some protection, but much less than the remaining Articles of the four Geneva Conventions provide for international conflict victims. *Id.* The Article purports to impose obligations on any party to a non-international armed conflict, not just governments. *Id.* at 12. It could be argued that when a government ratifies a convention it does so on behalf of all its nationals, even those who revolt against the government. *Id.* The methods of enforcement for Common Article 3 are unclear. *Id.* Under the article, an impartial body like the International Committee of the Red Cross (“ICRC”) may offer its services to the conflicting parties. *Id.* Another problem is whether the enforcement provisions of the Conventions govern Common Article 3. *Id.* One view of Article 3, after reading Common Article 2, is that it is an isolated provision and not related to the Conventions other provisions. *Id.* Yet in another Article that is common to the four Conventions, it is provided that “[e]ach High Contracting Party shall take measures for the suppression of all acts contrary to the provisions of the present Convention.” *Id.* at 12. Prior to the Additional Protocols, the ambiguous wording of Article 3 permitted states to deny that they breached its provisions except in the most obvious cases. *Id.* at 14.

107. See Common Article 3 to the Geneva Conventions, *supra* n.94.

Article 3 states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee on the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions to the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Common Article 3 states that each party to the conflict is bound to its provisions, and the latter have been extended to non-State armed groups, although they are not explicitly mentioned in the Article.<sup>108</sup> Yet, common Article 3 does not affect the legal status of these insurgent groups.<sup>109</sup>

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*Id.* See also Lysaght, *supra* n.106, at 11 (commenting that Article 3 was a compromise provision between those that felt Geneva Conventions should apply to all armed conflicts and those that felt the Conventions should apply only to conflicts between states). It affords victims of internal conflict some protection, but less than that afforded to victims of international armed conflict. *Id.* Common Article 3 purports to impose obligations on any party to an internal conflict. *Id.* at 12. Although the jurisdictional basis for imposing legal obligation on parties, other than the government is questionable, or could be argued that when a government ratifies a convention it does so in the name of all its citizens, even the insurgents. *Id.* at 12. Since Common Article 2 does not mention internal conflicts, some advance that Common Article 3 is an isolated provision and unrelated to other provisions in the Convention. *Id.* Critics felt that Article 3 was defective because it protected those that were already victims of armed conflict — prisoners, sick and wounded. It was felt that provisions regulating combat methods in internal conflicts, and safeguarding the civilian population were needed. *Id.* at 14. This lead to the initial drafting of Protocol II in 1974. *Id.* See also Rosemary Abi-Saab, *Humanitarian Law and Internal Concerns: The Evolution of Legal Concern*, in HUMANITARIAN LAW AND ARMED CONFLICT: CHALLENGES AHEAD 217 (Delissen and Tanja, eds. 1991) (stating that Article 3 provides basic protection of human rights and physical integrity of individuals, prohibiting torture, murder, mutilations, cruel treatment, hostage taking). These acts are prohibited against those not actively involved in the hostilities. *Id.* This provision is what sets Article 3 apart from the rest of the Geneva Conventions. *Id.* Article 3 does not discuss combatants or prisoners, nor does it provide immunity from punishment. *Id.*

108. See MOIR, *supra* n.101, at 52 (commenting that non-State insurgent parties never agreed to Convention, and have no capacity to become parties to Convention). Commentators believe that Article 3 binds insurgents, since APII was meant to develop and supplement Common Article 3, and it binds both States and rebels. *Id.* The legal justification used is the doctrine of legislative jurisdiction. *Id.* at 53. The doctrine provides that insurgents are bound because of their State's acceptance of the Convention, since upon ratification it is binding on all of a State's citizens. *Id.* Another justification for binding non-State forces to Common Article 3 is asserting that treaties entered into by States and binding on insurgents provided they exercise control over a part of national territory. *Id.* at 55. Yet not all rebel groups claim to represent the State — in fact they may wish to create a new State. *Id.* at 55-56. A third justification would be to hold insurgents bound by Article 3 as individuals under international law, since Conventions treat individuals as subjects of international rights and duties. *Id.* at 56. See also Abi-Saab, *supra* n.107, at 216 (stating that Common Article 3 vague formulation, considered at the time of drafting, major defect, is now one of its main advantages). It does not exclude a broad interpretation. *Id.*

109. See text of Common Article 3(2) to the Geneva Conventions, *supra* n.94. Article 3(2) reads, in pertinent part: "The Application of the preceding provisions shall not affect the legal status of the Parties to the conflict." See also MOIR, *supra* n.101, at 65 (commenting that inclusion of this provision was vital because it eased fears that government's power to contain internal revolt would be interfered with). Article 3 does

## 2. Additional Protocol II of 1977

There are two Additional Protocols to the Geneva Conventions — AP I and AP II.<sup>110</sup> Both resulted from an initiative of the International Committee of the Red Cross (“ICRC”) to actualize the laws of war and, in particular, to encourage States to recognize and accept the changing face of warfare.<sup>111</sup> AP II, the applicable provision in internal armed conflict, includes provisions limiting the permissible means of combat, strengthening protection of the civilian population, and extending the applicability of IHL within State boundaries.<sup>112</sup> AP II applies a limited range of international standards to situations of internal armed conflict

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not bestow recognition on the insurgents of any authority or of belligerency. *Id.* An insurgent group remains an insurgent under national law. *Id.*

110. See AP I and AP II to the Geneva Conventions of 12 August 1949, *supra* n.95.

111. See COHN & GOODWIN-GILL, *supra* n.104, at 57 (commenting on particular incidence of wars of national liberation and increased use of guerrilla tactics). See also Lysaght, *supra* n.106, at 21 (stating that story of AP II was one of disappointed expectations). Initially, there were hopes that prisoner-of-war status would be conferred on combatants in non-international armed conflicts. *Id.* Yet few governments were willing to relinquish the right to punish those rebelling in arms against their authority. *Id.* The ICRC draft placed before the Diplomatic Conference covered a wide range of rights relating to methods of combat, protection of civilians, and the care of the sick and wounded. *Id.* The application of APII as adopted was much more limited than Common Article 3, the International Covenant on Civil and Political Rights, and the American Convention, because it limited armed conflicts to those between forces of a High Contracting Party and other armed forces under “responsible command,[and] exercise such control over a part of its territory as to enable them to carry out a sustained and concerted military operations and to implement this Protocol.” *Id.* at 22.

112. See AP II, *supra* n.95, art. 4. Article 4, “Fundamental Guarantees,” states:

1. All persons who do not take direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions of religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:
  - a. violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
  - b. collective punishments;
  - c. taking of hostages;
  - d. acts of terrorism;
  - e. outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
  - f. slavery and the slave trade in all their forms;
  - g. pillage
  - h. threats to commit any of the foregoing acts.



of the intensity most people would classify as "civil war."<sup>113</sup>

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*Id.* See also Part IV Civilian Population, art. 13 "Protection of the Civilian Population." Article 13 states:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual citizens, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take direct part in hostilities.

*Id.* See also art. 17 "Prohibition of Forced Movement of Civilians." Article 17 states:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected to the conflict.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 57 (discussing evolution and scope of Additional Protocols).

113. See Preamble to AP II, *supra* n.95. The Preamble states:

The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,  
 Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,  
 Emphasizing the need to ensure a better protection for the victims of those armed conflicts,  
 Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates or the public conscience,  
 Have agreed on the following . . .

*Id.* See also Part I. Scope of this Protocol, art. 1 "Material field of application." Article 1 reads:

1. This protocol, which develops and supplements Article 3 Common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of one of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

AP II can only be applied if an internal conflict reaches a certain level of intensity, and the armed opposition, in turn, meets the criteria of responsible command and control over territory, and capacity to implement the AP II.<sup>114</sup> AP II is binding on insurgents, as is Common Article 3.<sup>115</sup> Many situations fall short of the AP II threshold, and remain governed by the minimal conditions of Common Article 3.<sup>116</sup> Common Article 3 also

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*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 57 (stating applicability of AP II).

114. See AP II, *supra* n.95, art. 1(1). Article 1(1) reads:

This Protocol . . . shall apply to all armed conflicts which are not covered by Article 1 of . . . [Protocol I] and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 58 (discussing applicability of AP II); PROVOST, *supra* n.96, at 267 (stating that as opposed to AP II, where State needs to be involved in order for its provisions to apply, Common Article 3 makes no such requirement). In addition, control of a portion of national territory is also unnecessary under Common Article 3. *Id.*; Sylvie Junod, *Additional Protocol II: History and Scope*, AM. U.L. REV. 29, 35 (1983) (stating that Protocol II develops and supplements Common Article 3 "without modifying its existing conditions of application"). The Diplomatic Conference drafting AP II chose to adapt the scope of the Protocol to the degree of intensity of the conflict. *Id.* In those situations where the conditions for the application of AP II are fulfilled, both AP II and Common Article 3 apply at the same time, because the scope of AP II is included in Article Three's wider scope. *Id.* See also David Matas, *Armed Opposition Groups*, 24 MAN. L.J. 621, 627 (1997) (stating that unlike Additional Protocol I, there is no provision in Additional Protocol II, to allow armed opposition groups involved in conflict of internal character to declare accession to Protocol). It applies only in the signatory's territory, and where the dissident armed forces are able to implement the Protocol. *Id.* There is an element of reciprocity in ability. *Id.* States which have acceded to the Protocol are supposed to apply it where dissident armed forces are able to implement the Protocol, whether the dissident armed forces are willing to implement the Protocol or not. *Id.*

115. See MOIR, *supra* n.101, at 97 (commenting that Common Article 3 binds both parties to internal conflict and since AP II supplements Common Article 3 it must do so as well). It would be strange if AP II did not provide the same conditions as Common Article 3, since AP II develops Article 3, which actually confers rights and obligations on insurgents. *Id.* See also PROVOST, *supra* n.96, at 160 (stating that in internal armed conflict neither Common Article 3 nor AP II draws distinctions between regular or irregular combatants). Insurgents are required to comply with humanitarian law, regardless of compliance by the State's armed forces. *Id.* at 161. See also THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 211 (Dieter Fleck, ed. 1995) (commenting that Common Article 3 and APII are two instruments that apply exclusively to internal armed conflicts). AP II applies with equal force to all parties—government and rebels alike. *Id.*

116. See AP II, *supra* n.95, art. 1(2). Article 1(2) reads:

This protocol shall not apply to situations of internal disturbances and ten-

has a threshold, without which it does not apply.<sup>117</sup> The applicability of some rules of international humanitarian law depends on whether the State has ratified the Geneva Conventions or the Additional Protocols, and whether the conflict falls within one of

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sions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 58-59 (commenting that these situations remain governed by minimal provisions of Common Article 3 and other human rights provisions that have not been derogated). See also PROVOST, *supra* n.96, at 261 (discussing evolution of APII from Common Article 3). Some felt that rules of internal armed conflicts should be expanded to cover more situations, or clarified to increase chances of application, while others preferred a narrower field because it would allow for better regulation of conflicts. *Id.* Two regimes were created, under Article 3 — which was wider in scope but narrower in content, and APII — with more limited applicability but more detailed rules. *Id.* Common Article 3 also governs all conflicts applicable to APII. *Id.* The field of application of AP II is set out in Article 1, and Article 1(2) sets out the lower threshold where APII does not apply. *Id.* It is not an exception to what defines conflict, but describes the opposite conditions listed in Article 1(1). *Id.* See also Junod, *supra* n.114, at 35 (stating that in low-intensity conflict, which does not fulfill requirements of Protocol II, Common Article 3 applies alone). See also text of Common Article 3. Four minimum provisions under Art. 3(1) are:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

*Id.*

117. See COHN & GOODWIN-GILL, *supra* n.104, at 59 (commenting that even though Common Article 3 may not apply, local law and prevailing human rights obligations do). See also Matas, *supra* n.114, at 628 (maintaining that Common Article 3 states that in cases of internal armed conflict occurring in territory of one of signing parties, each party to conflict is bound to apply listed minimum provision). There are only two limitations on the obligation: that the conflict be in the territory of the signing party and that it be an armed conflict. *Id.* According to commentary on the Conventions, any conflict is an armed one once there are armed forces engaged in hostilities. *Id.* They are conflicts like an international war confined to a single country. *Id.* See also Laura Lopez, Note, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts*, 69 N.Y.U. L. REV. 916, 927 (1994) (stating that unlike Protocol II, Article 3 does not define characteristics of "armed conflicts not of international character"). Yet, authoritative ICRC commentary states that the conflicts referred to in Article 3 "are armed conflicts, with armed forces on either side engaged in hostilities — conflicts, in short, which in many respects are similar to an international war, but take place within the confines of a single country." *Id.* at 927-28. Article 3 applies to some civil disputes, which do not fall under Protocol II, like when a dissident group engages in armed conflict but does not attain the required level of control over a territory control to trigger Protocol II. *Id.* at 928.

