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CARDOZO LAW INSTITUTE in Holocaust *and* Human Rights

HUMAN RIGHTS AND ATROCITY PREVENTION CLINIC

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June 20, 2024

Submitted to:

United Nations Special Rapporteur on trafficking in persons, especially women and children
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Call for input: for the report on trafficking in persons and gender, peace and security

Dear Special Rapporteur Prof. Siobhán Mullally,

Thank you for the opportunity to contribute to the Special Rapporteur's report on gender, peace, and security to be presented to the 3rd Committee of the United Nations General Assembly in October 2024. The following submission focuses on: (1) the need to ensure all possible avenues for redress remain available to victims-survivors of human trafficking and related harms, including slavery and the slave trade crimes and human rights violations, as part of women, peace and security action plans, programmes and transitional processes; and (2) the potential positive impact that centering gender justice in peace and transitional justice processes can have on identifying risks of exploitation and related harms as well as providing redress for victims-survivors of human trafficking and related crimes and human rights violations.

Redress for Slavery, the Slave Trade, and Human Trafficking

Slavery and the slave trade prohibitions are peremptory *jus cogens* norms enumerated specifically as international crimes, international humanitarian law prohibitions, and non-derogable human rights.¹ Under international law, slavery is the exercise of any or all powers

¹ League of Nations, Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 60 L.N.T.S. 253, Registered No. 1414 [hereinafter 1926 Slavery Convention]; U.N. Economic and Social Council (ECOSOC), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, *entered into force* Apr. 30, 1957, 266 U.N.T.S. 3 [hereinafter 1956 Supplementary Convention]; International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 2(f), June 8, 1977, 1125 U.N.T.S. 609; Org. of African Unity, *African Charter on Human and Peoples' Rights*, art. 5, OAU Doc. CAB/LEG/67/3 rev. 5 (June 27, 1981); Org. of American States, American Convention on Human Rights "Pact of San José, Costa Rica" art. 6, Nov. 22, 1969, 1144 U.N.T.S. 123; European Convention on Human Rights art. 4, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR]; Jocelyn Getgen Kestenbaum, *Disaggregating Slavery and the Slave Trade*, 16 FIU L. REV. 515 (2021) (By the early 1970s, a

attaching to the right of ownership over a person, while the slave trade entails reducing a person to slavery or further enslaving an already enslaved person.² Under international human rights law, the Universal Declaration for Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) prohibit slavery and the slave trade in all their forms.³

All forms of slavery and the slave trade are illegal under all circumstances—as non-derogable violations, they must be respected during periods of conflict, peace, and in post-conflict settings⁴—and can be prosecuted or redressed in international and national forums.⁵ Thus, in addition to slavery crimes as purposes of exploitation of human trafficking, slavery and the slave trade can and should be pursued separately toward more comprehensive redress for victims-survivors of human trafficking, slavery and the slave trade as part of women, peace and security action plans, programmes and transitional processes.

Persons of all ages and genders may be trafficked, slave traded and enslaved. By recognizing the distinct and overlapping jurisdictions of these different crimes and human rights violations, a more comprehensive pursuit of justice becomes possible, particularly in post-conflict and transitional justice settings where violence continues long after hostilities cease. Moreover, taking an intersectional approach is critical toward investigating possible overlapping crimes and human rights violations. When approaching the issue of trafficking, the international human rights framework and community typically focuses on how women and girls are impacted, which should not come at the expense of also focusing on these crimes' impacts on *inter alia* men, boys, and LGBTQIA+ individuals.

Gender, Peace, and Transitional Justice in Colombia

The Peace Accord, forged by the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), alongside numerous civil society groups, is innovative as a transitional justice process for its focus on gender, sexuality, and ethnicity in acknowledging, addressing, and remedying violence and injustice perpetrated throughout the country's decades-long internal armed conflict.⁶

consensus emerged that slavery was a norm of *jus cogens*, spurred on by the work of the United Nations International Law Commission and the determination by the International Court of Justice, in the 1970 *Barcelona Traction* case, that the “protection from slavery” created state obligations *erga omnes*.)

