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经济、社会和文化权利

特别报告员卡塔琳娜·托马舍夫斯基提出的报告 * **

增 编

对哥伦比亚的访问

(2003 年 10 月 1 日至 10 日)

* 本内容提要以所有正式语文分发。内容提要所附报告全文只以原文和英文印发。

** 在政府于 2003 年 12 月 19 日提出意见之前，无法完成报告。

内容提要

受教育问题特别报告员于 2003 年 10 月 1 日至 10 日进行访问的目的是，在现场调查哥伦比亚受教育权的情况。显而易见，40 年来的冲突对受教育权造成了一定的影响。特别报告员访问了波哥大和基布多(乔哥省)。她还会晤了副总统、外交部长、教育部长、司法部副部长、宪法法院首席法官和其他法官、调解员、总统男女平等咨询办公室。她还访问了社会保护部长和哥伦比亚家庭福利协会。此外，她还与驻哥伦比亚从事人权和教育领域工作的国际组织举行了会议，如哥伦比亚教育工作者联合会、教育事关所有人工作队、人权捍卫者、妇女组织、非裔哥伦比亚人和土著社团代表、流离失所者代表、大学教职人员和学生协会。

特别报告员建议哥伦比亚国立即明确申明全面遵守国际人权义务。免费义务教育是国际人权法的一个参照点。哥伦比亚于 1968 年批准了《经济、社会、文化权利公约》，但 36 年之后教育既不是免费的而且也不普及。特别报告员建议教育预算开支应增加 30%，从占国内生产总值(国产总值)的 4%提高至 6%。

由于所有关于无法受教育的标准的最新分类统计数字不足，因此无法评估受教育权仍被剥夺的儿童的人数和概况。此外，除了性别歧视外，其他形式的歧视仍未列入记录。特别报告员建议编制最新的关于无法受教育的概况，以期采取必要措施，尽快实现全面纳入教育系统。要保证教育能真正免费，就必须详细分列教育本应免费但又不是免费的儿童应承担费用，特别报告员建议对目前的费用进行研究，以便免除这些费用。

基于人权的战略的意义在于这种战略将所有人权联系在一起，并将教育转变享受这些人权的手段。国家承担的国际人权义务要求各国家机构将人权列入其战略、政策和行动中，并要求公共当局的所有部门为此进行合作。哥伦比亚没有基于人权的教育战略，因此特别报告员建议评估“教育革命”对受教育的影响，并作出承诺，增强保护经济、社会和文化权利。分别由公法和私法规范的公立学校和私立学校并存，这就需明确划分这两种教育制度的范围。

特别报告员建议学校与冲突之间应明确划清界线，学校应被确认为“和平领域”而受到保护。教员的人权、职业权、工会权和学术权如不受到保护，受教育权就无法实现。特别报告员建议立即采取措施，补救哥伦比亚无法提供这种保护的缺陷。

Annex**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION
ON HER MISSION TO COLOMBIA (1-10 OCTOBER 2003)****CONTENTS**

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Introduction

1. On 21 October 2002 the Special Rapporteur on the right to education asked to be formally invited to visit Colombia. In her letter she stated that the purpose of her visit would be to study and assess the exercise of the right to education in Colombia and its interpretation and implementation in practice. The Colombian Government sent her a written invitation on 19 July 2003, suggesting October as a convenient time to visit.
2. The purpose of the Special Rapporteur's mission from 1 to 10 October 2003 was to investigate in situ the right to education. She visited Bogotá and Quibdó (Chocó). She also met with the Vice-President, the Minister for Foreign Affairs, the Minister of Education, the Deputy Minister of Justice, the Chief Justice and other justices of the Constitutional Court, the Ombudsman and the Presidential Advisory Office on Gender Equality. She also visited the Ministry of Social Protection and the Colombian Family Welfare Institute (ICBF). Additionally, she had meetings with international organizations working in the field of human rights and education in Colombia, namely FECODE, the Educación Compromiso de Todos team, human rights defenders, women's organizations, representatives of the Afro-Colombian and indigenous communities, representatives of displaced populations, and associations of university teachers and students. During her visit, the Special Rapporteur learned of a large number of cases of violation of the right to education and of human rights in education. She talked with teachers who had been threatened or raped, parents unable to pay for their children's education - which should be free but is not - and university students who have been threatened on account of their human rights work.
3. The Special Rapporteur wishes to extend her profound gratitude to the Colombian office of the United Nations High Commissioner for Human Rights in Bogotá for the excellent logistical support that it provided before and during the visit, and to the Colombian Commission of Jurists (CCJ) for preparing and coordinating the programme of non-governmental organizations (NGOs). She further wishes to register her displeasure regarding the obstacles and difficulties that the Office of the High Commissioner for Human Rights placed in her way before and in the course of the mission.
4. This report contains an analysis of the key problems affecting the affirmation and realization of the right to education in Colombia and reviews the political, economic and fiscal measures taken by the Colombian Government. It also contains recommendations intended to ensure that the Government's policies and actions take account of all relevant aspects of the right to education. The recommendations are highlighted in bold type. Even so, in the space of 20 pages it is impossible to convey the complexity and subtleties of the Colombian context, especially against the backdrop of 40 years of conflict.
5. As always, the Special Rapporteur uses the system of "four As" in her work focusing on the core elements of the right to education.¹ Governments have a duty to ensure that education is Available, Accessible, Acceptable and Adaptable. The Special Rapporteur was especially pleased to note these criteria are used in Colombia,² and so there is no need to comment on them here.