five categories.<sup>118</sup>

B. *Applicability of Geneva Conventions of 1949, and the Additional Protocols of 1977 to the Child Soldier*

The Geneva Conventions of 1949 do not prohibit a child from becoming involved in armed conflict, but provide for the general protection of children, alongside women, during armed conflict.<sup>119</sup> AP I does not explicitly state that a child may never become a combatant in an international armed conflict.<sup>120</sup> Instead, Article 77 of AP I placed restrictions on those parties that

118. See COHN & GOODWIN-GILL, *supra* n.104, at 57. The five categories of conflict are: 1) traditional international armed conflicts, 2) AP I conflicts, 3) AP II conflicts between a State and organized armed groups under responsible command, 4) Common Article 3 conflicts under the 1949 Conventions, 5) and riots and internal disorders. *Id.*

119. See *id.* at 61 (stating limitations of Geneva with regards to child participation in armed conflict). See also Maher, *supra* n.104, at 302 (commenting that Article 3 to Geneva Conventions left many of the dangers confronted by civilians today unaddressed). Modern guerrilla warfare often results in insurgents looking to the civilian population for support. *Id.* Traditionally, children were protected by "cultural presumptions" that were not combatants. *Id.* The use of children by the Nazis, and those in opposition to them was the first widespread uses of children in modern conflict. *Id.* Article Three's blanket protection is not sufficient to protect children in modern warfare. *Id.* at 303. Modern warfare has destroyed the presumption of innocence of children, and allowed for active recruitment. *Id.* at 304. But see THE RIGHTS OF THE CHILD: INTERNATIONAL INSTRUMENTS 717 (1995) (pointing out that Part II of Geneva Convention (IV) for the Protection of Civilian Persons in Time of War, General Protection of Populations Against Certain Consequences of War, provides for overall child children -, in Article 13, which reads "The provisions of Part II cover the whole of the population of the countries in conflict, without any adverse distinction [. . .] and are intended to alleviate the sufferings caused by war"). *Id.* There is also a provision in Article 14 that calls for designating "safety zones" for the protection of the wounded, sick, elderly, children under the age of fifteen, expectant mothers and those with children under the age of seven. *Id.* The same can generally be said for Article seventeen and twenty-three. *Id.* at 718. See also Alison Dundes Renteln, *The Child Soldier: The Challenge of Enforcing International Standards*, 21 WHITTIER L. REV. 191, 193 (1999) (stating that Fourth Geneva Convention gave general protection to women and children as civilians in territories, occupied or unoccupied).

120. See COHN & GOODWIN-GILL, *supra* n.104, at 61 (stating limitations of API with regards to children in armed conflict). See also Maher, *supra* n.104, at 308 (commenting that draft articles provided "explicit" protection of children, rather than including children by "implication" in blanket civilian protection). Some of the delegates felt that documented increase in use of child soldiers eliminated international obligation to provide them with special protection. *Id.* Modifications were proposed to create standards that apply to children in participating in armed conflicts rather than bar all child participation in armed conflicts. *Id.* at 309. They appeared to decrease actual child protection, but were an attempt to insure some adherence by participating nations. *Id.* These modifications were rejected in favor of the present form. *Id.*

recruit children.<sup>121</sup> In particular, Article 77(2) reads that all parties shall take "feasible measures" to ensure that children who have not attained the age of fifteen do not take a "direct part" in hostilities, and shall refrain from "recruiting" them into the armed forces.<sup>122</sup>

Under AP II, the formal immunity of children from recruit-

121. See AP I, *supra* n.110, art 77. Article 77 "Protection of Children" reads:

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.
3. If, in exceptional cases, despite provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of the adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained, or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time of offence was committed.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 61 (pointing out that with respect to international armed conflicts in which State and/or armed opposition have declared their adherence to AP I, Article 77(2) imposes certain limitations on freedom to recruit). It is less restrictive than the measure originally proposed by the ICRC to the Diplomatic Conference, which would have obliged parties to take "all necessary measures" to prevent participation. *Id.* The text now reflects the wish of governments "to avoid entering into absolute obligations with regard to the voluntary participation of children in hostilities." *Id.* States rejected the draft Article, which would have prohibited even indirect participation in hostilities, like transmission of information, transporting of arms and supply provisions, as "unrealistic." *Id.* at 61-62. See also MCCOUBREY, *supra* n.96, at 93 (commenting that Article 77 is most extensive provision affording protection for children in armed conflict, aside from general provisions for civilian protection from which they benefit). See also Renteln, *supra* n.119, at 193 (stating that Article 77 prohibited all types of child involvement in armed conflict in territories of states in conflict).

122. See AP I, *supra* n.110, art. 77(2). Art. 77(2) reads:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of

ment and "involvement" is stronger in civil war situations, as is evident in article 4(3).<sup>123</sup> Article 4(3)(c) of AP II provides that children under the age of fifteen shall neither be recruited in the armed forces or groups, nor allowed to take part in hostilities.<sup>124</sup> Under AP II, two distinct obligations of conduct apply, and voluntary or indirect participation of those under fifteen is

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fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 62 (noting that according to some interpretations word recruit, as used in Article covers both compulsory and voluntary recruitment). It defines "feasible" as "that which is capable of being done and, by definition, whatever is under the jurisdiction and control of a party is prima facie capable of being done." *Id.*; Astrid J.M. Delissen, *Legal Protection of Child-Combatants After the Protocols: Reaffirmation, Development or a Step Backwards?*, in HUMANITARIAN LAW OF ARMED CONFLICT: CHALLENGES AHEAD 154 (Dellisen & Tanja eds., 1991) (contending that Article 77 is weak provision for child protection). It fails to protect children older than fifteen, it uses "feasible measures" instead of "necessary measures," and there is no ban on non-combat participation of children. *Id.* See also Renteln, *supra* n.119, at 193 (commenting that Additional Protocols deal directly with role of children in armed conflict and regulate it for first time). Article 77 prohibits all types of child involvement in armed conflict in territories of the states in conflict. *Id.*

123. See AP II, *supra* n.110, art. 4(3). Article 4(3) reads:

Children shall be provided with the care and aid they require, and in particular:

- a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
- b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
- c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
- d) the special protection provided in this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take direct parting hostilities despite the provisions of subparagraph (c) and are captured;
- e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove the children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure they are accompanied by persons responsible for their safety and well-being.

*Id.* See also COHN & GOODWIN-GILL, *supra* note 104, at 64, n.26 (stating that difference in treatment is possibly attributable to fact that provisions for child protection were undertaken by different committee and before drafting of parallel provisions in Protocol I). See also Renteln, *supra* n.119, at 193 (comparing children in armed conflict provisions of APII to API and noting difference in scope as to child participation in armed conflict).

124. See APII, *supra* n.110, art. 4(3) (dealing with children). Article 4(3) reads, in pertinent part:

equally ruled out.<sup>125</sup> This is a total prohibition, for a child cannot be recruited, or enlist himself, but furthermore will not be allowed to "take part in hostilities" i.e. to indirectly participate in military operations such as gathering information, transmitting orders, transporting ammunition and foodstuffs, or committing acts of sabotage.<sup>126</sup>

There is no rule that forbids youth from participating in non-international armed conflicts; instead, AP II places the responsibility not on the children, but on the parties to the con-

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Children shall be provided with the care and aid they require, and in particular:

- a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
- b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
- c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces of groups nor allowed to take active part in hostilities;
- d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take direct part in hostilities despite the provisions of subparagraph (c) and are captured;
- e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and to ensure that they are accompanied by persons responsible for their safety and well-being.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 64 (emphasizing stronger language of AP II as opposed to Geneva and AP I). See also Renteln, *supra* n.119, at 193 (commenting on provision prohibiting all types of in child participation in armed conflict).

125. See COHN & GOODWIN-GILL, *supra* n.104, at 64, n.25 (explaining that "obligations of conduct" call for action at level of direct relations between States- it requires specifically determined course of conduct, and to determine whether it has been fulfilled turns on whether State's action or omission is/not in conformity with internationally required conduct). See also Renteln, *supra* n.119, at 194 (stating that Article is innovative provision because it contains total prohibition of participation, including even voluntary enlistment). *But see* Delissen, *supra* n.122, at 157 (commenting on differing interpretations of word "recruitment" in Article 77). The Chairman of the Working Group involved in Article 77s drafting claims that the ban on recruitment includes voluntary enlistment. *Id.* While others believe that not including an explicit ban on accepting children who volunteer, essentially permits parties to allow child volunteers. *Id.*

126. See Renteln, *supra* n.119, at 194 (stating that children are not to be involved in any military operations). See also Chen Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict*, 28 COLUM. HUM. RTS. L. REV.629, 641 (1997) (commenting that Protocol II contains no "prisoner of war" category). Therefore, children who participate in internal armed conflicts are subject to penalties under the domestic laws of their countries. *Id.*

flict — those with the power and/or authority on either the government or opposition side to recruit.<sup>127</sup> The parties to the conflict — government or insurgent — have a duty to continue protecting children who actually participate in the hostilities.<sup>128</sup> An insurgent group, like the government, will only be formally bound by APII, if the State has ratified the treaty, or if it is recognized as having made a valid unilateral declaration of intent to respect international humanitarian law rules.<sup>129</sup> It will be bound by the rules of customary international law (“CIL”), regardless of whether they relate to conduct during conflict or protect vulnerable groups, like children.<sup>130</sup>

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127. See COHN & GOODWIN-GILL, *supra* n.104, at 64 (stating that commentators believe perhaps reflects practical difficulties of regulating or controlling self-willed activities of those under fifteen). See also Reis, *supra* n.126, at 641-42 (stating that language of Protocol II seemingly puts responsibility on those who allow child’s participation and not on child). See also Renteln, *supra* n.119, at 194 (stating that language of Protocol “ascribes” responsibility to those who allow children to participate rather than child).

128. See also AP II, art. 4(3)(d). Article 4(3)(d) reads:

The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take direct part in hostilities despite the provisions of subparagraph (c) and are captured.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 64 (commenting that parties to conflict are responsible for protecting children). See also Reis, *supra* n.126 at 642 (stating that special protection afforded by Article remains effective even if child becomes involved in armed conflict). This protection, includes, but is not limited to, measures regarding education and family reunification. *Id.* See also Article 4(3)(e), which reads:

measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and to ensure that they are accompanied by persons responsible for their safety and well-being.

*Id.*

129. See COHN & GOODWIN-GILL, *supra* n.104, at 65 (commenting on legal responsibilities of government and insurgency with respect to children and CIL). See also Renteln, *supra* n.119, at 194 (stating that Protocol II is binding on States Parties and armed opposition groups equally).