² 1926 Slavery Convention, *supra* note 1, art. 1(2); 1956 Supplementary Convention, *supra* note 1, art. 3.

³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 4, Dec. 10, 1948; [International Covenant on Civil and Political Rights](#), art. 8, Dec. 16, 1966 [hereinafter ICCPR].

⁴ ICCPR, *supra* note 3, art. 4(2); ECHR, *supra* note 1, art. 4.

⁵ For example, jurisdiction exists through the [Inter-American Court of Human Rights](#), art. 2 ([Case of the Hacienda Brasil Verde Workers v. the Federative Repub. of Brazil](#), (2016)); [European Court of Human Rights](#), art. 1, 4 (slavery only); [African Court on Human and Peoples' Rights](#), art. 3, 5; [ICCPR](#), art. 8(1); International Criminal Tribunal for the Former Yugoslavia (Prosecutor v. Kunarac, Kovač & Vuković, Case No. IT-96-23 & IT-96-23/1-T, Trial Judgment, U 542 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002)).

⁶ See COMISIÓN DE LA VERDAD DE COLOMBIA, [HAY FUTURO SI HAY VERDAD: INFORME FINAL](#) (2022).

Child victims-survivors overwhelmingly experienced forced recruitment into armed groups during the conflict.⁷ The FARC was the largest perpetrator of forced recruitment of children and committed sexual violence against individuals, including women and girls, to forcibly recruit them.⁸ The 2016 Peace Accord did not stop child forced recruitment; many armed groups have picked up where the FARC left off.⁹ The COVID-19 crisis has coincided with heightened conflict, and fewer alternatives for young people has accelerated recruitment in recent years.¹⁰

While overlapping factually, human trafficking, slavery and the slave trade can be pursued simultaneously as distinct avenues for victim redress for crimes related to child forced recruitment, especially and including outside of the context of armed conflict.¹¹ Further, the establishment of acts or conduct similar to acts of trafficking as a transnational crime and trafficking as a human rights violation could crucially assist in the proof of international crimes in post-conflict transition processes, in particular: slavery and the slave trade as war crimes or crimes against humanity under customary law; forced conscription, enlistment, or use of children as a war crime; and persecution as a crime against humanity.¹²

The Colombian peace process' incorporation of gender-sensitive measures paid specific attention to gender-based violence in conflict, including sexual violence and human trafficking.¹³ This approach has received recognition for integrating gender perspectives into peacebuilding efforts, illustrating the importance of inclusive and comprehensive transitional justice processes.¹⁴ Conflict-related sexual violence (CRSV) heightens the risk of trafficking for all persons, including women and girls, in conflict settings.¹⁵ CRSV profoundly impacts women's livelihoods and girls' education access, while generating lucrative profits for armed groups, including through conflict-driven trafficking in persons for sexual exploitation.¹⁶ Despite the disproportionate impact of sexual violence on women and girls, their voices are

⁷ Natalia Venegas, *Colombian Truth Commission's Final Report*, GENEVA INTERNATIONAL CENTRE FOR JUSTICE, (July 20, 2022) (According to official records, 16,238 children were recruited into armed groups. Child recruitment featured most heavily in illegal armed groups, but the State also took part. Under Colombian law, the government was allowed to recruit minors as soldiers until 1996. It was only in 2005 that Colombia set the minimum age of military recruitment at 18); Virginia M. Bouvier, UN Women Background Paper, *Gender and the Role of Women in Colombia's Peace Process*, UN WOMEN 4 (Mar. 4, 2016).

⁸ Bouvier, *supra* note 7, at 11.

⁹ *Id.*, at 15. (Since peace negotiations began in 2012, however, the *bandas criminales*, or *bacrim*, have surpassed the FARC as the main recruiter of children. Half of all *bacrim* members are under 18).