I. CONTEXT: “THE RIGHT TO THE RIGHT”³

6. The Special Rapporteur’s visit took place at a crucial time for the future of human rights in Colombia. One teacher asked the Special Rapporteur how teachers could be expected to teach human rights when the Government itself defined them as something suspect and subversive. This problem was highlighted by the Special Representative of the Secretary-General on human rights defenders, who deplored the fact that “the defence of human rights is considered to be a subversive political activity and that human rights NGOs are stigmatized” (E/CN.4/2002/106/Add.2, para. 89). On 29 September 2003 the Inter-American Commission on Human Rights asked the Colombian Government to take the necessary steps to clarify its policy on human rights. A good example of the need to guard against stigmatization is provided by some remarks of President Uribe himself: “I see respectable human rights organizations [...] and I also see certain writers and politicians who ultimately further the ends of terrorism and take cowardly refuge behind the banner of human rights.”⁴ At the same time, donors have expressed their support for human rights defenders and requested the Government to offer them better protection.⁵ The United Nations Children’s Fund (UNICEF) stressed that the Government’s proposals and actions “reflect what has been termed a ‘pedagogical thrust’, i.e. they provide lessons of various sorts that help to build citizenship”.⁶ **The Special Rapporteur recommends that the Government make an immediate and explicit commitment to defend and protect human rights defenders.**

7. Colombia’s regulatory framework, which is founded on the principles of a State governed by the rule of law, is highly developed, and the Constitutional Court is making notable endeavours. But rules and regulations aside, there remains a wide gulf between the letter of the law and reality. This gap between words and actions was expressed by President Uribe, who described Colombia as a legalistic but lawless State.⁷

8. It is important to remember that the preamble to the Universal Declaration of Human Rights calls attention to the fact that these rights “should be protected by the rule of law”. But the right to education is not afforded such protection. For example, the Government’s education strategy, known as the “education revolution”, makes no mention of the right to education, although it does refer to “democratic access” to education. In addition, the National Development Plan 2002-2006 (Act No. 812/2003) instituted a “rationalization of the justice service”. The Government’s proposal restricts access to remedies in respect of economic, social and cultural rights. The approval of this Plan would be a retrograde step in terms of enforcement of the law by the courts. In the past, Colombia has had a progressive judicial practice with regard to the right to education, confirming the principle that judicial protection is the most advanced stage of human rights protection. The planned constitutional reform and reform of the administration of justice aim to eliminate the protection of economic, social and cultural rights, thereby doing away with “the right to the right to education”.⁸ Colombian law as it stands does not recognize the right of adults to education,⁹ notwithstanding the affirmation that this is a universal right and despite the international obligations undertaken by the Colombian State in this regard. If children’s right to education is not protected, they will be left without an effective safeguard. In the vast majority of cases there is a lack of available and accessible schooling for children of school age, which is a violation of the right to education, yet nobody is held to

account for the situation. Constitutional protection is still an effective (in fact the sole) remedy. On 30 July 2003 the Constitutional Court registered its “profound and complete disagreement” with the proposed constitutional reform. **The Special Rapporteur recommends that the Colombian State confirm, immediately and explicitly, that its international human rights obligations are fully observed, and that it commit itself to strengthening the protection of economic, social and cultural rights.**

9. As the proportion of poor Colombians returned to its 1988 level, according to the *Colombia Poverty Report* published in May 2002, the World Bank noted that greater stability requires “the creation of opportunities for all Colombians”,¹⁰ and the Special Rapporteur believes it is important to strengthen the protection of economic and social rights. It is the task of the Special Rapporteur to draw attention to the lack of a commitment to the right to education in the Development Plan. **She recommends that government policy should be analysed and appraised in the light of the criteria of international human rights law with a view to incorporating this right into all government strategies and policies.**

II. EDUCATIONAL DYSFUNCTION

10. The dual status of education in Colombian law - public and private, free and fee-paying - has created a good deal of confusion. In addition, the Government’s education policies weaken the right to education because free, compulsory public education for school-age children is not guaranteed as a bare minimum. The Special Rapporteur thinks it is important to emphasize, as she does in every annual report, the difference between education as a commodity and education as a human right. The extension of the market approach to education can improve education statistics, but if access is pegged to ability to pay, education cannot be spoken of as a human right. The recent trend towards privatization poses a threat to education as a public good and to schools as a public service. Protests and demands that the Government reformulate its policies and action taken by the public services have exposed the lack of a government policy or strategy to guarantee the right to education or protect human rights in education, current legislation notwithstanding.

11. The economic changes, known as “sweat and tears”, have posed new challenges for human rights defenders because the Government’s economic policy contains no proposals to safeguard the right to education. Three proposals on education funding were rejected in the referendum of 25 October 2003. Two of the proposals sought to boost resources for education through savings and revenue grants, while the third proposed a public-sector pay freeze (including teachers’ pay). The protection of human rights necessitates a preliminary study of the impact that such initiatives might have, with a view to excluding (or at least minimizing) any undesirable effects. Since their inception, human rights have served as an indispensable corrective mechanism in all democratic measures. Children, the prime bearers of the right to education, are not entitled to vote. Consequently, their right to education is protected by the rule of the law.

12. The National Development Plan 2002-2006 makes the “education revolution” a priority in the social sphere. The principal objectives are to increase coverage (to 1.5 million places in basic education and 400,000 places in higher education) and improve the quality and efficiency of education. More than half of these extra places in basic education (800,000) will be created through restructuring (merging of educational institutions and increasing the ratio of pupils to

teachers and classrooms) without an increase in funding. The other half were to have been financed through savings, as proposed in the referendum. Following the rejection of the proposals in the referendum, the Government “is looking at alternative ways of finding the resources that were envisaged”.¹¹ The Development Plan 2002-2006 does not mention the right to education, nor does it provide for a strategy to extend free education or reduce education costs. Quite the reverse, it espouses the principle of co-financing by families and students, thereby shifting the State’s human rights obligations on to private individuals. The imposition of value added tax on enrolment fees illustrates the application of market principles to education,¹² or in the words of Alberto Yepes of the non-profit organization Corporación Región, the transformation of education into a business. So Colombia does not have a rights-based education strategy, and **the Special Rapporteur recommends that a study be undertaken of the impact of the “education revolution” on the right to education.**

A. “Public schools here operate like private schools”

13. The core tenets of the right to education include the guarantee that primary education is to be compulsory and free of charge for all children of school age, the guarantee of the principle of non-discrimination as regards the right to education and human rights in education, and the prevention of abuses by defining the objectives and scope of schooling in accordance with international human rights law.

