



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés



## **International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees**

This report has been produced by UNHCR on the basis of information obtained from a variety of publicly available sources, analyses and comments. The report is intended for reference by those involved in the asylum determination process and concentrates on the issues most commonly raised in asylum claims lodged in various jurisdictions. The information contained does not purport to be either exhaustive with regard to conditions in the country surveyed nor conclusive as to the merit of any particular claim to refugee status or asylum. Incomplete, inaccurate or incorrect information cannot be ruled out. The inclusion of information in this report does not constitute an endorsement of the information or the views of third parties. Neither does such information necessarily represent statements of policy or views of UNHCR or the United Nations.

**United Nations High Commissioner for Refugees (UNHCR)**

**Geneva**

**March 2005**

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## List of Acronyms

ACCU	<i>Autodefensas Campesinas de Córdoba y Urabá</i> (United Self-Defense Forces of Córdoba and Urabá)
AUC	<i>Autodefensas Unidas de Colombia</i> (United Self-Defense Forces of Colombia)
BCN	<i>Bloque Cacique Nutibara</i> (Cacique Nutibara Bloc)
CCJ	<i>Comisión Colombiana de Juristas</i> (Colombian Commission of Jurists)
CODHES	<i>Consultoría para los Derechos Humanos y el Desplazamiento</i>
DANE	<i>Departamento Administrativo Nacional de Estadística</i> (National Administrative Department for Statistics)
DMZ	<i>Zona de Despeje</i> (demilitarised zone)
DNP	<i>Departamento Nacional de Planeamiento</i> (Colombia's National Planning Department)
DSP	<i>Política de Defensa y Seguridad Democrática</i> (Democratic Security Policy)
ELN	<i>Ejército de Liberación Nacional</i> (National Liberation Army)
EPL	<i>Ejército Popular de Liberación</i> (Popular Liberation Army)
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i> (Revolutionary Armed Forces of Colombia)
FARC-EP	<i>Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo</i> (Revolutionary Armed Forces of Colombia – Army of the People)
HPA	Humanitarian Plan of Action
ICBF	<i>Instituto Colombiano de Bienestar Familiar</i> (Colombian Family Welfare Institute)
ICRC	International Committee of the Red Cross and the Red Crescent
IDPs	Internally Displaced Persons
M-19	<i>Movimiento 19 de Abril</i> (Movement of 19 April)
NGOs	Non-Governmental Organizations
OHCHR	Office of the United Nations High Commissioner for Human Rights ( <i>Oficina del Alto Comisionado de la Naciones Unidas para los Derechos Humanos</i> )
ONIC	National Organization of Indigenous Persons
PL	<i>Partido Liberal</i> (Liberal Party)
PSC	<i>Partido Social Conservador</i> (Conservative Party)
RCZs	Rehabilitation and Consolidation Zones
RSS	<i>Red de Solidaridad Social</i> (Social Solidarity Network)
UNDP	United Nations Development Programme ( <i>Programa de las Naciones Unidas para el Desarrollo</i> )
UNHCR	United Nations High Commissioner for Refugees ( <i>Alto Comisionado das Naciones Unidas para los Refugiados</i> )
UP	<i>Unión Patriótica</i> (Patriotic Union)

## I. INTRODUCTION

1. The armed conflict in Colombia has lasted for four decades and continues to generate thousands of victims every year. While statistics on violent crime indicate an overall improvement since UNHCR first issued guidelines on Colombian asylum claims in 2002, there is no indication that a definitive solution to the conflict is at hand and the number of Colombians seeking protection, both inside the country and abroad, continues to grow. The wide range of profiles of Colombian asylum-seekers and the rapidity with which the armed conflict is evolving pose difficulties for determination of Colombian asylum claims, and it is for this reason that UNHCR offers these revised eligibility guidelines.

## II. BACKGROUND INFORMATION

### 1. General Information About Colombia

2. Colombia is located in the northwest edge of South America. It has coastline on the Atlantic and Pacific oceans and 1,141,748 km<sup>2</sup> of land area. The central part of the country is dominated by the Andes Mountains, which are divided into three mountain ranges. The climate, topography and vegetation vary from mountainous zones and fertile valleys to extensive jungle in the Pacific and Amazonian regions. This geographic diversity has facilitated the operations of irregular armed groups as well as the development of a large illegal economy. Geographic conditions have also hindered effective governmental control over land and marine areas as well as over the country's borders (Colombia's land borders measure 6,341 Km).<sup>1</sup>

3. The country is divided into 32 Departments and a Capital District – Bogotá – as well as 1,098 municipalities. It is estimated that it has a population of 45,325,261 of which 50.6% are women, and 49.4% are men.<sup>2</sup> Colombia's population is heterogeneous and there are 90 indigenous peoples which make up about 2% of the population<sup>3</sup> as well as approximately 3,600,000 Afro-Colombians who account for 8% of the population.<sup>4</sup> These ethnic minorities are disproportionately affected by the internal armed conflict and as a result have faced increasing difficulties in preserving their culture in recent years. The armed conflict has accelerated urbanization and it is estimated that 72% of the population lives in urban areas.<sup>5</sup>

4. Over the past 15 years there have been significant variations in Colombia's social and economic indicators. In the 1980s it maintained an annual 3.4% GDP growth rate, whereas the other countries in the region experienced negative economic growth. This trend changed towards the middle of the 1990s and GDP growth went from 5.8% in 1995, to 0.6% in 1998, and then dropped to -4.05% in 1999. This situation affected the unemployment rate which reached 20% and fluctuated between 12% and 13.5% during 2004.

5. In terms of wealth distribution, Colombia is the third most unequal country in Latin America,<sup>6</sup> with 62.4% of the population living under the poverty line and 31% in extreme

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<sup>1</sup> Instituto Geográfico Agustín Codazzi, *Diccionario Geográfico de Colombia*, 1996.

<sup>2</sup> Basic demographic data of the National Statistics Department is available at [www.dane.gov.co](http://www.dane.gov.co).

<sup>3</sup> Republic of Colombia, National Planning Department, *Los pueblos indígenas de Colombia: En el umbral del nuevo mileni*”, 2004.

<sup>4</sup> Consejo de Política Económica y Social. *Documento CONPES 3310: Política de Acción Afirmativa para la Población Negra y Afroamericana*, September 20 2004.

<sup>5</sup> Estimate of the National Statistics Department (DANE) based on the 1993 census. The proportion of urban population may now be higher as a result of the upswing in forced displacement beginning in 1995.

<sup>6</sup> Controller-General of Colombia, *Balance Social 2004*, Ch. 1, March 2004.

poverty. This means that 28,000,000 Colombians do not have enough income to cover even basic nutritional needs. Moreover, the richest 10% of the population have 80 times more wealth than the poorest 10%.

## 2. The Political Context and the Actors

6. Colombia has a presidential system of government characterised by the historic alternation of power between two dominant parties, the Liberal and Conservative parties.<sup>7</sup> The bitter rivalry between these two parties led to 300,000 politically motivated killings in the middle of the 20th century. This period, known as the “Era of Violence”, ended with a military dictatorship which was later succeeded by the National Front Government (*Frente Nacional*) of 1958-1970, formed on the basis of a power sharing agreement between the two parties<sup>8</sup> under which the presidency alternated from one party to the other and government posts were shared.

7. The domination of the political system by two parties has had tremendous repercussions including political exclusion and the absence of viable political alternatives, the loss of ideological moorings which clearly differentiate the parties, widespread clientelism,<sup>9</sup> internal divisions within the parties and the lack of true social representation.<sup>10</sup> Unlike the first half of the 20th century, today there is no strong tradition of party activism nor do the parties have a solid base of popular support. Indeed, the electorate generally votes for a specific candidate and not for the party itself.<sup>11</sup>

8. Nonetheless, other political movements do occasionally appear and are represented in the Congress and local government. However, generally these movements end up setting up coalitions with the traditional parties and are coopted by the two-party system. In 2004, the *Polo Democrático Independiente* (Independent Democratic Pole), was the principal opposition party. In 2002 presidential elections it obtained 6% of the vote.<sup>12</sup> It subsequently gained strength and in 2003 the Polo candidate was elected mayor of Bogotá with 800,000 votes.

9. The armed conflict and political violence have also served to maintain the two-party system. The case of the *Union Patriótica* (Patriotic Union) is revealing in this regard. This party emerged from peace agreements negotiated between the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC-EP, Revolutionary Armed Forces of Colombia – People’s Army), and the administration of President Betancourt (1982-1986)

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<sup>7</sup> The Liberal Party was founded in 1848 and the Conservative Party in 1849. See Alvaro Tirado Mejía, “El estado y la política en el Siglo XIX” in *Nueva Historia de Colombia Vol. II: República S. XIX* (Bogotá: Editorial Planeta, 1989).

<sup>8</sup> The Benidorm Declaration of 1956 and the Sitges Pact of 1957 led to the end of the military dictatorship and establishment of the *Frente Nacional*. See Gabriel Silva Lujan, “El Origen del frente Nacional y el Gobierno de la Junta Militar” in *Nueva Historia de Colombia Vol.II: Historia Política 1946-1986* (Bogotá: Planeta, 1989).

<sup>9</sup> Term used to reflect the practice of obtaining followers and votes in exchange for public posts or State contracts.

<sup>10</sup> UNDP, *National Human Development Report 2003: Solutions to Escape the Conflict’s Impasse*, Ch. 1, “Origins: war on the periphery”. Available at [www.pnud.org.co](http://www.pnud.org.co).

<sup>11</sup> A useful description of the limited participation, clientelism and the party system is found in *ibid*.

<sup>12</sup> The candidates who garnered the most votes in 2002 were both Liberals, Álvaro Uribe and Horacio Serpa. They won a total of 88% of the vote.

and won a significant number of elected positions at the local and national levels.<sup>13</sup> However, 3,000 of its members were killed between 1986 and 2003.<sup>14</sup>

10. In Colombia there are three principal irregular armed groups and a number of smaller ones. There are two main guerrilla groups, the oldest and most powerful of which is the FARC. The other is the *Ejército de Liberación Nacional* (ELN – National Liberation Army). As well, there are three minor guerrilla groups with little impact and localised presence in certain areas of the country: a dissident group of the demobilized Ejército Popular de Liberación (EPL – Popular Liberation Army), the *Ejército Revolucionario del Pueblo* (ERP – Revolutionary People’s Army), and the *Ejército Revolucionario Guevarista* (ERG – Guevarista Revolutionary Army). There is a loose confederation of paramilitary groups called *Autodefensas Unidas de Colombia* (United Self-Defence Forces of Colombia), with a number of dissident paramilitary groups throughout the country. In addition, there are organised crime gangs and narcotics traffickers which have links to the guerrilla and paramilitary groups.<sup>15</sup>

11. The **FARC-EP** emerged from communist self-defence groups which appeared during the Era of Violence of 1948-1956. In 1964 the group was reorganized as a guerrilla organisation and in 1966 adopted the name FARC. In 1982 it began to increase the regional scope and intensity of operations, expanding from presence in 6 departments to a total of 17 departments with 38 fronts by the end of the 1980s. Its biggest economic and military expansion took place towards the middle of the 1990s when they became involved in drug trafficking and initiated widespread use of kidnapping to provide financing. They changed their military strategy and began a “war of positions” in which they forced the police out of 15% of the municipalities and inflicted a series of decisive defeats on State security forces. By 2000, the FARC had 66 organised fronts and an estimated 17,000 members operating in all areas of the country. The FARC is present in all regions of the country and exercises *de facto* control over extensive areas for prolonged periods of time.

12. In 1998, the government and the FARC-EP began negotiations in a demilitarized zone (DMZ) of 42,000 square kilometres known as the “*Zona de Despeje*”<sup>16</sup>. Lack of clear “rules of the game” in the negotiations, an increase of guerrilla actions, especially kidnapping from the DMZ, made negotiations impossible and they were broken off in February 2002. This period of negotiations was used by both the FARC and the Government to strengthen their military forces.

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<sup>13</sup> The history of the *Union Patriótica* is described in the Inter-American Commission on Human Rights decision on admissibility, case no. 11 227 (“the Patriotic Union case”), available at [www.cidh.org](http://www.cidh.org).

<sup>14</sup> US Department of State, *Country Report on Human Rights Practices 2003*, February 25 2004, Section 1 (a). In Chapter IX of its *Third Report on the Human Rights Situation in Colombia* of 1999, the Inter-American Commission on Human Rights indicated that “the Office of the High Commissioner for Human Rights in Colombia noted that political activity in Colombia “is characterized by a high degree of intolerance in relation to opposition parties and movements.” The most dramatic example of violence against alternative political parties is the case of the Patriotic Union political party (“UP”).” The Commission recommended that the “State should take effective measures to ensure that political parties, which serve as an alternative to the two traditional parties, may freely and fully participate in electoral politics.” Available at [www.cidh.org](http://www.cidh.org).

<sup>15</sup> Regarding the guerrillas, see UNDP *National Human Development Report 2003: Solutions to Escape the Conflict’s Impasse*, Ch. 2. On paramilitary links with common crime see International Crisis Group report, *Demobilising the Paramilitaries in Colombia: An Achievable Goal?*, August 2004. The ICG report states at page 8 that paramilitary leaders “have always maintained that the only way to combat the insurgents is to control the drug business” and also notes that “a number of sources show that there is a large presence of drug lords as well as common criminals-turned-paramilitaries at the negotiations”. See also “Revelaciones explosivas”, *Revista Semana* No. 1169, September 27 2004.

<sup>16</sup> The DMZ covered five municipalities: San Vicente del Caguan in the Department of Caquetá and La Macarena, Uribe, Vistahermosa and Mesetas in the Department of Meta.

13. The FARC has employed indiscriminate violence against the population through the use of improvised explosive devices,<sup>17</sup> terrorist bombings directed at civilians in urban areas,<sup>18</sup> antipersonnel mines, massacres, kidnapping, extortion and forced recruitment.<sup>19</sup> These tactics, together with a perceived lack of commitment to a political and social agenda have meant that the FARC now have minimal popular support in Colombia.

14. According to the Government, the increased initiative on the part of the armed forces since 2002 has weakened the offensive capacity of the FARC. Other analysts state that the FARC has opted for a “tactical withdrawal” or “strategic retreat” as the insurgents apparently believe that the State has limited capacity to sustain the high level of military expenditure it has had since 2002.<sup>20</sup> Currently there is no perspective for political negotiations between the Government and the FARC. The only topic of discussion has been the “humanitarian exchange”, in which kidnap victims have been used by the FARC to exert political pressure on the Government.

15. The ELN was created towards the middle of the 1960s by groups influenced by the Cuban revolution and liberation theology but by the early 1970’s it was on the verge of disappearing as a consequence of military operations by the authorities.<sup>21</sup> However, it gained strength during the 1980s through extortion of foreign oil companies. Towards the end of the 1990s it had four fronts which grouped 50 military units (3,500-5,000 combatants) which operated in 23 departments in the country.

16. Unlike the other irregular armed groups, the ELN suffered significant setbacks at the end of the 1990s. Its military strength was reduced as a result of pressure by the paramilitary groups in areas where ELN had influence, such as Magdalena Medio, Eastern Antioquia, and Norte de Santander and by the military retaliation they suffered at the hands of the armed forces after the ELN carried out a series of mass kidnappings. The ELN was also weakened because they did not systematically resort to narcotics trafficking as a source of financing and because the State was able to provide better protection to the oil industry, thereby reducing revenue from extortion.

17. In early 2004 the ELN initiated negotiations with the Government with mediation by Mexico. As of November 2004, however, there have been no clear advances in this process. On the contrary, ELN has announced that it would be willing to coordinate with the FARC-EP to combat the armed forces.

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<sup>17</sup> See the 2004 *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia* (UNHCHR), Annex II, para 18, E/CN.4/2004/13. The FARC continued to make widespread use of means and methods of warfare which violated the principle of distinction between civilians and combatants including frequent attacks with gas cylinder “artillery”. Use of gas cylinders led to the death of at least 117 people in a church in Bojayá, Chocó in May 2002.

<sup>18</sup> See UNHCHR *Report 2004*, Annex II, para. 21. The most serious of these attacks were: the attack on the Club Nogal in Bogotá in May 2003, which killed 36 people, the detonation of a “house bomb” in Neiva intended to kill the president in March 2003 and the letter-bomb attack on the President of the Senate in December 2003.

<sup>19</sup> UNHCHR *Report 2004*, Annex II, paras. 13, 35, 36.

<sup>20</sup> The “strategic retreat” of the FARC was apparently designed to slow down the armed forces and the guerrillas gave up territory but sought to wear down the armed forces over time. See “El repliegue de las FARC: Derrota o estrategia?” *Fundación Seguridad y Democracia* (available at [www.seguridadydemocracia.org](http://www.seguridadydemocracia.org)). Following a series of FARC attacks in January and February 2005 some observers argued that this “strategic retreat” had come to an end, see “Si hay guerra, Señor Presidente”, *Revista Semana* No. 1188, February 7 2005 and “El comienzo del fin del repliegue”, *El Tiempo*, February 10 2005, p. 1-2.

<sup>21</sup> Camilo Echandía, *El conflicto armado y las manifestaciones de violencia en Colombia*, Office of the President of Colombia, 1999.

18. **Paramilitary groups** (or self-defence groups, “*autodefensas*”, as they are frequently referred to in Colombia), were created with the support of landowners and cattle ranchers who had been under pressure from the guerrillas as well as from groups affiliated with narcotics traffickers such as the *Muerte a los Secuestradores* movement (MAS – Death to Kidnappers). As made clear in a 2004 judgement of the Inter-American Court of Human Rights,<sup>22</sup> numerous independent reports<sup>23</sup> and from what the paramilitaries themselves have said, in at least some cases they were given support by the State itself.<sup>24</sup>

19. The first paramilitaries appeared in the Magdalena Medio (Middle Magdalena River region) in the late 1970s and early 1980s. Towards the end of that decade, under the protection of the deceased drug trafficker Rodríguez Gacha (“El Mexicano”), they extended their influence to the south and east as well as to the Atlantic Coast. At the beginning of the 90’s, the alliances created in the context of the fight against Pablo Escobar (head of the Medellín cocaine cartel) and, particularly the links between the group *Perseguidos por Pablo Escobar* (“Los PEPEs” – Those Pursued by Pablo Escobar) and the Cali cocaine cartel, led to the consolidation of the paramilitary groups and the emergence of the leadership of the brothers Fidel and Carlos Castaño who organised the *Autodefensas Campesinas de Córdoba y Urabá* (ACCU – Córdoba y Urabá Peasant Self-Defence Forces). The ACCU became the strongest of the paramilitary groups and acted to expand the paramilitaries throughout Colombian territory.

20. In 1997, a confederation of paramilitary groups called *Autodefensas Unidas de Colombia* (AUC-United Self-Defence Forces of Colombia), was created and consolidated under the command of Carlos Castaño. In mid-2004 the AUC committed to demobilize 15,000 combatants by the end of 2005 and the Government reported that 2,624 had been demobilized during the collective demobilizations at the end of 2004.<sup>25</sup> Total troop strength of the paramilitary groups is unknown but prior to AUC demobilizations estimates generally ranged from 10,000 to 20,000 troops.<sup>26</sup>

21. The paramilitary groups attack what they call the “social roots” of the guerrillas. Their methods of combat have completely disregarded the principle of distinction between combatants and civilians and they have targeted social and community leaders, local public employees, human rights defenders and trade unionists, among others. Attempts to terrorise the population through torture, selective homicide, and massacres have been their principal means of combat. Due to the heinous nature of these tactics, the paramilitaries have been one of the main causes of massive population displacement. Nevertheless, as they widened their area of operations since 1998, they have increasingly fought the guerrillas directly.

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<sup>22</sup> See the Judgement of the Court of July 5 2004 in the Case of 19 Merchants, paragraphs, 84a-84d.

<sup>23</sup> See, for example Inter-American Commission on Human Rights, *Report on Demobilization Process in Colombia*, 13 December 2004, Section III A. The International Crisis Group report *Colombia: Negotiating with the Paramilitaries* of 16 September 2003 states at p. 6 that “Although the origins of the paramilitary groups are diverse, there is a confluence of four factors: (a) Regional elites ready to support them financially and politically; (b) advice or cooperation from the government armed forces; (c) leadership of groups or individuals linked to drug trafficking; and (d) sufficient political and military pressure from the insurgents to maintain a diverse group’s unity”.

<sup>24</sup> In the speech, the Magdalena Medio commander presented at the Congress of the Republic on July 28<sup>th</sup> 2004, he said: “We went to Base Calderón, now the Bárbula battalion, we stated what we wished to do and they helped as with eight shotguns and munitions .... and then on February 18<sup>th</sup> 1978 the now Peasant Self-Defenses of the Magdalena Medio Antioqueño were born.”

<sup>25</sup> See Oficina de Prensa Alto Comisionado para la Paz, “Informe de balance desmovilizaciones colectivas 2004”, January 2005. International Crisis Group provides an overview of the process in its report *Demobilising the Paramilitaries in Colombia: An Achievable Goal?* of 5 August 2004 which states at page 2 that “Just how many fighters would be demobilized as a result of talks remains unclear”.