130. See COHN & GOODWIN-GILL, *supra* n.104, at 65 (stating that in dynamic circumstances of civil war and internal armed conflict, rules that can be realistically applied must be identified, and distinction between formal application of rules and consequences of breaching them). See also Christopher Greenwood, *Customary Law Status of the 1977 Geneva Protocols*, in HUMANITARIAN LAW OF ARMED CONFLICT: CHALLENGES AHEAD, *supra* n.107, at 96 (commenting that it is generally assumed that multilateral treaties are treated as authoritative statements of customary international law). This applies in two cases: 1) when principles are codified that are already part of customary international law prior to the end of the treaty, and 2) even though they go beyond current customary law, the principles laid down by treaties are accepted as applicable and become part of customary international law. *Id.* See also Hans-Peter Gasser, *Negoti-*



## 1. Convention on the Rights of the Child

The Convention on the Rights of the Child ("CRC"), a document which upholds children's rights, entered into force in 1990, and offers general support for the argument against recruitment of children.<sup>131</sup> Article 4 of the CRC obliges States Parties to implement the rights recognized in the Convention.<sup>132</sup>

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*ating the 1977 Additional Protocols: Was it a Waste of Time?, in HUMANITARIAN LAW OF ARMED CONFLICT: CHALLENGES AHEAD, supra n.107, at 85 (commenting that it is also commonly agreed that major parts of both Additional Protocols give expression to customary law). Common Article 3 of the Geneva Conventions is part of customary law. Id. AP II goes farther than, and codified important human rights law. Id. APII strengthened basic human rights protection, more so than create new humanitarian obligations. Id. AP II has clarified current customary law relating to protection of persons during armed conflict, and it will help to interpret customary law in States where APII is not applicable due to its non-ratification. Id.*

131. See CRC, *supra* n.97, Preamble. The Preamble reads, in part:

*The States Parties to the present Convention,*

*Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world, [ . . . ]*

*Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, [ . . . ]*

*Recognizing that, in all countries of the world, there are children living in exceptionally difficult conditions and that such children need special consideration,*

*Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,*

*Recognizing the importance for improving the living conditions of children in every country, in particular in the developing countries [ . . . ]*

*Id. See also COHN & GOODWIN-GILL, supra n.104, at 67-68 (commenting that CRC also deals with education, particularly in article 29, which is platform "almost incompatible" with child involvement in armed conflict). See also Hick, supra n.2, at 118 (stating that CRC had been endorsed by 191 States, making it most widely ratified international instrument in history). See also A. GLENN MOWER, JR., THE CONVENTION ON THE RIGHTS OF THE CHILD: INTERNATIONAL LAW SUPPORT FOR CHILDREN 3 (1997) (stating that Convention's significance lies in fact that it is first global instrument to "explicitly recognize" children as having rights that states must "respect and ensure" (Article 1).*

132. See CRC, *supra* n.97, art. 4. Article 4 reads:

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

*Id. See also MOWER, supra n.131, at 7 (stating that CRCs potential impact on world, stems partly from fact it increases possibility that children will not be left behind, regardless of geographic location).*

Article 38 of the Convention refers to the applicable humanitarian law and the limits of recruitment and participation of children in armed conflicts in the familiar language.<sup>133</sup> While incorporating most of Article 77(2) of AP I, Article 38(2) of the CRC curbed article 4(3) of AP II, by requiring States Parties to take all feasible measures to prevent direct participation of children under the age of fifteen in hostilities.<sup>134</sup> Yet, CRC Article 41 en-

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133. See CRC, *supra* n.97, art. 38. Article 38 reads:

1. States Parties undertake to respect and to ensure respect for the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure the protection and care of children who are affected by armed conflict.

*Id.* See also COHN & GOODWIN-GILL, *supra* n.104, at 67, 68-69 (stating that 25th International Conference of Red Cross, held in Geneva in 1986, stressed that the protection to be provided to children under CRC, which was at that time under consideration, "should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols"). It did not work out quite that way. *Id.* The U.N. Special Representative took the position that a provision of international humanitarian law should not be altered by a human rights instrument. *Id.* See also Renteln, *supra* n.119, at 196 (discussing controversy and innovative aspects of article). Article 38 was the most controversial provision largely because of the age limit question. *Id.* When the lower of fifteen was chosen, several States objected and preferred to use the higher age of eighteen. *Id.* When these States ratified the CRC, they attached declarations stating they would not allow children to participate in armed conflict until the age of eighteen. *Id.* The Article was also considered innovative because it based human rights law on humanitarian law. *Id.* at 197. It is claimed that Article 38 of CRC employs a double standard, in that it makes requirements of CRC applicable to conduct of States parties and others. *Id.* The United States objected to having humanitarian law inserted into a human rights instrument. *Id.* See also MOWER, *supra* n.131, at 40 (stating that major part of CRC deals with child's right to protection from threats to their safety and well-being). The Articles that define this right were drafted at a time when the need for child protection was "beyond doubt." *Id.* The need to protect was most acute for children in rural areas who lacked access to the services, resources and infrastructure that would allow them to reach full potential. *Id.*

134. See CRC, *supra* n.97, for text of art. 38(2). See also COHN & GOODWIN-GILL, *supra* n.104, at 69 (paraphrasing text of Article 38(2)). See also SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 646 (1999) (pointing to Article 38(2) which directs States Parties to "refrain from recruiting any person who has not attained the age of fifteen years into their armed forces"). See

tures that the discrepancies in the wording noted above will not diminish the protection afforded to children.<sup>135</sup> The CRC, in Article 39, puts the onus on States Parties, to take "all appropriate measures to promote the recovery and social integration of these children."<sup>136</sup> Commentators have noted that like most human rights treaties, the CRC is limited in application only to States, rather than to the parties in a conflict.<sup>137</sup>

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*also* LAWRENCE J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS 150 (1995) (discussing why some countries and organizations insisted on keeping age limit at fifteen, instead of raising it to eighteen). Supporters of the lower age limit pointed to the Additional Protocols to Geneva and the age limit of fifteen that it set. *Id.* If Article 38(2) specified the same age limit it would be "consistent" with existing international humanitarian law. *Id.* at 150-151. This was the easiest way to deal with the issue, but it did not meet with the approval of those individuals who believed treaties and conventions should be used to advance international law development. *Id.* at 151. *See also* Article 4(3) of AP II (1977) to the Geneva Conventions (1949) *supra* 123, for text of Article). *See also* AP I, *supra* n.121, for text of Article 77. *See also* Reis, *supra* n.126, at 643 (stating that language of Article 38(2) is weaker than that of article 4(3)(c) of Protocol II). *Id.*

135. *See* CRC, *supra* n.97, art. 41. Article 41 reads:

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child which may be contained in:

- a) The law of a State party; or
- b) International law in force for that State.

*Id.* *See also* COHN & GOODWIN-GILL, *supra* n.104, at 69 (commenting that children's rights monitors will need to check State's compliance with CRC against the highest protective standard, nationally or internationally).

136. *See* CRC, *supra* n.97, art. 39. Article 39 reads:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

*Id.* *See also* DETRICK, *supra* n.134, at 646 (commenting that Article 38(4), which calls on States Parties "in accordance with their obligations under international humanitarian law to protect civilians" in armed conflict, and to take all feasible measures to ensure "protection and care" for children affected by armed conflict, "is closely related to Article 39, which deals with child's right to recovery and re-integration).

137. *See* COHN & GOODWIN-GILL, *supra* n.104, at 6 (stating that when conflict is beyond reach of IHL, CRC may be way to bring those standards "through the backdoor" when State is party to Convention). In situations where children participate in armed opposition groups and AP II does not apply, the fact that the State ratified the CRC, presents the challenge of extending the law to NGEs and monitoring them. *Id.* *See also* Renteln, *supra* n.119, at 197 (stating that CRC has serious limitation in that it generally limits only States' conduct). *See also* DETRICK, *supra* n.134, at 651 (commenting that wording of Article 38(1) one is based on Article 1 of Geneva Conventions). The wording may imply positive and negative obligations on the State party regarding

## 2. Optional Protocol to the Convention on the Rights of the Child: Children in Armed Conflict (2002)

On May 25, 2000, the U.N. General Assembly adopted two Protocols to the Convention on the Rights of the Child: the Protocol on the Involvement of Children in Armed Conflict (“Armed Conflict Protocol”) and the Protocol on the Sale of Children, Child Pornography and Child Prostitution (“Sale of Children Protocol”).<sup>138</sup> The Armed Conflict Protocol requires States Parties to take all feasible measures to ensure that children who have not reached the age of eighteen do not take part in direct military operations.<sup>139</sup> It stipulates that States Parties not impose obligatory military service on persons not yet eighteen years of age.<sup>140</sup> It raises the minimum age for military con-

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its own conduct and that of others. *Id.* It is argued that Article 1 of Geneva implies that States Parties should insure respect for the Convention’s provisions by their own armed forces, and the universal application of underlying humanitarian principles. *Id.*

138. See Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, 54th Sess., Annex I & II, U.N. Doc. A/54/49 (2000), entered into force Feb. 12, 2002. See also Michael J. Dennis, *Current Development: Newly Adopted Protocols to the Convention of the Rights of the Child*, *The American Journal International Law* 94 AM. J. INT’L L. 789, 789 (2000) (commenting that Protocols represented major advances in international effort to strengthen and enforce protective norms for children). *Id.* See also DETRICK, *supra* n.134, at 658 (discussing how the controversy surrounding the age limits of child recruits in armed conflict during the drafting of article 38, quite possibly propelled the U.N. Commission on Human Rights, by resolution 1994/91, to decide to establish open-ended Working Group to draft optional Protocol to the CRC on child involvement in armed conflict). Through resolution 1997/78, the Commission requested the group work on a draft optional protocol. *Id.*

139. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 1. Article 1 reads:

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

*Id.* See also Dennis, *supra* n.138, at 789 (commenting that Children in Armed Conflict Protocol raises conscription age to eighteen, as stipulated by existing international law). See also DETRICK, *supra* n.134, at 660 (discussing opinions of working group for draft protocol concerning direct and indirect involvement in military operations). Most of the delegations felt that direct and indirect participation should be prohibited. *Id.* They thought that including “direct” would weaken the protocol, since many children in war zones were performing dangerous tasks that placed their lives at risk. *Id.* Others felt that the word “direct” was necessary. *Id.*

140. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 2. Article 2 reads:

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

*Id.* See also Dennis, *supra* n.138, at 789 (stating that OP-CRC on Children in Armed Conflict states that Parties should not recruit minors under age of eighteen into their military).

scription from fifteen to eighteen, as stipulated under existing international law.<sup>141</sup> It asks non-government armed groups to not recruit or use children.<sup>142</sup> States parties must also take measures to prohibit the recruitment and use of persons below the age of eighteen by these non-government armed groups.<sup>143</sup> It is also the States' obligation to take the necessary measures to implement the provisions of the Protocol.<sup>144</sup>

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141. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 3. Article 3 reads:

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking into account the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and the description of the safeguards that it has adopted to ensure such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
  - a. Such recruitment is voluntary;
  - b. Such recruitment is done with the informed consent of the person's parents or legal guardians;
  - c. Such persons are fully informed of the duties involved in such military service;
  - d. Such persons provide reliable proof of age prior to acceptance into national military service.

*Id.* See also Dennis, *supra* n.138, at 789 (stating that Protocol raised conscription age to eighteen years). See also DETRICK, *supra* n.134, at 660 (discussing that many of participants in writing of draft protocol felt that "voluntary" recruitment was in many cases not a free choice, but product of indoctrination, incitement to vengeance, poverty, destitution, severe pressure, prospect of protection, or immaturity). The requirement of parental consent, it was believed, was not a safeguard and irrelevant in most situations. *Id.* It also felt that having recruitment and participation be different ages would make monitoring and enforcement more difficult. *Id.*

142. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 4(1). Article 4(1) reads: "Armed groups that are distinct from the armed forces of the State should not, under any circumstances, recruit or use in hostilities any persons under the age of 18 years." *Id.*

143. See *id.* art. 4(2). Article 4(2) reads "States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such parties." *Id.* See also *id.* art. 4(3), which reads: "The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict." *Id.* See also Dennis, *supra* n.138, at 789 (commenting that Protocol contains provision that puts responsibility on States to prevent recruitment of children into insurgent groups).

144. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 6. Article 6 reads:

Each Protocol, although styled as a Protocol to the CRC, operates as an independent multilateral agreement under international law.<sup>145</sup> States may ratify either Protocol without becoming a party to the CRC or being subject to its provisions.<sup>146</sup> The Protocols complement the ILO Convention (No. 182) on the Worst Forms of Child Labor, adopted by the International Labour Conference on June 17, 1999.<sup>147</sup> That Convention re-

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1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
  2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
  3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

*Id.*

145. See Dennis, *supra* n.138, at 789 (commenting that each protocol operates as a separate agreement).

146. See OP-CRC on Children in Armed Conflict, *supra* n.98, art. 9. Article 9 reads:

1. The present Protocol is open for signature by any State party that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

*Id.* See also Dennis, *supra* n.138, at 789 (stating that State can ratify either of Optional Protocols without becoming party to CRC). See also Cris R. Revaz, *The Optional Protocols to the U.N. Convention on the Rights of the Child on Sex Trafficking and Child Soldiers*, 9 HUMAN RIGHTS BR. 13 (2001) (stating that both Optional Protocols expressly permit those who have signed CRC to ratify Protocols although States have not ratified CRC).