14. The principle that compulsory education should be free of charge is axiomatic in international human rights law and has been upheld throughout Colombian history too. Act No. 12 of 1934 placed a legal obligation on the State to allocate 10 per cent of the national budget to education and to provide free primary education. The constitutional reform of 1936 enshrined the principle of free compulsory education. Secondary education was made free in 1938.

15. Fifty years later, the 1991 Constitution reaffirmed the cost-free status of compulsory education, except for those able to pay fees. This qualified guarantee permits the assessment of a family’s ability to pay using arbitrary criteria. All the indications are that inability to pay is still the principal reason why children fail to enrol in school or drop out of school.

16. Colombian children ask for “free, non-elitist education”,¹³ referring to the six socio-economic strata ranging from 1, the lowest, to 6, the highest, and the exclusion and fragmentation that are the result of the system of fee-paying education. This education system is “a recipe for perpetuating poverty and inequality”¹⁴ because it reproduces economic and social stratification. A fragmented system of education mirrors a fragmented society. The poorest strata, 1 and 2, account for less than 5 per cent of total income, whereas strata 5 and 6 account for 60 per cent.¹⁵ Family income is the fundamental determining factor in the education of children and young people, particularly higher education, with enrolment of “less than 6 per cent of young people from stratum 1 aged between 18 and 24”.¹⁶ The gap between rich and poor¹⁷ is illustrated by the fact that, on average, young people from strata 1 and 2 spend less than 5.7 years in the education system, compared with over 11 years for stratum 6, and by the fact that, in Bogotá, “42.5 per cent of young people from the lower strata are active in the labour market, compared with just 3.7 per cent in the higher strata”.¹⁸

17. In addition, decentralization in the education sector has increased administrative costs (which are high owing to the fragmented nature of the education system¹⁹), including the salaries of officials:

“The distribution of responsibilities and functions at each level (national, departmental, district, municipal and school) is still unclear, which creates a great deal of administrative inefficiency and misuse of resources.”²⁰

18. The Education Development Plan for 2003-2006 sets out three priorities for the population aged between 5 and 18, namely extending coverage, improving quality, and improving the efficiency of education. The changes are similar to the education policies pursued by Margaret Thatcher in the United Kingdom of Great Britain and Northern Ireland in the 1980s (E/CN.4/2000/6/Add.2, paras. 13-16). These placed emphasis on “educational output”, the hiring of private education companies, testing, evaluation of teachers according to their students’ success in examinations, and resource allocation based on results rather than costs. Subsidies enabling certain poor pupils to pay private school fees (“demand-driven subsidies”) are also modelled on the British system from the 1980s: “Demand-driven subsidies are intended to benefit children from low-income backgrounds [...] These students will be placed in private schools with high quality standards. The recipients will be able to pay the school fees.”²¹

19. The Special Rapporteur thinks it necessary to stress that the coexistence of public and private education, regulated by public and private law respectively, requires a clear and explicit demarcation of the scope of the two different education systems. The Constitutional Court stressed that:

“The tensions that have arisen between the fundamental right to education and the remuneration to which persons providing the public service of education are entitled should be resolved by protecting at all times the essence of that right, without overlooking the need to maintain a structural balance in terms of the funding of the private education system.”²²

20. The Special Rapporteur calls for an early indication of what impact the policies to extend private education as contained in the “education revolution” will have on the right to education, and what measures will be taken to eliminate (or at least minimize) any negative impact altogether.

B. “Eat or go to school”

21. The Government’s foremost obligation is to guarantee primary education for all children, which requires considerable investment. Children of school age are the prime bearers of the right to education. Although the Government need not be the sole investor in education, international human rights law nevertheless requires that the lion’s share of investment should originate from the State. The right to education cannot be translated into reality when there is a shortage of school places or if schools simply do not exist. The State has a duty to provide free, compulsory education that precludes all exclusion.

22. Persons with inadequate access to education pass on this legacy to the next generation. The policy of making families and local communities financially responsible for education

widens the gap between the haves, the have-nots and the have-nothings (such as the very numerous victims of forced displacement). To break this vicious circle, the Government must prioritize and provide funds for universal-free education. The history of the right to education shows that compulsory schooling is not feasible unless education is free of charge. In Colombia, the volume of public and private investment in education is equal, with both representing about 4 per cent of GDP.²³ Thus there are two parallel education systems in Colombia: poor education for the poor and expensive private education for the rich. About 30 per cent of all pupils attend private primary schools, 45 per cent attend private secondary schools and 75 per cent attend fee-paying tertiary educational institutions. This accentuates educational differences attributable to family wealth or poverty, and indicates that pre-school and tertiary education are the privilege of those in the higher income bracket.

23. "Gradual implementation" is the term used in international human rights instruments with reference to the right to education. Governments are thus obliged to ensure with immediate effect that primary education is compulsory and available free of charge to everyone, or to formulate a plan and seek international assistance to fulfil this obligation as speedily as possible. Colombia ratified the International Covenant on Economic, Social and Cultural Rights in 1968, but 35 years on education is still neither free nor universal. The Committee on Economic, Social and Cultural Rights has said that "this practice by the State party is contrary" to the Covenant (E/C.12/1/Add.74, para. 27).

24. The Ministry of Education is budgeting 1 million pesos (US\$ 365) per pupil per year. The cost of compulsory public education in Bogotá includes an enrolment fee of between US\$ 15 and US\$ 30, the cost of school uniforms and equipment varying between US\$ 19 and US\$ 52, to which must be added costs associated with transport (approximately US\$ 15 a month), school books and meals. According to CCJ, the average cost per pupil is 1,080,000 pesos a year or three times the minimum monthly wage, which is beyond the means of the poorest strata of society.

25. The Special Rapporteur was informed about the cost of enrolment fees, which should be waived but are not. In Chocó, the poorest department in the country, she was told that "free education is a sham". Enrolment and other fees at the primary-school level vary between 30,000 and 150,000 pesos, and at the secondary-school level between 120,000 and 250,000 pesos. In Bogotá, displaced children²⁴ are excused payment of fees in their first year of school, but the following year they must pay an enrolment fee of 85,000 pesos. The education authorities' power to assess a family's capacity to pay confronts people with a cruel choice: either eat or go to school.