<sup>26</sup> See International Crisis Group, *Demobilising the Paramilitaries*, n. 7.

22. The paramilitary groups have extended their operations and sought to wrest control of strategic regions and resources from the guerrillas in order to shore up their own sources of revenue and undermine those of the guerrillas. Civilians in these areas have been caught in the middle of this struggle. As controlling territory and resources is often irrelevant without simultaneous control of the population, civilians are at particular risk when one group attempts to take control of a given area. Hence, during 2004 attacks on civilians rose dramatically in such contested areas as the Catatumbo (Norte de Santander), the municipality of Samaná (Caldas) and Eastern Antioquia.

23. In addition to drug revenues, press reports indicate that the paramilitary groups have financed their activities by illicitly diverting funds from the national health care system<sup>27</sup> and from legal economic activities such as production of African Palm.<sup>28</sup> The paramilitary groups have sought to resettle populations which support them to consolidate their control of some zones of the country and have maintained alliances with business interests in some sectors while at the same time usurped the property rights to many internally displaced peasant farmers. Since the mid-1980s there has been constant acquisition of land by narcotics traffickers and paramilitary groups and there are indications that all social strata, from peasant small-holders to large landowners and urban professionals and business people, are affected by the attempts of the paramilitary groups to accumulate land.<sup>29</sup> As the UN High Commissioner for Human Rights notes, death threats continued to be the most frequent means employed by irregular armed groups to forcibly displace civilians and take over properties.<sup>30</sup>

24. The **Government and AUC initiated negotiations** in December 2002 and the AUC agreed to full demobilisation by the end of 2005 in the Santa Fe de Ralito Accord of July 2003. The process has advanced very quickly, but there has been a great deal of criticism regarding its legal basis and transparency. The process has also revealed the divisions within the paramilitary movement.<sup>31</sup> Based on the agreements,<sup>32</sup> the first 870 members of the Cacique Nutibara Block were demobilized in Medellín in December 2003 and on 1 July 2004, a demobilization zone (*Zona de Ubicación*) was established in Tierralta, Córdoba department, under the observation by the Organization of American States. Other zones were established for short periods for concentration and demobilisation of AUC troops, 2,624 of whom were demobilised during November and December 2004.<sup>33</sup>

25. Since the AUC declared a unilateral cease-fire in December 2002, the number of homicides and massacres attributed to them has dropped but there have been widespread violations of the cease-fire.<sup>34</sup> According to a report prepared by the Colombian Defensoría del

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<sup>27</sup> See for example, “Olla podrida en la salud”, *Revista Cambio* No. 584, 6 September 2004, pp. 24-25.

<sup>28</sup> In his speech to the Congress, AUC commander Ernesto Baez stated “the peasant self-defense movement is willing to cooperate with eradication of illegal crops. It will present an integral illegal crop substitution proposal ... In this field our organization has valuable experiences in the development of projects with huge socio-economic impact. Particularly in the south of Bolívar...we are growing more than 400 hectares of African palm which flourish on former coca plots”.

<sup>29</sup> See “Los Señores de la Tierra”, *Revista Semana*, N. 1152, Bogotá, 31 May 2004.

<sup>30</sup> UNHCHR *Report 2004*, Annex II, para. 16.

<sup>31</sup> See International Crisis Group, *Demobilising the Paramilitaries*, pp. 3, 7.

<sup>32</sup> The Santa Fe de Ralito Agreement between the AUC and the Government’s High Commissioner for Peace of July 15 2003; Agreement between the Government of Colombia and the AUC on the demobilisation zone of Tierralta. May 13, 2004.

<sup>33</sup> See Oficina de Prensa Alto Comisionado para la Paz, “Informe de balance desmovilizaciones colectivas 2004”, p. 2.

<sup>34</sup> The Colombian Commission of Jurists reported that the paramilitary groups were responsible for more than 1,895 murders and disappearances of civilians between December 2002 and September 2004 (*Colombia: en contravía de las recomendaciones internacionales sobre derechos humanos, agosto 2002-agosto 2004*, 15

Pueblo (Ombudsman's Office), there is evidence of the paramilitary groups having committed massacres, selective homicides, rapes, torture, sexual violence, forced displacements, and attacks against indigenous peoples in at least 11 regions of the country.<sup>35</sup> There has been a particular prevalence of violence on the Atlantic coast,<sup>36</sup> where the Northern Block operated under the command of Salvatore Mancuso, principal negotiator of the AUC. The most serious recent events were systematic attacks on the indigenous peoples of the Sierra Nevada de Santa Marta, where 44 indigenous Kankuamos were reported killed during 2003 alone.<sup>37</sup>

26. Along with the ceasefire violations, events during 2003 and 2004 highlighted the divisions within the AUC.<sup>38</sup> During late 2003 and early 2004, five regional blocks of the AUC simultaneously fought the Metro Block<sup>39</sup> and its commander was killed in May 2004. Carlos Castaño, the former AUC commander, went missing in April 2004 and his family had to leave the country. The commander of the Centauros Block was killed by members of his organization in September 2004. The *Autodefensas Campesinas del Casanare* (Peasant Self-Defence Forces of Casanare), who are not negotiating with the Government, fought the AUC over the course of 2004. The intensity of combat between paramilitary groups was such that it constituted one of the main causes of internal displacement in 2003. There are indications that these disputes related to control of narcotics trafficking and factional struggles within the AUC regarding the negotiations with the Government. The International Crisis Group indicates that "a number of sources show there is a large presence of drug lords as well as common criminals-turned-paramilitaries at the negotiations",<sup>40</sup> including at least two paramilitary commanders for whom the United States has requested extradition.

27. At the beginning of 2005, the impact of the paramilitary demobilization remained to be seen. As of January 2005 not all groups within the AUC had committed to demobilization (perhaps most notably the Elmer Cardenas Block in Urabá<sup>41</sup>), and some observers questioned whether demobilization of combatants would be sufficient to fully dismantle the paramilitary structures themselves.<sup>42</sup> There were indications that demobilised members of the Cacique Nutibara Block of Medellín continued to exercise social control over certain areas of the city after their demobilisation in December 2003.<sup>43</sup>

28. Finally, there were doubts regarding the process among various sectors of society and the international community stemming from the perceived absence of an adequate legal framework for negotiations and demobilization,<sup>44</sup> lack of transparency regarding the

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October 2004). High ranking members of the Government have publicly recognized the ceasefire violations, see International Crisis Group, *Demobilising the Paramilitaries*, pp. 4-5.

<sup>35</sup> Defensoría del Pueblo, *Seguimiento al cese de hostilidades prometido por las Autodefensas Unidas de Colombia como signo de su voluntad de paz con el país*, September 24, 2004.

<sup>36</sup> Departments of Córdoba, Sucre, Bolívar, Atlántico and Magdalena.

<sup>37</sup> *Informe sobre la Misión a Colombia del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas* (Report of the Special Rapporteur on Indigenous Peoples on his mission to Colombia), 10 November 2004, E/CN.4/2005/88/Add.2, p. 11.

<sup>38</sup> For more information on these divisions see ICG, *Demobilising the Paramilitaries in Colombia*.

<sup>39</sup> See "Cacería" in *Revista Semana* N. 1117. Bogotá. October 6 2003.

<sup>40</sup> International Crisis Group, *Demobilising the Paramilitaries*, p. 8.

<sup>41</sup> Inter-American Commission on Human Rights, *Report on the Demobilization Process*, para. 87.

<sup>42</sup> Human Rights Watch, *Colombia: Letting Paramilitaries off the Hook*, January 2005; p. 3; In a column published in *El Tiempo* on 2 February 2005, Rafael Pardo (a Senator generally supportive of President Uribe), also questioned whether demobilization would lead to full dismantling of paramilitary structures.

<sup>43</sup> International Crisis Group, *Demobilising the Paramilitaries*, pp. 12-13. As to November 2004, 15 of 870 demobilised combatants of the Cacique Nutibara had been murdered.

<sup>44</sup> See Inter-American Commission on Human Rights, *Report on the Demobilization Process*, paras. 96-100; International Crisis Group, *Demobilising the Paramilitaries*, p. 20.

demobilization of 2003<sup>45</sup> and concerns regarding impunity for serious crimes which could jeopardise the sustainability of an eventual negotiated settlement.<sup>46</sup> An eventual rupture in the process would pose a very real danger for the humanitarian situation in Colombia as it could well lead to further polarization, deterioration of the conflict and increased attacks on the civilian population.

29. **Narcotics production and trafficking** have had an enormous impact on the Colombian conflict as evidenced by elevated levels of violence as well as corruption and its destabilizing effect on institutions. Perhaps more importantly, however, the narcotics business has facilitated the growth and consolidation of the guerrilla and paramilitary groups. Indeed, their full involvement in narcotics production and trafficking in the mid-nineties enabled them to dramatically expand their forces and scope of operations.

30. As is shown in a 2004 report of the UN Office on Drugs and Crime (UNODC), there is generally a presence of irregular armed groups in areas of narcotics cultivation.<sup>47</sup> In these areas the armed groups seek to control territory in order to guarantee production levels and they either directly control or regulate production and trafficking, including setting prices and production levels as well as collecting “taxes” on drug production (“*gramaje*”).<sup>48</sup>

31. Growing and bartering of coca has been the very foundation of local economies in some areas controlled by the guerrillas, sometimes for extended periods. The relationship between narcotics production and the irregular armed groups explains the persecution of evangelical groups and others who refuse to participate in drug cultivation, and the phenomenon of confining communities in order to guarantee coca production in production regions (see sections II.4 and III.A below).

32. The fatigue generated by violence, 40 years of internal armed conflict and, in particular, the failed peace process with the FARC-EP, caused the Colombian electorate to rally around the figure of Álvaro Uribe Vélez who holds presidency for the period 2002-2006. Uribe received the highest number of votes in the country’s history (over 5,000,000 votes), and was elected with more than 50% popular support in the first round of the elections of 2002. He has received consistently high popularity ratings during his term in office and a survey in July 2004 revealed that 71% of Colombians would re-elect President Uribe.<sup>49</sup>

33. The central plank of the Uribe Government is the “**Democratic Security Policy**”,<sup>50</sup> the purpose of which is to provide security to all sectors of society, to recover control of the areas under the influence of the irregular armed groups and to consolidate State control of all of Colombian territory. The strategy aims to strengthen the effectiveness of the army, strangle the sources of financing of the irregular armed groups and develop closer cooperation between the population and the authorities.<sup>51</sup> Given the importance of the cooperation of the

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<sup>45</sup> In recordings of talks between the AUC and the Government, the High Commissioner of Peace is heard stating that the demobilization of the Cacique Nutibara Block included common criminals who had been recruited by the AUC only days before. See “Revelaciones Explosivas” *Revista Semana* N. 1169, September 27 2004.

<sup>46</sup> For example Human Rights Watch, “Colombia: Letting Paramilitaries off the Hook”, January 2005, pp. 1-3.

<sup>47</sup> According to UN Office on Drugs and Crime, *Colombia: Coca Cultivation Survey* (2004) at p. 39, in the 189 municipalities where coca is produced, guerrilla groups are present in 162, paramilitary groups in 86 and three irregular armed groups are present in 43 municipalities.

<sup>48</sup> *Ibid.*

<sup>49</sup> See Gallup Poll published by *Revista Semana* No. 1153, June 7 2004.

<sup>50</sup> Office of the President of the Republic, *Hacia un Estado Comunitario: Plan Nacional de Desarrollo 2002-2006*.

<sup>51</sup> This policy is outlined in the document *Política de defensa y seguridad democrática* published by the Ministry of Defence and Office of the President, 2003.

population for counterinsurgency operations, the Government has instituted a network of paid civilian informants and increased the troop strength of the armed forces with so-called “peasant soldiers” who provide military service in their places or regions of origin.

34. Improving security in order to increase confidence in the State and the economy is a fundamental objective of the Government. The view of the Government is that economic recovery is a prerequisite for the increased social investment that it hopes will overcome poverty and inequality in the country. In sum, improved public security is not only an objective in itself but it is also underpinning economic and social policy.

35. The State attempted to take and consolidate control over oil production regions in order to protect Government tax revenue and limit the capacity of the irregular armed groups to extort the oil companies. Immediately after taking office, the Government adopted measures restricting the exercise of human rights in the so-called “zones of rehabilitation and consolidation” in the departments of Arauca, Sucre and Bolívar.<sup>52</sup> However, these measures were declared unconstitutional by the Constitutional Court in April 2003 and in 2004 these areas continued to be characterised by high levels of violence and, in the case of Arauca, by a deterioration of the humanitarian situation.<sup>53</sup>

36. **Efforts to combat production and trafficking of narcotics** were stepped up. The estimated total area under cultivation was reduced from 163,000 hectares in 2000 to 86,000 in 2003. One of the factors which, according to the report by the UNODC, most influenced this result was aerial spraying using the herbicide Roundup. In 2003, 133,000 hectares<sup>54</sup> were sprayed. However, the same report revealed that coca was being grown in a greater number of departments than was previously the case and that the size of the plots had been reduced, thereby hindering eradication efforts. Due to the relationship between the cultivation of illicit crops and the irregular armed groups, this has intensified the conflict in zones that were not previously affected such as the departments of the coffee belt (*Eje Cafetero*), and in particular the department of Caldas.<sup>55</sup> The State crackdown on drug cartels and the resulting formation of smaller “baby” drug cartels combined with the fact that numerous traffickers provided information to authorities on activities of the cartels led to vendettas between drug gangs in departments such as the Valle del Cauca.

37. The Government increased the operational capacity of the armed forces and police by incorporating 66,000 new troops and police officers, and by October 2004 total strength of the armed forces and police was 362,634.<sup>56</sup>

38. Using approximately 17,000 troops, the armed forces launched the “*Plan Patriota*” (“Patriot Plan”), which is the biggest military operation ever carried out in the south of the country. The operation aims to attack the FARC in its traditional strongholds, cut off sources of supplies and financing and block transportation routes in an area of 74,000 Km<sup>2</sup> in the depths of the Amazon jungle in the departments of Caquetá, Meta and Guaviare.

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<sup>52</sup> When Álvaro Uribe took office on August 7, 2002, the FARC used mortars to attack the Presidential Palace causing 12 deaths. The Government subsequently declared a state of “internal upheaval” (Decree 1837 August 11, 2002). One of the measures adopted was the creation of “consolidation and rehabilitation zones” in three strategic departments in which oil is produced and transported: Sucre, Bolívar and Arauca.

<sup>53</sup> See the UNHCHR, “Una visión internacional sobre las zonas de rehabilitación y consolidación”, presentation delivered at the IV Encuentro Región Caribe de de Paz, Sincelejo, 25 July 2003.

<sup>54</sup> UNODC, *Coca Cultivation Survey*, 2004, pp. 50-53.

<sup>55</sup> In 1999 narcotics were cultivated in 12 departments while in 2003 they were grown in 23 departments. See *Ibid.*, p. 15.

<sup>56</sup> Ministry of National Defense document *Incremento de pie de Fuerza, Fuerza Pública*.

39. Two years into the term of the Uribe administration, the results of its Democratic Security Policy were evident. Key sectors of society had greater trust in State institutions, the economy was recovering, the State had re-established presence in all municipalities, official statistics indicated a reduction in levels of violence and the guerrillas had retreated in the face of the military superiority of the armed forces.<sup>57</sup> Nonetheless, as stated by the Office of the UN High Commissioner for Human Rights, “some regions with a greater presence of the Security Forces continued to suffer from serious problems of governability and public order”.<sup>58</sup> Significantly, while the police were present in all municipal centres, in many areas of the country their ability to operate in rural areas was severely limited. As well, the Democratic Security Strategy has created risks for the civilian population by, for example, increasing involvement of civilians in the conflict.<sup>59</sup> Various international bodies also expressed their concern regarding the polarising impact of a series of Government statements to the effect that human rights defenders were terrorists, as this put their security at risk and affected freedom of speech.<sup>60</sup>

40. **Mass detentions**<sup>61</sup> of persons allegedly linked with the guerrillas generated wide controversy, especially because of the meagre evidence provided and the practice of parading accused persons before the media in disregard of the principle of presumption of innocence. This practice also led to identification of these detainees with specific armed groups.<sup>62</sup> There is evidence that following release some of these persons were killed.<sup>63</sup>

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<sup>57</sup> The unemployment rate dropped from 15.3% to 13.6%; health coverage of households with unsatisfied basic needs increased from 65.8% to 81.6%; GDP increased by 3.85% in 2003 as opposed to 1.75% in 2002; the Government deficit fell from -3,5% to 2,7% of GDP; the coverage of armed forces and police in municipal centres rose from 931 municipalities to 1098 (100% of the country). Office of the President, *Report to Congress 2004*, July 20 2004.

<sup>58</sup> UNHCHR *Report 2004*, p. 3.

<sup>59</sup> The involvement of civilians through the informants network and “peasant soldier” programme are two prominent examples. The UN Committee against Torture (CAT) expressed its concern that the peasant soldier programme created greater risks for both the peasant soldiers and their communities. See *Concluding Observations* of 4 February 2004, CAT/C/CR/31/1 at paragraph 8a.

<sup>60</sup> See UN Human Rights Committee, *Concluding Observations* of 26 May 2004, CCPR/CO/80/COL at para. 18; UNHCHR *Report 2004* at para. 88. According to the US State Department *Country Report on Human Rights Practices in 2003*, “On September 9 (2003), in a national televised speech, President Uribe harshly criticised unspecified NGOs for masking a political – and even terrorist – agenda behind the shield of defending human rights. Human rights groups reacted strongly to the President’s criticisms, noting that accusations of guerrilla collaboration could expose them to violent reprisals.” Such criticism increased the stigmatisation of NGOs as organisations with “leftist” tendencies, exposing human rights activists to accusations of being supporters to guerrilla groups and to consequent and almost unavoidable persecution.

<sup>61</sup> See U.S. Department of State *Country Report 2003*, Section 1 (d). According to the Colombian Commission of Jurists there was a notable increase in arbitrary detentions, with at least 4362 between July 2002 and June 2003 versus 2869 in the period July 1996-July 2002. See *Colombia: En contravía de las recomendaciones internacionales sobre derechos humanos*, August 2004. The UNHCHR “recorded an increase in complaints of violations of the right to individual freedom due to arbitrary arrests perpetrated by State authorities. Several of these violations occurred under the security policy through the practice of mass arrests, detentions without a warrant by police and military forces, or with irregular warrants, as some people deprived of their liberty were not previously identified, or for being based on descriptions provided by hooded informers or intelligence reports (...) Additionally, the office in Colombia received complaints of cases where warrants for arrest were issued after the detainees had been singled out by former guerrillas reintegrated into civilian life.” UNHCHR *Report 2004*, paras. 74-75. The UNHCHR 2004 *Report* also noted at para. 89 that “members of NGOs and social trade union leaders were subject to arbitrary arrest and accused of rebellion. At the moment of their arrest, several of them were under the protection of precautionary measures requested by the Inter-American Commission on Human Rights (CIDH) and were benefiting from the protection programme of the Ministry of Justice and Interior.”

<sup>62</sup> The case of Rina Bolaños exemplifies the manner in which a detention may be based on doubtful evidence provided by demobilised combatants. Ms. Bolaños was a nurse who was kidnapped by the FARC in 2003.

41. The practice of carrying out detentions based on information provided by demobilised combatants participating in the reinsertion programme was the subject of concern as combatants who turn themselves in to authorities have both legal and economic incentives to denounce third parties and may seek to plea bargain using false information to obtain reduced sentences. According to the Procurator-General's Office, during 2003 some 1,957 persons were detained in mass operations and 40% were later set free for lack of evidence.<sup>64</sup> The report of the Working Group on Women and Armed Conflict complements this information by highlighting that following 16 months of mass operations only 53 of the persons detained in these operations had been put on trial.<sup>65</sup>

42. The long-term sustainability of the measures adopted under the Democratic Security Policy may also be in question. For some observers, time is against the authorities because in order to force the guerrillas to negotiate, high levels of military expenditure and other investment are required over a prolonged period and Colombian society may not be willing to stomach the cost. Apparently, the strategic withdrawal of the FARC-EP is based on the knowledge that the efforts of the State during 2002-2004 cannot be sustained indefinitely.<sup>66</sup>

43. Conscious of these limitations, the Government, albeit with limited success, has adopted a number of measures intended to broaden the powers of the Executive. In 2002 it decreed a State of Internal Commotion (creating the areas of Rehabilitation and Consolidation), but the Constitutional Court declared this measure unconstitutional. In 2003 Congress approved a constitutional reform that granted judicial powers to the police and the armed forces but the Constitutional Court determined that due to procedural irregularities it was unconstitutional. With the goal of enacting fiscal and other reforms, the Government held a referendum but it did not reach the minimum number of votes required for amendment of the Constitution. To strengthen the power of the presidency, the Government attempted to reduce the powers of the Constitutional Court by restricting its role in reviewing constitutional reforms and limiting the possibility of persons to present "*tutela*" petitions (*tutela* is a simple, rapid remedy to protect constitutional rights), in cases of violations of economic, social and cultural rights. On 1 December 2004, a constitutional reform eliminating the one-term limit on presidential office was approved by Congress.