147. See Child Labour Convention, *supra* n.99, arts. 3(a)(d), 7. Article 3(a)(d) reads:

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

...

work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

*Id.* Article 7 (1) reads:

Each Member shall take all necessary measures to ensure the effective imple-

quires, *inter alia*, that States Parties take immediate action to secure the elimination of the forced or compulsory recruitment of children for use in armed conflict, among other areas.<sup>148</sup>

A difficult issue during the negotiation process among different States for the CRC was the liability of non-State actors.<sup>149</sup>

mentation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

*Id.* Article 7(2) reads:

Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- a) prevent the engagement of children in the worst forms of child labour;
- b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- c) ensure access to free basic education.

*Id.* See also Dennis, *supra* n.138, at 790 (commenting that ILO Convention provisions dealing with children in armed conflict are complemented by OP-CRC Children in Armed Conflict).

148. See Child Labour Convention, *supra* n.99, art. 3(a). Article 3(a) reads:

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- c. 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
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

*Id.*

149. See Report of the Working Group of a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict on its third session, E/CN.4/1997/96, at paras. 43-44, Mar. 13, 1997 [hereinafter Third Session Report]. Paragraphs 43 and 44 read:

43. The Committee took the opportunity to reaffirm its position in relation to the different draft provisions under discussion by the working group and emphasized what it considered to be the most important elements. These were: that persons below the age of 18 years should never be allowed to be involved in hostilities, either directly or indirectly, as such involvement was physically and psychologically harmful to children and affected the full enjoyment of their fundamental rights; that persons below the age of 18 should neither be recruited on an involuntary basis nor allowed to enlist as volunteers into the armed forces of States parties or nongovernmental armed groups; that even in situations where voluntary enlistment would be accepted by States, training of such persons should incorporate and pay due regard to education on human rights and humanitarian law; and that the optional protocol should not admit

Evidence presented during the negotiation process, demonstrated the use of children by insurgent groups.<sup>150</sup> Some States proposed that the Protocol create a binding international legal obligation for insurgent groups, in line with existing IHL, which places equal obligations on each party to an armed conflict.<sup>151</sup> Other States did not want to include obligations for insurgents

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any reservations in view of its aim, which was to allow State parties to the Convention on the Rights of the Child which were in a position to do so, to clearly commit themselves not to recruit children below 18 years of age or allow their participation in hostilities.

44. Clarification was sought about the Committee's comments on the importance of including in the optional protocol an article on recruitment of minors by nongovernmental armed groups. Another question was directed to the Committee about the situation of children attending military schools.

*Id.* See also Dennis, *supra* n.138, at 792 (stating that liability of non-State actors was another issue in negotiation).

150. See Third Session Report *supra* n.149, at para. 45. Paragraph 45 reads:

In answer, it was stated that in some 28 ongoing situations of armed conflict, nongovernmental groups in hostilities were using persons below the age of 18 heavily, both directly and indirectly. It was, therefore, most important that the optional protocol should address the issue, obliging States parties to take all possible steps to prevent the recruitment of children by such insurgent groups in their territory. It was also recommended that the terminology of the optional protocol should not go beyond that contained in the Protocol II Additional to the 1949 Geneva Conventions. With regard to military schools, the Committee felt that such institutions should be supervised by the Ministry of Education rather than by the Ministry of Defence and that provisions protecting students below the age of 18 from being used as tools in armed conflict should be included in the new instrument. In any case, the Committee warned that in emergency situations there was often a temptation to use students as soldiers.

*Id.* See also Dennis, *supra* n.138, at 792 (commenting that there were approximately twenty-eight armed conflict situations, where children under age of eighteen forced to take arms).

151. See Report of the Working Group of a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict on its second session, E/CN.4/1996/102, para. 31, Mar. 21, 1996 [hereinafter Second Session Report]. Paragraph 31 reads:

It was pointed out that most armed conflicts nowadays were not international wars but rather internal civil conflicts in which non-State armed forces were involved. It was felt that the protocol would be failing in its aim of protecting children from involvement in armed conflicts unless it addressed the problem of children serving in non-governmental armed forces or groups. The view was expressed by many participants that the use of children as soldiers by any group should be prohibited by the optional protocol. At the same time, many delegations were cautious, wishing to avoid equating armed groups with States parties and not to provide recognition to such groups in an international legal document.

*Id.* See also Dennis, *supra* n.138, at 792 (commenting on position of certain States as to insurgent groups obligations under Optional Protocol).



in an international human rights treaty like the Protocol, not wanting to equate rebel groups with States Parties or to confer recognition on those groups.<sup>152</sup>

The States reached a compromise under which the States Parties would take "all feasible measures" to prevent the recruitment and use in hostilities of persons under the age of eighteen by non-governmental groups, including enacting national legislation to ensure that this recruitment is punishable as a criminal offense.<sup>153</sup> Commentators note that the term "feasible measures" was used to recognize the frequent lack of control that these States have over insurgent groups.<sup>154</sup> Yet, it also recognized that in certain situations, armed groups recruit from the territories of States that are not parties to the conflict.<sup>155</sup> Article

152. See Second Session Report, *supra* n.151, at para. 32. Paragraph 32 reads: While some delegations felt it necessary for the protocol to cover non-governmental armed forces since they could be a party to a conflict, others preferred to refer only to the responsibility of States as subjects of international law. It was argued that States would not be in a position to guarantee that non-governmental armed groups would abide by the protocol, and that the fact of mentioning them in the protocol could give them a legal status and international ambitions. The general feeling was that the obligation of a State party should be to take all feasible measures to ensure that armed groups in its territory abided by the protocol, and that a reference to non-governmental armed forces should therefore be made in the protocol.

*Id.* See also Dennis, *supra* n.138, at 792-93 (commenting that other States preferred to not make insurgent groups responsible under law fearing this would give groups legal recognition).

153. See text of para. 32 in Second Session Report, *supra* n.151. See also OP-CRC on Children in Armed Conflict, *supra* n.98, at art.4(2). Article 4(2) reads: "States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices." *Id.* See also Dennis, *supra* n.138, at 793 (commenting on compromise reached regarding responsibility of insurgent groups).

154. See Third Session Report, *supra* n.149, at paras. 36-37. Paragraphs 36-37 state:

36. A reference was also made to the international humanitarian law applicable in situations of non-international armed conflicts which binds all parties to a conflict, including armed groups, without giving them a legal status.

37. Other participants felt that implied recognition should not be given to non-governmental armed groups and that it would be preferable to see the issue covered in the preamble to the draft optional protocol, rather than in its operative part. It was further stated that it was important to be realistic about limits to the measures which might be taken by Governments, particularly as regards legislation, as non-governmental armed groups were already beyond the pale of law.

*Id.* See also Dennis, *supra* n.138, at 793 (discussing reason as to why drafters chose term "feasible measures" in text of Optional Protocol).

155. See Third Session Report, *supra* n.149, at paras. 51-53. Paragraphs 51-53 read:

51. Following her statement, the expert was asked to comment further on the appropriateness and effectiveness of addressing the issue of nongovernmental armed groups in a protocol to be ratified or acceded to by States. She was also asked how the international community could really come to grips with recruitment by nongovernmental armed groups, particularly when some States had provided support to safe havens for and exerted influence on such groups.

52. The expert stated that, without facing up to real problems, standards and norms would lose their relevance. She appealed to the working group to respond in a timely manner to today's challenge, namely situations of internal conflict. Failing to do this for political reasons would be tantamount, in her opinion, to taking half-measures to deal with the problem. Moreover, the expert felt that the working group would fail completely if it did not address the situation of children in nongovernmental armed groups.

53. The expert expressed the view that ratification of the instrument would entail an obligation for States parties to respect and implement its provisions with respect to nongovernmental armed groups operating both inside and outside of their countries. Further, she referred to a moral responsibility contained in the commitment of States to the international community to protect all children. She added that in civil society all forms of pressure should be brought to bear on eradicating the use of child soldiers; public opinion would isolate the abusers and render the phenomenon unacceptable and intolerable to the collective human and social consciousness.

*Id.* See also Report of the Working Group of a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict on its sixth session, E/CN.4/2000/74, at paras. 35-40, Mar. 27, 2000 [hereinafter Sixth Session Report]. Paragraphs 35-40 provide:

35. At the 2nd meeting, on 10 January 2000, the working group began its consideration of the issue of non-State actors, on the basis of article 3 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group also had before it article 5 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1) and the joint proposal of Canada and Norway which read as follows:

1. To the extent compatible with national legal systems and relevant international human rights standards, State Parties shall take all possible measures to prevent recruitment and use of persons under the age of 18 years by armed groups distinct from the armed forces of a State.
2. The application of the present provision under the Protocol shall not affect the legal status of any party to an armed conflict.

36. It was generally felt that all three proposals were constructive and could serve as a good basis for future work. Several delegations expressed their preference for the text contained in the "Chairperson's perception" paper, though it was admitted that it could be strengthened by merging the different proposals.

37. While some speakers argued that non-State parties could not be bound by an inter-State treaty and that it was therefore a matter to be dealt with through domestic law, another view was that the optional protocol should address non-State actors directly and provide for criminalization of their actions in cases where they were in violation of the protocol.

38. According to another opinion, the issue of non-State actors should only be addressed in the preambular part of the protocol. Several participants emphasized the importance of retaining in the text the provisions of paragraph 2 of

7 of the Armed Conflict Protocol further obligates States Parties to cooperate internationally "in the prevention of any activity contrary to the Protocol," which would include the recruitment and use of persons under eighteen in hostilities by armed insurgent groups.<sup>156</sup> The OP-CRC entered into legal force on February 12, 2002.<sup>157</sup> The U.N. Committee on the Rights of the Child ("UNCRC") will chiefly monitor implementation of the treaty.<sup>158</sup>

### C. *The Colombian Response to International Law and National Legislation*

Colombia, through its national legislation, adopted the world's most important children's rights Convention, the CRC, through Ley 12 ("Law 12").<sup>159</sup> Colombia's most important legal

article 3 of the "Chairperson's perception" paper concerning the legal status of parties to an armed conflict. It was also felt that the optional protocol should apply to all situations, not only those of armed conflict. At the same time, it was stated that nothing in the protocol should be in conflict with international humanitarian law.

39. Following consideration of the issue in the informal drafting group, the working group, at the 6th meeting, on 12 January 2000, approved ad referendum the text of an article on non-State actors.

40. Consideration of this issue was continued during the discussion of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above). For the final text, see the Annex, Article 4.

*Id.* See also Dennis, *supra* n.138, at 793 (commenting that insurgent groups may recruit outside home territory).

156. See text of Article 7 of the OP-CRC on Children in Armed Conflict, *supra* n.98. See also Dennis, *supra* n.138, at 793 (discussing provisions of Article 7).

157. See Special Representative U.N. Press Release, *supra* n.98.

158. See *id.* See also The Child Soldiers Project, Ratifications of OP-CRC as of Jan. 2, 2003, available at <http://www.childsoldiers.org>. To date, 111 countries have signed the Protocol and forty-five countries have ratified. *Id.*

159. See Law 12 of January 21 1991 (Col.), DIARIO OFICIAL NO. 39640 (Jan. 21, 1999), available at <http://www.bib.minjusticia.gov.co/biblioteca/consulta.htm>. Law 12 reads, in pertinent part:

Through Law 12 of 1991 the Congress of the Republic approved the Convention on the Rights of the Child, adopted by the United Nations Assembly on November 20 of 1989. Consequently, the Convention obligates the country to respect and comply effective the date of publication, January 21, 1991.