26. According to the World Bank, Colombia is the only country in the region where primary education is not free.²⁵ The Colombian Constitution provides that public education is free (for 10 years, from age 5 to 15) "without prejudice to the possibility of charging school fees to those able to pay". This guarantee can be interpreted in two ways. One interpretation is that free education is just a subsidy for those otherwise unable to pay; the other regards free education as an integral part of the right to education. The first interpretation defines education as a responsibility that is shared between the State and the family, while the second treats it as the responsibility of the State.²⁶

27. Education after the compulsory period should be made gradually available and accessible to all. Contrary to the provisions of human rights instruments, access to higher education in Colombia has not been widened; in fact it has become progressively commercialized. The report entitled *Desarrollo Humano: Colombia 2000* observed “the segmentation and ranking of educational institutions as a function of the social origin of their intake”.²⁷

28. **The Special Rapporteur recommends that the Colombian State should immediately and explicitly reaffirm its international obligation to ensure free education for all children of compulsory school age. The implementation of the cost-free principle requires a detailed breakdown of the costs incurred by pupils for education that ought to be free but is not. The Special Rapporteur further recommends that a study be undertaken of the actual costs involved with a view to abolishing them.**

III. THE PROFILE OF EXCLUSION

29. Although the Educación Compromiso de Todos team has criticized the education statistics for being unfocused, out of date and contradictory depending on the source that provides them,²⁸ statistics for children in school nevertheless exist, although there are no statistics for children who should be attending school but are not. Their number is estimated at between 1.5 and 3.3 million.²⁹ The exact population of Colombia is unknown. Reliable data are lacking. Estimates are based on population projections compiled by the National Administrative Department of Statistics (DANE), which are themselves based on the most recent census from 1993.³⁰ National coverage of civil registration of births was 81.6 per cent in 2000,³¹ but still fails to cover the entire indigenous, rural, poor and displaced child population. The number of displaced persons is not known; it is estimated that 2.9 million people have been victims of forced displacement since 1985³² and at least 1 million school-aged children have been displaced. **The Special Rapporteur recommends that the Government make an immediate commitment to free education and to subsidizing the full range of educational services for all displaced children of school age. The lack of up-to-date, disaggregated statistics for all exclusion criteria makes it hard to gauge the number and profile of the children whose right to education is still being denied. The Special Rapporteur recommends that an up-to-date profile of educational exclusion be prepared immediately with a view to adopting all necessary measures to ensure full inclusion as soon as possible.**

30. Education shows a history of exclusions based on all the discriminatory criteria currently prohibited. Simple prohibitions turn out to be more complicated when one attempts to grasp the changing pattern of discrimination inside and outside schools and the interaction between school and society. Discriminatory practices usually combine a range of already prohibited discriminatory attitudes with other exclusionary motives that are not yet outlawed. Colombia's education strategy is not based on international human rights standards and there are no statistics on access to education disaggregated by race, ethnicity or religion. It is therefore impossible to monitor progress or backtracking using the yardstick of human rights. Except for sex discrimination, discrimination continues to be unrecorded, thereby creating a vicious circle. When discrimination is not officially recorded, it can be ignored. Given the lack of quantitative data, anyone who tries to prove the existence of a discriminatory situation is doomed to failure.

Discrimination cannot be confronted unless it has been previously documented. **The Special Rapporteur recommends that a study be made forthwith of the nature and extent of discrimination in education, with input from victims, so as to adopt policies and practices to eliminate discrimination and ensure public scrutiny of these policies and practices.**

31. Accessibility is defined in different ways according to the stage of education involved. It is the duty of the Government to provide compulsory education for all children of school age. The right to education should be implemented gradually by making it easier to gain access to education after the compulsory phase, as far as circumstances permit, while at the same time ensuring that human rights are given priority in the use of all available resources. The fact that military spending takes priority over social investment in Colombia is illustrated by the increase in military spending from 3.5 to 5.8 per cent of GDP in 2006,³³ notwithstanding the constitutional obligation to give priority to public-sector social investment over any other kind of spending. The Constitutional Court explained human rights-based budget priorities when it considered the matter of forced displacement:

“The Court is aware that the country is facing a serious fiscal deficit. However, the phenomenon of forced displacement in Colombia is a full-blown humanitarian disaster - the gravest in the Western hemisphere - that henceforth necessitates immediate and priority action by institutions, as far as is practicable and within the limits of existing resources. Accordingly, spending on the care of displaced persons must be considered even more urgent than public funding of the social sphere, which is assigned priority under article 350 of the Constitution [...] What is certain is that the state of social emergency caused by forced displacement in Colombia must be dealt with by the Government as a matter of priority in order truly to satisfy the definition of a social State. And if that means that other items of expenditure have to be sacrificed, it must be clearly understood that such sacrifices are fully justified by the Constitution under the civic duty of solidarity.”³⁴

32. The level of budget funding for education is insufficient to guarantee universal primary education, or to guarantee universal compulsory education from the age of 9. According to calculations by the National Planning Department (DNP), school enrolment rates in 2000 were 40.5 per cent in pre-school education, 83.6 per cent in primary education, 62.6 per cent in secondary education and 15.1 per cent in tertiary education. Approximately 35 per cent of students enrol but drop out in the first few years, the majority because they cannot afford to continue.³⁵ **The Special Rapporteur recommends an increase of 30 per cent in budget spending on education, or from 4 to 6 per cent of gross domestic product (GDP).**

33. Prior to the affirmation of the right to education, work was in many cases the only form of “education” (in the sense of training for work) that poor children received. Child labour continues to exist owing to poverty and the need for children to work in order to survive. There is little explicit mention of the Government’s human rights-based response to child labour, despite the fact that, according to UNICEF, “there are approximately 2.5 million children aged between 9 and 17 working in Colombia”.³⁶ According to DANE, there are 2.3 million child workers aged between 5 and 17 in the country: 5 per cent of children aged between 5 and 9 and 30 per cent of children aged between 15 and 17 work, and 52 per cent of all children work without pay.³⁷ One obstacle to using education in the fight against child labour is education policy itself, according to which there is no type of “preference”, education being a right for all.