### **3. Indices of Violence, Violations of Human Rights and International Humanitarian Law**

44. In mid-2004, two years into the Presidency of Álvaro Uribe Vélez, there had been significant reductions in violent crime, human rights violations and breaches of international

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Following release she reported the kidnapping to the authorities and also reported that she had been raped by the local FARC commander. Subsequently, however, the FARC commander turned himself in to authorities through the reinsertion programme and denounced Bolaños as a guerrilla. She was accused of rebellion and detained before being exonerated in 2004. See Amnesty International, *Colombia: Scarred Bodies, Hidden Crimes – Sexual Violence against Women in the Armed Conflict*, October 2004, p. 35 and the 2004 report of the Working Group on Women and Armed Conflict, *Informe sobre violencia socio-política contra mujeres, jóvenes y niñas en Colombia: Enero 2003-junio 2004*, pp. 49-62. Available at [www.mujieryconflictoarmado.com](http://www.mujieryconflictoarmado.com).

<sup>63</sup> For example, in June 2004 university professor Alvaro Correa de Andreis was detained on the basis of information provided by demobilised guerrillas alleging that he was affiliated with the FARC. He was quickly released for lack of evidence but was murdered, together with his bodyguard, in the centre of Barranquilla in September 2004.

<sup>64</sup> Office of the Procurator-General of Colombia, *Informe de capturas masivas periodo 2003- 2004*, February 2004.

<sup>65</sup> 2004 Report of the Working Group on Women and Armed Conflict, p. 53.

<sup>66</sup> See for example Fundación Seguridad y Democracia, *El gasto en seguridad y defensa en Colombia: De la contención a la ofensiva*, November 2004.

humanitarian law from the record levels of 2002. Nonetheless, the situation remained critical.<sup>67</sup> The year 2002 witnessed extremely high levels of violence and violations of human rights and international humanitarian law. The escalation of violence during 2002 can partly be explained by the failure of the peace negotiations with the FARC-EP and the reaction of the guerrillas to the inauguration of the new Government. Nevertheless, the change of strategy by the Armed Forces and, especially, by the irregular armed groups led to an overall reduction of levels of violence involving the civilian population during 2003 and 2004. The strategic withdrawal of the FARC and, to a lesser extent, the reduction in attacks on the civilian population by the paramilitaries as a result of the “unilateral ceasefire” declared in December of 2002, are two of the factors underlying this decrease in levels of violence.

45. **Right to Life.** From 1994 to 2004 273,600 people were murdered in Colombia.<sup>68</sup> Official statistics indicate that there were 20,011 homicides during 2004 (approximately 44 per 100,000 inhabitants<sup>69</sup>), a decrease of 15% in comparison with 2003.<sup>70</sup> However, during the first two years of the current administration (August 2002-August 2004), there were more homicides than in the last two years of President Pastrana’s term in office.<sup>71</sup> This is explained by the high number of violent deaths (28,837), in 2002, a number without precedent in Colombia’s violent history.

46. The dynamics of the conflict explain to a great extent the variation of homicides in the country. In 2004, the departments where homicide rates had increased coincided with those where fighting occurred between paramilitary groups. Such is the case of Casanare department where the homicide rate increased by 90% in the first semester of the year and the department of Meta where murders increased by 44% during the same period. The human rights situation also deteriorated on the Atlantic Coast and in the departments of Atlantico and Guajira there were increases of 21 and 28%, respectively, in homicide rates during the first half of 2004.<sup>72</sup> In both of these departments the AUC was attempting to assert and consolidate its control during 2003 and 2004.

47. Conversely, homicide rates dropped dramatically in some departments and regions where one armed group had achieved hegemony, such as the city of Medellin which was no longer under dispute by 2003. It should be noted, however, that such improvements have not necessarily been accompanied by a drop in persecution against groups at risk. For example, while the overall murder rate dropped in Medellin, there was evidence that of “a higher degree of persecution against women leaders and [that] the murder rate for women has increased”.<sup>73</sup>

48. Homicide rates were also affected by conflicts between drug traffickers in some regions. During 2004 the highest number of homicides occurred in Valle del Cauca where 2,108

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<sup>67</sup> See UNHCHR *Report 2004*, Executive Summary.

<sup>68</sup> Data of the National Police and the Office of the Vice-President, *Boletín de Derechos Humanos del Observatorio de Derechos Humanos*, September 2004. Available at [www.derechoshumanos.gov.co](http://www.derechoshumanos.gov.co).

<sup>69</sup> The homicide rate declined from significantly: in 2003 it stood at 51.9 per 100,000 inhabitants and in 2002 at 65.7 per 100,000 (see Fundación Seguridad y Democracia, *Colombia: Balance de seguridad 2004*). Nonetheless, even 44 per 100,000 inhabitants is high, taking into account that the worldwide average for 2000 was 8.8 per 100,000 inhabitants. See World Health Organisation, *World report on violence and health* at p. 274. Available at [www.who.int](http://www.who.int).

<sup>70</sup> See Ministry of Defense press release, “Disminución sin antecedentes de principales índices de violencia”, 1 February 2004. Available at <http://alpha.mindefensa.gov.co>.

<sup>71</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Situación de Derechos Humanos en Colombia: Algunos indicadores de dos años de Gobierno*, August 2004.

<sup>72</sup> Office of the Vice-President, *Boletín de Derechos Humanos del Observatorio de Derechos Humanos*, September 2004.

<sup>73</sup> International Crisis Group, *Demobilising the Paramilitaries*, p. 13.

people were murdered between January and September, many in relation to clashes between drug traffickers.

49. The number of **massacres**<sup>74</sup> decreased significantly and the number of victims decreased to 403 in 2003 from 1,403 in 2000.<sup>75</sup> In the nine months to September 2004 there were 211 individuals killed during 38 documented massacres, a reduction of 45% in comparison with the same period the previous year.<sup>76</sup> At the same time however, “the paramilitaries and, increasingly, the guerrillas continued to make use of selective homicides and social cleansing as a military strategy.”<sup>77</sup> It appears that the irregular armed groups changed their tactics in order to avoid the high political costs of massacring civilians yet at the same time continue to intimidate and control the civilian population. There was a notable drop in the number of massacres attributed to the paramilitary groups which had been responsible for most massacres over the period 1994-2004. Another significant change was that the FARC was responsible for the majority of the massacres carried out. This can partly be explained by the attempt of the FARC to exercise control over populations which it believed prone to cooperating with State authorities or with the paramilitary groups.

50. The number of **forced disappearances** continued to increase. Whereas in 2002 there were a reported 3,255 outstanding cases, in 2003 there were 3,886, a rise of 20%.<sup>78</sup> As of November 2004, the fate of 2,000 of these persons remained unclear. According to the Association of Family Members of Disappeared Detainees, ASFADDES, 1,188 persons working for social organizations disappeared in 2003. The United Nations Working Group on Enforced or Involuntary Disappearances expressed its concern over the situation in Colombia, particularly with respect to the fate of more than 890 disappeared persons.<sup>79</sup> Seemingly, some of the cases which occurred in 2003 and 2004, particularly in slums of large cities and department such as Casanare and Meta, were linked to forced recruitment carried out by irregular armed groups.<sup>80</sup> The Office of the UN High Commissioner for Human Rights noted that paramilitary groups were the principal perpetrators but also indicated that complaints received “involve geographical areas where the security forces were widely present and in control and where tolerance and complicity of public servants with respect to paramilitary activities was reported”.<sup>81</sup>

51. **Sexual and gender-based violence** continued to be a significant problem in the context of the armed conflict and in Colombian society generally. Upon reviewing the State Report of Colombia, the UN Human Rights Committee indicated that it “reiterates its concern about the high levels of violence to which women are subjected. The Committee is particularly disturbed about the limited number of investigations into cases of domestic violence and sexual violence experienced by women during the internal conflict and by internally displaced women”.<sup>82</sup>

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<sup>74</sup> Massacre is understood as the (nearly) simultaneous killing of three or more persons not actively participating in hostilities at a single location or several nearby locations.

<sup>75</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores comparados sobre la situación de los derechos humanos en Colombia*, September 2004.

<sup>76</sup> Defensoría del Pueblo, *Resolución Defensorial 027 Sobre la problemática de la desaparición forzada en Colombia*, May 12 2003.

<sup>77</sup> UNHCHR *Report 2004*, Annex II, para. 14.

<sup>78</sup> Cited in “Un crimen silencioso”, *Revista Semana* No. 1666, 6 September 2004.

<sup>79</sup> United Nations News Service, “On International Day of Disappeared, the UN Human Rights Working Group Expresses Serious Concern”, 30 August 2004.

<sup>80</sup> “Un crimen silencioso”, *Revista Semana* No. 1666, September 6 2004.

<sup>81</sup> UNHCHR *Report 2004*, para. 73.

<sup>82</sup> UN Human Rights Committee, *Concluding Observations 2004*, para. 14.

52. Amnesty International confirms that “violence against women in the context of the armed conflict is widespread. All the armed groups – the security forces, paramilitaries and the guerrilla – have sexually abused or exploited women, either civilians or their own combatants”.<sup>83</sup> Abuse and exploitation include rape and sexual enslavement and in the case of the guerrillas specifically, compulsory use of contraceptives and forced abortion.<sup>84</sup> Judicial underreporting of sexual crimes persists, because the women tend not to denounce them out of fear, modesty or mistrust of the judicial system. Amnesty International also notes that “survivors can find it very difficult to obtain medical assistance, emergency treatment and support measures.”<sup>85</sup>

53. **Kidnappings and extortion** are practiced in all regions of the country and carried out by irregular armed groups but also by criminal gangs, including some State agents, who act for purely financial reasons.<sup>86</sup> Criminal gangs frequently sell the individuals that they have kidnapped to the irregular armed groups to avoid costs and to guarantee payment.

54. The practice of kidnapping decreased as a result of the policies adopted by the government and in particular by controlling the roads in order to impede mass kidnappings. Mass kidnappings accounted for 30% of the total number of kidnappings in 2002. Between 2002 and 2003 there was a 24% reduction in the total number of kidnappings with a further reduction of 42% in the first 10 months of 2004 over the same period in 2003.<sup>87</sup> Much of the reduction was due to the almost complete disappearance of the practice of mass kidnapping known as the “*pesca milagrosa*” (“the Miraculous Catch”) and the number of individual kidnappings remained high.<sup>88</sup> Moreover, once a person is identified as a potential victim for kidnapping, the possibilities of obtaining protection are limited. Fundación País Libre, a Colombian organisation which works with victims, reported that while kidnappings were down, there was a clear upward trend in reports of extortion which increased from 1761 cases in 2002 to 2271 cases in 2003.<sup>89</sup> During the first nine months of 2004 there were a reported 1713 cases, roughly the same number as all of 2002 but a reduction of 9% over the same period in 2003.

55. It should be noted that the possession of wealth is not the only factor in selection of victims and kidnapping and extortion affect virtually all groups in society. Moreover, the actions taken by agents of persecution do not follow a single pattern of behaviour.

56. Within the context of the armed conflict, such practices are generally used as:

- A form of social control over the populations of territories under influence of the irregular armed groups, as well as a mechanism of consolidation of that control in a determined area, be it rural or urban;
- An instrument of persecution against persons who have supported, or are suspected of having supported or sympathize with a rival or “enemy” group in the conflict;
- A means of financing the activities of the irregular armed groups.

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<sup>83</sup> Amnesty International, *Colombia: Scarred Bodies*, p. 3.

<sup>84</sup> UNHCHR *Report* 2004, paras. 94-95. Amnesty International, “Colombia: Scarred Bodies”, pp. 26-27.

<sup>85</sup> Amnesty International, *Colombia: Scarred Bodies* p. 4.

<sup>86</sup> See U.S. Department of State *Country Report 2003*, Section 1 (b). According to Fundación País Libre, during 2003 46.11% of kidnappings were committed by the guerrillas, 7.56% by paramilitaries, 18.29% by common criminals and 28.03% by unidentified authors. Statistics at [www.paislibre.org](http://www.paislibre.org).

<sup>87</sup> According to Government statistics the number of reported kidnappings dropped from 2986 to 2200 between 2002 and 2003 with a further drop to 1159 during the period January-October 2004 as compared to 2003 kidnappings during the same period of 2003. See data of Fondelibertad at [www.antisecuestro.gov.co](http://www.antisecuestro.gov.co).

<sup>88</sup> *Ibid.*

<sup>89</sup> In comparison, there were 1558 cases reported in 1998. See [www.paislibre.org](http://www.paislibre.org) and “País Libre en cruzada contra la extorsión”, *El Tiempo*, 8 November 2004 p. 1-3.

57. Given the above, much of the Colombian population is a potential victim of these kidnapping and extortion. However, certain persons may be at greater risk than others and they include land/property owners (given the strategic importance that land has for the irregular armed groups), wealthy citizens and persons who have to travel within areas particularly affected by the conflict. Extortion is in use in both the rural and urban environments and potential victims include cattle ranchers, land owners (regardless of the size of the property), truck drivers, itinerant merchants and independent professionals.<sup>90</sup> Most agents of persecution have the capacity to collect detailed information on their potential victims, including by using data provided illegally by employees of public and private sector institutions such as banks.

58. Any act of extortion carries with it a threat to life, security and personal freedom. The irregular armed groups have the capacity to track down victims throughout Colombia and, indeed, they have done so frequently in the past. Such threats target families as a whole. Moreover, individuals and their families may even be subject to extortion by different groups simultaneously. The payment demanded is not necessarily within the financial capacity of the victim, and compliance with demands does not always mean that the ordeal ends. To the contrary, extortionists frequently make additional demands and the victim usually continues to fear the repetition of the crime and will continue to live without effective means of protection against it.

59. Victims are often treated with terrible cruelty by agents of persecution, especially in the event that they try to escape. This appears to be explained by the persecutors' belief that such actions give credibility to their threats and it is also seen as a form of retaliation or revenge against those victims who dare to challenge them. Due to the importance of this practice as a war strategy and to the degradation of the conflict, stopping or refusing to make payment is usually seen by the persecutors as proof of political opposition.<sup>91</sup> Furthermore, payment often stigmatizes the victim who is not seen as a victim but as a collaborator. This can provoke further extortion or kidnapping by other armed groups and new attempts against the life, freedom, integrity or security of the victims.

60. Once a person has been identified as a potential victim or has been kidnapped or become a victim of extortion, the possibility of obtaining protection is limited. Corruption is widespread in different sectors of society, including authorities as well as commercial and financial sectors. The risk of violence or even death increases if the victims do not provide ransom on time. Due to fear and the fact that adequate protection is not available, family members or relatives often refrain from reporting cases to the authorities. Equally, kidnapped persons liberated through rescue operations of the authorities run a high risk of being located again.

61. The risk involved in kidnappings and extortion is not limited to the victim and the entire family of the victim is also at risk. Moreover, the number of kidnappings of children under 18 has increased and represents 50% of known cases. Kidnapping of children is usually done to guarantee the payment or the compliance of the requests dictated by the kidnappers.<sup>92</sup>

62. **Attacks on communications and electricity infrastructure** have been a constant feature of guerrilla strategy and are intended to force the armed forces to divert resources away from other tasks, demonstrate the impact of the conflict on the country and force extortion payments from the major energy companies, among other reasons. The government established an “energy and road” plan to reduce this activity and has succeeded in reducing

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<sup>90</sup> See Table of Victims by profession available at [www.paislibre.org](http://www.paislibre.org).

<sup>91</sup> See *infra*, paragraph 96.

<sup>92</sup> Fundación País Libre, statistics available at [www.paislibre.org](http://www.paislibre.org).

this type of attacks by 44%.<sup>93</sup> Nonetheless, these attacks on infrastructure continue to have a huge impact on the communities in many regions as they are sometimes left isolated and without electricity or running water.

63. While the DMZ was in existence, the strategy of the FARC was to expel the authorities from the urban areas of the municipalities in order to create strategic corridors and establish *de facto* “governmental” control. This led to attacks on 302 municipalities between 1998 and 2002.<sup>94</sup> As the armed forces adapted its structure and operations, especially by strengthening the Air Force and increasing presence throughout the country, these attacks diminished. In 2003, 5 municipal centres were attacked and a further 11 were attacked during the first 9 months of 2004.<sup>95</sup>

64. In 2002 FARC increasingly resorted to indiscriminate bomb attacks on the civilian population. Animals, vehicles and houses were rigged with explosives as were persons who were unaware that they were carrying bombs. After the attack on Club El Nogal in Bogota in February 2003, it was thought that the country was entering a new stage of the insurgency. Although there continued to be an alarming number of attacks in 2004, there was a significant reduction over the previous year with 960 attacks in the first nine months of 2003 compared to 606 in the same period of 2004.<sup>96</sup> Use of such explosive devices and landmines by the FARC was systematic in the rehabilitation and consolidation zones and was intended to slow the advance of the armed forces and counteract their numerical and technical superiority.

65. Colombia has faced a steady escalation in the use of **antipersonnel mines** and the population has also increasingly suffered as a result of accidents involving unexploded ordinance. Whereas in 1990 there were 32 events but no victims, in 2003 the number of victims rose to 393 and the number of incidents involving antipersonnel mines reached 1,277. By November 2004, the number of incidents reached 1,354,<sup>97</sup> a 6% increase over the whole of 2003.

66. Antipersonnel mines were present in 30 of 32 departments<sup>98</sup> but the zones most affected during 2003 and 2004 were principally areas where large-scale military operations were carried out: Antioquia, Cundinamarca, Meta and Caquetá in 2003 and Antioquia, Caquetá, Meta and Arauca in 2004.<sup>99</sup> The FARC-EP is the main group responsible for using antipersonnel mines. In October 2004 the armed forces destroyed their last stocks of antipersonnel mines and Colombia is committed not to produce more in compliance with the Ottawa Convention. The existence of mined areas generated forced displacement and created a risk for IDPs who participated in government-promoted returns.

67. As observed by a number of international bodies, **impunity for violations of human rights and international humanitarian law** continues to plague Colombia. The Office of the High Commissioner for Human Rights noted that during 2003 “measures taken against impunity continued registering few results”<sup>100</sup> while the UN Committee against Torture

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<sup>93</sup> Office of the Vice-President. Observatorio de Derechos Humanos, *Indicadore*, September 2004.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Office of the Vice-President, Observatorio de Minas Antipersonales, [www.derechoshumanos.gov.co](http://www.derechoshumanos.gov.co).

<sup>98</sup> Colombian Campaign against Landmines, *Monitor de Minas Terrestres 2004*, p. 7. Available at [www.colombiasinminas.org](http://www.colombiasinminas.org).

<sup>99</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores*, September 2004.

<sup>100</sup> UNHCHR *Report 2004*, p. 3. It should be noted that State authorities have often proven unable to effectively investigate and prosecute those responsible for a high percentage of violent crimes: According to a study by Mauricio Rubio, during the 1990s less than 6% of murder cases made it to trial and there were convictions in

expressed concern regarding “the climate of impunity that surrounds human rights violations by State security forces and organs”<sup>101</sup> and the UN Human Rights Committee indicated that it was concerned by the absence of sanctions in cases of murders of legislators<sup>102</sup> and adequate investigations into cases of torture, enforced disappearance and summary and arbitrary execution.<sup>103</sup>

68. Several international supervisory bodies also indicated their concern regarding links between elements of the State security forces and paramilitary groups. In May 2004 the UN Human Rights Committee “expresse[d] its concern about links involving extensive violations of articles 6, 7 and 9 of the Covenant<sup>104</sup> between elements of the armed forces and State security forces, on the one hand, and illegal paramilitary groups on the other.”<sup>105</sup> In its 2004 report, the UNHCHR notes numerous reports of prior knowledge and inaction of State security forces of paramilitary operations as well as tolerance and complicity of State agents in extra-judicial executions and enforced disappearances.<sup>106</sup> Such links were not confined to the security forces and in April 2004, for example, it was revealed that the regional office of the Attorney General in Norte de Santander was infiltrated by the AUC.

69. The US Department of State Human Rights Report covering 2003 indicates that “reasons for collaboration or tolerance varied from ideological sympathy and perceived operation exigencies to corruption and participation in illegal paramilitary activities such as drug trafficking. Evidence suggested there were tacit arrangements between local military officers and paramilitary groups in some regions, and some members of the security forces actively assisted paramilitary groups by passing them through roadblocks, sharing intelligence, providing them with weapons and ammunition, and joining their ranks while off duty.”<sup>107</sup> The report notes that impunity in cases of collusion with paramilitary groups remained a problem in 2003.<sup>108</sup>

70. There are indications that the ability of the State to provide protection for all citizens is also hampered by corruption in some State institutions. The Government named a “Czar” to coordinate its anti-corruption programme and has dismissed a number of police, armed forces officials and other officials for corruption. The organisation *Transparencia por Colombia*, the Colombian chapter of Transparency International, reports in its “index of integrity” that 143 of 146 State entities surveyed are at “medium” or “high” risk of corruption with the National Police and the Armed Forces at “medium” and the Prosecutor General’s Office at “high” risk.<sup>109</sup> This risk was illustrated in a series of cases during 2003 and 2004 including a case in which members of the National Police returned two tonnes of cocaine to drug traffickers,

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less than 4% of cases, cited in Eduardo Pizarro Leongómez, *Una democracia asediada: Balance y perspectivas del conflicto armado en Colombia*, Bogota: Norma, 2004, p. 218.