*Id.* (author's trans.). It was through this law, that the Colombian Congress approved the CRC. The text of Law 12 embodied the CRC in its entirety. See also U.N. Colombia Report, *supra* n.92, at 87 (discussing Colombia's apparent progress under Article 38 of CRC, in signing of CRC on January 26, 1990 and its incorporation into Colombian legislation under Law 12 of January 1991). In addition, it also discussed that Colombia, upon signing the CRC, made a declaration in which it considered that

while the minimum age of 15 years for taking part in armed conflicts, set forth in article 38 of the Convention, is the outcome of serious negotiations which

document, its 1991 Political Constitution, features children and their rights, prominently.<sup>160</sup> In addition, Colombia has taken steps to combat the child soldier problem in its national legislation, beginning in 1997, when it passed Ley 418 (“Law 418”), which called for both the military and insurgency to refrain from recruiting minors.<sup>161</sup> In 1999, Colombia passed Ley 548 (“Law 548”), which amended Law 418, and extended its observance for another three years — until December 23, 2002.<sup>162</sup> President Pastrana also issued an Executory Decree, which not only gave recognition to the international conventions ascribed to by Colombia, but also gave effect to its national laws.<sup>163</sup>

### 1. 1991 Political Constitution (with amendments as of 2001)

In Colombia, children are prominently featured in the Nation’s most important legal document — its 1991 Political Constitution, amended in 1997, and again in 2001.<sup>164</sup> The Colombian Constitution places high importance on the family unit.<sup>165</sup> It recognizes the sanctity of human life and outlaws the death penalty.<sup>166</sup> It outlaws torture and other inhumane treatment.<sup>167</sup>

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reflect various legal, political and cultural systems, it would have been preferable to fix that age at 18 years in accordance with the principles and norms prevailing in various regions and countries, including Colombia, for which reason the Government of Colombia, for the purposes of article 38 of the Convention, shall construe the age in question to be 18 years.

*Id.*

160. See CONSTITUCIÓN POLITICA DE COLOMBIA DE 1991, actualizada hasta Reforma de 2001, available at [www.georgetown.edu/pdba/Constitutions](http://www.georgetown.edu/pdba/Constitutions) [hereinafter CONSTITUTION].

161. See Ley 418 of 1997 of December 26, 1997, DIARIO OFICIAL NO. 43201 (Dec. 26, 1997), available at [www.bib.minjusticia.gov.co/biblioteca/consulta.htm](http://www.bib.minjusticia.gov.co/biblioteca/consulta.htm) [hereinafter Law 418].

162. See Ley 548 de 1999 of December 23, 1999 (Col.), amending Law 418 of 1997, DIARIO OFICIAL NO. 43827, Edición Extraordinaria (Dec. 23 1999), available at [www.bib.minjusticia.gov.co/biblioteca/consulta.htm](http://www.bib.minjusticia.gov.co/biblioteca/consulta.htm) [hereinafter Law 548].

163. See Executory Decree: Through which laws are expedited concerning the treatment of children and adolescents demobilized from the Armed Conflict, available at <http://www.mindefensa.gov.co> [hereinafter Executory Decree].

164. See CONSTITUTION, *supra* n.160.

165. See CONSTITUTION, *supra* n. 160, art. 5. Article 5 provides: “The State recognizes, without any discrimination, the importance of a person’s inalienable rights and considers the family to be the basic institution of society.” *Id.* (author’s trans.).

166. See *id.* art. 11. Article 11 reads: “The right to life is guaranteed. There shall be no death penalty.” *Id.* (author’s trans.).

167. See *id.* art. 12. Article 12 reads: “No one shall be subjected to forced disappearance, torture nor maltreatment or cruel, inhumane, or degrading punishment.” *Id.* (author’s trans.).

Article 44 recognizes the fundamental rights of children to life, physical integrity, health, social security, adequate nutrition, education, and freedom of expression, as well as the right to have families and not be separated from them.<sup>168</sup> The Article goes on to state that children shall be protected from abandonment, moral or physical violence, kidnapping, trafficking, sexual abuse, economic and labor exploitation, and dangerous work.<sup>169</sup> Children will also enjoy the other rights contained in the Constitution, in the national laws, and in international treaties ratified by Colombia.<sup>170</sup> The family, society and the State must assist and protect children's rights, and anyone can demand from the State authorities compliance and criminal punishment.<sup>171</sup> The rights of children prevail above the rights of all others.<sup>172</sup> Article 93 echoes the message of Article 44 — treaties and conventions ratified by the Colombian Congress recognizing and protecting human rights, are national law and Constitutional rights and privileges are interpreted as being in conformity with the international human rights treaties ratified by Colombia.<sup>173</sup>

## 2. Law 418 of 1997

In 1997, the Colombian Congress passed Law 418 with the objective of giving the State the necessary instruments to assure

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168. *See id.* art. 44. Article 44 states: "Fundamental rights of children: life, physical integrity, health and social security, balanced nutrition, their name and nationality, to have a family and not be separated from them, to care, love, education and culture, recreation and free expression of opinion . . ." *Id.* (author's trans.).

169. *See id.* art. 44. Article 44 goes on to say: "They shall be protected against all types of abandonment, physical or moral violence, kidnapping, sale, sexual exploitation, economic or labor exploitation and dangerous work . . ." *Id.* (author's trans.).

170. *See id.* art. 44. Article 44 also reads: "They shall also enjoy all the other rights contained in the Constitution, in the laws and international treaties ratified by Colombia . . ." *Id.* (author's trans.).

171. *See id.* art. 44. Article 44 also reads: "The family, society and the State are obligated to assist and protect children to guarantee their full and harmonious development and the full exercise of their rights. Any person can demand compliance from the authorities and sanctions for the individuals who violate those rights . . ." *Id.* (author's trans.).

172. *See id.* art. 44. Article 44 ends with: "The rights of children are superior to the rights of all others." *Id.* (author's trans.).

173. *See* Constitution, *supra* n.160, art. 93. Article 93 reads:

The treaties and conventions ratified by Congress, that recognize human rights and prohibit their limitation prevail in the internal order. The duties and rights in this Constitution are to be interpreted as being in conformity with international human rights treaties ratified by Colombia.

*Id.* (author's trans.).

the State's effectiveness and guarantee the many laws, rights, and liberties in the Constitution and/or the international treaties ratified by Colombia.<sup>174</sup>

Article 13 of Law 418 provides that males under the age of eighteen will be conscripted into the national armed forces.<sup>175</sup> The Article also provides this exemption for males in the eleventh grade, who under an earlier Colombian law were selected for obligatory military service unless they voluntarily, or with express and written consent of their parents, opted to comply with their constitutional duty and provide military service.<sup>176</sup> However, these minors cannot be sent to areas where there are ongo-

174. See Law 418, *supra* n.161, art. 1. Article 1 of Law 418 reads:

The rules enacted in the present law have as their objective to endow the Colombian State with effective instruments to secure the enforcement of a social and democratic State of law and guarantee all the fundamental laws and liberties recognized in the Political Constitution and/or International Treaties approved by Colombia.

*Id.* (author's trans.). See also *U.N. Colombia Report*, *supra* n.92, at 88 (discussing the origins of Law 418). On October 26, 1997, elections were held for town councils, department assemblies, mayors, and governors. *Id.* The "Mandate for peace, life and freedom" campaign was organized on that same day and 8 million Colombians voted for items of the mandate's agenda, such as the non-involvement of Colombian minors in the armed conflict, and in essence saying "no" to violence. *Id.* In view of the declaration made regarding the CRC and to respond to the "Mandate for peace," articles 13 and 14 were added on to Law 418, regarding coexistence and public order, which was approved on December 26, 1997. *Id.* See also *Children in Colombian Armed Conflict*, *supra* n.64, at 34 (stating that Law 418, as it pertains to children is to "offer an instrument in search for peaceful coexistence). Efficacious justice establishes ICBF duty to apply the necessary resources to guarantee protection to child victims of the armed conflict, and the recognition that they are victims, and are afforded the same benefits as those contemplated for adults. *Id.*

175. See Law 418, *supra* n.161, art. 13. Article 13 reads:

Minors under the age of eighteen will not be incorporated for military service. The incorporation of those who fall under a select class pursuant to Law 48 1993 will be postponed—except if voluntarily or with the express and written authorization of their parents, they opt for immediate compliance with their constitutional duty. In the latter case, these recruited minors will not be deployed to zones under war operations nor employed in armed confrontation[. . .]

The civil or military authority that ignores this present disposition will be charged with misconduct, which is conduct sanctionable, by dismissal.

*Id.* (author's trans.). See also *Child Soldiers*, *supra* n.8 (commenting that Law 418 also established that minors should not voluntarily join army). See generally *Ley 48 of 1993* (Mar. 3, 1993), *DIARIO OFICIAL NO. 40777* (Mar. 4, 1993), available at <http://bib.minjusticia.gov.co/biblioteca/consulta.htm> [hereinafter *Law 48*] (providing regulations for recruitment and mobilization in national armed forces, including males in high school).

176. See Law 418, *supra* n.161, art. 13.

ing war operations, nor could they be utilized in direct armed conflict.<sup>177</sup> The Article goes on to state that any civil or military authority ignoring the order would be subjected to discharge from his or her post.<sup>178</sup>

Article 14 states that those who recruit minors into insurgent and auto defense groups, or induce them to join, or train them militarily, are subject to three to five years in prison.<sup>179</sup> It also states that members of these groups who were found to have recruited minors, would not receive the judicial benefits found under the present law.<sup>180</sup> Article 17 states that the ICBF will provide priority assistance to minors who are without family or have a family not capable of caring for them, due to violent acts re-

177. *See id.*

178. *See id.*

179. *Id.* art. 14. Article 14 reads:

Those who recruit minors to integrate insurgent groups or auto defense groups, or induces them to be a part of, or admits them into these groups, or those that with this end in mind provide military training, shall be sanctioned with a three to five year prison term.

*Id.* (author's trans.). *See also Colombia 1379 Report, supra* n.47, at 24 (stating that Law 418 criminalized recruitment of minors (under the age of eighteen) by rebel or self-defense groups, as well as training for that purpose and sanctioned those responsible with three to five year prison terms). *See also Child Soldiers, supra* n.8 (stating that Law 418 would hold any person who recruits minors into rebel or self-defense groups, forces them, or receives them, or militarily trains them for this purpose would be liable to a three to five year prison term). *See also* Law 599 of Jul. 24, 2000 (Col.), DIARIO OFICIAL NO. 44097 (Jul. 24, 2000) [hereinafter New Penal Code]. Article 162 of the New Penal Code states:

Those who during armed conflict recruit minors under the age of eighteen or obligate them to participate directly or indirectly in the hostilities or in armed combat, will receive a six to ten year prison term and a fine in the amount of six hundred to one thousand minimum monthly salaries.

*Id.* (author's trans.). *See also Colombian Defense Ministry Report 2001, supra* n.54, at 33. (stating that the New Penal Code examined and addressed illegal recruitment of minors in subversive groups). *See also Children in Colombian Armed Conflict, supra* n.64, at 34 (stating that New Penal Code passed in 2000 and laid out punishable conduct committed against children). The recruitment of children, in article 162, is a crime. *Id.* *See also Children's Rights in Colombia 2001, supra* n.62, at 33 (commenting that Article 162 of New Penal Code incorporates into national laws the international dispositions in Worst Forms of Child Labour Convention (1999) and the Optional Protocol to the Convention on the Rights of the Child).

180. *See* Law 418, *supra* n.161, art. 14. Article 14 states:

The members of armed insurgent organization, which incorporate into these groups, minors under the age of eighteen (18), will not be deserving of none of the judicial benefits granted by this present law.

*Id.* (author's trans.). *See also Child Soldiers, supra* n.8 (stating that Law 418 states that members of insurgent groups who recruit minors under age of eighteen would not be entitled to legal benefits that Law 418 provides as whole). *Id.*

sulting from internal armed conflict.<sup>181</sup> The Article further states that children involved in any way in armed conflict will enjoy special protection and will be the first to obtain the benefits contemplated.<sup>182</sup>

### 3. Law 548 of 1999

On December 23, 1999, Law 548 came into effect and amended Article 13 of Law 418.<sup>183</sup> Article 13 remained virtually unchanged, except that males under the age of eighteen could no longer enlist in the military — even if their enlistment was voluntary or there was parental consent.<sup>184</sup> More importantly,

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181. See Law 418, *supra* n.161, art. 17. Article 17 reads:

The Colombian Institute on Family Welfare, in developing their preventive and protective programs, will give priority assistance to those minors that were either left orphaned or having a family, the family is not in the condition to care for the child by reason of the events referred to in Title Two [Violent Events Arising within the framework of internal armed conflict] of this Act. The National Government will provide funds to the Colombian Institute of Family Welfare to develop this program.