However, this general approach is unfair because programmes are inflexible and not targeted at populations with specific characteristics such as child workers.³⁸ **The Special Rapporteur recommends that the Government make an immediate commitment to free education, subsidizing the full range of educational services for all child workers of school age and, moreover, adapting education to these children's needs, having sought their input in the design and assessment of such programmes.**

34. Women's organizations explained to the Special Rapporteur that education actually contributes to displacement because it does not reflect the realities of life in the countryside and the lack of prospects drives people to the towns. However, in the period 1995-2001 the World Bank highlighted "an increase in urban poverty that is more acute than in rural areas" and described its impact on the conflict: "The improvement in the economic situation will not in itself be sufficient to stop the violence, but an increase in poverty could be an additional explosive factor."³⁹ In addition, the unemployment rate - 16 per cent among those with a higher education and 18 per cent among those with a secondary education⁴⁰ - underscores the need for an intersectoral strategy. The Special Rapporteur encountered on many occasions in the course of her work this worrying phenomenon of "educated unemployment" or "unemployed people with diplomas", which indicates an enormous loss of public and private investment. **The significance of a human rights-based strategy is that it links together all human rights and transforms education into a vehicle for the enjoyment of those rights. The State's international human rights obligations commit all State agencies to incorporate human rights into their strategies, policies and actions and require all branches of the public authorities to cooperate in that regard. The Special Rapporteur re-emphasizes her recommendations regarding the formulation of a development plan in which human rights are a cross-cutting theme.**

IV. CHOCÓ: "LET US BE DIFFERENT"

35. Accessibility subsumes various government obligations. Education as a civil and political right requires the Government to permit the establishment of schools and universities, while education as a social and economic right requires the Government to ensure that education is free, compulsory and accessible - as a bare minimum - for all children of school age. Education as a cultural right requires the affirmation of collective and individual rights. The Special Rapporteur would like to refer to a common misperception regarding the difference between education and the right to education. Compulsory, imposed schooling may constitute a human rights violation if it fails to satisfy the criteria of acceptability and adaptability.

36. Afro-Colombian and indigenous communities continue to be victims of systematic racial discrimination (A/54/18, 1999, para. 432). Racial discrimination is still not prohibited, nor is there a strategy to eliminate it as required under international human rights law. As the Special Representative of the Secretary-General on human rights defenders stated: "As such, discriminatory behaviour at any time by persons who are not participating directly in the hostilities continues to go unpunished in Colombian legislation" (E/CN.4/2002/106/Add.2, para. 34).

37. In the department of Chocó, where 90 per cent of the population is Afro-Colombian and 5 per cent is of indigenous origin, 82 per cent of households lack basic public services (E/CN.4/2003/13, para. 96). "The country seems to have forgotten Chocó", was a typical remark

heard by the Special Rapporteur when she outlined her plans to visit the region during her mission. But Chocó cannot be ignored by the rest of the country because of the “absurd level of violence that we do not understand”, as many local people put it to the Special Rapporteur. The *Desarrollo Humano: Colombia 2000* report says that “throughout this period, the capital city Bogotá and the department of Chocó had the best and the worst human development indicators respectively”.⁴¹ The statistics disguise the fact that Chocó is a coastal region where communications are very bad, the principal mode of transport being the canoe.

38. The concept of *colombianidad* (Colombian heritage) combines respect for diversity with contributions to building national identity. Ethno-education,⁴² a concept provided for under Act No. 115 of 1994, is aimed at groups or communities “that have their own native culture, language, traditions and certain laws”, and requires a differentiated approach. **The Special Rapporteur welcomes the scheme for an educational forum proposed by local people in Chocó to draw up an educational curriculum, with the involvement of all bearers of the right to education, whether individual or collective.**

V. MURDERS OF TEACHING STAFF

39. The right to education involves five key players: the Government, as the provider and/or sustainer of public education; the individual, as the possessor of the right to education; children, who must undergo compulsory education; parents, as first educators; and lastly professional educators, i.e. teaching staff. Although Colombia has an extensive legal apparatus to protect human rights, the right to education lacks a proper legal context in which the rights of all key stakeholders can be protected.

40. During her mission, the National Trade Union School gave the Special Rapporteur a list of 691 teachers who have been murdered during the past decade.⁴³ She noted with concern that none of these cases has been resolved by the Government. FECODE gave the Special Rapporteur a list of 34 teachers killed between 1 January and 6 October 2003. In early 2003 teachers were being murdered at a rate of three a month on average. In addition, the Special Rapporteur received detailed information about the murder of 70 faculty members, students and university workers belonging to the Association of University Teaching Staff (ASPU), the Union of University Workers and Employees of Colombia (SINTRAUNICOL) and the National Federation of University Teachers over the period 1985-2003. She was even more concerned to learn from the Ministry of the Interior and Justice that teaching staff are not specifically included among the groups benefiting from measures of protection. **The Special Rapporteur recommends that the Colombian Government take immediate steps to clarify the circumstances surrounding murders of teaching staff.**

41. The teaching profession was changed by Act No. 715 and the new teachers’ statute, which introduced a longer working day, increased the number of pupils per teacher and made the funding of schools and teachers alike dependent on the success of pupils in tests. Despite apparent indications that the murders are inextricably linked to the armed conflict, Amnesty International has noted that the tendency to ascribe the murders of teaching staff to the armed conflict disguises the true cause, namely that such attacks are retaliation for protests against economic policies, particularly privatization.⁴⁴ The database compiled by the National Trade Union School reveals that, in 76 per cent of cases in 2002, trade unions’ human rights were violated principally on account of their trade union work.⁴⁵ The Colombian office of the