<sup>101</sup> UN Committee against Torture, *Concluding Observations* 2004, para. 9a.

<sup>102</sup> UN Human Rights Committee, *Concluding Observations* 2004, para. 11.

<sup>103</sup> *Ibid.* para. 15.

<sup>104</sup> Article 6 of the International Covenant of Civil and Political Rights protects the right to life, article 7 prohibits torture and other cruel, inhuman or degrading treatment or punishment and article 9 enshrines the right to liberty and security of the person.

<sup>105</sup> UN Human Rights Committee, *Concluding Observations* 2004, para. 12.

<sup>106</sup> UNHCHR *Report* 2004, see in particular paras. 23–24 and 72–73.

<sup>107</sup> U.S. Department of *State Country Report* 2003, Section 1 (g).

<sup>108</sup> *Ibid.* Section 1 (a).

<sup>109</sup> Available at [www.transparenciacolombia.org.co](http://www.transparenciacolombia.org.co). A summary of results is also included in Transparency International’s *Global Corruption Report* which explains that the “overall index score is the average of 16 indicators, most of which are objective measures, with the others reflecting the opinions of a sample of public officials from each institution. The indicators focus on integrity – the measures taken by institutions to prevent and penalise corruption – rather than on the level of corruption.” *Global Corruption Report*, p. 192.

revelations of apparent links of the Attorney General's office with narcotics traffickers,<sup>110</sup> the shoot-out in Guiatarrilla, Nariño between army troops and an anti-kidnapping unit of the National Police in which 7 police and 4 civilians were killed in unclear circumstances.<sup>111</sup>

#### **4. Internal Displacement**

71. Internal displacement is the most serious manifestation of the humanitarian crisis in Colombia. From 1996 to 2004 between 2 and 3 million people were internally displaced.<sup>112</sup> Some IDPs have been forcibly displaced repeatedly as the irregular armed groups have the capacity to locate them even following displacement.<sup>113</sup> There are no reliable statistics on the magnitude of such secondary displacements nor on attacks against IDPs.

72. According to official sources, in 2003, 219,361 persons were internally displaced in Colombia. Both government and non-government sources indicate that new displacement decreased by approximately 50% from 2002 to 2003. At the beginning of 2005 the Government reported a further 37% decline in new displacement in 2004 (137,315 new IDPs in 2004 as opposed to 219,469 in 2003), but also stated that official statistics could be revised upward.<sup>114</sup> According to the civil society organisation CODHES (*Consultorio para los Derechos Humanos y el Desplazamiento*), 287,581 persons were internally displaced during 2004, some 780 persons every day.<sup>115</sup>

73. According to the Government new internal displacement decreased as a result of the Democratic Security Policy and particularly the reduction in homicides, massacres and kidnappings. Undoubtedly, there is a relationship between the decrease in levels of violence and the reduction in new internal displacement as displacement is one response of the population to the violence associated with the armed conflict. However, the decrease in new internal displacement also stems from changes in the dynamics of the conflict, in particular the apparent "strategic retreat" of the FARC, the reduction in violations by the paramilitary groups following the unilateral declaration of a cease-fire in 2002 and the practice of confining communities (see Section II.2 above).

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<sup>110</sup> "En la cuerda floja", *Revista Semana* No. 1146, 1 April 2003.

<sup>111</sup> *El Tiempo*, August 10, 2004, p. 1-4.

<sup>112</sup> As to 31 December 2004 the Government had recognised over 1,575,000 persons as internally displaced (data available at [www.red.gov.co](http://www.red.gov.co)) and indicated in 2002 that at that time there were some 2 million IDPs in total (see for example Office of the President of the Republic, *Hacia un Estado Comunitario: Plan Nacional de Desarrollo 2002-2006*). The NGO CODHES estimated that 3,328,000 persons had been internally displaced between 1985 and September 2004.

<sup>113</sup> As described in a report of the *Defensoría del Pueblo*, the irregular armed groups are present in Colombia's cities and the struggle to control territory and population, particularly in slum areas, has led to the largely "invisible" phenomenon of "intra-urban" displacement. Victims of "intra-urban" displacement included persons who had previously been forcibly displaced from elsewhere in the country and in particular IDP leaders, as well as other community leaders, See Defensoría del Pueblo, *Desplazamiento Intraurbano como consecuencia del conflicto armado en las ciudades*, September 2004, p. 64.

<sup>114</sup> See *El Tiempo*, February 2 2005, p. 1-2. By law IDPs have until one year after the events that gave rise to their displacement to make a declaration before authorities in order to be recognized as IDPs and authorities must thereafter evaluate each declaration and include persons recognized as IDPs in the national registry. As a result, the total number of persons displaced in 2004 was not known at the time of publication of these *Protection Considerations*. It is worth noting, however, that in January 2004 official statistics indicated that 179,000 persons were internally displaced in 2003 but this figure had been revised upward to 219,000 by December 2004.

<sup>115</sup> According to CODHES, new internal displacement during 2004 increased some 38.5% over 2003. See press communique "Conflicto armado y crisis humanitaria sostenida Desplazados en el Limbo" of 1 February 2005 at [www.codhes.org.co](http://www.codhes.org.co).

74. According to official figures, generalized fear among the population due to violence and the presence of irregular armed groups remained the main cause of internal displacement. Between 2000 and 2003, 51% of the internally displaced population stated that they were forcibly displaced by general threats, 25.5% indicated that they were displaced as a result of combat between the parties to the conflict and 12.3% were displaced as a result of individualised threats.<sup>116</sup>

75. As a result of the evolving dynamics of the internal armed conflict, the level of presumed responsibility of each armed group for internal displacement has also shifted. In 2001, responsibility was mainly attributed to the paramilitaries (48.2%) while the guerrillas were believed responsible for 12% of cases and the paramilitaries and guerrillas shared responsibility in 37% of cases. By the end of 2003, guerrilla and paramilitary actions together caused 42% of the internal forced displacement while the paramilitaries were believed responsible for 32.7% of cases (15% less than 2001) and the guerrillas for 22% (8% more than 2001).

76. Another variation in the dynamic of the conflict which accounts for part of the drop in new displacement is the increase in the practice of irregular armed groups of blockading communities. At least since 1999, many communities have been unable to leave their place of residence to seek protection. These communities are affected by a range of situations. While some decide to remain in their place of origin in spite of limited communication with the outside world and the dangers posed by the conflict, other communities are forced to remain by the irregular armed groups. All of these communities experienced food emergencies and had limited access to humanitarian assistance. Many of the communities which have chosen to remain have done so in order to defend their territories, because they have opted to “resist” the effects of the armed conflict by remaining uninvolved in the conflict or because they wish to avoid repeating the hardship encountered during previous internal displacements.

77. The irregular armed groups seek to control the population in order to guarantee a steady supply of provisions and recruits, to permit guerrilla members to “blend in”, and to use as human shields. As well, control of territory and population is required for both lawful and illicit economic activities including drug harvesting and production as well as cultivation of legal crops such as African Palm.

78. During the early part of the 2000s there was a notable increase in the number of localities where armed actors blocked supplies of basic goods such as food, medicine and fuel. According to figures from mid-2004, at least 70 villages in 9 departments<sup>117</sup> were subject to restrictions of this kind. This happened in departments where the conflict had intensified, such as Antioquia, Sucre, Magdalena, la Guajira, Putumayo, Casanare, Guaviare, Caquetá and Meta.<sup>118</sup>

79. Under Colombian law,<sup>119</sup> IDPs must register as such in order to qualify for humanitarian assistance and other benefits. The IDP registration system therefore provides a reliable indication of displacement trends. However, many IDPs do not register and the official IDP statistics therefore tend to underestimate the real number of internally displaced persons. Under-registration of IDPs results from the fear of registering with authorities, the fear of

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<sup>116</sup> *Report of the Social Solidarity Network to Congress*, March 2004. Available at [www.red.gov.co](http://www.red.gov.co).

<sup>117</sup> See *El Tiempo*, 19 September 2004, p. 1-8. It should be noted that there are no reliable statistics establishing the true magnitude of the phenomenon or complete information on the gravity of the conditions faced by these communities and it is therefore difficult to gauge its impact on IDPs and communities at risk of displacement.

<sup>118</sup> *Ibid.*

<sup>119</sup> Decreto 2569 of 2000, Título III.

being forced to return, the apparent increase in unreported displacements between villages and the restrictive criteria for recognition of IDP status.

80. Upon taking office in 2002, the Government set the objective of returning 30,000 internally displaced families by 2006. To October 2004, 14,128 families (59,842 persons) had returned.<sup>120</sup> UNHCR field monitoring of returns indicates that the majority of these persons returned almost immediately after being displaced even though the threats which gave rise to displacement persisted in areas of return. Of the returns monitored by UNHCR, many return areas continued to be under the control of at least one irregular armed group and some 20 cases of homicides of returned IDPs were reported between August 2002 and October 2004. For example, in July in the department of Antioquia the FARC attacked a truck loaded with returning peasants, killing 7 people because they had not given them permission to return.

81. The State provides basic assistance to registered IDPs but most IDPs have yet to achieve a durable solution. As a result of the unstable conditions in return areas and the dynamic nature of the conflict, most returned IDPs cannot be said to have achieved a durable solution. Indeed, an undetermined number of IDP returnees have been forcibly displaced following return. At the end of 2004, the State had yet to design and implement a comprehensive policy on durable solutions that includes not only voluntary return, but also local integration and relocation.

82. As stated by the Constitutional Court of Colombia, the measures taken to address the consequences of forced displacement have been insufficient.<sup>121</sup> In a recent judgement the Constitutional Court declared the existence of an “unconstitutional state of affairs” (“*estado de cosas inconstitucional*”), as a result of multiple and massive violations of the human rights of IDPs, responsibility for which the Court attributed to a wide range of State agencies.<sup>122</sup> In essence, the Constitutional Court found that there had been a system-wide failure to respect, protect and fulfill the rights of internally displaced Colombians and those at risk of displacement. The Court ordered the State to fulfill its obligations towards the internally displaced population by allocating sufficient financial resources to ensure effective enjoyment of basic rights.

### III. GROUPS AT RISK

83. Given the current situation of continued internal armed conflict, massive and widespread human rights abuses and violations of international humanitarian law, a large number of Colombians who flee across international borders continue to require international protection. Many Colombians have a well-founded fear of persecution for reasons set out in Article 1 A (2) of the 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees, and large numbers of Colombians continue to require international protection because their lives, safety or freedom have been threatened by generalised violence or other circumstances which have seriously disturbed public order.<sup>123</sup>

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<sup>120</sup> Social Solidarity Network, Sistema de información, consulted on 28 October 2004. Available at [www.red.gov.co](http://www.red.gov.co)

<sup>121</sup> Constitutional Court of Colombia, Judgement T-025 of February 2004. Available at [www.acnur.org](http://www.acnur.org).

<sup>122</sup> *Ibid.* at Section 7.

<sup>123</sup> In those countries which have adopted the Cartagena Declaration, these persons would fall within the scope of the definition set out in the Declaration. Conclusion III of the 1984 Cartagena Declaration on Refugees proposes for Latin America a broadened definition of “refugee” which, in addition to the persons who fall under the 1951 Convention, would also include those who have fled their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. See Section III.B, below.

84. It is important that decisions on refugee status of Colombian asylum-seekers be taken based on a thorough analysis of all individual circumstances of the case, such as the applicant's personal profile, family, social, political and ethnic background, his or her membership of or real/perceived collaboration with a particular political or social group as well as his or her activities. Against the background of widespread violations of human rights and international humanitarian law, certain groups of persons can be identified as being more frequently targeted than others. For the evaluation of these groups at risk, reliable and up-to-date country of origin information is indispensable.

## ***A. Colombians With a Well-Founded Fear of Persecution***

### **1. Introduction**

85. According to Article 1 A (2) of the 1951 Convention relating to the Status of Refugees, the term refugee shall apply to any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country.” There are thus four main elements to determine in each individual case: (a) well-founded fear (subjective and objective element), (b) persecution, (c) reasons of race, religion, nationality, membership in a particular social group or political opinion, (d) the presence of the person outside the country of origin.<sup>124</sup>

86. For a proper interpretation of Article 1, the size of the group that is affected is not relevant. The fact that whole communities may risk or suffer persecution for Convention related reasons does not undermine the legitimacy of any particular claim. In war or conflict situations, persons may be forced to flee on account of a well-founded fear of persecution for Convention reasons; war and violence are themselves often used as instruments of persecution; they are frequently the means chosen by the persecutors to repress or eliminate specific groups, targeted on account of their (imputed) political opinion or other affiliations.<sup>125</sup>

87. In the context of Colombia, asylum claims referring to generalised violence and insecurity are often lodged by individuals who have survived deliberate attacks, often linked to Convention grounds or indiscriminate violence against civil populations by one of the irregular armed groups, or armed clashes between the parties to the conflict. Other persons have left their community for preventive reasons prior to attacks. Many of the asylum applications made by Colombians that refer to a threat to life, safety or freedom because of generalised violence or massive human rights violations might therefore well fall under the 1951 Convention.

88. With regard to agents of persecution, it is relevant to note that – according to paragraph 65 of the Handbook on Criteria and Procedures for Determining Refugee Status – “persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned (...). Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the

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<sup>124</sup> For further detailed guidance on the criteria, their interpretation and application, reference is made to the following documents, Handbook on Procedures and Criteria Determining Refugee Status, UNHCR, 1979; UNHCR Notes on *Interpreting the Refugee Definition and on Complementary Forms of Protection*, IOM/FOM/38/2001 of 1 May 2001; UNHCR Guidelines on International Protection: “*Internal Flight or Relocation Alternative*” within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees of 23 July 2003.

<sup>125</sup> UNHCR's Note *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees* of April 2001, paragraph 20.

authorities, or if the authorities refuse, or prove unable, to offer effective protection.” In the current context of Colombia, acts by or attributable to the armed actors outlined above may therefore be considered persecution in the meaning of the refugee definition given the inability of the State to provide protection.

89. For the civilian population generally, it is becoming increasingly difficult to remain uninvolved in the conflict. The parties to the conflict need and actively seek the support of the population. Indeed, one of the three “pillars” of the Government’s Democratic Security Policy is to obtain the greatest possible support and participation of the population.<sup>126</sup> The very size of the irregular armed groups and the country-wide scope of their operations, the systematic violation of the basic principles of International Humanitarian Law, the “banalization” of violence and the limited political cost of violations of IHL have all tended to leave the civilian population at the mercy of the irregular armed groups. Given the national presence of the irregular armed groups, the inadequacy of State protection offered and the stigmatisation of persons as opponents based on seemingly innocuous characteristics, victims come from all social strata and regions.

90. The dynamics of the conflict vary by region and evolve rapidly and this renders it difficult to identify set categories of people who are more likely than others to be in need of international protection. However, there are some sectors of the population which are at greater risk than others and these are discussed in this section. The following paragraphs describe profiles of groups of Colombians who could – according to current and available information and assessment by UNHCR and depending on the individual circumstances of their claims – face a risk of persecution on the grounds described in Article 1 A (2) of the 1951 Convention and 1967 Protocol relating to the Status of Refugees. It should be noted that although statistics on past violations of human rights and international humanitarian law violations are provided, the Colombian conflict will continue to evolve rapidly and levels of risk for specific profiles may also vary significantly in the future.

## **2. Actual or Perceived Supporters of Parties to the Conflict**

91. In the context of the extremely polarised situation and political stigmatisation in Colombia, irregular armed groups target anyone considered a supporter of the opposing group irrespective of whether the collaboration is real or perceived, forced or voluntary. It should be noted that in areas controlled by one of the irregular armed groups, civilians are often obliged to support the group in order to avoid persecution. Often the mere place of residence is enough to arouse serious suspicions on the side of one or other of the armed actors. In many regions, the stigmatization is such that inhabitants of rural areas are considered to support the guerrillas while people who live in the towns are assumed to be affiliated with the paramilitaries. Hence, to visit a rural area may be viewed as suspicious by those who control a given town, and vice-versa. Persons who are forcibly displaced may be viewed as collaborators of the group in control of the area from which they fled and may simultaneously be viewed by that group as traitors. Likewise, they may be unable to return because in the eyes of the group in control of their area of origin, they might have been influenced by the other group. Similarly, members of confined communities are often considered to be supporters to the party to the conflict which controls the region and may continue to be viewed as such after the confinement ends.

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<sup>126</sup> The concept of “Democratic Security” might be summed up by the statement: Everyone benefits from democratic security and everyone contributes. For greater detail on the Policy, see the International Crisis Group, *Colombia: President Uribe’s Democratic Security Policy*, 13 November 2003.

92. Individuals who, because of economic activities and social or family ties, travel between areas controlled by different parties to the conflict may be identified with one party or another and for this reason be at risk of persecution. For example, truck and taxi drivers, merchants, rural teachers, street vendors, repair servicemen, healthcare providers including members of medical missions, civil servants and even people with family members living in different areas than themselves, who frequently travel in different regions are often presumed by the irregular armed groups to be conducting information gathering activities for enemy groups.

93. As a result of the dependence of the guerrilla and paramilitary groups on narcotics production and trafficking, they seek to control the population in coca production areas and, particularly, to guarantee a ready supply of labour to harvest coca crops. As a result, those persons who harvest the illegal crops (“*raspachines*”), in areas controlled by one group may be targeted by other groups.<sup>127</sup> It should be noted that these labourers are at the bottom of the drug production chain and many are forced by the armed group to harvest coca.<sup>128</sup>

94. Relatives and companions of members of the parties to the conflict are often targeted by the irregular armed groups, irrespective of their civilian status, on grounds of their kinship and the perception that they have the same political opinion as their relative, that they are informants or simply out of revenge.<sup>129</sup> There is a generalised pattern of violence against women, including rape and sexual slavery, when they have a family member in an opposition group or who fraternize or are believed to have a sentimental relationship with a member of another group.<sup>130</sup>

95. Individuals, and their family members, who resist forced recruitment or desert guerrilla or paramilitary forces are at risk of suffering persecution by the recruiting group, often on grounds of suspected collaboration with the enemy. The opposing group, in turn, does not acknowledge the forced nature of recruitment and thus considers that all conscripts hold the political opinion of their recruiter. Recruitment by irregular armed groups targets not only children and young people, but also anyone able to provide the groups with services or information.

96. Irregular armed actors often kidnap and/or extort persons deemed to hold an opposing political opinion. They also use kidnapping and extortion to finance political / military objectives, targeting anyone seen as a possible source of funds, regardless of the victim’s social status or political activity. Due to the significance of the income derived from ransom and extortion to fund political-military activities, refusal or inability to pay is viewed as an act or indication of political opposition, resulting in persecution and violence. This is reflected in letters written by the irregular armed groups demanding payment of a “war tax” (the so called “*vacuna*”) and a threat to mark victims as a military target upon failure or refusal to pay.

97. Victims of extortion and kidnapping who resort to State security agencies with a request for protection may often be exposed to violent reprisals from irregular armed actors. The submission of official complaints to the police or to the office of the Attorney General (*Fiscalía*) is commonly seen as an act of defiance by irregular armed groups, leading to persecution.

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<sup>127</sup> For example, in June 2004 the FARC massacred 34 “*raspachines*” in the department of Norte de Santander who it accused of harvesting coca for the AUC.

<sup>128</sup> Defensoria del Pueblo, *Resolución Defensorial Nacional No. 028: La crisis cafetera y las fumigaciones en el Departamento de Caldas*, May 21 2003, para. 68.

<sup>129</sup> This has been the case with some rural farm workers (and their families) who serve as “*soldados campesinos*” or peasant soldiers. See Colombian Commission of Jurists, “Seguridad democrática: El traje nuevo de un emperador en ciernes”, presentation delivered at the seminar Sostenibilidad de la política de seguridad democrática en Colombia, Cartagena, 17-19 September 2004, pp. 31-32.

<sup>130</sup> See Amnesty International, *Colombia: Scarred Bodies*, p. 23.