182. *Id.* (authors' trans.).

See Law 418, art. 17, para. 1. Paragraph 1 reads: "The minors who in any condition participate in the armed conflict shall enjoy special protection and shall be the beneficiaries of the benefits contemplated by this law." *Id.* (author's trans.).

183. See Law 548, *supra* n.162, which states, in part: "Through which the observance of Law 418 of December 26, 1997 is extended and other orders are proclaimed." *Id.* (author's trans.). See also Article 1, which "extends the observance of Law 418 of 1997 for a term of three (3) years, as of the approval date of this present law." *Id.* (author's trans.).

184. See Law 548, *supra* n.162, art.2. The new Article 13 reads:

Article 13 of Law 418 of 1997, will read:

"Article 13. Minors under the age of 18 years will not be mandated to military service. Incorporation of students in the eleventh grade, under the age of eighteen, who according to Law 48 of 1993, should be chosen to serve, will be postponed until they reach the required age."

*Id.* (author's trans.). See also Law 642 of 2001, DIARIO OFICIAL NO. 44282, Edición Ordinaria, Jan. 5, 2001 (clarifying Article 2 of Law 548 to explain that the Article also applies to minors who turn age eighteen and are still in high school). Article 1 reads:

Clarifying Article 2 of Law 548 of 1999 in that the option in Article 2 will also apply to those who turn eighteen (18) years old while they are still in high school, which is the moment they usually decide their military situation.

*Id.* (author's trans.). See also MINISTERIO DE DEFENSA NACIONAL, REPÚBLICA DE COLOMBIA, *Informe Anual Derechos Humanos y DIH 2000*, Jan. 21, 2001, at 35, available at <http://www.mindefensa.gov.co> [hereinafter *Ministry of Defense 2000 Report*]. It states, in part:

The National Government, in applying its policy of defense of human rights and promoting international humanitarian law, in 1999 ordered the demobilization of all minors under eighteen that were presently in the armed forces. As a result of this measure, more than 1000 minors were demobilized. Law 548 of 1999, in realization of international agreements subscribed to by Colombia,



Law 548 extended the observance of Law 418 for a period of three years, effective December 23, 1999.<sup>185</sup>

#### 4. Executory Decree

The Executory Decree from the Colombian government is meant to properly execute the laws and provisions dealing with children who have been demobilized from the armed conflict.<sup>186</sup> The Decree takes into consideration Article 39 of the CRC, which was ratified and adopted in the form of Law 12.<sup>187</sup> The Decree also points to Article 44 of the Constitution, holding the rights of children paramount above all others, as demonstrating the necessity of establishing special mechanisms and instruments that guarantee the protection required for ex-child soldiers.<sup>188</sup>

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prohibited the recruitment of a minor under the age of 18 into the armed forces, going beyond what was recently established in the Additional Protocol to the Convention on the Rights of the Child.

*Id.* (author's trans.). See also *1379 Report*, *supra* n.47, at 24 (discussing adoption of Law 548 on December 23, 1999). The law prohibited the voluntary and compulsory recruitment of minors under the age of eighteen in government forces. *Id.* It also stated that this policy was reinforced by an internal policy, Instructivo No. 8 of January 19, 2000, which stated that no minors would be incorporated into the National Police. *Id.*

185. See Law 548, *supra* n.162, art.1. Article 1 reads: "The extended observance of Law 418 of 1997 for a term of three (3) years, as of the approval date of this present law." (author's trans.). See also *Children's Rights in Colombia 2001*, *supra* n.62, at 33 (stating that Law 418 was expedited in temporary form only and is in observance until December 2002). *Id.*

186. See Executory Decree, *supra* n.163. The Decree reads, in part, that the President, in "exercise of the faculties conferred on him by Article 189, subpart 11 of the Colombian Constitution and in development of Article 17, its paragraph and the second paragraph of Article 50 of Law 418 of 1997, amended by Law 589 of 2000 . . ." *Id.* (author's trans.). See also Constitution, *supra* n.164, art. 189(11). Article 189 reads: "It corresponds to the President of the Republic, as Head of State, Head of Government and Supreme Administrative authority: . . . 11. the regulatory power to enact decrees, resolutions and orders necessary for the proper execution of the laws." *Id.* (author's trans.).

187. See text of Executory Decree, *supra* n.163, which reads, in part:

Considering :

That Article 39 of the Convention on the Rights of the Child, ratified by Colombia in Law 12 of 1991, establishes that 'the State Parties shall adopt all appropriate measures to promote physical and psychological recuperation and social reintegration of a child victims of: any form of neglect, exploitation or abuse; torture or another form of cruel, inhumane or degrading treatment or punishment; or armed conflicts. This recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.'

*Id.* See also text of Article 39 of the CRC, *supra* n.136.

188. See generally Executory Decree, *supra* n.163, the Decree states, in part:

It also recognizes Article 17 of Law 418, amended by Law 589 of 2000, where the ICBF was to provide priority assistance to children affected by the armed conflict.<sup>189</sup>

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Keeping in mind Article 44 of the Constitution declares the prevalence of children's rights above the rights of others, it is necessary to establish special mechanisms and instruments that will guarantee the protection of children demobilized from the armed conflict.

*Id.* (author's trans.).

189. *See id.*, reading, in part:

That article 17 of Law 418 of 1997, amended by Law 589 of 2000 states that the 'The Colombian Institute of Family Welfare, in developing its preventative and protective programs, will give priority assistance to minors who are without family, or whose families cannot care for them as a result of the acts mentioned in this present title.'

*Id.* (author's trans.). *See also* Law 418, *supra* n.161. *See generally* Law 589 of July 6 2000 (Col.), DIARIO OFICIAL NO. 44073 (Jul. 7, 2000), available at <http://www.bib.minjusticia.gov.co/biblioteca/consulta.htm>. This is the law that amends the Penal Code, adding new crimes and their punishments including: genocide (Article 322A), forced disappearances (Article 268A), forced displacement (Article 284A) and torture (Article 279). Article 322A reads:

Those who with the intent to destroy a nationality, ethnicity, race, religious, or political group that is acting within the law, because of their membership in these groups, and kills them, will incur a forty-five (45) to sixty year (60) prison term, a monetary fine from five-hundred (500) to two thousand (2,000) minimum monthly salaries, and suspension of their rights and public functions from five (5) to ten (10) years.

The prison sentence will run from twenty-five (25) to forty (40) years, the monetary fine will run between one hundred (100) to five hundred (500) minimum monthly salaries and the suspension of rights and public functions from one (1) to five (5) years, if with the same goal in mind, the following acts are committed:

- A) Severe injury to physical and mental integrity of any member of these groups;
- B) Forced pregnancy;
- C) Forcing group members to conditions of existence that will cause their partial or total physical destruction;
- D) Taking measures that prevent births within the group;
- E) The forced transfer of children from one group to another.

*Id.* (author's trans.). Article 268A reads:

An individual belonging to an armed group who submits a person to a deprivation of their liberty in any form, who hides them, denies their disappearance or provides no information as to their whereabouts, depriving them of the law's protection, will be subject to a prison term of between twenty-five (25) to forty years (40), a fine of five hundred (500) to two thousand (2,000) minimum wage salaries and the suspension of rights and public functions from five (5) to ten (10) years.

A public servant, or anyone acting under their determinations or acquiescence, will be subject to the same prison terms and fines for the conduct described above.

*Id.* (author's trans.). Article 284A reads:

The Decree holds that children who had in any way participated in the internal armed conflict will receive from the State specialized attention in order to reintegrate them into their families and society.<sup>190</sup> Demobilized children who are no longer part of the armed conflict, are defined under the following criteria: those children who were captured; those who voluntarily surrendered — individually or as a group; and those who were surrendered to the State by the insurgent armed groups.<sup>191</sup> The ICBF will take custody of child soldiers no later than thirty-six hours after demobilization from the conflict.<sup>192</sup> The ICBF is

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Who in an arbitrary manner, by way of violent or other acts directed at a sector of the population, occasions that one or more of its members change their place of residence, will incur a prison term of fifteen (15) to thirty (30) years, a fine of five hundred (500) to two thousand (2,000) minimum monthly salaries and suspension of rights and public functions from five (5) to ten (10) years.

*Id.* (author's trans.). Article 279 reads:

Those who inflict pain or severe physical or psychological suffering with the objective of obtaining from that person or another information or a confession, or to punish the person for an act committed or thought to be committed by this person or to intimidate or to compel them to do or say something that will cause some sort of discrimination will incur a prison term of between eight and fifteen years, a monetary fine of eight hundred (800) to two thousand (2000) minimum monthly salaries, and the suspension of their rights or public functioning for the length of the prison term.

The same prison terms and fines apply to those who inflict grave physical torture for reasons distinct from the ones above.

Torture will not be construed to mean the pain and suffering derived only from legal sanctions or those that are a normal or fortuitous consequence of them.

*Id.* (author's trans.).

190. See Executory Decree, *supra* n.163, art. 1. Article 1 reads:

All the children under the age of eighteen who under any condition participate in the internal armed conflict, are considered victims, as such it is the responsibility of the State through the National Institute of Family Welfare, to guarantee specialized attention that will permit their adequate reintegration into their family and society.

*Id.* (author's trans.).

191. See Executory Decree, *supra* n.163, art. 2. Article 2, para. 1 reads:

For the purposes of this decree, it will be understood that boys, girls and adolescents demobilized from illegal armed groups those that demobilize from the armed conflict, in the following circumstances:

Those that were captured;

Those that voluntarily surrendered, individually or as a group;

Those that were surrendered to the State by illegal armed groups.

*Id.* (author's trans.).

192. See Executory Decree, *supra* n.163, art. 3. Article 3 reads:

Children and adolescents who under any circumstance demobilize from inter-

called to protect these children under Title 3 of Law 418.<sup>193</sup>

III. *THE COLOMBIAN GOVERNMENT MUST PROVIDE BASIC SERVICES TO ITS CHILDREN AND ENSURE STRICT ENFORCEMENT OF INTERNATIONAL AND NATIONAL LAW TO EFFECTUATE CHANGE*

It is recognized that internal armed conflicts take an enormous toll on a country's ability to protect its citizens and enforce its laws.<sup>194</sup> This has certainly been the case with Colombia.<sup>195</sup> Yet, it must be recognized that a long-standing weak and corrupt government is to blame for Colombian citizens' current predicament — they are prisoners and victims in a conflict they did not create, but where they have suffered the most harm.<sup>196</sup> Colombians face a beleaguered and overwhelmed government

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nal armed conflict, should be surrendered by the Military, the Police, or any other State authority who certifies the demobilization, to the National Institute of Family Welfare, no later than 36 hours after demobilization.

The National Reinsertion Program should begin the legal and judicial proceedings to quickly dispose of the benefits to which the children and adolescents demobilized from the conflict are entitled to.

*Id.* (author's trans.).

193. See Executory Decree, *supra* n.163, art. 4. Article 4 reads: "The National Institute on Family Welfare will protect in a special form children who avail themselves of the protections established in title three of Law 418 of 1994 and Decree 1385 of 1994." *Id.* (author's trans.). See also Law 418, *supra* n.161, Title III "Reasons for dismissing the cause of action and punishment in cases of political crimes," art. 50, para. 2 1/4. Para. 2 1/4 reads:

When dealing with minors under the age of eighteen who are tied to insurgent armed groups who have a legally recognized political character, judicial authorities shall send all documentation to the Operative Committee for demobilization from armed conflict, who will decide to expedite the certification that is referred to in Decree 1385 of 1994, under the terms pronounced by this law.

*Id.* (author's trans.). See generally Decree 1385 of 1994, DIARIO OFICIAL NO. 41420, Jul. 5, 1994, available at [http://www.pahd.org.co/body\\_1385.html](http://www.pahd.org.co/body_1385.html) (stating that decree expedites norms concerning concession of benefits to those that voluntarily abandon armed subversive groups).

194. See *supra* nn.4, 13-17 and accompanying text (commenting that most of modern warfare is civil war, which has been characterized by increased use in high technology weaponry, involvement of more than one armed group, and widespread social breakdown). In addition, these conflicts tend to last longer and this increases the chances of child recruitment *Id.*

195. See *supra* nn.26-28 and accompanying text (discussing that Colombia is only country in Americas where guerilla warfare remains significant phenomenon).