United Nations High Commissioner for Human Rights detected “anti-union violence” and “criminal attacks on teaching staff, principally in universities” (E/CN.4/2002/17, paras. 290-292). FECODE has repeatedly requested protection for teaching staff, but the Government has made no promises. If a teacher is threatened and forced to move, but fails to obtain the status of “threatened teacher”, he or she faces disciplinary proceedings for abandonment of post. The possibility of temporary transfers is limited and rules out the majority of threatened teachers. **The right to education cannot be imagined without the protection of the human, professional, trade union and academic rights of teachers. The Special Rapporteur recommends that immediate measures be taken to deal with this situation of neglect in Colombia.**

42. The Special Rapporteur has studied the ample evidence of threats against teaching staff on account of their position. The following are typical. “Tell that little pipsqueak teacher X that he has been declared a military target; he should leave town within 24 hours.” “We regret to inform you that, effective X o’clock on X, such-and-such must discontinue all teaching activities for 12 months, failing which he will be considered a military target.” Moreover, threats against human rights education have included the charge that these activities contain “the seeds of subversion”. Such threats are received by teachers and students alike. **The Special Rapporteur recommends that the Government emphatically affirm the legitimacy and necessity of studying, teaching and defending human rights.**

VI. AIMS AND OBJECTIVES OF EDUCATION

43. Education is steeped in prevailing values, yet it also helps to shape new values and attitudes. Accordingly, human rights must be a tool for the elimination of exclusion and discrimination, thereby ensuring that education can enable everyone to exercise the full range of human rights. However, our knowledge is in inverse proportion to the importance of the object of study. We are fairly well informed of education policies and laws, yet we know little about the teaching process and even less about the learning process. In 1991 Juan Francisco Aguilar Soto described the disconnect between education inside and outside the classroom: “Knowledge acquired in the classroom is divorced from knowledge gained outside it, i.e. there is a disconnect between the contents of the school curriculum, the form in which this content is ‘transmitted’ by teachers, and general knowledge, the system of values, beliefs, knowledge and customs of importance in daily life, which in Colombia embraces a broad social and cultural spectrum.”⁴⁶

44. Furthermore, students are exposed to conflicting influences within school itself: “Students face a dilemma: their teachers set great store by high achievement, yet their peers value mediocrity. When children reach adolescence, the peer group takes on central importance and, except for a handful of very intelligent individuals, most students swallow the opinion of their peers that it is foolish to do more than is necessary to get by. Studies of secondary schools clearly indicate that academic success does not cause children to be accepted by their peers.”⁴⁷

45. The Colombian Constitution declares that education is a public service with a social function, but does not refer to its political function, despite the requirement that education “shall instil respect for human rights in each Colombian”.

46. Forty years of conflict in Colombia raise questions about the impact of violence on the right to education. Data supplied by human rights organizations for the year 2002 reveal the gravity of the situation: on average, 20 people die every day as a result of socio-political violence⁴⁸ and 13 are arbitrarily detained.⁴⁹ An average of 1,623 people are forced to take flight every day, one family every 10 minutes,⁵⁰ and according to the Ombudsman, every day in 2001 an average of 11 minors aged under 18 died a violent death.

47. The task of socializing children against a backdrop of violence and military operations imposes enormous demands on education. In the words of the Special Rapporteur on violence against women, its causes and consequences, the fact that “many Colombians are indifferent to violence” because they “accept the conflict as a part of life” (E/CN.4/2002/83/Add.3, para. 11) has a devastating impact on children. Ana Ofelia, a 10-year-old indigenous girl, has said that: “We children want to see joy in the eyes of our parents, brothers and sisters, not the hidden fear we see now, the fear that at any moment they could be mistreated, kidnapped or killed.”⁵¹ The application filed by one student, Yeny María Osuna Montes, who sought to take out an injunction ordering the removal of the police unit that had turned her school into a battlefield, stated that: “We live in insecurity and a state of tension, knowing that we are being used as human shields by the police unit at our backs.”⁵² According to the Ministry of the Interior, “the Government is prepared to bury the past”.⁵³ But how can all of the past be explained to children? The Special Rapporteur spoke with four secondary-school children, who told her that “Nothing is said about it; it is hidden”, even though girls have been raped or their teachers murdered, or “some girls were forced to endure a living death, i.e. abused to such an extent that they felt they were dead”. It would seem to be important to explain to children what has happened. Obviously, the lack of protection for the human rights of teachers and pupils alike makes this hard to do.

48. Most of the teaching staff at the pre-school, primary and middle school levels are women (66.6 per cent in 1990).⁵⁴ The majority of the combatants are men. It is possible that education in Colombia will continue to perpetuate a reverse gender imbalance, with a shortage of male teachers and, in the future, of male students. A preliminary analysis by the Special Rapporteur has confirmed the need for a gender-based approach in studying the extent to which education influences the socialization of children in their role as combatants, and the part played by education in triggering armed conflicts (E/CN.4/2001/52, paras. 46-47). Colombia’s schools are the target of attacks by armed groups, but they also play a role in “training for war”: “The army and the police have intervened in a number of schools in impoverished areas to conduct exercises in military strategy and ‘psychological operations’ among the civilian population; in these schools they organize training and military instruction and establish bases for security operations.”⁵⁵ **The Special Rapporteur recommends that a clear separation should be maintained between schools and the conflict, and that schools should be identified and protected as a “zone of peace” in order to rebuild the lives of children and young people who are prey to violence and forced displacement.**

49. Schools are also a recruiting ground. As one teacher put it to the Special Rapporteur, what can she say, on her salary of 300,000 pesos, to a 16-year-old student earning 800,000 pesos as a combatant? As children say, “if young people had more attractive educational and lifestyle

alternatives and opportunities, the recruitment of child soldiers could be avoided”.⁵⁶ The Special Rapporteur is concerned that the national agreement on equality between the sexes signed on 14 October 2003 refers to “women peacemakers” under the National Development Plan 2003-2006, but contains no commitment in this area, despite the crucial importance of peacemaking in Colombia. **The Special Rapporteur recommends the adoption of a gender-based education strategy with a view to studying educational processes from the viewpoint of both sexes and developing a style of education opposed to conflict and violence, one that promotes the concept of a peaceful society based on equal human rights for all.**

VII. HUMAN RIGHTS THROUGH EDUCATION: “WHAT CONCEPT OF GENDER?”

50. Prerequisites for the acceptability of education are guarantees of quality, minimum health and safety standards and professional requirements for teachers, that must be certified, verified and monitored by the Government. The acceptability of education has been considerably helped by the development of international human rights law. Insistence on the rights of indigenous peoples and minorities has prioritized the teaching of these groups’ native culture and languages. The prohibition of corporal punishment has transformed school discipline. Treating children as individuals with the right to education and rights at school has done much to make the education system more acceptable. In addition, the global commitment to eliminating gender discrimination has led to the merging of the definitions of acceptability and adaptability.