98. Members of State security forces interfering with the illegal activities of irregular armed groups, as well as their families, are also considered to be at particular risk of violent retaliations by irregular armed groups which are under investigation or otherwise affected by law enforcement actions.<sup>131</sup>

### **3. Former Members of Parties to the Conflict**

99. Former members of the guerrilla and paramilitary groups who desert are at risk of persecution, as are their family members. While many deserters participate in the Government's Reinsertion programme (*Programa de Reinserción* – see below), other do not. Desertion is generally considered as treason by the guerrilla movements and is punished by death. Indeed, one means of testing the “courage” of newly recruited combatants is by forcing them to execute accused deserters. As documented by Human Rights Watch, the irregular armed groups may subject children who desert to torture and summary execution.<sup>132</sup> At the same time, beneficiaries of the re-insertion programme have also been targeted by paramilitary attacks, as they are often considered as guerrilla infiltrators and permanent supporters of guerrilla groups

100. Large numbers of combatants captured by State authorities are currently incarcerated and in order to minimise violence between guerrilla and paramilitary groups, they are housed in different sectors (“*patios*”) of detention facilities. A deserter who is detained is therefore a target of both groups: paramilitary deserters are targeted by the guerrillas for their paramilitary past and by their former comrades-in-arms for being traitors and guerrilla deserters targeted by paramilitary detainees and the guerrillas as well. In order to protect deserters, prison authorities have sometimes placed them in solitary confinement which, over a prolonged period, may constitute cruel, inhuman or degrading treatment or punishment.<sup>133</sup>

101. Colombia has a “Reinsertion Programme” which was established in 1991 with the objective of reintegrating demobilised combatants of the M-19, EPL, *Quintín Lame*, the *Corriente de Renovación Socialista* and the *Partido Revolucionario de los Trabajadores*. The programme has assisted individuals who have voluntarily turned themselves in to the authorities. The programme provides for pardons and reduced sentences for political and related offences (with greater reductions for ex-combatants who provide information to the authorities), as well as social and economic benefits including payment of a small stipend, vocational training, small business start-up and job placements.

102. Former conscript or professional soldiers and police, as well as their families, may also be at risk. This is particularly the case with regard to former “peasant soldiers” who as a rule have served in the same zone as they live. Although the “peasant soldier” programme is relatively new (it dates from 2003), there are documented cases of threats and killings of family members of “peasant soldiers”.<sup>134</sup>

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<sup>131</sup> See U.S. Department of State *Country Report 2003*, Section 1 (a) for reference to killings and Section 1 (b) for references to kidnapping.

<sup>132</sup> See the numerous examples in the Human Rights Watch report *You'll Learn not to Cry: Child Combatants in Colombia*, September 2003.

<sup>133</sup> U.S. Department of State *Country Report 2003*, Section 1 (c) indicates that prisons were characterised by corruption, dangerous sanitary and health conditions and that only six facilities met international standards for prison conditions. For additional information on detention conditions see UNHCHR *Report of the Misión Internacional sobre derechos humanos y situación carcelaria*, October 2001, available at [www.acnur.org](http://www.acnur.org). A more recent report of the Defensoría del Pueblo indicates that serious problems persist, see *Análisis sobre el actual hacinamiento carcelario y penitenciario en Colombia – 2003*, available at [www.acnur.org](http://www.acnur.org).

<sup>134</sup> See note 129, *supra*.

#### **4. Municipal and Departmental Authorities and Former Authorities**

103. Threats against local authorities are common and countrywide. The precarious situation of current and former *alcaldes* (mayors), *concejales* (council members) and other municipal authorities is illustrative of the weakness of the state. Between 1993 to September 2004, over 800 mayors, council members and candidates for these offices were murdered.<sup>135</sup> Such attacks tend to rise in electoral periods as the irregular armed groups attempt to either obstruct the elections or to have their preferred candidates elected (and as a result, uncontested elections have become increasingly common in some regions of the country<sup>136</sup>).

104. During several periods since direct municipal elections began in 1986, the FARC have sought to force the State to abandon whole regions of the country by targeting State employees, elected officials and, in many cases, members of their families. Both the guerrillas and the paramilitary groups have also sought to dictate municipal spending, control tenders or levy “taxes” over municipal budgets. In 2002, 246 mayors were threatened and were forced to abandon their municipalities and to work in departmental capitals or in Bogotá. As a result of the return of National Police to all municipal centres, most mayors are now able to work in their municipalities (but may not be able to venture out to rural areas because the irregular armed groups remain in control). Nonetheless, increased police presence is no guarantee against threats by irregular armed actors: During 2004, 3 mayors and 11 former mayors were killed, a marginal increase over the 12 mayors and former mayor murdered in 2003.<sup>137</sup>

#### **5. Persons Involved in the Administration of Justice**

105. Attorneys, judges, public prosecutors, victims, witnesses and other persons who participate in proceedings and investigations related to violations of human rights or humanitarian law, involving members of the public security forces or paramilitary or guerrilla groups, face serious risks. In all such cases, a well-founded fear of persecution on the basis of imputed political opinion should be considered. Investigations into corruption cases and those involving narcotics trafficking carry the same risks and in some cases are similarly linked to the 1951 Convention by virtue of the frequent and direct links between such cases and guerrilla and paramilitary activities. Finally, members of the judiciary face increasing threats from the FARC for the very fact of being public officials (see preceding section). In many cases, the individual concerned is unable to avoid persecution simply by quitting his/her function and relocating elsewhere with a different job.

106. The scope and effectiveness of the Attorney-General’s protection program for victims, witnesses and others involved in criminal proceedings, and for staff of the Attorney General’s Office, is inadequate to protect individuals from threats. Moreover, there are no specific protection programs for judicial officials who do not work for the Attorney General’s Office, such as those who work at the municipal level. The lack of effective protection for this and other groups is reflected by the fact that in some cases the Ministry of the Interior has funded travel outside Colombia.

#### **6. Human Rights Defenders**

107. A large and varied non-governmental human rights community, characterised by a high degree of organisation and co-ordination and using countrywide information networks, is

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<sup>135</sup> Colombian Federation of Municipalities, *Violencia y gestión municipal*, 2003, available at [www.acnur.org](http://www.acnur.org). Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores*, September 2004.

<sup>136</sup> See for example U.S. Department of State *Country Report 2003*, Section 3.

<sup>137</sup> See Ministry of Defense press release, “Disminución sin antecedentes de principales índices de violencia”, 1 February 2004.

active in investigating and reporting violations of human rights and international humanitarian law. Given their perceived or imputed “leftist” tendencies, many human rights organisations are stereotyped as being associated with the guerrillas and are consequently targeted.

108. As a result of the persecution to which they have been subject, the State established a special protection programme which provided support to over 3000 persons linked to human rights organizations between 1999 and 2003.<sup>138</sup> Despite these efforts, the situation of human rights defenders continues to be of concern and there is a pattern of serious abuses against human rights defenders including threats, disappearances, killings and forced displacement, mostly but not exclusively perpetrated by paramilitaries.<sup>139</sup> For example, 33 human rights defenders were killed between August 2002 and August 2004.<sup>140</sup> The UN Committee against Torture expressed its concern regarding allegations and information indicating “widespread, serious attacks on human rights defenders”.<sup>141</sup> The UNHCHR observed, however, that “the dynamics of the armed conflict evidenced a change in the *modus operandi* of the armed groups, particularly the paramilitaries, that makes use of more subtle strategies which have less impact than direct attacks on the defenders’ right to life.”<sup>142</sup> Human rights defenders have also been affected by the policy of mass detentions and the Office of the High Commissioner for Human Rights stated that “members of the NGOs and social and trade union leaders were subject to arbitrary arrest and accused of rebellion”.<sup>143</sup>

109. Tensions between human rights organizations and the Government were palpable during 2003 and 2004 and human rights defenders have been critical of Government measures such as the August 2002 declaration of a “state of internal commotion”, the Antiterrorist Statute (which the Constitutional Court later declared unconstitutional), and the policy of undertaking massive detention operations. Senior Government officials, including the President himself, “questioned the nature of the work of human rights organizations and accused them of being at the service of terrorism”.<sup>144</sup> In May 2004, the UN Human Rights Committee indicated that it “deplores information received regarding actions taken against human rights defenders, including intimidation and verbal and physical attacks originating at the highest political and military levels”.<sup>145</sup>

## 7. Trade Union Leaders

110. Union leaders have often been viewed as sympathizers of the political left and it is therefore not a coincidence that the paramilitary groups are believed responsible for 80% of

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<sup>138</sup> The protection programme of the Ministry of the Interior was established in 1997 to provide protection to human rights defenders, union leaders and members of the *Unión Patriótica* and was later expanded to include journalists, local authorities under threat (mayors, counselors, municipal officials of the Attorney General and Procurator General known as *personeros*), political leaders, civil society leaders and beginning in 2004, IDP leaders as a specific group. The programme evaluates the risks faced by applicants and decides upon the measures to be adopted. Protection measures may include “hard” measures such as security measures in offices, armoured cars, bullet-proof vests, bodyguards and “soft” measures such as communications equipment. In particularly serious cases, the Ministry of Interior may assist in relocating a person within Colombia or evacuating them from the country.

<sup>139</sup> See the paragraphs 34, 38, 39 and 41 of the annual *Report of the UN Special Rapporteur on Human Rights Defenders*, E/CN.4/2004/94 and paragraphs 101-125 of the *Addendum* to that report, E/CN.4/2004/94/Add.3.

<sup>140</sup> Colombian Commission of Jurists, *Colombia: En contravía de las recomendaciones internacionales sobre derechos humanos*, August 2004, p.13.

<sup>141</sup> Committee against Torture, *Concluding Observations*, para. 9.d (iv).

<sup>142</sup> UNHCHR *Report* 2004, para. 86.

<sup>143</sup> *Ibid.* para. 89.

<sup>144</sup> *Ibid.* para. 88.

<sup>145</sup> Human Rights Committee, *Concluding Observation* 2004, para. 18.

murders of union leaders in which the author is known.<sup>146</sup> The stigmatization of union activity has the effect of limiting the right to freedom of association. Although the number of attacks on union leaders has declined between 2000 and 2004, the situation continues to cause alarm and a total of 427 union leaders were killed between 2000 and September 2004, 30 of them during the first ten months of 2004.<sup>147</sup>

111. In its most recent report, the ILO's Committee on Freedom of Association deplored "the extreme gravity" of the situation in Colombia, having received 59 allegations of murders of trade union officials and members in addition to 11 cases previously submitted, bringing to a total of 70 the number of cases of murder in 2003.<sup>148</sup> The Committee of Experts indicates that "violence against trade union members is very intensive" for those who work in the fields of education, the petroleum industry, health services as well as municipal and departmental administrations<sup>149</sup> and it is clear from its report the threats and risks that accompany union activity affect union leaders and members alike. The Committee has also indicated that there exists an "intolerable situation of impunity", which constitutes a serious obstacle to the free exercise of trade union rights.<sup>150</sup>

## **8. Individuals With a High Public/Community Profile**

112. Certain individuals with an important public/community profile related to leadership or community involvement such as priests, teachers and IDP leaders, particularly of indigenous and Afro-Colombian communities, continue to be targeted by all irregular armed groups. Generally, the irregular armed groups do not accept community organization processes unless they are able to dominate them. This is why individuals who exercise leadership roles in civil society are, *per se*, seen either as a threat to a group which seeks to control a community or as overt supporters of the opposing group. Moreover, community leaders may have aroused strong suspicions in the eyes of such actors as a result of having advocated for respect of the rights of the community and for principles of international humanitarian law or promoting the neutrality of their community in relation to armed actors. As a result, hundreds of community leaders have been murdered. The paramilitary groups have claimed that they do not murder peasants, but "guerrillas in civilian cloths" ("*guerrilleros de civil*"), and that their intelligence work has enabled them to identify members of the guerrillas. The guerrillas use the same tactics. To avoid persecution of leaders, some communities have established non-hierarchical models of participation, rotate their leaders or use third party spokespersons

113. Persecution of Catholic parishioners, lay persons and clergy have tended to be more for the leadership role they play in the community or political reasons than for reason of their faith or membership in the church.<sup>151</sup> For example, as a result of human rights activities with

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<sup>146</sup> Office of the Vice-President, *Annual Report on Human Rights and International Humanitarian Law 2003*, p. 94.

<sup>147</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores*, October 2004. Perhaps the most widely reported case during 2004 was that of three union leaders who were killed by army troops in Arauca on 5 August. Two of the three were protected under precautionary measures of the Inter-American Commission of Human Rights. The army initially reported that the three were ELN guerrillas and died in combat but the Attorney General quickly opened an investigation for homicide. See UNHCHR press release of 6 August: "Solicita investigación imparcial, rápida y efectiva por la muerte de tres líderes sociales en Arauca".

<sup>148</sup> ILO, *333rd Report of the Committee on Freedom of Association*, GB.289/9(Part I) 289th Session, March 2004, para. 391a.

<sup>149</sup> *Ibid.* para. 391g.

<sup>150</sup> *Ibid.* para. 391d.

<sup>151</sup> U.S. Department of State *Country Report 2003*, Section 2 (c).

the Social Ministry of the Church (Pastoral Social), some Church members have been accused of having ties with the guerrillas by State agents and, indeed, some representatives of the Church have been formally accused for this reason. Between 1984 and 2002, more than 50 lay workers and clergy were killed, including a Bishop, and a further 17 were kidnapped and 38 threatened.<sup>152</sup> According to Government statistics, 7 priests were killed by irregular armed groups in 2003, three were kidnapped and numerous others threatened.<sup>153</sup>

114. There is evidence of prosecution of evangelical ministers by the guerrillas for opposing recruitment of child soldiers and the cultivation of coca by peasant farmers in, for example, Caqueta and Putumayo departments. The Council of Evangelical Churches reported that 133 ministers were killed between 1992 and 2002 and that 82 of them died between 2000 and 2002,<sup>154</sup> with an additional 40 murdered during 2003, mostly by the FARC.<sup>155</sup>

115. According to the Human Rights Office of the Vice-Presidency, between 2002 and September of 2004 at least 168 teachers were murdered.<sup>156</sup> It should be noted that the situation of teachers deteriorated during the first nine months of 2004 with the number of homicides against members of this group increasing by 40% over the same period of 2003 (homicides increased from 32 to 46). During the first nine months of 2004, 10 teachers were killed and 52 were threatened.<sup>157</sup> The leadership role played by teachers in the community as well as constant travel between rural and urban areas are the two principal factors generating risk. Some persons may be at additional risk because they are active members of a teachers union. As a result of the risks faced, between 1998 and June 2004, 302 teachers received protection through the Ministry of the Interior's Protection Programme.

116. Asylum cases of indigenous leaders are rare, but should be taken extremely seriously. While official statistics are unavailable, according to ONIC (the National Indigenous Organisation of Colombia), from 2002 through the first half of 2003 179 indigenous leaders were murdered.<sup>158</sup> In the report on his visit to Colombia, the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people indicates that this violence is directed against indigenous leaders and spokespersons but also traditional authorities and that these homicides appear to form part of strategies designed to decapitate and disorganise indigenous communities.<sup>159</sup> The Office of the High Commissioner for Human Rights observed that violence against indigenous and Afro-Colombian traditional authorities increased during 2003.<sup>160</sup>

117. Indigenous leaders play crucial religious as well as cultural roles in their communities. Thus, asylum is usually viewed as the last resort for indigenous leaders as it means renouncing their position and identity as leader, and breaking with their community. For them to leave their territories and communities has a tremendous impact on the social fabric of their community and a deep psychological impact on themselves as well.

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<sup>152</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Boletín No. 24*, November 2002.

<sup>153</sup> U.S. Department of State *Country Report 2003*, Section 2 (c).

<sup>154</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Boletín No. 24*, November 2002.

<sup>155</sup> U.S. Department of State *Country Report 2003*, Section 2 (c)

<sup>156</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Annual Report 2003*, p. 95; *Indicadores*, September 2004.

<sup>157</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Indicadores*, September 2004.

<sup>158</sup> *Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 24 February 2004, E/CN.4/2004/18/Add.3.

<sup>159</sup> *Report of the Special Rapporteur on Indigenous Peoples on his mission to Colombia*, 10 November 2004, E/CN.4/2005/88/Add.2, para 29.

<sup>160</sup> UNHCHR *Report 2004*, para. 91.

118. As regards women community leaders, the UN High Commissioner for Human Rights reported in 2004 that “the illegal armed groups continue exercising social pressure on women aimed at weakening their organisational process and their participation in public activities. In the face of this situation, effective responses provided by the State are insufficient in terms of the protection, prevention, investigation and punishment of these acts.”<sup>161</sup> For example, between 2002 and 2004 two members of the NGO *Organización Feminina Popular* of the Middle Magdalena River region were murdered, another was kidnapped, ill-treated and later released and other members of the organization received death threats.

119. IDP leaders face threats against their lives as a result of the often high profile leadership they exercise (in the Municipal Committees for assistance to IDPs, for example). Numerous murders and disappearances of IDP leaders have taken place such as in February 2004 when two leaders were killed in Urabá.<sup>162</sup> Nonetheless, there are no precise figures on the human rights situation of IDP leaders. Given the seriousness of the situation and the increase of requests of specific measures to protect the life and integrity of these leaders, in 2004 the Ministry of Interior created a commission within its Protection Program to attend cases of IDP organizations.

## 9. Journalists

120. According to the UNHCHR, “the situation of journalists continued to be precarious, with limited space for free and independent exercise of their profession and the freedom of opinion, expression and information”.<sup>163</sup> Journalists in all media, at the national, regional and local level, have a key function within Colombian society insofar as they shape public opinion on the conflict, investigate and denounce corruption and narcotics cases, and expose violations of international humanitarian law committed by the parties to the conflict. This role has exposed journalists who cover stories counter to the interests of guerrillas, paramilitaries, and drug traffickers, to intimidation, threats, kidnapping and murder, primarily by paramilitary groups and guerrillas on grounds of real or imputed political opinion.<sup>164</sup>

121. The Colombian Fundación Libertad de Prensa indicates that reporting on corruption, in particular, has motivated numerous acts of persecution against journalists. In some cases, authorities who are being investigated by the media for corruption may seek the support of irregular armed groups to act against journalists to stop their investigations or to seek revenge for stories already published.<sup>165</sup>

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<sup>161</sup> UNHCHR *Report 2004*, para. 94. See also the *Report on her mission to Colombia of the Special Rapporteur on violence against women, its causes and consequences* (document E/CN.4/2002/83/Add.3 of 11 March 2002), paras 90-91 in which she remarks that “women’s organisations, especially peasant, indigenous and Afro-Colombian women’s organisations, and their leaders, are subject to systematic intimidation and persecuted for the work that they do to defend and improve living conditions for their communities. Members are not the only ones directly affected. Women’s children, husbands or partners have also been murdered as a result of the woman’s social and political activities. [...] In their effort to gain social and political control of territories under dispute, armed groups target women organisations as a visible obstacle, deeply rooted within the communities, which they try to use for their benefit or alternatively destroy. Women’s organisations that do not bow before the interests of armed groups are forced to carry on their activities in permanently unsafe conditions and are increasingly forced to abandon or transform their organisational procedures”.

<sup>162</sup> See UNHCR Briefing Note “UNHCR condemns murders of Colombian IDP leaders”, 10 February 2004 at [www.unhcr.ch](http://www.unhcr.ch).

<sup>163</sup> UNHCHR *Report 2004* at para. 97.

<sup>164</sup> This is explored in greater detail in the report published by the UN Special Rapporteur on the right to freedom of opinion and expression following his visit to Colombia in 2004, E/CN.4/2005/64/Add.3.

<sup>165</sup> See Fundación de Libertad de Prensa, *Los corruptos: Principales agresores de periodistas colombianos. Informe de Libertad de Expresión 2003*.

122. In principle the government respects freedom of the press, and different political views, including anti-government criticism, are expressed by the media in general without fear of government reprisals but there were reports of cases of detention of journalists and confiscation of press material by State authorities.<sup>166</sup>

123. While many journalists are covered by the Protection Program of the Ministry of the Interior, six homicides of journalists were reported in 2003<sup>167</sup>, two of which regarded victims who were covered by the Program but assessed as having a “medium-low” level of risk.<sup>168</sup> The UN Special Rapporteur on the right to freedom of opinion and expression indicated that he “received reliable information concerning the existence of “blacklists”, prepared by the guerrillas and the AUC, listing journalists and reporters who deserved punishment for their activities. Not surprisingly, these lists were almost identical and included names of journalists killed recently.”<sup>169</sup> As a result of their public profile, it is particularly difficult for journalists who are at risk to relocate in other parts of the country. Journalists and media therefore frequently practice self-censorship with regard to these subjects in order to avoid retaliation, a strategy that some refer to as “self-regulation in order to survive”.<sup>170</sup>

## 10. Indigenous Persons and Afro-Colombians

124. There have been continued high levels of violations of the human rights of indigenous and Afro-Colombians, especially in terms of murders, forced disappearances, death threats and internal displacement in rural areas. While indigenous people make up only 2% of the total population, 12% of IDPs are indigenous.<sup>171</sup> Similarly, 8% of the Colombian population is Afro-Colombian but they make up fully 20% of IDPs.