196. See *supra* nn.56-63 and accompanying text (discussing Colombian government's current state as product of years of corruption and inability to effectively govern and how this has allowed violence to claim lives of hundreds of thousands of Colombi-

who is seemingly unable to assist them.<sup>197</sup> The Colombian government may truly be incapable of controlling the movements and actions of the armed insurgents because of the groups' admitted military and financial strength,<sup>198</sup> but the government does have control when it comes to what is first on its national agendas. Alongside the much publicized peace process<sup>199</sup> and multi-billion U.S. dollar war against narcotics trafficking,<sup>200</sup> the Colombian government should be concerning itself with the welfare and peace of its children.<sup>201</sup>

In a country where fifty percent of the population lives below the poverty line and lack of access to basic education is common, many Colombian children, especially those in rural areas, struggle to make it through childhood.<sup>202</sup> The armed internal conflict and the resulting forced displacements of people, have only aggravated the already precarious situation by preventing Colombian children from living in stable environments, where education and basic amenities are readily available.<sup>203</sup> While it is noteworthy that the Colombian government has taken steps to

ans and perpetuate massive displacements of over million Colombian citizens throughout country).

197. See *supra* nn.50-63 and accompanying text (discussing not only pervasive links and cooperation between Colombian military and paramilitary group activities, but slow and unresponsive justice system and continuing human rights abuse perpetrated by insurgency and government against Colombian citizenry as reasons for Colombian government's ineffectiveness)

198. See *supra* nn.28-29, 32-38 and accompanying text (discussing not only military strength of guerilla and paramilitary groups, but also what has allowed them to grow in number — mainly income derived from drug trade and other activities and proliferation of high tech, light-weight weaponry).

199. See *supra* nn.44-46, 78 and accompanying text (discussing great, but failed, efforts made during Pastrana Presidency to attain dialogue and peace, as well as efforts by civilian population to entertain dialogue — mainly Mainz Agreement with ELN).

200. See n.49 and accompanying text (discussing specific provisions of US\$7.5 billion dollar plan, of which U.S. contributed US\$3.5 billion, of which US\$390 million is going towards counter-narcotics operations).

201. See *id.* (commenting that out of billions being provided to rebuild Colombia, politically and economically, only US\$2.5 million is being directly used to assist child soldiers)

202. See *supra* nn.62-63, 69 and accompanying text (commenting that conflict has displaced massive numbers of children, interrupting their childhoods and education as well as fact that many children who could or have become child soldiers grew up in dysfunctional families and in rural areas where there was no infrastructure, lack of services and education, governmental authority, abundant insurgent activity).

203. See *supra* nn.62-63 and accompanying text (commenting that forced displacements have disproportionately affected Colombian children).

protect the rights of its children in national legislation,<sup>204</sup> it must be acknowledged that these are merely *first* steps.

Colombia's most significant legal instrument, its Constitution, emphasizes, promotes, and guarantees Colombian children's basic and inalienable rights.<sup>205</sup> In addition, it proclaims that Colombian children will enjoy the rights contained within international treaties ratified by the country.<sup>206</sup> It declares that Colombian children's rights are above those of all other Colombian citizens.<sup>207</sup> Unfortunately, the rights of the "others," Colombian civilians, have been repeatedly violated during the past fifty years of internal armed conflict.<sup>208</sup> The rights of Colombian children have not fared any better, for they have been repeatedly trampled on and ignored.<sup>209</sup> Colombian children have yet to enjoy the rights set forth in their own Constitution, much less those in international treaties.

Yet, the Colombian government should be credited for signing and ratifying some of the most important international humanitarian law treaties.<sup>210</sup> By ratifying these treaties, Colombia has held itself up to the world as a Nation that will protect the rights of its citizens during armed conflict.<sup>211</sup> Unfortunately, proclaiming to do something and actually following through are two different things — and Colombia is failing in the latter respect.

IHL conforms to the Colombian situation perfectly in that it holds government actors, private individuals, and non-State ac-

204. *See supra* nn.159-193 and accompanying text (discussing Colombian legislation specifically adopted for child soldier).

205. *See supra* nn.168-169 and accompanying text (commenting that Article 44 provides for such inalienable rights as the right to life, physical integrity, a family, love, education, and protection from all kinds of violence).

206. *See supra* n.170 and accompanying text (discussing provisions of Article 44 of Colombian Constitution).

207. *See supra* n.172 and accompanying texts (discussing text of Article 44 of Colombian Constitution).

208. *See supra* nn.5, 7, 32, 33, 39, 40-42, 50, 53, 54, 57-61 and accompanying text (detailing abuses suffered by Colombian civilians in fifty years).

209. *See* nn. 10, 11, 62, 63 and for general discussion, *see also* Part I.C (addressing in detail abuses children face at hands of insurgency).

210. *See supra* nn.94-99 and accompanying text (listing IHL treaties and convention ratified or signed by Colombia).

211. *See supra* n.100 and accompanying text (describing obligations of Colombia under IHL).

tors liable for violent acts.<sup>212</sup> Common Article 3 of the 1949 Geneva Conventions, which applies to conflicts not of an international character,<sup>213</sup> asks that the parties refrain from violence of all kinds, including murder, cruel treatment and torture, hostage taking, and degrading treatment.<sup>214</sup> All of this is still a terrifying reality for Colombia's children, who continue to be targeted due to their direct or indirect participation in the conflict.<sup>215</sup> Although it is contended that the majority of children "volunteer"<sup>216</sup> to go with these groups, once conscripted, they are veritable hostages of war who are psychologically manipulated into staying within the ranks.<sup>217</sup> They are also subjected to physical maltreatment and abuse at the hands of their superiors.<sup>218</sup> Additionally, Common Article 3 also prohibits the passing of sentences and carrying out of executions without a judgment from a government court.<sup>219</sup> But as mentioned previously, escaping the ranks of insurgent groups is difficult, and those that do face execution, as traitors, at their former comrades' hands.<sup>220</sup> Common Article 3 of the Geneva Conventions binds each party of the conflict to apply, "as a minimum," these provisions.<sup>221</sup> Although the guerillas, in the past, have promised to stop recruiting children, they continue to unapologetically do

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212. See *supra* nn.100-103 and accompanying text (discussing how IHL holds government and insurgency equally accountable for actions during armed conflict).

213. See *supra* nn.106-109 and accompanying text (discussing applicability of Common Article 3 provisions to internal armed conflicts).

214. See *supra* n.107 and accompanying text (noting that Common Article 3 asks for abstention from violence).

215. See *supra* nn.64-66 and accompanying text (describing that of forty-six rebels killed in one skirmish in December 2000, twenty were children).

216. See *supra* nn.19, 20, 85-87 and accompanying text (discussing psychological manipulation used by insurgent groups as well as psychological aftermath).

217. See *supra* nn.85-87 and accompanying text (describing physical abuse and mental indoctrination that child soldiers are forced to undergo once they have joined ranks of insurgent armed groups).

218. See *supra* nn.84 and 85 and accompanying text (describing sexual abuse suffered by girl child soldiers at hands of older male soldiers and commanders and the physical abuse child soldiers endure as part of ranks).

219. See *supra* n.107 and accompanying text (describing text of Article 3(d) which deals with preserving peoples judicial guarantees).

220. See *supra* nn.11 and 86 and accompanying text (discussing rationale used by armed insurgent groups to justify killing of "traitorous" child soldiers).

221. See *supra* n.107 and accompanying text (commenting that Common Article 3 provisions are minimal requirements and that States can do more).

so.<sup>222</sup> Therefore, if they refuse to be bound by international standards, it is the responsibility of the Colombian government under human rights law to safeguard its own children.<sup>223</sup> Although Colombia ratified the Geneva Conventions and is bound to apply these provisions, it has failed to do so.<sup>224</sup> Colombian children continue to form a part of the ranks and still suffer from the effects of this situation.<sup>225</sup> And while the government has provided for services through the ICBF, these programs are not of a preventative nature.<sup>226</sup>

Colombia is also a party to AP I and AP II to the Geneva Conventions of 1949.<sup>227</sup> The Colombian conflict, which could be categorized as amounting to a “civil war,” aptly fits under the rubric of AP II.<sup>228</sup> It specifically addresses “dissident armed forces,” or “other organized groups” like the FARC, ELN and paramilitary groups.<sup>229</sup> It places the onus of preventing the recruitment of children on the parties, not the children.<sup>230</sup> Article 4(3)(c) states that children under fifteen years of age shall not be recruited nor allowed to take part in hostilities.<sup>231</sup> Colombian children continue to be recruited by armed insurgent groups, despite false promises from the guerillas,<sup>232</sup> and not only fight alongside the older combatants, but also serve as valuable spies

222. *See supra* nn.70, 71, 73, 78, 79 and accompanying text (describing Mainz “Heaven’s Gate” agreement signed by ELN in 1998).

223. *See supra* nn.101-102 and accompanying text (discussing obligations of Colombia under human rights law to protect rights of individuals even when government is not to blame for its violation).

224. *See supra* nn.129-130 and accompanying text (describing obligation of government and non-governmental entities (NGEs), like insurgent groups, under IHL).

225. *See supra* nn.62, 63, 72, 81, 84, 86, 87 (discussing abuses suffered by children during armed conflict and consequences).

226. *See supra* nn.91-93 and accompanying text (describing ICBF and programs that it oversees to assist demobilized children).

227. *See supra* n.95 and accompanying text (stating date Colombia acceded to both Additional Protocols).

228. *See supra* n.113 and accompanying text (describing application of AP II).

229. *See supra* n.114 and accompanying text (defining what is considered to be dissident armed forces under AP II).

230. *See supra* nn.124-127 and accompanying text (stating that both of these groups — government and opposition — have necessary power and authority).

231. *See supra* n.124 and accompanying text (describing that taking part in hostilities also means non-combat roles, like gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage).

232. *See supra* nn.73 and 78 and accompanying text (discussing past admissions of wrongdoing by guerrillas and purported attempts to rectify them).



and messengers.<sup>233</sup> Although the children play non-combat roles, they are still in harm's way.<sup>234</sup> Placing the onus on armed dissident groups, at least in Colombia's case, has not produced results. Therefore it is the Colombian government's responsibility to enact effective national legislation.

The CRC was ratified by Colombia.<sup>235</sup> Article 38 of the CRC states that States Parties shall "respect" and "ensure respect" for international humanitarian law applicable to children in armed conflict.<sup>236</sup> It requires that States Parties take "all feasible measures" to ensure that children under the age of fifteen do not take direct part in hostilities,<sup>237</sup> and that they ensure ex-child soldiers physical and psychological recovery and re-integration into society.<sup>238</sup> President Pastrana's "goodwill" gesture of ceding 42,000 square kilometers of Colombian land to the guerillas, left many thousands of Colombians, including children, within this demilitarized zone, at the mercy of guerilla and paramilitary groups.<sup>239</sup> Not only were citizens subject to guerilla "governance," but also to their violent acts,<sup>240</sup> as well as paramilitary retribution.<sup>241</sup> As a result of this gesture, and the action and inaction perpetrated by the government and the military, Colombian citizens' rights remain violated.<sup>242</sup> Many have been forced to

233. See *supra* nn.80-84, 88-90 and accompanying text (setting forth tasks carried out by children in Colombian illegal armed forces).

234. See *supra* nn.72, 80, 83, 84 (discussing various non-combat roles occupied by children and dangers associated with them).

235. See *supra* n.97 and accompanying text (reporting date Colombia ratified CRC).

236. See *supra* n.133 and accompanying text (providing text of Article 38(1) of CRC).

237. See *supra* n.133 and accompanying text (providing text of Article 38(2) of CRC).

238. See *supra* n.136 and accompanying text (providing text of Article 39, which makes States responsible for ex-child soldier rehabilitation).

239. See *supra* nn.47, 48, 59-62 and accompanying text (commenting on demilitarized zone ceded by Colombian government to FARC and forced movement of people as a result of violence).

240. See *supra* nn.32-41, 47 and accompanying text (describing affinity insurgent groups have for towns and villages, how they are able to gain control of these regions, use of violence to silence, and implementation of their own government police and judiciary within guerilla-controlled areas).