¹⁰ Elizabeth Dickinson, *Lockdowns Produced a New Generation of Child Soldiers*, INTERNATIONAL CRISIS GROUP, (Dec. 6, 2021).

¹¹ Mónica Hurtado, Ángela Iranzo Dosdad, & Sergio Gómez Hernández, *The Relationship between Human Trafficking and Child Recruitment in the Colombian Armed Conflict*, 39 THIRD WORLD Q. 941-58 (2018).

¹² See Letter from the Cardozo Law Institute in Holocaust and Human Rights to the Special Rapporteur on trafficking in persons, especially women and children (Feb. 28, 2023).

¹³ COMISIÓN DE LA VERDAD DE COLOMBIA, *HAY FUTURO SI HAY VERDAD: INFORME FINAL* (2022).

¹⁴ Antonio Urrejola, Office of the U.N. High Comm'r for Hum. Rts, *Technical assistance and capacity building in Colombia Report of the International human rights expert*, ¶ 3, U.N. Doc. A/HRC/55/18 (Mar. 26, 2024).

¹⁵ U.N. Secretary-General, *Women and peace and security: Rep. of the Secretary-General*, ¶ 39, U.N. Doc. S/2023/725 (Sept. 28, 2023).

¹⁶ U.N. Secretary-General, *Conflict-related sexual violence: Rep. of the Secretary-General*, ¶ 2, U.N. Doc. S/2024/292 (April 4, 2024).

consistently and routinely excluded from matters concerning peace and security.¹⁷ Despite serious gaps and challenges in implementation, Colombia's peace accord process exemplifies the importance of centering gender justice, including women, girls' and LGBTQIA+ voices and personal experiences, in women, peace and security action plans and transitional processes.¹⁸

Focusing on gender is particularly significant in the context of the internally displaced person (IDP) crisis in Colombia.¹⁹ Afro-Colombian and Indigenous persons are over-represented within the IDP population and, historically, are at a higher risk of poverty, displacement, human rights violations, and sexual violence.²⁰ These intersecting forms of marginalization render internally displaced Afro-Colombian and Indigenous peoples more vulnerable to human trafficking and related crimes. Armed groups target IDP children to replenish their ranks, as child IDPs have little ability to defend themselves or to seek redress.²¹ Once forcibly recruited, child members of armed groups often work in human trafficking and drug and arms trafficking themselves.²² Child IDP recruits *hors de combat* who are forced into direct participation roles also may be slave traded according to customary international law, which provides another legal avenue of accountability for those seeking to bring the perpetrators to justice or provide redress to victims-survivors.²³

In conclusion, transitional justice mechanisms are essential for addressing the pervasive issues of human trafficking, enslavement, and the slave trade in conflict and post-conflict settings. The lessons learned from the Colombian case study underscores the importance of a holistic and intersectional approach to transitional justice that centers gender justice and addresses the root causes of conflict.

Sincerely yours,



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¹⁷ *Id.*, ¶ 2.

¹⁸ *Urrejola*, *supra* note 14, ¶¶ 11, 16.


¹⁹ *Bouvier*, *supra* note 7, at 4. (In 2015, Colombia had the second highest number of IDPs in the world—5.859 million—and approximately 78% of these IDPs were women and children. Syria had the greatest number of IDPs in 2015).

²⁰ *Id.*, at 8.

²¹ See Dickinson, *supra* note 10; Luis Jaime Acosta, *Colombia armed groups turn forcibly recruited children into 'war machines' – government*, REUTERS (Feb. 12, 2021); *Colombia/Venezuela: Border Area Abuses by Armed Groups: Killings, Disappearances, Child Recruitment, Forced Displacement*, HUMAN RIGHTS WATCH (Mar. 28, 2022).

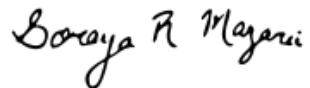
²² *Bouvier*, *supra* note 7, at 15.

²³ *Letter from the Cardozo Law Institute in Holocaust and Human Rights*, *supra* note 12, at 6.



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