125. Historically these groups have been socially and politically excluded and inhabit regions of the country which have received little assistance for the State. These areas are now of strategic interest to the irregular armed groups, in particular for military operations, narcotics production and trafficking and arms trafficking. As noted by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, “the massive presence of indigenous peoples and Afro-Colombian communities in regions of major economic and strategic importance and in conflict zones makes them extremely vulnerable” to violence.<sup>172</sup> Faced with the risk of losing their land and resources, many Indigenous and Afro-Colombian communities have adopted resistance strategies and attempted to remain in their territories. This has tended to leave them isolated and at risk of being confined by the irregular armed groups, with serious consequences for health and nutrition.<sup>173</sup>

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<sup>166</sup> UNHCHR Report 2004, para. 98. See also US Department of State *Country Report 2003*, Section 2 (a).

<sup>167</sup> Office of Vice-President, Observatorio de Derechos Humanos, *Indicadores*, October 2004. The Office of the Vice-President reports that homicides against reporters declined to 3 in the first 10 months of 2004 (from 6 during the same period in 2003) but notes that the circumstances surrounding an additional three murders of reporters had yet to be clarified. The UN Special Rapporteur on freedom of opinion and expression found that nearly 60 further journalists were kidnapped, threatened or assaulted, see *Report of the Special Rapporteur on his mission to Colombia*, 26 November 2004, E/CN.4/2005/64/Add.3, para. 50.

<sup>168</sup> UNHCHR Report 2004, para. 97.

<sup>169</sup> *Report of the Special Rapporteur on the right to freedom of opinion and expression on his mission to Colombia*, para. 60.

<sup>170</sup> UNHCHR Report 2004, para 98.

<sup>171</sup> *Report of the Special Rapporteur on Indigenous Peoples on his mission to Colombia*, para. 33.

<sup>172</sup> *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Colombia*, 24 February 2004, E/CN.4/2004/18/Add.3, p. 2.

<sup>173</sup> See the *Report of Special Rapporteur on Indigenous Peoples on his mission to Colombia*, Section III.

126. According to official statistics, between 1998 and September 2004, some 855 indigenous people were killed<sup>174</sup> and the Office of the UN High Commissioner for Human Rights reported that during 2003 “more than 100 indigenous individuals and authorities were victims of homicide”.<sup>175</sup> The UN Special Rapporteur on Indigenous Peoples stated that these acts constitute “veritable genocide and ethnocide”.<sup>176</sup> In the case of the Kankuamo people who inhabit the slopes of the Sierra Nevada de Santa Marta, some 166 of its members were killed between 1993 and 2003 and this led the Inter-American Court of Human Rights to issue provisional measures in July 2004 in which it ordered the State to safeguard the lives and personal integrity of members of the community and investigate and sanction previous violations.<sup>177</sup> Nonetheless, less than a month later another Kankuamo leader was killed.<sup>178</sup>

127. There has been a marked deterioration in the human rights situation of Afro-Colombians since 1996 when the intensity of the conflict increased on the Pacific Coast region where they constitute a majority of the population (departments of Nariño, Valle and Chocó). As with many indigenous peoples, some Afro-Colombian communities have proclaimed their neutrality in the conflict and have often been targeted by the irregular armed groups as a result. A number of Afro-Colombian communities have organised themselves in “peace communities” (“*comunidades de paz*”). The vulnerability of minority IDPs has been acknowledged by the Inter-American Court and Commission. Of particular relevance is a series of provisional measures ordered by the Court in relation to the protection of the Afro-Colombian “Community of Peace” of San José de Apartadó and the communities of Jiguamiandó and Curburadó.

## 11. Child Soldiers

128. The irregular armed groups routinely recruit children, in many cases younger than 15 years old.<sup>179</sup> The majority of children join of their own avail (often due to lack of alternatives and/or inducements such as salaries)<sup>180</sup> but other are forcibly recruited.<sup>181</sup> The Global Report 2004 of the Coalition to Stop the Use of Child Soldiers estimates that there were 14,000 child soldiers in the irregular armed groups, of which 50% were girls.<sup>182</sup> From August 2002 to November 2004 some 1165 children were demobilised but as few as 35% of demobilised children assisted by the Colombian Institute of Family Welfare (ICBF) returned home, many out of fear of reprisals against themselves and their families.<sup>183</sup>

129. The Human Rights Watch report “You’ll learn not to cry”<sup>184</sup> describes how child soldiers are trained and ordered to handle arms, take part in military operations, kill, mutilate

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<sup>174</sup> Office of the Vice-President, Observatorio de Derechos Humanos, *Annual Report 2003*, p.100; *Indicadores* September 2004.

<sup>175</sup> UNHCHR *Report 2004*, para. 91.

<sup>176</sup> *Report of Special Rapporteur on Indigenous Peoples on his mission to Colombia*, para. 29.

<sup>177</sup> Inter-American Court of Human Rights, Case of the Kankuamo Indigenous People, Order of Provisional Measures of 5 July 2004.

<sup>178</sup> See UNHCHR press release, “Condena por asesinato de líder kankuamo”, August 4 2004

<sup>179</sup> The majority of children interviewed by Human Rights Watch for its report on child soldiers were recruited when under the age of 15, the absolute minimum set by international law. Human Rights Watch, *You’ll Learn Not to Cry: Child Soldiers in Colombia*, Ch. I.

<sup>180</sup> *Ibid.* Ch. V.

<sup>181</sup> See examples of forced recruitment in Coalition to stop the use of Child Soldiers, *Global Report*, November 2004 at p. 128.

<sup>182</sup> See *Global Report*, p. 127. In 2003 Human Rights Watch estimated approximately 11,000 child soldiers distributed as follows: 7,400 in FARC, 1,480 of ELN and 2,200 in the AUC. Data in the Human Rights Watch report *You’ll Learn Not to Cry*, Ch. III.

<sup>183</sup> *Global Report*, p. 128.

<sup>184</sup> See examples in Human Rights Watch, *You’ll Learn Not to Cry*.

as well as torture and are in risk of summary executions if they try to desert. Girls have been victims of gender-related violence such as rape, providing sexual favours to commanders and forced use of contraception as well as forced abortions in case of pregnancy.

## **12. Marginalized Social Groups**

130. In areas under the control by one of the irregular armed groups, serious abuses and murder have been reported against drug-addicts, persons with HIV/AIDS, prostitutes, vagrants, “recyclers” (people who collect, separate and sell garbage), suspected petty thieves, mentally ill persons, street children and homosexuals.<sup>185</sup> Both the AUC and the guerrillas have frequently labeled these groups as “socially undesirable”. The resulting “social cleansing” campaigns are often tacitly supported by some segments of the local communities, and as in the case of political murders, are often committed with impunity. In the case of the AUC, this type of action is often accompanied by “protection” rackets for shop-owners and business people.

131. The irregular armed groups, and in particular the paramilitaries, have also imposed strict social norms in areas where they exercise control that are based on rigidly defined gender roles. These rules often include curfews, prohibition of adultery and dress codes (for example, no low-rider jeans, mini-skirts or cropped tops for women; no long hair or earrings for men). As documented by Amnesty International, the punishment for violating these rules of conduct can include flogging, mutilation, disfigurement of the face or other parts of the body with acid or sharp instruments and public humiliation.<sup>186</sup>

## **13. Victims of Trafficking**

132. Some Colombian victims of trafficking may fall within the definition of a refugee contained in Article 1A (2) of the 1951 Convention. Although Colombian law prohibits trafficking,<sup>187</sup> according to the Colombian Administrative Department for Security (DAS) the country is a source country for trafficking in persons, primarily for sexual purposes and principally to Europe and Asia, with an estimated 45,000 to 50,000 victims abroad, of whom the majority are women.<sup>188</sup> The traffickers are generally organized groups who use local recruiters who are acquainted with victims through friends, family or community contact. As result of their knowledge of the victim and his/her social network, traffickers have been able to track down victims who have escaped or not fulfilled their “obligations”, as well as locate family members of the victim. According to the report by the US Under Secretary of State for Global Affairs Office to Monitor and Combat Trafficking in Persons there were only 3 convictions for trafficking offenses during 2003, an indication of the inability of the State to protect victims.<sup>189</sup> As a result of these circumstances, victims of trafficking who are returned to Colombia may be at risk of being re trafficked or subject to other persecution as punishment for having escaped.

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<sup>185</sup> Amnesty International, *Scarred Bodies*, pp. 24-26; US Department of State *Country Report 2003* Section 1(a). The U.S. Department of State cites the Colombian Commission of Jurists as indicating that there were some 229 “social cleansing” killings in the first nine months of 2003 alone.

<sup>186</sup> Amnesty International, *Scarred Bodies*, p. 24.

<sup>187</sup> U.S. Department of State *Country Report 2003*, Section 6(f).

<sup>188</sup> *Ibid.*

<sup>189</sup> U.S. Department of State, Under Secretary of State for Global Affairs Office to Monitor and Combat Trafficking in Persons, *Trafficking in persons report, Colombia*, June 14 2004.

## ***B. Colombians in Need of International Protection on Broader Grounds***

133. There are cases of persons who have not been recognized as refugees under the 1951 Convention and the 1967 Protocol, yet who might, nevertheless, still be in need of international protection. These cases include persons outside of their countries whose lives, safety or liberty have been threatened by generalized violence, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order. Many states, indeed, do provide protection on broader grounds, either through the application of regional instruments which contain an extended refugee definition, or through the provision of complementary forms of protection.<sup>190</sup>

134. In the current situation, UNHCR considers Colombians, who are unable to return because their lives, security or liberty have been threatened by generalized violence, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order, to be in need of international protection.

135. The internal armed conflict continues to generate sustained and continuous levels of violence. The capacity of guerrilla and paramilitary groups to undertake operations throughout the territory, the constant shifts in territorial control between the different parties of the conflict, an increase in frequency and intensity of combat, and violations of international humanitarian law often create grave threats to the life, liberty or security of civilian populations in given zones or territories. These include, but are not limited to: civilians affected by crossfire; the continued use of means and methods of warfare by irregular armed groups which do not distinguish in their effects between civilians and combatants (such as antipersonnel mines and the use of unconventional artillery); continued use of forced displacement of civilians as a tactic of war; and indiscriminate killings and other acts aimed at creating terror and establishing social control over a given civilian population. Civilians also flee to escape anticipated attacks.

136. As noted above, the human rights situation continues to be critical in Colombia. Levels of violence, including homicides, kidnappings, extortion and other violent crimes affecting civilians remain high. As stated by the Office of the UN High Commissioner for Human Rights, the state policy to fight impunity continues to show few concrete results.<sup>191</sup> One of the consequences of the human rights situation is the continued displacement of civilian populations. As mentioned in Section II.4 above, between 2 to 3 million Colombians are internally displaced.

137. According to the Office of the UN High Commissioner for Human Rights, extended areas of the country continue to suffer from serious problems of governance and public order.<sup>192</sup> Beyond municipal centres and in rural areas in particular, state presence continues to be limited. Reinforcement of police and/or military presence in many areas has not been accompanied by the presence of civilian authorities. This state of affairs seriously limits state capacity to guarantee the rights of civilian populations in these areas, in particular the rights to life, liberty and security.

138. Given the **dynamic nature and rapidly changing patterns of the armed conflict**, adjudicators deciding claims must not only be aware of the prevailing situation country-wide,

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<sup>190</sup> The regional refugee instruments in Africa and Latin America – specifically the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees in Latin America –state that refugee protection should also encompass these or other similar “broader” grounds for recognition of refugee status.

<sup>191</sup> UNHCHR *Report* 2004, p. 3. See also para. 67, *supra*.

<sup>192</sup> *Ibid.*

but must also assess risks to life, liberty and security on the basis of the specific situation prevailing in the place of origin. Regions or areas which were relatively calm in previous periods may become areas of high risk over short periods of time as a result of new or renewed attempts of irregular armed groups to control territory, population and/or resources.

## IV. EXCLUSION CLAUSES

### 1. General Considerations

139. The exclusion clauses contained in Article 1F of the 1951 Convention provide for the denial of refugee status to individuals who would otherwise meet the refugee definition set out in Article 1A, but who are deemed not deserving of international protection on account of certain serious acts.

140. Article 1F stipulates that

“the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that he [or she]

- a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b) has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee;
- c) has been guilty of acts contrary to the purposes and principles of the United Nations.”

Given the above-described context of serious and widespread violations of humanitarian law and human rights as well as common criminality, due attention should be paid to the possibility that certain applicants may come within the scope of this provision.

141. The rationale behind Article 1F of the 1951 Convention is to protect the integrity of the institution of asylum by ensuring that those deemed undeserving of international protection do not obtain refugee status, and to prevent persons who are responsible for serious crimes from escaping prosecution. The exclusion clauses must therefore be applied “scrupulously”, as has been recognized *inter alia* by UNHCR’s Executive Committee in Conclusion No. 82 (XLVIII – 1997) on Safeguarding Asylum. Whenever there are indications that a particular individual who would meet the so-called “inclusion criteria” contained in Article 1A(2) of the 1951 Convention may come within the scope of Article 1F, it is necessary to establish whether there are indeed serious reasons for considering that he or she incurred individual responsibility for acts which fall within the scope of one or more of its sub-clauses.

142. However, as with any exception to human rights guarantees, they must always be interpreted restrictively. Moreover, given the possible serious consequences of exclusion, it is important to apply them with great caution and only after a full assessment of the individual circumstances of the case.

143. The application of an exclusion clause results in the denial, cancellation or revocation of refugee status for the individual concerned. This must be distinguished from those exceptional circumstances in which the 1951 Convention permits the expulsion of a refugee on grounds of national security or public order (under Article 32) or his/her return to the country of origin in application of an exception to the principle of *non-refoulement* if there are

reasonable grounds for regarding him/her as a danger to the security of the host country or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (under Article 33(2)). Neither Article 32 nor Article 33(2) provide for the loss of refugee status.

144. Detailed guidance on the substantive and procedural standards for the application of Article 1F of the 1951 Convention can be found in UNHCR's *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, of 4 September 2003 (hereafter: "Guidelines on Exclusion"), and the accompanying Background Note on the Application of the Exclusion Clauses (hereafter: "Background Note on Exclusion"). The following sections highlight a number of issues which are particularly relevant in the Colombian context; however, decision-makers should always refer to the Guidelines and Background Note when considering the applicability of Article 1F.

## **2. When Is It Necessary to Consider Exclusion Under Article 1F?**

145. Exclusion considerations may be triggered in any individual case, if there are elements in the applicant's story which suggest that s/he may have been associated with criminal acts which fall within the scope of Article 1F.

146. Given the situation in Colombia, the applicability of Article 1F of the 1951 Convention will need to be examined for all applicants who have participated in the armed conflict, regardless of whether they did so as State agents, members of guerrilla or paramilitary groups.<sup>193</sup> Exclusion considerations will also be triggered if there are indications that an asylum-seeker has committed, or substantially contributed to the commission of, serious drug-related crimes.

147. In all cases where the issue of exclusion arises, a thorough examination of the applicant's background and activities will be necessary. Decision-makers should examine, as a first step, whether there are acts within the scope of Article 1F with which the individual concerned was associated; and if this is the case, whether he/she incurred individual responsibility for these acts. If it has been established that there are serious reasons for considering that an applicant was responsible for excludable acts, it will also be necessary to determine whether the application of an exclusion clause would be in keeping with the principle of proportionality.

## **3. Acts Within the Scope of Article 1F**

148. It is necessary to determine whether the acts with which an applicant may have been associated come within the scope of an exclusion clause. It should be recalled that Article 1F exhaustively enumerates the types of crimes which may give rise to exclusion from international refugee protection based on account of the applicant's conduct. For guidance on the definition of the relevant crimes, please refer to paragraphs 23-49 of UNHCR's Background Note on Exclusion. In addition to the information contained therein, the following considerations should be kept in mind when examining the applicability of Article 1F to asylum-seekers from Colombia.

### Crimes against humanity

149. This category of Article 1F(a) applies to inhumane acts, when committed as part of a systematic or widespread attack against a civilian population. Article 7 of the ICC Statute

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<sup>193</sup> See UNHCR, Background Note on Exclusion, at para. 63; see also EXCOM Conclusion No. 94 (LIII – 2002) on the Civilian and Humanitarian Character of Asylum, particularly at (c)(vii).

contains a list of acts which are considered crimes against humanity, if committed in the aforementioned conditions: murder, extermination, enslavement, deportation or forcible transfer, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other forms of serious sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts of a similar character. Crimes against humanity can be committed during times of armed conflict as well as in peacetime.<sup>194</sup>

#### War crimes in a non-international armed conflict

150. As noted in the preceding sections, an armed conflict has been ongoing in Colombia for several decades, which is non-international in character. There are numerous reports of violations of international humanitarian law by all parties to the conflict. This raises the possibility of the application of Article 1F(a) – war crimes – to certain acts.<sup>195</sup>

151. “War crimes” are those violations of the laws and customs of war which give rise to criminal responsibility directly under international law, either because this is explicitly provided for in the relevant international instruments<sup>196</sup>, or on the basis of customary international law. The legal criteria for determining what acts or methods of warfare are prohibited in a non-international armed conflict are found in Article 3 common to the Four Geneva Conventions of 1949, Additional Protocol II thereto of 1977, and Article 8(2)(c) and (e) of the Statute of the International Criminal Court, which is relevant for the qualification of acts which took place after July 1998.<sup>197</sup>

152. Originally, war crimes were considered to arise only in international armed conflicts. However, developments in international criminal law have resulted in a general recognition, as of the mid-1990s, that war crimes may also be committed in the context of a non-international armed conflict.<sup>198</sup>

153. Therefore, breaches of common Article 3 and Additional Protocol II committed prior to the mid-1990s in internal armed conflicts did not give rise to criminal responsibility at the international level and, as a consequence, such breaches could not be considered as “war crimes.” However, they could come within the scope of Article 1F(b) as serious non-political crimes or Article 1F(a) as crimes against humanity (see above at paragraph 149).

154. Additionally, for acts prohibited under the above-mentioned provisions and committed from the mid-1990s to constitute “war crimes”, it is also necessary that they took place in the context of, and were associated with, the armed conflict. If this link, or ‘nexus’, is not present,

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<sup>194</sup> For further guidance on the interpretation of Article 1F – crimes against humanity – see UNHCR, Background Note on Exclusion, at paras. 33–36.

<sup>195</sup> See UNHCR, Background Note on Exclusion, at paras. 30–32.

<sup>196</sup> As is the case, in particular, for acts committed in international armed conflicts which constitute “grave breaches” of the Four Geneva Conventions of 1949 and Additional Protocol I thereto of 1977, or acts defined as war crimes in Article 8 of the ICC Statute.

<sup>197</sup> It is worth noting that from July 1998 onward, conscripting or enlisting children under the age of fifteen into armed forces or groups or using them to participate actively in hostilities is a war crime and would as such fall within the scope of Article 1F(a). See Article 8(2)(e)(vii) of the ICC Statute as well as Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

<sup>198</sup> As confirmed by the ICTY, criminal responsibility arises under customary international law for serious violations of Article 3 common to the Four Geneva Conventions of 1949, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in such conflicts. See ICTY, Prosecutor v. Dusko Tadic a/k/a “Dule”, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, at para. 134. Moreover, violations of Additional Protocol II are explicitly contained as war crimes in Article 4 of the ICTR Statute of 1994.

the acts in question could not amount to “war crimes” under Article 1F(a). Rather, they would need to be assessed under Article 1F(b) or, if the above-mentioned criteria are met, as crimes against humanity under Article 1F(a).

155. With regard to the possible application of Article 1F(b) to those crimes committed by the various parties to the conflict which do not fall within the scope of Article 1F(a), it should be noted that a serious crime should be considered “non-political” when other motives (such as personal reasons or gain) are the predominant feature of the specific crime committed. Where no clear link exists between the crime and its alleged political objective or when the act in question is disproportionate to the alleged political objective, non-political motives are predominant. Egregious acts of violence will almost certainly fail the predominance test, being wholly disproportionate to any political objective.<sup>199</sup>

#### Drug-related crimes

156. Drug-related offences may come within the scope of Article 1F(b) of the 1951 Convention, if they are sufficiently serious, non-political, and if they have been committed outside the country of refuge prior to admission to that country.<sup>200</sup> Each case would need to be assessed in light of its particular circumstances and the context in which it took place. In particular, only acts which reach the level of seriousness required under Article 1F(b) could give rise to exclusion. It should also be noted that drug-related crimes would not fall within the scope of Article 1F(c).<sup>201</sup>

## **4. Individual Responsibility**

### Basis for incurring individual responsibility

157. For exclusion on the basis of Article 1F of the 1951 Convention to be justified, it must be established that the individual concerned incurred individual responsibility for excludable acts. This requires an examination, in each individual case, of

- a. the applicant’s conduct – did s/he commit the acts in question him/herself or participate in ways which give rise to individual responsibility in the commission of crimes by others (e.g. planning, inciting, ordering, aiding or abetting, or participating in a joint criminal enterprise)?<sup>202</sup>; and
- b. his/her state of mind – did s/he act with the mental element (*mens rea*) required for the commission of the crime(s) in question<sup>203</sup>?