51. In her reports, the Special Rapporteur has observed a terminological shift towards the word “gender” while continuing to refer to women. Statistics indicate that there was an equal number of male and female ministers in the Colombian Government in 2003, but “the presence of women in public office has not been translated into policies for the advancement of women”.⁵⁷ Colombian education statistics show that an equal number of girls and boys enrolled in primary and secondary schools, with a higher proportion of female students in tertiary education. The World Bank observed that the gender approach as an analytical model is disadvantageous to the male sex, because boys perform worse in education and are “disproportionate victims of violent death because of both the armed conflict and crime”.⁵⁸

52. Of central importance in human rights is the nature of the education imparted. Access to education is not the only subject of concern. The key question in education is: who is responsible for defining what is to be taught and how it is to be taught? The State turns teacher insofar as it has the power to set the curriculum. Unlike many other countries, in May 2002 Colombia had national curriculum standards applicable to language, mathematics, natural sciences and environmental education. The process of developing these standards includes human rights as a component of “civic competence”, and **the Special Rapporteur reiterates her recommendation to the Government that it should clarify the legitimacy of human rights and develop its education system with the full involvement of human rights defenders, teaching personnel and students to adapt the education process to the Colombian context.** However, the Special Rapporteur continues to be concerned by the lack of information on how these curriculum standards are applied: “[The curriculum standards] are not widely known, and therefore, except in the academic timetable, they are not required to be enforced on a permanent basis.”⁵⁹

53. Colombia is the only country in the region where teenage pregnancy is on the increase, from 10 per cent in 1990 to 19 per cent in 2000.⁶⁰ The suspension of sex education, reproductive health and family planning programmes could account for this (E/CN.4/2002/83/Add.3, para. 31). Moreover, despite the established view of the Constitutional Court that expulsion from school by reason of pregnancy is a violation of the right to education, school rules contain stipulations such as the following: “Pregnancy is cause for expulsion, given that it offends morality and damages the good name of the institution.”⁶¹ The Special Rapporteur cited previous decisions of the Constitutional Court (E/CN.4/2000/6, para. 60) as a model for the protection of the right to education and also as a means of influencing public human rights education. **She recommends that the Government immediately develop mechanisms to ensure the effectiveness of efforts to eliminate all discrimination against pregnant girls and child-mothers, as called for by the Constitutional Court.**

54. For education to be adaptable, schools must adjust to children’s needs in accordance with the principle of the best interests of every child, as enshrined in the Convention on the Rights of the Child. This change ended the practice of forcing children to adapt to whatever school was offered to them. Human rights being indivisible, the requirement of adaptability means that all human rights must be protected within the education system and also improved through education.

Notes

¹ E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32 to 65; E/CN.4/2001/52, paras. 64-77; E/CN.4/2002/60, paras. 22-45.

² Ombudsman, *El derecho a la educación en la constitución colombiana, la jurisprudencia y los instrumentos internacionales*, Bogotá, 2003; Colombian Platform for Human Rights, Democracy and Development, *Informe sobre el derecho a la educación en Colombia*, Bogotá, October 2003.

³ The demand for “the right to the right” was used in July 2001 during a protest event calling for the release of Alba Lucía Rodríguez, who was raped, sentenced to 42 years in prison for the murder of her daughter during childbirth and acquitted in 2002.

⁴ Investiture of the new commander of the Colombian Air Force, Bogotá, 8 September 2003.

⁵ In the Declaration of the meeting of donors held in London on 10 July 2003, donors “welcomed the Colombian Government’s statement that they recognized and supported the role of civil society and NGOs as important stakeholders in [...] defending human rights [...]. They further welcomed and underlined the importance of the Colombian Government’s pledge to protect civil society leaders, including of trade unions, who have suffered threats against themselves and their families”.

⁶ *Hacia la construcción de una ciudad más amable y justa. Políticas de niñez y juventud en Bogotá 2001-2004*, UNICEF, Bogotá, 2003.

⁷ “Colombia’s conflicts: more order and less law”, *The Economist*, 9 November 2002.

⁸ Injunctions were established under the Constitution of 1991 as a judicial remedy whereby any person may petition a judge, at any time or place, on his or her own behalf or on behalf of another, in an urgent summary procedure, for immediate protection of his or her basic rights, when these are harmed or threatened by the acts or omissions of any public authority.

⁹ Although international human rights law affirms that “everyone has the right to education”, the Colombian Constitution specifies that this right vests solely in children. The case law of the Constitutional Court has recognized the fundamental nature of this right for children, despite the fact that it is absent from the chapter on fundamental constitutional rights.

¹⁰ See World Bank, “Assistance strategy for Colombia projects up to US\$ 3.3 billion in loans over four years”, News Release No. 2003/202/LAC, 16 January 2003.

¹¹ Reply of the Colombian Government, draft report of the Special Rapporteur on the right to education, Geneva, 8 December 2003.

¹² Act No. 788 of 2002, arts. 34 and 35.

¹³ World Social Forum (Colombia) on the theme of children, see www.foroninosyninas.galeon.com.

¹⁴ Educación Compromiso de Todos project, *Situación de la educación básica, media y superior en Colombia*, Casa Editorial El Tiempo, Fundación Corona and Fundación Restrepo Barco, Bogotá, second edition, 2002, p. 62.

¹⁵ Memorandum of the President of the International Bank for Reconstruction and Development and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy of the World Bank Group for the Republic of Colombia, Report No. 25129-CO, 24 December 2002.