241. See *supra* nn.39-41 and accompanying text (explaining that paramilitaries attack guerrillas through civilians whom they consider guerrilla sympathizers — regardless of whether they are or not).

242. See *supra* nn.40, 50, 57, 58 and accompanying text (describing persistent con-

flee their towns and villages.<sup>243</sup> This has proven seriously detrimental to the educational opportunities of the displaced children.<sup>244</sup> The Colombian government has taken measures that have only served to secure the armed groups' ability to continue their reign of terror in the Colombian mountains. The Colombian government's priorities have, until now, seemingly focused on appeasing the opposition and foreign interests,<sup>245</sup> rather than promoting the rights of its closest allies — its own people.

Colombia has signed, but not ratified the OP-CRC.<sup>246</sup> The OP-CRC calls on States Parties to take all "feasible measures" to not enlist children under the age of eighteen and to raise the recruitment age to eighteen.<sup>247</sup> More importantly, it calls on both, States Parties and armed insurgent groups to prohibit the recruitment and use of children by insurgent groups.<sup>248</sup> It calls on States Parties to adopt legal measures "necessary to prohibit and criminalize such parties."<sup>249</sup> The OP-CRC directly holds States Parties responsible for the welfare of children at the hands of the insurgent groups.<sup>250</sup> It puts the onus on Colombia to respect and enforce respect for the rights of its children. Although Colombia has not ratified the treaty, it has signed and already implemented similar provisions in its national legislation, which is indicative of its intent to be bound by CIL.<sup>251</sup> For all intents

nection of the armed forces to paramilitary groups, as well as continuing commission of human rights abuses by armed forces).

243. *See supra* nn.59-62 and accompanying text (discussing statistical information that is available concerning displaced Colombians and main perpetrators).

244. *See supra* nn.62-63 and accompanying text (stating that Colombian children comprise 48% of displaced population and that 75% of displaced youth, who previously attended school, do not return).

245. *See supra* nn.42, 47, 49 and accompanying text (discussing peace process, demilitarized zone ceded to FARC, as well as U.S. economic aid plan whose main objective is eradication of narcotics).

246. *See supra* n.98 and accompanying text (reporting date Colombia signed OP-CRC).

247. *See supra* nn.140-141 and accompanying text (setting forth text of Articles 2 and 3 of OP-CRC).

248. *See supra* nn.140, 143 and accompanying text (describing text of Article 3 (1) that applies to States Parties and Article 4(1) which applies directly to armed insurgent groups).

249. *See supra* nn.139-143 and accompanying text (setting forth the text of Article 4(2), which asks States to criminalize child soldier recruitment).

250. *See supra* n.144 and accompanying text (setting forth provisions of Article 6(3) which mandates that States Parties set up appropriate mechanisms to aid in child soldier recovery).

251. *See supra* n.130 and accompanying text (discussing CIL and its application).

and purposes, Colombia has attempted to follow through with its own national legislation, which purports to criminalize the insurgents' acts.<sup>252</sup> Yet, recognizing that Colombia is a weak State, where impunity exists in every corner of the government, can help explain why these laws remain ineffective.<sup>253</sup>

Law 418 of 1997 formally outlawed the conscription of Colombian males under the age of eighteen into national armed forces.<sup>254</sup> Yet, it made an exception for those who enlisted voluntarily or with parental permission.<sup>255</sup> Here, the Colombian government was following the provisions of AP II of 1977,<sup>256</sup> the CRC,<sup>257</sup> and went one step further by outlawing the enlistment of males under the age of eighteen, rather than fifteen — which was the age limit imposed at the time.<sup>258</sup> A few years later, in 2002, the OP-CRC, raised the enlistment age to eighteen.<sup>259</sup> Law 418 also addressed insurgent groups and stated that those found to have recruited or trained minors would be subject to between three and five years in prison.<sup>260</sup> Colombia had decided to criminalize the use of children in insurgent groups, as was prescribed by Article 38 of the CRC.<sup>261</sup> Another Article provided that the ICBF would provide priority assistance to demobilized minors, and that they would obtain protection.<sup>262</sup> This is also mandated by the CRC, which asks States Parties to take all "appropriate measures to promote physical and psychological recov-

252. See *supra* nn.159-193 and accompanying text (detailing analysis of national legislation in particular Law 418 and Law 599 — the new Penal Code).

253. See *supra* nn.51-56 and accompanying text (describing how high ranking government and military officials are rarely prosecuted).

254. See *supra* n.175 and accompanying text (discussing Article 13 of Law 418).

255. See *supra* n.176 and accompanying text (discussing parental consent exception to Article 13 of Law 418).

256. See *supra* n.124 and accompanying text (discussing prohibition on use of children under fifteen in Article 4 (3)).

257. See *supra* n.133 and accompanying text (discussing the CRC and Article 38(2)).

258. See *supra* nn.133-134, 159 and accompanying text (discussing Article 38 of CRC and declaration made by Colombia reserving age of enlistment at eighteen, not fifteen).

259. See *supra* nn.139-141 and accompanying text (describing text of Article 3 of OP-CRC and how it expands on Article 38 of CRC).

260. See *supra* n.179 and accompanying text (discussing criminal penalties set forth in Article 14).

261. See *supra* n.136 and accompanying text (describing provisions for children made under Article 38(4)).

262. See *supra* nn.138-140, 180-182 and accompanying text (describing purpose and activities of ICBF).

ery and psychological recovery and social reintegration of the child victim . . .”<sup>263</sup> Law 548 of 1999 amended Law 418 by outlawing the recruitment of males under the age of eighteen into the national armed forces, even if their enlistment was voluntary or with parental consent.<sup>264</sup> The passage of Law 548 in 1999 exceeded current international norms in that the OP-CRC, passed in 2000, and in force in 2002, still allows for either voluntary enlistment or parental consent enlistment.<sup>265</sup> Another intended benefit of Law 548 — its extending the legal observance of Law 418 for additional three years — has been lost, as Law 418 expired on December 23, 2002.<sup>266</sup> The promise of Law 418 and 548 as potentially meaningful and effective tools to curb child recruitment and execute punishment represents a lost opportunity for the Colombian government and its citizens. In order for Colombia to effectively ensure respect for its children, the government must execute and implement laws effectively and permanently — children’s rights are never temporary nor do they ever expire.

In the Executory Decree, the former President Andrés Pastrana Arango, not only acknowledged the prominent place of children in the Colombian Constitution, Article 39 of the CRC, and Law 418 of 1997, but made these documents legally enforceable in order to provide for ex-child soldiers.<sup>267</sup> The Decree was specifically directed to provide for demobilized children and their specialized care and attention.<sup>268</sup>

All of the above laws reflect two things: a well-intentioned government’s efforts, and the glare of the international humanitarian community at the Colombian situation. Colombia’s adoption of international treaties and national legislation is an at-

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263. *See supra* n.133 and accompanying text (setting forth text of Article 39 of CRC).

264. *See supra* nn.183-184 and accompanying text (discussing amendment of Article 13 of Law 418 in Law 548 prohibiting voluntary enlistment and enlistment by parental consent).

265. *See supra* n.141 and accompanying text (setting forth text of Article 3(3) of CRC).

266. *See supra* n.185 and accompanying text (discussing temporary nature of Law 418 and its expiration in 2002).

267. *See supra* nn.186-188 and accompanying text (discussing constitutional power given to President in order to promulgate laws, resolutions, and decrees).

268. *See supra* nn.190-193 and accompanying text (setting forth requirements and procedure for care and recovery of demobilized child soldiers)

tempt to appease the international community.<sup>269</sup> This is made more evident in that the Colombian child soldier epidemic has yet to find any kind of resolution and there has been no marked improvement, despite laws like 418 and 548.<sup>270</sup>

What else besides legislation, could help alleviate the child soldier problem? The implementation of educational and social welfare programs, like those administered by the ICBF, whose aim is to provide basic and necessary services to Colombian children.<sup>271</sup> Since many of these child soldiers come from impoverished backgrounds,<sup>272</sup> educational opportunities may prevent them from falling prey to insurgent groups' enticing offers.<sup>273</sup>

Yet, programs of this nature require an enormous expenditure of capital. Under "Plan Colombia," the economic aid plan, large amounts of money have been earmarked for Colombia.<sup>274</sup> Unfortunately, a comparatively small fraction of the aid package is directly benefitting human rights institutions and Colombian children — a mere US\$2.5 million will directly benefit demobilized child soldiers.<sup>275</sup> Normally, this is considered a large sum of money, but under these exigent circumstances, it pales in comparison to what is being spent to combat the drug trade in the country.<sup>276</sup> It could be argued that narcotics is the most critical issue facing Colombia and deserves most of the funding; however, hundreds of thousands of Colombian children are literally caught in the crossfire of the Colombian narcotics trade.<sup>277</sup> The insurgent armed groups that recruit children derive a large per-

269. *See supra* nn.100-103 and accompanying text (commenting on Colombia's responsibility upon ratification HR and IHL instruments and obligations to legal organizations that monitor compliance).

270. *See supra* nn.12, 64-67, 88 and accompanying text (providing current statistical information on number of child soldiers as recently as 2001).

271. *See supra* nn.91-93 (describing work of ICBF).

272. *See supra* n. 69 and accompanying text (discussing lack of access that hundreds of thousands of Colombian children have to an education).

273. *See supra* nn. 17, 69, 70, 74, and 76 and accompanying text (discussing not only social and economic conditions of children but enticements offered by insurgents that lure children to join).

274. *See supra* n.49 and accompanying text (discussing Plan Colombia and listing amounts of aid being provided).

275. *See id.* (describing amounts of humanitarian aid being provided and specific purpose it will be put toward).

276. *See id.* (stating that approximately US\$300 million is being spent on combating Colombian drug cultivation).

277. *See supra* nn.65, 69, 88 and accompanying text (discussing that not only are there are at least 6,000 and 3,000 children currently forming part of guerrilla and

centage of their income from taxing narcotics production.<sup>278</sup> Furthermore, the violence that has erupted between the guerrillas, paramilitaries, and the military due to the drug trade, has had a serious adverse effect on Colombian children.<sup>279</sup> Due, in part, to the serious attention that has been focused on the plight of child soldiers worldwide, it would make sense that Colombian child soldiers form an integral part of any aid plan for the country.<sup>280</sup> It is only hoped that whatever money has been earmarked for the children will benefit them, as money earmarked for Colombia has not always gotten into the right hands.<sup>281</sup> Ideally, international aid should be provided expressly to implement programs to prevent the recruitment of at-risk children and aid them after they have been demobilized. Colombia has attempted to do the latter through the programs administered by the ICBF.<sup>282</sup> True initiative and financial expenditures are needed in order to effectively implement new laws and programs. For this to happen, Colombian children must take their rightful place in the peace process, where attention can be focused on their plight.

### *CONCLUSION*

The exploitation of Colombian children in the internal armed conflict is a crime that deserves not only the scrutiny of the international community, but of the Colombian government. In order to eradicate the use of children as soldiers, the government must critically examine the social and economic ills that have disadvantaged its children and made them such easy prey for armed groups. The next step would be to strengthen or install educational and social welfare programs that would ad-

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paramilitary groups, respectively, but that an alarming number of 200,000 children are involved in cultivation of illegal narcotics).

278. See *supra* nn.34, 43-45 and accompanying text (discussing importance that drug trade plays in continuing growth of armed insurgent groups in Colombia).

279. See *supra* nn.57-63 and accompanying text (discussing impact of internal conflict on lives and stability of Colombian civilians and children).

280. See *supra* n.2 and accompanying text (providing statistical information regarding child soldier epidemic).

281. See *supra* n.50 and accompanying text (discussing incidents where high ranking military personnel have engaged in corrupt activities, like stealing funds earmarked to combat drug trade).

282. See *supra* nn.91-93 and accompanying text (describing coordinative efforts between ICBF, government agencies and armed forces to aid demobilized children).

dress and hopefully alleviate the problems — which is no small task. In addition to these preventative measures, existing and future legislation regarding children in armed conflict would need to be strictly enforced, widely disseminated, and permanently observed. Perpetrators — individuals or groups — must be aggressively pursued and effectively punished. The criminal penalties would also need to be significantly stiffened, so that the punishment truly fits the magnitude of the loss of innocence and childhood. Colombia must reclaim its children, but in order to do that, the Colombian government must take back its country.