158. As with all factual findings relevant to the applicability of Article 1F of the 1951 Convention, the standard of proof required is that of “serious reasons for considering” that the material and mental elements required for a particular crime to be committed were present in the applicant’s case. For this standard to be met, credible and reliable information is necessary.<sup>204</sup>

159. The burden of proof lies, as a general rule, on the decision-maker, although in certain cases a presumption of individual responsibility for crimes within the scope of Article 1F may be justified on the basis of an applicant’s voluntary membership in a particularly violent group or organization. Whether or not this is the case depends on a number of factors,

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<sup>199</sup> See UNHCR, Background Note on Exclusion, at paras. 37–45.

<sup>200</sup> *Ibid.*, at paras. 37–45.

<sup>201</sup> *Ibid.*, at para. 48.

<sup>202</sup> *Ibid.*, at paras. 50–56.

<sup>203</sup> *Ibid.*, at para. 64.

<sup>204</sup> *Ibid.*, at paras. 107–111.

including, in particular the actual activities of such a group; its place and role in the society in which it operates; its organisational structure and the individual's position in it; the individual's ability to have a significant influence on its activities; whether the group is cohesive or fragmented; whether and how the nature of the group's violent conduct has evolved over time.

160. Even if such a presumption arises, this does not mean that the individual concerned is automatically excludable. The presumption is rebuttable: the IC must be informed of the evidence/allegations on the basis of which exclusion may be decided and given an opportunity to show that he/she should not be excluded. A plausible explanation regarding the applicant's non-involvement or dissociation from any excludable acts, coupled with an absence of serious evidence to the contrary, should remove the applicant from the scope of the exclusion clauses.<sup>205</sup>

161. In the Colombian context, this question may arise with regard to persons who are associated with particular structures of certain groups involved in the armed conflict, including the FARC, ELN and the AUC<sup>206</sup> as well as other paramilitary groups.

162. For certain applicants who held a position of authority within a military or civilian hierarchy, individual responsibility may arise for crimes committed by persons under their effective command or control.<sup>207</sup>

#### Grounds negating individual responsibility

163. A complete exclusion analysis also requires an assessment of whether or not any circumstances which would negate individual responsibility arise in the applicant's case, for example because the person concerned did not have the necessary *mens rea*, or because there are circumstances which give rise to a valid defence, thus exonerating him/her from individual responsibility for his/her acts.<sup>208</sup>

164. In the Colombian context, the possibility that an applicant was forced to commit certain crimes in circumstances which give rise to a defence of duress is particularly relevant. This defence could apply to members of armed groups who committed certain acts in order to avert a threat of imminent death or of continuing or imminent serious bodily harm against themselves or another person. Where an applicant was forcibly recruited into such groups, especially if s/he was a child at the time, this would be a relevant factor in assessing whether or not s/he has a valid defence of duress.

165. Where the forced payment of "war taxes" (*vacunas*) by civilians could give rise to individual responsibility for an excludable act (i.e., in those cases where it would be possible to establish that by doing so an applicant made a substantial contribution to the commission of a crime within the scope of Article 1F in the knowledge that this will assist or facilitate the commission of the offence), a defence of duress is likely to arise from the fact that they did so under threat of death or serious bodily harm.

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<sup>205</sup> For further guidance on the criteria which must be met for a presumption of individual responsibility to be justified, please refer to UNHCR, Background Note on Exclusion, at paras. 57–62, 105–106, and 110.

<sup>206</sup> As noted above, these three groups are considered to be 'terrorist organizations' by the European Union (FARC, AUC) and the United States (FARC, ELN, AUC), and an applicant's membership thereof will trigger exclusion considerations. However, when determining whether a person associated with these groups comes within the scope of an exclusion clause, decision-makers should assess the nature of the relevant acts and determine whether they meet the criteria of Article 1F, rather than focusing on the designation of these groups as 'terrorist'. For further guidance on this issue, please refer to UNHCR, Background Note on Exclusion, at paras. 41–42, 49 and 79–84.

<sup>207</sup> See UNHCR, Background Note on Exclusion, at para. 56.

<sup>208</sup> *Ibid.*, at paras. 64–71.

166. Pardons, amnesties, expiation and other rehabilitative measures (i.e. *programas de reinserción*) must also be considered carefully in the Colombian context.<sup>209</sup>

167. If the circumstances do not exonerate the applicant from individual responsibility, they may nevertheless constitute mitigating factors which should be taken into account in the proportionality analysis which forms the final step of the exclusion assessment (see below at paragraph 169).

#### Application of Article 1F to children

168. In principle, an exclusion clause may be applicable for crimes committed by a person when s/he was a child, that is, under 18 years of age. However, in such cases, careful consideration should be given to a number of specific issues. In particular, it will be necessary to establish whether, at the time the acts took place, the person concerned had reached the age of criminal responsibility, that is, the minimum age set under national law below which a person cannot commit a crime. If that age was reached, it must further be assessed whether the applicant had the necessary mental capacity. This means examining whether s/he was mature enough to comprehend the nature of his/her acts and their consequences. The possibility of a defence needs to be examined, especially in circumstances in which the child may have acted under duress. Where it is established that the child incurred individual responsibility, any mitigating factors and generally his/her vulnerability should be taken into account in the proportionality analysis (see also below at paragraph 169).<sup>210</sup>

### **5. Proportionality Considerations**

169. If it is established that an applicant incurred individual responsibility for acts within the scope of Article 1F, the final step in the exclusion analysis consists of weighing the seriousness of the acts in question against the consequences of exclusion for the individual concerned.<sup>211</sup>

### **6. Consequences of Exclusion**

170. Persons to whom an exclusion clause applies are not eligible for refugee status. They cannot benefit from international protection under the 1951 Convention, nor under UNHCR's mandate, however they may still be protected against return to a country where they are at risk of ill-treatment by virtue of other international instruments.<sup>212</sup>

171. It is important to recall, however, that family members of excluded individuals are not automatically excluded as well. Their claim to refugee status needs to be examined on an individual basis, and in light of their own situation. Family members will qualify for refugee status even if their well-founded fear of persecution results from their relationship to the excluded relative. Family members are only excluded if there are serious reasons for considering that they too are individually responsible for excludable crimes. Where family members have been recognized as refugees, however, the excluded applicant cannot benefit from the right to family unity to secure protection or assistance as a refugee.<sup>213</sup>

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<sup>209</sup> See UNHCR, Background Note on Exclusion, at paras. 72–75.

<sup>210</sup> *Ibid.*, at paras. 91–93.

<sup>211</sup> *Ibid.*, at paras. 76–78.

<sup>212</sup> See UNHCR, Guidelines on Exclusion, at para. 9 and Background Note on Exclusion, at paras. 21–22.

<sup>213</sup> See UNHCR, Background Note on Exclusion, at paras. 94–95.

## 7. Cancellation and Revocation of Refugee Status

172. There may be instances where information comes to light after a person was recognised as a refugee which indicates that refugee status should not have been granted to him/her in the first place, either because s/he did not meet the inclusion criteria of the refugee definition, or because an exclusion clause would have been applicable to him/her at the time of the initial determination. In such cases, it will be appropriate to review the correctness of the recognition decision and, if it is established that the person concerned was indeed not eligible for international protection, to cancel his/her refugee status. The effect of cancellation is to invalidate refugee status from the time it was originally granted.<sup>214</sup>

173. Where a person who was properly determined to be a refugee engages in conduct within the scope of Article 1F(a) or (c) after recognition, this may give rise to the revocation of his or her refugee status. In such cases, the entitlement of the person concerned to international protection ends.<sup>215</sup>

## V. INTERNAL FLIGHT OR RELOCATION ALTERNATIVE

174. The question of whether an asylum-seeker fearing persecution in one part of the country has the possibility of finding safety in an alternative location inside the country is one which must be considered on a case-by-case basis, taking into account all the circumstances of each individual case and the situation in the country of origin.<sup>216</sup>

175. The 1951 Convention does not require or even suggest that the fear of being persecuted need always extend to the *whole* territory of the refugee's country of origin.<sup>217</sup> The concept of an internal flight or relocation alternative therefore refers to a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him/herself and live a normal life. Consequently, if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified and the claimant provided with an adequate opportunity to respond.

176. In the context of the holistic assessment of a claim to refugee status, in which a well-founded fear of persecution for a Convention reason has been established in some localised part of the country of origin, the assessment of whether or not there is a relocation possibility requires two main sets of analyses, undertaken on the basis of answers to the following sets of questions:

### I. The Relevance Analysis

a) *Is the area of relocation practically, safely, and legally accessible to the individual?*  
If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.

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<sup>214</sup> For further guidance on the principles and standards applicable to the cancellation of refugee status, please refer to UNHCR's Note on the Cancellation of Refugee Status, 22 November 2004.

<sup>215</sup> See UNHCR, Background Note on Exclusion, at para. 17. For further guidance on the interpretation and application of Article 1F(a) and (c), please refer to paras. 23–36 and 46–49, respectively.

<sup>216</sup> See UNHCR Guidelines on International Protection: "*Internal Flight or Relocation Alternative*" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04.

<sup>217</sup> See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979, Geneva, re-edited 1992).

b) *Is the agent of persecution the State?* National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.

c) *Is the agent of persecution a non-State agent?* Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.

d) *Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation?* This would include the original or any new form of persecution or other serious harm in the area of relocation.

## II. The Reasonableness Analysis

*Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?* If not, it would not be reasonable to expect the person to move there.

177. The current situation in Columbia is marked by widespread violence and general insecurity. The following characteristics may be noted: (a) a continuing conflict, which is highly fluid and volatile and is affecting rural as well as urban areas; (b) the inability of the Colombian authorities to fully extend their power and authority in terms of security and the rule of law to significant areas of the country; (c) existence of irregular armed groups which have established effective communication networks and are able to trace and reach targets throughout Colombia,<sup>218</sup> (d) lack of a functioning and reliable civil administrative system and judiciary; (e) widespread violations of human rights and international humanitarian law; (f) destruction of socio-economic infrastructure and the magnitude of the phenomenon of forced internal displacement.

178. Taking the above into account, it will be extremely difficult for an individual fleeing non-state agents of persecution to find an alternative area of relocation which could be considered as safe. In regard to areas under the control of the authorities, the network of the irregular armed groups along with their ability to pursue their targets would continue to pose a threat to the individuals concerned, while the authorities will not be in a position to extend their protection to them. As a result, in many cases IDPs are repeatedly internally displaced due to recurring threats to their lives and security.<sup>219</sup> There may also be reasons for such individuals not to approach the authorities since the authorities may perceive them as members of armed groups, and, furthermore any contacts with the authorities may expose the individual's concerned to further risks of being targeted by the irregular armed groups. It

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<sup>218</sup> An adjunct professor in the department of Government at Georgetown University, quoted in a report on Colombia of Canada's Immigration and Refugee Board of 22/07/2003, confirms that both the guerrillas and paramilitary groups often employ highly sophisticated databases and computer networks. An individual who is threatened in one area of the country will not be notably safer by relocating to another. Depending on the nature and reasons for the threat, the victims can be pursued relentlessly. There are countless stories of men and women receiving threats in Bogotá and Medellín after relocating from another area and attempting to live anonymously in the big city. Many have been killed after seeking refuge in another part of the country. There are also cases of people leaving the country for periods of months or years, and then killed after returning. Memories are long and data is systematically recorded and analyzed.

<sup>219</sup> Defensoria del Pueblo, *Desplazamiento Intraurbano como consecuencia del conflicto armado en las ciudades*, December 2004.

should be noted that the UN Human Rights Committee has expressed not only its concern about the participation of state agents in the commission of acts such as arbitrary detentions, abductions, forced disappearances, torture, extrajudicial executions and murders; but also its concern regarding links between elements of the armed forces and State security forces, on the one hand, and illegal paramilitary groups on the other with respect to extensive violations of the right to life, the prohibition of torture and other ill treatment and the right to liberty and security of the person.<sup>220</sup>

179. The possibility of relocation to other areas controlled by competing armed groups should be carefully assessed. Relocation to an area controlled by another armed group may expose the individuals concerned to risks of reprisals by the group in control as the individuals may be stigmatized by the mere fact of their place of origin and perceived as members or sympathizers of competing armed groups.

180. Accessibility to alternative relocation areas may also not be safe given that there are large numbers of illegal checkpoints on travel routes throughout the country where individuals concerned may run the risk of indiscriminate violence or being identified and targeted. Given the widespread network of the irregular armed groups, the risk of being identified exists in rural areas as well as in big cities.

181. In relation to individuals fleeing state agents of persecution, the possibility of relocating to areas controlled by non-state agents should be carefully assessed. Apart from extreme difficulties in gaining access to such areas from government controlled areas in light of widespread insecurity, relocation to such areas may expose the individuals concerned to new risks of persecution by the armed group controlling the area. In addition, the shifting nature of the armed conflict entails rapid changes to the controlling power so that any alternative relocation may be rendered meaningless.

182. Even where an alternative relocation area is considered as relevant, it may be extremely difficult for the individuals concerned to lead a relatively normal life without undue hardship. Relevant to this analysis is an assessment of the applicant's profile (family situation, age, health, membership of an indigenous or other ethnic minority) and possible vulnerability, in particular, the existence of past persecution, previous displacements and possibility for economic survival as well as security conditions and respect for human rights in potential relocation areas.<sup>221</sup> In such cases the reasonableness analysis should take into consideration the real possibility for survival of the claimant in the context of often inadequate socio-economic assistance provided by the State to IDPs.<sup>222</sup>

183. In terms of procedures, given the complex and substantive nature of a refugee status inquiry, the examination of an internal flight or relocation alternative is not appropriate in accelerated procedures or in deciding on an individual's admissibility to a full status determination procedure.<sup>223</sup> For the same reason, there should not be any additional burden of proof on asylum applicant; it is for the state to show that there is an internal flight alternative in relation to the asylum applicant concerned by identifying the possible areas of relocation and providing evidence establishing that it is a reasonable alternative for the individual concerned.

184. The objective and adequate assessment of the Colombian context and the eventual analysis of the internal flight alternative will always depend on good research, accurate and

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<sup>220</sup> See para 11 and 12 of the *Concluding Observations* of the Human Rights Committee, 26 May 2004.

<sup>221</sup> See UNHCR Guidelines on International Protection: *Internal Flight or Relocation Alternative*, paras. 24–30.

<sup>222</sup> See *supra*, Section II.4.

<sup>223</sup> See UNHCR Guidelines on International Protection: *Internal Flight or Relocation Alternative*, para. 36.

up-to-date country of origin information on the general human rights situation, as well as the particular situation in the concerned area (department, municipality and *vereda* or village).<sup>224</sup> However, the usefulness of this information is limited by the dynamic nature of the ongoing armed conflict in Colombia.

185. In conclusion, when considering whether fear of persecution or other threats to life, security or liberty experienced by Colombians could reasonably and successfully be avoided by moving to other parts in Colombia, decision-makers should take a highly cautious approach taking into account all the circumstances of the case against the background of the current situation as outlined above. Nonetheless, given the situation in the country, the application of the internal relocation concept may generally be considered as irrelevant, unless in extremely clear-cut cases.

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<sup>224</sup> Decision-makers may find relevant and updated country of origin information in the following sources: [www.acnur.org/pais](http://www.acnur.org/pais) and [www.unhcr.ch/refworld/reflink](http://www.unhcr.ch/refworld/reflink).

## Annexes

### A. Refugees and Asylum-Seekers From Colombia: Global Trends<sup>225</sup>

#### A. Refugee Population

By the end of 2003, the number of refugees from Colombia was estimated to be around 38,000 according to UNHCR estimates. This figure constitutes a 25 per cent increase compared to the beginning of the year when the number was estimated at 30,500. The United States is the largest asylum country for Colombian refugees hosting some 11,600 persons (31%). The second largest asylum country is Costa Rica (8,300), followed by Canada (6,700) and Ecuador (6,200) (see Box 1).

During 2003, some 10,740 Colombian asylum-seekers were recognized as refugees (9,730) or allowed to remain for humanitarian reasons (1,010), primarily in Ecuador (3,280), the United States (3,250), Canada (1,960) and Costa Rica (1,660).

In addition, some 2,120 Colombian refugees were resettled during the year according to official Government statistics, primarily by Canada (1,880) and the USA (150). Out of the total of 5,200 resettled Colombian refugees during 1990-2003, 65 per cent were accepted during 2002-2003 only.

During 2003, UNHCR facilitated the resettlement of some 320 Colombian refugees from first countries of asylum, notably from Costa Rica (160) and Ecuador (150). This was the highest number of Colombian refugees resettled by UNHCR on record. During 1992-2003, a total of 357 Colombian refugees were resettled under UNHCR's auspices.

#### B. Asylum Applications

##### Industrialized countries

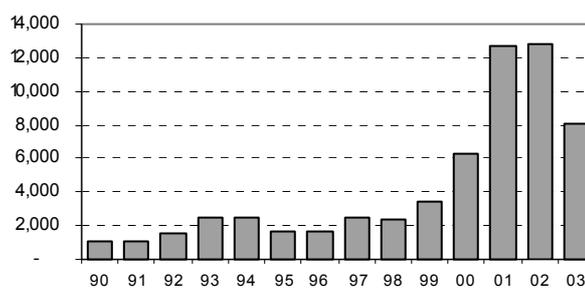
The flow of asylum-seekers from Colombia to industrialized countries has increased significantly over the last decade. While during the first half of the 1990s the annual number of new asylum claims ranged between 1,000 and 2,500, this number has risen steadily reaching its peak in 2002 with 12,700 new asylum

**Box 1. Refugees from Colombia, 2003**

Country of asylum	Begin year	End year	Change
United States*	11,100	11,600	4.5%
Costa Rica	7,300	8,300	13.7%
Canada*	4,100	6,700	63.4%
Ecuador	3,100	6,300	103.2%
United Kingdom*	1,100	1,300	18.2%
Panama	990	860	-13.1%
Spain*	540	680	25.9%
Sweden*	560	570	1.8%
France	260	260	0.0%
Switzerland	200	220	10.0%
Other	1,290	1,290	0.0%
<b>Total</b>	<b>30,540</b>	<b>38,080</b>	<b>24.7%</b>

\*UNHCR estimate.

**Box 2. Asylum applications lodged by Colombians, 1990-2003**



<sup>225</sup> Prepared by the Population Data Unit, PGDS/DOS, UNHCR Geneva.

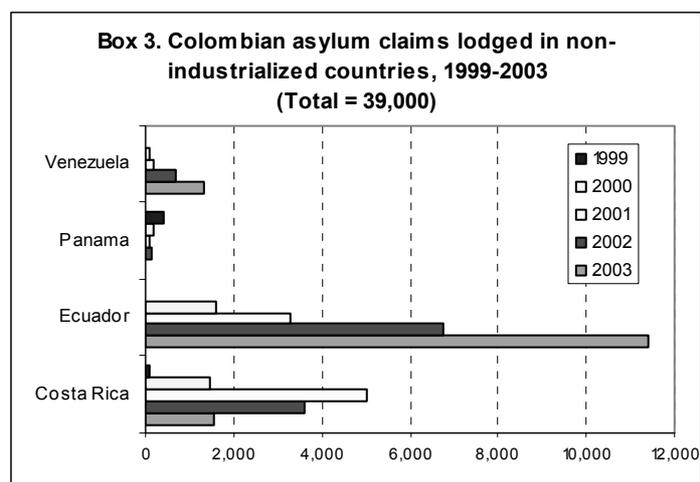
applications being lodged by Colombians. During 2003, however, the figure dropped sharply to 8,000 (-38%). Applications fell in all three main destination countries during 2003, namely in Canada (-22%), Spain (-48%) and the United States (-41%) (see Box 2).

The distribution of the 61,700 new asylum applications lodged by Colombians since 1980 shows that the United States received the largest number of claims (27,700 or 45%, cases only), followed by Canada (9,200 or 15%), Spain (7,700 or 12%), the United Kingdom (7,400 or 12%, cases only) and France (2,900 or 5%). In 2003, countries receiving the largest number of Colombian asylum-seekers were the United States (4,700, cases only), Canada (2,100) and Spain (580).

The most recent monthly data indicates a slight decrease in the number of asylum-seekers from Colombia. During the first six months of 2004, some 3,240 claims were lodged by Colombians, compared to 3,350 during July-December 2003 and 3,660 in January-June 2003. Between January 2003 and June 2004, the number of monthly asylum applications lodged by Colombian nationals ranged between 495 (June 2003) and 714 (March 2003).

### Non-industrialized countries

During 2003, non-industrialized countries received some 14,600 Colombian asylum applications, a 27 per cent increase compared to 2002 when 11,500 had been submitted. Ecuador (11,400) was by far the largest recipient of Colombian asylum-seekers during 2003, followed by Costa Rica (1,500) and Venezuela (1,300). Ecuador and Costa Rica were also the main recipients during 1999-2003 accounting for 34,800 or 89 per cent of all Colombian asylum claims submitted in non-industrialized countries. Venezuela (2,400) and Panama (830) were other major recipients (see Box 3).