¹⁶ World Bank, *Tertiary Education in Colombia: Paving the Way for Reform*, 2003, p. 3.

¹⁷ L.J. Garay, *Colombia entre la exclusion y el desarrollo: propuestas para la transición al estado social de derecho*, Office of the Controller General, Bogotá, 2002, p. xxxiii.

¹⁸ UNICEF, see note 6, above.

¹⁹ The Controller General reports that administrative costs accounted for 16.9 per cent in 1999, with “other items” accounting for 9.3 per cent.

²⁰ Programme for Educational Reform in Latin America and the Caribbean (PREAL), *Entre el avance y el retroceso - Informe de progreso educativo en Colombia 2003*, Bogotá, 2003, p. 6.

²¹ Education reform: sectoral plan 2002-2006, March 2003. See www.mineducacion.gov.co.

²² Judgement T-388 of 2001.

- ²³ J.E. Vargas and A. Sarmiento, *La descentralización de los servicios de educación en Colombia*, ECLAC Public Policy Reforms, Series No. 50, United Nations, Santiago, Chile, 1997.
- ²⁴ Documentation requirements include the declaration of displaced person status (obtainable through the Single Registration System (SUR)), which approximately 35.4 per cent do not possess.
- ²⁵ “In Latin America, there are essentially no tuition fees (only Colombia has these)”, World Bank, *User fees in primary education: Draft for review*, Washington D.C., February 2002, p. 7.
- ²⁶ “Público y privado”, *Educación Compromiso de Todos*, No. 5, June 2003.
- ²⁷ *Desarrollo Humano: Colombia 2000*, Social Mission of the National Planning Department and UNDP, Bogotá, 2001, p. 100.
- ²⁸ Educación Compromiso de Todos project, see note 14 above.
- ²⁹ The education revolution estimated that approximately 1.5 million children were excluded from compulsory education, but the Controller General calculated that 3,297,732 children were without educational provision in 2001.
- ³⁰ Interview with Daniel Rivera, Director of Planning at the Ministry of Education (*Educación Compromiso de Todos*, No. 4, November 2003, p. 10).
- ³¹ UNICEF, *La niñez colombiana en cifras*, see www.unicef.org.co.
- ³² *El embrujo autoritario. Primer año de gobierno de Álvaro Uribe Vélez*, Colombian Platform for Human Rights, Democracy and Development, Bogotá, September 2003, p. 124.
- ³³ “Colombia’s conflicts: Superman Uribe holds back the tide”, *The Economist*, 7 June 2003.
- ³⁴ Judgement SU-1150 of 2000.
- ³⁵ The 1997 survey of living conditions showed that the main reason for school dropouts was cost (33.6 per cent of all cases); in 20.5 per cent of cases, pupils drop out because they do not enjoy going to school.
- ³⁶ *Trabajo doméstico infantil y juvenil en hogares ajenos: de la formación de los derechos a su aplicación*, UNICEF Colombia and Save the Children, Bogotá, October 2001, p. 10.
- ³⁷ DANE, National Survey of Child Labour, November 2001.
- ³⁸ International Programme on the Elimination of Child Labour (IPEC)-International Labour Organization (ILO), *Análisis de la política nacional frente al trabajo infantil en Colombia 1995-2002*, Bogotá, November 2002, p. 44-45.

³⁹ World Bank (see note 15, above).

⁴⁰ See note 16, above.

⁴¹ See note 27, above.

⁴² The Constitution specifies that education for ethnic groups must be in accordance with their aspirations, and ministerial directive No. 08/2003 reconfirms the applicability of all ethno-educational legislation.

⁴³ The National Trade Union School provided the Special Rapporteur with its list of teaching staff killed between 1 January 1991 and 29 September 2003.

⁴⁴ Amnesty International, *Fundamental rights at work: Amnesty International concerns to the International Labour Conference*, IOR 42/001/2002, 1 May 2002.

⁴⁵ “Cien días críticos para los derechos humanos: contra quién es la guerra?” *Cien días*, vol. 10, No. 51, June-November 2002, p. 39.

⁴⁶ J.F. Aguilar Soto, *La Transformación de la escuela en Colombia*, Centre for Ecumenical and Social Promotion, Santa Fé de Bogotá, second edition, 1993, p. 12.

⁴⁷ *Edugénero* Fascicle 6: *Roles y formatos de la participación*, Central University, Bogotá, April 2003, p. 10.

⁴⁸ Alternative report to the fifth periodic report of Colombia to the Human Rights Committee, submitted by CCJ in July 2003.

⁴⁹ Database of human rights and political violence, Research and Popular Education Centre (CINEP) (2002).

⁵⁰ Advisory Office for Human Rights and Displacement (CODHES) (2002).

⁵¹ Cauca Indigenous Regional Council (CRIC), *Informe sobre el derecho a la educación en los pueblos indígenas de Colombia ante la Relatora Especial sobre el derecho a la educación*, Bogotá, 8 October 2003.

⁵² Judgement SU-256 of 1999.

⁵³ “Narcotráfico se acaba este año”, *El Tiempo*, 12 January 2003.

⁵⁴ Ministry of Education, *Avances del plan de administración de recursos humanos y del censo de maestros y funcionarios del sector educativo*, 1990

⁵⁵ Coalition against the involvement of children and young people in armed conflict in Colombia, *Niñez, escuela y conflicto armado en Colombia*, Bogotá, October 2003.

⁵⁶ E. Páez, *No queremos que nos limiten nuestros sueños de niña: Las niñas en el conflicto armado en Colombia*, Terre des Hommes, Bogotá, 2002, p. 170.

⁵⁷ *Informe Derectios de las Mujeres en Colombia 2003*, National Women's Network and National Congress of Women's Networks, Bogotá, 2003, p. 112.

⁵⁸ World Bank (see note 15, above).

⁵⁹ PREAL (see note 20, above), p. 7.

⁶⁰ National Demographic and Health Survey, Profamilia, Bogotá, 2000.

⁶¹ Corporación Punto de Vida report, prepared for the Special Rapporteur.