### *C. Asylum and Refugee Status Determination*

In 2003, some 31,000 Colombian asylum claims were adjudicated globally. This is an increase of 14 per cent compared to 2002 when 27,100 claims had been adjudicated. Of the 31,000 claims, some 13,500 (44%) were rejected on substantive grounds while 6,700 (22%) were closed (rejected) without having received a substantive decision. Of the 24,300 claims which were decided on substantive grounds, 9,700 were grants of refugee status (40%), 1,000 were grants of humanitarian status (4%), whereas the remaining 13,500 claims (56%) were rejected. Recognition rates varied greatly, depending on the country of asylum, the type of asylum application and the level in the asylum procedure. The number of undecided asylum claims increased by five per cent during 2003, from 21,900 at the beginning of the year to 22,900 at end-year (see Table 5).

#### D. Internally Displaced Persons (IDPs)

At end-2003, the number of IDPs in Colombia was estimated to be around 1.2 million according to UNHCR. This figure constitutes a 31 per cent increase compared to the beginning of the year when the number of IDPs was estimated at some 950,000. The number of newly displaced IDPs has risen steadily over the past few years. At end-2000 the figure stood at some 525,000 and increased to an estimated 720,000 by end-2001.

#### E. Others of Concern to UNHCR

At the end of 2003, the number of Colombians in Venezuela and Panama not falling into any of the above categories but yet 'of concern to UNHCR' was estimated at some 26,500. The figure almost halved compared to the beginning of the year (50,100) which is primarily due to a reduction in the number of Colombian beneficiaries in the border region located between Venezuela and Colombia.

**Table 1. Refugee population from Colombia by country of asylum, 1990-2003**

Data for 2003 is provisional and subject to change. All figures as at 31 December of each given year.

The origin is listed if the total number of refugees is 100 or more at end-2003.

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Australia*	-	-	-	-	-	-	13	37	94	137	185	235	251	212
Canada*	-	-	-	-	101	112	132	151	235	450	1,077	2,339	4,051	6,689
Costa Rica	-	-	-	-	-	34	52	-	-	64	515	3,085	7,326	8,266
Ecuador	70	120	80	92	112	92	93	104	123	159	1,374	1,614	3,122	6,248
France	-	-	-	-	-	352	324	318	295	265	245	253	264	262
Germany	-	-	-	-	-	-	-	-	-	-	-	-	236	214
Italy**	1	2	2	2	2	4	4	4	5	11	23	69	103	114
Norway**	-	-	-	-	-	-	-	43	44	94	194	203	210	205
Panama	-	-	-	-	-	-	7	10	564	733	711	881	989	860
Spain**	-	35	35	36	43	45	60	73	85	160	345	490	537	680
Sweden**	311	441	546	578	686	711	749	800	773	711	622	605	563	572
Switzerland	-	-	-	-	-	-	-	-	103	122	157	186	201	220
United Kingdom**	93	123	133	141	156	159	168	203	405	385	870	915	1,140	1,317
United States*	19	19	35	71	140	250	407	488	594	852	2,614	6,663	11,135	11,590
Various	-	-	12	122	123	143	159	146	218	270	347	400	497	546
<b>Total</b>	<b>494</b>	<b>740</b>	<b>843</b>	<b>1,042</b>	<b>1,363</b>	<b>1,902</b>	<b>2,168</b>	<b>2,377</b>	<b>3,538</b>	<b>4,413</b>	<b>9,279</b>	<b>17,938</b>	<b>30,625</b>	<b>37,995</b>

**Note**

A dash (-) indicates that the value is zero or not available.

\* UNHCR estimate, based on five years of resettlement arrivals and asylum-seeker recognition.

\*\* UNHCR estimate, based on ten years of resettlement arrivals and asylum-seeker recognition.

Source: UNHCR.

**Table 2. Asylum applications lodged by Colombian nationals in industrialized countries, 1980-2003**

Figures generally refer to first/new applications only. Figures between 1 and 4 have been replaced with an asterisk.

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Australia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	329	201	141	122	86	37	22	938
Austria	-	-	-	-	-	-	-	-	*	8	*	*	*	-	-	-	-	*	8	52	36	19	10	10	154
Belgium	-	-	-	-	-	-	*	*	6	19	30	43	45	33	40	32	56	32	62	83	134	115	91	31	857
Canada	-	-	-	-	-	-	-	-	-	-	83	79	53	62	90	76	87	71	270	622	1,063	1,831	2,718	2,131	9,236
France	-	76	75	26	31	29	80	156	208	398	437	221	94	126	88	78	42	56	59	105	104	153	157	139	2,938
Germany	-	-	-	*	-	*	*	6	7	26	62	87	61	38	15	13	36	47	49	119	181	124	92	24	994
Italy	-	-	-	-	-	-	-	-	*	*	-	*	*	*	-	*	-	-	8	*	49	123	65	59	318
Netherlands	-	-	-	-	-	-	-	6	8	10	11	5	-	6	*	6	*	14	28	39	24	48	26	34	269
Norway	-	-	-	-	-	-	-	-	-	-	6	7	7	7	*	*	7	15	191	5	8	9	11	*	282
Spain	-	-	8	*	8	*	17	-	-	-	-	-	217	385	505	67	57	98	155	601	1,361	2,532	1,105	577	7,699
Sweden	-	-	-	-	-	-	-	-	-	142	167	175	180	145	-	83	87	145	303	56	57	87	81	40	1,748
Switzerland	*	*	*	5	*	*	*	*	15	7	16	28	11	16	-	-	20	108	452	202	57	72	50	38	1,117
United Kingdom	9	6	*	8	*	*	13	15	33	90	175	140	280	385	405	525	1,005	1,330	425	1,000	505	360	420	224	7,362
United States	-	-	-	-	-	-	-	-	-	-	101	227	584	1,290	1,336	740	250	251	200	334	2,631	7,144	7,950	4,661	27,699
Other	-	-	-	-	-	-	-	-	-	-	-	*	-	-	*	-	*	*	21	36	6	25	22	16	134
Total	13	86	87	42	46	42	117	188	280	701	1,091	1,018	1,537	2,494	2,484	1,626	1,652	2,499	2,432	3,399	6,338	12,728	12,835	8,010	61,745

**Note**

A dash (-) indicates that the value is zero or not available.

UK and USA: number of cases.

**Table 3. Monthly asylum applications submitted by Colombian nationals, January 2003-June 2004**

All data for 2004 is provisional and subject to change. Figures between 1 and 4 have been replaced with an asterisk.

Country	2003												2004						Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Austria	-	-	-	*	-	-	*	*	*	-	*	-	*	*	*	*	-	-	18
Belgium	*	-	*	*	*	13	*	*	*	*	*	-	*	*	*	*	*	*	49
Bulgaria	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cyprus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Czech Rep.	-	*	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	*	
Denmark	-	-	-	-	-	-	-	-	*	-	-	-	-	-	-	-	-	*	
Finland	-	-	-	-	-	-	*	-	-	-	-	-	-	-	-	-	-	*	
France	16	9	19	10	8	10	5	7	13	11	18	11	7	7	8	8	5	5	177
Germany	*	*	*	7	-	-	*	*	*	*	*	-	*	*	*	6	6	*	51
Greece	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Hungary	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Ireland	-	-	-	-	-	-	-	-	-	*	-	-	-	-	-	-	-	*	
Liechtenstein	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Luxembourg	-	-	-	-	-	-	-	-	*	-	-	-	-	-	-	-	-	*	
Netherlands	*	*	*	*	*	*	*	6	*	5	*	*	*	11	23	32	33	28	165
Norway	*	-	-	-	-	-	*	-	-	-	*	*	*	-	*	6	-	-	13
Poland	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Portugal	-	*	-	*	*	*	-	-	-	-	*	-	-	-	-	-	*	-	7
Romania	-	-	-	-	-	-	-	-	-	*	-	-	-	-	-	-	-	*	
Slovakia	-	*	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	*	
Slovenia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Spain	24	37	37	20	46	29	37	38	50	90	50	66	40	71	51	29	63	51	829
Sweden	7	*	*	*	*	5	*	7	*	*	-	5	*	-	*	*	*	-	46
Switzerland	-	10	7	*	*	-	6	*	-	-	*	*	5	8	-	-	9	*	62
United Kingdom	40	19	29	19	19	22	20	6	14	16	11	9	10	12	11	22	5	7	291
Canada	123	140	158	215	172	118	170	140	212	172	209	182	238	248	208	200	267	251	3,423
United States	454	300	453	399	312	292	336	321	262	280	213	273	213	203	226	196	151	193	5,077
Australia	-	-	-	*	*	*	*	-	6	*	*	*	-	*	*	*	*	-	28
New Zealand	-	-	-	-	-	*	-	-	-	-	-	-	*	-	-	-	-	-	*
Japan	-	-	-	*	*	-	*	-	-	-	-	-	-	-	-	-	*	-	*
Total	670	528	714	686	571	495	590	534	574	584	514	553	529	571	541	505	548	542	10,249

**Note**

A dash (-) indicates that the value is zero or not available.

Spain: June 2004 extrapolated based on Jan-May 2004 data.

UK and USA: Data refers to number of cases.

**Source:** Governments; compiled by Population Data Unit, UNHCR.

**Table 4. Applications and refugee status determination of Colombians by country of asylum, 2002**

Figures between 1 and 4 have been replaced with an asterisk.

Country or territory of asylum (residence)	T <sup>1</sup>	L <sup>2</sup>	Cases pending at the beginning of the year	Applied since 1 Jan.	Decisions since 1 January					Cases pending at the end of the year	Indicators		Change in pending cases
					Recognized	Humanitarian	Rejected	Otherw. closed	Total		Recognition rates		
											Ref. status <sup>3</sup>	Total <sup>4</sup>	
Argentina	G		39	10	-	-	-	-	-	49	..	..	26%
Australia	G	FI	24	37	18	-	35	*	57	10	34%	34%	-58%
Australia	G	AR	108	26	18	-	71	7	96	38	20%	20%	-65%
Austria	G		-	10	*	-	7	6	14	-	13%	13%	..
Bahamas	U		-	*	-	-	-	-	-	-	..	..	..
Belgium	G	FI	-	91	*	-	13	*	18	-	13%	13%	..
Belgium	G	AR	-	14	-	-	-	*	*	-	..	..	..
Bolivia	G		*	11	-	-	*	*	*	9	0%	0%	800%
Brazil	G		23	71	36	-	15	*	52	42	71%	71%	83%
Bulgaria	G		*	-	-	-	-	-	-	*	..	..	0%
Canada	G		1,823	2,718	1,084	-	199	124	1,407	3,148	84%	84%	73%
Chile	G		17	27	30	-	*	8	40	*	94%	94%	-76%
Costa Rica	G		2,411	3,613	2,299	2,179	1,876	436	6,790	-	36%	70%	-100%
Cuba	U		-	5	*	-	-	-	5	-	60%	60%	..
Denmark	G	FI	5	5	-	-	7	-	7	-	0%	0%	-100%
Denmark	G	AR	-	-	-	-	*	-	*	*	0%	0%	..
Ecuador	G		218	6,732	1,568	-	1,196	1,568	4,332	2,618	57%	57%	1101%
El Salvador	G		5	*	5	-	-	-	5	*	100%	100%	-40%
Finland	G	FI	10	-	-	10	-	-	10	-	0%	100%	-100%
France	G	RA	-	*	*	-	-	-	*	-	100%	100%	..
France	G	FI	-	157	29	-	160	-	189	-	15%	15%	..
Germany	G	RA	*	5	-	-	-	5	5	*	..	..	0%
Germany	G	NA	86	92	6	*	78	25	111	73	7%	9%	-15%
Guatemala	U		-	7	-	-	-	-	-	7	..	..	..
Honduras	G		*	9	*	-	7	*	12	-	22%	22%	-100%
Hong Kong SAR, China	U		-	*	*	-	-	-	*	-	100%	100%	..
Ireland	G	FI	-	*	-	-	*	*	*	-	0%	0%	..
Ireland	G	AR	-	*	-	-	*	-	*	-	0%	0%	..
Israel	V		16	*	-	-	*	*	*	15	0%	0%	-6%
Italy	G		-	65	20	14	60	-	94	-	21%	36%	..
Mexico	G		-	56	18	-	18	10	46	10	50%	50%	..
Mexico	U		*	9	10	-	*	*	13	-	83%	83%	-100%
Netherlands	G	JR	7	-	-	-	-	-	-	19	..	..	171%
Netherlands	G	FI	22	26	*	*	21	8	33	17	4%	16%	-23%
Netherlands	G	AR	14	-	*	-	*	7	12	8	20%	20%	-43%
New Zealand	G	FI	-	12	16	-	15	-	31	-	52%	52%	..
Nicaragua	G		*	8	-	-	-	*	*	8	..	..	300%
Norway	G	FI	-	11	-	5	14	*	22	-	0%	26%	..
Panama	G		25	118	54	-	28	7	89	54	66%	66%	116%
Paraguay	U		-	*	-	-	-	*	*	-	..	..	..
Peru	G		44	57	5	-	*	-	9	92	56%	56%	109%
Poland	G	FI	-	-	-	-	*	-	*	-	0%	0%	..
Portugal	G		-	*	*	*	*	-	*	-	33%	67%	..
Slovenia	G		-	*	-	-	-	*	*	-	..	..	..
Spain	G		-	1,105	41	6	306	742	1,095	-	12%	13%	..
Sweden	G	JR	-	-	-	-	-	-	-	28	..	..	..
Sweden	G	FI	-	81	6	8	42	12	68	93	11%	25%	..
Sweden	G	AR	-	-	8	25	39	9	81	21	11%	46%	..
Switzerland	G	FI	45	50	12	8	36	17	73	34	21%	36%	-24%
Switzerland	G	CA	-	-	-	7	-	-	7	-	0%	100%	..
United Kingdom	G	FI	-	420	45	20	345	70	480	-	11%	16%	..
United Kingdom	G	AR	-	-	160	-	465	35	660	-	26%	26%	..
United States	G	IN	3,621	7,950	2,532	-	4,246	459	7,237	4,499	37%	37%	24%
United States	G	EO	4,412	9,508	1,019	-	1,723	1,173	3,915	10,005	37%	37%	127%
Uruguay	U		*	7	*	-	*	*	8	-	75%	75%	-100%
Venezuela	G		303	705	-	-	-	-	-	1,008	..	..	233%
<b>Total</b>			<b>13,291</b>	<b>33,847</b>	<b>9,056</b>	<b>2,288</b>	<b>11,045</b>	<b>4,759</b>	<b>27,148</b>	<b>21,918</b>	<b>40%</b>	<b>51%</b>	<b>65%</b>

**Notes**

<sup>1</sup> Type of procedure: G=Government; U=UNHCR; V=Various/unknown.

<sup>2</sup> Level in the procedure: FI=First instance; AR=Administrative Review; JR=Judicial Review; CA=Cantonal regulations; EO=Executive Office of Immigration Review; IN=Immigration and Naturalization Service; NA=New applications; RA=Repeat applications.

<sup>3</sup> Number of cases recognized divided by the total number of cases recognized, granted humanitarian status and rejected.

<sup>4</sup> Number of cases recognized and granted humanitarian status divided by the total number of cases recognized, granted humanitarian status and rejected.

**Table 5. Applications and refugee status determination of Colombians by country of asylum, 2003**

Figures between 1 and 4 have been replaced with an asterisk.

Country or territory of asylum (residence)	T <sup>1</sup>	L <sup>2</sup>	Cases pending at the beginning of the year	Applied since 1 Jan.	Decisions since 1 January					Cases pending at the end of the year	Indicators		
					Recognized	Humanitarian	Rejected	Otherw. closed	Total		Recognition rates		Change in pending cases
											Ref. status <sup>3</sup>	Total <sup>4</sup>	
Argentina	G		49	7	*	-	*	10	12	44	50%	50%	-10%
Australia	G	AR	38	7	12	-	21	5	38	7	36%	36%	-82%
Australia	G	FI	10	22	*	-	17	-	21	9	19%	19%	-10%
Austria	G		-	10	-	-	*	-	*	-	0%	0%	..
Belgium	G	AR	10	42	*	-	13	*	18	34	13%	13%	240%
Belgium	G	FI	-	31	*	-	35	9	46	-	5%	5%	..
Bolivia	G		9	*	*	-	8	*	12	-	20%	20%	-100%
Brazil	G		42	45	27	-	27	7	61	26	50%	50%	-38%
Bulgaria	G		*	-	-	-	-	-	-	*	..	..	0%
Canada	G		3,148	2,131	1,960	-	302	150	2,412	2,822	87%	87%	-10%
Chile	G		*	56	21	-	-	*	22	38	100%	100%	850%
Costa Rica	G		-	1,545	773	887	327	24	2,011	-	39%	84%	..
Cuba	U		-	*	-	-	*	-	*	-	0%	0%	..
Denmark	G	AR	*	-	-	-	*	-	*	-	0%	0%	-100%
Denmark	G	FI	-	*	-	-	*	-	*	-	0%	0%	..
Ecuador	G		2,618	11,388	3,282	-	4,356	3,842	11,480	2,526	43%	43%	-4%
Finland	G	FI	-	*	-	-	-	-	-	-	..	..	..
France	G	FI	-	139	33	-	84	-	117	-	28%	28%	..
France	G	RA	-	*	13	-	-	-	13	-	100%	100%	..
United Kingdom	G	AR	-	-	160	-	485	25	670	-	25%	25%	..
United Kingdom	G	FI	-	224	18	5	270	45	338	-	6%	8%	..
Germany	G	RA	*	*	-	-	-	*	*	*	..	..	0%
Germany	G	NA	73	24	-	10	75	7	92	8	0%	12%	-89%
Guatemala	G		7	-	-	-	-	7	7	-	..	..	-100%
Honduras	G		-	8	-	-	6	*	8	-	0%	0%	..
Ireland	G	AR	-	*	*	-	-	-	*	-	100%	100%	..
Ireland	G	FI	-	*	-	-	-	-	-	-	..	..	..
Italy	G		-	59	11	-	32	-	43	-	26%	26%	..
Japan	G	AR	-	*	-	*	*	-	*	*	0%	33%	..
Japan	G	FI	-	*	-	-	*	-	*	(1)	0%	0%	..
Luxembourg	G		-	*	-	-	-	-	-	-	..	..	..
Mexico	G		20	38	13	-	20	16	49	9	39%	39%	-55%
Netherlands	G	AR	8	-	-	5	6	-	11	*	0%	45%	-75%
Netherlands	G	FI	17	34	5	6	15	13	39	15	19%	42%	-12%
Netherlands	G	JR	19	-	-	-	-	-	-	13	..	..	-32%
Nicaragua	G		8	7	-	-	-	6	6	9	..	..	13%
Norway	G	FI	-	*	-	*	5	-	8	-	0%	38%	..
New Zealand	G	AR	-	*	*	-	*	-	*	7	75%	75%	..
New Zealand	G	FI	-	*	*	-	7	-	8	-	13%	13%	..
Panama	V		54	18	-	-	-	5	5	67	..	..	24%
Paraguay	U		-	*	-	-	-	*	*	-	..	..	..
Peru	G		92	105	19	-	-	53	72	125	100%	100%	36%
Portugal	G		-	5	-	*	-	*	6	-	0%	100%	..
Romania	G		-	*	-	-	-	-	-	*	..	..	..
El Salvador	V		*	6	*	-	-	*	6	*	100%	100%	0%
Spain	G		-	577	79	65	1,293	310	1,747	-	5%	10%	..
Slovakia	G		-	*	-	-	-	*	*	-	..	..	..
Sweden	G	AR	21	-	-	7	12	*	21	13	0%	37%	-38%
Sweden	G	FI	93	40	*	*	52	11	68	62	4%	9%	-33%
Sweden	G	JR	28	-	-	-	-	-	-	57	..	..	104%
Switzerland	G	FI	34	38	36	5	24	10	75	8	55%	63%	-76%
Switzerland	G	CA	-	-	-	13	-	-	13	-	0%	100%	..
Uruguay	U		-	*	-	-	-	-	-	*	..	..	..
United States	G	EO	10,005	6,835	1,589	-	3,062	1,799	6,450	10,389	34%	34%	4%
United States	G	IN	4,487	4,661	1,661	-	2,935	278	4,874	4,370	36%	36%	-3%
Venezuela	G		1,008	1,345	-	-	-	83	83	2,270	..	..	125%
<b>Total</b>			<b>21,911</b>	<b>29,482</b>	<b>9,733</b>	<b>1,014</b>	<b>13,504</b>	<b>6,734</b>	<b>30,985</b>	<b>22,940</b>	<b>40%</b>	<b>44%</b>	<b>5%</b>

**Notes**

<sup>1</sup> Type of procedure: G=Government; U=UNHCR; V=Various/unknown.

<sup>2</sup> Level in the procedure: FI=First instance; AR=Administrative Review; JR=Judicial Review; CA=Cantonal regulations; EO=Executive Office of Immigration Review; IN=Immigration and Naturalization Service; NA=New applications; RA=Repeat applications.

<sup>3</sup> Number of cases recognized divided by the total number of cases recognized, granted humanitarian status and rejected.

<sup>4</sup> Number of cases recognized and granted humanitarian status divided by the total number of cases recognized, granted humanitarian status and rejected.

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